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Summary record of the 1798th meeting

Topic:
**Status, privileges and immunities of international organizations, their officials, experts,
etc.**

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genuine jurisprudence remained a long way off and that much remained to be done on that score. Finally, he suggested that the Secretariat should update the study carried out in 1967.¹⁷

The meeting rose at noon.

¹⁷ See footnote 3 above.

1798th MEETING

Wednesday, 6 July 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (continued) (A/CN.4/370¹)

[Agenda item 7]

PRELIMINARY REPORT OF THE
SPECIAL RAPPORTEUR (continued)

1. Mr. BALANDA thanked the Special Rapporteur for inviting the new members of the Commission to state their views. The increase in the number of international organizations was no surprise to observers of the international political scene, for it reflected the intensification of inter-State co-operation and the increasing interdependence of States. The need to co-operate led States to seek a variety of arrangements to enable the international organizations they established to meet their diverse obligations. That was especially true of new States, which mistrusted bilateral international co-operation because it was not always free from political influence.

2. The question arose as to what an international organization was. From all the definitions suggested, including those of Mrs. Bastid and Mr. Laurent, it could be concluded that an international organization was a legal entity having a personality independent of that of the States which had established it by intergovernmental agreement. But if two international entities created a third, was that also an international organization? The question might be theoretical, but it was worth asking.

The Commission should not dwell on theoretical definitions, however, but should try to grasp the subject and study it as exhaustively as possible.

3. A whole series of questions came to mind. Was the independence of international organizations absolute or relative? Did the existence of international organizations compel recognition by the international community as a whole or did they have to be recognized as such? A wide variety of denominations was used. There were "organizations" proper, such as the United Nations, WHO and WMO; "unions", such as the Customs and Economic Union of Central Africa (UDEAC) and the African and Malagasy Postal and Telecommunications Union (AMPTU); "committees", such as ICRC; "councils", such as the Council of Europe and the International Tin Council; and "communities", such as the European Communities and the Economic Community of the Great Lakes Countries (CEPGL) which comprised Burundi, Rwanda and Zaire.

4. In establishing an international organization, States tried to represent a specific reality which differed according to the nature of the organization: it might be a mere association for co-operation in a particular field, or a more ambitious organization, such as the European Communities or CEPGL, in which case the States concerned surrendered some attributes of their sovereignty. The diversity of legal instruments used should also be noted. They ranged from charters (United Nations, OAU) and statutes (Council of Europe) to treaties (NATO) and constitutions (ILO); that diversity was due to the characteristics of each organization. Furthermore, such international entities could be universal, regional or subregional, and technical or of any other kind.

5. It was also necessary to consider the extent of the legal capacity of organizations in the performance of their functions. Some confined themselves to the activities specified in their constituent instrument; others, being more dynamic, went further. The Special Rapporteur should take account of that dynamism, which had increased in practice. Could an international organization act only in the territory of its member States or could it intervene in the territory of a third State? To what legal régime were its activities subject: to general international law, to the international law specific to the organization, or to the internal law of the host State—or to those three different régimes simultaneously?

6. The Special Rapporteur would have to devote special attention to the powers of the organs of international organizations. The question arose as to whether they had political or administrative powers. In an organization of an essentially political character such as the United Nations, did its organs exercise political powers only, or also administrative powers? Were those powers established in a legal instrument or were they implicit? At the time of Zaire's accession to independence, the question of the precise nature of the powers of the United Nations Secretary-General had arisen, and it had been asked whether he was merely the executive agent of the Security Council or whether he had administrative or political

¹ Reproduced in *Yearbook* . . . 1983, vol. II (Part One).

powers. Should the Secretary-General be restricted to his administrative prerogatives or should he enjoy some freedom of action? There again, the question of the dynamism of international organizations arose.

7. Another point to consider was the nature of the decisions, resolutions, recommendations, directives and regulations adopted by international organizations. Were those texts automatically applicable in the territories of all member States or must they be converted into internal law in the usual way? Was a resolution adopted by a small majority as binding on States as a resolution adopted by an overwhelming majority?

8. With regard to the position of international officials, it might be asked whether they were governed by a statute or were under contract, and whether the internal law of the host State was ever applicable to them. Could they acquire the nationality of the host State? What was the status of experts and consultants? Did States never intervene in the activities of international officials? All those questions must be elucidated in order to guarantee international officials the independence they needed. In that connection, it might be asked whether experts and consultants should enjoy the same privileges and immunities as international officials. Should the privileges and immunities of international officials vary according to the nature of the functions they performed? If an international organization engaged mainly in commercial activities, should all those activities enjoy immunity?

9. The Special Rapporteur would have to base his study on an examination of constituent instruments, host agreements, national legislation, the judicial decisions of host States and State practice, especially that of Ministries of Foreign Affairs. The scope of the draft articles could only be determined after completion of the study, which should therefore cover all international organizations, including those of a regional character. As to the form the draft would take, at present he favoured that of a convention.

10. Mr. BARBOZA said that the report under consideration (A/CN.4/370) was brief but satisfactory, and set out the issues clearly. After the election of the previous Special Rapporteur, Mr. El-Erian, as a Judge of the ICJ, some years had elapsed before Mr. Díaz González had been appointed to replace him, and the membership of the Commission had changed. The new Special Rapporteur had therefore been right to invite the new members to state their views, which would add to his information on the topic.

11. The Special Rapporteur appeared tacitly to endorse the conclusions formulated by his predecessor and by the members of the Commission during the discussions in 1977 and 1978. From what had been said so far, it appeared that the present members of the Commission shared the views expressed previously, as the situation had not changed much in the last few years. The new Special Rapporteur was thus about as well equipped as his predecessor had been.

12. He endorsed the conclusions of the previous Special Rapporteur as set out in the report under consideration

(*ibid.*, para. 11) and stressed the abundance of documentation on the question, the multitude of international organizations, the great number of relevant laws of host States and the wealth of judicial precedents and practice. Regional international organizations also provided a source of useful information. The Special Rapporteur should pay particular attention to the documentation of OAS, an organization he knew well. He should also study the replies to the questionnaires and be provided, as he had requested (*ibid.*, para. 13), with an updated version of the Secretariat's study.²

13. So far, the Special Rapporteur had shown the desired caution, in particular by inviting the members of the Commission to answer the various questions raised by the topic. Like other speakers, he believed that the study should include regional international organizations but that the Commission could not take a final decision on the scope of the draft articles until it had examined the whole study. Hence regional organizations should not yet be excluded. At the same time, it should not be forgotten that the first part of the topic did not relate to regional international organizations and that it might be necessary to yield to the requirements of symmetry.

14. The Special Rapporteur should first tackle the simplest questions, such as the status, privileges and immunities of international organizations, before going on to examine the status, privileges and immunities of their officials and experts and other persons participating in their activities who were not representatives of States. He would have to adopt a pragmatic approach and deal mainly with the practical aspects of the life of international organizations, so that the Commission need not engage in theoretical discussion.

15. Mr. RAZAFINDRALAMBO, thanking the Special Rapporteur for his interest in the views of new members, said he was grateful to him for not adding to the conclusions of the previous Special Rapporteur any further considerations, which might have been superfluous. The complementarity of the two parts of the topic was shown by the wording of the item under consideration. If it had been possible to draft the 1975 Vienna Convention on the Representation of States, there was no reason why the same should not be possible for the second part of the topic, which was its logical sequel.

16. There was no need to emphasize how useful it would be for the countries of the third world to harmonize the rules on the status, privileges and immunities of international organizations; for those countries had joined the community of nations fairly recently and were daily confronted with the need to conduct relations with international organizations. The rules which the Commission might adopt could provide a useful complement to the existing conventions on diplomatic law and provide States with a body of residual rules for the conclusion of their agreements with international organizations.

17. If only in order to achieve greater uniformity in the field of application of the two parts of the topic and for

² See 1797th meeting, footnote 3.

reasons of method, it might have been more expedient and simpler, at least at the initial stage, to confine the study to international organizations of a universal character; for the specific problems of regional international organizations called for the elaboration of special rules peculiar to those organizations. But the previous Special Rapporteur, who had taken that view at the start, had changed his mind in the light of certain recent facts, particularly the growth of the network of regional organizations: he had come to the conclusion that the questions which could be codified were, generally speaking, much the same for universal international organizations as for regional international organizations.³ In view of those considerations, he (Mr. Razafindralambo) endorsed the conclusion in paragraph 11 (c) of the preliminary report (A/CN.4/370).

18. As to the subject-matter of the proposed study, he reminded the Commission of the three categories of privileges and immunities suggested by the previous Special Rapporteur: those of the organization, those of its officials and those of experts on mission for the organization and persons having official business with it. He was inclined to share Sir Francis Vallat's view⁴ that the Commission should approach the subject from the standpoint of relations between States and international organizations or relations between international organizations, and not on the basis of the effect or absence of effect of the existence of international organizations in the territory of States. The latter approach might unduly restrict the subject-matter of the study. The general feeling was, however, that the study should cover both the status or legal capacity of organizations under internal law and their privileges and immunities, so as to comply with the terms of Articles 104 and 105 of the Charter.

19. The question of the privileges and immunities of officials of organizations could not be dissociated from that of the privileges and immunities of the organizations by which they were employed, since, as the ICJ had indicated in its Advisory Opinion of 11 April 1949, they were executive agents of those organizations, having been "charged by an organ of the organization with carrying out, or helping to carry out, one of its functions".⁵ Many speakers, however, had underlined the great diversity in the status of international officials, despite the existence of more or less similar rules deriving from the 1946 Convention on the Privileges and Immunities of the United Nations⁶ and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies,⁷ from the protocols annexed to the treaties setting up the

European Communities, and from headquarters agreements.

20. Relations between organizations and their staff were a matter for their internal tribunals and did not come within the scope of the study. Nevertheless, the question of the privileges and immunities of international officials and other agents of international organizations was a particularly delicate one and it seemed quite natural that successive Special Rapporteurs had decided to propose that the priority to be given to any particular aspect of the study should be settled when it had been concluded.

21. It was precisely that attitude of caution that should prevail in the consideration of the whole topic, since various data and elements were still lacking. Like the Special Rapporteur, therefore, he hoped that the Secretariat would revise the 1967 study.⁸

22. Mr. NJENGA, after congratulating the Special Rapporteur on his report (A/CN.4/370), said that reference had been made to the number and diversity of international organizations, which differed not only in their objectives and membership, but also in the scope of their operations. That diversity would complicate the Special Rapporteur's task, but there was one thing which all international organizations had in common: they enjoyed privileges and immunities in the host State. Consequently, a wealth of material was available and practice was so abundant that the topic was ripe for codification. Moreover, as rightly stated in the report (*ibid.*, para. 11 (a)), there was general agreement both in the Commission and in the Sixth Committee of the General Assembly on the desirability of taking up the study of the second part of the topic.

23. He agreed on the need for the utmost caution and considered that great care should be taken to ensure a proper balance between the interests of the international organization and those of the host State. While certain basic privileges and immunities were vital for the proper functioning of international organizations, it was important not to lose sight of the fact that privileges and immunities amounted to a detraction from the sovereignty of the host State and, furthermore, were a cause of resentment among the local population. Privileges and immunities should therefore be restricted to the basic minimum to which an international organization was entitled by reason of functional necessity. In that connection, Mr. Koroma (1797th meeting) had rightly drawn attention to Article 105 of the Charter and to the Advisory Opinion of the ICJ concerning *Reparation for injuries suffered in the service of the United Nations*,⁹ which dealt with the meaning of functional necessity.

24. On closer examination, it appeared that the concept of "functional necessity" had very similar consequences whatever the nature and size of the international organization concerned. For instance, the basic immunities claimed by every intergovernmental organization included exemption from local taxation,

³ *Yearbook . . . 1978*, vol. II (Part One), pp. 283-284, document A/CN.4/311 and Add.1, paras. 120-122.

⁴ *Ibid.*, p. 269, para. 44.

⁵ *Reparation for injuries suffered in the service of the United Nations, I.C.J. Reports 1949*, p. 177.

⁶ United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

⁷ *Ibid.*, vol. 33, p. 261.

⁸ See 1797th meeting, footnote 3.

⁹ *I.C.J. Reports 1949*, p. 174.

inviolability of its premises and exemption from measures of attachment or execution relating to its property. Officials of intergovernmental organizations were entitled to immunity from civil and criminal jurisdiction in respect of acts carried out in the performance of their functions, and were generally recognized to be exempt from immigration and emigration restrictions.

25. With regard to the conclusions of the previous Special Rapporteur reiterated in the report, he would like to know what was meant by the statement that “the Commission adopted a broad outlook, inasmuch as the study should include regional organizations” (A/CN.4/370, para. 11 (c)). Did that mean that the Special Rapporteur would restrict his inquiries to the practice of international organizations of a universal character and then determine whether the results arrived at were equally applicable to regional organizations? If so, he (Mr. Njenga) could not endorse that procedure. As had already been pointed out, certain regional organizations, such as OAU and OAS, were of such major significance that they could not be disregarded. For instance, there was very close interaction between OAU and the United Nations, each of which was entitled to participate in the meetings of the other, and it would be anomalous if the draft articles did not cover OAU representatives. Moreover, agreements between host countries and regional organizations were modelled on the relevant United Nations conventions, and to ignore their practice would be counter-productive.

26. He therefore fully endorsed the Special Rapporteur’s recommendation (*ibid.*, para. 13) that the Secretariat revise the 1967 study,¹⁰ but would propose that the Secretariat be invited to send similar letters to the various regional organizations, requesting them to furnish information on their practice in the matters under consideration. It should be made clear at the same time that no decision had yet been reached on whether a draft convention or any other instrument would be extended to those organizations.

27. He agreed on the need for a pragmatic and step-by-step approach. It would be logical to deal first with the legal status of international organizations, in particular their capacity to conclude treaties and contracts and to acquire movable and immovable property, and then to move on to their privileges and immunities. Then it would be necessary to examine the questions mentioned by the Special Rapporteur (*ibid.*, para. 9) and to decide which of them should be given priority. While nearly all those questions were relevant, he had serious doubts about the wisdom of including the “responsibility of States to ensure respect by their nationals of their obligations as international officials”. That would amount to a negation of the terms of Article 100, paragraph 1, of the Charter of the United Nations, and of similar provisions in the constituent instruments of regional organizations and of many other organizations not of a universal character. It was essential to the very nature of an international organization for it to be independent of

the will of any State, whether it was the host State or the State from which an official of the organization came.

28. He also agreed that it would be premature to decide at the present stage on the form of the eventual product of the Commission’s work, though a decision would have to be taken soon, since it would of necessity dictate the future course of action. In view of the wide-ranging and complex nature of the issues involved, he did not think a draft protocol would be acceptable. Moreover, because of the limited scope of the 1975 Vienna Convention, a protocol thereto would be automatically restricted to international organizations of a universal character, so that regional organizations would be excluded. Model rules, or a study to be recommended to States, which had also been suggested, would tend to reduce the work done to something of minor significance, which he did not think was justifiable. He therefore favoured an integral and comprehensive draft convention.

29. The topic had been before the Commission since 1976, and he believed that it was time to come to grips with the subject-matter. He therefore welcomed the Special Rapporteur’s declared intention of including a first set of draft articles in his second report.

30. Mr. NI said that, with the increasing activities of the United Nations and its related agencies and subsidiary organs, as well as the proliferation of new international organizations, the study of the topic before the Commission had become both useful and necessary. He thanked the Special Rapporteur for his report (A/CN.4/370), for his concise and orderly introductory statement (1796th meeting) and for inviting new members of the Commission to express their views.

31. He fully agreed, first, on the need to seek additional information and to examine the agreements and practice of international organizations, both within and outside the United Nations family, as well as the legislation and practice of States, since only on that basis could a valid decision be reached. The possibility of formulating another diplomatic code could be considered, but only after the materials had been thoroughly examined. The possibility of preparing a set of model rules could likewise be considered if, after that examination, it was deemed appropriate.

32. Secondly, given the growing number of regional organizations and their expanding roles, he believed that their inclusion in the study was virtually inevitable. The previous Special Rapporteur had explained in convincing terms why he had changed his mind in favour of including regional organizations in the study;¹¹ but a final decision on the matter should be taken in the light of the examination of State and international practice. He noted that the Special Rapporteur had wisely followed the approach of his predecessor and of the Commission in advocating the need for caution in dealing with the topic.

33. Lastly, the guiding principle in the work on the topic should be the need to secure the right balance between

¹⁰ See 1797th meeting, footnote 3.

¹¹ See footnote 3 above.

the interests of host States and the functional needs of international organizations.

34. Mr. MALEK said he wished to endorse the statement made at the previous meeting by Mr. Calero Rodrigues. He fully agreed with the conclusions reached by the Commission in 1978, as set out by the Special Rapporteur in his preliminary report (A/CN.4/370, para. 11).

35. The Special Rapporteur was undoubtedly in the best position to deal with all the questions that might arise within the context of his study and he should therefore be given a free hand in the choice of solutions to be proposed. He would perform his task with the caution required in dealing with every item on the Commission's agenda.

36. The extent of the privileges and immunities of international organizations should be studied with particular care. Immunities were no longer privileges, as in the past, or granted as a courtesy, but were rights of the entities that performed public functions in the territory of a State. Of course, the presence of diplomatic missions was felt less than that of international organizations, which attained considerable size in some cases, owing to the diversity of their functions. It was doubtful whether international organizations and the officials employed by them could perform their tasks if they enjoyed only limited immunity. Nevertheless, it might perhaps be advisable to provide against the risk of abuses, since man was still an irrational being.

37. When drafting headquarters agreements, the parties should be guided by model rules which took account of all the interests at stake, not only those of the host State.

38. Mr. THIAM said he believed that the Commission should concern itself primarily with international organizations of a universal character, but should none the less take regional international organizations into account. The importance of regional organizations had already been underlined by the previous Special Rapporteur and there was no doubt that they now constituted, all over the world, a privileged means of co-operation at the regional level.

39. Several members had already stressed the difficulties of the topic, which stemmed mainly from relations between international organizations and host States or between an international organization and one of its member States. In the first case, they were generally practical difficulties relating to taxation or security, or to the privileges and immunities to be granted. It should be noted that, when several States offered to receive an international organization in their territory, they were inclined to outbid each other and declare their willingness to grant greater advantages than were normally accorded. Care should therefore be taken not to confine States within unduly strict regulations.

40. In the second case, when the relations between an international organization and one of its member States were at issue, the difficulties generally related to sovereignty. For in relations with an organization of which it was a member, a State was always at pains to protect its

sovereignty, and that attitude was all the more marked when the organization had a political purpose. When an organization was a technical one, its member States were much more inclined to facilitate its operation and even to grant it legal capacity in certain cases.

41. The considerations he had put forward were dictated by the multiplicity and diversity of international organizations, which should induce the Commission to proceed with great caution. But caution should be blended with generosity; for given the role which international organizations played in co-operation between States, they met a genuine need and could only grow more important in the future.

42. Mr. SUCHARITKUL said he wished to make three points which arose from statements by other members. The first related to the definition of an international organization as an intergovernmental organization. For the purposes of that definition, the actual number of members in the organization was immaterial; there could well be an international organization with only two or three members. It was only the international organization of a universal character which had a special status; other organizations all had the same status, regardless of whether they were regional, subregional, interregional, intraregional or even extraregional. That led to the fundamental problem of identifying those elements which helped to constitute an international organization. For example, was it necessary for the organization to have a secretariat? Did it have to possess a permanent headquarters? Clearly, there should be some element of permanence in the functioning of its mechanisms and a staff working for it. But all those elements need not necessarily be present at the same time and the absence of one or more of them did not alter the fact that the body concerned was an international organization.

43. The essential factor was the political will of States, which was expressed in the constituent instrument of the organization. It was the States parties to that instrument which decided to establish an international organization. They could just as well set up, by agreement, a mere committee, without expressing the intention to establish an international organization.

44. His second point related to the issue of recognition. The existence of an international organization was undoubtedly an objective phenomenon, but recognition was nevertheless useful. The question then arose by whom the organization must be recognized. An international organization could be recognized by another international organization or by one of its member States or by a non-member State. Three separate series of questions thus arose, and each of those questions might require a separate or different answer. Those answers would be useful in examining the relationships involved.

45. Consideration should also be given to the content of recognition. First, there was recognition of the international organization as having international personality; secondly, there was recognition of its capacity to conclude treaties; and lastly, there was recognition of its legal personality under private law, whether by way of national legislation or by declaration of the State concerned. The

State concerned could be the host State, a member State or even a non-member State wishing to enter into relations with the international organization—not necessarily diplomatic relations, but possibly co-operative, economic, social or other relations.

46. His third point concerned the legal basis for the jurisdictional immunity to be accorded to the international organization. Clearly, that legal basis rested on the consent of States. There the host State played a pre-eminent role, usually through the headquarters agreement or host agreement, but occasionally also through the constituent instrument itself. Jurisdictional immunity was significant mainly in the country where the international organization had its headquarters; hence the importance of the host State in that regard.

47. By way of example, he referred to the international organization set up by Thailand and Malaysia, called the Joint Authority for the Exploration and Exploitation of the Joint Development Areas of the Sea-Bed in the Gulf of Thailand. The intention of the parties had been to establish an international organization having two member States. The organization was independent and a certain degree of immunity had been conferred upon it. Reciprocity was not entirely irrelevant, since the organization consisted mainly of civil servants of the two countries, who had to be immune from the jurisdiction of each other's courts. The organization itself was not subject to the authority of either party and was exempt from the jurisdiction of both. It had an almost sovereign authority vested in it by both Governments in respect of certain specific matters.

48. The justification for jurisdictional immunity was functional necessity, but the true legal basis of that immunity was the consent of States and, more specifically, the sovereign will of the host Government. For an international organization, immunity from jurisdiction was not based on the concept of independence or sovereignty, because an organization, unlike a State, did not possess sovereignty. In a way, however, it could be said that certain small "pieces" of sovereignty were entrusted to the international organization by the States which established it. But the extent of the attributes thus conferred upon the organization would always depend on the political will of the States concerned.

49. Mr. LACLETA MUÑOZ said that he fully agreed with the conclusions in the preliminary report under consideration (A/CN.4/370, para. 11). The Commission should take up the study of the second part of the topic, proceeding with great caution in view of the difficulties involved. One of those difficulties lay in the fact that the Commission had agreed that the study should include regional organizations. On that point, he endorsed the reasons given by the previous Special Rapporteur in his second report.¹²

50. The topic under study constituted the third component of a trilogy, the other two being the 1975 Vienna Convention on the Representation of States and

the draft articles on the law of treaties between States and international organizations or between international organizations.¹³ The order in which those components had been taken up was based on practical considerations, but the third component was undoubtedly the most important in conceptual terms. As to the fate of the future draft articles, he would prefer them to become a separate convention, rather than an additional protocol to the 1975 Vienna Convention. The draft should be independent of that Convention, since when international organizations had first come into existence there had been no permanent missions to facilitate relations between States and international organizations, as the previous Special Rapporteur had pointed out.¹⁴

51. In view of the difficulties caused by the ever-increasing variety of international organizations, the second part of the topic should be approached very cautiously. A common denominator should first be sought for the existing instruments, whether constituent instruments of international organizations, headquarters agreements or treaties relating to privileges and immunities. The legal status and the privileges and immunities of international organizations and their officials should be examined, as well as the special position of operational organizations. In general, he approved of the list of questions presented by the Special Rapporteur (*ibid.*, para. 9), but he had some doubts about the "responsibility of States to ensure respect by their nationals of their obligations as international officials", since States claimed not to influence the conduct of their nationals as international officials.

52. A very delicate question, which should not be settled until later, was how the draft articles could be extended to organizations that were not of a universal character. Criteria had been suggested for defining international organizations and distinguishing them from other entities. In his view, the main criterion was the fact that an international organization was a grouping resulting from the agreement of a number of States, which vested it with a will separate from that of its member States.

53. Mr. QUENTIN-BAXTER said that the Special Rapporteur had acted wisely in drawing attention to the last report submitted by his predecessor, the late Judge El-Erian; that report had permanent value.¹⁵ Similarly, the directives laid down by the Commission in its 1978 discussion¹⁶ had not been made out of date by anything that had happened since.

54. The Commission had already dealt with two other items concerning international organizations. The first had been the first part of the topic of relations between

¹² See footnote 3 above.

¹³ *Yearbook* . . . 1982, vol. II (Part Two), pp. 17 *et seq.*, para. 63.

¹⁴ *Yearbook* . . . 1978, vol. II (Part One), p. 278, document A/CN.4/311 and Add.1, para. 102.

¹⁵ *Ibid.*, p. 263, document A/CN.4/311 and Add.1.

¹⁶ *Yearbook* . . . 1978, vol. II (Part Two), pp. 146–147, paras. 155–156.

States and international organizations, which had led to the adoption of the 1975 Vienna Convention on the Representation of States. There, attention had been confined to the United Nations and its specialized agencies—a very finite and special group of organizations.

55. The other topic had been the law of treaties between States and international organizations or between international organizations, concerning which the Commission had adopted a set of draft articles at its previous session.¹⁷ One of the most fascinating aspects of the Commission's work on that topic had been the careful consideration given to the introduction of very small changes to the text of the 1969 Vienna Convention on the Law of Treaties, which contained the basic law on the subject.

56. There had been certain limiting factors in that topic as well. The first was that not all international organizations had treaty-making capacity, and those which did not possess that capacity were clearly not included in the topic. But even when an international organization did have treaty-making capacity, States would deal with it according to their own will. It was the will of the member States which conferred treaty-making capacity upon the organization, and the question of whether a State chose to deal with an international organization depended on the will of that State. Those considerations showed that there was a strong process of selection associated with the topic.

57. With regard to the present topic, the question arose as to how widely the Commission should consider the unlimited problems of international organizations, which were so diverse in nature and objectives that no common definitions could be framed for them. In fact, the only thing which all such organizations had in common was that they were the product of the combined will of their member States. That being so, it would be for the Special Rapporteur to set his own limits for the topic. One way of doing so would be to concentrate on "relations" between States and international organizations, taking the key word from the general title of the topic. That would show that the Commission was not attempting to define international organizations and that its attention was focused on the problem of relations between States and those organizations, although in order to study those relations it was, of course, necessary to know something about the international organizations themselves.

58. The issue of recognition was, he agreed, relevant to the topic. With respect to relations between States, that issue governed everything the Commission did. It was a delicate matter with both legal and political aspects. States reserved their sovereign right to decide whom they would recognize. In the case of other States, there was the strongest possible reason for recognition: it was clearly embarrassing not to have relations with a State which controlled a portion of the earth's surface. In the case of international organizations, however, the position was completely different. An international organization did

not normally impinge on the affairs of a particular country, and it was hardly possible for the Commission to suggest that every State was committed to recognizing all international organizations.

59. States must be allowed freedom of choice to deal or not to deal with an international organization. They could decide to do so either as members of the organization or because they believed it to be in the interests of the international community. That particular problem had not arisen in connection with the first part of the topic, because that part had been confined to the United Nations and its specialized agencies and it had rightly been considered that a non-member State would have no objection to recognizing the United Nations and its specialized agencies.

60. He agreed that there was no basis for drawing any distinction between organizations which were not of a universal character; those organizations—regional, sub-regional or other—all fell into the same category. Organizations of a universal character were those in which there was an unlimited right of membership; all States could join them, provided they were in a position to discharge the corresponding duties. Other organizations had only a limited membership, even if they were not regional. In fact, there was an infinite variety of international organizations and it would be necessary to extract from the text of the 1975 Vienna Convention, from the draft articles on the law of treaties between States and international organizations or between international organizations, and from the various headquarters and host agreements what was common to all organizations. The rules which emerged would constitute the very essence of the relevant law and would prove to be of great value not only to international organizations, but also to States, by providing them with guidance on how to conduct their affairs.

61. Although the present work would relate only to intergovernmental organizations, it was likely to have positive results for certain other organizations as well. It would, for example, be of great advantage to ICRC. That unique body was not, of course, an intergovernmental organization; nevertheless, it had relations with all Governments, based to some extent on the 1949 Geneva Conventions.¹⁸ He had no wish to commit the Special Rapporteur to the consideration of such other organizations working at the international level, but it should be borne in mind that the world of international organizations was not always confined to intergovernmental bodies. Reference should be made to the list of non-governmental organizations in consultative status with the Economic and Social Council; those organizations played a significant part in the attempt to make international relations work.

62. Mr. EL RASHEED MOHAMED AHMED said he shared the feeling expressed by other members that the Special Rapporteur was fully aware of all the difficulties of the topic and was well prepared to meet them. He drew

¹⁷ See footnote 13 above.

¹⁸ United Nations, *Treaty Series*, vol. 75.

attention to the intention expressed by the Special Rapporteur in his preliminary report (A/CN.4/370, para. 19) to present a second report which would follow the guidelines established by the Commission. Like Mr. Calero Rodrigues (1797th meeting) and Mr. Malek, he fully endorsed those guidelines. He also agreed that the 1967 Secretariat study¹⁹ should be brought up to date, to take into account the considerable developments and changes that had taken place in international affairs during the past 16 years.

63. Regional organizations should be included in the study, but he supported the Special Rapporteur's suggestion that the question of whether to include them in the ultimate codification should be decided only after the study had been completed. It was true that caution was called for, because regional organizations would raise a host of difficulties and specific problems which could delay the Commission's work. Those problems might not prove to be permanent, however, and it should be remembered that the inclusion of regional organizations in the study would make it possible to draw an overall picture, which would be an aid to future codification.

64. It was pertinent to inquire to what extent the ultimate convention or set of rules would concern all States. A regional organization, for example, might not have any activities in the majority of States. He shared the doubts expressed by Mr. Quentin-Baxter as to whether States should be called upon to recognize all international organizations. Nevertheless, he believed that the study would prove valuable, since the ultimate convention or set of rules could constitute a framework treaty and serve as a model for host agreements, or for rules to be adopted by regional organizations or their member States.

65. Lastly, he agreed that the privileges and immunities granted to international organizations and their officials should not exceed what was stipulated in Article 105, paragraph 1, of the Charter; he favoured the functional approach of that Article.

66. Mr. USHAKOV said that the term "regional organizations" was very ambiguous. Apart from the specific meaning which the Articles of Chapter VIII of the Charter gave to the term "regional agencies", the expression "regional organizations" lent itself to many interpretations. It seemed that it should include all international organizations other than those of a universal character.

The meeting rose at 1.05 p.m.

¹⁹ See 1797th meeting, footnote 3.

1799th MEETING

Thursday, 7 July 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (concluded) (A/CN.4/370¹)

[Agenda item 7]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (concluded)

1. Mr. DÍAZ GONZÁLEZ (Special Rapporteur), summing up the discussion on his preliminary report (A/CN.4/370), said he was glad to note that all members who had spoken had approved the guidelines fixed by the Commission at its thirtieth session in 1978² after examining the second report of the previous Special Rapporteur.³ All were agreed that the study of the second part of the topic of relations between States and international organizations should be continued and that it was necessary to proceed very cautiously. It was only on minor points that some slight differences of opinion had come to light.
2. It did not seem possible to affirm, as Mr. McCaffrey had done (1797th meeting), that no international organization had requested the Commission to carry out the study. Indeed, it was the General Assembly of the United Nations, an international organization if ever there was one, which had entrusted that study to the Commission. Under the terms of Article 13, paragraph 1 (a), of the United Nations Charter, the General Assembly could initiate studies for the purpose of encouraging the progressive development of international law and its codification. Moreover, the specialized agencies and IAEA, to which the Secretariat had sent a questionnaire at the Commission's request, had tacitly endorsed the study by replying to that questionnaire.
3. As to the words "a broad outlook" in his report (A/CN.4/370, para. 11 (c)), on which Mr. Njenga had asked (1798th meeting) for some clarification, those were the words which the previous Special Rapporteur had used in his second report and which had been approved in 1978 by the members of the Commission, including Mr. Njenga. They should probably be interpreted as meaning

¹ Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

² See 1798th meeting, footnote 16.

³ *Ibid.*, footnote 15.