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**Summary record of the 756th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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it would be preferable for him to deal first with the status of international organizations and their agents, and then with the status of permanent missions.

77. With regard to question V, he agreed with those members who thought that the Commission should base its conclusions on existing practice regarding relations between States and universal organizations, leaving aside the question of regional organizations.

The meeting rose at 1 p.m.

### 756th MEETING

*Wednesday, 1 July 1964, at 10 a.m.*

*Chairman* : Mr. Herbert W. BRIGGS

#### **Relations between States and Inter-Governmental Organizations**

(A/CN.4/161 and A/CN.L.104)

(continued)

[Item 5 of the agenda]

1. The CHAIRMAN invited the Commission to continue its consideration of agenda item 5.
2. Mr. EL-ERIAN, Special Rapporteur, said that since at the previous meeting he had confined himself to general remarks and to introducing question No. I of list of questions (A/CN.4/L.104), he now wished to explain his reasons for including question No. II, particularly as reference had been made to its relevance.
3. Questions No. II dealt with the approach to the subject. There were two possible methods of approach: the casuistic method, which consisted of studying every legal problem relating to inter-governmental organizations as collateral to the treatment of the same subject in its inter-State application; and the general approach, which would treat the subject of the legal status of inter-governmental organizations as an independent and integrated whole, welding together the different problems in question as components of a single entity. Those two methods would have different consequences both with respect to the scope of the topic and with respect to the underlying orientation in its treatment.
4. So far as the scope of the topic was concerned he said that, if the casuistic method was adopted, the result would be that the problems for consideration would be limited to those which had been given priority in the Commission's work on inter-State topics. The general approach would, on the other hand, leave room for the treatment of certain problems which might be peculiar to international organizations. If the general

approach was adopted, the order of priorities followed in the treatment of inter-State relations would not necessarily be transposed to the study of the topic of relations between States and inter-governmental organizations; the order of priorities as between the various questions involved in that topic would be decided on its own merits.

5. As to the underlying orientation in the treatment of the topic, he said the general approach would tend to reflect more adequately the specific characteristics and particular needs of international organizations than would a treatment that was patterned, more or less, on the study of the rules governing inter-State relations and their applicability to relations between States and international organizations.

6. Mr. CASTRÉN said that he would give his views on the last three questions asked by the Special Rapporteur.

7. Referring to question No. III he said that, when the Commission had discussed the topic at its previous session, he had expressed agreement with the Special Rapporteur's view that the general questions should be studied first, in other words, the general principles of the international personality of international organizations.<sup>1</sup> Several members of the Commission, however, had thought that it should first — or even exclusively — consider specific problems, such as that of diplomatic law as applicable to relations between States and international organizations. He still believed that the former approach was more suited to a systematic and logical treatment of the subject; that was also the approach which the Commission had chosen for dealing with the topic of State responsibility. It was true that that approach was harder, and if the Commission wished to arrive at practical results more quickly it should probably deal first with a specific question like that he had mentioned.

8. He would reply in the affirmative to question No. IV. There existed several conventions or other treaties concerning the status of international organizations, and some members of the Commission, as well as the Secretary, thought that it would not be advisable to propose new rules in that connexion with a view to the possible revision of the existing rules. The questions to which the Special Rapporteur had given prominence (status of permanent missions and of delegations) concerned precisely a matter for which rules had not yet been established, or at least not yet fully and clearly established, by treaty provisions or by customary law. Besides, a certain amount of practice had already grown up in that field, which might form the basis of some common rules.

9. With regard to question No. V, he thought the Commission should concentrate in the first place on international organizations of a universal character, but should not disregard those which did not belong to the United Nations family. During the discussions at the previous session and at the previous meeting several

<sup>1</sup> *Yearbook of the International Law Commission, 1963, Vol. I, summary record of the 718th meeting, paras. 8-12.*

members of the Commission had rightly argued that regional organizations were so diverse that uniform rules applicable to all of them could hardly be formulated. It would probably be better to leave those regional organisations great latitude to settle their own relations with Governments. If the Special Rapporteur succeeded in identifying certain general principles that were, or should be, applicable to all such organizations, the Commission might consider later whether it was desirable to prepare draft rules on the subject.

10. Mr. LIANG, Secretary to the Commission, said that the Secretariat was always concerned that the existing complex body of treaty structure on the subject of the privileges and immunities of the United Nations and its specialized agencies might be perturbed by premature recasting of the rules on the subject; such a recasting would necessarily have repercussions on existing instruments.

11. If a general codification were to be carried out, it would undoubtedly replace the general Convention on the Privileges and Immunities of the United Nations<sup>2</sup> approved by the General Assembly of the United Nations on 13 February 1946. He had himself had the honour of being a member of the Sub-Committee which had drafted the 1946 Convention; its chairman had been Judge Guerrero of El Salvador, who had subsequently been President and Vice-President of the International Court of Justice. The members of the Sub-Committee had been very conscious of the difficulties involved in reaching agreement on a delicate subject. They had also been fully aware of the difficulties in the way of achieving universal acceptance for such a convention. To some extent, factors arising from the international atmosphere had been responsible for the fact that the Convention had not been universally ratified. For his part, he considered it very unlikely that it would be possible to bring into being in the near future another convention having the wide scope and detailed provisions of the 1946 Convention. His doubts on that point were strengthened by the knowledge that some States which had enthusiastically supported the 1946 Convention had since given indications that they regarded the privileges and immunities granted therein as having been too extensive.

12. On the assumption, however, that a new general convention, codifying the privileges and immunities of international organizations, was to become a reality, the legal consequences would have to be considered. States would have to examine the problem from the point of view of the rules governing the modification of a treaty by subsequent treaty and those governing the problem of the incompatibility of the provisions of successive treaties. The Commission would no doubt recall the difficulties it had encountered when formulating those rules at recent meetings devoted to the topic of the law of treaties. The picture which thus emerged was not a very encouraging one.

13. He stressed that he was only referring to the subject of privileges and immunities, and not to the

other subjects mentioned in the Special Rapporteur's working paper. In that regard, he was sceptical with respect to the use of the expression "diplomatic relations" in the context of relations between organizations and States. Except in so far as privileges and immunities were concerned, there was little connexion between the two types of relations.

14. It would, of course, be possible for States to overcome to some extent the difficulty to which he had referred by means of the device embodied in article 25 of the 1958 Convention on the Territorial Sea and the Contiguous Zone and article 30 of the 1958 Convention on the High Seas. Those two articles were couched in identical terms:

"The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States parties to them."<sup>3</sup>

15. The same device had been used in the Vienna Convention on Consular Relations 1963 (A/CONF.25/12),<sup>4</sup> which contained the following article:

"Article 73

"*Relationship between the present convention and other international agreements*

"1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

"2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof."

However, if a provision of that type were to be included in a new convention on the privileges and immunities of international organizations, the usefulness of that convention would be greatly reduced and the legal situation immeasurably complicated. Moreover, the problems which arose in connexion with *inter se* amending instruments could not be avoided.

16. During the discussion, several members had emphasized the need to adopt a practical approach. That approach would indicate the advisability of studying those aspects of relations between States and international organizations which had not yet been fully developed. In that connexion, he had noted with satisfaction the reference in question No. IV of the Special Rapporteur's working paper to the status of permanent missions accredited to international organizations, a subject eminently suited for study. On the other hand, any examination of the status of international organizations and their agents would inevitably spread out into the sphere of privileges and immunities.

17. While it was proper for the Special Rapporteur to consider his topic in broad perspective, he cautioned that the subject of the relations between States and inter-governmental organizations covered virtually the

<sup>3</sup> See *United Nations Conference on the Law of the Sea, Official Records*, Vol. II (United Nations publication, Sales No. 58.V.4, vol. II), p. 135 and p. 138.

<sup>4</sup> See *United Nations Conference on Consular Relations, Official Records*, Vol. II (United Nations publication, Sales No. 64.X.1), p. 187.

<sup>2</sup> *United Nations Treaty Series*, Vol. I, p. 15.

whole of the law of international organizations. The relations between organizations and individuals accounted for only a minute fraction of that law.

18. In conclusion, he urged that, for practical reasons, the study should be confined initially to the subjects which were not adequately covered by existing agreements and which offered the prospect of bearing some fruit. That approach should be preferred to undertaking the immense task of examining the whole field of the relations between States and international organizations and attempting to codify subjects which were unlikely to yield fruitful results for the reasons which he had given.

19. Mr. ELIAS said that, at the fifteenth session of the Commission, it had received a report from the Chairman of its Sub-Committee on the Succession of States and Governments containing the following recommendation on the co-ordination of the work of the four Special Rapporteurs :

“ It is recommended that the four Special Rapporteurs (on succession of States and Governments, on the law of treaties, on responsibility of States and on relations between States and inter-governmental organizations) should keep in close touch and co-ordinate their work.”<sup>5</sup>

20. Those remarks remained as valid as when they had first been made early in 1963. It was true that the first draft on the law of treaties had since been largely completed and that it raised a number of issues of interest to the Special Rapporteur on the topic of relations between States and inter-governmental organizations. But the Commission had still to delimit the scope of the topics of State succession and State responsibility, and the Special Rapporteur would need to keep in close touch with the Special Rapporteurs for those two topics in order to avoid unnecessary duplication.

21. Turning to question No. I, he said it would be within the Special Rapporteur's rights to take a broad view of his field of work, at least in the initial stages. Gradually, he would limit himself to a number of subjects of a practical character that lent themselves to codification.

22. The answer to question No. V was connected with what he believed should be the next step, for, like Mr. de Luna, he thought that the first task was to define precisely what was meant by “inter-governmental organizations”. If that definition was formulated with sufficient clarity, the problem raised in question No. V would disappear. He believed that the Special Rapporteur should concentrate on universal organizations; that approach would not, of course, preclude appropriate references in the commentary or in footnotes to organizations other than those of a universal character.

23. His answer to question No. III would be that priority should be given to the subject of diplomatic law and its application to international organizations. Regarding the order of priorities, mentioned in question No. IV, he believed that the starting point should be

the status of international organizations and their agents; the Special Rapporteur could then proceed to study the question of the status of permanent missions.

24. With regard to question No. II, he drew attention to the suggestion by Mr. Tunkin that the Special Rapporteur should confine himself at that stage to dealing with diplomatic relations, leaving other subjects for later consideration.

25. The difficulties to which the Secretary had drawn attention should not deter the Special Rapporteur from suggesting possible lines of advance in relation to the matters dealt with in the 1946 Convention. Of course, the provisions of that Convention should be maintained in broad outline, but the Commission should investigate the practical possibilities of introducing desirable improvements by way of progressive development.

26. Sir Humphrey WALDOCK thanked the Special Rapporteur for clarifying the issues involved in a topic the codification of which was not only his task but that of the whole Commission.

27. If one were to accept the interpretation placed by most members upon General Assembly resolution 1289 (XIII), the topic appeared so broad as to involve almost a lifetime of study. Whatever view was taken regarding the interpretation of that resolution, it was clear that the topic could only be dealt with in successive stages. Inevitably, therefore, the question of priorities arose.

28. He agreed with the majority of the members that the topic should be treated as an independent subject, but thought that, at all stages during its consideration, the Commission would have to bear in mind the corresponding legal provisions governing inter-State relations.

29. On the subject of priorities, there appeared to be very general agreement that the Special Rapporteur should commence his work with a practical subject on which there existed an adequate body of practice on the part of States and international organizations, so as to provide a basis for certain clear rules. It would probably be easiest and most satisfactory to begin with the subject broadly described as “diplomatic law”. He agreed with many of Mr. Reuter's remarks regarding the independent character of each international organization, but that situation had not prevented some measure of “common law” from emerging. Perhaps the time was not yet ripe for a codification of the rules in the matter. He had examined the problem from the angle of the law of treaties and had not found it easy to formulate very definite rules on treaty-making by international organizations. Accordingly, and although some principles were emerging in the matter of treaty-making, it would be wiser to begin with the consideration of the subject of diplomatic law, which would be less speculative. At the same time, he considered that the Commission should not try to dictate too much to the Special Rapporteur with regard to the order in which he would study the various parts of the actual topic given priority by the Commission; he should be allowed considerable latitude in that respect.

<sup>5</sup> *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, annex II, para. 12.*

30. With regard to the remarks by the Secretary, he agreed that the Commission should beware of approaching the study of the subject as providing primarily the occasion for a revision of the 1946 Convention. The Commission had received no directive from the General Assembly to that effect and, no doubt, if the General Assembly had intended that such a revision should be carried out, it would have made its intention clear. However, the mere existence of the 1946 Convention should not deter the Commission from making a general study of the subject of the privileges and immunities of international organizations. The importance of not disturbing that Convention was realized by all, but since 1946 there had been considerable experience of its application and use should be made of that experience. The 1946 Convention would necessarily constitute a leading source and, even if the Commission's general study led it to suggest certain departures from that Convention, that would not necessarily mean that its system would be disturbed. As indicated by the Secretary, devices were available to States to avoid that result. When the Commission had completed its study, it would be for States to decide the political question as to what would be done with the Commission's work.
31. He believed it would be a great mistake to approach the topic without the intention of studying it thoroughly. With regard to the suggestion that the topic should be confined to universal organizations, he believed that it would be appropriate to focus attention primarily on general organizations which were open to a very large participation. However, it would be unfortunate to leave out the smaller organizations, whether of a revisional character or merely limited organizations; some of them had long been in existence and therefore had considerable experience. It should be remembered that many large organizations had been in existence for only a comparatively short time. Moreover, in any comparative study, the Special Rapporteur should cover as wide a field as possible; the Commission could always narrow down the scope of the study later. It would be ill-advised to begin with too narrow an approach to the subject.
32. He stressed that the ultimate fate of the Commission's work on the topic under discussion would involve a political decision. Bearing that fact in mind, the Commission should embark on a general study of the topic; it should give the Special Rapporteur instructions that were not too rigid and that would encourage and support him in the study of the first aspect of a very large topic.
33. Mr. RUDA thanked the Special Rapporteur for his working paper. The subject was a thankless one and the sources indicating the practice were sparse or too recent, which seemed to show that codification was hardly possible.
34. He would take the broadest approach to the questions asked by the Special Rapporteur, for two reasons. First, that was the intention, as he understood it, of resolution 1289 (XIII); while it was true that the General Assembly referred in the first paragraph of the preamble to the problem of so-called diplomatic law, in the operative part it explicitly referred the topic to the Commission in its general form. Secondly, surely the Special Rapporteur would not be able to tackle his task without first undertaking a series of general studies on the problems of the international personality and legal capacity of international organizations.
35. With regard to question No. II, he believed that the topic should be treated as an independent subject.
36. Commenting on question No. III, he said that, although the Special Rapporteur would no doubt be able to draft articles on diplomatic law more easily, he would probably have to study the theoretical general basis of the subject.
37. The two problems raised in question No. IV were parallel. They involved many complex side issues, such as the responsibility of international organizations for injury to private persons or government officials. That was a very delicate matter politically.
38. He was particularly interested in question No. V. In his opinion, the Commission could hardly ignore regional organizations, at any rate in a theoretical study. Nevertheless, because of the way in which the question was worded and because of the idea of priority inherent in the phrase "in the first place", he would say that the Commission should study either all international organizations or else only those of a universal character.
39. Mr. LACHS thanked the Special Rapporteur for his concise and clear working paper concerning future work on his topic. The discussion which had taken place on the working paper had shown how complex and rich the topic was. International organizations were acquiring a new status in international relations; their birth, constitution, international regulation, machinery, practice, decisions and attempts at law-making constituted interesting fields of study.
40. With regard to question No. II, he said the Special Rapporteur had indicated in his statement two possible methods of approach, which could be termed the subjective and the objective approach respectively. From the point of view of legal theory, a general approach was to be recommended, but the Commission was engaged on an eminently practical task — the codification of international law by means of international conventions. The Commission, far from being engaged in the exploration of theoretical issues, should prepare a draft that would not only serve practical needs, but would also hold out prospects in international relations.
41. For that reason, he urged that the Commission should adopt an empirical approach in its study of inter-governmental organizations and that it should seek to codify the rules that were mature for codification and likely to be codified in practice. In its early years the Commission had conducted some studies which, though valuable from the theoretical point of view, had not yielded any practical results. He therefore suggested that for the time being the Commission should confine itself to giving the Special Rapporteur a reply to question No. IV on the order of priorities. More specifically, he suggested that the Commission should recommend that the Special Rapporteur should

deal with the part of the topic relating to the status of permanent missions accredited to international organizations and delegations to organs of, and conferences convened by, international organizations. Without entering into any question of priorities, he suggested that the part of the subject relating to the status of international organizations and their agents should be deferred.

42. The empirical approach which he was suggesting did not require the adoption of any long-term plan. The Commission would not take any decision on the approach to the subject, its mode of treatment or even the order of priorities. The Special Rapporteur would simply be encouraged to deal with that aspect of his topic which offered the best prospects for codification.

43. With regard to question No. V, he thought that attention should be concentrated on organizations of a universal character. While agreeing with Sir Humphrey Waldock's remarks in so far as certain small organizations of a technical character were concerned, he definitely considered that regional organizations in the strict sense of the term should be omitted from the study.

44. He noted the Secretary's opinion that care should be taken not to tamper with the existing law on the privileges and immunities of the United Nations, lest the system of privileges and immunities in question suffer. In view of the conflicting tendencies which were discernible at present, States might well not be prepared to subscribe to all the privileges and immunities to which they had agreed in 1946.

45. With regard to the remarks by Mr. Elias drawing attention to the recommendation made by the Sub-Committee on the Succession of States and Governments on the co-ordination of the work of the four Special Rapporteurs, he suggested that a meeting of those Special Rapporteurs should be arranged at the end of the current session.

46. In conclusion, he advised a very careful and very limited approach to the topic and suggested that attention should be centred on one problem, namely, the first part of the subject of diplomatic law mentioned in question No. IV. In the light of the experience that would be gained from the work on that part of the subject, the Commission could proceed with its further work. Because the Commission's task was not to study doctrinal questions but to deal with the practical issues of codification and progressive development, he considered that the door should be opened for work on the most suitable aspect of the topic and that no door should be closed to the study of other aspects if the Commission so decided at a later stage.

47. Mr. BARTOŠ said that, as Special Rapporteur on the topic of special missions, he would refer to certain questions with which Mr. El-Erian would have to deal in the course of his study. The series of questions put by Mr. El-Erian showed that he had encountered a number of problems, which the Commission should ponder with a view to assisting him in his task.

48. At the risk of appearing heretical, he would say that the topic was one in which experience and practice

abounded and which the Commission should approach from the point of view not only of the codification but also of the progressive development of international law. Every year since 1945, legal opinions had been given, disputes had arisen and resolutions had been adopted by the General Assembly, on the subject of the application of diplomatic law to international organizations. One example was the question of the status of the United Nations and its agents in connexion with the Organization's armed forces, both in the countries where those forces were stationed and in the countries of transit. To cite another instance: the services responsible for technical assistance at the international level were requesting that certain general rules should be applied. Difficulties were constantly being encountered in connexion with the operations of UNICEF, and it would be remembered what problems had arisen over the winding up of the International Refugee Organization. He recognized that some of the blame was attributable to those who had drafted the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, for they had not adopted an outlook in keeping with the requirements of a modern organization. Some of the rules which they had laid down had been inherited from the League of Nations; they had not even regulated the status of permanent missions to the United Nations, which had remained unsettled until the third session of the General Assembly.

49. In his view, the law on the subject stood in urgent need of codification and at the same time of progressive development. The Commission had not shown an excessive predilection for pure codification; it had laid down rules rendered necessary by technical development. Like Mr. Reuter, he considered that the Commission was not strictly bound by any resolution and that it could take a very broad view. His personal approach to the problem was, however, pragmatic. What had been the purpose of the delegation of France in proposing the study? What had the General Assembly had in mind in adopting that proposal? The answer was that they had wished the legal status of international organizations to be settled and the rules governing relations with international organizations, among those organizations, between States and those organizations, and between States through those organizations, to be codified. For the time being, therefore, the Commission, while not adopting a theoretical position tending to restrict the scope of the study, should confine itself as far as possible to the most urgent questions. That would be his reply to question No. I.

50. On the subject of question No. II, his view was that the first step should be to define the legal status of international organizations. Naturally, it would be difficult to produce forthwith an absolute definition applicable to all such organizations. Although it was true that some of the problems could be settled in the context of the reports to be submitted by the Special Rapporteurs on such topics as State succession and State responsibility, others were peculiar to international organizations, and in their case Mr. El-Erian's report should make it possible to formulate general rules; one example was the question of the treaty-

making capacity of international organizations. Since the Commission had decided not to deal with international organizations in connexion with the law of treaties, he thought that the Special Rapporteurs concerned should meet with a view to demarcating the topics and perhaps persuading the Commission to reserve its earlier decisions, so that a subject of such importance would not be left on one side.

51. The subject of succession between international organizations (e.g. in the case of the International Refugee Organization), the dissolution of specialized agencies and the sub-division or amalgamation of such bodies, might at first sight appear to have some analogy with that of State succession, the formation of new States and the merging of existing States; but in fact it formed a separate subject, and the Commission would have to decide whether it should be dealt with in Mr. El-Erian's study or elsewhere.

52. The question of the responsibility of States and of international organizations was arising constantly. It had been settled by an advisory opinion of the International Court of Justice but, even so, half the problem had been left unsettled. Did the United Nations possess the capacity to bring an international claim? If so, before whom? and how far did that capacity extend? Could a claim be brought against an international organization?

53. It was therefore too early to say whether the topic was an independent one or whether it should cover other matters.

54. In the light of what he had said, his reply to question No. III was that the Commission should discuss the concept "international organization" and the concept of such an organization acting as an intermediary in relations between States or between other organizations.

55. With regard to question No. IV, he thought that the problem of the status of international organizations and their agents and that of the relationship between States within international organizations should be settled first. It was not yet clear what was meant when international organizations were described as centres for harmonizing the actions of nations in international affairs. One tended always to think of what was done within, or by, international organizations, and not enough about the States themselves. In matters concerning the Security Council, for example, one should consider not only the functioning of the Council but also the clash of the interests of States.

56. His answer to question No. V would be that the Commission should concentrate on organizations of a universal character. So far as regional organizations were concerned a distinction should be drawn between two types: first those having universal objects limited territorially; the Commission should take such organizations into account in drafting general rules. Secondly, there were organizations of narrower scope, which were connected with the interests of certain blocs and which were more in the nature of political unions. So far as the latter were concerned, the Commission should be careful to make no attempt to draw up any rules.

57. Mr. TSURUOKA said that he had little to add to Mr. Lach's remarks, with which he agreed in every respect.

58. The Special Rapporteur was to be commended for the careful way in which he had framed his questions, thus greatly facilitating the replies.

59. With regard to the first two questions, he took the view that, to begin with at any rate, the Commission should confine its studies to the particular subject of diplomatic relations. A preliminary general study would no doubt be required to throw light on the subject as a whole; but any draft articles that the Commission might prepare should deal only with the restricted subject of diplomatic relations between States and inter-governmental organizations. Indeed, the Commission might consider drawing up a separate set of draft articles on that subject. Later, the scope of the study might be widened, but for the time being, the Commission should deal with the most urgent problems.

60. His answer to questions Nos. III and IV would be that the Commission should adopt a strictly practical approach and deal first with the more straightforward aspects of diplomatic relations between States and inter-governmental organizations — in other words, privileges and immunities — which were ripe for codification and most likely to lead to a progressive development of international law. The Commission's object should be to formulate a legal instrument which would be acceptable to most States, easy to apply, and conducive to international co-operation in establishing legal stability. Any draft prepared by the Commission should be without prejudice to the existing conventions on the privileges and immunities of the United Nations and the specialized agencies. The Commission should endeavour to fill in the gaps in those conventions and to clear up the ambiguities which they contained, with a view to rendering them more effectual and to inducing Governments not yet parties to accede to them.

61. So far as question No. V was concerned, he considered that the Commission could disregard regional organizations and should concentrate on relations between States and organizations that were universal in character or scope.

62. Mr. TABIBI said he was pleased to find that his views accorded with those of the majority, in particular as far as the order of priorities was concerned.

63. Although he realized that the Secretariat had a wide practical knowledge of the way in which the Convention on the Privileges and Immunities of the United Nations operated, he could not agree with the Secretary that the Convention was so perfect that it should be left undisturbed. In fact, since its adoption, and that of the convention on the privileges and immunities of the specialized agencies, numerous changes had taken place both in the relations between States and inter-governmental organizations and in the functions and methods of work of those organizations. By way of illustration, he mentioned the world-wide ramifications of the Technical Assistance Administration and the Special Fund.

64. In practice, a great number of difficulties had arisen in the implementation of the Conventions, and they probably needed to be brought up to date to meet modern requirements. The study of those instruments by the Commission would in no way mean that they would be altered before general agreement was reached concerning their revision.

65. Mr. PAL associated himself with the praise expressed for the work already done by the Special Rapporteur, which gave great promise of the quality of his future reports. The subject was as yet totally unexplored, so much so that the task of the Special Rapporteur might well be likened to Gulliver's voyage to Laputa, an odd island floating in the air, oddly related to land below, functioning in that relationship with odd mechanism in an odd manner, and inhabited by the oddest-looking creatures whose eyes did not focus on anything before them. On a subject like that, in its present unexplored condition, the light which had previously been offered for guidance was certainly the best light; but he was not quite certain if it might not in the long run prove only darkness.

66. In the present unexplored condition of the subject, he did not feel in a position to offer to the Special Rapporteur guidance as to the questions asked and, in particular, as to where to begin. He suggested that Mr. El-Erian, after further thorough exploration of the subject, should submit his own suggestions in those respects for the Commission's approval. In the very light of the results of such study the Commission would then be in a better position to judge.

67. It would not be possible to disregard regional organizations altogether; provision for such organizations was made in Chapter VIII of the Charter, and they could be utilized to serve universal interests.

68. Mr. PAREDES said that the Special Rapporteur had shown commendable courage in tackling a problem which was both so difficult and of such contemporary importance. The questions he had asked deserved consideration.

69. With regard to question No. I, he considered that the Commission on had full freedom to choose what subjects should be studied, in what order and by what methods. He entirely agreed with Mr. de Luna that the Commission should first define the purpose of its study, in other words, should indicate to what organizations the rules to be drawn up by it would apply. Obviously, the status of organizations differed according to the purpose and constitution of each. The United Nations aspired to become a world government; other organizations, such as the Organization of American States, were forms of confederations of States of decidedly political nature. It would be convenient and easy for the Commission to deal in its study with the relations between States and inter-governmental organizations such as the United Nations and the Organization of American States, but in doing so it would make its draft unnecessarily complicated and would be in danger of leaving gaps in it if it also tried to deal with specialized organizations concerned only with some particular aspects of the relations among their members.

70. In reply to question No. II, he said that the Commission should regard the topic as independent and treat it as an independent subject. As, however, there were obviously links between that and other topics, the Special Rapporteurs concerned should confer to decide together what parts of the topic each was covering in his report; in that way, overlapping among the reports would be avoided and the study of the problem itself would become easier.

71. With regard to questions No. III and IV, he agreed with those members who thought that the Special Rapporteur himself was best qualified to settle the order in which the topics should be studied.

72. Mr. LIANG, Secretary to the Commission, said that he had in no way wished to suggest that the 1946 Convention on the Privileges and Immunities of the United Nations was sacrosanct and not open to examination. The difficulties which had arisen, and which had been mentioned by Mr. Tabibi, in connexion with its application might have been due either to the fact that many States had not become parties to it or to the fact that there had been some controversy between the parties about its applicability to certain situations. He had simply sought to direct attention to some problems that would arise if an effort were made presently to revise a complex system of agreements on privileges and immunities.

73. During the 15th session, at the 718th meeting, Mr. Rosenne had said that: "he was not at all certain that the Commission was empowered to take any action regarding the two Conventions [those on the privileges and immunities of the United Nations and of the specialized agencies] unless it had some specific indication that the General Assembly would welcome such action. If his doubts were shared by others members, he would suggest that the Commission should draw the attention of the General Assembly to the matter in its report".<sup>6</sup> At the same meeting, Mr. Verdross had asserted that the question of the privileges and immunities of international organizations was beyond the Commission's competence.

74. If the result of a particular stage in the Commission's work on the relations between States and international organizations were a revision of the 1946 Convention, he also wondered if a specific mandate on the matter from the General Assembly would not be necessary. That, however, did not prevent the Commission from studying the above-mentioned Convention in connexion with its general programme of work on the subject.

75. Mr. ROSENNE said that the observations made by the Secretary and Mr. Tabibi impelled him to point out that to the best of his knowledge there had been no strong demand or a review of the 1946 Convention on the Privileges and Immunities of the United Nations either in the discussions leading to the adoption of General Assembly resolutions 1289 (XIII) and 1505 (XV) or in any debate either in the Assembly or in the

<sup>6</sup> *Yearbook of the International Law Commission*, 1963, Vol. I, summary record of the 718th meeting, para. 7.



Commission itself concerning topics for future codification. Of course, that argument was not conclusive, and a number of problems had indeed arisen from the implementation of the Convention, but the gaps and imperfections discovered in the text had evidently not been of such magnitude as to induce States to call for its revision. The same was true of the Convention on the Privileges and Immunities of the Specialized Agencies and of the various headquarters and host agreements.

76. He wondered also whether the Commission was equipped to carry out such a review, for which the collections of texts in the Legislative Series<sup>7</sup> would not suffice. It would be a delicate and possibly a difficult matter to obtain from the Secretariats of the organizations themselves, and from Governments, the requisite additional material.

77. On the question of competence he firmly remained of the opinion he had expressed at the previous session to which the Secretary had made reference. Given the circumstances in which the 1946 Convention had been adopted, he had grave doubts as to whether the Commission was competent on its own initiative to undertake any review of the Convention without some indication from the General Assembly that such a step would be welcomed. He emphasized that point because of his anxiety that the Commission should not enter into any conflict with the General Assembly of the kind that had occurred early on in its existence when serious differences between it and the General Assembly had arisen over their respective competence concerning matters falling within the Commission's Statute. Those disagreements had undoubtedly adversely affected some of the Commission's early work.

78. The discussion had revealed that there was a matter that could usefully be studied, namely the position of permanent missions — presumably primarily those accredited to the United Nations — although even that was to some extent covered by the 1946 Convention itself or by related instruments.

79. Mr. YASSEEN supported Mr. Lach's proposal that the Special Rapporteurs concerned should meet to demarcate their respective topics. The Commission should await the result of that consultation before it took a final decision on the matters to be considered in Mr. El-Erian's report. That would also be the best way of preventing overlapping between the various reports.

The meeting rose at 1 p.m.

## 757th MEETING

Thursday, 2 July 1964 at 10 a.m.

Chairman: Mr. Roberto AGO

### Relations between States and Inter-Governmental Organizations

(A/CN.4/161 and A/CN.4/L.104)

(continued)

[Item 5 of the agenda]

1. The CHAIRMAN invited the Commission to continue its consideration of agenda item 5.
2. Mr. TABIBI said that he wished to reply to three points raised by Mr. Rosenne at the previous meeting.
3. The first point related to his (Mr. Tabibi's) statement at the previous meeting that the Special Rapporteur should study the defects and gaps of the existing Conventions on the privileges and immunities of the United Nations and its specialized agencies. Mr. Rosenne had suggested that there had been no agitation in the General Assembly for a revision of those Conventions. In fact, both the French delegation, which had sponsored the proposal that had ultimately become Assembly resolution 1289 (XIII), and a number of other delegations, had had very much in mind all the practical aspects of relations between States and inter-governmental organizations, and the questions touched upon by the Conventions on privileges and immunities were eminently practical. Of course, States did not often refer openly in United Nations debates to the difficulties which had arisen in the matter because of a desire not to embarrass the Secretariat or the host governments concerned; however, many of the problems which had arisen had been and still were the subject of protracted negotiations. In the circumstances, it was very desirable that the Special Rapporteur should examine the experience gained in the application of the Conventions in question, study the practice in the matter and the developments which had taken place since the Conventions had been concluded, and consider what could be done to fill any existing gaps and remedy deficiencies. In doing so, the Special Rapporteur would rely on the help and assistance of the Secretariat, which could make available to him its unrivalled experience and much valuable unpublished source material.
4. The second point raised by Mr. Rosenne was that of the relationship between the Commission and the General Assembly. On that point, he considered that the Assembly had left the Commission free to study the topic as it saw fit; however, the Commission, as a creation of the General Assembly, constantly reported to it on its work. The Commission would therefore report to the General Assembly any decision it might take on the question of priorities as between the various aspects of the topic.

<sup>7</sup> United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10 and 11), United Nations publication, Sales Nos. 60.V.2 and 61.V.3.