Document:-
A/CN.4/SR.1795

Summary record of the 1795th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
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should be guided by practical considerations, and therefore the framework agreement should not only set forth unconditional obligations, but also contain provisions whose legally binding content was less clear. Such provisions could pertain, for example, to what was practical or necessary in a given case; they could prove indispensable in shaping practice regarding river administration and co-operation, as well as in formulating progressive rules of law, and could also provide States with the legal and political impetus to draw up modern system agreements. The bases for discussion set forth in his report (A/CN.4/367) seemed to command general support in that respect, but he would take due account of the comments made when preparing his second report.

28. In his introductory statement (1785th meeting), he had asked for the Commission's reaction to the outline for a draft convention set out in his report (A/CN.4/367, para. 65). It seemed that the outline was basically acceptable, although Mr. Jagota and Mr. Lacleta Muñoz (1793rd meeting) had suggested that the articles might be rearranged, and Mr. Flitan (1791st meeting) had underlined the importance of retaining chapter V on the settlement of disputes. In his future work on the topic, he would take account of the views that had been expressed in order to improve the outline in the manner suggested.

29. As to whether he had struck a reasonable balance between the various interests involved, he did not think that he had been entirely successful on that score, and Mr. Jagota, for example, had suggested that certain formulations might be misinterpreted. Again, in his future work, he would bear such points of concern in mind.

30. Also in connection with the outline for a draft convention, he had suggested that it might be inadvisable to include provisions on the law of war. While several members had supported this view, others had suggested that some provisions could be included on use and management for peaceful purposes or on use for peaceful purposes in time of peace and in time of war. He would reconsider the matter with a view to arriving at an accommodation in that regard.

31. The general feeling in regard to chapter V, relating to settlement of disputes, was that it was useful, and even necessary, to include it in a framework agreement. A number of members had supported his oral proposal that consideration should be given to including provisions on compulsory conciliation procedures. In that connection, he noted that Mr. Lacleta Muñoz and Mr. Quentin-Baxter (1792nd meeting) had advocated the establishment of a fact-finding technical commission, or fact-finding technical bodies, while Mr. Reuter (1786th meeting) had suggested that such negotiations could perhaps be assisted by international organizations or mediators appointed specifically to ascertain the facts. Mr. Ushakov (1788th meeting), on the other hand, had questioned the need for chapter V since, in his view, if the purpose of a framework agreement was to create the climate in which individual system agreements could be concluded, such issues should be solved by negotiation between the parties of those system agreements.

32. With regard to the interesting exchange of views which the Commission had had on the concept of an "international watercourse system", he believed that there was a fundamental difference between that concept and the "drainage basin" concept. In addition to the two features of a watercourse system which Mr. McCaffrey (1792nd meeting) had indicated, namely flexibility and relativity, it should perhaps be borne in mind that the drainage basin concept had been defined in article II of the Helsinki Rules on the Uses of the Waters of International Rivers[6] and, consequently, was burdened with that definition. Notwithstanding some hesitation on the part of some members of the Commission, his own view was that the concept of the watercourse system was a convenient descriptive tool, especially if it were not regarded as a superstructure from which to distil legal principles.

33. When considering draft article 6, he would take account of the statements made regarding the "shared natural resource" concept. The many valuable observations made pertaining to other concepts would likewise assist him when he came to reconsider his first report.

34. As to his future programme of work, he hoped to revise his proposals in the light of the proceedings in the Commission and in the Sixth Committee of the General Assembly, in whose deliberations he planned to take part. He trusted that he would be able to submit his second report in good time for the Commission's thirty-sixth session. In the circumstances, it did not seem appropriate at the current stage to refer any draft articles to the Drafting Committee. He had not summed up the comments on individual draft articles, since he felt that it was not the right time to do so and he also wished to be able to consult the summary records. Lastly, he thanked members again for their comments and valuable advice.

35. The CHAIRMAN, thanking Mr. Evensen for his work as Special Rapporteur, said that the Commission looked forward to receiving his second report in 1984.

The meeting rose at 12.30 p.m.

[6] See 1785th meeting, footnote 13.

1795th MEETING

Monday, 4 July 1983, at 12.05 p.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Statement by the Secretary-General of the United Nations

1. The CHAIRMAN said that the Commission had gathered on the present special occasion to receive His Excellency Mr. Javier Pérez de Cuéllar, the Secretary-General of the United Nations, who had done it the honour of paying it an official visit.

2. It was his own good fortune to have been elected Chairman of the thirty-fifth session of the Commission and to have the rare opportunity to extend to the Secretary-General a very warm and cordial welcome on behalf of all members of the Commission. He hoped that the Secretary-General would accept the apologies of Chief Akinjide, Mr. Al-Qaysi, Mr. Boutros Ghali, Mr. Jacovides, Mr. Jagota, Mr. Ogiso and Mr. Reuter, who were unable to attend the present meeting.

3. It was understandable that, as a member of the Commission from the Latin-American region, he himself should claim the privilege of welcoming, on behalf of the Commission, the eminent Latin-American diplomat and jurist who, with great distinction, occupied the exceptionally important post of Secretary-General of the United Nations. As a jurist, scholar and professor who had taught and published on questions of international law, the Secretary-General should feel at home in the Commission, where he no doubt recognized not only many members of the Commission and its secretariat, but also its distinguished visitors, Judge Roberto Ago of the International Court of Justice, who had formerly been a member of the Commission for some 20 years, and Mr. Erik Suy, Director-General of the United Nations Office at Geneva.

4. Everyone present respected and admired the contributions which the Secretary-General had made to the cause of peace through the United Nations, with which he had been associated in several capacities. In the course of a brilliant career, he had provided constant proof of a deep personal commitment to the principles and purposes enshrined in the Charter of the United Nations and of his belief in the important role of international law as a means of achieving those goals. The Secretary-General had eloquently given expression to that commitment and that belief on at least two occasions in the past year, namely in the introduction of his first report on the work of the Organization, which he had submitted to the thirty-seventh session of the General Assembly,[1] and in his statement to the Montreal Conference of the International Law Association.[2]

5. The Secretary-General's visit to the Commission relatively early in the course of his mandate offered additional proof of his deep commitment to the promotion and maintenance of international legal order. The statement which the Secretary-General would now make to the Commission would be a further confirmation of an approach that could only serve to encourage the members of the Commission in the performance of the tasks for which they had been elected by the General Assembly.

6. The SECRETARY-GENERAL thanked the Chairman for welcoming him on behalf of the members of the Commission. As he, too, was a lawyer, it was a particular pleasure for him to be in the Commission's company.

7. Since he was present in the Commission for the first time, he wished to mention some of his preoccupations concerning the vital importance of the codification and progressive development of international law. It was a well-known fact that one of the basic aims of the United Nations, as spelt out in the Preamble to the Charter, was the establishment of conditions under which justice and respect for the obligations arising from treaties and the other sources of international law could be maintained. The prime purpose of the Organization, as enunciated in article 1, paragraph 1, of the Charter, was the maintenance of international peace and security. To that end, that provision referred to the bringing about by peaceful means, and in conformity with the principles of justice and international law, of the adjustment or settlement of international disputes or situations which might lead to a breach of the peace. The concept of a coherent and generally accepted body of international law thus lay at the heart of the Charter. Such a body of law was essential not only for solving existing disputes without violence, but also for the day-to-day coexistence and co-operation of the many States which now constituted the international community.

8. It might be asked whether it was not perhaps ironic to stress the importance of the role of international law in the present state of international relations, when constant claims were being made about the violation of the basic principles that made up that law. In his view, however, the time had never been more critical than now, when substantial confusion reigned about international norms of conduct for restating and formulating the very foundations of international relationships and legal order. The history of mankind had demonstrated that, without a clear formulation of legal principles to serve as guidelines for the conduct of States in the common interest, the world would face even greater difficulties in searching for an ordered direction of international affairs. Regardless of their ideologies, social and economic systems, size and relative military and economic strength, States should acknowledge that there was no viable and long-term alternative to a policy of development and peaceful coexistence within a framework of international law.

9. The continuing role which the United Nations was expected to play in the growth and development of a coherent and generally accepted body of international law had found expression in Article 13, paragraph 1 (*a*), of the Charter, which provided that the General Assembly would initiate studies and make recommendations for the purpose of "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification". The adoption of that provision by the San Francisco Conference had marked the beginning of a new

[1] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 1* (A/37/1).

[2] Sixtieth Conference of the International Law Association, Montreal, 29 August–4 September 1982.

and unprecedented era in the process of progressive development and codification of international law. The framers of the Charter had conceived of work on the progressive development and codification of international law as a political objective of the United Nations in whose achievement the Member States had undertaken a political and legal commitment to co-operate.

10. The process of developing and codifying international law was now taking place primarily in the forums of the universal international organization, in which the participants were seeking to update, mould and even transform the criteria for the conduct of their relations so as to make those norms more responsive and effective in the context of new situations. That process relied on multilateral diplomacy, which would produce treaties and codify conventions, rather than on the development of customary international law through practice, acceptance or acquiescence. Its aim was the fulfilment of the political aspirations, interests and needs of States and of the organized international community with a view to facilitating international co-operation and contributing to the maintenance of international peace and security through the certainty of law.

11. In addition to the underlying concern with the need to maintain international peace and security, other major factors had led States to attach growing importance to the progressive development and codification of international law. It was generally recognized that, in the past 40 years, international society had undergone a substantial transformation which constantly called for the progressive development of international law and its codification in the interest of contemporary requirements.

12. As had been emphasized time and again, what had been adequate and appropriate at the turn of the century, when 60 per cent of the world's land and 70 per cent of its total population had been made up of colonies, dominions and protectorates, or even in 1945, when 51 States had signed the Charter of the United Nations, could not be expected to meet the demands of an international community of 157 States faced with a whole range of new issues and problems. Those issues and problems had also arisen out of the scientific and technological developments that had materially affected the global structure and the global economy, thereby producing a need for the legal regulation of activities that had, by the middle of the current century, still been beyond man's capabilities.

13. Contemporary civilization was largely guided by the benefits and demands of science, in which limited resources were coupled with an increasing need for their more rational and equitable distribution and in which interdependence, brought about by the ease of modern communications and the necessities of progress, had grown so much that national economic and industrial activities substantially affected not only a State's immediate neighbours, but also States on the other side of the planet. The international flow of goods and services in today's world had been so amply documented that its mention alone would suffice to confirm that interdependence. The point was that sustained global interaction had made the life and stable existence of States dependent upon numerous factors operating beyond their national boundaries: the contemporary effective pursuit by States of development and coexistence was increasingly dependent on their ability to identify those factors and to devise feasible means of dealing with them. At the same time, however, States continued to be jealous of their independence and territorial sovereignty.

14. The current emphasis was on what separated States rather than on what brought them together. There was, moreover, no doubt that, in a world with limited resources and severe economic depression, one State's larger share would be at the expense of another's smaller share. There was thus a danger of losing sight of common interests and of failing to achieve consensus on what direction should be taken. The codification of legal principles against such a background of interdependence had proved to be an enormous task, but it was all the more important precisely for that reason.

15. In November 1983, 36 years would have passed since the General Assembly, in resolution 174 (II), had established the International Law Commission as a means of exercising one of the principal functions entrusted to it by Article 13 of the United Nations Charter. With the establishment of the Commission, the General Assembly had acquired a permanent subsidiary organ of the highest scientific and technical quality to carry out the essential preparatory work for all codifications, namely the elaboration of basic drafts. The community of States had always taken care to ensure the election to the Commission of jurists of the highest qualifications and standing. The Commission had been established as a body capable of formulating legal rules simultaneously on a variety of complex topics. The Commission's membership also added a unique feature to its character: individual experts from *academia*, diplomacy and the bar provided a valuable combination of talents and experience for the theoretical and practical analysis of State practice, judicial decisions and doctrine with a view to defining the content of the legal rules to be formulated.

16. Since diplomatic codification could not be carried out in a political vacuum, the General Assembly had made the Commission part of the political system of the United Nations and had associated Member States, individually and collectively, with all the main stages of the codification process. That amalgam of legal objectivity and political subjectivity was without doubt one of the most characteristic features of the Commission and of the codifying method adopted by the United Nations. It certainly served as a basis for the flexibility and effectiveness which the Commission had displayed in elaborating drafts that had proved viable when submitted to the final scrutiny of States.

17. In the 35 years of its existence, the Commission had become the most respected international institution in the field of codification and progressive development of international law. It had responded to the appeal made by the international community as a whole as expressed through the General Assembly and had, over the years, produced

a series of conventions, some of which—such as the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Vienna Convention on the Law of Treaties—constituted the principal landmarks in current international law.

18. The Commission's achievements had been the result not only of improvements in the process of co-ordination of its studies of particular topics with the opinions expressed by Governments, but also of the flexible approach it had adopted. The Commission's practice in that regard had demonstrated that there was a range of possibilities available in furtherance of its purposes and that what might suit the needs of a particular topic and of the international community in one context might not be suitable in another. As the Commission continued its work in future, it would no doubt expand the repertoire of techniques available within the framework of its Statute for the sucessful codification and progressive development of international law in different spheres. That would be particularly important as the Commission moved, as it certainly would, into new areas of international law in which scientific and technological advances would require the development of legal rules to regulate the immensely valuable, but sometimes potentially dangerous, instruments made available by science and technology.

19. In his first report on the work of the Organization,[3] he had emphasized that an important first step towards the full realization of the role and capacity of the United Nations would be a conscious recommitment by Governments to the Charter. He believed that such a recommitment would be particularly appropriate today in respect of the objective enshrined in the Article of the Charter to which he had referred earlier. Clearly, the progressive development and codification of any legal rules that would be universally acceptable was no simple task. More than ever, there was a need for legal minds to search for ways of accommodating conflicting demands and relationships and to design coherent legal rules that would provide guidance in meeting the challenges of peaceful coexistence and development. He was convinced that the Commission would again prove to be responsive to the winds of change and continue to meet the growing expectations of mankind. He wished the Commission every success in its important task.

20. The CHAIRMAN said that he spoke on behalf of all members of the Commission in expressing appreciation for the important statement which the Secretary-General had made to mark his first visit to the Commission. The Secretary-General had stressed the significance in the contemporary world of the mandate entrusted to the General Assembly in Article 13, paragraph 1 (*a*), of the Charter, namely that of "encouraging the progressive development of international law and its codification", and had emphasized the central role assigned to the Commission in seeking to achieve that objective as the General Assembly's permanent subsidiary organ with general competence in the field of public international law.

21. The Secretary-General had also praised the work accomplished by the Commission during the 35 years of its existence. The Commission was proud of its achievements and the Secretary-General's words of recognition were a source of special satisfaction and inspiration to its members as well as a timely reminder of the delicate and difficult task that lay ahead.

22. During the three and a half decades that had elapsed since its establishment, the Commission had concerned itself with basic chapters of public international law in their comprehensive sense and, in particular, with diplomatic law, the law of treaties and the law of State responsibility. Pursuant to the instructions of the General Assembly, the Commission had now embarked upon the study of other complex and far-reaching topics of great practical value to the international community, including the Draft Code of Offences against the Peace and Security of Mankind; jurisdictional immunities of States and their property; State responsibility; the law of the non-navigational uses of international watercourses; the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier; relations between States and international organizations; and international liability for injurious consequences arising out of acts not prohibited by international law.

23. The Commission thus had a full agenda for the immediate future, but that did not mean that it would not be capable of undertaking additional work of an urgent nature if the General Assembly deemed it necessary. Indeed, it could be said that, in its present composition, the Commission could respond as readily as ever, if not more so, to pressing demands for international legal regulations designed to meet the needs of the contemporary international community. In 1981, the General Assembly had decided to increase by nine the membership of the Commission in accordance with an agreed set pattern for the regional distribution of seats, so that the Commission's size and composition would be more consonant with the substantial growth of the membership of the United Nations since 1961.

24. The enlargement of the Commission's membership attested to the continuing and increasing interest shown by States in the process of progressive development of international law and its codification within the framework of the United Nations system. The Commission was aware of that interest and of all the responsibilities it entailed and had at all times endeavoured to discharge those responsibilities with the utmost efficiency. In that connection, it was significant that, since the thirty-seventh session of the General Assembly, action had been taken in one instance and action was expected to be taken by States in two other instances in respect of three of the final drafts recently prepared by the Commission. Consequently, a convention had been adopted in April 1983 on succession of States in respect of State property, archives and debts;[4] a new convention was to be elaborated on the law of treaties concluded between States and international organizations; and the General Assembly was

[3] See footnote 1 above.

[4] A/CONF.117/14.

also to take a decision on the final form of the draft articles on most-favoured-nation clauses.

25. The increase in the membership of the Commission by decision of the General Assembly in 1981 was an inevitable consequence of the increase in the membership of the General Assembly itself in the wake of the decolonization process. That transformation in the membership of the Organization had been accompanied, *inter alia*, by insistent appeals from developing countries for reforms in the international economic, financial and trading relationships between developed and developing countries. The Commission, being a microcosm of the General Assembly, would from time to time have to deal with the legal aspects of such relevant issues arising within the United Nations system with a view to readjusting the international economic and social order. In that connection, he noted that articles 23, 24 and 30 of the draft on most-favoured-nation clauses[5] contained provisions of particular interest to developing countries. The Commission would inevitably be expected to respond to difficult issues and it was well equipped to deal with such contingencies, not only because of its expertise, but also because its members, who served in their individual capacities, formed a close-knit fraternity and because those from developed countries were aware of the problems of the developing world and were willing to help find solutions to those problems. There were thus excellent prospects for continuing good relations among the members of the Commission and for the progressive development of international law in the interests of third world countries.

26. In discharging its functions, the Commission was fortunate to have the services and assistance of a small number of highly skilled, competent and devoted staff members from the Codification Division of the Office of Legal Affairs. He took the opportunity to thank the Secretary-General for that assistance, which had over the years become an integral part of the Commission's work, and to express the hope that, in future, such assistance would not only be maintained, but would also be expanded in response to the Commission's needs at any given time.

27. The Secretary-General's visit to the Commission was of great significance, for as the chief administrator of the Secretariat and the chief executive of the United Nations system, he could be compared to a military commander-in-chief visiting his forces abroad to offer them encouragement in the battle in which they were engaged. Although the Commission was not engaged in battle, it did have a difficult task ahead of it and the Secretary-General's presence would offer it the encouragement it needed to continue to work for the codification and progressive development of international law.

28. He invited the Secretary-General to meet the members of the Commission.

The meeting rose at 12.45 p.m.

[5] *Yearbook . . . 1978*, vol. II (Part Two), pp. 59–68 and 72–73.

1796th MEETING

Monday, 4 July 1983, at 4 p.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (A/CN.4/370[1])

[Agenda item 7]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR

1. Mr. DÍAZ GONZÁLEZ (Special Rapporteur) said that his main purpose in submitting his preliminary report (A/CN.4/370) was to elicit the views of the members of the Commission and, in particular, of the new members on the topic under consideration.

2. Everyone was aware of the problems raised by the second part of the topic of relations between States and international organizations, namely "the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities who are not representatives of States". The laws and regulations in force in a particular State could, for example, hamper the activities of international organizations. In order to give international organizations full freedom of action to perform the functions assigned to them by the international community, States which agreed to the establishment of such organizations in their territory had to give up part of their sovereignty. In that way, the States members of an international organization were assured of equal treatment.

3. Referring, in 1955, to the legal status of the various international organizations which had their headquarters in Switzerland, the Swiss Federal Council had informed the Federal Assembly of the Confederation that:

> Under international law, an international organization which is established on the basis of a treaty between States enjoys a number of privileges within the State in which it has its headquarters; according to custom, it concludes with that State an agreement stipulating the modalities of such privileges. An organization whose members are States cannot be subject to all the provisions of the internal law of the State where its main or secondary headquarters is located. Otherwise, the State would be able to interfere, either directly or indirectly, in the organization's activities. The honour of having an international organization established in its territory naturally involves an obligation, which

[1] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).