

Document:-
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Summary record of the 2180th meeting

Topic:
Status, privileges and immunities of international organizations, their officials, experts, etc.

Extract from the Yearbook of the International Law Commission:-
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diseases having a world-wide impact or, indeed, the action taken to ensure greater protection for human rights, there was one self-evident fact: if the efforts were to bear fruit, they must be world-wide. The only conceivable perspective was that of a world organization whose potential must be harnessed in the most effective way.

67. To borrow the words of an eminent internationalist, as long as the international community was composed of States, it was only through the exercise of their will, as expressed in treaties and agreements or formulated by an international authority deriving its powers from States, that a rule of law could become binding on individuals. As Professor Jessup had stated, there was one inescapable fact, namely that the whole organization of the modern world rested on the coexistence of States and there could be no major change other than through the action, positive or negative, of States.

68. Despite the slow changes now taking place in that area in terms of an increased role for individuals in international life, the fact remained that public international law continued to govern primarily relations between States: the topics dealt with by the Commission provided a good illustration of that fact.

69. The twenty-sixth session of the International Law Seminar which was drawing to a close had also enabled participants to become acquainted with the activities of UNHCR, ICRC and GATT, as well as with certain procedures established for the protection of human rights and with the provisions of the 1989 Convention on the Rights of the Child, all areas vital in the closing years of the century at a time when the upheavals in the world gave a new dimension to the perspective and potential of the United Nations.

70. Mrs. BLAKE, speaking on behalf of the participants in the twenty-sixth session of the International Law Seminar, said that the Seminar had enabled them to observe closely the work of the Commission and, through their attendance at the Commission's morning meetings and at afternoon workshops, had provided them with a perception of the process of elaborating international law. The participants had been impressed by the breadth of knowledge and range of experience of those who had addressed them. They had also broadened their own knowledge by discussing different approaches to various issues and by gaining an appreciation of the fact that their role as Government official, researcher, practitioner or teacher could affect the way in which they focused on any one issue.

71. The participants, who were convinced of the inestimable value of the Seminar, wished to thank the Commission for its continued emphasis on the Seminar's importance, the Governments without whose generosity the Seminar could not be held, the Director-General of the United Nations Office at Geneva, the staff of the Legal Liaison Office for their assistance, the Gilberto Amado Fund which had welcomed them on the opening day and, lastly, the Canton of Geneva for its hospitality.

The Director-General presented the participants with certificates attesting to their participation in the twenty-sixth session of the International Law Seminar.

The meeting rose at 12.25 p.m. to enable the Enlarged Bureau to meet.

2180th MEETING

Tuesday, 26 June 1990, at 10.00 a.m.

Chairman: Mr. Jiuyong SHI

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Al-Qaysi, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Diaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Illueca, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

**Relations between States and international organizations
(second part of the topic) (*concluded*) (A/CN.4/401,¹
A/CN.4/424,² A/CN.4/L.383 and Add.1-3,³
A/CN.4/L.443, sect. G, ST/LEG/17)**

[Agenda item 8]

FOURTH REPORT OF THE SPECIAL RAPPORTEUR (*concluded*)

ARTICLES 1 TO 11⁴ (*concluded*)

1. Mr. DÍAZ GONZÁLEZ (Special Rapporteur), summing up the discussion, said that he was well satisfied with the debate that had taken place on his fourth report (A/CN.4/424) and welcomed the constructive proposals and ideas that had been put forward. All members of the Commission who had spoken in the debate, apart from one, were in general agreement with the fourth report, as well as with his second report,⁵ and with the approach he had adopted, which had been approved by the Commission at its thirty-ninth session, and by the General Assembly at its forty-second session, in 1987.

2. He wished first to make some general remarks with a view to clarifying certain points made during the debate. In the first place, the topics considered by the Commission were not invented by special rapporteurs, nor, in the majority of cases, by the Commission itself:

¹ Reproduced in *Yearbook ... 1986*, vol. II (Part One).

² Reproduced in *Yearbook ... 1989*, vol. II (Part One).

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

⁴ For the texts, see 2176th meeting, para. 1.

⁵ *Yearbook ... 1985*, vol. II (Part One), p. 103, document A/CN.4/391 and Add.1.

they were placed before the Commission at the express request of the General Assembly. Moreover, a report by a special rapporteur was not a piece of school homework submitted to a teacher for correction, but a working document of the Commission—just as the special rapporteur was its working tool—designed to facilitate its work. Nor was the special rapporteur alone responsible for the topic: the Commission as a whole was accountable to the General Assembly and what was submitted to the General Assembly were the results achieved by the Commission, not the reports of the special rapporteur. Each and every member of the Commission therefore had a right and a duty to express his views on a special rapporteur's proposals and to amend, supplement or improve them, thus enabling the Commission to secure the benefit of his wisdom and knowledge.

3. It had been said that his reasoning was elliptical. Fortunately, every human being had his own way of reasoning; were it otherwise, human relations would be very monotonous and there would be no need for such bodies as the Commission. Not even the harshest dictatorship had succeeded in controlling men's minds. No special rapporteur would wish to impose his approach to a particular problem, and still less his way of reasoning and his conclusions, on the other members of the Commission. The work of the Commission was, by its very nature, teamwork, and it was for each member to make his own contribution to the joint effort.

4. Notwithstanding certain doubts concerning the usefulness of continued work on the topic, the majority of members who had spoken in the discussion believed that it was both useful and important. As had rightly been said, it was not a question of whether study of the topic was of any use but a question of completing work which had been assigned to the Commission by the General Assembly and had been started several years earlier. The Commission could not simply tell the General Assembly it had failed in its task, without even attempting to fulfil its mandate. In that connection, he noted that Mr. Beesley (2179th meeting) had made some valuable suggestions concerning the kinds of norms that should be taken into account.

5. It had been suggested that a working group should be set up to determine the scope of the topic. That had in fact already been done in the initial stages, and on the basis of the group's conclusions the Commission had proceeded, with the General Assembly's approval, to consider the topic.

6. It had also been said that States would not adopt the Commission's proposals on the topic. It was a valid remark, for obviously nothing could be achieved without the political will of States. That applied, however, not only to the present topic but to all the topics before the Commission. One member, to underline his doubts, had referred to the importance States might attach to a framework agreement on the law of the non-navigational uses of international watercourses. While it was highly probable that such an agreement would encounter opposition, as, for instance, the draft articles on most-favoured-nation clauses and the draft articles on the status of the diplomatic courier

and the diplomatic bag not accompanied by diplomatic courier had done, he would not himself go so far as to say that work on the topic of international watercourses was pointless. The wealth of material prepared by the present and previous special rapporteurs for that topic could be of great use in preparing a more realistic draft, should it be decided to incorporate all matters pertaining to the legal aspects of the environment in one topic and to call it by its real name. Any topic was useful in so far as States had an interest in it and the political will to accept the rules proposed.

7. He had been charged with using somewhat exaggerated language, but would point out that the formulations proposed were embodied in many international instruments. Furthermore, he saw no contradiction between the concession or granting of privileges and immunities and the fact that international organizations could demand them. Indeed, once privileges and immunities had been granted under an appropriate legal instrument, any right could be demanded. It was inconceivable that a right should be granted yet not be exercisable.

8. There had been some comment to the effect that account had perhaps not been taken of his second report, in which the legal personality and legal capacity of international organizations had been discussed in more detail and reference had been made to headquarters agreements, particularly those concluded with the Swiss Government. He had, however, pointed out at the outset of the debate (2176th meeting) that, in considering the fourth report, the Commission should also bear the second report in mind.

9. The majority of members who had spoken had expressed general agreement with the draft articles submitted, subject to certain changes. He had no objection to those proposals, which, together with the comments made during the discussion, would be very useful when the Drafting Committee came to finalize the articles.

10. The word "universal" had been used in reference to international organizations in order to draw a distinction between intergovernmental organizations—which should perhaps more appropriately be referred to as organizations with a universal vocation—and regional organizations or organizations set up by specific groups of States, such as OPEC. The word "office" (art. 1, para. 1 (e) (ii)), to which one member had referred, meant any premises used by an international organization to perform its functions and was used in the sense in which the term "premises" was defined in article 1 (i) of the 1961 Vienna Convention on Diplomatic Relations. The same was to be inferred, in the case of the United Nations and other international organizations, from Articles 104 and 105 of the Charter of the United Nations, as well as from the relevant provisions of the headquarters agreements or constituent instruments of various intergovernmental organizations.

11. The topic was growing in importance. In that connection, the reference made to the recent Security Council meeting held in Geneva, though perhaps falling more within the context of other legal instruments, was none the less valid inasmuch as it demonstrated

that, even in cases covered by conventions or headquarters agreements, some States might fail to comply with their obligations.

12. He would suggest that the draft articles be referred, together with members' comments and proposals, to the Drafting Committee for further consideration. He wished to assure members that their comments had been greatly appreciated and would serve as a guide in his further work on the topic.

13. Mr. CALERO RODRIGUES said that he had no objection to the Special Rapporteur's proposal, but felt bound to place on record his view that it was not the proper course at the present stage. A question that had wider implications was involved and it did not concern the topic under consideration alone. The question was: should the Commission refer draft articles to the Drafting Committee when it knew that the articles would not be examined by the Committee during the term of office of the Commission's current members? In view of the fact that the new members would not have had an opportunity to study the draft articles, it would be preferable for the Commission in its new membership to take the decision to refer the articles to the Drafting Committee.

14. Mr. THIAM said that, while he understood Mr. Calero Rodrigues's concern, it would not, in his opinion, be a good idea to divide the Commission's term of office into two periods, as it were, one during which draft articles could be referred to the Drafting Committee and one during which they could not. It was not a method of which he could approve.

15. After a procedural discussion in which Mr. DÍAZ GONZÁLEZ (Special Rapporteur), Mr. AL-QAYSI, Mr. FRANCIS, Mr. BARBOZA, Mr. EIRIKSSON, Mr. BEESLEY, Mr. McCAFFREY, Mr. TOMUSCHAT, Mr. GRAEFRATH, Mr. PAWLAK, Mr. ILLUECA, Mr. MAHIOU and Mr. SOLARI TUDELA took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to refer draft articles 1 to 11 to the Drafting Committee.

It was so agreed.

*The meeting rose at 11.10 a.m. to enable
the Planning Group to meet.*

2181st MEETING

Wednesday, 27 June 1990, at 10.05 a.m.

Chairman: Mr. Jiuyong SHI

Present: Mr. Al-Khasawneh, Mr. Al-Qaysi, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Illueca, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo,

Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

International liability for injurious consequences arising out of acts not prohibited by international law (continued)* (A/CN.4/384,¹ A/CN.4/423,² A/CN.4/428 and Add.1,³ A/CN.4/L.443, sect. D)⁴

[Agenda item 7]

SIXTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

ARTICLES 1 TO 33⁵ (continued)

1. Mr. CALERO RODRIGUES said that his comments would be of a preliminary nature, even though he was well aware that he would have no opportunity at the current session to come back to the topic. Because of its complexity and density, the Special Rapporteur's excellent sixth report (A/CN.4/428 and Add.1) was one of those which could not be considered in their entirety the year they were submitted. He regretted not having had the time to give it the detailed consideration it required.

2. The Special Rapporteur had adopted a constructive and very flexible method of work which enabled him to amend the draft articles in the light of the comments made in the Commission. That flexibility nevertheless had one drawback: the introduction of new concepts and amendments seemed to call into question the purpose of the draft, which had often been discussed in the Commission, most recently at the thirty-ninth session, in 1987. On that occasion, he himself had stated:

... The main purpose of the draft articles should therefore be to delimit the legal consequences of harm caused in the absence of wrongfulness. It would also be useful to include in the draft rules of prevention, which ... would be based on the principle of co-operation. Nevertheless, the essence of the articles should be to establish the legal consequences of transboundary damage.⁶

He was no longer sure, however, that the draft articles were still being developed from that angle, especially when he considered section B of the introduction to the sixth report, entitled "Activities involving risk and activities with harmful effects."

3. Although the Special Rapporteur stated in the report that "the question whether activities involving risk and activities with harmful effects should be considered separately has already been dealt with" (*ibid.*,

* Resumed from the 2179th meeting.

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

² Reproduced in *Yearbook ... 1989*, vol. II (Part One).

³ Reproduced in *Yearbook ... 1990*, vol. II (Part One).

⁴ Consideration of the present topic is based in part on the schematic outline submitted by the previous Special Rapporteur, R. Q. Quentin-Baxter, at the Commission's thirty-fourth session. The text is reproduced in *Yearbook ... 1982*, vol. II (Part Two), pp. 83-85, para. 109, and the changes made to it are indicated in *Yearbook ... 1983*, vol. II (Part Two), pp. 84-85, para. 294.

⁵ For the texts, see 2179th meeting, para. 29.

⁶ *Yearbook ... 1987*, vol. I, p. 156, 2019th meeting, para. 8.