

Document:-  
**A/CN.4/SR.1078**

**Summary record of the 1078th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1970, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

covered by sub-paragraph (a) or that it did not apply to members of delegations.

140. The CHAIRMAN said that that question would have to be decided in connexion with sub-paragraph (a).

*Article 75, as amended by the deletion of sub-paragraph (g), was adopted.*

ARTICLE 76 (Exemption from customs duties and inspection)

141. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 76:

*Article 76*

*Exemption from customs duties and inspection*

1. Within the limits of such laws and regulations as it may adopt, the host State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of a delegation to an organ or to a conference;

(b) Articles for the personal use of the representatives in the delegation and the members of its diplomatic staff.

2. The personal baggage of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

142. The article followed the pattern of article 35 of the Convention on Special Missions.<sup>29</sup>

*Article 76 was adopted.*

The meeting rose at 1.05 p.m.

<sup>29</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 103.

**1078th MEETING**

*Friday, 26 June 1970, at 10.20 a.m.*

*Chairman: Mr. Taslim O. ELIAS*

*Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.*

**Relations between States and international organizations**

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of item 2 of the agenda.

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
(continued)

ARTICLE 77 (Privileges and immunities of other persons)

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 77:

*Article 77*

*Privileges and immunities of other persons*

1. If representatives in a delegation to an organ or to a conference or members of its diplomatic staff are accompanied by members of their families, the latter shall enjoy the privileges and immunities specified in articles ... to ..., provided they are not nationals of or permanently resident in the host State.

2. Members of the administrative and technical staff of the delegation shall enjoy the privileges and immunities specified in articles ... to .... Members of their families who accompany them and who are not nationals of or permanently resident in the host State shall enjoy the same privileges and immunities.

3. Members of the service staff of the delegation shall enjoy immunity from the jurisdiction of the host State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article ....

4. Private staff of the members of the delegation who are not nationals of or permanently resident in the host State shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the delegation.

3. The article followed the pattern of article 40 of the Convention on Special Missions.<sup>1</sup> It was important to note that the text would require revision along the lines of article 36 of the Convention on Special Missions if alternative B of article 73 were adopted. The number of the articles referred to in paragraphs 1, 2 and 3 had not yet been inserted, but article 77 would include the same range of privileges and immunities as were referred to in article 40 of the draft articles on permanent missions.<sup>2</sup>

4. Incidentally, the Drafting Committee had noted that paragraph 2 of article 40 of the present draft contained an error in that it stated that the persons referred to would enjoy the privileges and immunities specified in articles 30 to 37. But article 33, concerning waiver of immunity, and article 34, concerning settlement of civil

<sup>1</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 104.

<sup>2</sup> *Ibid.*, Supplement No. 10, p. 13.

claims, did not really grant any privileges and immunities. The commentary would include a reference to the need to revise article 33, whereas the final version of article 34 would depend on whether the Commission chose alternative A or alternative B of article 73.

5. Mr. USHAKOV said that since the Commission had decided at its previous meeting to send to governments both the alternatives proposed for article 73, two alternatives should now be drafted for article 77 also and be submitted to governments.

6. Mr. KEARNEY, Chairman of the Drafting Committee, said he could assure Mr. Ushakov that the nature of the changes and the need for them would be made clear to governments.

7. Mr. USHAKOV said that the necessary explanations should perhaps appear in the commentary.

8. The CHAIRMAN suggested that the Commission adopt article 77, subject to the necessary changes and to the point made by Mr. Ushakov.

*It was so agreed.*

#### ARTICLE 78 (Duration of privileges and immunities)

9. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 78:

##### *Article 78*

##### *Duration of privileges and immunities*

1. Every person entitled to privileges and immunities under the provisions of this part shall enjoy such privileges and immunities from the moment he enters the territory of the host State in connexion with the meeting of an organ or conference or, if he is already in its territory, from the moment when his appointment is notified to the appropriate authority pursuant to article 67.

2. When the functions of a person entitled to privileges and immunities under this part have come to an end, the privileges and immunities of such person shall normally cease at the moment when he leaves the territory of the host State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time. However, with respect to acts performed by such a person in the exercise of his functions as a member of a delegation to an organ or to a conference, immunity shall continue to subsist.

3. In the event of the death of a member of a delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the host State.

10. The article was modelled on article 43 of the Convention on Special Missions,<sup>3</sup> although a slight change had been made in the final clause of paragraph 1.

11. A reference would be made in the commentary to the possibility of an armed conflict; it would follow the same lines as the reference in paragraph (1) of the commentary to article 48.<sup>4</sup>

12. Mr. ROSENNE said that he was somewhat concerned about the phrase "to the appropriate authority" at the end of paragraph 1. That phrase was not as specific as the corresponding phrase in article 43 of the Convention on Special Missions, which used the words "to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed". Article 42 of the draft articles on permanent missions was also quite specific in that respect, since it used the words "from the moment when his appointment is notified to the host State by the Organization or by the sending State".<sup>5</sup> The language in article 78 was altogether too vague; the passage should either be deleted or else revised along the lines of article 42.

13. Mr. TABIBI said that sometimes the privileges and immunities of a representative did not expire when he left the host State but remained in force until his successor had presented his credentials. Mere departure was not sufficient to bring about the termination of his privileges and immunities.

14. Mr. USHAKOV said that there appeared to be a mistake in paragraph 1; surely the words "notified to the appropriate authority" should read "notified by the appropriate authority"?

15. Mr. KEARNEY (Chairman of the Drafting Committee) said that the passage should read "to the host State by the appropriate authority".

16. The Drafting Committee's original intention had been to follow article 42, as suggested by Mr. Rosenne.

17. Mr. YASSEEN said that the idea of a reasonable time limit should be inserted in the last part of paragraph 1, because States sometimes notified the appointment of their representatives several months before the start of a conference, and the Commission clearly did not intend that persons so appointed who were already in the territory of the host State should enjoy privileges and immunities for such a long period.

18. The CHAIRMAN suggested that the last phrase in paragraph 1 be revised to read "from the moment when the appointment is notified to the host State by the organ or by the conference" and that the element of a reasonable time, proposed by Mr. Yasseen, be also included.

19. Mr. KEARNEY (Chairman of the Drafting Committee) said that Mr. Yasseen's point was a good one and he would suggest that the same change be also made in article 42. A reference to the problem would, of course, be included in the commentary for consideration at the second reading.

*Article 78, as amended, was adopted.*

ARTICLE 78 bis (Property of a member of a delegation or of a member of his family in the event of death)

20. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 78 bis:

<sup>3</sup> *Ibid.*, Supplement No. 30, p. 104.

<sup>4</sup> *Ibid.*, Supplement No. 10, p. 17.

<sup>5</sup> *Ibid.*, p. 14.

*Article 78 bis**Property of a member of a delegation or of a member of his family in the event of death*

1. In the event of the death of a member of a delegation to an organ or to a conference or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the host State, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

21. The article followed article 44 of the Convention on Special Missions<sup>6</sup> and paragraphs 3 and 4 of article 42 of the draft articles on permanent missions.<sup>7</sup> The problem it dealt with had been made the subject of a separate article because of a decision by the General Assembly during its consideration of the Convention on Special Missions, which would be explained in the commentary.

22. The CHAIRMAN suggested that the Commission adopt article 78 bis, and take note of the explanation given by the Chairman of the Drafting Committee.

*It was so agreed.*

ARTICLE 79 (Transit through the territory of a third State)

23. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 79:

*Article 79**Transit through the territory of a third State*

1. If a representative in a delegation to an organ or to a conference or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the delegation, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present part. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the delegation in transit the same inviolability and protection as the host State is bound to accord under the present part.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance,

either in the visa application or by notification, of the transit of those persons as members of the delegation, members of their families or couriers, and has raised no objection to it.

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the delegation, when the use of the territory of the third State is due to *force majeure*.

24. The article was the same as article 42 of the Convention on Special Missions.<sup>8</sup> It also raised the question of the possibility of an armed conflict, to which reference might be made in the commentary.

*Article 79 was adopted.*

## ARTICLE 80 (Non-discrimination)

25. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 80:

*Article 80**Non-discrimination*

In the application of the provisions of the present part, no discrimination shall be made as between States.

26. The article was the same as all the other articles concerning non-discrimination.

*Article 80 was adopted.*

## ARTICLE 81 (Respect for the laws and regulations of the host State)

27. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 81:

*Article 81**Respect for the laws and regulations of the host State*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from criminal jurisdiction, the sending State shall, unless it waives this immunity, recall the person concerned, terminate his functions with the delegation or secure his departure, as appropriate. This provision shall not apply in the case of any act that the person concerned performed in carrying out the functions of the delegation in the premises where the organ or conference is meeting or the premises of the delegation.

3. The premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the delegation.

28. The article was based on article 45 of the draft articles on permanent missions,<sup>9</sup> which represented a compromise on a difficult issue.

29. The Committee had had some difficulty, however, in adapting the last sentence in paragraph 2 of that

<sup>6</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 104.

<sup>7</sup> *Ibid.*, Supplement No. 10, p. 14.

<sup>8</sup> *Ibid.*, Supplement No. 30, p. 104.

<sup>9</sup> *Ibid.*, Supplement No. 10, p. 16.

article to cover certain cases about which host States had complained in the past, especially in connexion with charges of manslaughter following accidents. It had decided to use the words "in the premises where the organ or conference is meeting or the premises of the delegation" to replace the phrase "within either the Organization or the premises of a permanent mission" in article 45.

30. Mr. EUSTATHIADES said he was not satisfied with the second sentence of paragraph 2. Immunity from jurisdiction had always been considered to relate to functions, and he could not see why an idea of place should be introduced.

31. Mr. USHAKOV said he agreed with Mr. Eustathiades. At the Commission's last session and in the Drafting Committee at the present session he had reserved his position on the final words "in the premises where the organ or conference is meeting or the premises of the delegation".

32. At the last session of the General Assembly, which he had attended as Chairman of the International Law Commission, he had noticed that several members of the Sixth Committee had also criticized the corresponding draft article relating to permanent missions. He was prepared, however, to accept the wording of the sentence provisionally, on the understanding that a better form of words would be found on second reading.

33. Mr. NAGENDRA SINGH suggested that, in order to respect the formulation it had already used in article 45, on permanent missions, the Commission might adopt the wording "within the organ or conference". That would avoid introducing the new element of place. The words after "carrying out" in the last sentence of paragraph 2 of article 81 would be deleted and replaced by the words "his functions within the organ or conference".

34. Mr. KEARNEY (Chairman of the Drafting Committee) said that he had used that phrase in his original draft, but the Drafting Committee had decided that it was too vague.

35. Mr. SETTE CÂMARA said that he supported the views of Mr. Eustathiades and Mr. Ushakov. He would have to reserve his position regarding the final phrase in paragraph 2.

36. Mr. CASTRÉN said that he understood the concern expressed by Mr. Eustathiades and Mr. Ushakov. The Commission had discussed the question at length at its previous session,<sup>10</sup> however, and in the end had accepted the wording which was now being criticized. It would therefore be better to wait before altering the words until the comments of governments on the article and on the corresponding draft article on permanent missions had been received.

37. Mr. USHAKOV said that the Drafting Committee had adopted the phrase in question because an organ

or conference did not normally have any premises of its own.

38. The CHAIRMAN said that a majority of the Commission seemed to favour the present text of article 81 subject to reconsideration of paragraph 2, and of paragraph 2 of article 45, at the second reading.

*Article 81 was adopted on that understanding.*

ARTICLE 82 (End of the functions of a member of a delegation)

39. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 82:

*Article 82*

*End of the functions of a member of a delegation*

The functions of a member of a delegation to an organ or to a conference shall come to an end, *inter alia*:

(a) On notification to this effect by the sending State to the organ or the conference;

(b) Upon the conclusion of the meeting of the organ or the conference.

40. The article was based on article 47 of the draft articles on permanent missions;<sup>11</sup> the main difference was in sub-paragraph (b), which referred to the conclusion of the meeting of the organ or the conference.

41. Mr. CASTRÉN said that the Commission had already decided that notifications by the sending States should be addressed to the organization and not to the organ. The word "organ" in sub-paragraph (a) should therefore be replaced by the word "Organization".

42. The CHAIRMAN said it was clear that the word "organ" in sub-paragraph (a) should be replaced by the word "Organization".

43. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee had deliberately broadened the title of article 82 in order to cover all members of the delegation. It might, therefore, be necessary to include a reference in the commentary to the possibility of a change in article 47.

44. Mr. ROSENNE said that the word "meeting" in sub-paragraph (b) should be replaced by the word "session".

45. Mr. KEARNEY (Chairman of the Drafting Committee) said that he had originally proposed using the word "session" but the Committee had concluded that "meeting" was somewhat broader.

46. Mr. ROSENNE said that in current United Nations practice the word "session" was surely broader than "meeting".

47. Mr. USHAKOV said that the French version was much clearer and should not be changed.

<sup>10</sup> See *Yearbook of the International Law Commission, 1969*, vol. I, 1030th meeting, paras. 1-52, 1032nd meeting, paras. 26-74 and 1033rd meeting, paras. 1-22.

<sup>11</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 17.

48. The CHAIRMAN suggested that the Commission might adopt article 82 provisionally and record the views expressed by members in the commentary.

*Article 82 was adopted on that understanding.*

#### ARTICLE 83 (Protection of premises and archives)

49. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 83:

##### *Article 83*

##### *Protection of premises and archives*

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of a delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

50. The article was based on article 49 of the draft articles on permanent missions,<sup>12</sup> but there was some question as to whether it was really necessary.

51. Mr. EUSTATHIADES said that in the present article the word "*réunion*", as used in the French version, obviously meant "*session*" and not "*séance*". Nevertheless, to avoid confusion and cover the case of a meeting held before the session, perhaps both terms should be used, "*réunion ou session*". The same applied to article 82.

52. Mr. YASSEEN said that the difficulty arose because the same word, "meeting", was used in English for both *réunion* and *séance*. An appropriate term should be found for the English version, but the French version should not be changed.

53. Mr. USHAKOV said it would be helpful if article 00, on use of terms, included a definition of the words "*réunion d'un organe*" in the French and of "meeting of an organ" in the English version.

54. Mr. ROSENNE said that the problem was one which really affected the English version only. In his opinion, it should be decided at the present session and not postponed until 1971.

55. Mr. REUTER suggested, as a device for removing the ambiguity, that the noun be replaced by a verb and that the privileges and immunities be granted "until the moment when the conference or organ ceases to sit".

56. Mr. BARTOŠ said that he had drawn attention in the Drafting Committee to the danger of providing that privileges and immunities should cease with the close of the session, since it was customary to allow delegates a certain time to complete their last duties after the session was over, such as checking the records. The wording proposed for article 83 was therefore not very happy.

57. The CHAIRMAN suggested that the Commission retain the present wording, while bearing in mind that it might be necessary to reconsider it on second reading at the next session. If the word "meeting" were changed in article 83, it might have to be changed in a number of other articles as well.

*Article 83 was adopted on that understanding.*

58. Mr. USTOR said that the Commission had now adopted articles on permanent missions, permanent observer missions and delegations to meetings of organs and conferences. In the interests of completeness, it was desirable that it should also prepare articles on observer delegations to meetings of organs and to conferences, a subject on which the Special Rapporteur on relations between States and international organizations had prepared a paper (A/CN.4/L.151). Perhaps the Secretariat would get into touch with the Special Rapporteur to obtain his views on the subject.

#### Organization of work

*(resumed from the 1065th meeting)*

59. The CHAIRMAN asked the Deputy Secretary to the Commission to read out a telegram he had received from Mr. Bedjaoui.

60. Mr. TESLENKO (Deputy Secretary to the Commission) said the telegram addressed by Mr. Bedjaoui to the Chairman read:

"Referring to our telephone conversation of yesterday afternoon, I confirm that very urgent governmental duties prevent me from attending the Commission's meeting on Monday 29 June for the discussion of my report. It is however not impossible that I may be able to come to Geneva on the following Monday, 6 July, if the Commission can discuss the report on that day. If, as I have been told by telephone, the Commission cannot start a discussion on that day, I shall request you to arrange an agenda for the next session which will allow a full debate on my draft articles and on those which I shall submit then."

61. After an exchange of views in which Mr. YASSEEN, Mr. BARTOŠ, Sir Humphrey WALDOCK, Mr. USHAKOV, Mr. THIAM, Mr. ROSENNE, and Mr. USTOR took part, the CHAIRMAN asked the Deputy Secretary to the Commission to get into touch with Mr. Bedjaoui at once and inquire whether he could be in Geneva on 2 and 3 July, in which case the Commission would devote three meetings to a study of his report.

*The meeting was suspended at 11.40 a.m. and resumed at 12.25 p.m.*

62. Mr. TESLENKO (Deputy Secretary to the Commission) said that he had telephoned to Algiers and spoken with Mr. Bedjaoui, who had told him that, as the Algerian Government would be travelling in the interior of the country on 2 and 3 July, he would not be able to come to Geneva on those days.

<sup>12</sup> *Ibid.*, p. 17.

63. The CHAIRMAN said that in the circumstances it would unfortunately not be possible to deal at the present session with the topic of succession in respect of matters other than treaties.<sup>13</sup> The topic would, of course, be on the Commission's agenda for the following session, and at the beginning of the session the officers of the Commission would consider the possibility of allocating a number of meetings to it.

### Organization of future work

[Item 8 of the agenda]

(resumed from the 1071st meeting)

#### REPORT OF THE SUB-COMMITTEE ON TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

64. The CHAIRMAN invited the Commission to consider the report of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations.<sup>14</sup> Paragraph 2 of that report related to the internal work of the Sub-Committee and did not call for any action by the Commission. Paragraph 1 related to work to be done by the Secretariat, if the Commission decided to request it.

65. Mr. EUSTATHIADES said the method of work proposed by the Sub-Committee was quite satisfactory. The document the Secretariat was being asked to prepare on the practice of the United Nations and the principal international organizations would be very useful both to the Special Rapporteur and to members of the Commission. It was also important to know how many international organizations had been invited to the Vienna Conference, as it was essential to have as comprehensive a picture of the practice as possible.

66. Mr. USHAKOV said it was only normal that the international organizations invited to the Vienna Conference should be consulted, since the topic to be considered also concerned the law of treaties. It would not, however, be necessary to prepare a full bibliography, so the first line in paragraph 1 (ii) should be amended accordingly.

67. Mr. THIAM suggested that the words "a full bibliography" in paragraph 1 (ii) be replaced by the words "as full a bibliography as possible".

68. Mr. TESLENKO (Deputy Secretary to the Commission) said that in 1966 the Legal Counsel had explained to the Sixth Committee the criteria followed by the Secretary-General in deciding which organizations should be invited.<sup>15</sup>

<sup>13</sup> See also 1044th meeting, para. 52, 1056th meeting, para. 1, and 1066th meeting, para. 1.

<sup>14</sup> For the text of this report, see *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 10, para. 89*.

<sup>15</sup> See *Official Records of the General Assembly, Twenty-first Session, Sixth Committee, 918th meeting, para. 8*.

69. Mr. BARTOŠ said he agreed that there should be close collaboration with the international organizations directly concerned, but it was necessary to be realistic. So far, even when invited they had not shown any particular eagerness to follow the Commission's work. Consequently, though he had not opposed the proposal that the Secretary-General should invite the largest possible number of international organizations to contribute to the study, he had his doubts as to the response the invitation would evoke.

70. He suggested that the Secretary-General be asked to raise the question in the Administrative Committee on Co-ordination, stressing the benefit of continuous contact with the Commission both to the international organizations themselves and to the progress of international law. It was possible that the organizations were afraid of an infringement of their autonomy, so that something more should be done than merely write to them.

71. Mr. AGO said he supported the proposals contained in the Sub-Committee's report. It was important that the document referred to in paragraph 1 (ii) should be as complete as possible, particularly with regard to the practice. The required information could be obtained, not only by consulting the organizations direct but by examining published material.

72. With regard to the international organizations with which the Secretary-General might enter into contact, he hoped that the formula adopted would not result in unfortunate exclusions. Perhaps the words, "in particular" should be added before the words "those which were invited to send observers" in the last sentence of paragraph 1 (ii).

73. Mr. ROSENNE said that, of the specialized and related agencies of the United Nations, the following had been represented by observers at the Vienna Conference on the Law of Treaties: the International Labour Organisation, the Food and Agriculture Organization, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the International Bank for Reconstruction and Development and the International Development Association, the World Health Organization, the Universal Postal Union, the Inter-Governmental Maritime Consultative Organization and the International Atomic Energy Agency. In addition, the General Agreement on Tariffs and Trade, the United International Bureaux for the Protection of Intellectual Property, the Asian-African Legal Consultative Committee, the Council of Europe and the League of Arab States had been similarly represented.

74. In 1966 the Sixth Committee had discussed the question of the organizations to be invited to the Vienna Conference, and the Legal Counsel had then indicated the criterion by which the Secretary-General would be guided. Apart from the specialized agencies and IAEA, invitations would be extended to those intergovernmental organizations which maintained permanent relations with the United Nations and with the International Law Commission.

75. During the work on the law of treaties, the Commission had not at first formally asked organizations for comments. At a later stage, the Sixth Committee had organized certain consultations, which had resulted in the production of documents A/6827 and A/CONF.39/7, containing material on the views of international organizations on the draft articles on the law of treaties.

76. In the present instance, if the Secretary-General were to communicate the Sub-Committee's conclusions to international organizations, he suggested that it be left to the organizations to reply as they saw fit. Some of them appeared to display considerable reticence in that respect.

77. Sir Humphrey WALDOCK said that the points which had been raised by members had been fully discussed in the Sub-Committee. The Sub-Committee's intention was that as much material as possible should be obtained on the practice in the matter. There was, however, the difficulty that the Secretariat had some sensibilities with respect to formal invitations to organizations.

78. The formula which appeared in the last sentence of sub-paragraph (ii) of paragraph 1 was the one most satisfactory for the purposes of the Secretariat. The opening words "For the time being" reserved the Commission's right to consult any further organization in the future. For example, the European Economic Community had developed a considerable practice with regard to treaties, and information on the practice of the Council for Mutual Economic Assistance (CMEA) would also be of interest. Probably, the Commission would not need to obtain information from a very large number of organizations in the initial stages; later, it could widen the scope of the research.

79. During his own work on the law of treaties, he had made some inquiries of the legal advisers of international organizations, and had found that at that date some of them had no great enthusiasm to take up the subject. He had gained the impression that many organizations were developing their practice and felt that, if codification took place too early, it might inhibit that development.

80. Since then, however, there had been the resolution adopted by the Vienna Conference<sup>16</sup> and the decision taken by the General Assembly calling for the study of the subject by the Commission.<sup>17</sup> The Secretariat would refer to those important decisions in its invitations to the organizations and it was to be hoped that information would be readily supplied.

81. Mr. RUDA said that information should also be obtained from the Organization of American States; in inter-American affairs, there was a practice of seventy years' standing which it would be of interest to explore.

82. Mr. ALCÍVAR said that the point had been raised in the Sub-Committee both by him and by Mr. Sette Câmara.

83. Mr. NAGENDRA SINGH said he supported Mr. Ago's suggestion that as wide a field as possible should be covered in the inquiries from international organizations.

84. Mr. BARTOŠ said that he knew of two organizations concerned with strictly legal matters which had not been invited to Vienna: the International Institute for the Unification of Private Law and The Hague Conference on Private International Law.

85. Mr. THIAM said he noted that the Organization of African Unity was not included in the list given by Mr. Rosenne.

86. Mr. USHAKOV said that the matter had rather important political implications and that the Commission should be guided by the decisions of the General Assembly. He therefore fully supported the criterion proposed in the Sub-Committee's report, namely, the international organizations which were invited to send observers to the Vienna Conference on the Law of Treaties. If it were proposed to change that formula he would ask that the proposal be put to the vote, and would vote against it.

87. Mr. TABIBI said that the question of invitations to international organizations was a sensitive political question which was best left to the judgement and practice of the Secretariat.

88. The presence of an observer for the Asian-African Legal Consultative Committee at the Vienna Conference was understandable because that Committee had discussed the law of treaties very fully immediately before the Conference.

89. Mr. AGO said that it was not a question of inviting organizations, as had been the case at Vienna, but merely of gathering information on the practice followed by the organizations.

90. Sir Humphrey WALDOCK said that the question was one of sending an invitation to international organizations. The question of the choice of the organizations to be invited undoubtedly posed problems for the Secretariat.

91. He thought that in certain cases legal advisers might hesitate to give information without obtaining the approval of a higher authority in the organization. That could well be because some of the practices which had developed might not have a very clear constitutional basis.

92. Apart from the information that might be obtained in response to an official invitation, the Special Rapporteur would have his own means of research into the practice of international organizations, with the help of the Secretariat.

93. Mr. EUSTATHIADES said that while the Secretary-General should be left to make the final choice, after

<sup>16</sup> *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/26, annex* (United Nations publication, Sales No.: E.70.V.5).

<sup>17</sup> General Assembly resolution 2501 (XXIV).

taking into account all the difficulties that had been mentioned, it might help him if he were asked to choose those organizations which it seemed most advisable to consult on the subject.

94. Mr. ROSENNE said that the last sentence of paragraph 1 could be left as it was. Once the two lists of treaties requested in paragraph 1 had been compiled, they would reveal which organizations had concluded treaties. The Commission could then take its decision in the light of that information.

95. Mr. CASTRÉN said that the formula used in the Sub-Committee's report was a very cautious one and left the Secretary-General full discretion, since it stated "the Secretary-General might consider".

96. He endorsed Mr. Ago's proposal that the words "in particular" should be added.

97. Mr. TESLENKO (Deputy-Secretary to the Commission) said that the list of the organizations that had been invited to Vienna was longer than the one Mr. Rosenne had given, which was the list of organizations that had attended the Conference.

98. He must reserve the Secretary-General's position on the question of the choice of organizations. It would put the Secretary-General in a delicate position if he were asked to make such a choice without the help of an objective criterion. The study of the topic was still in the initial stage; later, when more documentation was available to the Commission, it might itself be able to draw up the list of organizations to be consulted.

99. Mr. BARTOŠ said that if the text of the report were amended as Mr. Ago had suggested, the Commission should put the matter to the vote; he would vote against that amendment.

100. Mr. AGO said that he had not formally proposed any amendment, so there was no need for a vote.

101. Mr. BARTOŠ said that in that case it would be sufficient to mention in the Commission's report that several members had requested that the list of organizations be expanded.

102. The CHAIRMAN said it would be enough if the points raised by Mr. Ago and Mr. Bartoš were recorded in the summary record to the meeting.

103. If there were no further comments, he would take it that the Commission agreed to request the Secretary-General to prepare the documents mentioned in sub-paragraphs (i) and (ii) of paragraph 1 of the Sub-Committee's report (A/CN.4/L.155) with only one change: in the first sentence of sub-paragraph (ii), the words "a full bibliography" would be replaced by the words "as full a bibliography as possible".

*It was so agreed.*

The meeting rose at 1.20 p.m.

## 1079th MEETING

*Monday, 29 June 1970, at 3.15 p.m.*

*Chairman:* Mr. Taslim O. ELIAS

*Present:* Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

### State responsibility

(A/CN.4/233)

[Item 4 of the agenda]

*(resumed from the 1076th meeting)*

1. The CHAIRMAN invited the Commission to resume consideration of the Special Rapporteur's second report on State responsibility (A/CN.4/233).

2. Mr. USTOR paid a tribute to the Special Rapporteur for the skill and elegance with which he had handled a wealth of material in his report. He fully agreed with the view, expressed in paragraph 24, that the notion of international responsibility was extremely complex and was one with respect to which the claims of progressive development of international law might assert themselves more forcefully than they did with respect to other notions. Not much had been done in that direction hitherto, and the life of the international community demanded that a great measure of progressive development should be introduced into the Commission's draft articles on State responsibility. The Commission should not focus its attention exclusively on injuries done to aliens, but should deal with international responsibility in general, including responsibility for the gravest acts in international life, such as aggression, genocide and the use of weapons of mass destruction.

3. The remarks he was about to make were of a tentative character; indeed, they related to a report which was itself, in a sense, provisional.

4. With regard to the delimitation of the subject, he fully agreed with the Special Rapporteur's approach in paragraphs 5 and 6, but thought that the delimitation should perhaps be stated in the draft articles themselves, not only in a commentary. In the first place, the topic of State responsibility, as its title indicated, covered only the responsibility of States, not the responsibility of other subjects of international law, especially international organizations. In the second place, the draft would cover only responsibility for illicit acts and not responsibility for risk. He therefore suggested that it might well begin with an article stating that the international responsibility of a State could derive either from illicit acts or from actions which were not in themselves unlawful, but which could result in injury to another State, or endanger life