

Document:-  
**A/CN.4/SR.1928**

**Summary record of the 1928th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
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conclude treaties, without which there could be no headquarters agreement: the language used was identical with that of article 6 of the draft articles on the law of treaties between States and international organization or between international organizations.<sup>9</sup> He had no objection on that score, but considered that any modification of the article should await the outcome of the United Nations Conference on that topic to be held in 1986.

46. In regard to article 1 of alternative B, the main issues were the legal personality and capacity of international organizations, as opposed to the sources of such personality and capacity, and the question whether such sources should be specified in the draft. The international legal personality of an international organization, which was deemed to be separate from that of its member States, was generally provided for by Governments in the statutes of the organization or in a treaty. The legal capacity of an international organization, on the other hand, depended on its object and purpose. In his view, therefore, the point would be covered if, in line with the wording of Article 104 of the Charter of the United Nations, article 1 was reworded to read: "An international organization shall have international legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, and in particular the capacity to: ...". Subparagraph (c) could, if necessary, be amended to read "be a party to legal proceedings". It would not then be necessary to mention international law and internal law, since international law would be covered by the term "international legal personality" and the effect of internal law would depend on the extent to which it was relevant. It might, for instance, have indirect relevance as a means of regulating legal capacity, the source of which was a treaty or the constituent instrument of the international organization concerned. In such a case, member States would be under an obligation to apply those instruments and might adopt implementing legislation for the purpose. Alternatively, provision might be made for such rights to be exercised in conformity with local law, which would become relevant but would not be a direct source of the capacity or personality.

*The meeting rose at 12.45 p.m.*

<sup>9</sup> See 1925th meeting, footnote 17.

## 1928th MEETING

*Wednesday, 17 July 1985, at 3.05 p.m.*

*Chairman:* Mr. Satya Pal JAGOTA

*Present:* Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Calero Rodrigues, Mr. Diaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Yankov.

## International Law Seminar

1. The CHAIRMAN invited Mr. Giblain, Director of the International Law Seminar, to address the Commission.
2. Mr. GIBLAIN (Director of the International Law Seminar) thanked the Chairman for giving him an opportunity to address the Commission on the International Law Seminar, which had held its twenty-first session at Geneva from 3 to 21 June 1985. During those three weeks, 24 participants, chosen by a selection committee from among some 60 candidates, had followed the deliberations of the Commission and attended a series of lectures given by members, which had been much appreciated.
3. A report on the activities of the twenty-first session of the Seminar had been deposited with the secretariat for the Commission's consideration, so he would confine himself to adding a few particulars. Of the 24 participants in the twenty-first session of the Seminar, 17 participants from developing countries far distant from Geneva had been awarded fellowships to cover their travel and subsistence expenses. Those fellowships had been financed from voluntary contributions by States, but since 1980 the amount of those contributions had been decreasing, as had also the number of contributing States. Contributions had fallen from \$US 30,000 in 1981 to \$10,000 in 1985. At the beginning of 1985, before the meeting of the selection committee, the Seminar had had in hand a total amount of \$46,000, of which \$35,000 had been allocated to the 1985 fellowships, so that only \$11,000 remained for the 1986 session. Assuming that the contributions for 1986 would not fall below the level for 1985, the Seminar would have \$21,000 for fellowships, whereas in 1985 it had spent \$35,000 for 17 candidates. Consequently, it would no longer be able to award fellowships to candidate from developing countries distant from Geneva and the balanced representation of different nationalities would be impaired.
4. In order to enable the Seminar to continue its activities and to achieve the purpose for which it had been instituted, while maintaining a balance among the participating nationalities, he believed that a special appeal should be made for contributions from a larger number of States by 15 March 1986, the date of the next meeting of the selection committee.
5. The CHAIRMAN said that the matter raised by the Director of the International Law Seminar was naturally of concern to the Commission, one of whose regular activities was to assist the Seminar. Members would doubtless wish to reflect on the information provided by Mr. Giblain, so that ways and means of providing for the Seminar in future years might be considered when the Commission came to examine the relevant section of its draft report on the current session.
6. Sir Ian SINCLAIR said he agreed that discussion of the matter should be deferred until the consideration of the draft report, but he wished to put on record his alarm at the situation reported by Mr. Giblain, particularly in regard to candidates from developing countries. It would be helpful if a paragraph on the Seminar's financial position were

included in the report, giving warning that, unless more contributions were forthcoming, it might not be possible to hold a Seminar of the same quality in 1986.

**The law of the non-navigational uses of international watercourses (A/CN.4/393,<sup>1</sup> A/CN.4/L.382, sect. F)**

Agenda item 7

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR

7. The CHAIRMAN invited the Special Rapporteur, Mr. McCaffrey, to introduce his preliminary report (A/CN.4/393) on the topic.

8. Mr. McCaffrey (Special Rapporteur) said that the report he was submitting to the Commission was a preliminary one in that it was merely a very modest effort to prepare the ground for future work by indicating the current status of the Commission's work on the topic and suggesting lines of further action. The report contained no substantive proposals and only made recommendations concerning the point at which work on the topic should be resumed. In another sense, however, although it was the first by the present Special Rapporteur, the report was by no means preliminary: it could not be said to offer the first, or even an early opportunity for the Commission to consider the topic. That being so, he would confine himself to outlining the historical and other reasons for his recommendations on how the Commission might proceed, summarizing those recommendations and offering some suggestions concerning the points which any discussion of the report might usefully address.

9. In its report on its thirty-first session,<sup>2</sup> the Commission had recognized that water was as vital for life as air, that it was a universal substance which moved over, through and under national boundaries, and that it was subject to depletion and degradation. It had noted that demand for water would continue to grow with the upsurge in world population, the spread of industrialization and urbanization, the expansion of agriculture and increasing needs for power, and had generally recognized that problems of fresh water were among the most serious confronting mankind. It was therefore imperative that the international community should progressively develop and codify the appropriate principles of international law, lay down procedures for its application and establish institutions for its continuing development. In attempting to carry out that task, the Commission had always borne in mind the interplay between two fundamental principles of international law: on the one hand, the sovereignty and independence of States, and on the other, the necessity for co-operation among States resulting from their interdependence.

10. In its resolution 2669 (XXV) of 8 December 1970, the General Assembly had recommended that the Commission should take up the study of the law

of the non-navigational uses of international watercourses. The Commission had included the topic in its general programme of work in 1971 and placed it on its active agenda in 1974. The Commission's work thus far could be divided into two stages, which were, however, not completely separate from one another. In the first stage, starting with the topic's inclusion in the Commission's general programme of work in 1971 and ending with the consideration in 1979 of the first report of the second Special Rapporteur, Mr. Schwebel, the Commission had carefully considered the best approach to adopt, thus laying the foundations for the second stage, which had begun in 1980 and continued up to the present. During that second stage, the Commission had decided on its general approach and had provisionally adopted the first six articles of the draft (see A/CN.4/393, paras. 2-9).

11. The watershed year appeared to have been 1979, when comments on Mr. Schwebel's first report in the Commission and in the Sixth Committee of the General Assembly had led him to submit a set of draft articles which had formed the basis for the six articles provisionally adopted in 1980. Comments on the first report had revealed that the "framework agreement" approach enjoyed broad support. Under that approach, States would be free and even encouraged to conclude specific agreements tailored to the special characteristics and needs of particular international watercourses. The predominant view in the Commission and in the Sixth Committee had been that the draft should lay down the general principles and rules governing the non-navigational uses of international watercourses in the absence of agreement between the States concerned, and provide guidelines for the negotiation of future specific agreements. At the end of the debate at its thirty-second session, in 1980, the Commission had decided that it should first proceed to the codification and progressive development of general principles and rules, rather than of rules pertaining to specific uses of watercourses. A set of draft articles dealing with some of the general principles and rules governing the subject had accordingly been provisionally adopted at that session (*ibid.*, para. 5).

12. In its report on its thirty-second session,<sup>3</sup> the Commission had drawn attention to the fact that, from the outset of its work on the topic, it had recognized the diversity of international watercourses and the fact that their physical characteristics and the human needs they served were subject to geographical and social variations similar to those found in other connections throughout the world. It had also recognized, however, that certain common watercourse characteristics did exist and that it was possible to identify certain principles of international law already existing and applicable to international watercourses in general.

13. The evolution of the Commission's work on the topic had not, of course, stopped in 1980. At its thirty-fifth and thirty-sixth sessions, in 1983 and 1984, the Commission had considered a tentative but complete set of draft articles submitted by the third

<sup>1</sup> Reproduced in *Yearbook ... 1985*, vol. II (Part One).

<sup>2</sup> *Yearbook ... 1979*, vol. II (Part Two), p. 163, paras. 111-112.

<sup>3</sup> *Yearbook ... 1980*, vol. II (Part Two), p. 109, para. 95.

Special Rapporteur, Mr. Evensen, as a basis for discussion (*ibid.*, para. 10). The structure of the draft and the articles it contained had been generally based on the approach evolved under the guidance of the first and second special rapporteurs.

14. Thus the Commission had already devoted much time and effort to the determination of the most appropriate way of approaching the topic and to the elaboration of draft articles and commentaries. With the valuable guidance of the Sixth Committee and the assistance of no less than three previous special rapporteurs, it had taken certain decisions concerning both the methodology to be followed in formulating draft articles and the substantive approach it would adopt towards the codification and progressive development of the law on the topic.

15. Those considerations had led him, as the present Special Rapporteur, to believe that the Commission's future work on the topic should build as much as possible on such progress and agreement as had already been achieved, not only because of the time and effort already invested and of the concrete results obtained, but also because of the concern of Governments that the work should continue to move forward expeditiously. That concern had been reflected in the discussion in the Sixth Committee, at the thirty-ninth session of the General Assembly, on the Commission's report on its thirty-sixth session (see A/CN.4/L.382, para. 333), and in the statement made by the Secretary-General of the Asian-African Legal Consultative Committee as an observer at the Commission's 1903rd meeting.

16. The proposals advanced in the light of all those considerations were contained in paragraphs 50 and 51 of the preliminary report. It was proposed, first, that the articles referred to the Drafting Committee in 1984, namely articles 1 to 9 of the revised draft submitted by the previous Special Rapporteur, Mr. Evensen (A/CN.4/393, paras. 15-30), should be taken up by the Committee at the thirty-eighth session and should not form the subject of another general debate in the Commission. In addition, he would present in his second report a concise statement of his views on the major issues raised by those articles, so that members of the Commission might have an opportunity of studying those views and commenting on them. The main object of that proposal was, however, to avoid consuming too much of another precious resource—the Commission's time—in another discussion of draft articles 1 to 9 in plenary meeting.

17. The second proposal was based on the fact that the outline for a convention, if not the draft articles themselves, submitted by the previous Special Rapporteur had seemed broadly acceptable as a general basis for further work (see A/CN.4/393, para. 10). The gist of the proposal was that the Special Rapporteur, for the time being at least, should follow the general organizational structure provided by the outline in elaborating further draft articles. Since the nine draft articles referred to the Drafting Committee in 1984 comprised the first two chapters of the outline, the Special Rapporteur intended to take up, in his second report, at least some of the issues dealt

with in chapter III. A similar course of action had been suggested in the Sixth Committee (see A/CN.4/L.382, para. 333).

18. Having had little opportunity yet to reflect upon the various important issues involved, he would not venture to make any specific substantive proposals at the present stage. Any reactions which members of the Commission might have to the general procedural proposals put forward in the preliminary report would be welcome; but while not wishing in any way to prejudice the right of members to express their views, he would prefer any substantive observations to be deferred, if possible, until the consideration of his second report at the Commission's thirty-eighth session. The reason for that preference related both to the shortage of time available for discussion at the present session and to the very limited time he had had to study the topic.

19. The CHAIRMAN thanked the Special Rapporteur for his introduction of his preliminary report (A/CN.4/393) and for his proposals, clearly set out in paragraphs 48 to 52 of the report, as to how the Commission's work on the topic might proceed at the current and next sessions. He invited members to comment on those proposals, bearing in mind the Special Rapporteur's request that substantive issues should be left aside until the next session.

20. Mr. CALERO RODRIGUES expressed his appreciation to the Special Rapporteur for an excellent report, presented in so short a time. He was confident that the Special Rapporteur would be equal to the important task assigned to him, building, as indicated in the report itself, as much as possible on progress already achieved and aiming at further concrete progress in the form of the provisional adoption of draft articles.

21. Mr. MALEK endorsed the appreciation expressed by Mr. Calero Rodrigues.

22. Mr. DÍAZ GONZÁLEZ associated himself with the congratulations addressed to the Special Rapporteur. He noted that, in approving the preliminary report, the Commission was already anticipating the discussion which would be required at the thirty-eighth session for the approval of the substantive report. He therefore reserved the right to express his doubts on certain passages of the preliminary report concerning, in particular, the decisions taken at the thirty-sixth session.

23. Mr. YANKOV, expressing his appreciation to the Special Rapporteur, said that he generally endorsed the considerations and proposals contained in paragraphs 49 and 50 of the preliminary report. Nevertheless, while agreeing that it was desirable to avoid a new general debate on articles already referred to the Drafting Committee, he did not think that comments on the general principles and methodology involved could be ruled out. As to the proposals contained in paragraph 51 of the report, he fully accepted them because the general outline for a convention proposed by the previous Special Rapporteur provided an excellent basis for further work.

24. Chief AKINJIDE associated himself with the remarks made by Mr. Calero Rodrigues and con-

gratulated the Special Rapporteur on the mastery of the topic and its history displayed in his preliminary report. He sincerely hoped that, in the arduous task before him, the Special Rapporteur would never lose sight of the fact that the non-use of international watercourses was a major source of famine in many developing countries.

25. Mr. FRANCIS, Mr. RIPHAGEN, Sir Ian SINCLAIR and Mr. SUCHARITKUL joined previous speakers in congratulating the Special Rapporteur on his excellent preliminary report and wishing him success in his future efforts.

26. The CHAIRMAN said that the sentiments placed on record by Mr. Calero Rodrigues were clearly shared by the Commission as a whole. The difficult and sensitive nature of the topic made the new Special Rapporteur's task particularly important, and the views expressed by members of the Commission reflected their confidence that, under his competent and fair-minded guidance, the work would be brought to an early and successful conclusion.

27. Mr. McCAFFREY (Special Rapporteur) thanked the previous speakers for their expressions of support, which he took to represent approval of the proposals set out in the concluding paragraphs of his preliminary report.

28. The CHAIRMAN, summing up the position with regard to the Commission's programme of work on the topic, said that, in the interests of maintaining an element of continuity with the work done up to 1984, it was suggested that at the thirty-eighth session, in 1986, the Drafting Committee should consider articles 1 to 9, which had been referred to it at the thirty-sixth session. The Special Rapporteur would also need time to consider those articles and, if he had any comments to make on them, would do so in the report which he would submit in 1986. Members of the Commission would then also be free to offer their own comments on any new views put forward by the Special Rapporteur concerning articles 1 to 9, but there should be no reopening of a general debate on those articles.

29. As to the Special Rapporteur's further work, it was suggested that he should take up first the study of chapter III of the outline for a convention. Members of the Commission should, of course, feel free to express their views on any concrete proposals included in the Special Rapporteur's second report. It should be noted that one member of the Commission had given notice that, at the next session, he proposed to comment on the substance of the preliminary report.

30. Mr. DÍAZ GONZÁLEZ said that, although it had been decided not to discuss the substance of the draft articles, that did not mean that they had been adopted. If the Special Rapporteur could propose amendments to the articles, members of the Commission should also be able to do so.

31. At the thirty-sixth session, the discussions on the topic had been very long, and it had been almost out of weariness that the Commission had referred the draft articles to the Drafting Committee, on the understanding that it would resume consideration of

them at a later stage. Mr. Evensen, however, had not entirely shared the views of his predecessor, Mr. Schwebel, and had slightly modified the terms used. Thus the expression "international watercourse system" had been eliminated at a stroke and new concepts had been introduced, such as "equitable sharing", which called for caution. He therefore considered that the discussion was open for the next session, when each member would be able to propose any amendments he might consider useful, since, as he felt bound to stress once again, articles 1 to 9 had not been adopted.

32. The CHAIRMAN said he had not meant to suggest that no substantive discussion should be held in 1986 on the draft articles before the Drafting Committee; in that connection, he drew attention to the last sentence of paragraph 50 of the preliminary report. Neither had he referred to articles 1 to 9 as having been adopted by the Commission. In accordance with its usual practice, the Commission, having discussed articles 1 to 9, had referred them to the Drafting Committee for further consideration in the light of the discussion. It went without saying that, when the Drafting Committee reported back to the Commission, all views or reservations expressed by members would be taken into consideration before any decision was taken. As to the preliminary report now before the Commission, no member should feel prevented from commenting on its substance, either at the current session or at the next session.

33. Mr. KOROMA congratulated the Special Rapporteur on his report. He also endorsed the views expressed by Mr. Díaz González. Any statement of views made by the Special Rapporteur on draft articles 1 to 9 in his second report would invite discussion in the Commission and would presumably be taken into account by the Drafting Committee. Accordingly, he could see no contradiction between the position adopted by Mr. Díaz González and the procedure proposed by the Special Rapporteur.

34. Sir Ian SINCLAIR agreed with Mr. Koroma. He understood from the preliminary report that the Special Rapporteur was proposing to present, in his second report, a brief statement of his views on some of the conceptual problems already encountered by the Commission in its consideration of draft articles 1 to 9, and that any member of the Commission would then have ample opportunity to make his own comments.

35. Mr. ROUKOUNAS observed that a rather large volume of work had been entrusted to the Drafting Committee, for it included the working hypothesis adopted in 1980, articles 1 to 5 and X provisionally adopted in 1980<sup>4</sup> and draft articles 1 to 9 submitted by the previous Special Rapporteur (see A/CN.4/393, paras. 15-30). That was obviously a heavy load.

36. Faced with such a complex situation, the new Special Rapporteur should have an opportunity of expressing his views on his topic as a whole. He should define his position on the theoretical plane,

<sup>4</sup> See *Yearbook ... 1984*, vol. II (Part Two), pp. 84-85, para. 270.

for example, as certain members of the Commission had already said, and clarify some of the major issues before taking up the study of chapter III, on co-operation and management in regard to international watercourses. Perhaps the Special Rapporteur could concentrate his attention on the points which had raised difficulties in the Commission or in the Sixth Committee of the General Assembly. In any case, he should be encouraged to express his views freely on the points which he considered to be of decisive importance for the continuation of his work.

37. Mr. REUTER said that he agreed with Mr. Díaz González: the positions adopted by the previous Special Rapporteur on a number of issues should not be taken as final. The new Special Rapporteur had inherited a delicate situation, inasmuch as the draft articles had been referred to the Drafting Committee precisely because they were not ripe, so to speak. The Drafting Committee would necessarily have to hold a preliminary discussion to regularize the position.

38. For the continuation of the work on the topic, it would be helpful if the Special Rapporteur could submit his second report as early as possible, so that the Drafting Committee could examine it at the beginning of the thirty-eighth session and decide how to act on it.

39. Mr. McCaffrey (Special Rapporteur) expressed his appreciation to those members of the Commission, in particular Mr. Díaz González, who had endeavoured to clarify the situation regarding the Commission's future consideration of the topic.

40. The proposals contained in his preliminary report represented an effort not only to observe the procedural customs of the Commission, but also to ensure the greatest possible degree of continuity in its work on the topic. Naturally, with a new Special Rapporteur, complete continuity was not possible. Consequently, he had thought that it would be appropriate for him to express his views on the main issues raised by draft articles 1 to 9 in his second report, and to give members of the Commission an opportunity to comment on them at the thirty-eighth session. That procedure would ensure full discussion of the issues involved, while at the same time enabling the Commission to maintain its rate of progress on the topic, which was an important and urgent one.

41. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to the procedure proposed by the Special Rapporteur.

*It was so agreed.*

**International liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/394,<sup>5</sup> A/CN.4/L.382, sect. E)**

[Agenda item 8]

PRELIMINARY REPORT OF THE  
SPECIAL RAPPORTEUR

42. Mr. CALERO RODRIGUES said that, as the Special Rapporteur, Mr. Barboza, was unable to be present to introduce his preliminary report (A/CN.4/394), the Commission would have to decide on the procedure it intended to adopt in dealing with the topic. Perhaps the Commission might take note of the report, even though it had not been introduced, so that the Special Rapporteur would know whether his proposals had been accepted or not.

43. The CHAIRMAN said that, while there were advantages in taking note of the report, as suggested by Mr. Calero Rodrigues, difficulties might arise if, during its consideration, concrete proposals were made requiring a response from the Special Rapporteur.

44. Mr. McCaffrey said that he agreed to some extent with the suggestion made by Mr. Calero Rodrigues. He recalled, however, that in 1983 the previous Special Rapporteur, Mr. Quentin-Baxter, had suggested that his fourth report, submitted at the Commission's thirty-fifth session, should be considered at the following session, in conjunction with his fifth report.<sup>6</sup> Perhaps a similar procedure could be adopted in the present case. The Commission could take note of the report and express its appreciation to the Special Rapporteur for having complied with its recommendations, without itself adopting any further specific recommendation.

45. Sir Ian SINCLAIR said that he would be reluctant to examine the preliminary report submitted by the Special Rapporteur in his absence, particularly as it might give rise to substantive discussions. The wisest course might be for the Commission to indicate in its report to the General Assembly that it had received and taken note of the Special Rapporteur's preliminary report, but had been unable, for various reasons, to consider it further. The Special Rapporteur could then be invited to submit a further report to the Commission at its thirty-eighth session.

46. Mr. SUCHARITKUL said that he agreed with the suggestions made by Sir Ian Sinclair and Mr. McCaffrey. By taking note of the preliminary report, the Commission would not be preventing the Special Rapporteur from preparing a further report.

47. Mr. REUTER agreed that it was impossible to discuss a report in the absence of its author, especially as, in that particular case, the document went rather deeply into substance, unlike the report submitted by Mr. McCaffrey, for example, which was concerned only with method. Nevertheless, the report had been circulated and the Commission had received it. Perhaps the Commission could simply say in its own report that it had not been able to discuss the report "owing to the circumstances", without giving any further details. The "circumstances" would include a very real lack of time, since the report had been circulated late.

<sup>5</sup> Reproduced in *Yearbook ... 1985*, vol. II (Part One).

<sup>6</sup> *Yearbook ... 1983*, vol. II (Part One), p. 223, document A/CN.4/373, para. 75.

48. Mr. MAHIU said he agreed with Mr. Calero Rodrigues that the Special Rapporteur should be encouraged to go ahead with his work. The preliminary report which he had submitted was much more than a note on methodology: it represented a reorientation and a closer scrutiny of the problems of the topic. The Special Rapporteur should be invited to specify his intentions and to clarify the subjects for reflection which he proposed to the Commission.

49. Mr. RIPHAGEN said he agreed with Mr. Reuter that the report went deeply into the substance of the topic. Since the Commission did not have time to discuss substantive issues, but could not endorse the report without such discussion, it should simply inform the Special Rapporteur that it looked forward to receiving his second report.

*The meeting rose at 5.50 p.m.*

## 1929th MEETING

*Thursday, 18 July 1985, at 10.05 a.m.*

*Chairman: Mr. Satya Pal JAGOTA*

*Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.*

### **Relations between States and international organizations (second part of the topic) (concluded)\*** (A/CN.4/370,<sup>1</sup> A/CN.4/391 and Add.1,<sup>2</sup> A/CN.4/L.383 and Add.1-3<sup>3</sup>)

[Agenda item 9]

#### SECOND REPORT OF THE SPECIAL RAPPORTEUR (concluded)

##### TITLE I (Legal personality)<sup>4</sup> (concluded)

1. Mr. DÍAZ GONZÁLEZ (Special Rapporteur) said that, before summing up the discussion, he wished to thank the members of the Commission for their indulgence towards him, their useful critical comments on his second report (A/CN.4/391 and Add.1) and their suggestions of sources to consult, in particular the work of the Third United Nations Conference on the Law of the Sea and the 1982 United Nations Convention on the Law of the Sea. He also thanked the secretariat for its assistance.

\* Resumed from the 1927th meeting.

<sup>1</sup> Reproduced in *Yearbook ... 1983*, vol. II (Part One).

<sup>2</sup> Reproduced in *Yearbook ... 1985*, vol. II (Part One).

<sup>3</sup> *Ibid.*

<sup>4</sup> For the text, see 1925th meeting, para. 27.

2. The comments made confirmed that the topic was not an easy one. To extract from particular rules a set of general rules applicable to all international organizations was obviously very difficult. Not only was there a diversity of international organizations, but each of them had its speciality, its manner of operating, its competence, its own character and its own law. It was from that multiplicity of factors that a minimum of common characteristics had to be derived in order to produce a well-articulated framework for the privileges and immunities of international organizations, which were undoubtedly at the very heart of the topic. It would, however, be difficult, if not impossible, to elaborate general rules on the privileges and immunities of international organizations without defining their personality, from which all else necessarily followed.

3. He noted that the viewpoint from which he had begun his study and from which he proposed to continue it had not provoked any strong opposition in the Commission.

4. As to the specific comments made during the debate, he noted that Mr. Balanda (1926th meeting) had stressed the need to employ precise wording and the danger of using certain terms. Though not believing himself to be infallible, he must point out that in the original Spanish text of his second report he had not used the word *poderes*, the equivalent of the word *pouvoirs* which appeared in the third sentence of paragraph 6 of the French text. The original Spanish text had referred to *funciones*. Besides, paragraph 6, which listed some of the questions raised at the Commission's thirtieth session, was merely descriptive.

5. It had been said that it was necessary to produce a schematic outline and that it would have been preferable to elaborate a complete set of draft articles. But he had chosen to proceed little by little for the same reasons as had led the Commission, on several occasions, to prepare draft articles with prudence, after mature consideration. True, the previous Special Rapporteur for the topic of the law of the non-navigational uses of international watercourses had been able to submit a number of draft articles at once for consideration by the Commission—which, however, had been able to discuss only a few of them at one session—but that was because that topic had been under consideration for about 10 years. In the present case, he had not considered it necessary to submit an outline, because the Commission had approved the outline of the scope of privileges and immunities submitted by the previous Special Rapporteur in his preliminary report<sup>5</sup> and he had thought that the work would continue on that basis. However, if the Commission thought that a new outline would be useful for the continuation of the work, he would comply with its wishes.

6. The question of responsibility had also been raised during the discussion. Mr. Ushakov (1927th meeting) had said that the Special Rapporteur was not required to deal with responsibility, but he had in fact never mentioned it, either in his report or in his

<sup>5</sup> *Yearbook ... 1977*, vol. II (Part One), pp. 153-154, document A/CN.4/304, paras. 70-74.