Document:-
A/CN.4/SR.1237

Summary record of the 1237th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1973, vol. I

52. A collection of the European conventions concluded up to the end of 1971, with an analytical index, had just been published in two volumes and would be sent to the members of the Commission. Of the 15 States parties to the European Convention on Human Rights, 12 had so far recognized the jurisdiction of the European Commission of Human Rights and the European Court of Human Rights.

53. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his very interesting statement, which was particularly useful to the Commission at a time when it was planning its programme of future work.

54. Sir Francis VALLAT warmly thanked the observer, both on his own behalf and on behalf of the other members of the Commission from countries which were members of the Council of Europe, for an excellent description of the Council's legal work as such, and in relation to the work of the Commission. He was glad to note that, in drawing up its conventions and legal rules, the Council took great care not to impinge on the field of customary law, which came within the Commission's province. He had been especially interested to hear of the Committee's work on the subjects of jurisdictional immunities of States and pollution of international watercourses.

55. Mr. REUTER warmly thanked the observer for the European Committee on Legal Co-operation, for his outstanding statement and for the generosity of his Committee in providing the members of the Commission with documents of undeniable interest. The description of the European Committee's activities held many lessons for the Commission. In particular, the Commission might well adopt the technique of working out, side by side, a set of peremptory general rules and a set of more flexible rules agreed upon between the main parties concerned. If that procedure had been found necessary and convenient for 17 States which were close neighbours, it was all the more so for the international community. The fact that the Council of Europe had established a general system for the protection of human rights did not prevent it from taking up problems of more limited scope. Similarly, while the Commission had to take up major questions of international law, it should also, from time to time, study more limited subjects which could be quickly disposed of.

56. Mr. USTOR, speaking also on behalf of Mr. Ushakov, said it was a great pleasure every year to hear Mr. Golsong's report on the manifold activities of the European Committee on Legal Co-operation. It was especially interesting for members from eastern Europe to learn what was being done by legal bodies in western Europe at a time when preparations were under way for the European Conference on Security and Co-operation, the purpose of which would be to lower the barriers between the two parts of the old continent and to unite their peoples in their common interest and for the benefit of mankind.

57. Mr. MARTÍNEZ MORENO, speaking for the Latin American members of the Commission and for Mr. Yasseen, who had been unable to be present when Mr. Golsong had made his statement, said it was an honour for him to welcome the observer for the European Committee on Legal Co-operation. Mr. Golsong's statement had confirmed that Europe was still in the vanguard of legal science and could count on worthy successors to such great jurists of its past as Vitoria and Grotius.

58. He had been particularly pleased to hear about the recent judgement of the European Court of Human Rights awarding pecuniary compensation to a private person who had been unable to obtain satisfaction in national courts. Latin American jurists followed the work of the European Commission of Human Rights with keen interest, for the Central American Court of Justice, founded in 1907, had been the first international tribunal of that kind in the world and had been open to private persons.

59. Mr. KEARNEY thanked Mr. Golsong not only for his very interesting statement but also for the cordial reception which he—Mr. Kearney—had met with on attending the meeting of the European Committee on Legal Co-operation at Strasbourg in the autumn of 1972. On that occasion he had been impressed by the number and variety of the Committee's activities in both public and private international law.

60. Mr. TSURUOKA, speaking also on behalf of Mr. Tabibi and Mr. Ramangasoavina, thanked Mr. Golsong for his remarks, which had been most enlightening to the Commission, and congratulated the European Committee on Legal Co-operation on its achievements.

61. Mr. BILGE said that the work of the European Committee on Legal Co-operation was most helpful to the Commission in its own fields of study. He welcomed the increase in the number of States which accepted the jurisdiction of the European Commission and the European Court of Human Rights, he hoped that their number would increase still further and that the European Convention for the Protection of Human Rights would be fully applied.

62. Mr. QUENTIN-BAXTER expressed his gratitude to the observer for the European Committee on Legal Co-operation for his detailed account of the Committee's many activities. He had been particularly touched to hear of the work being done by the Committee in the field of human rights.

The meeting rose at 1.0 p.m.

1237th MEETING

Friday, 29 June 1973, at 11.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

(a) Review of the Commission's long-term programme of work: "Survey of International Law" (A/CN.4/245) prepared by the Secretary-General

(b) Priority to be given to the topic of the law of the non-navigational uses of international watercourses

(A/CN.4/244/Rev.1; A/CN.4/245; A/CN.4/254; A/CN.4/270)

[Item 5 of the agenda]

(resumed from the previous meeting)

1. The CHAIRMAN invited the Commission to resume consideration of item 5 of the agenda.

2. Mr. SETTE CÂMARA reminded the Commission that the General Assembly, in its resolution 2926 (XXVII), had noted that the Commission intended, in the discussion of its long-term programme of work, "to decide upon the priority to be given to the topic of the law of the non-navigational uses of international watercourses". The advance report submitted by the Secretary-General pursuant to that resolution (A/CN.4/270) contained only a plan of the report being prepared to supplement the 1963 report on "legal problems relating to the utilization and use of international rivers". The supplementary report, like the previous one, would provide information on internal laws, bilateral and multilateral treaties, decisions of international tribunals and studies made by non-governmental organizations. The new report would also include studies by intergovernmental organizations and information concerning the problem of pollution of international waterways. Information from States, was coming in very slowly, however. Eight States had given information on treaties and only one had supplied information on national legislation. Only three international organizations had complied with the request to furnish material concerning their work on the subject, and the Secretariat reported that no decisions of international tribunals, other than those included in the initial report, had been found (A/CN.4/270, para. 9).

3. At the previous session he had pointed out that the Commission needed to have access to the supplementary report before deciding what priority to give the topic. The existing studies[1] had been published in 1963 and were based on evidence provided by a very limited number of States, since at the time only five States had sent information to the Secretariat. The very limited response to the recent Secretariat requests for information showed that there was no feeling of urgency among States concerning the codification of the rules governing international watercourses. The matter was one on which international agreements abounded: no less than 253 treaties governing the non-navigational uses of international watercourses were included in the Secretariat survey of Legislative Texts and Treaty Provisions[2] and the rules applicable varied from place to place and from river to river. It was essential that the Secretariat should digest the voluminous material announced in its advance report, so as to enable the Commission to extract valid rules of international law from the fluid mass of State practice. What was more, the Secretariat stated in its Survey of International Law that at the General Assembly's fourteenth session the view had been expressed that an attempt to codify the matter would be premature and that it should be left to the International Law Commission to decide whether the subject was an appropriate one for codification (A/CN.4/245, para. 286).

4. It was common knowledge that interest in the subject, which had been dormant for 12 years, had been awakened by the adoption of the "Helsinki Rules" by the International Law Association in 1966.[3] Those rules constituted a useful piece of academic research, but included some very controversial features, such as the doctrine of the unity of river basins, which might prevent developing countries from exploiting their water resources, since the use of even the smallest tributary would depend on the consent of the other States in the river basin concerned. To take a specific case, practically the whole territory of Brazil was included in two river basins: that of the Amazon and that of the river Plate. The doctrine of the unity of river basins would mean that the construction of a small hydroelectric power station on any one of the thousands of small rivers in Brazil would require the consent of all the other States in the basin concerned. Brazil had a balanced approach to the problem, for it was the upstream State in the river Plate basin and the downstream State in the Amazon basin, the largest river basin in the world.

5. The Helsinki Rules dealt with the problem of pollution and the Commission itself, in its 1972 report, had concluded that "the problem of pollution of international waterways was of both substantial urgency and complexity".[4] Pollution was undeniably an important question; it was the by-product of centuries of heedless exploitation of natural resources, and the world had to devise means of controlling it. But world-wide concern over the problem went back only a few years; it could not be said that there were already international rules that were ripe for codification. The Stockholm Conference had produced a set of principles,[5] but had revealed wide divergencies between industrialized and developing countries in their approach to pollution control. The Governing Council of the United Nations Environment Programme had recently discussed a number of problems relating to pollution, but only in a very preliminary way. The Commission had not received any specific recommendation to undertake the codification of rules on the pollution of watercourses, though it had recognized that the problem was both urgent and complex.

6. In his opinion no decision could be taken on the priority to be given to the subject until the supplementary report was received and the Commission had had time to study it thoroughly. The Commission should therefore wait until its next session before even discussing the problem of priority.

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[1] Document A/5409 (3 vols.).

[2] ST/LEG/SER.B/12 (United Nations publication, Sales No. 63.V.4).

[3] The International Law Association, *Report of the Fifty-second Conference (1966)*, p. 484.

[4] See *Yearbook of the International Law Commission, 1972*, vol. II, document A/8710/Rev.1, chapter V, para. 77.

[5] See document A/CONF.48/14, section I.

7. As to methods of work, Mr. Kearney's proposal seemed to provide a way for the Commission to reach some conclusions about the revision of the 1949 list. It was essential to arrange systematically, and analyse, the many and often conflicting suggestions which had been made during the discussion and the individual preferences which had been expressed, in order to arrive at conclusions that would represent the consensus of the Commission. Some members preferred the minor subjects, others the major ones. Some would choose the traditional problems of international law; others would prefer new and up-to-date subjects. He therefore supported the idea of setting up a small committee to meet for a few days immediately before the Commission's twenty-sixth session.

8. Mr. HAMBRO said he found Mr. Sette Câmara's comments thought-provoking, but feared that if the Commission should decide not to give priority to the question of the non-navigational uses of international watercourses, that might cause some surprise in the Sixth Committee.

9. He had also been interested by the various suggestions made concerning the Commission's methods of work. He hoped that emphasis would be placed on the usefulness of obtaining expert technical advice, as had been done on the question of the continental shelf. On the other hand he could not agree to the suggestion that the Commission should lengthen its sessions from 10 to 20 weeks. After all the Sixth Committee was not unaware of what went on in the Commission and might very well conclude that it was already difficult enough to persuade members to remain for a ten-week session. Membership in the Commission conferred such prestige that all members were in great demand for other tasks and would have difficulty in devoting more time to the work of the Commission itself.

10. He thought the Commission was slowly approaching a consensus on its future programme of work; he hoped it would not be necessary to vote on the matter.

11. Mr. KEARNEY said he agreed with Mr. Hambro that the Commission was reasonably close to a consensus on its future programme of work. However, that programme would necessarily be influenced by the current programme, which included some topics that had so far been considered only in part.

12. State responsibility was undoubtedly the most fundamental and the broadest topic on the Commission's list, and attention might well be given to those aspects of it which had not yet been dealt with by the Special Rapporteur. For instance, once the ground-work had been completed on the basis of the Special Rapporteur's draft, the Commission might consider State responsibility for the violation or breach of treaties and for the discharge of obligations which might be the consequence of termination of a treaty. Another aspect of the topic might be the problem of the abuse of rights giving rise to various kinds of liability. A third aspect, not at all well regulated, was the question of determination of damages. The Commission might also wish to decide on an order of progress for various other aspects of State succession, such as publicly owned property other than State property, public debts and nationality.

13. In addition, he thought that consideration should be given to the subject of the jurisdictional immunities of foreign States. Legislation was pending in the United States Congress which provided for a drastic revision of the Government's approach to the question of State immunity. Under that legislation, decisions would be left to the courts and not to the Department of State, and immunity—not only from jurisdiction, but also from execution—would be excluded from a very broad range of the economic activities of foreign States.

14. As to the law relating to international watercourses, he differed from Mr. Sette Câmara with regard to the urgency of the problem of pollution. Man had always polluted his sources of fresh water by using them to dispose of waste materials of all kinds; but now, suddenly, in almost every part of the world, there was a fear that the use of fresh water for waste disposal had outstripped, or was outstripping, the capacity of rivers and lakes to dispose of the waste. In order to judge whether that fear was justified and to determine whether action to preserve the quality of fresh water supplies was urgently needed, it might be helpful to review the basic factors that had given rise to pollution at an ever-expanding rate. The ultimate cause was the scientific revolution of the twentieth century and its three major consequences. The first was population growth which, by all estimates, would increase the world population to 4,000 million by 1980, while the amount of fresh water would remain the same. The second was the change in the location of people: the urban population had increased from 500 million in 1940 to nearly 1,500 million in 1973. Within the next 10 or 15 years about half the world's population would be living in urban areas. Urban development had always depended on the availability of sufficient quantities of water for domestic purposes and, to an increasing extent, for industrial purposes. The third consequence was industrialization, which had created a host of new products that were playing an even greater role than population growth and urbanization in degrading the river systems.

15. In the past, the process of river life had made the river a useful and available means of waste disposal. The flowing water had helped to dispose of the organic waste, which had then been broken down by bacteria into inorganic waste, by the use of oxygen. In turn, plant life had consumed the inorganic waste and recycled oxygen into the water. But in many places that system was collapsing under the threefold pressure of population growth, urbanization and industrialization. When the overloaded river systems broadened into lakes, for example, and the flow of water slowed down, algae feeding on substances in sewage, such as phosphorus and nitrogen, had multiplied spectacularly, as could be seen in Lake Erie in North America and Lake Constance in Europe.

16. In that situation the urgency of the need to reduce water pollution was obvious, but the question was whether it was also necessary to deal with that problem from the point of view of international law. In his opinion, in attempting to frame any legal rules it would be necessary to rely on scientific, engineering, economic and financial studies on a large scale. Such studies were

already being carried out in the river basins of the Lower Mekong, the Senegal, the Chad, the Nile, the Upper Paraguay, the river Plate, the Rhine and the Moselle. In North America, two commissions had long been established in that field, namely, the Mexican-United States Boundary and Water Commission and the Canadian-United States International Joint Commission.

17. It was interesting to note, however, that a panel of experts convened by the United Nations to study the question of integrated river basin development had reached the following conclusions in a report published in 1970:

> "The vital character of current and impending disputes on international streams has been shown in chapter IV where it is pointed out that lack of accepted international law on the use of these streams presents a major obstacle in the settlement of differences, with the result that progress in development is often held up for years, to the detriment not only of the countries concerned but of the economy of the world in general." [6]

That panel, composed of outstanding experts on water uses from Colombia, France, the Netherlands, Pakistan, the Soviet Union, the United Kingdom and the United States, had consisted of scientists, with one lawyer.

18. It was evident, therefore, that the world was faced with a serious gap in an area of international law where lack of law could have disastrous effects upon one of the essentials for human life—fresh water. The pressure of population growth, industrial growth and urban growth upon water supplies would inevitably continue to mount. Where international river basis were concerned, co-operative action by all riparian and boundary States would be necessary to ensure that the available water was kept tolerably clean. As the experts' report had made clear, legal principles would have to be established to provide a working basis for that essential international co-operation.

19. The first step might be to consider what legal principles appeared to be applicable. The obvious ones would seem to be those drawn from the topic of State responsibility. For example principle 21 of the Stockholm Declaration on the Human Environment provided *inter alia* that:

> "States have... the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States...".

An analysis of that principle showed, however, that the responsibility of the State in such situations differed basically from State responsibility as defined in draft article 1 on the subject prepared by the Commission's Special Rapporteur.[7] In the first place a substantial problem of attribution was involved. In most States the pollution of a river basin derived from a variety of public and private sources, with the State organs as such playing a large, but not necessarily dominant role. Even if the broad range of attribution in the Special Rapporteur's draft article 7 [8] was adopted, so that acts of municipal sewage systems, public irrigation systems and publicly owned industrial corporations were attributed to the State, it was likely that in many international rivers a large part of the pollutants would be discharged from private sources. Those sources would not be attributable to the State unless, under the Special Rapporteur's draft article 11,[9] the State organ in question "ought to have acted to prevent or punish the conduct of the individual or group of individuals and failed to do so".

20. It would then be necessary to consider the second requirement of State responsibility, namely, that the State's conduct constituted failure to comply with an international obligation. In dealing with responsibility for river pollution, however, the first fact to be faced was that rivers had been used for waste disposal from time immemorial. States obviously had a right to use rivers for such purposes; the question was what limitations could be placed on that right, rather than whether the State had violated its international obligations. That was not to say that such international obligations did not exist. For example, a State which knowingly permitted the discharge of poisonous elements such as mercury into a river, in quantities which resulted in death in the downstream State, would, in his opinion, be considered as having violated its obligations under existing international law.

21. Thus the classical principles of State responsibility were not particularly helpful in dealing with river pollution, and it was necessary to look for other sources of law. Although a considerable amount of practice had been developed in that field, there were certainly no generally accepted customs drawing a clear line between what was permissible and what was not. However, by turning to generally accepted legal principles, reliance could be placed on the ancient principle of *sic utere tuo ut alienum non laedas*. In the field of pollution that principle might have been expressed for the first time in the *Trail Smelter* arbitration case of 1941 between Canada and the United States, when the tribunal had held that no State had the right to use or permit the use of its territory in such manner as to cause serious injury by fumes in or to the territory of another or the properties or persons therein.[10]

22. That principle had been supported by many jurists and had found expression in the formulations of a number of legal societies, such as the Madrid declaration of 1911 of the Institute of International Law, that Institute's amplifying statement of 1961 [11] and the International Law Association's Helsinki Rules of 1966 on the Uses of the Waters of International Rivers. Regional studies on the subject included draft articles prepared by the Inter-American Juridical Committee and proposals by the

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[6] *Integrated River Basin Development* (United Nations publication, Sales No. E.70.II.A.4), p. 44.

[7] See 1202nd meeting, para. 16.

[8] See document A/CN.4/264 and Add.1, annex I.

[9] *Ibid.*

[10] See *The American Journal of International Law*, vol. 35, 1941, p. 684.

[11] See *Annuaire de l'Institut de droit international*, vol. 24, p. 365 and vol. 49 (II), p. 370.

Economic Commission for Europe, the Council of Europe and the Asian-African Legal Consultative Committee. The draft rules under consideration in the competent sub-committee of the last-mentioned body had been somewhat along the lines of the Helsinki Rules, but had differed from them in one important respect: while the Helsinki Rules had imposed an obligation on States to abate existing pollution, the draft before the Sub-Committee had not included that requirement, because of the limited resources of developing countries.

23. In dealing with river pollution it was necessary to devote much attention to the scientific and economic aspects of the subject. One illustration of the complexities of those aspects was to be found in the Agreement of 1972 between the United States and Canada on Great Lakes Water Quality,[12] which first laid down certain general objectives, and then more specific ones, such as those concerning microbiology, dissolved oxygen, total dissolved solids, iron, phosphorus, radioactivity and so on. It was obvious, therefore, that any legal study of the subject of river pollution would call for the closest co-operation with such scientific agencies as WHO, FAO and others.

24. He hoped that recital of facts would convince members of the Commission that scientists, engineers and economists were in real need of principles of international law to guide them in their work. In that work, international lawyers should act as catalytic agents in inculcating some unity of approach to the various aspects of the question. In his opinion the Commission would be the most suitable body to undertake that task; but if it decided not to do so, urgent action would obviously be called for on the part of some other body.

25. Mr. YASSEEN said that, since the questions under examination by the Commission were enough to keep it occupied for several years, there was no urgent need to consider its future programme of work; but it would be useful to do so, in order to be prepared, if only psychogically, to take up other topics when the time came. The Commission should therefore report to the General Assembly that the general review it had made was without prejudice to its existing programme of work —State responsibility, succession in respect of treaties, succession in respect of matters other than treaties, the most-favoured-nation clause, and treaties concluded between States and international organizations or between two or more international organizations—and that it intended to complete that programme, but might add a few more topics to it.

26. In selecting those topics the Commission should bear in mind that it did not have the same latitude in the progressive development of international law as it had in codification. Whereas it had a fair degree of freedom in regard to codification, it had to await the instructions of the General Assembly on questions of progressive development. Perhaps it might suggest to the General Assembly those of the topics already on its general programme of work to which it would like to give priority once the current work was completed. He had several such topics to suggest.

27. In the first place, jurisdictional immunities of foreign States and their property should be taken up as soon as possible after the Commission had completed its current work. Secondly, unilateral acts in international law should occupy a high place on the Commission's general programme of work: it was a subject of great practical importance, since it involved estoppel, waivers, and other notions which had been the subject of many arbitral awards and judicial decisions.

28. In the third place came the question of international watercourses, since it had been expressly referred to the Commission by the General Assembly in a resolution which, although couched in very measured terms, was nevertheless clear and must be interpreted as reflecting the Assembly's wish to accord some degree of priority to the examination of that topic.

29. When the time came, the Commission would also have to tackle the problem of risk, of which it was difficult to say whether it was a matter for codification or for progressive development, but which was more or less directly connected with the question of responsibility, at least in the minds of many lawyers.

30. With regard to the topics which came under the heading of progressive development, it must be recognized that the Commission had no monopoly of codification or of progressive development, and that many other bodies had been specially set up to perform those tasks. It would be best to leave aside any matters which had been entrusted to other bodies: for example, the law of outer space and the new aspects of the law of the sea.

31. There remained the question of the environment. He would not deny that there were some principles of international law relating to the subject, particularly where pollution was concerned, but the question had already been assigned to a recently established specialized body which, as the Chairman had pointed out, envisaged the possibility of inviting the General Assembly to refer to the Commission, for codification, the fundamental principles relating to the environment. It would therefore be better to await the outcome of that proposal and merely state in the report that the Commission regarded the law relating to the environment as a possible topic for study.

32. Mr. AGO said he fully supported Mr. Kearney's plea for the Commission to study the law relating to international watercourses. It was, indeed a topic of the greatest importance, to which the Commission, more than any other body, could give really objective legal treatment. He wished, however, to reply to some remarks Mr. Kearney had made concerning State responsibility.

33. The Commission would recall that during its discussion on State responsibility it had agreed on what should and what should not be covered by its study and what the various stages of that study should be. It had decided to codify the whole topic if possible, on the understanding any element alien to responsibility would be excluded, and to proceed in a particular order. He was therefore unable to support Mr. Kearney when he said that priority should be given to the study of responsibility arising from the violation of treaties. The Commission had established that responsibility was the consequence

[12] See *International Legal Materials*, vol. XI, No. 4, p. 694.

of the violation by a State of an international obligation. An international obligation could derive from a treaty, a customary rule or other source, and one of the first rules the Commission would meet with when it took up the chapter on violation, was that there was no difference in a violation according to whether the obligation violated arose from one source or from another. It would therefore be a departure from the basic criterion, and even a setback to the codification of responsibility, to attempt to study the violation of treaties before the violation of other obligations.

34. Mr. Kearney had also mentioned the problem of abuse of rights. When the Commission had discussed the question of responsibility, it had made one point clear: if there was a rule of international law to the effect that, at least in certain matters, the possessor of an international right could not go beyond a certain limit in exercising that right, then there was an international obligation not to abuse the right, and any violation of that obligation, as of any other obligation under international law, gave rise to international responsibility. But the real problem was not one of responsibility. It was a substantive problem, a problem of a primary rule, namely, whether there was or was not a rule of international law which set a limit to the exercise of a right. He was becoming more and more convinced that the problem of abuse of rights deserved study by the Commission, but that it did not come within the framework of responsibility and should be studied separately.

35. The question of the determination "*dommages*" —which did not correspond exactly to the English term "damages"—would be dealt with when the Commission took up the determination of the consequences of a wrongful act, which was the last stage in the study of responsibility. That question would thus find its place in the Commission's programme of work in due course.

36. As to pollution and its relationship to responsibility, he emphasized that the problem of river pollution was not one of responsibility, so could not be solved as part of the study of responsibility. That was why Mr. Kearney had not found in the draft articles on responsibility the answers to the questions he had raised. There was nothing surprising in that, since the question to be decided was whether there were any rules of international law to prevent States from engaging in certain activities calculated to produce the results complained of, or whether the Commission wished to establish such rules where none existed. The matter would be relatively simple if the activities of States or public authorities alone were involved, but it was also necessary to consider whether there were, or whether the Commission wished to establish, rules of international law obliging States to prohibit privates persons from carrying on certain activities or to require them to take certain precautions. If such rules existed and pollution was the result of State activity, the State which had violated the obligation deriving from those rules incurred international responsibility, and if a private person caused pollution by acting contrary to the rules which the State should have prescribed for him, the State would incur responsibility for failure to take the necessary measures to prevent the pollution. There again, the problem was anterior to that of responsibility; it should be studied, but outside the framework of responsibility.

37. The CHAIRMAN said that the officers and former chairmen of the Commission, at a meeting held that morning, had examined the question of the long-term programme of work and concluded that it would be extremely difficult to reach a consensus on a list of topics for recommendation to the General Assembly. Furthermore, it had been considered undesirable to adopt a list by voting.

38. In those circumstances, it was recommended that the report to the General Assembly should include a passage giving a detailed account of the Commission's discussion. The passage would record the fact that some members had stressed the importance of certain topics; it would also note that none of the members had suggested the inclusion of some other topics, such as the right of asylum and the recognition of States and governments, which remained outstanding from the 1949 list. The proposed passage would begin with a paragraph stating that the Commission's current agenda included State responsibility, succession of States in respect of matters other than treaties, the most-favoured-nation clause and the question of treaties concluded between States and international organizations, which would take up much of the Commission's time in the years ahead. The passage would not constitute a decision, but would simply inform the General Assembly of the discussion held, leaving it to the Assembly to decide which topics should be included in the Commission's long-term programme of work and to lay down priorities.

39. The question of international watercourses was, of course, another matter, for it was already included in the Commission's programme of work.

40. If there were no comments, he would take it that the Commission decided to adopt those suggestions.

It was so agreed.

The meeting rose at 1 p.m.

1238th MEETING

Monday, 2 July 1973, at 3.10 p.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of matters other than treaties

[Item 3 of the agenda]

(resumed from the 1232nd meeting)

1. Mr. BEDJAOUI (Special Rapporteur) said it would be useful if the Secretariat could help in getting together