Document:-

**A/CN.4/SR.2025**

**Summary record of the 2025th 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**

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 Convention 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.*

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## 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. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

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**Relations between States and international organizations (second part of the topic) (*continued*) (A/CN.4/391 and Add.1,[1] A/CN.4/401,[2] A/CN.4/L.383 and Add.1-3,[3] 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).

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[1] Reproduced in *Yearbook . . . 1985*, vol. II (Part One).

[2] Reproduced in *Yearbook . . . 1986*, vol. II (Part One).

[3] Reproduced in *Yearbook . . . 1985*, vol. II (Part One)/Add.1.

2. At the 1983 session, the question of determining which international organizations would be covered by the topic had been left open. His own preference would be to deal in the first instance with organizations of a universal character, following the example of the 1975 Vienna Convention on the Representation of States. One argument in favour of that approach was the frequently ephemeral character of regional organizations. The situation of universal organizations was far less uncertain: despite their financial difficulties, none of the specialized agencies had entered the twilight zone which surrounded a considerable number of regional institutions.

3. Moreover, the present topic resembled more the 1975 Vienna Convention, which was confined to international organizations of a universal character, than the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, which constituted a set of rules applicable to treaties concluded by any international organization. Those rules were based on the premise that there had to be full equality between the two parties to a treaty; hence the substantive status of the organizations concerned was not at stake. The position was totally different with regard to the present topic, in which the status of international organizations was the very subject-matter of the work. In the present instance, the Commission would have to face up to the perennial tension between, in particular, the interests of host States on the one hand, and those of international organizations on the other.

4. Another important consideration was that any attempt by the Commission to go beyond the United Nations family would give the impression of interference by the United Nations with regional systems. Every region had its own legal bodies and the legal issues relating to regional organizations concerned exclusively the relationship between the host State and the organization itself. Those were not matters of universal international law, and they should be left to the free choice of the States concerned.

5. Furthermore, it would be much easier to formulate rules confined to organizations of a universal character belonging to the United Nations family, for they were very similar in many respects, if only because of the large number of participating States and the presence of States from different political camps. The great disparity between regional organizations would, however, make it extremely difficult to establish general rules applicable to all of them. For example, an organization established by only two States would be far less detached from the internal legal order of those two States than the legal system of the United Nations was from the domestic rules of its various Member States. Moreover, even the actual number of regional international organizations was not known. It was significant in that connection to recall the difficulties that had arisen in endeavouring to draw up a list of international organizations to be invited to the 1986 Vienna Conference. It was equally significant that the questionnaire of 5 January 1984 had elicited replies from only 18 regional organizations, that seven others had confined themselves to submitting materials in writing and that many had not replied at all (see ST/LEG/17). Clearly, if the Commission were to extend the scope of the draft articles to all international organizations, it would enter a jungle in which it could easily lose its way.

6. Mr. Yankov (2024th meeting) had advised the Commission not to engage in an academic exercise but to try to identify gaps in existing instruments. Actually, the two existing conventions dealing with the privileges and immunities of the United Nations and of the specialized agencies, respectively, had been overtaken by the pace of events, at least in some areas. They had been drafted in 1946 and 1947 and their authors could not have imagined the breadth of the issues that would arise 40 years later. Precisely for that reason, it had been found necessary to frame the 1975 Vienna Convention to govern the status of delegations to international organizations, and similar reasons could well justify the Commission's present undertaking. It was necessary, however, to state the reasons in support of that course, which could be done on the basis of the excellent materials assembled by the Secretariat.

7. Two examples would illustrate his argument. The first related to the status of the officials of an international organization. Under both of the relevant conventions, they could not be denied the right to enter the host State and were not subject to immigration restrictions. The need for that rule was obvious, for otherwise the host State could paralyse the work of the organization established in its territory. International officials also had the right to leave the host country. They did not, however, appear to enjoy the right to travel freely within the host country. Of course, there might not be any functional necessity for international civil servants to travel in the territory of the host State, but it would appear to be a human necessity to allow them to leave the headquarters from time to time. Without such authorization, the recruitment of officials would become difficult, thereby hampering the proper functioning of the organization itself.

8. The second example related to the problem of jurisdictional immunities. The two conventions in question specified that the United Nations and the specialized agencies enjoyed the right to institute legal proceedings and, as far as the passive aspect was concerned, provided for immunity from every form of legal process except in the event of an express waiver. The two instruments were thus based on the theory, current at the time they had been drafted, of absolute immunity applied in inter-State relations. Nowadays, that question would have to be carefully re-examined, all the more so since the Commission itself had opted for the theory of restricted immunity in its consideration of the topic of the jurisdictional immunities of States. Thus it would be difficult to adhere to the traditional pattern of absolute immunity for organizations when even States were required to yield in some measure to the territorial sovereignty of the State of the forum. In that regard, it was a well-known fact that the collapse of the International Tin Council had brought to light an apparent paradox, namely that States could in some instances be obliged to defend themselves in private suits, whereas their offspring—international organizations—would seem to be protected by immunity.

9. Those two examples showed that the process of reviewing, and possibly amending, the existing rules could not lead simply to a strengthening of the privileges and immunities enjoyed by international organizations. Such an approach would be politically unwise. There was much resentment in some States against international organizations, partly justified perhaps. If, on the other other hand, the Commission undertook a careful scrutiny of the subject, article by article, the prospects for a future convention would be enhanced.

10. Another considerable advantage in confining the work to the United Nations and its specialized agencies was that the Commission would be relieved of the need to agree on a definition of international organizations, and that would enable it to avoid engaging in doctrinal disputes.

11. The question remained as to how the new instrument and the two existing conventions should be co-ordinated. If the new instrument were to take the form of a treaty amending the two existing conventions, the situation would be relatively easy, but only relatively, for many difficulties would none the less remain. In particular, as far as matters of status were concerned, there would always have to be one single solution, and not two, depending on whether the State concerned would be a party solely to the old conventions or to the new convention. That matter, however, could be left to the diplomatic conference, if the draft ever reached that stage.

12. Since the appointment of the present Special Rapporteur in 1979, the Commission had not made much progress on the present topic. That was not the fault of the Special Rapporteur, for the topic had had to give way to other more pressing subjects, particularly at the previous two sessions. He therefore urged the Commission to give greater attention to the topic at the next session, when it would have only five main topics on its agenda. The Special Rapporteur could submit a substantive report, which, together with the materials compiled by the Secretariat, should enable the Commission to establish the real needs of the international community in the matter. On that basis, it ought then to be easier to formulate draft articles bringing the existing conventions up to date.

*Mr. Al-Qaysi, Second Vice-Chairman, took the Chair.*

13. Mr. ARANGIO-RUIZ congratulated the Special Rapporteur on the calibre of his reports and said that he was particularly grateful for the clear and detailed schematic outline submitted in the third report (A/CN.4/401, para. 34). The remarks made by members at the previous meeting prompted him to revert to the question of the legal personality and capacity of international organizations. There were many good reasons, in his view, for avoiding any general provisions in that regard, and the proposition that all international organizations enjoyed legal personality was quite unacceptable. It was first necessary to distinguish between international personality and personality under municipal law.

14. In the case of personality under municipal law, it was quite clear that two or more States founding an organization could enter into any obligations they saw fit with regard to the status of that organization in their respective legal systems. Other States would have no voice in the matter, although third States might, if they so wished, join the member States in granting legal personality under their own municipal law to the entity in question, either independently of any request on the part of the member States by which the international organization had been set up, or pursuant to an international agreement by which they were required to do so.

15. International personality was another matter and one in which the role played by agreement was far less relevant. Distinguishing, as Mr. Bennouna (2024th meeting) had suggested, between objective and non-objective international personality was not enough. International legal personality could not be anything but objective. The member States of an international organization could, of course, always agree among themselves to act, severally or jointly, as though the body they had set up had legal personality in international law. But such an agreement could not *per se* bind any third States, who would continue to regard the organization as an organ common to the member States concerned until such time as they agreed to treat it as a separate entity. That kind of problem had arisen at the Conference on Security and Co-operation in Europe towards the end of its work on the Helsinki Final Act in 1975, at a time when Italy was occupying the presidency of the European Communities. Following very delicate negotiations, Aldo Moro had signed the Final Act both as Prime Minister of Italy and as President in office of the Council of the European Communities.

16. It was, and always had been, his firm conviction that the objective international personality of an international organization, and specifically of the United Nations, was not a matter for agreement but a question of general international law. The ICJ had been quite right, in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*,[4] to affirm that the United Nations enjoyed international personality and was thus entitled to obtain reparation for damage suffered by one of its officials. However, it had been wrong, in his humble submission, when it had said—or had seemed to say—that recognition of the legal personality of the United Nations derived automatically from the agreement of the founding States. In support of his contention, he would refer members to the statement he had made at the thirty-seventh session,[5] and also to a passage from a course he had given in 1972 at The Hague Academy of International Law.[6] As a person in international law, the United Nations of course had the capacity to conclude agreements and to claim and obtain reparation for damage suffered. At the present stage, however, he would not commit himself on the question whether it

[4] Advisory Opinion of 11 April 1949, *I.C.J. Reports 1949*, p. 174.

[5] *Yearbook . . . 1985*, vol. I, pp. 289 *et seq.*, 1926th meeting, paras. 8 *et seq.*

[6] *Collected Courses of The Hague Academy of International Law, 1972-III* (Leyden, Sijthoff, 1974), vol. 137, pp. 675-680.

could incur some form of international responsibility, as had been suggested.

17. It was therefore necessary to be very careful in deciding whether to include in the draft any general provisions concerning the international legal personality of international organizations. His remarks concerning the United Nations, for instance, could not be extended without qualification to all kinds of international organizations. Moreover, it had been suggested that legal personality could be granted for certain limited purposes to occasional diplomatic conferences. While that might be true of conferences of a universal or very general character, he would have strong doubts about extending such personality to a conference—or indeed to any organization—that was not universal in character. He did not see any general rule in international law comparable to the rule in the Italian Civil Code, and presumably in the civil codes of most countries, whereby two or more persons could set up a company endowed with legal personality without permission and merely by means of a legal transaction concluded among themselves.

18. The question whether or not an international organization was an international legal person therefore had to be considered in the light of the nature of each organization, the kind of activities it carried on and its membership. It would depend on conditions and factors that were not dissimilar from those which decided whether or not a political entity became an international person.

19. For all those reasons, he believed that the Commission should avoid any general statements concerning the legal personality or capacity of international organizations. In particular, with regard to capacity, much as he favoured the proper development of the functions and powers of international and supranational organizations, he had the impression that the ICJ, in the above-mentioned advisory opinion, had gone a little too far in regarding the constituent instrument, and the interpretation of that instrument, as the essential basis for determining the functions and powers of the organization. In his view, the Court had been unduly influenced in that case by the municipal corporate body model and had taken it for granted that everything that could be done in municipal law could also be done in general international law by creating artificial juridical entities.

20. Mr. MAHIOU said that it was the first time he had had an opportunity to speak on the present topic, firstly because he had occasionally been obliged to be absent, but chiefly because of the way in which the Commission had so far dealt with the question. The topic had been on the agenda for 10 years, yet the Commission was still discussing its scope and field of application. Admittedly the work had been intermittent: there had been a change of Special Rapporteur in 1979, the topic had not been considered at the 1980, 1981 and 1982 sessions, and only in 1983 had the Commission received a preliminary report, followed by a second report in 1985, and lastly a third report in 1986, the one now under consideration. Consequently, the second part of the topic had in fact been one of the Commission's concerns for only five years.

21. While it was not his intention at the present juncture to ponder on the Commission's methods of work, it did seem that two lessons could be drawn from such ups and downs. First, the Commission, without ever explicitly saying so, was following the practice of momentarily postponing the consideration of some topics, which thus became marginalized. Secondly, thought could well be given to ensuring some balance in the allocation of work between the various items on the agenda.

22. In any event, the Special Rapporteur had advised that the discussion should be confined to the two main points in his third report (A/CN.4/401): the scope of the draft articles (*ibid.*, para. 31) and the schematic outline of the subject-matter to be covered (*ibid.*, para. 34). Personally, he would be inclined to confine the scope of the draft to certain organizations. Unlike States, existing organizations were so varied that there was no single notion of an international organization, such a concept had never been clarified, and theorists even seemed to have relinquished the idea of formulating one. A decision must therefore be taken and, in his opinion, pre-eminence should go to international organizations of a universal character, regardless of the criteria for making such a choice.

23. To take the geographical criterion first, it could be seen that a universal international organization had the merit of preserving the unity and consistency of the topic. It was not that regional organizations were less interesting from the point of view of developing international law, but two arguments could be adduced for excluding them. First, the 1975 Vienna Convention on the Representation of States was a precedent that confirmed the need to classify the problems and choose the terrain in which it would be possible to make the most rapid headway. Secondly, the diversity of regional organizations was such that it was difficult to find any unity in them. The Secretariat had produced a very interesting document concerning them (ST/LEG/17), from which it was apparent that it would be pointless to look for a single status for both types of organization.

24. While the criterion of the purpose of international organizations was not perhaps always pertinent, it was not negligible. For example, could a political organization, like the United Nations, and a technical, or even a military organization, be treated in the same way? The disparity in objectives would have to be reflected, one way or another, in the régime the Commission was endeavouring to create. But it would not be an easy matter.

25. Again, in terms of purpose, some organizations engaged in co-operation, others in integration (particularly regional organizations, which, in that connection too, posed a singular problem), and yet other organizations settled disputes (the ICJ, international tribunals and courts of arbitration). The value of that criterion was therefore not obvious, but it should certainly be borne in mind.

26. As to the criterion of the nature of the activities of international organizations, some were equivalent to an international public service (the ICJ and the United Nations, for example), whereas others were closer to an industrial or commercial entity, when they were non-profit-making. Was a single status reconciling so many differences conceivable? Connected with that was a problem which had arisen in relation to the jurisdictional immunity of States: for States there were "acts of sovereignty", which lay beyond jurisdiction, and other activities, which did not. It was true that an examination of the nature of the activities of international organizations could well lead the Commission beyond the present topic, but the problem of the jurisdictional immunity of international organizations would have to be tackled one day.

27. For all those reasons, he urged that the Commission should confine itself for the time being to international organizations of a universal character, a course that would preserve the unity of the subject-matter at the stage now reached in the study of the topic. There would always be time to extend the work to encompass other types of organization.

28. In the schematic outline proposed by the Special Rapporteur for the drafting of the articles (A/CN.4/401, para. 34), three questions seemed more important than the others, namely "1. Definitions and scope", "4. Privileges and immunities of the international organization" and "5. Privileges and immunities of officials". The other parts of the outline were constructed around those three and in some sense supplemented them.

29. The Special Rapporteur also set out in his third report his thoughts on the major principles underlying the topic. Other members had already mentioned them, and he would refer only to the notion of legal personality and the notion of the internal law of the organization. No one wanted to start out afresh on defining legal personality, but a distinction should none the less be drawn in that regard between international law and the internal law of the organization. From the point of view of international law, the notion of personality seemed less problematical if it was confined to international organizations of a universal character. The problem with regional organizations was the position of third States, which were often greater in number than the member States and might be loath to grant privileges and immunities to bodies in which they did not participate. In that case the issue underlying the problem of legal personality was the actual definition of international organizations. No doubt some were unambiguous in character, such as the United Nations. But what was to be made of the many bodies constantly being created by scission and proliferation, by the establishment of agencies or branches, and by participation in joint enterprises? Indeed, an International Sea-Bed Enterprise had been established only recently. Clearly it would be necessary at some time or other to agree on a practical and concrete definition.

30. A similar comment could be made with regard to legal capacity, which would doubtless vary depending on whether States were more or less favourably inclined to the establishment of an international organization in their territory. Some States would probably go much further than the régime the Commission was to devise, whereas others would hold back.

31. The internal law of the organizations was certainly not a crucial matter, but was one that would inevitably arise when immunities had to be defined. For example, a contract concluded between an official and an international organization was normally outside the jurisdiction of the host State: it came under the internal law of the organization, which itself provided for remedies, although such a state of affairs was sometimes questioned. On the other hand, if a contract was concluded between the organization and a private individual who was not an official, the jurisdiction of the host State prevailed, unless otherwise specified in the headquarters agreement.

32. He offered those few comments for consideration by the Special Rapporteur, who had perhaps received too many recommendations for caution, for it was important to move ahead. On the basis of the quite comprehensive outline the Special Rapporteur had proposed, it should be possible for him to submit precise texts of draft articles at the Commission's next session.

33. Mr. SOLARI TUDELA, after congratulating the Special Rapporteur on his third report (A/CN.4/401), said that, following his advice, he would confine his remarks to the scope of the draft articles (*ibid.*, para. 31) and the proposed schematic outline (*ibid.*, para. 34). As to the scope of the régime the Commission was endeavouring to prepare, the question had already arisen as to whether its provisions should be extended to cover regional organizations as well as universal organizations. The work on the first part of the topic had already led to the conclusion of the 1975 Vienna Convention on the Representation of States, and it should be remembered that article 2, paragraph 2, thereof provided for possible relations between States and "other organizations". The fact was, however, that there were States in which some organizations enjoyed greater immunities and privileges than others, more often than not to the detriment of regional organizations, for universal organizations had greater negotiating power with the States in which their activities were conducted. Hence it would be right for the future convention to cover both types of international organization, universal and regional. In addition, Article 53 of the Charter of the United Nations specifically mentioned "regional agencies", and consequently there was no reason to exclude them.

34. The proposed schematic outline was by and large acceptable, although it was difficult to see where it could include the notion of the "right of legation" of international organizations, which had been mentioned in the second report (A/CN.4/391 and Add.1, para. 71). It was already common practice for international organizations to consult the host State on the appointment of representatives to the organization, a logical course inasmuch as a person deemed *persona non grata* by the host State might sometimes be appointed to an international organization. Furthermore, article 9 of the 1975 Vienna Convention entitled the sending State to appoint the members of its mission "freely", but sub-

ject to the restrictions applicable to cases in which a representative was not of the nationality of that State. That aspect of the discretionary power of the host State should be provided for in the draft articles.

35. The CHAIRMAN said that the meeting would rise to enable the Drafting Committee to meet.

*The meeting rose at 11.25 a.m.*

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## 2026th MEETING

*Friday, 3 July 1987, at 10 a.m.*

*Chairman*: Mr. Stephen C. McCAFFREY

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

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

[Agenda item 8]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. REUTER said that the statements made by other members had made it clear to him that the topic under consideration was still at the exploratory stage, since no one yet knew what treasures it held. By presenting the Commission with a detailed programme, which was more like a programme of research than a programme of practical performance, the Special Rapporteur appeared to share that point of view. The questions listed could not all be dealt with in depth, for that would take several years.

2. He had the impression that the Commission's agenda included several topics whose consideration would involve exploratory work designed to determine what the relevant sets of draft articles would cover. That was, to some extent, the case of international liability for injurious consequences arising out of acts not prohibited by international law and of the draft Code of Crimes against the Peace and Security of Mankind. When the Commission had completed the general part of the draft code, for example, it would have to consider the crimes themselves, some of which had already been recognized as such by international law. In the case of the topic under consideration, the Commission would, as it were, also have to thread its way among the questions with which it could not deal and those which had already been settled, so as to determine the ones on which it should focus its attention.

3. Two ideas expressed with regard to such exploratory work should be taken into account. The first was that the outline proposed by the Special Rapporteur should be used to go over all the ground covered by the topic in order to pin-point the questions to be dealt with. The second was that it was not at the research stage, but in the second phase, that the Commission must, as Mr. Tomuschat (2025th meeting) had suggested, not go too far. Initially, the Commission should not limit its research, which might enable it to discover questions of concern not to regional organizations, but to organizations of a universal character with a limited purpose, whose constituent instruments, statutes and headquarters agreements were less elaborate than those of the major universal organizations themselves and which therefore encountered problems that the latter did not face. It was thus only when the Commission came to propose solutions to a particular problem that it would have to proceed somewhat cautiously.

4. He himself went even further than Mr. Tomuschat in wondering whether the Commission would be able to formulate draft articles to apply to a group as large as that of the specialized agencies, for although, as Mr. Mahiou (*ibid.*) had noted, some of those agencies were similar, others differed considerably from one another. That was especially true with regard to immunities and financial resources: IMF and the World Bank, for example, had always operated on a grander scale than the other specialized agencies. He was not even certain that, in its work on the topic, the Commission could hope to cover the United Nations system in its entirety. He recalled that, in its early work on the law of treaties, the Commission had discussed the question whether certain treaties concluded by the United Nations were binding only on one part or another of the Organization. For example, would an agreement concluded by UNICEF be a United Nations agreement or an agreement by only one part of the United Nations? Constantin Stavropoulos, who had been United Nations Legal Counsel at the time, had urged the Commission to leave aside that aspect of the problem as a matter of expediency.

5. Moreover, when a topic that required exploratory work was being studied, serious problems arose in obtaining information and, indeed, in deciding whether or not the undertaking was worth the effort. In the case of the topic under consideration, were the serious problems faced by the United Nations to be examined in general terms? That was a matter to be settled by means of personal contacts, in which the Chairman and the Special Rapporteur would have a special role to play, not a matter to be discussed in the Commission itself. Furthermore, the Secretariat might have a heavy burden to bear, as would all those whom the Commission would ask to do research work. Questions that might be considered included the international civil service and agreements concluded by the United Nations with

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