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A/CN.4/SR.1653

Summary record of the 1653rd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1981, vol. I

ARTICLE 25 *bis* (Provisional application of treaties between one or more States and one or more international organizations)

30. The CHAIRMAN invited the Commission to consider articles 24, 24 *bis*, 25 and 25 *bis*, which read:

Article 24. Entry into force of treaties between international organizations

1. A treaty between international organizations enters into force in such manner and upon such date as it may provide or as the negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty between international organizations enters into force as soon as consent to be bound by the treaty has been established for all the negotiating organizations.

3. When the consent of an international organization to be bound by a treaty between international organizations is established on a date after the treaty has come into force, the treaty enters into force for that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty between international organizations regulating the authentication of its text, the establishment of the consent of international organizations to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 24 bis. *Entry into force of treaties between one or more States and one or more international organizations*

1. A treaty between one or more States and one or more international organizations enters into force in such manner and upon such date as it may provide or as the negotiating State or States and organization or organizations may agree.

2. Failing any such provision or agreement, a treaty between one or more States and one or more international organizations enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and organizations.

3. When the consent of a State or an international organization to be bound by a treaty between one or more States and one or more international organizations is established on a date after the treaty has come into force, the treaty enters into force for that State or organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty between one or more States and one or more international organizations regulating the authentication of its text, the establishment of the consent of the State or States and the international organization or organizations to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25. Provisional application of treaties between international organizations

1. A treaty between international organizations or a part of such a treaty is applied provisionally pending its entry into force if:

(*a*) the treaty itself so provides; or

(*b*) the negotiating organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating organizations have otherwise agreed, the provisional application of a treaty between international organizations or a part of such a treaty with respect to an international organization shall be terminated if that organization notifies the other international organizations between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

Article 25 bis. *Provisional application of treaties between one or more States and one or more international organizations*

1. A treaty between one or more States and one or more international organizations or a part of such a treaty is applied provisionally pending its entry into force if:

(*a*) the treaty itself so provides; or

(*b*) the negotiating State or States and organization or organizations have in some other manner so agreed.

2. Unless a treaty between one or more States and one or more international organizations otherwise provides or the negotiating State or States and organization or organizations have otherwise agreed:

(*a*) the provisional application of the treaty or a part of the treaty with respect to a State shall be terminated if that State notifies the other States, the international organization or organizations between which the treaty is being applied provisionally, of its intention not to become a party to the treaty;

(*b*) the provisional application of the treaty or a part of the treaty with respect to an international organization shall be terminated if that organization notifies the other international organizations, the State or States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

31. The CHAIRMAN suggested that articles, 24, 24 *bis*, 25 and 25 *bis* should be referred to the Drafting Committee.

It was so decided.[6]

The meeting rose at 11.30 a.m.

[6] *Idem*, paras. 43–44.

1653rd MEETING

Monday, 18 May 1981, at 3.10 p.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Jurisdictional immunities of States and their property (A/CN.4/331 and Add.1,[1] A/CN.4/340 and Add.1, A/CN.4/343 and Add.1–4)

[Item 7 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

[1] *Yearbook ... 1980*, vol. II (Part One).

1. The CHAIRMAN invited the Special Rapporteur to introduce his third report on the jurisdictional immunities of States and their property (A/CN.4/340 and Add. 1).

2. Mr. SUCHARITKUL (Special Rapporteur) reminded the Commission that a study group had been set up in 1978 to prepare an exploratory report on the jurisdictional immunities of States and their property,[2] and that he had presented a preliminary report in 1979.[3] Those two reports had identified the subject-matter and relevant source materials and had examined general aspects of jurisdictional immunities as well as certain problems of general understanding and definition. Subsequently, pursuant to the instructions of the Sixth Committee of the General Assembly, the Special Rapporteur had prepared six draft articles, which had been submitted in 1980 in his second report (A/CN.4/331 and Add.1). The first five articles formed the introduction to the draft, while the sixth laid down the first general principle, that of State immunity. Draft articles 1 and 6 had been provisionally adopted,[4] on the understanding that the Commission could revert to them later.

3. He was most grateful to all members of the Commission for the help and advice he had received in connection with the preparation of his third report. Mr. Pinto, as Chairman of the Commission's thirty-second session, had explained to the Sixth Committee of the General Assembly the delicate nature of the Commission's task in its search for an acceptable compromise. Mr. Reuter had pointed out to him the infinite complexities inherent in the very nature of the subject-matter. Mr. Ushakov had made a number of positive suggestions, in which connection members would recall that, although a definition of State property had been adopted, it had become clear that the matter would require further consideration. The definition of State property in the context of succession of States was not quite the same as in the context of the immunities of States and their property. Possibly the criterion to be adopted in determining whether, in a given case, immunity from jurisdiction or, as the case might be, from attachment or execution, should be granted was whether the property in question was in the possession and control of the State. Both the Commission and the General Assembly had, however, indicated that the question of property and immunity from execution could be dealt with at a later stage.

4. He owed a special debt of gratitude to Sir Francis Vallat, who had provided valuable guidance on draft articles 1 and 6. The Commission might at a later stage wish to omit the words "questions relating to" in draft article 1, as being redundant, but he considered that it would be advisable to retain them so long as the scope of the subject of State immunities had not been determined. In draft article 6,[5] for want of a better term, he had used the terms "territorial State" and "foreign State", but it might be preferable to say simply "a State" and "another State". The term "territorial State" could be misleading, since the draft articles were concerned with the State of the forum and not necessarily with the territorial State as such, and if the term "territorial State" was not used, there would be no need to have "foreign State" as its counterpart.

5. The Chairman had raised a very important question, which had also been discussed in the Sixth Committee of the General Assembly, namely, whether the subject of the jurisdictional immunities of States should be treated as a general principle of international law or as an exception to the more fundamental principle of territorial sovereignty. He trusted that the Commission would pronounce on that question and that the commentary on the report would adequately reflect its discussions.

6. With regard to the point made by Mr. Tsuruoka at the Commission's previous session, that paragraph 2 of draft article 6 was perhaps unnecessary, he believed that it would serve as a link with draft article 7 and that, in a way, it represented a compromise between divergent views. In that connection, the United Kingdom representative in the Sixth Committee had said that if State immunity had still to be established as a principle of international law, it would be particularly difficult to prove an exception to it.[6] Thus, it was a matter of the burden of proof, which could be shifted depending on whether or not State immunity was regarded as an established principle.

7. In his second report, he had cited State practice, which seemed to provide overwhelming support for the existence of a general rule or principle of State immunity. There were, however, some differences of opinion on the formulation of that principle in draft article 6. The majority view in the Commission had been that a State was immune from the jurisdiction of another State, but that principle had been criticized by some as not being sufficiently normative. It had therefore been made subject to a qualifying phrase: "in accordance with the provisions of the present articles". As yet, however, the content of those articles was unknown.

8. His third report (A/CN.4/340 and Add.1) contained five further draft articles, which dealt with the general principles of State immunity following from the proposition set out in draft article 6: article 7, entitled

[2] See *Yearbook ... 1978*, vol. II (Part Two), pp. 152 *et seq.* paras. 179 *et seq.*

[3] See *Yearbook ... 1979*, vol. II (Part One), p. 227, document A/CN.4/323.

[4] See *Yearbook ... 1980*, vol. II (Part Two), p. 138, para. 112. For the text of the two articles adopted by the Commission: *ibid.*, pp. 141 and 142.

[5] For the text of articles 1–6 submitted by the Special Rapporteur, see *Yearbook ... 1980*, vol. I, p. 195, 1622nd meeting, para. 4, and p. 199, 1623rd meeting, para. 2.

[6] See *Official Records of the General Assembly, Thirty-Fifth Session, Sixth Committee*, 51st meeting, para. 17; and *ibid.*, *Sessional fascicle*, corrigendum.

"Rules of competence and jurisdictional immunity" (*ibid.*, para. 44), and articles 8, 9, 10 and 11 (*ibid.*, paras. 58, 71, 81 and 92), which dealt, respectively, with consent of State, voluntary submission to the jurisdiction, counter-claims and waiver.

9. Draft article 7 was the corollary of the right to immunity laid down in draft article 6, in that it imposed a duty on the part of one State to refrain from exercising jurisdiction over or against another. Such a duty was recognized under the laws of many countries, though there were many nuances in its formulation. For instance, section 86 (1) of the Indian Code of Civil Procedure provided that no ruler of a foreign State could be sued in any court except with the consent of the central Government in writing.[7] Article 61, paragraph 1, of the law entitled "Fundamentals of civil procedure of the Soviet Union and the Union Republics, 1961" proscribed a similar duty in a slightly different manner, by providing that an action could be brought against a foreign State "only with the consent of the competent organs of the State concerned."[8]

10. In that connection, the question of the competence of the court arose. If the court called upon to exercise jurisdiction was not competent—in other words, if the case did not fall within the jurisdiction of the court according to its own rules—then, in his submission, the question of immunity did not arise: there being no jurisdiction, there could be no immunity from jurisdiction. The two concepts—competence and immunity—were interrelated, inasmuch as the court might not proceed in a case, either because it had no competence or because the State was immune.

11. There were also a number of concepts that were closely interrelated under the internal law of different countries. For instance, it had recently been suggested that sovereign immunity was one aspect of the "act of State" doctrine—"act of State" being understood in the sense of a defence to an action in tort. There was a clear distinction to be drawn between jurisdictional immunity on the ground that the defendant was a sovereign State—though the court would otherwise have been competent—and other cases in which the court had no competence, either because the matter was outside its territorial jurisdiction or because the subject-matter had no connection whatsoever with the court or because, for some other reason, the subject-matter was not actionable before the court or was not justiciable before the judicial authority.

12. When the concept of jurisdictional immunity had originally been formulated in such classic cases as *The Schooner "Exchange" v. McFaddon and others* (1812)[9] there had been a concurrence of two types of sovereignty—territorial sovereignty and national sovereignty. Thus, the presence of one State on the territory of another, in the form, say, of the presence of troops, of the sovereign in person, of ambassadors or of other representatives, had given rise to concurrent jurisdiction. One jurisdiction had then given way to the other, with the result that jurisdictional immunity had arisen. As State practice had developed, however, and as States had begun to prescribe the limits of the jurisdiction of their own courts, it seemed to have become generally accepted that the State could have jurisdiction even where no territory was involved. For instance, if there was an agreement to submit to the jurisdiction or an agreement on the choice of law, the law of certain States would permit them to exercise jurisdiction—which could perhaps be regarded as extraterritorial jurisdiction—in matters pertaining to nationality, to jurisdiction over aircraft and space craft, and to jurisdiction over areas falling outside the national sovereignty but within the national jurisdiction.

13. In most cases, it was possible to distinguish lack of competence on grounds other than jurisdictional immunity. There might, for instance, be some technical defect, such as lack of legal personality or of capacity to litigate. He had referred in his third report to a case that had come before the Supreme Court of Thailand, in which it had been held that the Government of Thailand lacked the capacity to be sued under Thai law because it did not have legal personality.[10] In certain jurisdictions, some aliens lacked the capacity to sue and be sued, and that was particularly true in time of war.

14. In regard to the "act of State" doctrine, it was important to distinguish between non-actionability of acts of a foreign Government and non-justiciability owing to lack of competence and jurisdictional immunity, for, if the court declined jurisdiction on the ground of jurisdictional immunity, the defect was curable either by the State giving its consent, or by conduct, or by waiver. But, if the court declined jurisdiction because it lacked competence, neither waiver nor consent could remedy the defect.

15. Another element in the general proposition that a State had a duty to refrain from exercising jurisdiction over another State was the absence of compulsory jurisdiction. Even in the case of the International Court of Justice, jurisdiction was not compulsory initially. Likewise, under internal law, a municipal court could not be expected to have compulsory jurisdiction over another State. That question was closely allied to the element of compulsion: where there was consent, there

[7] India, *The Code of Civil Procedure, 1908 (As modified up to the 1st May 1977)* Ministry of Law, Justice and Company Affairs, (n.d.) p. 32.

[8] USSR, *Sbornik zakonov SSR i ukazov Prezidiuma Verkhovnogo Soveta SSR 1938–1975* [Compendium of laws of the USSR and of decrees of the Presidium of the Supreme Soviet of the USSR, 1938–1975] (Moscow, Izvestia Sovetov Deputatov Trudiashchikhsia SSR, 1976), vol. 4, p. 53. [Translation by the Secretariat.]

[9] W. Cranch, *Reports of Cases argued and adjudged in the Supreme Court of the United States*, 3rd ed. (New York, Banks Law Publishing, 1911), vol. VII, p. 116.

[10] See A/CN.4/340 and Add.1, footnote relative to para. 20.

was no compulsion; where there was willingness, there was no subjection.

16. It has been said that there was no need to include any interpretative provisions to indicate what was meant by "State". If that view were accepted, some reference should perhaps be made to the circumstances in which a State was said to be "impleaded". He had therefore listed in his third report (A/CN.4/340 and Add.1, paras, 27 *et seq.*) certain action which might be regarded as impleading a foreign State: proceedings against a foreign State, proceedings against the central Government or head of a foreign State, proceedings against political subdivisions of a foreign State, and proceedings against organs, agencies or instrumentalities of a foreign State. He had also made a passing reference to State agents or representatives of foreign Governments, including sovereigns, ambassadors, diplomatic agents, consular agents and other types of representatives of foreign Governments attending meetings, whose status and immunities had to some extent been dealt with in other conventions. There were also proceedings affecting State property or property in the possession or control of a foreign State. State practice seemed to suggest that a State would be impleaded if a vessel in its possession or control was attached without due consideration being given to the kind of activity in which the vessel was engaged, with a view to determining the extent of its immunities and how amenable it was to the jurisdiction of the court.

17. Lastly, he pointed out that two alternative versions of paragraph 2 of draft article 7 had been submitted for the Commission's consideration. It should also be borne in mind that draft articles 8 to 11 were mainly of a procedural nature and subsidiary to the main rule laid down in draft article 6.

ARTICLE 7 (Rules of competence and jurisdictional immunity)

18. The CHAIRMAN invited the Commission to proceed to consideration of draft article 7 (A/CN.4/340 and Add.1, para. 44), the text of which read:

Article 7. Rules of competence and jurisdictional immunity

1. A State shall give effect to State immunity under article 6 by refraining from submitting another State to its jurisdiction, notwithstanding its authority under its rules of competence to conduct the proceedings in a given case.

ALTERNATIVE A

2. A legal proceeding is considered to be one against another State, whether or not named as a party, so long as the proceeding in fact impleads that other State.

ALTERNATIVE B

2. In particular, a State shall not allow a legal action to proceed against another State, or against any of its organs, agencies or instrumentalities acting as a sovereign authority, or against one of its representatives in respect of acts performed by them in their official functions, or permit a proceeding which seeks to deprive another State of its property or of the use of property in its possession or control.

19. Mr. RIPHAGEN said that, the Special Rapporteur's full and lucid report and introductory statement having provided much food for thought on a very intricate topic, he could do no more than express his immediate feelings.

20. In his view, one of the most remarkable features of the topic was the interaction between the three "levels" of inter-State relationships: the intergovernmental level, or that of relations between sovereigns; the level of relations between national legal systems or "jurisdictions"; and the level of international commerce, in the broad sense of the movement of goods and persons across national frontiers and of the interplay of the national and international regulations to which such use of foreign territory gave rise. The same interaction, albeit in the reverse sense, was apparent in the case of the rule prohibiting the use by one State of the territory of another for the performance of public acts. Both the principles embodied in that rule and in the concept of State immunity were based on the notion of the equality and separation of States, and in each case the application of the principle could be mitigated by consent.

21. In the case of State immunity, consent, like the interaction of inter-State relationships, could take three forms: the express consent of the receiving State to the establishment within its territory of diplomatic, consular or other missions of a foreign State; the consent of the "sending" State, through an explicit or implicit waiver of immunity, to the exercise of jurisdiction by the "receiving" State; and the consent implied by voluntary entry into a legal relationship under national law, and on an equal footing, with non-State entities. The latter form of consent could be manifested through entry into a contract, through conduct which was a tort against another party, or even through the acquisition of what was generally termed "status". All three levels of consent must be taken into account in considering the question of State immunity, and it was gratifying to see that the Special Rapporteur had already taken some steps in that direction.

22. Further elements to be taken into account were those of jurisdiction and the factual manifestations of a State. The various kinds of jurisdiction included: jurisdiction as expressed in the force of abstract rules; the authoritative determination in specific situations of concrete rights and obligations; and the exercise of factual power. The factual manifestations of the State included its representatives of "instrumentalities", its conduct, and those objects or goods of a State which might be present in the territory of another State.

23. He had been struck, in reading draft article 7, by the flexibility of the Special Rapporteur's approach. That flexibility was apparent in all three elements of the article, namely, the notion of action by a party against another State, the notion of impleading, and the notion of the "other State" itself. Naturally, those notions would need to be more clearly defined, but for the moment their vagueness should facilitate the further

study of the topic. It could be considered that the notion of legal proceedings already had a legal relationship, usually in the form of a request for remedy, as its basis. The notion of impleading was sufficiently flexible to take account of the various forms in which a foreign State might be involved in legal proceedings.

24. With regard to the further definition of that notion, the Special Rapporteur had already noted in his report that the question of the inadmissibility of proceedings against the political subdivisions and the other instrumentalities of States required clarification, and that, since State practice in the matter was far from uniform, the Commission would have to choose between a number of options. The Special Rapporteur had taken the stand, in alternative A for article 7, paragraph 2, that the impleading of another State was a matter of fact. There he was on the right track, but it would probably be necessary to have some legal qualification of the kind of situation in which another State was "in fact" impleaded. While the Special Rapporteur was right in saying that jurisprudence had often considered a State's possession or control of property, rather than its legal relationship to that property, to be the relevant point in that respect, he himself wondered whether the legal relationship was not also of some importance. In alternative B, the Special Rapporteur had taken account of the fact that another State, could not always be considered to act in the same capacity in relation to non-State entities; sometimes such entities were under it sovereignty, and sometimes they were not. In the latter case, the only possibility of establishing a legal relationship between the other State and the entity was to do so on a basis of equality—and that, of course, was also pertinent to the question of State immunity.

25. Mr. TABIBI commended the Special Rapporteur's work as a very valuable aid to the study of a complex topic in what could be considered to be a new field of international law. In examining the topic, care must be taken not to slip from the domain of public international law into that of private international law, and the highly sensitive issue of the sovereignty and sovereign equality of States must be borne constantly in mind.

26. An aspect of the topic that was of particular interest to him was the protection of the interests of States, especially small States. For example, while every State had the right to develop its own natural resources as it saw fit, small States were often unable to do so without the aid of larger nations. The draft articles must safeguard the interests of the territorial State, as well as of the foreign State, in such situations; their potentially conflicting interests required careful handling, but the Special Rapporteur had already demonstrated his awareness of that need, his skill in balancing the various elements involved, and his intention to draw both on State practice and on the decisions of national and international courts.

27. He (Mr. Tabibi) approached draft article 7 in the same spirit of caution and desire to avoid overlapping between public international law and private international law as that in which the Commission had taken up the question of the scope of the topic the previous year. In that light, he found that the article was flexible and followed naturally from draft article 6. He had, as yet, no final opinion concerning the alternative versions of paragraph 2 of article 7, though he found alternative A simpler and clearer.

28. Sir Francis VALLAT said that the topic before the Commission was one which required a great deal of thought—a requirement which the Special Rapporteur had clearly satisfied in his exemplary third report and oral presentation of draft article 7. The subject was, however, so complex that it would be impossible to comment fully on that article until the succeeding provisions were also available.

29. As he understood it, what lay at the heart of the Special Rapporteur's thinking with regard to draft article 7 was the distinction between competence and immunity. While he entirely agreed that the distinction existed, he was not sure that it was necessarily right to hold that competence must precede immunity. That was, admittedly, the case in the purely juridical sense, for, if there was no competence, the question of immunity could not arise, but he had serious doubts as to whether it was necessarily the case in the practical and procedural senses. That was not an abstract, but a very real problem: one of the first questions which would be asked of a lawyer representing a State that was the subject of proceedings in a foreign court would be whether the State, in the form of a representative of its Government, should enter an appearance in the proceedings. Answering that question would be extremely difficult if competence had to be disputed in the courts of the foreign State before the question of immunity arose. He believed, therefore, that the Commission should not regard the question of competence and immunity as a "prior question", in the sense in which the issue of jurisdiction might be so considered before, for example, the International Court of Justice.

30. There was a related procedural question which he also hoped the Special Rapporteur would investigate in due course, namely, the question whether a State claiming sovereign immunity ought or ought not to be required to participate in proceedings before the courts of another State. While it was often wisest for the State claiming immunity not to enter an appearance, that was not always the most helpful procedure. The draft articles might offer the Commission an opportunity to discuss and, perhaps, even to help to solve what was a very difficult problem.

31. A further procedural question was that of action by the executive of a State with respect to immunity. As members of the Commission were aware, in some States, immunity was not normally accorded without some form of action—such as, in the United Kingdom,

the delivery of a Foreign Office certificate—by the executive, or Government. The Commission should, therefore, consider the relevant function of the Government of a State in which proceedings of the kind in question were brought and its relationship to a claim of sovereign immunity.

32. Another, far more fundamental question (which he believed to be the underlying reason for the Commission's study of the topic) was that of the nature of the activities of a State claiming sovereign immunity and the conditions in which those activities were conducted. Should the same rule, or even the same principle, apply to activities carried on by a State through its organs, which fell, in one case, directly into the public sphere, and, in the other case, into the sphere of activities, such as commercial activities, normally conducted by private enterprises? He had in mind the case of *Mighell* v. *Sultan of Jahore*,[11] which he saw as a cause for serious doubt whether, in all circumstances, even a head of a State could be identified with the immunity of the State itself. Was it reasonable that, in relation to a private activity, such as entry into a contract to marry, a sovereign should always be able to hide behind State immunity? To make such a claim seemed to him to be a terrible abuse of the concept of State immunity. The questions which State organs could be regarded as synonymous with their parent State for the purposes of immunity and in what circumstances they could be so regarded must be given thorough study, and the outcome of that study would influence the Commission's attitude to the principles embodied in draft article 7.

33. There remained the very delicate question of the meaning of the term "implead". He agreed in principle with the Speical Rapporteur's use, in alternative version A of paragraph 2 of article 7, of the words "in fact impleads", inasmuch as it was not necessary for a State to be impleaded by name for it effectively to be involved in proceedings. However, bearing in mind recent proceedings before the International Court of Justice, he believed that the Commission must find more precise wording which would indicate that a legal proceeding would be considered as one "against another State" if that State's legal interests were involved to the extent that they would be legally affected by a judgement in the case.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/339 and Add.1–5, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

34. Mr. PINTO drew attention to document ILC (XXXIII)/Conf. Room Doc. 5, in which he had listed the provisions of the Draft Convention on the Law of the Sea[12] and the Agreement Establishing the Common Fund for Commodities[13] that were relevant to the question of treaties concluded between States and international organizations or between two or more international organizations.

35. He hoped that that document would assist the members of the Commission in referring to the two voluminous and important documents in question.

The meeting rose at 5.40 p.m.

[11] United Kingdom, *The Law Reports of the Incorporated Council of Law Reporting, Queen's Bench Division, 1894* (London), vol. I, p. 149.

[12] "Draft convention on the law of the sea (Informal text)" (A/CONF. 62/WP.10/Rev. 3 and Corr.1 and 3).

[13] *Agreement Establishing the Common Fund for Commodities* (United Nations publication, Sales No. E.81.II.D.8), p. 1.

1654th MEETING

Tuesday, 19 May 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Jurisdictional immunities of States and their property (*continued*) (A/CN.4/331 and Add.1,[1] A/CN.4/340 and Add.1, A/CN.4/343 and Add.1–4)

[Item 7 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 7 (Rules of competence and jurisdictional immunity)[2] (*continued*)

1. Mr. CALLE Y CALLE said that, while the question under consideration was in some respects a difficult one, it was nevertheless of an extremely urgent nature. The concept of immunity as a consequence of sovereignty was an old concept, which was recognized and applied by States, but which was becoming increasingly difficult to apply in the modern world. A

[1] *Yearbook . . . 1980*, vol. II (Part One).

[2] For text, see 1653rd meeting, para. 18.