

Document:-
A/CN.4/3175

Summary record of the 3175th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2013, vol. I

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SUMMARY RECORDS OF THE SECOND PART OF THE SIXTY-FIFTH SESSION

Held at Geneva from 8 July to 9 August 2013

3175th MEETING

Monday, 8 July 2013, at 3.10 p.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Al-Marri, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Organization of the work of the session (*continued*)*

[Agenda item 1]

1. The CHAIRPERSON read out the programme of work for the first two weeks of the second part of the Commission's sixty-fifth session, which had been revised to take into account requests made under the agenda item entitled "Cooperation with other bodies".

Protection of persons in the event of disasters (*continued*)** (A/CN.4/657, sect. B, A/CN.4/662, A/CN.4/L.815)

[Agenda item 4]

SIXTH REPORT OF THE SPECIAL RAPPORTEUR

2. The CHAIRPERSON invited the Special Rapporteur, Mr. Valencia-Ospina, to introduce his sixth report on the protection of persons in the event of disasters (A/CN.4/662).

3. Mr. VALENCIA-OSPINA (Special Rapporteur) said that, contrary to usual practice, but in order to keep the report short, he had not included a summary of the

Sixth Committee's discussion of the chapter in the Commission's annual report to the General Assembly on the protection of persons in the event of disasters, especially as the Secretariat had provided a summary of that discussion in document A/CN.4/657. Since 2007, when the topic was included in the Commission's programme of work,⁶¹ 16 draft articles (1 to 15 and 5 *bis*), containing general provisions or dealing with intervention in the event of disasters, had been adopted. From the very outset of his work, he had communicated his intention to tackle the most important aspects of the broad field of disaster management, ranging from prevention and preparedness to assistance and relief efforts. In 2008, in his preliminary report, he had suggested, with regard to the scope of the topic *ratione temporis*, that work on the topic should extend to all three phases of a disaster situation, but that it seemed legitimate to give particular attention to aspects relating to prevention and mitigation of a disaster as well as to provision of assistance in its immediate wake.⁶² Accordingly, the sixth report dealt with the prevention, mitigation and preparedness activities which, as the Secretariat had indicated in its memorandum, lay at different points of the continuum of actions undertaken in advance of a disaster.⁶³

4. Prevention, mitigation and preparedness had long been part of the discussion relating to natural disaster reduction and, more recently, to disaster risk reduction. In temporal terms, preparedness straddled two areas of disaster risk reduction and disaster management: the pre-disaster phase and the post-disaster phase. The goal was to respond effectively and ensure more rapid recovery when disasters struck. Mitigation had come to be understood as aiming at structural or non-structural measures to limit the adverse effects of disaster. Since, by definition, mitigation and preparedness entailed the taking of measures prior to the onset of a disaster, they could properly be regarded as specific manifestations of the overarching principle of prevention which lay at the heart of international law.

* Resumed from the 3173rd meeting.

** Resumed from the 3162nd meeting.

⁶¹ *Yearbook ... 2007*, vol. II (Part Two), p. 98, para. 375.

⁶² *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598, p. 155, para. 66.

⁶³ A/CN.4/590 and Add.1-3 (mimeographed; available from the Commission's website, documents of the sixtieth session), para. 27.

5. In the past few decades, the international community had come to an awareness to the fundamental importance of disaster prevention or, to use more up-to-date terminology, risk reduction. The Office of the United Nations Disaster Relief Coordinator had been set up in 1971.⁶⁴ In 1987, in its resolution 42/169 of 11 December, the General Assembly had recognized “the responsibility of the United Nations system for promoting international co-operation in the study of natural disasters of geophysical origin and in the development of techniques to mitigate risks arising therefrom, as well as for co-ordinating disaster relief, preparedness and prevention, including prediction and early warning” systems (eighth preambular paragraph). It had decided to designate the 1990s as the International Decade for Natural Disaster Reduction (para. 3).⁶⁵ During the Decade, it had adopted 11 more resolutions on the subject, including resolution 46/182 of 19 December 1991, in which it had recommended that “[s]pecial attention should be given to disaster prevention and preparedness by the Governments concerned, as well as by the international community” (annex, para. 8). In the same year, 1991, it had endorsed a proposal to convene a world conference on natural disaster reduction, which had taken place in Yokohama, Japan, from 23 to 27 May 1994.⁶⁶ In the Yokohama Message, the 148 participating States had affirmed that “[d]isaster prevention, mitigation, preparedness and relief are four elements which contribute to ... the implementation of sustainable development”, recommending that States “should incorporate them in their development plans and ensure efficient follow-up measures at the community, national, subregional, regional and international levels” and calling for further improvements in early warning. They had affirmed that “[d]isaster prevention, mitigation and preparedness are better than disaster response in achieving the goals and objectives of the Decade” and urged States to “develop and strengthen national capacities and capabilities and, where appropriate, national legislation for natural and other disaster prevention, mitigation and preparedness”.⁶⁷

6. The International Strategy for Disaster Reduction was launched in 1999,⁶⁸ reflecting a major shift, from the traditional emphasis on disaster response, to disaster reduction, and seeking to promote a “culture of prevention”.⁶⁹ In December 2003, the General Assembly had decided to convene a world conference on disaster reduction in 2005.⁷⁰ The Conference had been held in January 2005 in Kobe, Japan, and had resulted in the adoption of the Hyogo Declaration 2005 and the Hyogo Framework for Action 2005–2015.⁷¹ In 2006, the General Assembly had

adopted resolution 61/198 of 20 December, in which it had noted the proposed establishment of a global platform for disaster risk reduction (para. 15). That institution had held four sessions since then, most recently in May 2013. At the conclusion of the last session, chaired by Switzerland, the Chairperson stated in his summary that

[t]here is growing recognition that the prevention and reduction of disaster risk is a legal obligation, encompassing risk assessments, the establishment of early warning systems, and the right to access risk information. In this regard, the progressive development and codification [by the International Law Commission] of international law concerning the “Protection of persons in the event of disasters” is highly relevant and welcome.⁷²

7. The dual-axis approach that he had adopted was central to the study of the topic. Just like the disaster-proper phase, the pre-disaster phase implied rights and obligations both horizontally (the rights and obligations of States in relation to one another and the international community) and vertically (the rights and obligations of States in relation to persons within their territory and control). Based on an in-depth analysis of the principle of prevention in international law; multilateral, international, regional and bilateral instruments; and the implementation by States of risk reduction measures in their territories by adopting laws and policies on risk assessment, collection and dissemination of risk information, land use controls, construction standards, insurance, funding, community preparedness and education and early warning systems, he was now proposing two new draft articles, 5 *ter* (Cooperation for disaster risk reduction) and 16 (Duty to prevent).

8. With reference more specifically to protection in the event of disasters, the existence of an international legal obligation to prevent harm, both in its horizontal and vertical dimensions, found support in human rights law and environmental law. The principle of prevention in the environmental context was based on the common law principle of *sic utere tuo ut alienum non laedas*. Declared by the International Court of Justice in the *Corfu Channel* case, that principle was well established in international law and had been applied as early as 1941 in the *Trail Smelter* arbitration. In 2001, the Commission had analysed, in the context of prevention of transboundary harm from hazardous activities,⁷³ the “well-established principle of prevention”.⁷⁴ Referring expressly to the Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”)⁷⁵ and the Rio Declaration on Environment and Development (“Rio Declaration”),⁷⁶ it had concluded that “[p]revention

18–22 January 2005 (A/CONF.206/6 and Corr.1), chap. I, resolutions 1–2.

⁷² UNISDR, *Proceedings: Fourth Session of the Global Platform for Disaster Risk Reduction, Geneva, 19–23 May 2013: Invest Today for a Safer Tomorrow*, p. 13 (available from www.preventionweb.net/).

⁷³ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 146 *et seq.*, paras. 97–98. The articles on prevention of transboundary harm from hazardous activities adopted by the Commission at its fifty-third session are reproduced in the annex to General Assembly resolution 62/68 of 6 December 2007.

⁷⁴ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 148, paragraph (4) of the general commentary.

⁷⁵ *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), Part One, chap. I, p. 3.

⁷⁶ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations

⁶⁴ General Assembly resolution 2816 (XXVI) of 14 December 1971.

⁶⁵ See also General Assembly resolution 44/236 of 22 December 1989.

⁶⁶ General Assembly resolution 46/149 of 18 December 1991, para. 3.

⁶⁷ Report of the World Conference on Natural Disaster Reduction (A/CONF.172/9 [and Add.1], chap. I, resolution 1, annex II, paras. 2, 3 and 7 (c)).

⁶⁸ General Assembly resolution 54/219 of 22 December 1999.

⁶⁹ United Nations Office for Disaster Risk Reduction (UNISDR), “What is the International Strategy?” (www.unisdr.org/who-we-are/international-strategy-for-disaster-reduction/).

⁷⁰ General Assembly resolution 58/214 of 23 December 2003, para. 7.

⁷¹ Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters, Report of the World Conference on Disaster Reduction, held in Kobe, Hyogo, Japan,

of transboundary harm to the environment, persons and property has been accepted as an important principle in many multilateral treaties concerning protection of the environment, nuclear accidents, space objects, international watercourses, management of hazardous wastes and prevention of marine pollution”.⁷⁷

9. The principle of prevention in environmental law was based on two separate, but to some degree related, obligations: due diligence and the precautionary principle. Due diligence, which was the standard basis for prevention, was an obligation of conduct rather than of result. It had been elucidated by the International Court of Justice in the *Pulp Mills on the River Uruguay* case, among others, and by the European Court of Human Rights in *Öneryıldız v. Turkey* and *Budayeva and Others v. Russia*. For the Commission, the obligation of due diligence had two main characteristics: the degree of care in question, which was the care expected of a “good Government”, and the degree of care that was proportional to the hazardousness of the activity involved. The duty of due diligence accordingly required States to take all “necessary” or “appropriate” measures to uphold the principle of prevention. The idea of “appropriate measures” was duly reflected in draft article 16. As to the precautionary principle, it flowed from the more general obligation to prevent any environmental harm.

10. Similarly, in the field of human rights, the positive obligation of States to respect and safeguard human rights included the obligation to prevent human rights violations. As the Inter-American Court of Human Rights had emphasized, “This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights”.⁷⁸ In his preliminary report on the topic, he had given examples of the human rights relevant in the event of disasters.⁷⁹ Thus, an international obligation to prevent and mitigate disasters arose from States’ universal obligation to ensure rights such as the right to life, food and medical care, to cite only a few. International jurisprudence had highlighted that approach particularly well in relation to the right to life. The decisions of the European Court of Human Rights in the cases just mentioned, which confirmed the duty to prevent, were noteworthy for a number of reasons: the Court had articulated the same duty irrespective of whether the disaster was natural or human-made; it had faulted the States concerned for failing to prevent the harm, mirroring the obligation in various international instruments to take “appropriate” or “necessary” measures to reduce the risk of disaster; and lastly, the Court had suggested that the duty to prevent was triggered when a disaster became foreseeable, mirroring the foreseeability requirement within the principle of due diligence. In the *Öneryıldız v. Turkey* case, the Court had affirmed that the right to life lay down “a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction” (para. 71) and stressed that this entailed “above all a primary duty on the State to

put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life” (para. 89). Draft article 16, in line with that finding, called on States to adopt measures “to ensure that responsibilities and accountability mechanisms be defined and institutional arrangements be established”.

11. Having analysed international environmental law and international human rights law, he then turned to the examination of multilateral and bilateral instruments on disaster risk reduction. Only two global instruments directly addressed disaster preparedness, prevention and mitigation: the Framework Convention on civil defence assistance and the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations. However, there were other instruments on the prevention of specific disasters, such as nuclear or industrial accidents. All those instruments imposed on States the duty of due diligence by obliging them to take “necessary” or “appropriate” measures. He had also examined numerous regional and subregional instruments that directly addressed disaster risk reduction as well as about 20 bilateral treaties that included the obligation to take disaster prevention and response measures.

12. Lastly, he had undertaken an analysis of national policy and legislation which revealed that States were addressing disaster risk reduction, in line with the Hyogo Framework for Action 2005–2015, and were acknowledging their obligation to take preventive measures. There were three objectives in disaster prevention efforts: risk prevention through risk assessment, collection and dissemination of risk information and land use controls; mitigation of harm using construction standards and insurance; and preparedness based on an institutional framework, funding, community preparedness and education and early warning. Some of those components were taken up in draft article 16, paragraph 2, which provided examples of appropriate measures: “the conduct of multi-hazard risk assessments, the collection and dissemination of loss and risk information and the installation and operation of early warning systems”.

13. Mr. MURASE said he agreed that the principle of prevention entailed both horizontal and vertical obligations upon States to prevent and mitigate ecological disasters. However, he believed that the various facets of the principle needed to be elaborated more fully and, rather than treating it as a categorical norm, its flexible nature should be emphasized. In relation to environmental harm, the principle of prevention presupposed a degree of certainty about the likelihood that a risk would materialize—the criterion of “foreseeable” risk introduced in the *Trail Smelter* arbitration. Measures taken in furtherance of the principle were intended to avert disasters whose probability of occurring could be objectively assessed, normally on the basis of scientific analysis. It would be unreasonable to consider that States had an international legal obligation to anticipate and prepare for damage in the case of natural disasters. That was not to say, however, that the principle of prevention was never applicable to that type of disaster. Certain natural disasters such as earthquakes and hurricanes tended to occur cyclically, and States in the affected regions should be expected to take preventive measures. Nevertheless, prudence dictated the need to

publication, Sales No. E.93.I.8), vol. I: *Resolutions Adopted by the Conference*, resolution 1, annex I, p. 2.

⁷⁷ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 149, paragraph (5) of the general commentary.

⁷⁸ *Velásquez Rodríguez v. Honduras*, judgment (merits) of 29 July 1988, para. 175.

⁷⁹ A/CN.4/598 (see footnote 62 above), p. 149, para. 26.

avoid the indiscriminate application of the principle to disasters that overwhelmed the best predictive powers that modern science could provide.

14. Turning to environmental hazards that were anthropogenically influenced or created, he said that the principle of prevention could generally be viewed as the source of States' obligation to anticipate and avert such hazards. However, they were under no obligation to act prophylactically in every instance where the risk of an incident existed. The requirement of due diligence that imbued the principle of prevention was a shifting paradigm that balanced the likelihood of harm against the "significance" of the specific harm. In other words, significant harm that had a low probability of occurring must be avoided due to the potentially serious ramifications, whereas relatively negligible damage that had a high probability of occurring did not necessarily need to be counteracted. That was a detail that the Special Rapporteur had overlooked but which nonetheless must be taken into consideration when giving shape to the binding quality of the principle of prevention.

15. The prevention principle was thus a nuanced norm that could be adjusted to differing contexts within international law. As the Special Rapporteur noted, it was in human rights law and environmental law that the principle was most strongly manifested as an obligation, but it did not have the same normative weight in those two contexts. The norms on which the report focused in the realm of human rights law, above all, the right to life, were directly relevant to the topic under consideration, namely the protection of *persons* in the event of disasters. On the other hand, the pertinence of international environmental norms was much more attenuated, especially as the Special Rapporteur did not expressly mention its link to harm to people. If the Commission was to maintain an anthropocentric focus in the project, it needed to be more mindful of how the principle of prevention functioned in distinct areas and of the varying obligations it engendered in those areas. It must not be viewed as an omnibus rule to be used for all purposes.

16. He had serious reservations about the "precautionary principle" cited in the Special Rapporteur's sixth report. He disagreed with the assertion (para. 60) that the principle of prevention stemmed from the precautionary principle and that the latter qualified as a State "obligation". First, the issue of whether the adoption of measures by a State to ward off a potential environmental hazard was actually a "principle" or fell into the less stringent category of "approach" (Rio Declaration) had not yet been resolved in international law. It would therefore be better not to label the concept a "principle", in order to win the approval of as many States as possible. Second, he had doubts about whether the precautionary principle was actually a source of the prevention principle. The two concepts were fundamentally different: whereas prevention was premised on the idea of calculable and verifiable risk, precaution was predicated entirely on the notion of scientific uncertainty. Third, the precautionary principle did not have the status of an obligation for States. The International Court of Justice had yet to recognize a precautionary "principle", the International Tribunal for the Law of the Sea had not accepted it and the organs of the European Convention on Human Rights had shown

a marked reluctance to apply such a "principle", or even "approach", in deciding cases involving ecological damage. The Commission should therefore classify the precautionary "principle" as something decidedly less than an "obligation" that States were compelled to fulfil.

17. Lastly, he thought there was a need for more specificity concerning the meaning of the "responsibilities" and "accountability mechanisms" alluded to in draft article 16. Since the subject of the draft article was States, it could be assumed that the "responsibilities", in the plural, corresponded to State responsibility, in the singular. As for "accountability" mechanisms, it was a bit unsettling that the expression, which was used only once in the entire report (para. 100), should constitute a key phrase in the text.

18. He had no general comments to make on draft article 5 *ter* and was in favour of sending the draft articles to the Drafting Committee.

19. Mr. KITTICHAISAREE said that since the topic under consideration was a new field of international law, it was appropriate to address it based on analogies with other fields. In his report (paras. 6–8), the Special Rapporteur recalled the relationship between prevention, mitigation and preparedness and noted that mitigation and preparedness could be regarded as concrete manifestations of the overarching principle of prevention that lay at the heart of international law (para. 40). However, given that the report stated that the principle of prevention stemmed from two distinct but interrelated State obligations, namely due diligence and the precautionary principle, it was striking to note that draft article 16 mentioned neither of those two elements. He therefore suggested that paragraph 1 of the draft article should be rewritten and that mention should be made in paragraph 2 of knowledge management and education as well as reduction of the underlying risk factors.

20. Mr. AL-MARRI thanked the Special Rapporteur for having grounded his work in an analysis of State practice worldwide. Within governmental institutions, prevention, management and mitigation of the effects of disasters were accompanied by the prevention of transboundary harm from hazardous activities and, in general, by the protection of the environment. Sustainable development was the cornerstone of all disaster management policy and entailed a certain degree of public awareness-raising, with due respect for freedom of expression and domestic law. As to the obligation to prevent, it was incumbent upon States in the context of good governance, as was the analysis of the environmental impact of development projects that were all too often carried out against the wishes of the local population. The importance of international cooperation, including for States that suffered the adverse effects of certain transboundary development activities, must also be recalled. Such cooperation must be carried out with a view to strengthening the competencies of beneficiary countries.

21. Mr. TLADI said he agreed with the substance of draft articles 16 and 5 *ter* and recommended that they both should be referred to the Drafting Committee. However, he would have preferred the report to take a more nuanced approach on certain points, and he agreed

with Mr. Murase that an unduly broad approach to the principle of prevention should be avoided.

22. He recalled his earlier remark that the Commission's work pertaining to the relationship between the affected State and third States should be conceptualized in terms of cooperation rather than rights and duties. That was why he had reservations about the dual-axis approach mentioned in paragraph 36 of the report. While he accepted that there was a vertical relationship of rights and duties between an affected State and its population, he did not believe that there was any basis in customary international law, practice or policy to posit a horizontal relationship of rights and duties in the interaction of affected States and third States.

23. He remained unconvinced that in the field under consideration, a horizontal axis was supported by the duty under international law to prevent harm, as provided for in various international instruments and case law. While the principle was firmly entrenched in international law, it was applied in a completely different context, namely in ensuring that the activities carried out in one State did not cause harm to another State. The sources cited, including those relating to sustainable development, were likewise not applicable by analogy to the topic under consideration.

24. He had no doubt that there was a duty to prevent. However, in the context of inter-State relations, it operated exclusively with respect to transboundary harm. On the other hand, in the context of the vertical relationship between a State and its population or persons within its territory, the question of what was the source of the duty remained unresolved. Unlike the Special Rapporteur, he did not think the basis of the duty could be found in international environmental law. For reasons he had already discussed, the principle of prevention applied only in the context of transboundary harm. International human rights law might be a more viable basis, although a State could be fulfilling its obligations under international human rights instruments and still not be in a position to effectively manage a disaster. By the same token, it would be going too far to suggest that a State that was less well prepared than it could be was in violation of the right to life due to the occurrence of a disaster, particularly a natural disaster. The test of human or natural origin of a disaster had to be taken into account. Draft article 16, correctly, did not do so. It would be better to view the duty to prevent, in the context of the protection of persons, as a corollary of sovereignty, and not as emanating from either human rights law or environmental law.

The meeting rose at 5.10 p.m.

3176th MEETING

Tuesday, 9 July 2013, at 10.05 a.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Al-Marri, Mr. Candiotti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Has-souna, Mr. Hmoud, Ms. Jacobsson, Mr. Kittichaisaree,

Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies

[Agenda item 13]

STATEMENT BY THE SECRETARY-GENERAL OF
THE ASIAN–AFRICAN LEGAL CONSULTATIVE ORGANIZATION

1. The CHAIRPERSON welcomed Mr. Rahmat Bin Mohamad, Secretary-General of the Asian–African Legal Consultative Organization (AALCO), and invited him to address the Commission.

2. Mr. MOHAMAD (Secretary-General of the Asian–African Legal Consultative Organization) said that, because the topics being studied by the Commission were of great importance to AALCO, a half-day special meeting on selected items on the Commission's agenda had been scheduled during the organization's fifty-second annual session, to be held in New Delhi in September 2013. At the current meeting, he wished to convey the views of his organization's member States on three topics, namely immunity of State officials from foreign criminal jurisdiction, protection of persons in the event of disasters, and formation and evidence of customary international law.

3. Although the immunity of State officials from foreign criminal jurisdiction, which was based on the principle of the sovereign equality of States, was already a well-established rule of treaty law and customary international law, the Commission's study of the topic was timely, owing to recent controversy surrounding the issue of whether the immunity of State officials should prevail over the duty to prosecute and punish individuals responsible for international crimes.

4. AALCO agreed with the Special Rapporteur that the topic must be approached from the dual perspective of *lex lata* and *lex ferenda*. It was vital, however, that before the topic took its final form, the Commission should clearly indicate which elements were statements of *lex lata* and which reflected *lex ferenda*. The concepts of immunity *ratione materiae* and immunity *ratione personae* helped to clarify the scope of the immunity enjoyed by various categories of State officials.

5. Immunity before international courts was already sufficiently delimited by the relevant international instruments. Moreover, diplomatic and consular immunity and the immunity of international organizations had undergone considerable development in treaty law and customary law. There was therefore no need for the Commission to consider those regimes. While the distinction between personal and functional immunity had been generally accepted in legal theory and reflected in legal practice, it was still of vital relevance when ascertaining which persons were covered by immunity. The Special Rapporteur had rightly concluded that it was impossible to find cogent arguments in favour of extending immunity *ratione personae* to officials