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Summary record of the 1708th meeting

Topic:
Jurisdictional immunities of States and their property

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which CMEA had concluded the agreement. If one of the CMEA member countries subsequently failed to fulfil those obligations, the State with which CMEA had concluded the agreement would turn not to CMEA, but to the country concerned, which had expressly undertaken to fulfil the obligations arising from the agreement.

52. He himself did not believe that a State which had concluded an agreement with EEC and which did not succeed in securing fulfilment of the agreement by one of the member countries of the Community could turn directly to that country. In his opinion, it was clear that, when an international organization of the type referred to in article 36 *bis*, subparagraph (*a*), concluded an agreement with a third State, the result was neither a collateral agreement nor a direct relationship between the members of the international organization and that third State.

53. He also wished to know whether the relevant rules of the organization referred to in article 36 *bis*, subparagraph (*a*), were rules which provided that the agreement did not bind the organization itself, but produced its effects directly between the member States of the organization and the third State with which the organization had concluded the agreement or, rather, rules which provided, for example, that the international organization alone was competent to conclude agreements, and implied that the obligations arising from the agreements concluded by the organization were established for its member States.

54. All those questions raised by article 36 *bis* were of a purely legal, rather than political, nature.

The meeting rose at 1.05 p.m.

1708th MEETING

Monday, 17 May 1982, at 3.05 p.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

Jurisdictional immunities of States and their property (A/CN.4/340 and Add.1,[1] A/CN.4/343 and Add.1-4,[2] A/CN.4/357, A/CN.4/L.337, A/CN.4/339, ILC (XXXIV)/Conf. Room Doc. 3)

[Agenda item 6]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his fourth report on the topic of jurisdictional immunities of States and their property (A/CN.4/357).

2. Mr. SUCHARITKUL (Special Rapporteur) said that, at the present stage, it might be useful to review the Commission's study of the topic so far. The work had begun in 1978 with the submission of an exploratory report by the Working Group on jurisdictional immunities of States and their property,[3] a report that had dealt, amongst other things, with the historical background of the topic and with the justification for examining it for the purposes of codification and progressive development of the law.

3. In 1979, he had submitted a preliminary report[4] suggesting possible approaches and identifying source materials. The guidelines laid down by the Commission called on the Special Rapporteur to concentrate initially on main principles, and then proceed to the examination of exceptions, and subsequently to the question of immunities for execution.

4. In his second report,[5] he had submitted five draft articles comprising part I of the draft, entitled "Introduction". Article 1, concerning the scope of the articles, had been adopted provisionally[6] and the phrase "questions relating to the immunity ..." used therein was intended to afford a degree of flexibility in studying matters pertaining to the topic. Draft articles 2 to 5 had been submitted not for immediate discussion, but simply as a framework indicating the various elements to be considered.

5. Draft articles 6 to 10, comprising part II, entitled "General principles", had been submitted in the second report and also in the third report (A/CN.4/340 and Add.1). On the basis of an examination of judicial practice of States, national legislation and governmental practice, he had drawn the conclusion that there was a well-established rule of international law in support of the general principle of the jurisdictional immunity of States. As had been noted, the concept had developed differently in different legal systems. In the common-law system, it had evolved from an extension of the doctrine of the immunity of the local sovereign to cover foreign sovereigns. In civil-law jurisdictions, on the other hand, the question of jurisdictional immunity had been primarily one of the competence or jurisdiction of the courts.

6. The original formulation of article 6 had been amended with the help of the Drafting Committee. The use of the phrase "in accordance with the provisions of the present articles" had given rise to some controversy, on the grounds that it did not definitely establish the existence of a legal principle of State immunity because it made such immunity dependent on the provisions of subsequent articles of the draft. However, other

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] Reproduced in the volume of the United Nations Legislative Series entitled *Materials on Jurisdictional Immunities of States and their Property* (United Nations publication, Sales No. E/F.81.V.10).

[3] A/CN.4/L.279/Rev.1, reproduced in part in *Yearbook ... 1978*, vol. II (Part Two), pp. 153-155.

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

[5] See *Yearbook ... 1980*, vol. II (Part One), pp. 199 *et seq.*, document A/CN.4/331 and Add.1.

[6] For the text of draft article 1 and the commentary thereto, see *Yearbook ... 1980*, vol. II (Part Two), pp. 141-142.

members of the Commission had taken the view that the wording in question could provide some degree of certainty when the content of the remaining draft articles had been determined and that a statement of the existing situation regarding legal practice could avoid problems at a later stage. Paragraph 2 of the article had been considered redundant by some members. Others had none the less felt that it reinforced the legal proposition stated in paragraph 1. The article had also been adopted provisionally by the Commission.[7]

7. In articles 7 to 10,[8] he had sought to enunciate other relevant general principles. It had become increasingly clear that, regardless of its historical development, the concept of jurisdictional immunities was based on the principle of *par in parem imperium non habet*. The evidence provided by State practice was not yet sufficient to warrant amplifying the draft articles to cover immunity from all aspects of State jurisdiction. Rather, they should be limited to the area of judicial jurisdiction, including immunity from the exercise of certain administrative powers by national authorities in respect of legal actions or proceedings.

8. Article 7 set forth the principle of the obligation to give effect to State immunity by refraining from subjecting another State to the jurisdiction of national authorities. In connection with paragraph 1, some members had deemed it unneccessary to include the phrase, in alternative A, "subjecting another State to the jurisdiction of its otherwise competent judicial and administrative authorities" and in alternative B, the phrase "nothwithstanding the existing competence of the authority before which the proceedings are pending". However, a certain relationship could be said to exist between rules of competence and jurisdictional immunity. In that respect, it would be remembered that the original title of article 7 had been "Rules of competence and jurisdictional immunity", something which had been regarded as establishing too close a relationship with private international law. As to paragraph 2, it was essential to determine the starting point of jurisdictional immunity, as well as the type of proceedings that could affect the interests of another State. That, in turn, was closely bound up with the question of who were to be the beneficiaries of State immunity.

9. Article 8 dealt with another important principle, namely, consent of State. Its relevance to the theory of State immunity had been demonstrated in *The Schooner "Exchange" v. McFaddon* (1812)[9] and was, in fact, pertinent both to States granting jurisdictional immunity and to States requesting a waiver of the exercise of jurisdictional immunity. A State's consent to the exercise of jurisdiction by another State meant that it could no longer claim immunity and, as such, was approximately equivalent to a waiver of immunity. In drafting the article he had drawn on the Code of Civil Procedure of the Soviet Union.[10]

10. Article 9 attempted to systematize the methods whereby consent could be expressed. The terms of paragraph 6, under which failure by a State to appear in a proceeding did not imply consent to the exercise of jurisdiction by the court concerned, were based on the national legislations of a number of countries.

11. Turning to article 10, concerning counter-claims, he said that a counter-claim made by one State against another implied the consent of both parties to the exercise of jurisdiction by the court concerned. At one time, under the provisions of a number of national legislations, counter-claims were allowed to operate only as a set-off, but the Commission had concluded that counter-claims should also be regarded as consent to the exercise of jurisdiction by the court in respect of the principal claim.

12. Part III of the draft dealt with exceptions to State immunities. The possible exceptions to the general rule of State immunity were enumerated in chapter II of the fourth report (A/CN.4/357, para. 10 (*c*)). They had been introduced into some national legislations and regional conventions, and he would be grateful for guidance from the Commission on how to proceed in his study of relevant State practice.

13. In the fourth report, a number of familiar points discussed in the Commission and in the Sixth Committee of the General Assembly (A/CN.4/L.339, paras. 156-179) were reviewed, including the question of whether State immunity should be viewed as a general rule or as an exception to the more fundamental rule of sovereignty. In that regard, the tentative conclusion seemed to be that it would prove easier to consider it as a general rule, since exceptions to the rule of State immunity itself would have to be examined later. Another question was that of the dual approach, suggested more particularly by Mr. Riphagen.[11] An approach of that kind deserved consideration, but it might be rather late to start thinking in such terms once again. Moreover, these seemed to be ample justification for the Commission to base its deliberations on State practice.

14. It was important to realize that one of the main features of the topic of State immunity was its flexibility. Many national procedures showed that the granting of jurisdictional immunity could be made dependent on reciprocity and that, even when not required by law to do so, a State could grant immunity without offending any principle of law. In spite of the many distinctions to be drawn between private and public international law

[7] For the text of draft article 6 and the commentary thereto, *ibid.*, pp. 142-157.

[8] For the texts of draft articles 7 to 10, revised at the thirty-third session of the Commission, see *Yearbook ... 1981*, vol. II (Part Two), p. 158, footnotes 668-671.

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

[10] Law of 8 December 1961, Fundamentals of Civil Procedure of the USSR and the Union Republics, art. 61 (text reproduced in: United Nations, *Materials on Jurisdictional Immunities...* (see footnote 2 above, p. 59)).

[11] *Official Records of the General Assembly, Thirty-sixth Session, Sixth Committee*, 45th meeting, para. 7.

on the one hand, and between different international laws and international law on the other, it was to be hoped that a common practice was emerging in clearly defined areas and that, in less clearly defined areas, the Commission would be able to find solutions which were acceptable to all States.

15. In formulating the text of article 11 (A/CN.4/357, para. 29), which related to the scope of part III of the draft, he had taken account of the preferences expressed by members of the Commission. It made all the general principles set forth in part II subject to the exceptions contained in part III, the aim being to avoid any idea that the requirement of consent in effect marked a preference for the concept of absolute immunity.

16. Article 12 (*ibid.*, para. 121) dealt exclusively with the exception applying to trading or commercial activity of States, a fact that should not be taken to signify that non-trading or non-commercial activities were entitled to benefit from immunity, since they could be subject to yet other exceptions. Current State practice with regard to trading or commercial activities seemed to indicate a general trend towards limiting immunity in respect of such activities, although the views expressed by Governments still displayed differing attitudes. Treaty practice, on the other hand, showed greater uniformity. Support for the proposition set forth in the article was provided by recent court decisions in a number of countries, including Pakistan, the United Kingdom and the United States, and by the 1972 European Convention on State Immunity,[12] all of which gave effect to such an exception. At the regional level, there had been some moves in the same direction in Latin America, and the Asian-African Legal Consultative Committee had adopted a report[13] with recommendations which had been approved in 1960 by a large majority of African and Asian States.

17. The CHAIRMAN pointed out that the Commission had adopted draft articles 1 and 6 on first reading,[14] and had left aside draft articles 2, 3, 4 and 5.[15] At the previous session, draft articles 7, 8, 9 and 10[16] had been referred to the Drafting Committee, which had not had time to consider them. Accordingly, the best course at the present time was to engage in a general discussion of those articles, which the Special Rapporteur was now presenting in a revised form, together with the two new articles 11 and 12 (A/CN.4/357, paras. 29 and 121), before proceeding to examine them one by one.

18. Mr. PIRZADA congratulated the Special Rapporteur on his fourth report (A/CN.4/357) and his most lucid oral presentation.

19. A study of the law relating to jurisdictional immunities of States revealed the development of two divergent doctrines: one being the classical theory of sovereign immunity, which was perhaps based on the maxim *par in parem imperium non habet*, and the other being the more recent restrictive theory whereby the immunity of a foreign sovereign State was recognized in regard to its public acts (*jure imperii*) but not its private acts (*jure gestionis*). The Special Rapporteur had rightly pointed out in his fourth report (*ibid.*, para. 54) that, at the outset, the term "absolute" immunity had been unknown and State practice had simply covered carefully selected categories of immunities.

20. Theoretically, trading had fallen outside the operation of the doctrine of State immunity. The Karachi High Court, in the case *The Secretary of State of the United States of America* v. *Messrs. Gammon-Layton* (1971),[17] noted pertinently that the period following the Second World War had seen the emergence of great nations in which all economic activities, including foreign trade, were carried on by the State. The orthodox doctrine of the complete immunity of the sovereign State had evolved in the monarchial era during a period dominated by *laissez-faire* ideas and had, in many people's view, become an anachronism. Its continuance meant the ouster on an unprecedented scale of the jurisdiction of the court, and had evoked world-wide criticism.

21. Even when immunity had been confined to foreign sovereigns or heads of State, concern had been expressed and limitations had been spelt out. The Special Rapporteur had referred in that connection to the dictum of Lord Stowell in *The "Swift"* case (1813)[18] and, as far back as 1873, Sir Robert Phillimore, one of the draftsmen of the Covenant of the League of Nations, had observed in *The "Charkieh"* case[19] that no principle of international law, no decided case and no doctrine of jurists had gone so far as to authorize a sovereign prince to assume the character of a trader when it was to his benefit to do so and, when he incurred an obligation to a private subject, to throw off that "disguise" and claim all the attributes of a sovereign. It had further been pointed out by the Supreme Court of Pakistan in *A. M. Qureshi* v. *the Union of Soviet Socialist Republics* (1981)[20] that the courts of many countries had developed a distinction between acts of government and acts of a commercial nature, and denied immunity from jurisdiction in the latter case.

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

[13] See Asian-African Legal Consultative Committee, *Report on the Third Session, Colombo, 20 January to 4 February 1960* (New Delhi [n.d.]), p. 68.

[14] See footnotes 6 and 7 above, respectively.

[15] For the texts of draft articles 2 to 5, see *Yearbook ... 1981*, vol. II (Part Two), pp. 153-154, footnotes 655-658.

[16] See footnote 8 above.

[17] *All Pakistan Legal Decisions* (Lahore), vol. XXIII (1971), p. 314.

[18] J. Dodson, *Reports of Cases argued and determined in the High Court of Admiralty* (London, Butterworth, 1815), vol. I, p. 339.

[19] United Kingdom, *The Law Reports, High Court of Admiralty and Ecclesiastical Courts* (London, 1875), vol. IV, p. 97.

[20] *International Legal Materials* (Washington, D.C.), vol. XX, No. 5 (September 1981), p. 377.

22. In the cases *Rahimtoola,* v. *Nizam of Hyderabad* (1957),[21] *Thai-Europe Tapioca Service, Ltd.* v. *Government of Pakistan* (1975)[22] *and Trendtex Trading Corporation Ltd.* v. *The Central Bank of Nigeria* (1977),[23] Lord Denning had made rulings from which seven propositions could be deduced. First, each State should have proper respect for the dignity and interdependence of other States. Second, the rule of absolute immunity, if carried to its logical extreme, was in danger of becoming an instrument of injustice. Third, a rule of immunity for public but not private acts had proved to be a most elusive test. Fourth, it was certain that international law did change. Fifth, the courts had applied the changes in international law without the aid of any act of parliament. Thus, when, through the force of public opinion, the rules of international law had been changed to condemn slavery, the English courts had been justified in applying the modern rules of international law. Similarly, the limits of territorial waters varied from time to time and the courts applied those limits accordingly. Sixth, even if there was no consensus on the doctrine of sovereign immunity, that did not mean there was no rule of international law on the subject. It was for the courts to define the rule as best they could, seeking guidance from the decisions of other countries, from jurists, from treaties and conventions, and by defining the rules in terms that were consonant with, rather than contrary to, justice. Lastly, under the restrictive doctrine, four exceptions were that there was no immunity in respect of land situated in England, in respect of trust funds lodged for payment of creditors, in respect of debts incurred in England for services rendered to property there, and in instances when a foreign sovereign entered into a commercial transaction with a trader in England and a dispute arose that properly fell within the territorial jurisdiction of the English courts.

23. The significant changes in the limits of sovereign immunity over the past thirty years had been recognized in many countries, and many municipal courts had favoured the doctrine of restrictive immunity. Among the leading cases on the question were *Dralle* v. *Republic of Czechoslovakia* (1950) (a decision by the Supreme Court of Austria),[24] *X* v. *the Empire of Iran* (a decision by the Federal Constitutional Court of the Federal Republic of Germany) (1963),[25] *Alfred Dunhill of London, Inc.* v. *Republic of Cuba* (a decision by the United States of America Supreme Court) (1976)[26] and *Société Européenne d'Etudes et d'Entreprises (SEEE)* v. *Yugoslavia* (1973) (a decision by the Netherlands Supreme Court).[27] The decisions of the courts of Argentina, Belgium, Egypt, France, Greece, Italy, the Philippines, Romania and Switzerland also had persuasive force.

24. So far as Pakistan was concerned, under section 84 of the Civil Procedure Code of 1908, foreign States were allowed to sue in any court, and under section 86, suits against rulers, ambassadors and envoys of foreign States were barred unless consent in writing was obtained from the Government.[28] Consent could be given, *inter alia*, if the party to be sued traded within the local limits of the jurisdiction of the court or was in possession of immovable property situated within such jurisdiction, and the suit pertained thereto. In the absence of such consent suit was not possible, and it had been held by the Privy Council in the *Gaekwar of Baroda* case (1938)[29] that the doctrine of waiver was inapplicable. Thus, the terms of section 86 of the Code departed materially from customary international law.

25. In *Kashani* v. *United Arab Republic* (1966)[30] the Supreme Court of India had held that section 86 of the Code of Civil Procedure[31] not only applied to rulers of foreign States but also covered cases of foreign States. The Court had not, however, dealt with the principles of customary international law, and in any event, the courts in Pakistan had dissented from its interpretation of municipal law. In the *Gammon-Layton* case,[32] the High Court of Karachi had held that the term "rulers of foreign States" was used in section 86 in contradistinction to "foreign State". The court in that case had applied the doctrine of restrictive immunity and its view had been upheld by the Supreme Court of Pakistan in *A. M. Qureshi* case.[33] The judge, who had referred not only to the principles of Islamic law but also to the recent trend in customary international law, had reviewed international conventions, municipal law and the decisions of many countries, as well as the work of jurists and other eminent writers on international law. He had held that the tests of *acta jure imperii* or *acta jure gestionis* were not the sole tests for determining the availability or otherwise of the immunity of foreign States: there was also a third category of cases under customary international law, namely commercial and trade cases, in respect of which no jurisdictional immunity was available to a foreign State. It was encouraging to note that, a week later, on 16 July 1981, the House of Lords had also held in the case of *"I Con-*

[21] *International Law Reports, 1957* (London, 1961), p. 175.

[22] *The All England Law Reports, 1975* (London, Butterworth, 1976), vol. 3, p. 961.

[23] *International Legal Materials* (Washington, D.C.), vol. XVI, No. 3 (May 1977), p. 471.

[24] *International Law Reports, 1950* (London), vol. 17 (1956), case No. 41, pp. 155 *et seq.*

[25] *Ibid.*, vol. 45 (1972), p. 57; United Nations, *Materials on Jurisdictional Immunities* ... (see footnote 2 above), p. 282.

[26] *International Legal Materials* (Washington, D.C.), vol. XV, No. 4 (July 1976), p. 735.

[27] United Nations, *Materials on Jurisdictional Immunities* ... (see footnote 2 above), pp. 355 *et seq.*

[28] Pakistan, Ministry of Law and Parliamentary Affairs, *The Pakistan Code* (Karachi, 1966), vol. V (1908-1910), pp. 52-55.

[29] *Annual Digest of Public International Law Cases, 1938-1940* (London), vol. 9 (1942), case No. 78, p. 233.

[30] *The American Journal of International Law* (Washington, D.C.), vol. 60, No. 4 (October 1966), p. 859.

[31] India, Ministry of Law, Justice and Company Affairs, *The Code of Civil Procedure, 1908 (As modified up to the 1st May 1977)*, pp. 32-33.

[32] See footnote 17 above.

[33] See footnote 20 above.

greso del Partido" [34] that sovereign immunity was not available for commercial transactions.

26. Under the State Immunity Ordinance, 1981 promulgated in Pakistan,[35] a State was immune from the jurisdiction of the courts of Pakistan. The Ordinance provided for two exceptions however: first, a State was not immune with regard to proceedings in respect of which it had submitted to the jurisdiction. Secondly, it was not immune with regard to proceedings relating to a commercial transaction entered into by the State or an obligation of a State by virtue of a contract which might or might not be of a commercial nature but which fell to be performed wholly or partly in Pakistan. Under the Ordinance, "commercial transaction" meant a contract for the supply of goods or services, any loan or other transaction for the provision of finance or any guarantee or indemnity in respect of any such transaction, and any other transaction or activity, whether of a commercial, industrial, financial, professional or other similar character, into which a State entered otherwise than in the exercise of its sovereign authority.

27. The Ordinance was in line with recent trends. It also reflected recommendations adopted by the Asian-African Legal Consultative Committee in 1960[36] that recognized, *inter alia*, that the doctrine of sovereign immunity of foreign States was not meant to include the new and extended functions in trade matters being assumed by Governments and, consequently, Asian and African nations might wish to consider the need to place restrictions on the immunity granted to foreign States in respect of such activities. All the delegations present at that session of the Committee, save Indonesia, had taken the view that a distinction should be drawn between different types of States activity and that immunity should not be granted to foreign States in respect of activities which could be called commercial or of a private nature. The Indonesian delegate had, however, adhered to the view that immunity should be granted to all the activities of the foreign State, irrespective of their nature, provided they were carried on by the Government itself. On that basis, the Committee had recommended that a State which entered into transactions of a commercial or a private character should not raise a plea of sovereign immunity if it was sued in the courts of a foreign State in respect of such transactions. If such a plea were raised, it should not be allowed to deprive the domestic courts of jurisdiction.

28. In conclusion, he wished to voice his support for the views expressed by the Special Rapporteur in the general part of his report.

29. Mr. RIPHAGEN said that one might well wonder whether the existing rules of international law provided the answer, in terms of the strict rights and obligations of States, to the bewildering variety of situations to which questions of State immunity gave rise. In his opinion, they did not really do so. Many of the questions that arose in practice were a matter of comity, since they involved principles rather than the kind of strict rules that provided an answer in each and every case. Indeed, as the Special Rapporteur had said, there was a complete dearth of international judicial pronouncement on State immunity. In addition, State practice provided scant guidance in the matter. In that connection, there had been an *obiter dictum* in the *"Lotus"* (1927)[37] case to the effect that international law left the State a wide measure of discretion in applying its law to matters that occurred outside its boundaries. Also, the 1958 Law of the Sea Conventions preferred to use the recommendatory "should", rather than the mandatory "shall", in regard to the jurisdiction of coastal States when foreign vessels passed into their territorial waters. Generally speaking, it therefore seemed that the jurisdiction of a State was not very exhaustively regulated by international law, and he thought that the same applied to jurisdictional immunity.

30. A further point which added to the doubts he had voiced in the Sixth Committee in 1981[38] was that, since it had not been possible in the European Convention on State Immunity to cover all situations, a clause had been included[39] whereby a State party could declare that it would go further in restricting foreign State immunity than was stipulated in the Convention. That clause had in fact been invoked by most of the countries that had ratified the Convention.

31. Consequently, it might be necessary to recognize clear-cut cases in which immunity would or would not apply and then also recognize a grey area in which there was no rule of international law couched in terms of rights and obligations but in which there were perhaps other rules of comity, and if, in a given situation, one State did not recognize the immunity of another State, the former would not necessarily be in breach of its international obligations and the latter could reciprocate by refusing to grant immunity. An illustration of that point was afforded by draft article 12, as proposed by the Special Rapporteur (A/CN.4/357, para. 121). If that article was compared with United States and United Kingdom legislation, it would be seen that the solutions adopted by the United States and the United Kingdom respectively differed slightly from that proposed by the Special Rapporteur, and that the United Kingdom and the United States legislation did not accord with each other. It would be difficult to say that either system of legislation was in breach of international law in that regard, but it could be deemed to fall into a grey area that could give rise to reciprocal treatment but not to legal consequences of the kind to which he had already referred.

The meeting rose at 5.25 p.m.

[34] *The All England Law Reports, 1981* (London, Butterworth, 1981), vol. II, p. 1064.

[35] Pakistan, *The Gazette of Pakistan* (Islamabad), 11 March 1981, p. 31.

[36] See footnote 13 above.

[37] *P.C.I.J., Series A*, No. 10.

[38] *Official Records of the General Assembly, Thirty-Sixth Session, Sixth Committee*, 45th meeting, para. 6.

[39] Art. 24 of the Convention: see Council of Europe, *Explanatory Reports on the European Convention on State Immunity and the Additional Protocol* (Strasbourg, 1972), pp. 33-34.