

Document:-
A/CN.4/SR.2026

Summary record of the 2026th 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

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

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.

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. 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.1,¹ 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

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.

regional international organizations, such as the European Communities and organizations in socialist countries, concerning pension schemes for officials transferred from one organization to another.

6. The Commission must not forget that the United Nations Secretariat was being put to the test by the current policy of austerity. He was therefore somewhat concerned by the fact that the Commission might more and more frequently be dealing with topics for which it would need outside assistance. If it was to overcome all the obstacles involved in exploratory work, it would no longer be able to work on its own, as in the golden age of its consideration of the law of treaties. He was convinced that the Commission had to explain that aspect of the problem to the Sixth Committee of the General Assembly and tell it why it had to spend so much time on particular topics. It was for the Commission to weigh the problems involved in the topics it had before it and to determine which ones would require lengthy exploratory work, as well as outside assistance.

7. The CHAIRMAN said that the meeting would rise to enable the Planning Group's Working Group on Working Methods to meet.

The meeting rose at 10.40 a.m.

2027th MEETING

Tuesday, 7 July 1987, at 10 a.m.

Chairman: Mr. Stephen C. McCAFFREY

later: Mr. Edilbert RAZAFINDRALAMBO

later: Mr. Stephen C. McCAFFREY

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Sreenivasa Rao, Mr. Reuter, Mr. Roucounas, 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.1,¹ 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. SHI congratulated the Special Rapporteur on his reports and said that the schematic outline proposed

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.

in the third report (A/CN.4/401, para. 34) made a definite contribution to the Commission's work on the topic. He also thanked the Secretariat for its very useful study on the practice of international organizations (A/CN.4/L.383 and Add.1-3). He subscribed to most of the views expressed by previous speakers on the scope of the topic and the general approach to it, and, on the whole, had no difficulty in accepting the Special Rapporteur's proposed outline. He wished, however, to raise certain points for the Special Rapporteur's consideration in formulating the draft articles.

2. First, he unreservedly agreed with the Commission's conclusions on the general approach to the topic, as stated in the Special Rapporteur's second report (A/CN.4/391 and Add.1, paras. 10 and 15), namely that the Commission should, in view of the complex issues involved, proceed with great caution, adopting a pragmatic approach in formulating specific draft articles and avoiding protracted debates of a theoretical or doctrinal nature. That was an important point to which due regard should be paid, particularly since the 1975 Vienna Convention on the Representation of States, which had been concluded on the basis of the Commission's work on the first part of the topic, had still not received the necessary ratifications for entry into force.

3. Secondly, given the difficulties inherent in arriving at a precise and comprehensive definition of international organizations, the Commission should be satisfied with the definition laid down in the 1975 Vienna Convention and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

4. Thirdly, for the reasons stated by Mr. Tomuschat (2025th meeting), the scope of the draft articles should be confined to international organizations of a universal character. In that connection, the privileges and immunities of international organizations formed only one part of relations between States and such organizations; the draft should therefore also include specific provisions on the obligations of international organizations and their officials towards States.

5. Fourthly, as the Special Rapporteur had rightly noted in his second report (A/CN.4/391 and Add.1, paras. 59-60), the internal personality of international organizations was accepted by member States without much difficulty, but States were more reticent where international personality was concerned. That was because internal personality operated within the framework of the municipal law of member States, whereas international personality involved sensitive theoretical and political issues. In general, States were not prepared to regard international organizations as subjects of international law and active members of the international community on a par with sovereign States. Mr. Arangio-Ruiz (2025th meeting) had been right to say that the Special Rapporteur should not include in the draft articles any general provisions on the objective personality of international organizations.

6. Fifthly, the nature of the privileges and immunities of international organizations and their officials, and the questions of waiver of immunity and protection of