

Document:-
A/CN.4/SR.2506

Summary record of the 2506th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1997, vol. I

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and was therefore in danger of not acquiring the nationality of any successor State.

78. Mr. SIMMA said that he was currently convinced of the advisability of retaining article 23, paragraph 2.

79. Mr. GOCO said that he had no objections to the substance of the text, but wondered whether, generally speaking, the Commission should not consider the possibility of curtailing the practice of cross-references, which often caused confusion. Moreover, since the right of option had been defined as having two aspects, one positive and the other negative, he asked the Chairman of the Drafting Committee to explain how article 23, paragraph 2, tied in with the right to opt out and, in particular, with article 7, paragraph 2.

80. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) explained that, from the technical point of view, cross-referencing was designed to guarantee respect for the basic objectives of the draft. There were too many cross-references, but that was inevitable on first reading. If, when drafting specific provisions such as those in Part II, the Commission refrained from referring to the draft's basic objectives, there was a risk that the provisions it adopted might result in statelessness, multiple nationality or a nationality being imposed on persons against their will. In the particular case of articles 22 and 23, the objective was to ensure that the persons concerned obtained the nationality of one of the successor States. However, if one such person was habitually resident abroad and did not wish to be a national of one of the successor States, the nationality of that State could not be automatically imposed on that person. That had to be spelled out so that one of the basic objectives of the text would not be meaningless. Cross-references were thus a necessity at the current stage, but, on second reading, the Commission could look into better ways of achieving the desired end.

81. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 23 with the amendment to paragraph 1.

Article 23, as amended, was adopted.

The meeting rose at 1.05 p.m.

2506th MEETING

Friday, 4 July 1997, at 3.05 p.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Bennouna, Mr. Candiotti, Mr. Crawford, Mr. Economides, Mr. Ferrari

Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Operti Badan, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosentock, Mr. Simma, Mr. Thiam.

Closure of the International Law Seminar

1. The CHAIRMAN invited Mr. von Blumenthal, Director of the Seminar, to address the Commission on the occasion of the closing ceremony of the thirty-third session of the International Law Seminar.

2. Mr. von BLUMENTHAL (Director of the International Law Seminar) expressed gratitude to all those who had helped to make the Seminar a meaningful event. He said that special thanks must go to the Governments which had donated the necessary funds without which it would not have been possible to ensure equitable geographical distribution among the participants, and also, of course, to the Chairman and members of the Commission, the experts from international organizations who had given lectures and the many members of the secretariat who had lent their support in various ways.

3. At a time of financial crisis, when the work and mandates of many United Nations bodies were being questioned, the International Law Seminar could not escape scrutiny of its objectives, methods and value. Constructive criticism and suggestions by Commission members as well as by participants in the Seminar were both necessary and welcome. Within tight financial and material limits, the active involvement of members of the Commission remained vital. For 33 years, the Seminar had provided a unique opportunity to successive generations of young lawyers from all regions and legal systems to acquaint themselves with the techniques of codification of vital topics of international law. Many previous participants had since taken up important positions in government and international relations, and some had become members of the Commission. He hoped that the participants in the thirty-third International Law Seminar would also go on to perform important functions and trusted that the three weeks of intensive exposure to the work of the Commission would remain a lasting source of inspiration to them in their commitment to bridging differences and conflicts through the unifying force of law and dialogue. In conclusion, he wished the participants every success in their future endeavours.

4. Ms. DOUKOURE, speaking on behalf of the participants in the International Law Seminar, thanked the Chairman and members of the Commission, the Director of the International Law Seminar and all members of the secretariat who had contributed to the successful holding of the Seminar. Attending the Commission's plenary meetings had given participants a better insight into problems in the codification and progressive development of international law as well as into the Commission's working methods. The lectures given by members of the Com-

mission and officials of United Nations specialized agencies had provided enriching opportunities for exchanges of views among lawyers from different cultures and legal systems. The participants had greatly appreciated the variety and topicality of the subjects covered by the lectures and, in particular, the opportunity to ask questions on topics currently under consideration by the Commission. They would have wished, however, to be allowed a closer view of the working methods of the Drafting Committee, the veritable linchpin of the Commission's work. In conclusion, she again thanked all concerned and emphasized the value of the instruction so generously dispensed to the participants, as well as the many human ties they had been able to establish.

5. The CHAIRMAN said he joined in the good wishes addressed to the participants by the Director of the International Law Seminar and thanked the participants for their courtesy and the lively interest they had shown in the Commission's work. With reference to the point just raised by their spokeswoman, while he appreciated the wish to gain a better insight into the work of the Drafting Committee, he felt that all persons other than Drafting Committee members should continue to be excluded from the Committee's meetings, complete privacy being, in his view, essential to the efficacy of the Committee's work.

The Chairman presented participants with certificates attesting to their participation in the thirty-third session of the International Law Seminar.

6. The CHAIRMAN invited International Law Seminar participants and members of the Commission to proceed to an informal exchange of questions and answers.

7. Mr. KABATSI and Mr. SIMMA said that they sympathized with the Seminar participants in their wish to attend meetings of the Drafting Committee and saw no reason why the presence of distinguished young professionals should disturb the Committee's work.

8. Mr. ROSENSTOCK said that he basically agreed with the Chairman, but would have no objection if Seminar participants were admitted to one Drafting Committee meeting during each session.

9. Mr. CANDIOTI said that, as a member of the Commission who had previously participated in an International Law Seminar, he thought that access to some meetings of the Drafting Committee and the working groups could prove very useful to young lawyers. He suggested that, in future, participants might be asked during the Seminar to engage in some research on topics related to the work of the Commission.

10. The CHAIRMAN recalled that at an earlier Seminar the participants had, on the initiative of the then Chairman, Mr. Tomuschat, set up four working groups, each of which had produced a paper on some aspect of the work of the Seminar.¹ He was not sure why the practice had been discontinued and hoped it would be revived next year.

¹ See *Yearbook . . . 1992*, vol. II (Part Two), p. 56, document A/47/10, para. 386.

11. Mr. BENNOUNA urged participants in the Seminar to put forward their ideas on topics for the Commission's future work.

12. Mr. KATEKA said he supported the suggestion by one participant that the Commission should take up the topics of corruption and extraterritorial application of national legislation. The comment that members of the Commission were sometimes encumbered by their personal background or national affiliation was true.

13. Mr. OPERTTI BADAN said the international community clearly needed to provide for some kind of solution to the problem of corruption. So far, the only legal system that had offered a formal response was the inter-American one, with the signing of the Inter-American Convention against Corruption, which set out a number of extremely important categories, such as influence-peddling and unjust enrichment. Usually, corruption did not touch one State alone, but relied on mechanisms for hiding funds in a number of countries. The Commission should make a formal decision to take up the topic and thereby show that it was capable of responding to concerns of great importance in the modern world.

14. Mr. ROSENSTOCK said the topic of corruption represented an interesting possibility for the Commission's future work, but the initiative for considering it should come from comments by representatives of Governments in the Sixth Committee, rather than from the Commission itself. Governments were unlikely to be interested in the views of international legal experts on extraterritorial jurisdiction, because it was not an issue in which technical legal issues were paramount: economic and political issues predominated.

15. Mr. LUKASHUK said it was interesting that a number of the topics for the Commission's future work suggested by Seminar participants coincided with those on the Commission's long-term programme of work, such as corruption, international terrorism, extradition and extraterritorial application of criminal law. The participants were people of some experience and it might be useful to mobilize their experience to deal with the problems with which the Commission itself was grappling. The Seminar should operate, not on the basis of lectures alone, but also through small working groups on particular subjects.

16. Mr. CRAWFORD said he agreed with Mr. Rosenstock's comments on extraterritorial jurisdiction. Corruption was a social problem with diverse legal ramifications and it would be useful for the Commission to have some incentive from representatives of Governments in the Sixth Committee. Clearly, something more than a regional approach was required, since the fruits of corruption tended to end up in regions other than those in which the corruption had occurred.

17. The CHAIRMAN observed that, although members of the Commission were independent experts, they were at the service of the international community with a view to fostering the codification and progressive development of international law. They would not be properly performing their mission if they were to take up a topic that Governments were not prepared to see progress on. That was true with extraterritoriality, and he agreed with Mr. Rosenstock's comments on that point.

18. In response to a question as to whether the Commission envisaged a revision of the Vienna Convention on Diplomatic Relations in the light of the growing tendency towards lack of respect for diplomatic immunity, he pointed out that at its forty-third session in 1991 the Commission had adopted a set of draft articles on jurisdictional immunity of States and their property.² The General Assembly was scheduled to respond, at its fifty-third session in 1998, to the submission of the draft, for the purposes of adopting a convention.

19. Mr. BENNOUNA added that in a situation of growing disregard for diplomatic immunity, very little good could be achieved, and some damage might be done, if the Commission were to revise or supplement existing rules. Moreover, the Commission had at one time taken up the issue of the immunity of international organizations, but had not proceeded further with the matter.

20. Mr. ECONOMIDES said the real problem in connection with diplomatic immunity was the attitude taken by States. When a diplomat committed a crime, the State of which he or she was a national should of its own volition renounce the absolute diplomatic immunity it was allowed under the Vienna Convention on Diplomatic Relations. It was shocking that States did not do so, and he believed it was above all the moral stance of countries that needed to evolve.

21. Mr. THIAM, replying to a question concerning feedback from Governments, said that, although the Commission had repeatedly invited comments from Governments on the topics under discussion, there was usually very little response. African States attributed their failure to respond to a lack of technical resources in the legal departments of Ministries of Foreign Affairs.

22. Mr. LUKASHUK said that the influence of African States on the process of codification and development of international law was an important issue which should be addressed by regional organizations such as OAU and the League of Arab States.

23. Mr. Sreenivasa RAO said that Governments' views were expressed not only in the form of written comments but also in their statements to the Sixth Committee. Some Governments were reluctant to express their views on work in progress, since that would leave them with less scope to comment on the final product. On the practical side, difficulties included few staff resources and the need to consult a number of different government departments and coordinate their views.

24. Mr. MIKULKA said that manpower and financial problems were no excuse for failing to provide the Commission with extracts from national legislation, for example on nationality in relation to State succession. That could only be described as negligence on the part of the Member States concerned.

25. The CHAIRMAN said that, as Special Rapporteur on the topic of reservations to treaties, he had been very gratified to receive replies to his questionnaire from 30 out of 185 Member States, which was apparently a record for the Commission.

26. Mr. LUKASHUK, replying to a question about the relationship between national and international law, said

that a topic which featured on the Commission's long-term agenda was the preparation of model legislation which could be used by individual States when they were unsure how to address particular contemporary issues.

27. Mr. ECONOMIDES said that the Venice Commission, a Council of Europe body, had undertaken a systematic comparative study of international and internal law, focusing on general principles, customs and judicial decisions, in order to establish how international law was applied within States. The study contained recommendations to the member States of the Council of Europe.

28. Mr. MELESCANU said some countries had arranged for the automatic incorporation of international human rights treaties in domestic law. For example, under article 20, paragraph 2, of the Constitution of Romania, the provisions of human rights treaties ratified by Romania could be invoked in domestic courts and prevailed over internal law in the event of a conflict between the two.

29. The CHAIRMAN said that the same was true of the French system of constitutional monism established in 1946 and developed in 1958.

30. Mr. LUKASHUK said that the Russian Constitution had opted for a radical solution to the problem, stipulating that generally accepted human rights principles and standards ranked higher than the Constitution.

Visit by the Secretary-General

31. The CHAIRMAN said that the Commission was particularly honoured to welcome the Secretary-General, whose presence denoted his interest in the cause of international law and its progressive development and codification. His visit also had symbolic status on the eve of the Commission's fiftieth anniversary.

32. The members of the Commission and of the International Law Seminar had been joined for the occasion by the President and members of the United Nations Administrative Tribunal, members of the United Nations Compensation Commission and representatives of diplomatic missions accredited to Geneva.

33. Mr. ANNAN (Secretary-General) said he regretted that a busy schedule in Geneva prevented him from spending more time with the Commission, as international law was a subject to which he attached the greatest importance.

34. He congratulated the Commission, as it prepared to celebrate its fiftieth anniversary, on its great achievements in the codification and progressive development of international law. The United Nations remained guided in its major reform efforts by the Commission's common heritage and commitment to the principles and purposes on which the Organization was founded. That foundation was the law, and also the idea that the conduct of States and the relations between them should be governed by one law that was equally applicable to all.

35. Mankind was living through a remarkable period in the advancement of international law. Great strides had been made in refining its writ, expanding its reach and enforcing its mandate. The challenges of the future in areas such as narcotics, disease, crime and international

² *Yearbook . . . 1991*, vol. II (Part Two), p. 13, para. 28.

terrorism were increasingly recognized as international challenges. As that recognition grew, so too had the realization that international law was a viable tool in the global effort to meet the challenges. For nearly 50 years the Commission had been in the forefront of that endeavour. It had succeeded greatly in setting forth basic rules in most of the key areas of international law. Those rules had in turn served as the basis for global treaties governing State activities in many areas. Indeed, some of the treaties drafted by the Commission, such as those regulating diplomatic matters, had laid the very foundation of the modern practice of international relations.

36. The occasion of the Commission's fiftieth anniversary afforded an opportunity not only to celebrate the Commission's achievements but also to evaluate the state of international law and to project its work into the next millennium. The General Assembly had requested him to make appropriate arrangements to commemorate the fiftieth anniversary through a colloquium on the progressive development and codification of international law to be held later in the year, during the consideration of the Commission's report in the Sixth Committee. Arrangements had already been made by the Secretariat and the colloquium would be held.

37. He was sure that, as servants of the peoples of the United Nations, all present would work together to advance the goals and objectives of the Charter of the United Nations and that the Commission and the United Nations as a whole would rise to the challenge.

38. The CHAIRMAN thanked the Secretary-General for his kind words, which were a source of inspiration and encouragement for the members. The Commission firmly hoped that the Secretary-General would honour it with his presence on the occasion of its fiftieth anniversary.

39. It was a time to look back on the past and to form new resolutions. The Commission's record was certainly nothing to be ashamed of. The achievements over the past 50 years covered a wide variety of fields and had laid the foundations of what might be termed the constitutional law of the international community, the finest products of which were the Vienna Convention on diplomatic relations and the Vienna Convention on the law of treaties. In addition, the draft articles on State responsibility adopted on first reading at the previous session were already exerting considerable influence and would assist in shedding light on the splendid enigma of international law, a law that forged links primarily, even if not exclusively, among sovereign States.

40. The Commission had proven its worth and continued to serve the international community by helping the United Nations to discharge its first purpose under the Charter of the United Nations: the maintenance of international peace and security in conformity with the principles of justice and international law. Those were sufficient grounds, he felt, to refrain from questioning the basic modalities of its functioning and, a fortiori, its existence. At the same time, they should not serve as an excuse to avoid seeking ways and means of improving the Commission's working methods and procedures and giving serious thought to its future work programme. A working group on the long-term programme of work had tackled

that difficult task at the forty-eighth session³ and some of its recommendations were currently being implemented. But progress did not depend on the Commission alone.

41. One of the most valuable aspects of the Commission's work was the close collaboration with the General Assembly, through the Sixth Committee, and with States. Such collaboration between political bodies and independent experts ensured, or should ensure, that the drafts produced were technically sound and realist. In practice, however, the cooperation was often far from satisfactory and that was certainly not always the Commission's fault. In its report on the work of its forty-eighth session, the Commission had referred in "diplomatic" terms to the shortcomings of the existing dialogue and the share of responsibility borne by the Sixth Committee.⁴ He would revert to the subject, in less diplomatic terms, when he came to represent the Commission at the fifty-second session of the General Assembly.

42. It was unnecessary in front of the Secretary-General to recall that the Commission, like all other United Nations bodies, was feeling the impact of the budgetary crisis. Unfortunately, with the shortening of its sessions, it had reached what threatened to become a point of no return.

43. It was an anomaly that no woman had yet been elected to the Commission. The reasons for that regrettable situation were complex and the remedy uncertain, depending as it did more on States than on the adoption of legal provisions. Consideration might nonetheless be given to certain measures, which should at least act as an incentive or possibly be binding. A second anomaly was the way in which the membership of the Commission was renewed. Unlike the judges of ICJ and the members of most expert bodies, the members of the Commission were all subject to re-election at the same time every five years. It was not a satisfactory procedure and led to disruptive changes in the membership of the Commission. Although the 18 new members at the current session—over half of the total—had settled in quite rapidly, renewal of one third or one half of members would certainly make for a smoother transition.

44. The members of the Commission greatly appreciated, in terms of both quantity and quality, the services provided by the Secretariat staff at all levels. However exorbitant the Commission's demands, they were always met with competence and dedication. The Secretary-General could be proud of his staff.

45. Expressing the hope that the Commission could look forward to additional and more extended visits, he presented the Secretary-General with a copy, signed by all members present, of the Commission's contribution to the United Nations Decade of International Law.⁵

The meeting rose at 4.45 p.m.

³ See *Yearbook . . . 1996*, vol. II (Part Two), paras. 244-245 and annex II.

⁴ *Ibid.*, paras. 173-184.

⁵ *International Law on the Eve of the Twenty-First Century: Views from the International Law Commission* (United Nations publication, Sales No. E/F 97.V.4).