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Summary record of the 755th meeting

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755th MEETING

Tuesday, 30 June 1964, at 10 a.m.

Chairman: Mr. Herbert W. BRIGGS

Law of Treaties
(continued)

[Item 3 of the agenda]

ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

ARTICLE 65 (Application of incompatible treaty provisions)

1. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, the text proposed by the Drafting Committee for article 65 which read:

"*Application of incompatible treaty provisions*

"1. Subject to Article 103 of the Charter of the United Nations, the obligations of States parties to treaties, the provisions of which are incompatible, shall be determined in accordance with the following paragraphs.

"2. When a treaty provides that it is subject to, or is not inconsistent with, an earlier or a later treaty, the provisions of that other treaty shall prevail.

"3. When all the parties to a treaty enter into a later treaty relating to the same subject-matter, but the earlier treaty is not terminated under article 41 of these articles, the earlier treaty applies only to the extent that its provisions are not incompatible with those of the later treaty.

"4. When the provisions of two treaties are incompatible and the parties to the later treaty do not include all the parties to the earlier one

"(*a*) as between States parties to both treaties, the same rule applies as in paragraph 3;

"(*b*) as between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty applies;

"(*c*) as between a State party to both treaties and a State party only to the later treaty, the later treaty applies.

"5. Paragraph 4 its without prejudice to any responsibility which a State may incur by concluding or applying a treaty the provisions of which are incompatible with its obligations towards another State under another treaty."

2. Mr. PAL suggested that, as the first paragraph governed the following three paragraphs, it might be left unnumbered, the paragraphs governed by it being numbered 1 to 3. He thought there was some inconsistency in the structure of the article, in that the governing paragraph spoke only of treaties the provisions of which were incompatible, while paragraph 3 dealt with case in which the provisions were *not* incompatible. Again, paragraph 5, though one of the following paragraphs mentioned in paragraph 1, was not designed to be governed by paragraph 1.

3. Sir Humphrey WALDOCK, Special Rapporteur, said that a similar pattern had been followed in other articles and he did not believe it was open to objection on grounds of logic.

4. Mr. LACHS said there was some force in Mr. Pal's criticism: the paragraphs dealing with provisions which were incompatible should be grouped together.

5. Mr. ELIAS said that the Drafting Committee had given a great deal of thought to the structure of the article; he would be sorry if the Commission changed it and re-opened the discussion on substance. As it stood, the article seemed simple and straighforward.

6. Sir Humphrey WALDOCK, Special Rapporteur, said that the passage "the provisions of which are incompatible" in paragraph 1 was intended to govern paragraphs 2 to 4.

7. Mr. de LUNA said he did not think the presentation of paragraph 1 was illogical, since all the paragraphs concerned cases of incompatibility.

8. Mr. TSURUOKA thought that the words "the provisions of which are incompatible" were superfluous. The purpose of paragraph 1 was to make it clear that Article 103 of the Charter was entirely independent of the provisions of article 65 of the draft. Since paragraphs 2, 3 and 4 all referred to cases of incompatibility, it would be enough to State in paragraph 1 that Article 103 of the Charter prevailed.

9. Mr. LACHS suggested that the difficulty might be removed by amending the words in question to read: "the provisions of which may be incompatible".

10. Sir Humphrey WALDOCK, Special Rapporteur, said that if that change met with general support he would not oppose it.

11. The CHAIRMAN,* speaking as a member of the Commission, said he considered that paragraph 1 was acceptable as it stood. Its object was to state that, if the provisions of two treaties were incompatible, the rules laid down in the succeeding paragraphs became applicable.

12. Mr. ROSENNE said that a few drafting changes might meet the objections raised. He suggested that a colon should be substituted for the full-stop at the end of paragraph 1, and that paragraphs 3 and 4 should become sub-paragraphs (*a*) and (*b*). Paragraph 2 would remain as it stood and paragraph 5 might follow, or be embodied in a separate article.

13. Mr. REUTER suggested that in the French text of paragraph 1 the words "*sont incompatibles*" should be replaced by the words "*sont en concurrence*".

14. Sir Humphrey WALDOCK, Special Rapporteur, referring to Mr. Rosenne's suggestion, said that paragraphs 3 and 4 should remain where they were, for otherwise the rules stated in them would lose their force.

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* Mr. Briggs.

15. Mr. ELIAS said that if Mr. Rosenne's suggestion were followed paragraph 2 would also have to become a sub-paragraph of paragraph 1, since paragraph 1 governed all the provisions that followed.

16. Mr. PESSOU said he realized that the members of the Commission represented different systems of law and upheld differing doctrines; but when it came to drafting a text which should reflect uniformity in that diversity, the final results were difficult to understand and indeed disheartening; that was true of the French text of paragraphs 1 and 2.

17. Sir Humphrey WALDOCK, Special Rapporteur, said that the difficulty which had arisen over paragraph 1 was perhaps partly due to the change made in the wording. The relevant passage in paragraph 2 of his original draft (A/CN.4/167) had read: "that its provisions should be subject to". Possibly paragraph 2 should be amended to read: "When a treaty provides that it is to be subject to or is not to be inconsistent with". Certain treaties contained clauses of that kind, for example, treaties establishing certain international organizations provided that their provisions should not be insonsistent with the Charter of the United Nations. The question whether or not there was incompatibility was an objective one to be determined by reference to the content of the treaty. The object of paragraph 2 was to provide that that treaty prevailed to which the other, by an express clause, had to give way, but of course it was not an easy principle to formulate.

Paragraph 1 was approved.

18. The CHAIRMAN,* speaking as a member of the Commission, said he had been rather troubled by the words "that other treaty" in paragraph 2, which seemed to be open to misconstruction.

Paragraph 2 was approved.

Paragraph 3 was approved.

Paragraph 4 was approved.

Paragraph 5 was approved.

19. Mr. TUNKIN said he doubted whether article 65 as a whole was entirely satisfactory. During the second reading the Commission would have to decide whether the point made in paragraph (17) of the Special Rapporteur's commentary on his original draft of article 65, that "any treaty laying down ... obligations not open to contracting out must be regarded as containing an implied undertaking not to enter into subsequent agreements which conflict with those obligations", should be expressly covered in the article itself.

20. Mr. ROSENNE said that although he would vote in favour of the article as a whole, he maintained his earlier reservation concerning its relationship with article 41.[1]

21. The CHAIRMAN put to the vote article 65 as proposed by the Drafting Committee.

Article 65 was adopted by 16 votes to none, with 3 abstentions.

Relations between States and Inter-governmental Organizations

(A/CN.4/L.104)

[Item 5 of the agenda]

22. The CHAIRMAN invited the Commission to consider the list of questions submitted by the Special Rapporteur as a basis of discussion for defining the scope and mode of treatment of the subject of relations between States and inter-governmental organizations (A/CN.4/L.104).

23. Mr. EL-ERIAN, Special Rapporteur, said that his suggested list of questions was not intended to supersede the working paper he had submitted at the previous session (A/CN.4/L.103) elaborating the conclusions set out in his preliminary report (A/CN.4/161). The list was intended to focus the Commission's attention on a number of specific questions and he was glad that time had been found to complete the preliminary discussion started in 1963, which was to have been continued at the winter session that had not taken place. Once he had received the necessary guidance he would be able to proceed with his work.

24. The discussion at the previous session had revealed a cleavage of opinion concerning the scope of the subject; some members had approved of the broad scope he had outlined and others had favoured a more restrictive approach. The part of his report devoted to the problem of the juridical personality of inter-governmental organizations had proved to be particularly controversial, both in the Commission and in the Sixth Committee of the General Assembly at its eighteenth session. For example, one representative in the Sixth Committee had said that "In the matter of relations between States and inter-governmental organizations, his delegation considered that sovereign and equal States were not only subjects of international law, in their capacity as holders or sovereignty, but also creators of international law." International organizations, despite their importance in the study and solution of the great problems facing mankind, were subjects of international law only to the extent that they needed that status in order to carry out their work; since they did not possess the same characteristics as a sovereign State, there could be no question of their holding the same status in international law.[2] On the other hand, a proponant of the broader approach had said that: "His delegation attached great importance to the study of relations between States and inter-governmental organizations. Through their activities in the field of economic and social co-operation and in peacemaking, the United Nations and related specialized agencies had acquired an original legal personality".[3]

* Mr. Briggs.

[1] 742nd meeting, para. 56.

[2] *Official Records of General Assembly, Eighteenth Session, Sixth Committee*, 783rd meeting, para. 29.

[3] *Op. cit.*, 786th meeting, para. 22.

25. One reason why it was difficult to define the scope of the subject was the wording of its title in General Assembly resolution 1289 (XIII). The titles of other topics dealt with by the Commission were indicative of their general scope, but that was not true of the topic under discussion; the appearance of inter-governmental organizations as subjects of international law and the attribution to them of certain functions analogous to those of sovereign States was a comparatively new phenomenon and the legal problems it created were more or less uncharted. Moreover, the discussion in the Sixth Committee on the French delegation's proposal,[4] which had resulted in the General Assembly's request that the Commission should study the topic, had provided little guidance as to its scope; it could not be inferred from that discussion that the study should be confined to diplomatic law in its application to relations between States and inter-governmental organizations.

26. He himself favoured a fairly broad approach. In the absence of any clear delimitation by the General Assembly he had been influenced, first, by the content of the eighth paragraph of the preamble to General Assembly resolution 1505 (XV), which read: "Considering that it is desirable to survey the present state of international law, with a view to ascertaining whether new topics susceptible of codification or conducive to progressive development have arisen, whether priority should be given to any of the topics already included in the Commission's list or whether a broader approach may be called for in the consideration of any of these topics"; and secondly, by the Commission's own decisions in response to that resolution, when it had defined the scope of the topics of State responsibility and the succession of States and Governments. As the study of particular aspects of the relations between States and inter-governmental organizations had on various occasions been deferred pending the outcome of other work by the Commission, it would be helpful if the Commission could now give an equally clear indication of what it intended to undertake in that particular field.

27. In that connexion he drew attention to the views of two Governments. The Austrian Government had expressed the opinion that "International organizations, within the express or implied powers conferred upon them by their statute, participate in international intercourse. Some aspects of the existence of international organizations as international legal phenomena are covered by international conventions which have been concluded for or by individual organizations. To other aspects of the external relations of international organizations, for which no such conventions exist, the traditional norms of international law can be applied only to a limited degree, because they were created by the practice of States and therefore fit the organizational structure of States. Although a new practice is slowly being developed by and in respect of international organizations, it is still embryonic and, above all, multiform. To ameliorate the situation, traditional norms need to be adjusted, new norms to be created. Regulations are, for instance, required for the conclusion of treaties by international organizations, the legal status of permanent missions of Member States to international organizations and the legal status of international organizations in the territory of Member States, the responsibility of international organizations, etc. The International Law Commission has already been entrusted with the consideration of some of those questions, but has not yet taken them up".[5] The Netherlands Government considered that one of the new topics the Commission could profitably study was the status of international organizations and the relations between States and international organizations.[6]

28. In summing up the discussion in the Sixth Committee on the Commission's decision to take up the topic and to appoint a Special Rapporteur, the Committee's Rapporteur, Mr. Ruda, had said: "A number of representatives stressed the importance that the question had acquired in international relations; some thought that a very valuable study could be made, within the topic, of such questions as the international personnality of international organizations, their capacity to enter into treaties, their international responsibility and the privileges and immunities of the staffs of international organizations."[7]

29. In conclusion, he suggested that the Commission should deal with the questions on his list one by one. The first two were general and the third and fourth were questions concerning priority, the answers to which would of course depend on the decisions taken on the general question. The fifth question related to the particular problem of regional organizations and might be left aside until later.

30. Mr. TABIBI said that the Special Rapporteurs on special missions and on relations between States and inter-governmental organizations had initiated a helpful practice by submitting a list of questions to the Commission in order to obtain clear terms of reference.

31. He sympathized with Mr. El-Erian, who had been entrusted with the study of a complex subject that was in a state of evolution and had assumed great importance. International organizations had different procedures and the codification of rules in that sphere would contribute to the progressive development of law.

32. In his opinion the Commission should concentrate on the practical aspect of the subject and was free to delimit its scope. There was no contradiction between General Assembly resolutions 1289 (XIII) and 1505 (XV).

33. The Commission had already answered question II when it had appointed a Special Rapporteur to deal with relations between States and inter-governmental organizations as an independent subject. If it had taken a different view, it would have asked the Special Rapporteurs on State responsibility and State succession to deal with such aspects of the subject as fell within their sphere of study.

[4] See document A/CN.4/161, paras. 4-8.

[5] *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, p. 16, para. 2.

[6] *Ibid.*, p. 17, para. 4.

[7] *Op. cit. Seventeenth Session, Annexes*, agenda item 76, p. 17, para. 51.

34. His answer to question III would be that the Special Rapporteur should concentrate, first and foremost, on the question of the privileges and immunities of international organizations, their officials and delegations to them. That matter called for urgent consideration because practice varied considerably; one example was the anomaly of OPEX officials not having the status of international civil servants. Other important matters could be left for future consideration. He did not think it necessary at that stage to consider regional organizations, for they were sometimes of a temporary character and were in any case greatly influenced by the rules and procedures of organizations within the United Nations system.

35. Mr. CASTRÉN, after thanking the Special Rapporteur, said that in his view General Assembly resolution 1289 (XIII) could not be interpreted as being restrictive. The General Assembly had given the Commission great latitude as to the scope of its study and how it was to be carried out: that was what seemed to follow from General Assembly resolution 1505 (XV), from the Sixth Committee's discussions on the Commission's programme and methods of works and from the replies of governments. It was possible that the General Assembly and governments wished the Commission to give priority to the problems of diplomatic law in its application to relations between States and inter-governmental organizations.

36. It seemed to him that the Commission had already answered question II at its previous session. The subject was a special one, on which the Commission had been asked to formulate draft rules. But it was related to other branches of international law, particularly diplomatic law, the law of treaties, State responsibility and State succession. Consequently, the Commission should endeavour to avoid any overlapping between the rules governing relations between States and international organizations and the rules which already existed, or which it would propose, concerning those other branches of international law. That was why the Commission had provided for close co-operation between the Special Rapporteurs concerned, which seemed to be working satisfactorily.

37. Mr. PESSOU thanked the Special Rapporteur for his account of the way in which the subject could be approached. In his opinion, question I was of no importance, since the Commission could not deal with such a subject without taking into account its possible repercussions in other spheres, such as *ad hoc* diplomacy. The various topics should be considered as a whole, so as to avoid overlapping.

38. As to question II, he thought it would be preferable to treat the subject as an independent one. The Special Rapporteur himself had suggested the best approach: the two Special Rapporteurs concerned should consult one another to ensure that they did not deal with the same aspects of the matter.

39. Mr. REUTER said that, so far as instructions from the Sixth Committee were concerned, the Commission was free: it must take its own decisions.

40. He thought there was a preliminary question to be settled: were there — or could there be — any general rules applying to international organizations? If the Commission reached the conclusion that no such rules existed or could exist, it need consider the subject no further. He himself believed that the answer would not be entirely negative, but it would remain to determine whether there were many such rules or not. It would be for the Special Rapporteur to investigate that question. If the Commission reached the conclusion that there were many general rules on a given matter, it should embody them in a special convention. If it found that there were only a few rules, it should incorporate them in the draft conventions which also related to States. Of course, that approach to the problem by-passed questions I and II and went straight on to question V, for it was neither possible or desirable to work out rules that would be applicable only to the United Nations and the specialized agencies: there were organizations with a world-wide field of action which did not belong to the United Nations system, and it would make an unfortunate impression if the Commission appeared to be excluding them.

41. He would support whatever conclusions the Special Rapporteur proposed. He had already formed the opinion, however, that the Special Rapporteur would find fairly substantial general rules on diplomatic questions, but few, if any, general rules for international organizations concerning agreements, State responsibility and State succession. In the present state of international relations, there was no rule of equality of international organizations: unlike States, they were fundamentally unequal, so that only minimum rules could be laid down.

42. Consequently, when the Special Rapporteur had submitted his conclusions concerning the existence of general rules, the Commission would probably have to prepare a special draft convention on diplomatic questions linked with that on *ad hoc* diplomacy, and to include one or two articles on the problem of international organizations in the separate drafts on State responsibility, State succession and other topics.

43. Mr. de LUNA said he agreed with those speakers who had expressed the view that the Commission had a completely free hand with regard to the scope of the subject, provided that the matters dealt with came under the heading of relations between States and inter-governmental organizations.

44. From the practical point of view, it was certainly true to say that the only guidance was provided by the recognition by States of the privileges and immunities of inter-governmental organizations, of their treaty-making power and of their international personality generally. Without going into any theoretical issues, the Commission would have to define, for the purposes of its works, what constituted an inter-governmental organization. He did not believe that the study should be confined to international organizations of a universal character; regional organizations should not be ignored.

45. A further problem was whether an inter-governmental organization constituted a subject of interna-

tional law by reason of its treaty-making capacity or whether, on the contrary, it had that capacity by reason of its status as a subject of international law. In fact, the situation was that States were willing to establish formal relations of the treaty type with organizations.

46. He agreed with Mr. Reuter on the need to ascertain whether any general rules existed; but he did not think it would be advisable to make a comparative study of the constitutional arrangements and internal rules of the various international organizations. He was somewhat less pessimistic than Mr. Reuter, however, and could say from his own experience that in spite of the diversity of international organizations, there was some uniformity of practice as to privileges and immunities and also as to treaty-making capacity. Apart from the constitutional provisions of the organizations, and sometimes in the absence of any constitutional provisions on those two subjects, there were indications that certain customary rules were emerging in response to practical needs. That process was particularly evident in the case of privileges and immunities; and the concept of treaty-making capacity implicit in the constitution of an organization, which had gained some measure of acceptance, could only be explained by the formation of a customary rule.

47. With regard to question I on the Special Rapporteur's list, he urged him to adopt as broad an approach as possible. Experience had shown that it was preferable for the Commission to begin with a draft covering a fairly wide field, since its scope was inevitably narrowed down during discussion.

48. With regard to question II, it seemed clear that the subject was an independent one. It was equally clear that the Special Rapporteur should take into account the work done by the Commission on other subjects and keep in touch with the other Special Rapporteurs so as to avoid duplication.

49. With regard to the mode of treatment and order of priorities, he agreed with Mr. Tabibi that there would be some practical advantage in dealing first with the question of privileges and immunities.

50. With regard to question V, he urged that the Commission should deal with all international organizations, universal or regional, provided that they constituted inter-governmental organizations within the meaning of whatever definition the Commission might adopt for practical purposes.

51. He commended the Special Rapporteur for the manner in which he had undertaken an extremely difficult task and expressed the hope that the Commission would be able to formulate a number of rules on the subject and thus make a valuable contribution to the progress of international law.

52. Mr. JIMÉNEZ de ARÉCHAGA thanked the Special Rapporteur for submitting his questions to the Commission so clearly. He recalled that the Special Rapporteurs on the succession of States and on State responsibility had received certain directives from the Commission. The Special Rapporteur on *ad hoc* diplomacy had received guidance from the States assembled at the Vienna Conference of 1961. The Special Rapporteur on relations between States and inter-governmental organizations was the only one who, so far, had received no directives and had been working as Special Rapporteurs had worked in the early years of the Commission. That system had in some cases led to unsatisfactory results, because there had occasionally been a disinclination on the part of the Commission to take up a particular report which had not met with general approval after having been prepared without any guidance from it.

53. The questions put to the Commission by the Special Rapporteur were concrete and objectively expressed. With regard to question I, it seemed to him premature to try to define the scope of the subject. The subject of relations between States and inter-governmental organizations was a very broad one and the Commission would be well advised to select, from among the many matters which it embraced, a few that clearly pertained to that subject alone. It was not a question of fixing boundaries between the main subjects for codification, but of assigning priorities to questions clearly within the scope of the present subject. It was clear from the manner in which the Special Rapporteur had formulated question III that he would be perfectly satisfied with an indication from the Commission regarding the aspect of the subject which deserved priority.

54. With regard to question II, it was too early for the Commission to decide how it would extend its work on treaties, State succession and State responsibility to cover international organizations. It would be appropriate to defer to a more advanced stage in the codification of those subjects the decision on whether the Commission should start from the specific subject-matter of treaties, succession and responsibility or from the subject of rights and obligations, i.e. the international organizations as such.

55. With regard to question II, he thought that priority should be given to diplomatic law in its application to relations between States and international organizations. The Commission would have to proceed with great caution, lest any of its work might in any way affect the status of the existing international conventions governing the United Nations and its specialized agencies, as the Secretary of the Commission had pointed out the previous year.[8]

56. The two topics mentioned in question IV reflected two aspects of one and the same problem. He did not believe that priority should be given to either of them at that stage: the Special Rapporteur should deal with them simultaneously, and decide later whether he would give priority to one of them.

57. With regard to question V, he did not think the Commission should deal with regional organizations, particularly at the present stage. Some regional organizations had their own codification organs, and it was undesirable that the Commission should invade the

[8] *Yearbook of the International Law Commission, 1963*, Vol. I, p. 303, paras. 39 *et seq.*

field assigned to them. Accordingly, the Commission should confine its attention to universal organizations and, at least in the initial stages, concentrate on organizations belonging to the United Nations family.

58. Mr. AMADO said he was convinced that the Commission would have the greatest difficulty in codifying international law on a subject on which State practice was very recent and rules had not yet emerged. How could it develop law which was not yet codifiable? Although he was reluctant to adopt a negative attitude, he could not see what answers the Commission could give to the Special Rapporteur's questions. As Mr. Tabibi had said, it was probably in the sphere of diplomatic privileges and immunities that most custom and usages were to be found, but the Commission could not exclude the other aspects of the question, because it did not yet know what the results of the study would be. The Special Rapporteur himself was best qualified to answer the question he had asked. The Commission should leave it to him to clear the ground and to suggest, on completion of his study, what general rules could be codified and put into the form of articles.

59. Mr. ROSENNE said he wished to acknowledge the service rendered by the Special Rapporteur in submitting concrete questions to the Commission.

60. With regard to question I, he found it difficult to see the relevance of General Assembly resolution 1505 (XV). The Commission had discussed that resolution at its thirteenth session when planning its future work. It had experienced some difficulty, largely because the resolution was not addressed to the Commission, but stated what the General Assembly proposed to do itself. The Assembly had continued to act in accordance with that resolution. He did not wish to imply, however, that the Commission should entirely exclude from its discussions the thought underlying the resolution or, in particular, the eighth paragraph of the preamble. In fact, a "broader approach" had been quite characteristic of the Commission's work even before that resolution had been adopted; and its approach had remained broad thereafter, as was clearly shown by the way it had dealt with the law of treaties.

61. Resolution 1289 (XIII) had originated in a paragraph in the Commission's own report on its tenth session,[9] which had dealt mainly with diplomatic intercourse and immunities; the resolution should therefore be interpreted primarily in that context. At its fifteenth session, the Commission had included in its report a recommendation for a winter session in January 1965, "in order to continue the consideration of the two topics which complete the codification of diplomatic law".[10] The two topics in question were special missions and relations between States and inter-governmental organizations. Hence, as he understood that decision taken at the fifteenth session, they were regarded as parallel topics, at least for the time being.

62. The implications of question II escaped him. The Commission had consistently abstained from taking any position regarding the application to international organizations of the various rules of substantive law which it had codified. It had made a reservation on that point when it had discussed, in the context of the law of the sea, the right of vessels to fly the flag of an international organization. The same position had been taken by the 1958 Conference on the Law of the Sea, which had included the following article in the Convention on the High Seas: [11]

"*Article 7*

"The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization."

63. Thus no decision of principle had been taken on the question whether the application of the rules of the law of the sea to inter-governmental organizations constituted an independent subject or not.

64. The position was similar with regard to the law of treaties, to which, in spite of the many difficulties that had arisen, the Commission had consistently adopted the same approach. The same attitude had been adopted by the Sub-Committee on State Responsibility and the Sub-Committee on the Succession of States and Governments. The Commission itself had endorsed the decisions of those two Sub-Committees that their two topics should be treated exclusively with reference to States, leaving aside other subjects of international law such as international organizations.[12]

65. He did not believe the Commission was called upon to inquire whether relations between States and inter-governmental organizations constituted an independent subject or a collateral one related to other subjects. The Special Rapporteur should set out the questions which were exclusive to his subjects, leaving aside those that impinged on other topics, which the Commission could take up at a later stage, when it would also decide on the subject within the scope of which they would fall to be considered.

66. The whole question of international organizations was an extremely delicate one; even the term "inter-governmental organization" was a generalization. Like Mr. Amado, he was far from convinced that the topic was ripe for codification. For example, even on the question of treaties entered into by international organizations — the branch of the law in which, in all probability, most experience had been gained — the opinions of learned authors such as Schneider, Kasmé, Zemanek and Socini [13] were divided; and, what was

[9] *Yearbook of the International Law Commission, 1958*, Vol. II, page 89, para. 52.

[10] *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9*, p. 38, para. 74.

[11] *United Nations Conference on the Law of the Sea, 1958, Official Records*, Vol. II, page 135.

[12] *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9*, p. 36, paras. 54 and 57.

[13] Schneider, J. W., *The Treaty-making Power of International Organizations*, Geneva, 1959; Kasmé, B., *La capacité de l'Organisation des Nations Unies de conclure des Traités*, Paris, 1960; Zemanek, K., *Das Vertragsrecht der internationalen Organisationen*, Vienna, 1957; Socini, R., *Gli accordi internazionali delle Organizzazioni inter-governative*, Padua, 1962.

much more serious, the literature showed great divergencies in State practice and in the practice of organizations.

67. His reply to question I was, in principle, in the negative. With regard to question II, he thought that the Commission was not called upon to adopt either of the two approaches suggested. He would answer question III in the affirmative, subject to the general reservation he had made at the previous session that the Commission should not go into matters already dealt with in the Conventions on the Privileges and Immunities of the United Nations and the specialized agencies and in the Headquarters Agreements, unless the General Assembly gave an indication that it would welcome a re-examination of those matters in the light of the decisions reached at the Vienna Conference on Diplomatic Intercourse and Immunities.[14] The study would, therefore, probably be confined to the remaining aspects of privileges and immunities. With regard to question IV, he agreed with Mr. Jiménez de Aréchaga, but hoped that the Special Rapporteur would choose to deal first with the part of the subject relating to the status of permanent missions. On question V, he was also in agreement with the reply given by Mr. Jiménez de Aréchaga.

68. Mr. YASSEEN said he was glad that the Special Rapporteur, by asking some specific questions, had given the Commission an opportunity of expressing its opinion on the line to be followed in the study.

69. With regard to the first two questions on the list, it was quite proper to refer to resolution 1289 (XIII), by which the General Assembly had invited the Commission to give further consideration to the question of relations between States and inter-governmental international organizations ; but it was doubtful whether reference should also be made to resolution 1505 (XV), which had been intended for the Assembly's own use, and according to which the Assembly itself was to reconsider the programme of work on the codification and progressive development of international law. Technically, there was no direct link between the two resolutions. However, the Commission might, of course, be guided by the trend of thought in the General Assembly.

70. It was clear from resolution 1289 (XIII) that the Commission should consider the subject generally, and not confine itself to any particular aspect. The reason why the General Assembly had referred in that resolution to the study of diplomatic intercourse and immunities, consular intercourse and immunities, and *ad hoc* diplomacy, was that it wished the Commission to take advantage of the studies already made and of the Assembly debates on those subjects. In his opinion, the study should cover all aspects of relations between States inter-governmental organizations, which should be treated as an independent subject.

71. With regard to questions III and IV, he thought it was too early to establish an order of priority. The study could begin with diplomatic law in its application to relations between States and international organizations, but the Special Rapporteur should be given ample latitude to deal with other matters in whatever order he thought best.

72. As to question V, if it was doubtful whether there were any general rules on the subject, or whether there were many such rules, then *a fortiori* it must be doubtful whether there were any rules concerning regional organizations. Those organizations were, by their very nature, special organizations ; hence, it would be better to leave it to their member States to draw up different rules to meet their special needs. Thus it was doubtful whether codification of the international law concerning regional organizations was possible or desirable.

73. Mr. TUNKIN said that the Special Rapporteur had presented the problems involved in a manner that would facilitate discussion of the subject. The central question to be answered by the Commission was that of the scope of the subject for immediate study. It had many aspects, some of which came within the scope of the law of treaties, State responsibility or State succession. The Special Rapporteur should undertake the immediate study of what might be termed the " diplomatic " relations between States and inter-governmental organizations.

74. In question IV, the Special Rapporteur touched on the various aspects of the application of diplomatic law to relations between States and international organizations : the status of international organizations and their agents ; the status of permanent missions ; the status of delegations to organs of international organizations and the status of delegations to conferences convened by international organizations. On the last question, he should co-operate with the Special Rapporteur on special missions in order to avoid duplication of work.

75. At the present stage of the study, the field referred to in question IV seemed to be the only one in which the Commission could make a useful contribution to the codification and development of international law. It also appeared to be the intention of General Assembly resolution 1289 (XIII) that that should be the subject of immediate study. In that connexion, he agreed with the speakers who had pointed out that, in approaching that difficult and extensive subject, the Commission would be faced with the existing conventions, in particular, the Convention on the Privileges and Immunities of the United Nations. The Commission would have to consider whether it wished to make any recommendation for replacing the texts of those conventions by new texts.

76. Referring to question I, he said that there had certainly been no intention to confine the Commission to any specific aspect of the subject. With regard to question II, he urged that the Special Rapporteur should direct his attention to diplomatic law and leave the other aspects aside. Question III would then present no difficulty : the problem of priority would not arise. With regard to question IV, he thought that the order of priority between the two parts of the subject should be decided by the Special Rapporteur himself, though

[14] *Yearbook of the International Law Commission, 1963*, Vol. I, pp. 300-301, paras. 6-7.

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 orentation 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.[1] 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

[1] *Yearbook of the International Law Commission, 1963*, Vol. I, summary record of the 718th meeting, paras. 8-12.