

Document:-
A/CN.4/SR.1522

Summary record of the 1522nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

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

(e) "condition of compensation" means a condition providing for compensation of any kind agreed between the granting State and the beneficiary State, in a treaty containing a most-favoured-nation clause or otherwise;

(f) "condition of reciprocal treatment" means a condition of compensation providing for the same or, as the case may be, equivalent treatment by the beneficiary State of the granting State or of persons or things in a determined relationship with it as that extended by the granting State to a third State or to persons or things in the same relationship with that third State;

(g) "persons or things" means any object of most-favoured-nation treatment.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

103. Article 2 of the 1976 draft had had one paragraph defining five terms used in the draft. The new text retained, in subparagraphs (a) to (d) of paragraph 1, the first four terms of the former text, with some drafting changes. In subparagraphs (b) and (c), which dealt with "granting State" and "beneficiary State" respectively, the verb "grant" had been replaced by the expression "has undertaken to accord", in order to conform to the terminology used in article 4, which defined a most-favoured-nation clause. The fifth term, "material reciprocity" (former subparagraph (e)), had been replaced by two new terms: "condition of compensation" (new subparagraph (e)) and "condition of reciprocal treatment" (new subparagraph (f)), the need for which he had explained when introducing articles 11, 12 and 13. In addition, a new term, "persons or things", had been defined in a subparagraph (g), to take account of the Commission's debate and because of its widespread use throughout the draft. Conscious of the almost insurmountable difficulties involved in drafting an abstract definition of persons and things, the Drafting Committee had agreed to define them by reference to the subject-matter of the draft articles.

104. Finally, a new paragraph 2 had been added, based on paragraph 2 of article 2 of the Vienna Convention on the Law of Treaties.

105. Mr. PINTO considered the definition in subparagraph (g) unsatisfactory, since the expression "persons or things" was used in the draft in meanings other than that given in the definition.

106. Mr. REUTER said that, in the French version of subparagraphs (b) and (c) of paragraph 1, the words "has undertaken to" would be better translated by the words "a consenti à" than by the words "s'est obligé à".

107. For subparagraph (g), the French version seemed clearer than the English version; however, if the latter were approved, the French version should be brought into line with it and the words "tout ce qui peut être l'objet" replaced by the words "tout objet".

108. Mr. YANKOV understood the term "granting State", in subparagraph (b), to mean a State that had already granted most-favoured-nation treatment as

well as a State that had undertaken to accord it. Similarly, he understood the words "beneficiary State", in subparagraph (c), to mean a State to which a granting State had already accorded most-favoured-nation treatment as well as one to which a granting State had undertaken to accord such treatment.

109. Mr. VEROSTA thought that, in view of Mr. Reuter's comment, the English version of subparagraph (g) might perhaps be brought into line with the French version.

110. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that the Drafting Committee had purposely used the quite imprecise words "any object" and "tout ce qui peut être l'objet", because some objects of most-favoured-nation treatment might not be "things" in the physical sense. The Committee had thus adopted the broadest possible approach to the matter. It might be preferable to leave the English version as it stood.

111. Mr. NJENGA said that he did not understand the meaning of subparagraph (g).

112. Mr. DÍAZ GONZÁLES said that in Spanish it was strange to say that a person was an object.

113. Mr. RIPHAGEN suggested that the French version should be translated into English.

114. Mr. FRANCIS said that the definition had been a source of trouble to the Drafting Committee. If possible, the English text should be left as it stood. No improvement would be made by translating the French text into English.

115. Mr. USHAKOV (Special Rapporteur) pointed out that subparagraph (g) did not say that the expression "persons or things" meant objects—which would be difficult to accept—but that it meant any object of a certain treatment, which was very different.

116. Mr. DADZIE agreed with Mr. Francis. The definition was the best the Drafting Committee had been able to produce. A solution might be to replace the word "means" by the word "covers".

The meeting rose at 1.05 p.m.

1522nd MEETING

Thursday, 20 July 1978, at 10.50 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

The most-favoured-nation clause (*continued*)
(A/CN.4/308 and Add.1 and Add.1/Corr.1 and
Add.2, A/CN.4/309 and Add.1 and 2, A/CN.4/
L.280)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE (*continued*)

ARTICLE 2 (Use of terms)¹ (*continued*)

1. Mr. THIAM said that, whether or not the English version of subparagraph (g) of paragraph 1 were amended, the French version of the subparagraph should remain unchanged.

2. Mr. SUCHARITKUL said that he and Mr. Riphagen had been working on the definition given in paragraph 1, subparagraph (g). They suggested that the English version of the definition be amended to read:

“‘persons or things’ means any object in respect of which most-favoured-nation treatment can be accorded”.

3. Mr. FRANCIS said that it might be preferable to speak of a person as the object of an instrument, such as a treaty or law. If the amendment proposed by Mr. Sucharitkul were adopted, a person would be referred to as an inanimate object. He was accustomed to hearing a person spoken of as the object of a law but not simply as an object.

4. Mr. SUCHARITKUL said that, to his mind, an object could be animate or inanimate, animal, vegetable or mineral. The purpose of his amendment was to bring the English version into line with the French version.

5. Mr. USHAKOV (Special Rapporteur) was not satisfied with the French version of subparagraph (g). The expression “persons or things” did not mean “anything that might be the object of most-favoured-nation treatment” but any object of most-favoured-nation treatment, real or agreed. The English version of the provision was entirely satisfactory but the French version was too wide in scope.

6. The CHAIRMAN pointed out that the Commission was doing the work of the Drafting Committee. He suggested that it approve article 2 on the understanding that the Drafting Committee would re-examine paragraph 1, subparagraph (g), with a view to working out a satisfactory text.

7. Mr. VEROSTA regretted being at the origin of the difficulties arising from the definition of the expression “person or things”, whose inclusion in article 2 he had himself proposed.

8. Two courses were now open to the Commission. It could either delete subparagraph (g) or adopt the following wording for it in the English version:

“(g) the expression ‘persons or things’ means anything in respect of which most-favoured-nation treatment can be accorded.”

In the former case, it should first make sure that the words “persons or things” did not occur in the draft too frequently. In the second case, as an exception, the definition would begin with the words “the expression”, whose equivalent was in the French version.

9. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to approve the title and text of article 2 referred to it by the Drafting Committee, on the understanding that the Committee would endeavour to find a satisfactory text for paragraph 1, subparagraph (g).

It was so agreed.

TITLE OF THE DRAFT ARTICLES

10. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that the Committee had decided to recommend a change in the title of the draft articles from the singular to the plural form, which it had considered more generic in character. The title of the draft would thus read: “Draft articles on most-favoured-nation clauses”.

11. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to approve the title of the draft articles proposed by the Drafting Committee.

The title of the draft articles was approved.

RESOLUTION AND RECOMMENDATION OF THE COMMISSION

12. Mr. EL-ERIAN said that the Commission owed a debt of gratitude to Mr. Ushakov, who had spent much time and energy in preparing the draft articles on most-favoured-nation clauses. He suggested that the Commission should pay a tribute to Mr. Ushakov by adopting the following draft resolution:

“The International Law Commission,

“Having adopted the draft articles on most-favoured-nation clauses,

“Desires to express to the Special Rapporteur, Professor Nikolai A. Ushakov, its deep appreciation of the outstanding contribution he has made to the treatment of the topic by his scholarly research and vast experience, thus enabling the Commission to bring to a successful conclusion its work on most-favoured-nation clauses.”

13. Mr. TABIBI expressed the hope that the draft resolution proposed by Mr. El-Erian would be shown in the report as having been put forward by the Commission as a whole.

14. Mr. FRANCIS fully supported the draft resolution proposed by Mr. El-Erian. Mr. Ushakov had worked like a Trojan and left his imprint on the draft articles.

15. He expressed his personal appreciation to Mr. Schwebel, Chairman of the Drafting Committee, for the masterly way in which he had conducted the work of the Drafting Committee and for the skill with which he had introduced the draft articles to the Commission.

¹ For text, see 1521st meeting, para. 102.

16. In the course of the session, he had benefited greatly from the experience of the other members, particularly Mr. Reuter, Mr. Riphagen and Mr. Schwebel.

17. Mr. DADZIE fully supported the draft resolution proposed by Mr. El-Erian, and associated himself with the tribute paid by Mr. Francis to Mr. Schwebel.

18. The CHAIRMAN fully subscribed to all the tributes paid to Mr. Ushakov. He suggested that the Commission should adopt the draft resolution proposed by Mr. El-Erian.

The draft resolution was adopted by acclamation.

19. Mr. USHAKOV (Special Rapporteur) thanked the members of the Commission warmly for the resolution they had adopted. The credit for the results achieved was due mainly to Mr. Endre Ustor, the specialist in the subject who had preceded him as Special Rapporteur. It should also be stressed that the Drafting Committee had worked very hard during the current session on improving the draft. Mr. Tsuruoka, although not a member of the Drafting Committee, had made a useful contribution to that work. Lastly, it was the experience and competence of the Chairman of the Commission that had made it possible for the draft to be approved in its final form.

20. Perhaps it would now be appropriate to formulate a recommendation to the General Assembly. He proposed that the recommendation should be based on the Commission's recommendation for the draft articles on diplomatic intercourse and immunities and that the following passage should accordingly be inserted at the end of the chapter of the Commission's report on the most-favoured-nation clause:

"At its 1522nd meeting, on 20 July 1978, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that the draft articles on most-favoured-nation clauses should be recommended to Member States with a view to the conclusion of a convention on the subject."

21. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to adopt the recommendation proposed by Mr. Ushakov.

The recommendation was adopted.

Relations between States and international organizations (second part of the topic) (A/CN.4/311 and Add.1)

[Item 7 of the agenda]

22. The CHAIRMAN invited the Special Rapporteur to introduce his second report on the second part of the topic of relations between States and international organizations (A/CN.4/311 and Add.1).

23. Mr. EL-ERIAN (Special Rapporteur) said that the report had two purposes: to examine the preliminary questions raised by the Commission when it had examined the preliminary report, at its twenty-ninth

session,² and by the Sixth Committee when it had discussed the Commission's report; and to elicit guidelines for the study on the second part of the topic. The report consisted of five chapters: introduction (basis of the report), summary of the Commission's discussion at its twenty-ninth session and of the Sixth Committee's discussion at the thirty-second session of the General Assembly, examination of general questions in the light of those discussions, and conclusions.

24. Before presenting his second report, he wished to place on record that in preparing it he had been greatly helped by the Secretariat. Pursuant to the Commission's recommendation, the Legal Counsel of the United Nations had written to the specialized agencies and to IAEA requesting them to reply to a very elaborate questionnaire. That questionnaire had taken as its point of departure the questionnaire circulated in 1965, the replies to which had served as the basis for the study entitled "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat".³ He expressed his deep appreciation to Mr. Suy, Legal Counsel, for the care with which he had responded to the Commission's request. He also wished to thank Mr. Romanov, Director of the Codification Division, and his assistants, for the material they had provided for him, including a complete set of the *United Nations Juridical Yearbook*, from 1962 to 1975, which contained very useful material on the legal status, privileges and immunities of international organizations.

25. He had also been in touch with a number of regional organizations, some of which had already furnished him with material relating to their legal instruments and practice in the matter under study. Some of the specialized agencies had already replied to the questionnaire sent them by the Legal Counsel, and their replies had been forwarded to him. Finally, he had visited the legal adviser of UPU and the legal advisers of certain specialized agencies based in Geneva, who had given him information.

26. It had been a very rewarding experience for him to study the comments made by members of the Commission on his preliminary report. Although at its twenty-ninth session the Commission had devoted only three meetings to that report, the discussion had been in the best traditions of the Commission. The discussion was summarized in six sections of chapter II of his second report, entitled respectively "Question of the advisability of codifying the second part of the topic", "Question of the scope of the topic", "Subject-matter of the envisaged study", "Theoretical basis of immunities of international organizations", "Form to be given to the eventual codification" and "Methodology and processing of data".

² *Yearbook ... 1977*, vol. II (Part One), p. 139, doc. A/CN.4/304.

³ *Yearbook ... 1967*, vol. II p. 154, doc. A/CN.4/L.118 and Add.1 and 2.

The statements of Commission members on those subjects had been very useful. For example, Mr. Reuter had drawn his attention to the five-volume compilation of principal legal instruments published by UNCTAD and entitled "Economic co-operation and integration among developing countries",⁴ which dealt with an impressive number of regional organizations, the existence of many of which had previously been unknown to him. He wished to thank Mr. Reuter for that. Mr. Šahović had suggested that a much more practical analysis should be made of the situation, taking account of recent developments in the international community and of their impact on international organizations. It had also been suggested that, in dealing with the legislative sources of the legal status, privileges and immunities of international organizations, a thorough study should be made of national legislation, which supplemented conventions and headquarters agreements. A complete account of the comments made on those points and on others, such as the theoretical basis of immunities and the methodology and processing of data, was to be found in the six sections of chapter II to which he had referred.

27. Turning of chapter III of his report, he said that the general reaction of the Sixth Committee to the Commission's report on the progress of its work on the second part of the topic of relations between States and international organizations could be said to be one of approval. He had dealt in that chapter with statements by members of the Sixth Committee in which the topic had been reviewed in detail. Some of those statements had contained reservations concerning, for example, the advisability of codifying the second part of the topic, the implications of the Commission's work for the general conventions on privileges and immunities, and the desirability of studying relations between States and international organizations before the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character⁵ had been generally accepted. His report took account of all the reservations expressed by Members of the General Assembly.

28. In chapter IV of the report, he had examined general questions in the light of the discussions in the Commission and in the Sixth Committee. In section A, he had pointed out that the developments that had had the most impact on the United Nations system since the adoption of the general conventions were institutional evolution and functional expansion. The interaction of those phenomena had resulted in both a quantitative and a qualitative renovation of institutionalized inter-State co-operation, as illustrated by the emergence of the institution of permanent missions and of permanent observer missions

to international organizations. Space had not permitted him to give an account of all the different aspects of the institutional, evolution and functional expansion that had taken place in the United Nations, in the specialized agencies and in other international organizations of a universal or regional character during the previous 30 years, but he had given examples of the impact of some of those aspects on the law of immunities of international organizations. Since those examples were drawn from the practice of the United Nations, it would be necessary, at the next stage of work on the topic, to study the practice of the specialized agencies and regional organizations in the light of the replies of the specialized agencies to the questionnaire circulated by the Legal Counsel of the United Nations and of the information he had obtained through his personal contacts.

29. In addition to institutional evolution, the refinement and extension of the régime of immunities of international organizations had been considerably influenced by the increasing expansion of the activities of the United Nations and related organizations as a consequence of the theory of functionalism, as that theory was described in paragraph 104 of his report. The steady broadening and diversification of the functional programmes of the United Nations, its related agencies and their subsidiary organs had led to developments of great significance for the Commission's work, such as the establishment of UNDP and of the OPEX Programme.⁶ The opening in a great many countries of permanent UNDP offices had resulted in the institution of "resident representatives" of international organizations to States. The sending of *ad hoc* missions and panels to governments and the assignment of experts to assist governments in planning their development projects had extended the activities and categories of United Nations experts far beyond what had been envisaged in the general conventions on privileges and immunities.

30. In section B of chapter IV he had remarked that, while the basic provisions regulating the privileges and immunities of international organizations were embodied in the constituent instruments of those organizations, in headquarters agreements and in the general conventions on privileges and immunities, legislation designed primarily to give effect to those various international instruments had now been enacted in a large number of countries. Among the first countries to introduce laws of that type had been the United Kingdom and the United States of America. In the case of the latter country, not only federal but also state legislation was of relevance to the Commission's study. Special mention should also be made of the case of Switzerland which, although not a member of the United Nations or a party to the 1946 Convention on the Privileges and Immunities of the United Nations,⁷ had been among the first countries to enact legislation in that area.

⁴ TD/B/609/Add.1.

⁵ For the text of the Convention (hereinafter referred to as the 1975 Vienna Convention), see *Official Records of the United Nations Conference on the Representation of States in their relations with International Organizations*, vol. II. *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

⁶ OPEX = Operational and Administrative Personnel. See A/CN.4/311 and Add.1, para. 105.

⁷ United Nations, *Treaty Series*, vol. 1, p. 15.

31. In reviewing, in section C of chapter IV, the case for codification of the law of international immunities, he had dealt with the concern expressed as to the possible effects of such codification on the status of the general conventions and headquarters agreements. He had noted in that connexion that the 1975 Vienna Convention on the first part of the topic contained an article 4 that stated expressly that the provisions of the Convention were without prejudice to international agreements. With reference to the comments made in the Sixth Committee concerning the utility, in the light of the degree of acceptance of the 1975 Vienna Convention, of the Commission's work on the second part of the topic, he had pointed out in paragraph 113 of his report that the Commission had in the past deemed it possible to commence consideration of a topic that was closely related to a convention before that instrument had entered into force or gained general acceptance; that had been the case, for example, in regard to the topics of special missions, succession of States in respect of treaties, and the question of treaties concluded between States and international organizations or between two or more international organizations. He had also mentioned that, although there was certainly an organic relationship between the two parts of the topic of relations between States and international organizations, each part constituted a self-contained unit capable of being separately codified. That had of course been recognized by the General Assembly when it had decided, in 1971 (resolution 2780 (XXVI), section II), that it was not necessary to wait for work on the second part of the topic to be completed before convening the Conference on the first part.

32. Section D of chapter IV set out the views so far expressed on the place of regional organizations in the régime of international immunities.

33. In chapter V of his report, he had expressed his conclusion that there was general approval in the General Assembly and the Commission for undertaking a study of the immunities of international organizations and that such a study must include a thorough examination of existing international instruments, national legislation, and practice. Only after such an examination could a decision be taken on the form in which the results of the Commission's work should be presented. As to whether the study should include all international organizations, of both a universal and a regional character, he had stated that his thinking on that point had changed significantly since recommending to the Commission in his first report that the study should concentrate on international organizations of a universal character alone.⁸ He had made that recommendation on the grounds that, since regional organizations did not have objective personality (unlike organizations of a universal character, which had been recognized as possessing such personality in the advisory opinion of the International Court of Justice on *Reparation*

for Injuries Suffered in the Service of the United Nations),⁹ to study them would raise difficulties of an essentially different nature. He had also had in mind that there were few permanent missions, or permanent observer missions, to regional organizations, that there was little legislation on the law of immunities of such organizations, and that practice with respect to them was still evolving. However, as he had recognized in paragraph 121 of his second report, the theoretical and practical considerations that had led him to make his earlier recommendation were no longer valid. Indeed, the situation had changed so much that he could imagine no problems, among those that might be considered in the study, that were exclusive to organizations of a universal character. He therefore recommended that the study should cover both universal and regional international organizations.

34. With reference to the questions raised concerning the relationship between the proposed study and the question of the jurisdictional immunities of States, he recognized that it was the Commission's practice not to deal with any topic in relation to international organizations before it had completed work on that topic in relation to States. He considered none the less that the study he proposed could go ahead as planned, since the immunities of States flowed from their sovereignty, whereas those of international organizations were justified by their functional needs. Furthermore, the Commission's Working Group on jurisdictional immunities of States and their property had recommended that the Commission should appoint a special rapporteur on that topic and that the topic should be included in the Commission's current programme of work (A/CN.4/L.279, para. 32). The Commission would therefore be aware of the orientation of its work on the jurisdictional immunities of States when it examined the question of the immunities of international organizations.

35. He wished to express his deep appreciation to the Legal Counsel of the United Nations and his staff for the assistance they had given him. He hoped that the Codification Division of the Office of Legal Affairs would be able to produce, for inclusion in the *Yearbook of the International Law Commission*, an analysis of the material form the United Nations, the specialized agencies and IAEA similar to the study that had appeared in the 1967 *Yearbook*, which had proved of such value to both scholars and practitioners of international law. He also hoped that, as in connexion with the first part of the topic, arrangements would be made to associate not only the Members of the United Nations, but also the Government of Switzerland and the specialized agencies and IAEA, with the preparation of any draft articles the Commission might propose on the second part of the topic.

36. He was deeply grateful to the Chairman of the

⁸ *Yearbook ... 1963*, vol. II, p. 185, doc. A/CN.4/161 and Add.1, para. 179.

⁹ *I.C.J. Reports 1949*, p. 185.

Commission for the contribution he had made to the topic as a whole. The Chairman had been instrumental, as President, in ensuring the success of the 1975 United Nations Conference on the Representation of States in their Relations with International Organizations and, as Chairman of the Planning Group, in securing the agreement of the Commission to the commencement of work on the second part of the topic. The Chairman had also greatly encouraged the Special Rapporteur in his work.

37. The CHAIRMAN, speaking on behalf of the Commission, congratulated the Special Rapporteur on his learned report and on his lucid and encouraging presentation. It was well known that the Special Rapporteur was an authority on the topic of relations between States and international organizations, and might justly be termed the father of the 1975 Vienna Convention, whose success he had ensured.

38. It had been very encouraging to hear of the response of the Sixth Committee to the Special Rapporteur's preliminary report on the second part of the topic, since consideration of the immunities of international organizations was necessary in order to complete the great cycle of instruments codifying diplomatic law that so far included the Vienna Convention on Diplomatic Relations (1961),¹⁰ the Vienna Convention on Consular Relations (1963),¹¹ the Convention on Special Missions (1969),¹² and the 1975 Vienna Convention.

39. Mr. TABIBI reiterated his view that it would be not merely logical to complete the study of the topic of relations between States and international organizations, but contrary to the interests of the world community and of international organizations and their officials to do otherwise. It was clear, however, that it would not be easy to achieve what must be the objective in investigating the second part of the topic, namely, to strike a proper balance between the vital interests of host governments and the vital interests of organizations or their field staff. The treatment offered by host governments to international organizations and their officials varied widely from country to country, as it had varied in time, and there were also substantial differences between the areas of activity of the various international organizations and the duties of their officials.

40. With regard to international organizations of a universal character, the Commission should start by examining the experience of the oldest of them, namely, the bodies now called the International Telecommunication Union and the Universal Postal Union, and see how practice had evolved since their foundation. It was also essential that the Commission look at the practice and experience of the United Nations and its related agencies and of the countries that were hosts to the headquarters or regional or branch offices of universal organizations. That would

mean investigating the situation in innumerable, and perhaps even all, countries. The written material that must be examined included not only headquarters agreements and the general conventions on privileges and immunities, but also the protocols to such instruments, resolutions and decisions of international organizations, the internal legislation of States and the correspondence often exchanged between heads of State and senior officials of international organizations in connexion with the organization of special missions and programmes such as the OPEX Programme. Only on the basis of such a wide-ranging study would the Commission be able to decide whether it would be appropriate to propose rules relating to regional as well as universal organizations. Furthermore, if the Commission were to draft generally acceptable rules, it would have to concentrate on those points on which its investigations revealed general agreement or disagreement.

41. It was therefore important not only that, before proceeding further, the Commission should have the replies to the questionnaire that had been sent to the specialized agencies and IAEA, but also that it should circularize the governments of all the States Members of the United Nations, for all those countries had some experience of the presence of international organizations or their officials on their territory. It would be of particular value to receive information from government departments that had practical responsibilities in the areas covered by the privileges and immunities of international organizations.

42. Mr. PINTO said that, with regard to the institutional evolution and functional expansion of international organizations, the contribution of national law to the immunities of such organizations, and the general classification of international organizations into universal and regional bodies, the Special Rapporteur might wish to bear in mind the phenomenon of the evolution of operational international organizations. Essentially, such organizations were not merely co-ordinative, administrative or regulatory, as were most United Nations specialized agencies, and they did not deal with broad political or economic issues, as did the United Nations itself; they were established by governments for the express purpose of operational, and sometimes even commercial, activities. Whether such organizations were universal or regional, the very nature of their activities made it unrealistic to apply to them, without modification, the "traditional" rules relating to the status, privileges and immunities of international organizations. In making the modifications required, a balance must be maintained between the interests of the individual States that were members or "shareholders" of an organization and the interest of the community as a whole in the accomplishment of the objectives for which the organization had been created.

43. Organizations of the kind he had in mind included the World Bank, with respect to which there already existed a fairly large body of practice relating to immunities. That practice, however, could serve only as a starting-point for a review of special appli-

¹⁰ United Nations, *Treaty Series*, vol. 500, p. 95.

¹¹ *Ibid.*, vol. 596, p. 261.

¹² General Assembly resolution 2530 (XXIV), annex.

cations of the traditional principles; consideration must also be given to the arrangements that had been made for more recent bodies, such as INTELSAT, and to those that might be made for the benefit of the sea-bed mining Enterprise envisaged in the proposed convention on the law of the sea. In the absence of any international corporate law by which such institutions might be governed, the rules for their activities were those provided in their constituent instruments. Those instruments, therefore, had to meet the difficult requirement of being models of completeness.

44. He hoped the Special Rapporteur would find it possible to cover organizations with operational competence in the study he now proposed. If that proved impossible, it might be necessary to add a third part to the topic.

45. Mr. ŠAHOVIĆ expressed gratitude to the Special Rapporteur for having taken into consideration the remarks he had made at the preceding session on the importance of practice.¹³ In the report under discussion, the Special Rapporteur had analysed the subject substantively and outlined the general framework of his future work. His field of study had distinctly broadened. In the light of his new outlook and the conclusions he had reached, the Special Rapporteur should now indicate his plan of work.

The meeting rose at 1 p.m.

¹³ See *Yearbook* ... 1977, vol. I, pp. 205 and 206, 1452nd meeting, paras. 32 and 34.

1523rd MEETING

Friday, 21 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

The most-favoured-nation clause (concluded)
(A/CN.4/308 and Add.1 and Add.1/Corr.1 and Add.2, A/CN.4/309 and Add.1 and 2, A/CN.4/L.280)

[Item 1 of the agenda]

ARTICLE 2 (Use of terms)¹ (concluded)

1. The CHAIRMAN invited the Chairman of the Drafting Committee to report on the Committee's further discussion of article 2, paragraph 1, subpara-

graph (g), in which the Committee had proposed a definition of the term "persons or things" and which the Commission had referred back to the Committee at its previous meeting.

2. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that the outcome of the further discussions mentioned by the Chairman had been the conclusion that the Drafting Committee would be unlikely to find a definition of the term in question that would be sufficiently comprehensive and clear. The Committee therefore recommended the deletion of subparagraph (g). That recommendation was, however, subject to the understanding that the commentary to article 5, which was the article most directly involved, would contain an explanation of what was meant in the draft articles by the term "persons or things", and would in particular make it clear that the expression covered activities and services.

3. Mr. VEROSTA expressed support for the Drafting Committee's recommendation.

4. The CHAIRMAN said that, if there were no objection, he would take it that the Commission approved the deletion of article 2, paragraph 1, subparagraph (g).

It was so agreed.

5. The CHAIRMAN suggested that the Commission should adopt, as a whole, the draft articles on most-favoured-nation clauses, as amended at its 1521st and current meetings.

The draft articles, as amended, were adopted.

Relations between States and international organizations (second part of the topic) (A/CN.4/311 and Add.1) (continued)

[Item 7 of the agenda]

6. Mr. REUTER wished to know whether the Special Rapporteur thought it possible for the question of the privileges and immunities of international organizations to be dealt with quite separately from that of the responsibility of international organizations, the one being the counterpart of the other. The latter question had still to be examined and he wondered whether it could be approached from the standpoint of codification.

7. He congratulated the Special Rapporteur on the clarity and judgement displayed in his report.

8. Mr. USHAKOV observed that the members of the Commission had no legal status and enjoyed no immunities or privileges. In his view, they could not be assimilated to experts on mission on behalf of the United Nations, as was being suggested. He therefore proposed that the Secretary-General should be officially requested to enter into an arrangement with the Swiss Government, after authorization by the General Assembly, establishing the status of the members of the Commission.

9. Mr. REUTER was not opposed to the adoption of a decision on that matter, but pointed out that the

¹ For text, see 1521st meeting, para. 102.