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Summary record of the 1574th meeting

Topic:
Jurisdictional immunities of States and their property

Extract from the Yearbook of the International Law Commission:-
1979, vol. I

be taken of the cause of the situation, regardless whether it was an act of nature or a human act. In that connexion, Mr. Ago had said that it would be preferable, in describing situations of material impossibility attributable to natural and especially human causes, to avoid the term "coercion", which had been used in other provisions in a specific sense. For his own part, he had taken that remark to refer to article 28,[3] and the subject-matter considered by the Commission in fact called to mind the content of that article.

16. In practical terms, it was possible to think of a number of treaty situations in which the treaty as a source of international obligations included many elements of what, between private individuals, would be called a contract. That was particularly the case with treaties between States relating to the delivery of products or equipment. In such a case, the act of a third party might produce some effect. For example, a treaty might provide for the delivery by one State to another of aircraft that the first State was unable to manufacture without having first concluded another agreement with a third State for the supply of necessary equipment. If the third State did not supply the equipment, that would amount to an act by a third State that prevented the performance of the first treaty, and it must be determined whether, as a result, the non-performance by the State that had undertaken to supply the aircraft of its obligation pursuant to the treaty lost its character of wrongfulness. In that connexion, Mr. Ago had mentioned the idea of an act of State, taken from private law, where it described the act of a State that prevented the performance of private contracts. Such a situation could in fact arise in international relations, especially where treaty implementation was prevented by an international decision.

17. The Commission could not avoid studying complex problems of that kind if it decided to approach the matter in terms of causes; like Mr. Ago, he thought it would be best to deal exclusively with situations.

18. Mr. USHAKOV said he had always considered it necessary to make a distinction between natural occurrences, which relieved the State of its responsibility, and acts of human origin, which were a different matter. Moreover, he thought the Commission should rid its commentary of all examples of specific cases that were not clear and indisputable, as great caution was called for.

19. Mr. VEROSTA said he still regretted that articles 31 and 32 were not followed and supplemented by an article 33 defining necessity. It would in fact be desirable to establish a closer link between cases in which the State was in mortal danger and cases of distress on the part of organs of the State, since the author of the conduct attributable to the State was generally an organ of the State.

20. Mr. SUCHARITKUL pointed out that he had mentioned the danger of adopting private law terminology in international law only as a general reminder. In the present case, he was not opposed to the use of the words "*force majeure*", especially after the explanations given by Mr. Ago.

21. Mr. AGO agreed with Mr. Reuter that a number of difficulties could be avoided by not referring to causes. However, the Commission had been asked to draft general rules of international law and it was obvious that, where an international treaty contained a different rule, the latter would apply, since the texts drafted by the Commission had only the value of subsidiary rules.

22. In the specific case described by Mr. Reuter of the impossibility of performing an international sales agreement owing to the act of third State, paragraph 3 of article 31 would become operative, for it might be considered that the State had been careless and negligent by concluding a treaty to supply equipment for whose production it was not dependent on itself alone. In the different case of international sanctions, article 30 (Countermeasures),[4] could be applied.

23. Like Mr. Ushakov, he thought the Commission should exercise great caution in drafting its commentary.

24. As to the question of distinguishing between state of emergency and situation of distress, raised by Mr. Verosta, he pointed out that state of emergency was quite different from distress, and would be studied subsequently.

25. In conclusion, he shared Mr. Sucharitkul's concern about the need to use clear and precise terminology that left nothing in doubt.

26. The CHAIRMAN proposed that if there were no objections the Commission should refer draft articles 31 and 32 to the Drafting Committee, which would consider them in the light of the discussion and of the proposal submitted by Mr. Ushakov (1571st meeting, para. 20).

It was so decided. [5]

The meeting rose at 11.40 a.m.

[3] 1567th meeting, para. 1.

[4] *Ibid.*

[5] For consideration of the texts proposed by the Drafting Committee, see 1579th meeting.

1574th MEETING

Monday, 23 July 1979, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter,

Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Jurisdictional immunities of States and their property (A/CN.4/323)

[Item 10 of the agenda]

1. The CHAIRMAN invited Mr. Sucharitkul, Special Rapporteur, to introduce his preliminary report on the topic of jurisdictional immunities of States and their property (A/CN.4/323).

2. Mr. SUCHARITKUL (Special Rapporteur) said that, in preparing his report, he had used as a working basis the report of the Working Group on jurisdictional immunities established by the Commission at its thirtieth session,[1] but that at the same time he had endeavoured to take an over-all view of the topic. The purpose of the preliminary report, as explained in the introduction, was to identify the various types of source material with a view to determining the areas of interest and defining the content of the topic. It was hoped thus to ensure systematic treatment of the body of customary and evolutionary rules of international law applicable.

3. He could inform the Commission that eight Governments had now responded to the circular letter sent by the Secretary-General to the Governments of Member States at the Commission's request, inviting them to submit relevant materials on the jurisdictional immunities of States and their property by 30 June 1979. Some of those eight Governments had indicated that there had been no decided cases in their countries, but others had supplied valuable information on their laws and practice.

4. Chapter I of the report, entitled "Historical sketch of international efforts towards codification", referred to the work of the League of Nations, of the Commission itself, and of the regional legal committees. The Asian-African Legal Consultative Committee had discontinued its consideration of "Restrictions on immunity of States in respect of commercial transactions entered into by or on behalf of States and by State trading corporations", but members would note that the European Committee on Legal Co-operation had contributed to the conclusion of the 1972 European Convention on State Immunity, and that the current programme of work of the Inter-American Juridical Committee included an item entitled "Immunity of States from jurisdiction". A number of professional institutions had also been concerned with legal developments in regard to State immunities, including the Institut de droit international, the International Law Association, the Harvard Law School (Research in International Law) and the International Bar Association.

5. Chapter II of the report dealt with the sources of international law on State immunities. As he had pointed out in paragraph 22, those sources were unusual in that they were more widely scattered than might have been expected. The different views on that matter expressed in the Sixth Committee of the General Assembly,[2] pointed to the difficulties that lay ahead and to the need for particularly close examination of national legal systems. However the same difficulties had arisen in connexion with other topics, such as diplomatic and consular relations and immunities.

6. The first source of international law referred to in chapter II of the report was the practice of States, which covered a number of areas, starting with national legislation. Legislative enactments on the judicial system were to be found in the law on the constitution of a State, and in the basic or specific law on the organization of its courts or the establishment of the judicial hierarchy. For example, article 14 of the French Code civil permitted suits against foreigners in French courts, and articles 52 and 54 of the Belgian Code de procédure civile applied the same principles. The report also referred to article 61, entitled "Suits against foreign States: diplomatic immunity", of the Fundamentals of civil procedure of the USSR and the Union Republics. With regard to more recent national legislation, two statutes deserved special mention: the United States Foreign Sovereign Immunities Act of 1976, and the United Kingdom State Immunity Act, 1978.[3] There were also a number of statutes in various countries that dealt with certain aspects of State immunity, such as the immunities extended to the premises of a foreign embassy, to the residence of an accredited ambassador, to the premises of a mission accredited to an international organization, to warships and State-owned ships employed in governmental and non-commercial service, to foreign sovereigns, and to the property of a foreign sovereign State.

7. The second area of State practice, and by far the most substantial source of rules of international law on State immunity, was the judicial decisions of municipal courts. Unfortunately, there were no reported cases on State immunity prior to the nineteenth century, and an added difficulty was introduced by the need to appreciate the special characteristics of the procedures of each legal system. On the other hand, there appeared to be a tendency for municipal courts not only to rely on their own precedents but also to refer to the judgements of other courts, so that comparative law techniques had been adopted in a number of fairly recent cases. A case directly in point was the judge-

[1] A/CN.4/L.279/Rev.1 (section III of which was reproduced in *Yearbook... 1978*, vol. II (Part Two), p. 153, document A/33/10, chap. VIII, sect. D, annex).

[2] See *Official Records of the General Assembly, Thirty-third Session, Annexes*, agenda item 114, document A/33/419, paras. 263 and 264.

[3] See A/CN.4/323, paras. 25 and 26.

ment of the Supreme Court of Austria in *Dralle v. Republic of Czechoslovakia* (1950), an excerpt from which was cited in his report. United States courts had also referred to foreign judgements, as had the Court of Appeal of the United Kingdom in the *Trendtex* case in 1977.[4] It would therefore seem advisable to continue to examine the judicial decisions of municipal courts.

8. Governmental practice was the third area of State practice. The executive branch of government could play a decisive part in deciding whether or not a State should claim or waive immunity. It had at least three distinctive roles to play: in the enactment of legislation on State immunities; in giving advice to the judiciary on matters relating to State immunities; and in issuing statements or certificates to its own courts confirming the status of an entity or the existence of statehood, or on any pertinent question of international law or of fact.

9. The second main source of international law on State immunities was international conventions such as Conventions on the Law of the Sea (1958), the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the Convention on Special Missions (1969) and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (1975). Mention must also be made of the regional conventions, in particular the European Convention on State Immunity (1972) and the Brussels International Convention for the Unification of Certain Rules relating to the Immunity of State-owned Vessels (1926).

10. The third source of material was international adjudication, which included both judicial decisions and arbitral awards. There were apparently no reported cases, but that did not mean that the subject was not regulated by international law.

11. The fourth and last source of material was the opinions of writers. Although their opinions differed, there appeared to be an emerging trend in favour of State immunity.

12. Chapter III of the report dealt with the possible content of the law of State immunities. As noted in section A, the main purpose of the preliminary report was simply to define the scope of the study; the structure and order of presentation of the rules of international law in the form of draft articles would be considered at a later stage. There was an apparent dichotomy between States and their property which, although misleading, served to indicate that there were several different phases in the application of the rules, more particularly in regard to immunity from seizure and attachment, and ultimately from execution of judgement.

13. Section B attempted to clarify the meaning of certain key words. While the term "jurisdiction" did not cause much difficulty, the term "jurisdictional immunities" could have more than one meaning. It did not imply exemption from the application of substantive law, but it might involve immunity not only from the power of adjudication of a court, but also from the powers of arrest and detention, whether of persons or property, in other words, of powers belonging in certain instances to both the judiciary and the executive branch of government. It was not necessary to define the word "State" for all purposes, but the Commission should perhaps consider whether a definition was required, for the purposes of the study, to indicate which entities were covered by the expression. Such a definition was to be found in national laws and also in certain regional conventions. The Commission had already defined "State property" in its earlier work on other matters, particularly in the context of the draft articles on succession of States in respect of matters other than treaties,[5] and the same or a similar definition could perhaps be used in the present study.

14. With regard to the general rule of State immunity, which was discussed in section C of chapter III, the Working Group had pinpointed the problem by stating that the doctrine of State immunity was the result of an interplay of two fundamental principles of international law: the principle of territoriality and the principle of State personality, those being two aspects of State sovereignty.[6] In terms of an analysis of legal relations, it could be said that the concept of immunity was the corollary of the non-exercise of a power, but despite the utility of the analytical approach it was important not to lose sight of the historical development of State practice, as outlined in paragraphs 57 and 58 of the report. In determining the elements that constituted the basis of the general rule, a number of factors deserved closer attention, in particular, the existence of a sovereign State with valid territorial jurisdiction over the activities of another sovereign State, or in other words, the exercise of sovereign authority by one State within the territorial jurisdiction of another, and the absence of consent of the foreign sovereign State to the exercise of territorial jurisdiction by the State authorities. Consent was an important element in the doctrine of State immunity, and related to consent were waiver of immunity and other incidental questions. Further questions connected with consent included voluntary submission to the jurisdiction, counterclaim, incidence of costs, and execution.

15. The vital question of possible exceptions to the general rule of State immunity was dealt with in section E. In his view, there were two possible approaches: to define the circumstances in which immunities would be recognized, and to state the general principle of immunity and then provide for exceptions to it. Of those two approaches, he was inclined to favour the latter and would suggest that a tentative list

[4] *Ibid.*, paras. 29 and 30.

[5] See *Yearbook... 1973*, vol. II, p. 205, document A/9010/Rev.1, chap. III, sect. B, article 5.

[6] See *Yearbook... 1978*, vol. II (Part Two), p. 152, document A/33/10, chap. VIII, sect. D, annex, para. 11.

of exceptions could be grouped under the following headings: commercial transactions; contracts of employment; personal injuries and damage to property; ownership, possession and use of property; patents, trademarks and other intellectual properties; fiscal liabilities and customs duties; shareholdings and membership of bodies corporate; ships employed in commercial service; arbitration.

16. The Commission would have to decide at a later stage whether provision for immunity from attachment and execution should be made in the same set of draft articles or whether it should form the subject of another, separate, part of the draft. It would also have to examine a number of other procedural questions, which were referred to in section G of chapter III.

17. Lastly, although the report did not lend itself to any specific conclusions, he believed that it would provide the Commission with a basis for its work, in undertaking which he would suggest that it should be guided by the views of Governments.

18. The CHAIRMAN congratulated the Special Rapporteur on his preliminary report and masterly presentation thereof.

19. Mr. REUTER shared the Special Rapporteur's preference for starting from the principle of State immunity, rather than from the exceptions to that principle. Historically, it was the principle that had been stated first; it was only the economic and technical changes of the modern era that had complicated the subject. The fact remained, however, that the frequency and complexity of exceptions to the application of the principle, due in particular to the trend towards socialization and interventionism, would probably lead the Commission to devote more time to studying the exceptions. Moreover, account must be taken of the fact that States such as the United States of America and the United Kingdom, after long maintaining firm positions on the principles, had relaxed their positions in the matter of legislation.

20. It appeared from a reading of the preliminary report and from the Special Rapporteur's oral presentation that two general approaches were open to the Commission. It could start either from general principles stated in the form of rules or definitions, or from specific cases. Both methods were attractive, but had their dangers. He therefore hoped that the Special Rapporteur would deal at the outset with certain general aspects, while giving examples of specific cases, and that he would simultaneously prepare articles, some relating to general problems and others to specific questions. That would probably complicate his task, but he would thus be able to avoid the extremes of both methods.

21. Only immunity from jurisdiction should be dealt with at first, immunity from execution being left until later. As a result of the great changes in the modern era, immunity from jurisdiction had developed rapidly, which was not true of immunity from execution. It followed that immunity from execution was probably less ripe for codification and that its consideration would present greater difficulties. The Commission should not decide in advance how it would deal with immunity from execution. Moreover, since immunity from jurisdiction related mainly to questions of procedure, the Commission should begin with those questions, leaving aside, as far as possible, questions of substance and the many difficulties they would surely raise. Consideration of procedural questions might soon yield constuctive results that could be given practical expression in draft articles.

22. As to the advisability of making references to internal law in the draft articles, he noted that the Special Rapporteur had drawn attention to the fact that the draft articles on succession of States in respect of matters other than treaties contained a definition of State property that referred to internal law. Although it might be true that in international law many concepts could be defined only by reference to internal law, it was a fact that that method could have disadvantages, as the Commission had found when studying the question of State archives. In his opinion, it would be advisable to go beyond internal law. It would not be sufficient, for example, for the Commission merely to lay down the principle that it was the *lex rei situs* that was applicable to real property. To establish such a rule raised the question of the capacity of a foreign State under internal law; and a State that enjoyed full capacity in international law had no capacity under the internal law of another State. In principle, a State could not purchase real estate abroad, any more than a private person could make a gift to a foreign State.

23. Some questions had been the subject of judicial decisions. For example, what law was applicable in establishing the ownership of movable property? Was it the law applicable to conclusion of the contract or the law applicable to the place where the property was situated? He wondered, too, from what moment a State purchasing aircraft from another State became their owner and, once the aircraft had become its property, from what moment they were military or civil aircraft. What internal law would establish whether they were military or civil aircraft? As the Commission had found when examining the problem of State archives, when it entered the area of internal law it came up against questions of private international law. As far as possible, therefore, it should try to draw up rules of pure public international law, or at least rules under which conflicts of laws could be settled.

24. Mr. RIPHAGEN associated himself with the congratulations expressed to the Special Rapporteur on his report. All who had ever had to deal with the intricate questions of State immunity would appreciate the enormous amount of work that had gone into the document.

25. In general, he agreed with the Special Rapporteur's opinions, especially the statement in paragraph 44 of the report to the effect that the absence of international judicial decisions relating to State immunities did not imply that the matter was not subject to regulation by international law. It was a fact, however, that writers and domestic courts, particularly in the

United States of America, often referred to questions of State immunities as questions of comity—an attitude that was also frequent in regard to questions of conflict of laws or of limits of national jurisdiction.

26. In his view, the differences in practice revealed by such judicial decisions as existed relating to State immunities should be taken less as evidence that there was no universal rule of international law in the matter than as evidence that States enjoyed a measure of "discretion", in the sense in which that term had been employed by the International Court of Justice in the *Lotus* case.[7] No doubt the absence of international adjudication could be at least partly explained by the fact that refusal by a national court to recognize the immunity of a foreign State would not of itself result in damage to that State, and by the fact that even the enforcement of judgement in the territory of the State of the court would in practice be of little significance to the State whose immunity had been ignored. At all events, there was a wealth of diplomatic correspondence in which immunity had been claimed and its refusal had been protested on the basis of alleged rules of public international law. Moreover, the subject of State immunities, by its very nature, was one that should be regulated by international law.

27. There was a further aspect of the analogy between situations involving conflicts of laws and those involving State immunities that merited the Commission's attention, namely, the aspect of legal technique. In both instances, decisions in specific cases were based on the links between the situation giving rise to the claim of immunity and the States or legal systems involved. If, for the sake of argument, it was considered that all the persons representing a foreign State or all that State's activities or property were exclusively or even predominantly connected with it, absolute immunity would ensue. There was a growing realization, however, that there might be factors connecting a potential subject of immunity with a State or legal system other than the "foreign State", especially the State of the forum, and that such factors might predominate, with the result that the foreign State would have only limited immunity. Examples of that principle could be found in abundance in national laws and in treaties, including the European Convention on State Immunity.[8] In that instrument, the existence or non-existence of State immunity was held to be dependent on such questions as whether an obligation under a contract was for discharge in the State of the forum and where the contract had been concluded, the nationality of persons recruited under a litigious contract of employment, and whether the foreign State maintained a representative office or the like in the territory of the other State.

28. There was yet another aspect of the analogy between situations involving conflicts of laws and those involving State immunities that merited attention. What the Special Rapporteur had said in the first two sentences of paragraph 53 of his report was true in general, but depended, *inter alia*, on the sphere of application of the "territorial laws" in question. Despite the Special Rapporteur's assertion in the fourth sentence of the same paragraph, he wondered whether such laws would apply in all instances of waiver of immunity. For example, in a case in the Netherlands in which there had been an indisputable implied waiver of immunity through the making of a counter-claim, the highest court in the land had none the less found it necessary to see whether it could test the conduct of the foreign State involved. Such a case clearly came within the ambit of the "act of the State" doctrine, which might conceivably be construed as relating to State immunity, but only at the level of the exercise of *imperium* by the testing of the conduct of foreign States.

29. It should be noted that the question of such testing, or even of its permissibility, could arise before national courts even in cases in which the foreign State was not, in the technical sense, a party to the proceedings. In the Netherlands, for example, an action for tort had been brought against a private shipping company trading in Indonesia. The question had turned on the conduct *jure imperii* of the Indonesian Government, and the court had declared itself incompetent. Similarly, he believed that a United States court that had recently declared itself incompetent to settle a claim between two private litigants concerning the validity of titles conferred by rival Governments had done so not merely because the question at issue had been political, but also because it had not considered itself competent to judge the conduct of foreign States. It would be wise for the Special Rapporteur to avoid including questions of State immunity at such a level in his study, for it was doubtful whether there were any general rules of international law to cover them.

30. While he fully agreed with the Special Rapporteur's statement in the last sentence of paragraph 53, that sentence seemed to imply that immunity from the jurisdiction of a foreign court would exist as a matter of course if the court assumed jurisdiction in excess of the "ordinary rules of private international law". The question then naturally arose what those "ordinary rules" were. That was a problem that had given much cause for thought to the drafters of the European Convention on State Immunity, and the answer they had reached was far from simple. Moreover, if it was true that the existence or non-existence of State immunity was based on the existence or non-existence of factors linking the situation giving rise to a claim with the State of the forum, it might be appropriate to look at the factors that linked the claimant with the forum. He could well imagine circumstances in which a defendant State would be unable to claim immunity if a claimant had a real link with the State of the forum, but would be able to do so if he did not. Such cases would in turn raise the issue of "forum shopping". The Commission could avoid becoming enmeshed in such intricate questions, how-

[7] *P.C.I.J.*, Series A, No. 10, p. 19.

[8] Council of Europe, *European Convention on State Immunity and Additional Protocol*, European Treaty Series, No. 74 (Strasbourg, 1972).

ever, if it followed the approach to the topic suggested by the Special Rapporteur.

31. Mr. USHAKOV said he had the impression that the Special Rapporteur proposed to draw up articles dealing with exceptions to the general rule of State immunity rather than with the rule itself. It could not of course be claimed that there were no exceptions to the rule, but it was probably rather early to affirm, as had the Special Rapporteur, that there was no State immunity in certain cases and that the exceptions might take precedence over the rule. Such assertions could not be made unless they were based on customary rules or State practice.

32. With regard to the reference to internal law, he stressed that it could be made only if the rule of internal law referred to did not conflict with a rule of international law.

33. In paragraph 71 of his report, the Special Rapporteur, having stated that a possible exception to the rule of State immunity was the trading activity of a foreign State, said that a question might arise in regard to Government-to-Government transactions. It was strange to consider that such a case might present difficulties, since it was a matter of treaties concluded between States, and such treaties, even if they related to commercial questions, could not be subject to State jurisdiction. Neither the application of internal law nor the question of State immunity was relevant.

34. The Special Rapporteur's terminology was not always very precise, nor was his general conception of the State satisfactory. It was true that in the seventeenth and eighteenth centuries some writers, influenced by theories prevailing in the Middle Ages, had contrasted State *imperium* with State *dominium*. In their view, *imperium* derived from *dominium*, so that the governmental authority exercised by the State over its territory derived from the fact that it was master of that territory. Those outmoded ideas were still upheld by some writers. For his own part, he thought it would be pointless to try to split up the single entity constituted by the State. It was only for the purpose of distributing tasks among State organs, and purely for convenience, that one spoke of legislative, executive and judicial powers, but it could not be said that a State could act as a trader. By definition, everything done by a State was political. To say that the purchase of shoes by a State was commercial in nature, or that other of its activities were cultural, was to resort to a fiction that concealed the essentially political nature of all State activities.

The meeting rose at 6.5 p.m.

1575th MEETING

Tuesday, 24 July 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Jurisdictional immunities of States and their property (*concluded*) (A/CN.4/323)

[Item 10 of the agenda]

1. Mr. USHAKOV said that, just as the State was an indivisible entity, State property could not be divided into State property in commercial use and other State property. In paragraph 85 of his report (A/CN.4/323), however, the Special Rapporteur referred to "State property in commercial use". Oil, for example, could be used for commercial purposes, but it could also be used for warships. It was not only incorrect but also pointless to state, as the Special Rapporteur stated in paragraph 70 of the report, that "one possible exception to the rule of State immunity is the trading activity of a foreign State", since in the modern world it seemed that States did not engage in foreign trade activities. In the Soviet Union, it was not the State but bodies having the status, as it were, of legal entities in private law, that engaged in foreign trade. Nor could capitalist States themselves engage in commercial activities. The State did not act as a real trader. True, it might sometimes happen, although only very rarely, that the State concluded contracts for the sale of certain products. For example, a private law contract, as opposed to an international agreement, might be concluded between a State and a foreign private bank. In such cases, the State acted as a legal entity under private law and was subject to the applicable law, in accordance with the contract. But there could be no doubt that it enjoyed jurisdictional immunity unless, in concluding the contract, it expressly agreed to submit to a certain internal law.

2. It would be wrong to consider that the topic under consideration comprised only immunity from judicial authority. The immunity of States was indivisible; they were exempt, in principle, from the governmental authority of other States as such, whether that authority was judicial, administrative or of any other kind. That being so, it would be pointless to draft articles relating only to the judicial activities of foreign States. In his view, "jurisdictional immunities" should be taken to mean immunities from State jurisdiction in the broad sense, in other words, from the exercise of governmental authority. That immunity was indivisible, and judicial immunity was only one aspect of it.

3. Mr. VEROSTA wished to place on record the congratulations he had expressed privately to the Special Rapporteur as soon as he had read his report. He agreed with Mr. Reuter (1574th meeting) that, in his approach to the topic, the Special Rapporteur should steer a middle course between general definitions and detailed provisions. Nevertheless, he hoped that the Special Rapporteur would prepare a questionnaire that was as thorough as possible, for it was the replies from