

Document:-  
**A/CN.4/SR.2024**

**Summary record of the 2024th meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**1987, vol. I**

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39. The Commission had considered the topic at its thirty-seventh session, in 1985.<sup>13</sup> Due to lack of time, however, the discussion had unfortunately been brief and the Commission had been unable to take any decision on the draft article which he had submitted.<sup>14</sup> It had deemed it advisable to resume its consideration of the draft article at its thirty-eighth session so that more members could express their views and the new members could become acquainted with the topic. It had merely requested him to consider the possibility of submitting concrete suggestions on the scope of the draft articles to be prepared, as well as a schematic outline of the subject-matter to be covered by the articles.

40. He had therefore prepared his third report (A/CN.4/401) for the thirty-eighth session of the Commission, which had been unable to consider it, again due to lack of time. He noted that the third report took account of the replies to the various questionnaires (1965, 1978 and 1984) sent by the Legal Counsel of the United Nations to the United Nations specialized agencies, to IAEA and to regional organizations. Those replies were contained in the studies prepared by the Secretariat in 1967<sup>15</sup> and 1985 (A/CN.4/L.383 and Add.1-3) and in the collection issued in 1987 (ST/LEG/17).

41. He suggested that the discussion at the present session should focus on the third report (A/CN.4/401) and, in particular, on the possible scope of the draft articles (*ibid.*, para. 31) and the schematic outline for the drafting of the articles (*ibid.*, para. 34). It would be easier for the Commission to consider the second report in conjunction with the fourth report, which he would prepare for the next session. It would then be able to take a decision after having heard the comments of those of its members who had been elected since the topic had been included on the agenda.

42. Obviously he attached particular importance to the comments and suggestions which members of the Commission would make on the two main points dealt with in his third report, namely the scope of the privileges and immunities of organizations and the various persons in their service, and the schematic outline for the drafting of the articles. The Commission would thus be able to decide how its work should proceed and he would have a much clearer idea of its views concerning the mandate entrusted to it by the General Assembly.

43. The CHAIRMAN noted that the Special Rapporteur had suggested that the Commission should focus its discussion on his third report and, in particular, on the scope of the draft articles and the schematic outline he had proposed (A/CN.4/401, paras. 31 and 34).

44. Mr. TOMUSCHAT said that it would be helpful if the Commission could have a list of the States which

had ratified the 1975 Vienna Convention on the Representation of States.

45. The CHAIRMAN said that the Secretariat would prepare that list. He suggested that the meeting should rise to enable the Drafting Committee to meet.

*The meeting rose at 12.25 p.m.*

## 2024th MEETING

*Wednesday, 1 July 1987, at 10 a.m.*

*Chairman:* Mr. Stephen C. McCAFFREY

*Present:* Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucouinas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

**Relations between States and international organizations (second part of the topic) (continued) (A/CN.4/391 and Add.1,<sup>1</sup> A/CN.4/401,<sup>2</sup> A/CN.4/L.383 and Add.1-3,<sup>3</sup> ST/LEG/17)**

[Agenda item 8]

THIRD REPORT OF THE SPECIAL RAPPORTEUR  
(continued)

1. Mr. REUTER observed that the statements by members of the Commission were generally marked by their experience, whether at the Third United Nations Conference on the Law of the Sea, for example, or, as in the present case and in his own case, at the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, held in Vienna in 1986, which had completed a series of international conferences on treaties, but had also been concerned with international organizations. At the present stage, the Commission could not take up a subject which touched closely, or even remotely, on international organizations without taking account of the reactions evoked by the problems of international organizations at the 1986 Vienna Conference.

2. He wished to make two comments on the question that was of the greatest interest to the Special Rapporteur, namely the scope of the draft. First, it should be decided whether the draft would apply to all international organizations or only to some of them. The view of the Special Rapporteur and apparently of the Com-

<sup>13</sup> See *Yearbook . . . 1985*, vol. I, pp. 282 *et seq.*, 1925th to 1927th and 1929th meetings.

<sup>14</sup> See *Yearbook . . . 1985*, vol. II (Part Two), p. 67, footnote 252.

<sup>15</sup> *Yearbook . . . 1967*, vol. II, p. 154, document A/CN.4/L.118 and Add.1 and 2.

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

<sup>2</sup> Reproduced in *Yearbook . . . 1986*, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook . . . 1985*, vol. II (Part One)/Add.1.

mission was that the draft should be conceived and studied from the outset as applying to all international organizations. But it was possible that, on completion of its work, the Commission would be led to change its opinion, since the subject had political and technical aspects that would appear only when further progress had been made. He therefore considered that for the time being the Commission should not go back on the cautious position it had adopted.

3. Secondly, with regard to the matters to be dealt with which were shown in a tentative outline, he thought it would be reasonable, at the first stage, to opt for as broad an outline as possible. The outline proposed by the Special Rapporteur did not call for criticism or comments on his part, for the Commission was bound to encounter a fundamental problem of a political and technical nature, inasmuch as it was not breaking new ground, since there were already a certain number of special treaties on the subject. There was therefore every reason to expect that States in whose territory the headquarters of an international organization was located would argue that it had been difficult to solve the problems raised by its establishment and that the solutions adopted should not be called in question again. Furthermore, it was obvious that the rules proposed by the Commission would be compared with those already in force, and that they should be at least equally generous to international organizations and international officials. Lastly, it was a minority of States that had received international organizations in their territory; hence there would be many political problems to solve. However, he thought that the Commission need not concern itself with those delicate political questions as things stood at present.

4. It was in dealing with questions which were rarely settled in headquarters agreements or were even ignored by agreements and practice, or which required more detailed regulation, that the Commission would be doing useful work. For example, not all headquarters agreements settled the question of the archives of international organizations. That question, which seemed simple at first sight, appeared in a new light because of technical progress. Citing the case of an organization long regarded as a non-governmental organization by the Economic and Social Council before being recognized as an international organization—the International Criminal Police Organization (INTERPOL)—he noted that that organization had very incriminating files on wanted individuals all over the world. As all countries had enacted legislation for the protection of human rights, especially in view of the progress of information processing, which made it possible to store the most varied information on the public or private life of all mankind in a small space, it might be asked whether the privileges of international organizations covered the information they had stored in computerized form. Did it constitute archives or not? That question had arisen for INTERPOL the day it had acquired a computer. United States courts had decided, on first instance, that the status of an international organization could not be accorded to INTERPOL, so that it could not invoke privileges or immunities. Consequently, if it transmitted information about a person who was subsequently

found to be innocent, proceedings could be taken against it. He therefore welcomed the broad outline proposed by the Special Rapporteur, even though the Commission might subsequently decide not to pursue its work in some particular direction.

5. Referring to the definition of an international organization, on which his views derived from the conclusions he had drawn at the 1986 Vienna Conference, he pointed out that in all its work the Commission had kept to the definition given in the 1969 Vienna Convention on the Law of Treaties, article 2, paragraph 1 (*i*), of which stated that an “international organization” meant an intergovernmental organization. Although, during the preparatory work for the 1986 Vienna Conference, many Governments had asked the Commission to make that definition more precise, it had declined, taking the position that either an intergovernmental organization did not have the capacity to conclude treaties, in which case the convention would not apply to it, or that it did have such capacity and the convention would apply to it. The question of definition had not arisen directly in 1975 regarding the Vienna Convention on the Representation of States, because that Convention applied only to certain organizations. It had nevertheless arisen indirectly in so far as the possibility of applying the same rules to other intergovernmental organizations had been discussed. But in the present case there was a question which the Commission could not answer in the same way as it had done previously. That question was whether the Commission should provide for a minimum of privileges to be enjoyed by international organizations and determine the kind of international organizations that would enjoy them. For there were international organizations, designated by that name, which did not have the capacity to conclude treaties. In the same context, he wondered whether an international conference did not have some personality. Did the president of a conference, with the authorization of its officers, not perform certain international acts on behalf of the conference? Did an international conference, as such, not perform embryonic activities? The Commission might thus be led to pronounce rather more precisely on what an international organization was.

6. He had some reservations about the Special Rapporteur’s proposal that international organizations should be recognized as having international personality. What was the content of international personality? It implied at least the faculty to conclude international agreements and probably also a certain international responsibility. That being so, if the Commission intended to apply the term “international organization” to entities which were not entitled to conclude treaties, it could hardly speak of international personality. In his reports on State responsibility, Mr. Ago had referred to the question whether international responsibility of international organizations existed as a principle. But there had never been any question of proposing the responsibility of international organizations as a possible subject of study, because there was no general concept of an international organization valid for all of them. International organizations were proliferating, because they represented the future of mankind, but

States wished to define them independently of one another, giving each one its own particular status.

7. He had no reservations about the capacity of international organizations under internal law, provided that such capacity was determined by their functions. The capacity of international organizations should be adapted to each one and it was not possible to lay down general rules. In that respect, the 1986 Vienna Conference had adopted a rather more precise definition of the notion of "rules of the organization" than that drafted by the Commission, replacing the words "relevant decisions and resolutions" by "decisions and resolutions adopted in accordance with [the constituent instruments]".

8. He urged the Commission to be cautious, in order not to give certain Governments the impression that it was trying to complicate things. Moreover, many international organizations encountered practical problems in the exercise of certain internal activities, such as those relating to international officials' co-operative stores (the commissary in Vienna, and SAFI in Geneva). It was those questions, among others, that the Commission should study in order to do useful work.

9. Mr. PAWLAK said that he spoke with some reluctance on a topic that had been under consideration since 1976, as he did not wish to contradict opinions already accepted by the Commission. At the same time, he had some doubts and reservations regarding the scope of the draft articles as shown in the proposed outline.

10. His first remark would be of a general character. Like the majority who had spoken on it in the Sixth Committee of the General Assembly, he considered it desirable to codify the present topic, which was an important, complex and useful one. As the Special Rapporteur pointed out in his third report (A/CN.4/401, para. 37), the Commission, in undertaking the work of developing and codifying the topic as a branch of diplomatic law, intended to complete the *corpus juris* of diplomatic law elaborated on the basis of its work and embodied in the four codification conventions mentioned in the report (*ibid.*), as well as in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The new instrument in preparation would usefully supplement the 1946 Convention on the Privileges and Immunities of the United Nations.

11. In view of the clear mandate it had received from the General Assembly, the Commission should speed up its work on the topic. Since States had approved its various conclusions and recommendations, the Commission had their support in regard to both the scope of the draft articles to be prepared on the topic and the schematic outline of the subject-matter to be covered by the various draft articles.

12. The Special Rapporteur's new outline of the subject-matter to be covered by the draft articles (*ibid.*, para. 34) was exhaustive and covered the main aspects of the topic. It was so general, however, that it was difficult to comment on it or suggest improvements. Moreover, it gave undue prominence to the question of the privileges and immunities of international organiza-

tions and their officials, which was dealt with in one way or another in 6 of the 11 sections of the outline. Important though they were, privileges and immunities were subsidiary in relation to the functions and purposes of international organizations, which were created, operated and controlled by States.

13. However broad their privileges and immunities might be, the fact remained that international organizations were subjects of international law only to a limited extent. Their activities could not extend beyond the limits set by their constituent instruments. Even a powerful organization like the United Nations was not a full subject of international law. International organizations could not act like States, which had territory and a population.

14. That remark led to the question of the meaning of the term "international organization", which the Commission had to define. It would perhaps arrive at a broader definition than that contained in the 1969 Vienna Convention on the Law of Treaties. For his part, he was inclined to agree with the Special Rapporteur's statement in his second report (A/CN.4/391 and Add.1, para. 15) that the Commission should not "try to work out and propose a precise definition of what an international organization is". He himself could accept as a working hypothesis the definition of the term "international organization" as meaning an intergovernmental or inter-State organization.

15. The Commission should confine its study to intergovernmental organizations of a universal character. From his own experience he could say that most of the important regional organizations had already established their *modus vivendi* and *modus operandi* in their relations with States. In most cases, similar arrangements existed between States and international organizations of a universal character.

16. Referring to the scope of the topic as presented in the tentative outline in the third report (A/CN.4/401, para. 31), he stressed that international organizations set up by States to engage in co-operation in a particular field had not only rights, but also obligations *vis-à-vis* States. They had to conform to their constituent instruments in their relations with States and refrain from activities for which they had no mandate. The status and role of international officials should also be defined in accordance with the constituent instrument and mandate of the organization to which they belonged; but, as was well known, that was not always the case.

17. While he was strongly in favour of expanding the functions and duties of international organizations, he could not accept the view that, with the extension of its functions, an international organization could become independent of the States that had created it. He maintained that such organizations could act only within the framework agreed on by member States and could in no way set themselves above States.

18. All those factors should be taken into consideration when formulating concrete provisions on definitions and the scope of the draft articles, and provisions on the bases of the privileges and immunities of international organizations, which should be followed by pro-

visions setting out the specific privileges of international organizations and their officials.

19. In conclusion, he thanked the Special Rapporteur for his third report and the Secretariat for its useful study of the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities (A/CN.4/L.383 and Add.1-3), as well as for the equally useful document containing the replies of regional organizations to a questionnaire concerning their status, privileges and immunities (ST/LEG/17).

20. Mr. BENNOUNA said that a reading of the Special Rapporteur's second and third reports led him to raise a number of questions. Quoting a passage from the third report (A/CN.4/401, para. 36), according to which "this body of norms consists of an elaborate and varied network of treaty law, which requires harmonization, and a wealth of practice, which needs to be consolidated", he asked, first, whether the topic under study was one for codification alone. Was progressive development excluded? Secondly, why should the provisions of treaty law require harmonization? He would have liked the Special Rapporteur to have developed that statement and to have gone more deeply into it from the point of view of legal policy. In other words, he would like to know what were the advantages and disadvantages of such harmonization for the functioning of international organizations. Thirdly, what would be the place and the role of host countries in the process of harmonization? Should a special place not be reserved for their participation? Fourthly, did the process of codification contemplated not automatically imply the participation of international organizations and, if so, how did the Special Rapporteur envisage the role of international organizations in that process? That was a difficult question, connected with the question as to which organizations were involved.

21. The tentative outline called for another series of comments. First, the question of the relationship between the future general convention and existing special agreements was not made clear. Secondly, a distinction was made in the outline between the privileges and immunities of the organization and the privileges and immunities of its officials. Did they not affect each other? How could international organizations intervene to protect their officials and ensure that their privileges and immunities were respected? That was a classic question, because it was the central point of the advisory opinion of the ICJ of 11 April 1949 on *Reparation for Injuries Suffered in the Service of the United Nations*.<sup>4</sup> But there were also more recent cases, of intense current interest, concerning international officials who, being detained in their countries, were prevented from submitting their resignation to the Secretary-General, and on whose behalf the United Nations was seeking to intervene to find a solution taking account of the interests of the Member State, of the official concerned and of the Organization itself. Those were cases of fundamental importance for the future operation of international organizations, that was to say for the security of international officials in their work. If, when on mission,

such officials could be detained and prevented from performing their duties, they would certainly not be in a position to fulfil their functions to the best of their ability.

22. Thirdly, did what had been called the right of functional protection—protection exercised by international organizations—come within the scope of the topic or not? Fourthly, in his second report (A/CN.4/391 and Add.1), the Special Rapporteur had made concrete proposals concerning the legal personality and capacity of international organizations. A place should also have been found for the principle of specialization of international organizations, which should be the subject of an article. With regard to personality, he pointed out that, in the above-mentioned advisory opinion, the ICJ had held that the United Nations possessed objective legal personality, which meant that it could initiate legal proceedings not only against its own Members, but also against non-member States. Did the Special Rapporteur share that opinion? Besides "normal" or "relative" legal personality, effective only in regard to members and requiring recognition by non-members, should a place be found for "objective" legal personality, effective in regard not only to members, but also to non-members, being as it were absolute? In that connection he referred to paragraph 37 of the second report, in which the Special Rapporteur had confined himself, for the time being, to relative personality.

23. Mr. YANKOV thanked the Special Rapporteur for his clear and concise report, which raised a number of very important questions. He also thanked the Secretariat for its comprehensive study of the practice of international organizations (A/CN.4/L.383 and Add.1-3), which showed that each organization had its own rules. For the purposes of the present study, that was an important point to bear in mind, since it was impossible to conceive of a legal régime that would apply equally to all international organizations and embody uniform rules.

24. In his second report (A/CN.4/391 and Add.1, para. 15), the Special Rapporteur had said that the object should be to formulate "general rules governing the legal capacity, privileges and immunities of international organizations". Having made a thorough study of existing international instruments and practice, however, he himself was inclined to favour a more modest approach whereby gaps and unsolved problems would be identified and rules corresponding to the new requirements would be proposed. The Commission should not, of course, lose sight of the general framework, but it should adopt a pragmatic approach, concentrating less on doctrinal and general issues and more on the codification method of harmonization.

25. In his third report (A/CN.4/401, para. 21), the Special Rapporteur referred to certain very important questions which the Commission would have to answer. The first concerned the place of custom in the law of international immunities as applied to international organizations. In his view, it would be better not to concentrate on customary law, since enough legal instruments existed already. In dealing with the second

<sup>4</sup> *I.C.J. Reports 1949*, p. 174.

question—that of the differences between inter-State diplomatic relations and relations between States and international organizations—it was important to bear in mind the similarities as well as the differences. Common aspects of those two spheres of relations included, for example, the regulation of privileges and immunities, exemptions from national laws and regulations, and the special legal protection and favourable treatment given to international organizations and their staff. As to the differences, in traditional diplomacy the relationship between the sending State and the receiving State was based on sovereign equality and the important principle of reciprocity, which could also serve as a basic mechanism for legal protection. In that connection Mr. Bennouna had asked how an international organization could secure legal protection against a host State which had infringed the status of the organization. The principle of sovereign equality had no place in relations between a State and an international organization, and a balance would clearly have to be found in the triangular relationship sometimes established between the sending State, the host State and an international organization.

26. The Special Rapporteur raised two very important questions in his report (*ibid.*) regarding the scope of privileges and immunities and the uniformity or adaptation of international immunities. Those questions were, first, what kind of international organizations should be covered, in other words what should be the scope *ratione personae* of the draft; and secondly, what kind of privileges, immunities and facilities should be accorded, in other words what should be the scope *ratione materiae* of the draft? It was clear from previous debates in the Commission that the general view was that, for the time being, the Commission should not try to differentiate between different kinds of organization, although that could perhaps be done at a later stage, when it was clear whether or not only organizations of a universal character within the United Nations system should be covered. His own view was that the Commission should not be over-ambitious and should confine itself to organizations of a universal character, because the longer the list of organizations, the more difficult would be the situations to be covered. In any event, special organizations, for example financial institutions, were regulated under internal law and by their own rules rather than under general international law.

27. Where privileges, immunities and facilities were concerned, functional necessity should be the guiding principle. Generally speaking, he could accept the schematic outline proposed by the Special Rapporteur (*ibid.*, para. 34). At the present stage, the outline should not be too detailed, but should be sufficiently precise to show the general framework of the topic and the main issues. It should, however, include a specific reference to waiver of immunity from legal process by an international organization or its staff. He took it that resident representatives and observers sent by international organizations to States or to other international organizations would be covered, as well as officials at headquarters: that should be made clear. A separate heading should perhaps be included for the duty of an international organization and its officials to respect the laws and regulations of the host State. A provision along the lines of article 41 of the 1961 Vienna Conven-

tion on Diplomatic Relations, article 55 of the 1963 Vienna Convention on Consular Relations or article 77 of the 1975 Vienna Convention on the Representation of States might be suitable. The draft should also include a general provision on the obligations of the host State regarding the legal protection and normal functioning of the international organization and its officials. Lastly, in view of the multiplicity of treaties and agreements already concluded, it was particularly important to clarify the relationship between the draft articles and international conventions in force: that, too, should be done in the draft.

*The meeting rose at 11.35 a.m.*

## 2025th MEETING

*Thursday, 2 July 1987, at 10 a.m.*

*Chairman:* Mr. Stephen C. McCAFFREY

*later:* Mr. Riyadh Mahmoud Sami AL-QAYSI

*Present:* Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

**Relations between States and international organizations (second part of the topic) (continued) (A/CN.4/391 and Add.1,<sup>1</sup> A/CN.4/401,<sup>2</sup> A/CN.4/L.383 and Add.1-3,<sup>3</sup> ST/LEG/17)**

[Agenda item 8]

THIRD REPORT OF THE SPECIAL RAPPORTEUR  
(continued)

1. Mr. TOMUSCHAT said that, at the Commission's thirty-fifth session, in 1983, he had been among those who had asked the Special Rapporteur to provide more information on the overall structure of the draft articles he intended to submit. He therefore welcomed the helpful schematic outline of the subject-matter contained in the Special Rapporteur's third report (A/CN.4/401, para. 34). In addition, the existing conventions on the privileges and immunities of the United Nations and the specialized agencies provided useful guidance for the Special Rapporteur, who could also draw on the valuable materials assembled in the Secretariat study (A/CN.4/L.383 and Add.1-3) and in the collection of replies to the questionnaire sent to regional organizations (ST/LEG/17).

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

<sup>2</sup> Reproduced in *Yearbook* . . . 1986, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook* . . . 1985, vol. II (Part One)/Add.1.