Document:-
A/CN.4/SR.1524

Summary record of the 1524th meeting

Topic:
<multiple topics>

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

order to determine whether they contained a common denominator that could be codified and developed; it would not be possible to legislate for each individual case. Every existing type of organization would have to be studied. It was therefore a source of satisfaction to him that members had agreed that account should be taken of regional organizations. In that connexion, he recalled that the list of organizations in paragraph 121 of his report was not exhaustive, and that European organizations would be included in future lists.

47. It was gratifying to note that the Commisson had reaffirmed its opinion that the topiç was ripe for codification. He agreed with Mr. Schwebel and Mr. Yankov that a prudent approach should be adopted to the matter and that other topics had a better claim to priority. Nevertheless, it seemed useful that the Commission should complete its work on topics concerning inter-State relations with a topic concerning relations between States and international organizations.

48. In raising the question of the status of the members of the Commission, Mr. Ushakov had drawn attention to a lacuna in the law governing international organizations. Conventions and headquarters agreements referred to the organization, its officials, its experts and its resident representatives, but made no provision for persons who, like the members of the Commission, fell into none of those categories. It would be necessary, however, to heed the warning given by Mr. Reuter on the subject. The Special Rapporteur would consider the matter when he came to the question of experts.

49. The question of the waiver of immunities, to which Mr. Sucharitkul had referred, would be taken into account when dealing with the question of immunities.

50. In conclusion, he said that the Commission could congratulate itself on having laid the foundations for future work on the second part of the topic.

The meeting rose at 1 p.m.

1524th MEETING

Monday, 24 July 1978, at 3.10 p.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, 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.

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

[Item 7 of the agenda]

1. The CHAIRMAN observed that at its previous meeting the Commission had omitted to approve the conclusions submitted by the Special Rapporteur in his second report (A/CN.4/311 and Add.1, chapter V). If there were no objections, he would take it that the Commission approved those conclusions.

It was so agreed.

State responsibility (*concluded*)* (A/CN.4/307 and Add.1 and 2 and Add.2/Corr.1, A/CN.4/L.271/Add.1)

[Item 2 of the agenda]

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

ARTICLE 27[1] (Aid or assistance by a State to another State for the commission of an internationally wrongful act)

2. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the title and text proposed by the Drafting Committee for article 27 (A/CN.4/L.271/Add.1), which read:

Article 27. Aid or assistance by a State to another State for the commission of an internationally wrongful act

Aid or assistance by a State to another State, if it is established that it is rendered for the commission of an internationally wrongful act, carried out by the latter, itself constitutes an internationally wrongful act, even if, taken alone, such aid or assistance would not constitute a breach of an international obligation.

3. Mr. SCHWEBEL (Chairman of the Drafting Commitee) said that the article was based on article 25, entitled "Complicity of a State in the internationally wrongful act of another State", proposed by the Special Rapporteur (A/CN.4/307 and Add.1 and 2, para. 77). Article 27 would be the first article of chapter IV of the draft, entitled "Implication of a State in the internationally wrongful act of another State".

4. The aim of the Drafting Committee in preparing the text had been to retain the essence of the original text in terms as simple and balanced as possible, while removing any source of ambiguity or misinterpretation. That was why it had discarded such words as "complicity", "accessory" and "international offence", which had appeared in the original text. As the Special Rapporteur had suggested in summing up the discussion (1519th meeting, para. 32), the expression "against a third State" had also been discarded.

5. The formulation adopted by the Drafting Committee stressed the cardinal material element of the internationally wrongful act envisaged by the article, but it also took into account the element of the intention of the State rendering aid or assistance to an-

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* Resumed from the 1519th meeting.

** Resumed from the 1518th meeting.

[1] For consideration of the text initially submitted by the Special Rapporteur, see 1516th meeting, paras. 4-22, 1517th meeting, paras. 1-12, 1518th meeting, paras. 3 *et seq.*, and 1519th meeting.

other State for the commission of an internationally wrongful act by the latter, The words "if it is established that it is rendered for the commission" made it clear that the aid or assistance in question must have been given for the purpose of the commission of an internationally wrongful act by the other State and that such intention must be "established". Furthermore, the words "carried out by the latter" had been added to emphasize that the commission of the "principal" internationally wrongful act by the State that had received the aid or assistance was a condition for the existence of the internationally wrongful act of "participation" as a separate wrong entailing the international responsibility of the State that provided the aid or assistance in question. Finally, the last part of the text adopted by the Drafting Committee specified that the giving of such aid or assistance would be "wrongful" even if, under other conditions, the actions or omissions in question would be lawful under international law.

6. 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 27 proposed by the Drafting Committee.

It was so agreed.

Organization of future work
[Item 10 of the agenda]

REPORT OF THE WORKING GROUP ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (A/CN.4/L.279)

7. The CHAIRMAN invited the Chairman of the Working Group on jurisdictional immunities of States and their property to introduce the Group's report (A/CN.4/L.279).

8. Mr. SUCHARITKUL (Chairman of the Working Group) said that, since the report was merely exploratory in nature, its findings were necessarily tentative. The main objectives of the Working Group had been to identify the questions to be examined, to define and delineate the general scope of the future study and to make recommendations on how the Commission should proceed in its work on the topic. The members of the Working Group were indebted to the Chairman of the Commission and to Sir Francis Vallat, both of whom had kept alive the Commission's interest in the topic. He himself was particularly grateful for the advice he had received from Mr. Tsuruoka. The Group had also held private consultations with Mr. Ushakov, Mr. Šahović and Mr. Njenga.

9. The Working Group, which had been set up on 16 June 1978, at the 1502nd meeting, had held three meetings, on 20 June and on 11 and 12 July.

10. The report was divided into four parts, entitled "Introduction", "Historical background", "General aspects of the topic" and "Recommendations of the Working Group". In part II, the Working Group described how the topic had originally been brought to the attention of the Commission. In 1948, the Secretary-General had prepared for the first session of the International Law Commission a memorandum entitled *Survey of International Law in relation to the work of Codification of the International Law Commission.*[2] The *Survey* had included a separate section on "Jurisdiction over foreign States", in which it had been stated that the subject covered "the entire field of jurisdictional immunities of States and their property, of their public vessels, of their sovereigns, and of their armed forces". At its first session, in 1949, the Commission had reviewed various topics of international law with a view to selecting topics or codification, taking the 1948 *Survey* as a basis. It had drawn up a list of 14 topics selected for codification,[3] including one entitled "Jurisdictional immunities of States and their property".

11. In its work on various topics, the Commission had touched upon certain aspects of the question of the jurisdictional immunities of States and their property. In its 1956 draft articles on the law of the sea, the Commission had referred to the immunities of State-owned warships and other ships. The immunities of State property used in connexion with diplomatic missions had been considered in the 1958 draft articles on diplomatic intercourse and immunities, while those of State property used in connexion with consular posts had been dealt with in the 1961 draft articles on consular relations. The 1967 draft articles on special missions had also contained provisions on the immunity of State property, as had the 1971 draft articles on the representation of States in their relations with international organizations.

12. In 1970, the Commission had asked the Secretary-General to submit a new working paper on the basis of which it might select a list of topics for inclusion in its long-term programme of work. In 1971, the Secretary-General had submitted a working paper entitled *Survey of international law,*[4] containing a section on jurisdictional immunities of foreign States and their organs, agencies and property. The 1971 *Survey* had served as a basis for discussion during the Commission's consideration of its long-term programme of work at its twenty-fifth session, in 1973. Among the topics repeatedly mentioned in the discussion had been that of the jurisdictional immunities of foreign States and of their organs, agencies and property. The Commission had decided that it would give further consideration to the various proposals or suggestions in the course of future sessions. It was not until 1977, however, that the Commission had considered possible additional topics for study after the completion of its current programme of work. The topic "Jurisdictional immunities of States and their property" had then been recommended by the Commission for consideration in the near future, bearing in mind its day-to-day practical importance as well as its suitability for codification and progressive

[2] United Nations publication, Sales No. 1948.V.1 (I).

[3] See *Yearbook ... 1949*, p. 281, doc. A/925, para. 16.

[4] *Yearbook ... 1971*, vol. II (Part Two), p. 1, doc. A/CN.4/245.

development. Finally, in resolution 32/151, the General Assembly had invited the International Law Commission, at an appropriate time and in the light of progress made on the draft articles on State responsibility for internationally wrongful acts and on other topics in its current programme of work, to commence work on the topics of international liability for injurious consequences arising out of acts not prohibited by international law and jurisdictional immunities of States and their property.

13. In its consideration of the general aspects of the topic, the Working Group had started with the nature of the topic and the legal basis of jurisdictional immunities. It had been observed that the doctrine of State immunity resulted from the interplay of two fundamental principles of international law, namely, the principle of territoriality and the principle of State personality. The topic was of interest to States from two standpoints: as territorial sovereigns for the exercise of their sovereign authority over the entirety of their territorial units; and as foreign sovereigns, when they were pursued in litigation or suits by individual or corporate plaintiffs before the judicial or administrative authorities of another State exercising territorial jurisdiction over cases involving foreign States. The Working Group had considered, therefore, that it was in the interest of States generally that the rules of international law governing State immunities should be made more easily ascertainable so as to give general guidance to States for the adoption and maintenance of a consistent attitude in the exercise of their territorial sovereign authority as well as in the assertion of their sovereign right to be exempt from the exercise of a similar authority by another State.

14. With regard to the scope of the study, the topic concerned the immunities of foreign States from the jurisdiction of territorial authorities; it also covered the immunities accorded by territorial authorities to foreign States and to their property.

15. With regard to the question of sources of international law for the study of the topic, evidence of rules of international law on State immunities appeared to be available primarily in the judicial and governmental practice of States, in the judicial decisions of national courts and in the opinions of legal advisers to governments, and secondarily in the rules embodied in national legislation and international conventions of a universal or regional character dealing with the subject-matter concerned. Customary international law had grown largely out of the judicial practice of States, since the question of extent of jurisdiction of a national court was invariably determined by the court itself. At a later stage in the study of the topic, the views of governments might be sought as to the nature, scope and extent of the immunities that States were prepared to accord each other and the immunities they considered themselves entitled to claim from each other. For the purposes of the initial stage of the study, it would be helpful to request governments to provide basic information and material relating to State practice in the matter.

16. The Commission would reserve the right to alter the title of the topic if it deemed it necessary.

17. With regard to the content of State immunities, an examination should be made of the substance of State immunities in various forms, including immunity from civil jurisdiction, from penal or criminal jurisdiction, from arrest, search, service of writs and detention, and from provisional measures of protection by way of seizure and attachment. The exercise of jurisdiction by the judicial authorities of a State was essentially different from the exercise of measures by the competent authority of that State in execution of judgement. Immunities from execution formed a special class of State immunities, requiring separate attention and treatment. Waiver of immunities from jurisdiction did not, as a general rule, extend to waiver of immunities from execution.

18. In the matter of beneficiaries of State immunities, it had been observed that such immunities were enjoyed by States in respect of a wide variety of beneficiaries, persons or things. The expanding list of beneficiaries of State immunities deserved thorough examination. In particular, it should be determined what constituted a "foreign State" for the purpose of immunities. Such an inquiry would entail the study of the different types of organs, agencies and instrumentalities of States that participated in the enjoyment of State immunities. Beneficiaries of State immunities certainly included the armed forces of States and, conversely, "foreign visiting forces". The status of political subdivisions of States and the position of constituent States members of a federal union also merited special study. Men-of-war, spaceships, public vessels, submarines, aircraft, military vehicles and public property were also covered by State immunities.

19. The question of the extent of State immunities would be the crux of the study. The doctrine of State immunities had been formulated in the nineteenth century at a time when immunities had been accorded to States on the grounds of their sovereign equality and political independence, irrespective of the nature of their activities. That doctrine of absolute or unqualified immunity appeared, however, to have undergone considerable changes. Current trends in State practice and in legal thinking gave strong support to the idea of restrictive as opposed to absolute immunities. The time had therefore come to define the precise extent to which immunities should be granted. Any examination of the extent of jurisdictional immunities should also cover related matters such as voluntary submission to local jurisdiction, waiver of immunities, counter-claims, service of writs, security for costs and the question of execution of judgements against foreign States.

20. In conclusion, he pointed out that the recommendations of the Working Group were contained in paragraph 32 of its report.

21. The CHAIRMAN thanked the Working Group, and particularly its Chairman, for its excellent report, which was a model of objectivity and efficiency.

22. Mr. TSURUOKA fully concurred with the general analysis of the topic presented by the Working Group. He also supported the Working Group's recommendations in paragraph 32 of its report.

23. It was particularly satisfying to him that the Group was aware of recent important developments in State practice on the subject. The Group had observed, for instance, that current trends in the practice of States and in the opinion of jurists were predominantly in favour of restrictive as opposed to absolute immunities, and that a distinction should be drawn between activities of States covered by immunities and other increasingly numerous activities in which States engaged like individuals, often in direct competition with the private sector. It was sometimes said that in current practice immunities were accorded only in respect of activities of States that were public in character, official in purpose or sovereign in nature. In other words, only *acta jure imperii* as distinct from *acta jure gestionis* or *jure negotii* were covered by State immunities. That was a very important point, deserving careful study from the standpoint of both theory and State practice.

24. He fully supported the Working Group's recommendation that the Commission should include the topic "Jurisdictional immunities of States and their property" in its current programme of work. The topic would call for a careful study of historical precedent and current State practice; it should not, therefore, be dealt with too hastily. In Mr. Sucharitkul, the Commission had a member with the necessary academic knowledge and practical skills to serve as Special Rapporteur for the topic, and he was convinced that, with Mr. Sucharitkul's asssitance, the Commission would be able to deal with the task successfully.

25. Mr. USHAKOV said that, subject to two minor amendments, he could accept the recommendations made by the Working Group in paragraph 32 of its report (A/CN.4/L.279). In paragraph 32 (*c*), he proposed that the word "authorize" should be replaced by the word "invite", and he would favour setting governments a shorter time-limit than the one provided for in paragraph 32 (*d*).

26. On the other hand, he thought that the Commission could not adopt section III, E, F and G, of the Working Group's report, since it could not take a position on the topic without first studying it thoroughly. He was particularly surprised at the reference in paragraph 22, in connexion with the content of State immunities, to "immunities from arrest, search, service of writs, detentions". In addition, the expression "jurisdictional immunities" in the title of the topic was not entirely satisfactory; he would prefer the words "immunities from jurisdiction".

27. Mr. SCHWEBEL agreed that the Commission could not appoint a better Special Rapporteur than Mr. Sucharitkul.

28. He supported the Working Group's recommendations. However, he agreed with Mr. Ushakov that the date mentioned in paragraph 32 (*d*) should be brought forward to 1 February 1979 and that the Special Rapporteur should be "invited"—not "authorized"—to prepare a preliminary report for consideration by the Commission.

29. He was puzzled, however, by the remainder of Mr. Ushakov's comments. At the current stage, the Commission was required merely to adopt the recommendations of the Working Group and to take note of the report as a whole. The forms of State immunities cited in the report were commonplace, and it would be odd not to mention them.

30. Mr. TABIBI fully supported the Working Group's recommendations, subject to the drafting changes suggested by Mr. Ushakov. It was high time that the topic was codified.

31. He agreed with previous speakers that the Chairman of the Working Group should be appointed Special Rapporteur for the topic.

32. Mr. QUENTIN-BAXTER thanked the Group for its important work. The fact that the Commission would be taking up the topic of jurisdictional immunity of States and their property would be welcomed in the world of scholarship. It would also be welcomed in common-law countries. In courts in the United Kingdom, judges were facing the need to come to terms with modern thinking in a sphere in which the general trend was very conservative. He was convinced that the Commission would produce a set of articles that would find its place in the legislation of all countries.

33. Mr. YANKOV said that the Working Group's report was well organized and provided guidelines for the Commission's future work on the subject. Nevertheless, he agreed with Mr. Ushakov that the Commission should approach the topic cautiously. In particular, the scope of the study must be very carefully defined and the Commission must be extremely prudent in selecting the sources of international law to be taken into consideration; those sources should include international conventions, customary law and the judicial and administrative practice of States. He also agreed with Mr. Ushakov's remark about the title of the topic.

34. In general, he supported the recommendations made by the Working Group but hoped that the amendments suggested by Mr. Ushakov and Mr. Schwebel would be accepted.

35. Mr. DADZIE said that, generally speaking, he approved the manner in which the Working Group had dealt with the subject. It might be useful, however, to allow the Commission more time to analyse the report.

36. He fully supported the recommendaions made by the Working Group, but agreed with previous speakers that in paragraph 32 (*c*) the word "authorize" should be replaced by the word "invite". In paragraph 32 (*d*) the date should be amended to read "1 February 1979".

37. He was not convinced that the time had come to appoint a Special Rapporteur for the topic. When

that time came, however, he would support a proposal that Mr. Sucharitkul should be appointed Special Rapporteur.

38. In conclusion, he suggested that the Commission should not rush its work on such an important subject.

39. Mr. REUTER congratulated the Chairman of the Working Group on his research and fully approved the Group's report. However, the period for the submission of information by governments should be shorter, since a good deal of that information had already been published. At all events, the preparation of the preliminary report by the Special Rapporteur should not be delayed because such information had not been submitted on time. He thought that a Special Rapporteur should be appointed as soon as possible.

40. Mr. PINTO said that the Working Group was to be congratulated on having prepared, in the short time available to it, an excellent report that reviewed the subject comprehensively. Although some of the statements in the report were controversial, the Working Group had succeeded in presenting matters in an objective light. That augured well for the success of the Commission's work on the topic, for which Mr. Sucharitkul was eminently qualified to act as Special Rapporteur.

41. He supported the drafting change proposed in paragraph 32 (*c*) of the recommendations of the Working Group (A/CN.4/L.279), but thought that the date to be stipulated in paragraph 32 (*d*) should be 30 June 1979 and not 1 February 1979.

42. The report already gave some idea of the wealth of material available on the subject of jurisdictional immunities and placed emphasis on an intention to study existing practice. Although he welcomed that approach, he considered it essential, in order to set that rich practice in its proper perspective, that the future Special Rapporteur should begin his work by analysing the social and political purpose of State immunity as it had been accorded through the ages.

43. Mr. THIAM warmly congratulated the Chairman of the Working Group, whom he considered very well qualified to exercise the functions of Special Rapporteur and who had already given an admirable introduction to the main aspects of the topic and the problems and controversies to which it gave rise.

44. The recommendations of the Working Group might be adopted, with the various amendments proposed.

45. Mr. VEROSTA also favoured the adoption of the recommendations, with the proposed amendments. He stressed the fact that, once the information that governments would be requested to submit by 1979 had been received, it would be even more interesting to have their opinions on certain matters of substance.

46. As to the appointment of a Special Rapporteur, the Commission's choice should be Mr. Sucharitkul.

47. Mr. SUCHARITKUL (Chairman of the Working Group) said that the Group had not imagined for one moment that its report, which it had regarded as a purely exploratory document, would give rise to such a lively and illuminating debate. The Group was grateful and encouraged by the interest shown in its work and it approved the drafting changes proposed in its report.

48. He assured the Commission that no member of the Working Group had any desire to prejudge the topic, and that subsections C to G of section III of the report were intended merely to indicate the type and nature of the problems that the Commission would probably have to study. The comments of Mr. Ushakov and Mr. Yankov concerning the need to take a cautious attitude and avoid the presentation of premature conclusions on a subject displaying several controversial aspects had been most apposite. The topic was indeed one that required profound study and in which not only practice itself, but also, as Mr. Pinto had said, the political, social and other considerations that had given rise to that practice, must be carefully sifted and weighed.

49. The CHAIRMAN said that, if there were no objections, he would take it that the Commission approved the report of the Working Group (A/CN.4/L.279), subject to the replacement in subparagraph (*c*) of paragraph 32 of the word "authorize" by the word "invite", and in subparagraph (*d*) of the date "1 February 1980" by "30 June 1979".

It was so agreed.

Question of treaties concluded between States and international organizations or between two or more international organizations (*concluded*)* (A/CN.4/312)

[Item 4 of the agenda]

Draft articles proposed by the Drafting Committee (*concluded*)

Articles 39, 40 and 41

Statement by the Chairman of the Drafting Committee

50. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that, owing to the Drafting Committee's heavy workload and the time constraints imposed on it, as well as on the Commission, it had been unable to take up the study of the articles 39, 40 and 41 submitted by the Special Rapporteur in his seventh report (A/CN.4/312) and referred by the Commission to the Committee at its 1507th, 1508th and 1509th meetings respectively. The Committee hoped, however, that it would be able to examine those articles and report on them early in the Commission's next session.

* Resumed from the 1512th meeting.

Draft report of the Commission on the work of its thirtieth session

51. The CHAIRMAN invited members to consider the Commission's report on the work of its thirtieth session, beginning with chapter V.

CHAPTER V. ***Question of treaties concluded between States and international organizations or between two or more international organizations*** (A/CN.4/L.277)

A. Introduction

Section A was approved.

B. Draft articles on treaties concluded between States and international organizations or between two or more international organizations

TEXT OF ARTICLES 35, 36, 36 *bis*, 37 AND 38, AND OF ARTICLE 2, PARAGRAPH 1 (*h*), WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTIETH SESSION

ARTICLE 2, PARAGRAPH 1 (*h*)

Commentary to subparagraph (h) *of paragraph 1 of article 2* (Use of terms)

52. Mr. USHAKOV said that it was inaccurate to state, in paragraph (1) of the commentary, that the definition of the terms used in subparagraph (*h*) of paragraph 1 of article 2 "follows the Vienna Convention exactly", since the Vienna Convention on the Law of Treaties[5] defined only the term "third State". Moreover, since the definition in question covered two terms, it should be modelled on article 2, paragraph 1 (*e*), and include the word "respectively".

53. Paragraph (2) of the commentary referred to article 36 *bis*, but the commentary related only to article 2. It was therefore inappropriate to refer to article 36 *bis*, particularly since that provision had not been adopted by the Commission, but it should be explained that the term "third State" meant any State that was not a party to the treaty, including the States members of an international organization.

54. Mr. REUTER (Special Rapporteur) proposed that the words "follows the Vienna Convention exactly", in paragraph (1) of the commentary, should be replaced by the words "is based directly on the Vienna Convention", and that paragraph (2), which had been drafted in reply to an objection raised during the discussion, should be deleted.

55. Mr. USHAKOV also thought it would be best to delete paragraph (2), which might give rise to misunderstandings. The definition of the terms "third State" and "third international organization" must be a general one, that would apply to the draft as a whole.

56. Mr. RIPHAGEN suggested that, in order to take account of the objection raised by Mr. Ushakov and of the importance of the statements made in paragraph (2), that paragraph should be deleted from the commentary to article 2; perhaps it might be considered for insertion in the commentary to article 36 *bis*.

It was so agreed.

The commentary to article 2, paragraph 1 (h), *as amended, was approved.*

ARTICLES 35, 36, 36 *bis*, 37 AND 38

Commentary to article 35 (Treaties providing for obligations for third States or third international organizations)

Paragraph (1)

57. Mr. USHAKOV said that the words "if a treaty is to create obligations for them", in the first sentence of the paragraph, should be redrafted to reflect more closely the text of article 35 of the Vienna Convention, and thus the truth of the matter: an obligation was created not by a treaty, but by a provision of such an instrument, and then only if the parties to the treaty intended the provision to have that effect. The statement in the same sentence to the effect that article 35 extended the rule of the corresponding provision of the Vienna Convention to third international organizations was also inaccurate; article 35 of the Vienna Convention required express acceptance of an obligation in writing, whereas paragraphs 2 and 3 of the Commission's article 35, which were the paragraphs that referred to third international organizations, required respectively that an obligation should be expressly accepted and that the acceptance should be given in writing, which was not the same thing.

58. Mr. SCHWEBEL (Chairman of the Drafting Committee) suggested that the final part of the first sentence of the paragraph be amended to read: "... if a provision of a treaty is to establish obligations for them, and it extends that rule to third international organizations".

Paragraph (1), as amended, was approved.

Paragraph (2)

59. Mr. USHAKOV said that paragraph (2) of the commentary related to article 35, paragraph 2. What should be stated in the commentary was that, where the parties to a treaty intended to create an obligation for an international organization, they must, in general, ensure that that obligation was within the sphere of the organization's activities, instead of stating that an organization could accept an obligation only "in the sphere of its activities"; it did not rest with the Commission to decide whether an organization might or might not accept an obligation. Moreover, it was not true that the expression "in the sphere of its activities" referred in flexible terms to the capacity of an organization; it referred to the sphere of activities that must be taken into consideration by the States parties to a treaty when they intended to create an obligation for the organization. Throughout the rest of the paragraph under consideration, the Commission gave the impression of wanting to interfere in the internal affairs of organizations, but that was not how article 35, paragraph 2, must be understood.

[5] For the text of the Convention (hereinafter regerred to as the Vienna Convention), see *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E. 70.V.5), p. 287.

60. Mr. RIPHAGEN said that, as he had stated during the Drafting Committee's discussion of the question, he agreed fully with Mr. Ushakov that an international organization was limited in its capacity to accept obligations only by the provisions of its own rules.

61. Mr. REUTER (Special Rapporteur) suggested that the second and third sentences of paragraph (2) should be replaced by the following text: "All organizations pursue their activities in a sphere whose extent is determinable externally and it is logical that the parties to a treaty will not intend to create an obligation for an international organization outside that sphere of activity".

Paragraph (2), as amended, was approved.

Paragraph (3)

62. Mr. USHAKOV, referring to the second sentence of paragraph (3), said it was inaccurate to state that the expression "by those rules" referred not only to the rules that concerned the organization's capacity but also to those that determined its competent organs, the procedures it must follow, the form of its acts and the entire legal régime that continued to govern the acceptance it had given. The expression "rules of the organization" had already been defined in article 2, paragraph 1 (*j*), which made no reference to rules such as those that determined an organization's competent organs, the procedures it must follow and the form of its acts. Why should the expression "rules of the organization" now be given another meaning?

63. Mr. REUTER (Special Rapporteur) said that there was a misunderstanding. The material expression in the second sentence of paragraph (3) was not the words "by those rules", but the word "governed". The sentence in question had been included in the commentary because, in the Drafting Committee, Mr. Ushakov had pointed out that what was being dealt with was not only the capacity of the organization, but also the entire legal régime. Since Mr. Ushakov did not find the sentence satisfactory, it would be best to delete it.

64. Mr. USHAKOV said that there was a difference between the content of article 6, relating to the capacity of international organizations to conclude treaties, and paragraph (3) of the commentary to article 35. He could therefore accept the deletion of the second sentence of that paragraph.

Paragraph (3), as amended, was approved.

Paragraph (4)

65. Mr. SCHWEBEL (Chairman of the Drafting Committee) suggested that, in order to reflect more accurately the outcome of the Commission's discussion of article 36 *bis*, the word "approve" should be replaced by the word "adopt".

Paragraph (4), as amended, was approved.

The meeting rose at 6.05 p.m.

1525th MEETING

Tuesday, 25 July 1978, at 11.25 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: 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.

Organization of future work (*continued*)

[Item 10 of the agenda]

APPOINTMENT OF SPECIAL RAPPORTEURS IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 32/151

1. The CHAIRMAN said that, pursuant to the provisions of paragraph 7 of General Assembly resolution 32/151, the Enlarged Bureau recommended that Mr. Quentin-Baxter should be appointed Special Rapporteur for the topic of international liability for injurious consequences arising out of acts not prohibited by international law and that Mr. Sucharitkul should be appointed Special Rapporteur for the topic of jurisdictional immunities of States and their property.

2. If there were no objections, he would take it that the Commission approved those recommendations.

It was so agreed.

Organization of work

APPOINTMENT OF OBSERVERS TO THE WORLD CONFERENCE TO COMBAT RACISM AND RACIAL DISCRIMINATION

3. The CHAIRMAN said that, if there were no objections, he would take it that the Commission approved the recommendation of the Enlarged Bureau that Mr. Tabibi and Mr. Dadzie should be appointed the Commission's observers to the World Conference to Combat Racism and Racial Discrimination.

It was so agreed.

Draft report of the Commission on the work of its thirtieth session (*continued*)

CHAPTER V. ***Question of treaties concluded between States and international organizations or between two or more international organizations*** (*concluded*) (A/CN.4/L.277)

B. Draft articles on treaties concluded between States and international organizations or between international organizations (*concluded*)

TEXT OF ARTICLES 35, 36, 36 *bis*, 37 AND 38, AND OF ARTICLE 2, PARAGRAPH 1 (*h*), WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTIETH SESSION (*concluded*)

ARTICLES 35, 36, 36 *bis*, 37 AND 38 (*concluded*)

Commentary to article 36 (Treaties providing for rights for third States or third international organizations)