Document:-
A/CN.4/SR.1657

Summary record of the 1657th meeting

Topic:
Jurisdictional immunities of States and their property

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

43. Mr. USHAKOV, explaining his position, said he believed that, from the point of view of a single State, international law could be regarded as a set of restrictions on its sovereignty or its capacity. That was what might be called the metaphysical approach. For the community of States, on the other hand, international law was a means of safeguarding sovereignty. The same was true of immunities, which, from the point of view of a single State and, in particular, of the beneficiary State, constituted a restriction on sovereignty. From the point of view of the community of States, on the other hand, the rules of jurisdictional immunity acted as a safeguard for sovereignty.

44. Although he did not accept the idea of absolute sovereignty, he nevertheless considered that a State, as such, enjoyed full sovereignty. The same applied to immunities, for although there could be no absolute immunity, a State could enjoy full immunity.

45. Mr. CALLE Y CALLE said that draft article 7 related to immunity from judicial proceedings and that its scope was thus confined to the action of the courts of a State. He noted, however, that draft article 2[14] defined jurisdictional immunities as "immunities from the jurisdiction of the judicial or administrative authorities of a territorial State", and that article 31 of the 1961 Vienna Convention granted diplomatic agents immunities from the criminal, civil and administrative jurisdiction of the receiving State.

46. He would like the Commission to take account of those provisions in the text of draft article 7, and not to refer only to immunity from jurisdiction.

47. The CHAIRMAN suggested that the Commission should refer draft article 7 to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

[14] See 1653rd meeting, footnote 5.

1657th MEETING

Friday, 22 May 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

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

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 8 (Consent of State),

ARTICLE 9 (Voluntary submission),

ARTICLE 10 (Counter-claims), *and*

ARTICLE 11 (Waiver)

1. The CHAIRMAN invited the Special Rapporteur to present draft articles 8, 9, 10 and 11 (A/CN.4/340 and Add.1, paras. 58, 71, 81 and 92), which read:

Article 8. Consent of State

1. A State shall not exercise jurisdiction against another State without the consent of that other State in accordance with the provisions of the present articles.

2. Jurisdiction may be exercised against a State which consents to its exercise.

3. A State may give consent to the exercise of jurisdiction by the court of another State under paragraph 2:

(*a*) in writing, expressly for a specific case after a dispute has arisen, or

(*b*) in advance, by an express provision in a treaty or an international agreement or in a written contract in respect of one or more types of cases, or

(*c*) by the State itself through its authorized representative appearing before the Court in a proceeding to contest a claim on the merit without raising a plea of State immunity.

Article 9. Voluntary submission

1. Jurisdiction may be exercised against a State which has voluntarily submitted to the jurisdiction of a court of another State:

(*a*) by itself instituting or intervening in proceedings before that court; or

(*b*) by appearing before that court of its own volition or taking a step in connection with proceedings before that court without raising a claim of State immunity; or

(*c*) by otherwise expressly indicating its volition to submit to the jurisdiction and to have the outcome of a dispute or question determined by that court.

2. The mere fact that a State fails to appear in proceedings before a court of another State shall not be construed as voluntary submission.

3. Appearance or intervention by or on behalf of a State in proceedings before a court of another State with a contention of lack of jurisdiction on the ground of State immunity, or an assertion of an interest in a property in question, shall not constitute voluntary submission for the purpose of paragraph 1.

Article 10. Counter-claims

1. In any legal proceedings instituted by a State, or in which a State intervenes, in a court of another State, jurisdiction may be exercised against the State in respect of any counter-claim:

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

(*a*) for which in accordance with the provisions of the present articles jurisdiction could be exercised had separate proceedings been instituted before that court; or

(*b*) arising out of the same legal relationship or facts as the principal claim; and

(*c*) to the extent that the counter-claim does not seek relief exceeding in amount or differing in kind from that sought by the State in the principal claim.

2. Any counter-claim beyond the extent referred to in paragraph 1 (*c*) shall operate as a set-off only.

3. Notwithstanding voluntary submission by a State under article 9, jurisdiction may not be exercised against it in respect of any counter-claim exceeding the amount of differing in kind from the relief sought by the State in the principal claim.

4. A State which makes a counter-claim in proceedings before a court of another State voluntarily submits to the jurisdiction of the courts of that other State with respect not only to the counter-claim but also to the principal claim.

Article 11. Waiver

1. Jurisdictional immunity may be waived by a State at any time before commencement or during any stage of the proceedings before a court of another State.

2. Waiver may be effected by a State or its authorized representative:

(*a*) expressly in *facie curiae*, or

(*b*) by an express undertaking to submit to the jurisdiction of a court of that other State as contained in a treaty or an international agreement or a contract in writing, or in any specific case after a dispute between the parties has arisen.

3. A State cannot claim immunity from the jurisdiction of a court of another State after it has taken steps in the proceedings relating to the merit, unless it can satisfy the court that it could not have acquired knowledge of the facts on which a claim to immunity can be based until after it has taken such a step, in which event it can claim immunity based on those facts if it does so at the earliest possible moment.

4. A foreign State is not deemed to have waived immunity if it appears before a court of another State in order specifically to assert immunity or its rights to property.

2. Mr. SUCHARITKUL (Special Rapporteur) said that draft articles 8 to 11 followed on logically from draft articles 6[2] and 7, and dealt in rather more detail with general and procedural principles. He drew attention to the information and materials submitted by Governments, including the summary of the report submitted by C. C. A. Voskuil to the Netherlands International Law Association (A/CN.4/343/Add.1, p. 46), which was very relevant to the Commission's consideration. Members should also refer to the Government replies to the questionnaire (*ibid.*, part I), in particular, to questions 9 and 10.

3. The consent of a State, in the event that proceedings were brought against it, was highly relevant. In most cases, State immunity was recognized and accorded on the assumption that there was absence of consent and that absence of consent was an essential element in the formulation of the principle of State immunity. Where there was consent, there could be no question of jurisdictional immunity; and once a State had consented to the exercise of jursidiction, it could not subsequently claim jurisdictional immunity. The expression of consent was only permissive in character in so far as the court considering the plaintiff's claim might or might not exercise jurisdiction. Consent of the State could, in certain cases, provide the foundation for jurisdiction or, to borrow the terminology of civil law, for the competence of the court, but in most cases the question of jurisdiction or competence was provided for under internal law and, specifically, under the regulations governing the organization of the courts. Consequently, if a case did not fall within its jurisdiction a court was not required to exercise jurisdiction, even if there was consent; and where there was jurisdiction, the expression of consent would permit, but not compel, the court to exercise jurisdiction since, in the last analysis, it was for the court to decide whether it was convenient and opportune to do so.

4. Draft articles 8, 9, 10 and 11 were very similar in effect, and if he had chosen to keep them separate, it was only to bring out certain nuances. The Commission might therefore wish to change the presentation. For instance, the four draft articles could be combined in one article entitled "Consent"; or their subject-matter could be covered by three articles entitled, respectively, "Consent and voluntary submission", "Counter-claims" and "Waiver"; or there could be two articles entitled, respectively, "Consent, voluntary submission and waiver of immunity" and "Counter-claims".

5. Referring to draft article 8, he said that it had become more or less generally accepted in State practice, as also in legislative and treaty practice, that consent could be given in a variety of circumstances. Accordingly, the draft article provided for three ways in which consent could be given. First, it could be given on an *ad hoc* basis after a dispute had arisen, in which case it generally had to be in writing, since there was a requirement that consent should be given by the State organ authorized to give it. Secondly, consent could be given in advance in a written agreement, which could take the form of a treaty or of an international or intergovernmental agreement, or it could be given in a written contract. The extent to which a written contract would be recognized as a method of expressing consent that was binding on a State would depend on the legal requirements of the court concerned. In the case of a treaty, the rules of privity would come into play; the party invoking the obligation under the treaty would therefore have to be a State party to that treaty, although there might well be treaties that were designed to benefit third parties. The third method of expressing consent was by conduct, which must express consent in a very explicit manner; thus if an appearance was entered on behalf of a State contesting a case on the merits, that could be regarded as consent. However, consent to the exercise of jurisdiction was confined to the period extending from the time when legal or

[2] See 1653rd meeting, footnote 4.

judicial proceedings were instituted to the time when judgement was delivered. Separate consent was always required in the case of measures of enforcement or execution.

6. Draft article 9 dealt with voluntary submission. Consent was more passive than voluntary submission, which required the State to take the initiative. The report cited three instances of voluntary submission: instituting or intervening in a legal proceeding, when a State might decide of its own accord to institute proceedings in the court of another State or to intervene in legal proceedings already instituted; entering an appearance on a voluntary basis; and other indications of intention to submit to the jurisdiction, such as consent given in the form of a treaty or of an international agreement. The effect of voluntary submission was similar to, if not identical with, that of consent: it disentitled the State from pleading jurisdictional immunity. It must always be assumed, however, that the court had jurisdiction.

7. The relationship between competence or jurisdiction, on the one hand, and immunity, on the other, was such that it was necessary either for both (competence and immunity) to be present, or neither: where there was no jurisdiction, there could be no question of immunity. It might happen, however, that there was no immunity, in which case that point fell to be decided by the court before it examined the question of competence. That was the more common practice in the common law countries, but the civil law countries always started on the basis of a civil procedure code which conferred jurisdiction. Lastly, appearance to assert an interest in property could not constitute voluntary submission where the State claimed an interest in that property. Such a claim might be akin to a claim of jurisdictional immunity. That was a fine point which the Commission would have to decide. He, as Special Rapporteur, had no preference, but rules would have to be evolved to provide the parties that dealt with the State, whether corporations or individuals, with guidance.

8. Draft article 10 dealt with counter-claims. There were two types: counter-claims by the State and counter-claims against the State. The latter occurred when the State submitted voluntarily to the jurisdiction by instituting proceedings. Once that happened, it laid itself open to a counter-claim although, to be allowable, such counter-claim had to arise out of the same transaction or the same legal relationship or from the same set of facts or circumstances as the principal claim. The same applied to counter-claims by the State. The State, when a defendant, could also submit to the jurisdiction by counter-claiming against the plaintiff. The difference was that, if the State counter-claimed on the basis of the same transaction or legal relationship, or of the same set of facts or circumstances, it also submitted with respect to the principal claim; that was not so if the counter-claim was filed on a different and independent basis. The effect of that difference was that the State first bringing the action might have a slight advantage, since a counter-claim against the State, even when it arose out of the same transaction or legal relationship or from the same set of facts or circumstances, would operate not offensively but defensively, as a set-off and would not operate to provide extra-judicial remedies or remedies of a different kind. In practice, there might be advantage in inducing a State to submit to the jurisdiction voluntarily, by bringing the action rather than by counter-claiming once the action had started. Accordingly, a rider should perhaps be incorporated in paragraph 4 of draft article 10 to the effect that there was an implied condition that the principal claim arose out of the same transaction or legal relationship as the counter-claim.

9. Another way of expressing consent was waiver, which was dealt with in draft article 11. In a sense, waiver of immunity was an exercise of the sovereign authority of the State, for it could be effected only by and with the authority of the State. Although, under the laws of some countries waiver and voluntary submission had the same kind of effect, waiver was closer to renunciation of immunity by the State, whereas voluntary submission involved a more active initiative of the State in seeking relief from the court of another State. There had been instances of local courts imposing a very rigid requirement for the expression of waiver: for instance, it might have to be express, and performed *in facia curiae* and by a party having authority. The current trend in State practice, however, was not to insist on such a formal waiver, but to permit immunity to be waived, for instance, by a clause in a treaty or in an international agreement or private contract. The difference in nuance, if any, was that the expression "waiver" was used in the treaty itself. Such instances were numerous, and on the increase in treaty practice. There were, in fact, two stages to such waivers, for in a treaty a State undertook to waive not only immunity from jurisdiction, but also immunity from execution in respect of certain property, and sometimes the property in question was listed in the treaty. The Commission was not concerned with waiver as it related to property and immunity from execution, however, but only as it related to jurisdiction.

10. Waiver must always be express. An agreement to arbitrate was not really an agreement to waive immunity, since arbitration differed in nature from the exercise of jurisdiction. Waiver could also be effected by conduct or by implication, once the State decided to enter an appearance without claiming immunity. There were a variety of nuances in practice. In the Netherlands, for example, once a State had entered an appearance without raising the question of immunity it was deemed to have waived such immunity by its conduct. The effect, therefore, was precisely the same as consent by conduct and voluntary submission.

11. Draft articles 8, 9, 10 and 11 were quite straightforward, and the report spoke for itself. He

would, however, be pleased to answer any questions members might wish to raise.

12. Mr. CALLE Y CALLE said that draft articles 8 to 11 specified the conditions in which the jurisdiction of a State could be exercised over another State, that was to say, the conditions for the application of the rules laid down in articles 6 and 7. It appeared from those provisions that consent was the essential element that opened the way for jurisdiction over the other State.

13. By contrast, the regime of "absolute immunity" had not admitted of any exceptions, such immunity being autonomous and always respected. Under that system, the courts had submitted to the will of the executive power to renounce the jurisdiction of the State over the property of a foreign State. There was, however, jurisdiction that could be exercised against the will of the other State, by reason of the matter in dispute. In such a case, the competent court exercised its jurisdiction and the State was subject to it even without its consent.

14. As the Special Rapporteur had indicated in paragraph 51 of his third report (A/CN.4/340 and Add.1), consent expressed by a State was not an exception to State immunity, but extinguished it. Thus exceptions could only be of a general nature, since the territorial State must apply its internal law in the normal way; the effect of that law was, however, limited by the principles of international law when it applied to a foreign State.

15. Moreover, a State which formally consented to submit to the jurisdiction of another State did so only because it recognized that the subject-matter over which the jurisdiction was to be exercised did not impair its sovereignty or its sovereign rights. It thus accepted the jurisdiction of another State because such jurisdiction applied outside the sphere of acts of State or of Government. Furthermore, the principle of consent involved reciprocity, since the receiving State assumed the existence of a regime which made it possible to define the various activities, and the other State assumed the existence of consent to be subject to the relevant rules. In practice, a State which intended to engage in commercial activities also meant to observe the rules governing them.

16. Draft article 7 enunciated the principle that States must refrain from exercising their jurisdiction over other States. Draft article 8 then specified that such jurisdiction must not be exercised without the consent of the other State. Paragraph 1 of that provision indicated the definitive elements of consent. It was not clear, however, whether it referred to the different forms of consent or to the different forms of the exercise of jurisdiction.

17. Paragraph 2 was worded positively, and stated the conditions in which jurisdiction could be exercised. It should nevertheless be stressed that, once a State had expressed its consent to submit to the jurisdiction of another State, it was for the competent court to decide whether or not it would exercise its jurisdiction. With regard to the wording of paragraph 2, he would prefer the words "against a State", which suggested confrontation, to be replaced by the words "with respect to a State" or "over a State"—the latter being perhaps the most appropriate wording, since reference was made to "submission" to jurisdiction.

18. Article 8, paragraph 3, enumerated certain forms or cases of consent. In subparagraph (*a*), he did not think that the English word "dispute" was the most appropriate to describe a dispute between States that was brought before a court.

19. In subparagraph (*b*), he suggested that the Commission should follow the wording of the 1969 Vienna Convention on the Law of Treaties,[3] which defined a treaty as "an international agreement", and adopt the wording "by an express provision in an international agreement".

20. In subparagraph (*c*), the introductory words "by the State itself" should be deleted, since the three subparagraphs were governed by the introductory wording of paragraph 3. He also noted that subparagraph (*c*) contained the words "raising a plea of State immunity", while article 9, subparagraph 1 (*b*) used the words "raising a claim of State immunity"; he proposed that the Commission should harmonize the wording of those two provisions.

21. Mr. ALDRICH said that articles 8 to 11, as proposed by the Special Rapporteur, seemed to contain, not only "general principles", in keeping with the title of the section of the draft articles in which they were placed, but also modalities of implementation. Furthermore, in so far as they did propound general principles, those principles seemed to constitute a system in which the only basis for the loss of sovereign immunity was consent. It was certainly possible to use such a basis, providing one was willing to engage in legal fictions, but he was not sure that such fictions would yield a structure flexible enough to admit of the necessary exceptions. That was a point on which he would reserve judgement until he had seen what exceptions the Special Rapporteur had in mind.

22. In his view, at least one fiction could be found even in the draft articles under consideration, for he doubted whether there was always consent in counter-claim cases. It was, admittedly, not unreasonable to consider a counter-claim as a consent, but it should be recognized that that was a legal fiction. He also wondered whether it was appropriate to limit counter-claims against a State to set-offs.

23. The rigidity of the draft, which caused him some concern, was illustrated by the need for an exception from the rule of consent in the case of States engaging

[3] 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.

in commercial transactions. It might well be hard to reconcile such an exception with the sweeping language of article 8, paragraph 1. True, that provision contained the phrase "in accordance with the provisions of the present articles", but that phrase seemed, in the context, to be essentially a reference to the ways in which consent might be given. Moreover, paragraph 3 of the same article seemed to say that there were only three ways in which consent could be given, whereas other sections of the document under consideration mentioned procedures such as voluntary submission, counter-claim and waiver, which the Special Rapporteur had recognized could be considered alternative forms of consent.

24. To make everything depend on consent would result in a severe distortion of the balance of interests at which he thought the articles should aim. Basically, the situation with which the articles dealt was that of a conflict of sovereignties between two or more States. It was not simply a matter of stating immunity as a rule and consent as a means of avoiding that rule, and then describing the modalities of signifying consent. Consequently, the Commission should seek a rational means of accommodating conflicting legal interests.

25. Sir Francis VALLAT said that the Special Rapporteur's summing-up at the previous meeting was relevant to the articles now under discussion. He had found it extremely useful, and thought it should help to alleviate at least some unease of the kind expressed by Mr. Aldrich.

26. There was, perhaps, a temptation to regard articles 8 to 11 as clear and as largely reflecting State practice, and to refer them immediately to the Drafting Committee. It was, however, desirable that there should be some discussion of those provisions in the Commission, for they involved points of principle, and also points of detail and subtleties which such a discussion might, as so often, bring out for the benefit of the Drafting Committee.

27. In that connection, he wished to express his agreement with the comments on drafting which Mr. Calle y Calle had made concerning article 8, and to say that he thought they also applied to some extent to the succeeding articles. He was particularly unhappy about the use of the expression "jurisdiction against another State"; in many instances, proceedings involving State interests were not actions *in personam*, but actions *in rem*, so that for purely technical reasons the expression "jurisdiction against a State" was hardly correct. It would be difficult to find the proper wording, but there might be a key in the United Kingdom *State Immunity Act 1978*,[4] which avoided the dilemma by speaking of situations in which a State was "immune" or "not immune" from jurisdiction. That was all the more likely to be the key because, as Mr. Aldrich had indicated, in article 8 the Commission came up against the fundamental problem of the topic.

28. While he was quite satisfied, after having heard the Special Rapporteur's summing-up at the previous meeting, that he did not intend, by the wording of article 8, paragraph 1, to preclude any of the questions that remained to be considered, it was none the less the case that that provision contained no reference to State immunity and that, by declaring that "a State shall not exercise jurisdiction against another State without the consent of that other State", it at least seemed to be propounding a proposition from which all members of the Commission must surely dissent. It might well be that the words "in accordance with the provisions of the present articles" were meant to bring in not only the procedural questions discussed in the remainder of article 8 and in articles 9 to 11, but also, by implication, the concept of the nature of State immunity and the question of its extent; syntactically, however, those words could only refer to "the consent of that other State". For those reasons, paragraph 1 must be recast so that it accorded far more closely with both the spirit and the nature of articles 6 and 7.

29. He could well understand why, in the case in question, the Special Rapporteur had not tackled the substantive questions before taking up matters of procedure. It seemed a wise course to have begun with one basic idea, and then to have taken the points on which practice was in general accord throughout the world, leaving the more difficult questions of substance until later. That approach should, however, be pursued only on the clear understanding that nothing in the procedural articles should prejudge the conclusions the Commission might reach when it did discuss issues of substance.

30. There was no doubt at all that the underlying theme of articles 8 to 11 was the consent of a State to the exercise of jurisdiction, where that State was entitled to immunity under international law. That being so, there was inevitably some overlapping of the articles, since they were all, in a sense, expressions of different ways of signifying consent. That, in turn, called for the greatest care in drafting the articles, to ensure that they did not conflict with each other. With that in mind, he urged the Commission not to seek economy in drafting at the expense of clarity. As he had often said, there was great benefit in producing on first reading a text that was too long and seeking to reduce the surplus only after hearing the comments of Governments and others.

31. Mr. RIPHAGEN said he agreed with many of the comments made by previous speakers, especially those by Sir Francis Vallat.

32. In reading the document under discussion, he had been struck by the repetition of the idea that the absence of consent to the lifting of its immunity by a State against which proceedings were envisaged was "presumed". He wondered why that presumption should be made. After all, the topic of the jurisdictional immunities of States involved compromise between two principles of international law, namely, the principle

[4] See 1655th meeting, footnote 10.

that *par in parem imperium non habet* and the principle that one State could not act in the territory of another. While both those principles were based on the idea of the separation of States, they had, especially in modern times, been mitigated by inter-State co-operation. Consent was really a matter of such co-operation; it was in essence always bilateral, not unilateral. Accordingly, it seemed strange and unbalanced to presume in the draft articles the consent of one State to the activities of another within its territory, on the one hand, and, on the other hand, the absence of consent on the part of that other State to the exercise of jurisdiction. Because of that imbalance, he had difficulty in forming an opinion on the draft articles and in commenting on their drafting.

33. It might be better to try to deal with the procedural and substantive aspects of the topic at the same time, and to determine in which cases the "pre-trial consent" of the non-territorial State must be presumed from its activities in, or in connection with, the territorial State, particularly where those activities made use of the territorial State's legal system. That would, admittedly, entail dealing immediately with the substance of the matter, but he feared that to deal first with the procedural aspect might prejudice the subject-matter of what had been called the limits of State immunity.

34. Those comments were perhaps also relevant to some of the detailed subjects discussed in the document under study, particularly the subject of counter-claims, which provided an illustration of the reciprocal relationship involved in the type of cases in question. He wondered whether the limitations set out in draft article 10 were always fully applicable to counter-claims. For example, in a well-known case before the Netherlands Supreme Court, involving a Netherlands bank and the United States of America, the counter-claim entered by the bank had not set off the claim made by the United States.

35. Furthermore, he found the discrepancy to which the Special Rapporteur had referred in the first sentence of paragraph 80 of his report so startling as to make him wonder whether the reciprocal relationship involved in the matters to which the sentence referred was not sometimes overlooked. There was also, he thought, a reciprocal aspect to the activity, namely, the establishment of a representative bureau in a foreign State, which had been the subject of the latest advisory opinion by the International Court of Justice.[5] In short, all instances in which one State was active in the territory of another involved an element of reciprocity, co-operation or the exchange of benefits, which could not always be split up into its "component parts", in the sense of the unilateral acts of one or other of the States involved. The Commission should give thought to that reciprocal aspect of immunity.

[5] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion: *I.C.J. Reports 1980*, p. 73.

36. Mr. USHAKOV said he would confine himself to some general comments on the articles under consideration, as he thought that all the articles in Part II required thorough study, and it was too early to dwell on their drafting.

37. Article 8, like the following articles, was not, in the Special Rapporteur's view, based on presumptions, since the Special Rapporteur believed that he had stated the rule of immunity in article 6 and could then formulate exceptions to that rule, as was clearly shown by the first sentence of his written introduction to article 8 (A/CN.4/340 and Add.1, paragraph 45). However, article 6 did not state the rule of immunity because, according to that provision, a State was immune from the jurisdiction of another State "in accordance with the provisions of the present articles". The rule was stated not in absolute terms, but in relation to the draft articles. Starting with article 7, all the proposed articles were thus based on a general principle that had not been stated. If that principle was stated, it would apply with exceptions, whereas if it was not stated, both the articles under consideration and the following articles could only be based on presumptions. There would be no justification for those articles if the rule of immunity was not properly established at the beginning of Part II of the draft.

38. It should be noted that civil actions that might be brought would not necessarily be connected with the territory of the receiving State or its area of jurisdiction. Lastly, he found the expression "voluntary submission" unsatisfactory. It might be used in legal literature, but seemed rather too strong for a draft article referring to the position of one State in relation to that of another.

39. The CHAIRMAN, noting that the Commission had not been able to complete its examination of the Special Rapporteur's third report on item 7 within the allotted time,[6] suggested that the discussion should be resumed later in the session.

It was so decided.

The meeting rose at 12.45 p.m.

[6] See 1650th meeting, paras. 39 and 43.

1658th MEETING

Monday, 25 May 1981, at 3.10 p.m.

Chairman: Mr. Doudou THIAM

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