Document:-
A/CN.4/SR.2740

Summary record of the 2740th meeting

Topic:

Extract from the Yearbook of the International Law Commission:-
2002, vol. I

2740th MEETING

Friday, 2 August 2002, at 10.10 a.m.

Chair: Mr. Robert ROSENSTOCK

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Tomka, Ms. Xue, Mr. Yamada.

The responsibility of international organizations (A/CN.4/L.622)[1]

[Agenda item 7]

REPORT OF THE WORKING GROUP

1. Mr. GAJA (Chair of the Working Group on the Responsibility of International Organizations, Special Rapporteur), introducing the Working Group's report (A/CN.4/L.622), said that, since the topic had only recently been taken up by the Commission, any decision would be premature. The Working Group, which had been established on 8 May 2002 (2717th meeting), had, however, produced a number of preliminary guidelines that pointed the way to future work and appeared in the body of the report.

2. The term "responsibility" had been given a precise meaning in the draft articles on the responsibility of States for internationally wrongful acts, adopted by the Commission at its fifty-third session,[2] which specifically excluded, under article 57, the questions of the responsibility under international law of an international organization, or of any State for the conduct of an international organization. It therefore seemed reasonable that the new topic should address those two questions, although it should be stressed that the word "conduct" did not necessarily imply that it was unlawful: the organization might not be the legal addressee of the rule establishing an obligation. The new draft should presumably attempt to express rules of general international law relating to the responsibility of international organizations, including responsibility arising in the relations between them and their member States, even though in many cases such relations were mainly governed by special rules. In that context, he noted that, in the Working Group's view, the matters to be considered were not necessarily identical with those dealt with by the articles on State responsibility for internationally wrongful acts, although there was naturally some correspondence in subject matter.

3. In the Commission's work since its twenty-second session, held in 1970, issues of liability that did not presuppose the existence of unlawful conduct had been considered as a separate topic. The Working Group on International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law had not, as far as he knew, yet decided whether the topic would also include liability on the part of international organizations. Meanwhile, it seemed reasonable for the Working Group on the Responsibility of International Organizations to defer consideration of issues of liability until the other Working Group had made progress. The Commission could then decide whether the issue deserved special consideration and, if it did, what the most appropriate context for the study would be.

4. As for the other essential element for the definition of the scope of the topic, codification conventions generally defined international organizations as intergovernmental organizations. The existence of a legal personality on the part of the international organization was thus implied. Indeed, such a requirement was essential, as the organization's conduct would otherwise have to be attributed not to the organization itself but to its members. There might, however, be a need to establish different rules for different types of organization, especially with regard to the issue of member States' responsibility for the organization's conduct. Some intergovernmental organizations, for example, had non-State members, which might be either private entities or other international organizations. In the latter case, the situation clearly fell within the topic of responsibility of international organizations, but the same did not apply in the case of the former. It might therefore be preferable to consider only issues relating to States and international organizations as members of international organizations and to take non-State members into consideration only if their conduct affected the responsibility of States or organizations in any way.

5. The Working Group had discussed extensively the question of the relations between the draft articles on State responsibility for internationally wrongful acts and the new articles to be drafted. It had been recognized that the former had elucidated a number of issues and that every effort should be made to be consistent. The articles on State responsibility for internationally wrongful acts would thus have to be constantly taken into account. Nonetheless, every issue relating to international organizations would need to be the object of an independent study. Given the limited practice available, some questions might have to be put aside, or else resolved by referring to the rules applicable to States; alternatively, some other form of progressive development might occur. There had been a clear wish not to repeat the experience of the law of treaties, which had resulted in the adoption of a convention in 1986 that was regarded as a pale copy of the earlier codification convention. Members of the Commission who had been present at that time would recall it as a painful exercise, since the whole process could have been made

[1] Reproduced in *Yearbook ... 2002*, vol. II (Part Two), chap. VIII, sect. C.

[2] See 2712th meeting, footnote 13.

far simpler by including a general reference to the 1969 Vienna Convention in a protocol concerning international organizations. The difference in the present instance was that the Commission could not look at a codification convention that had already been adopted: the status of the draft articles on State responsibility for internationally wrongful acts had not yet been determined. Moreover, it was possible that issues specific to international organizations were more numerous in the field of responsibility than in that of the law of treaties.

6. The Working Group had therefore expressed a preference for drafting a completely independent text. Pending consideration by the General Assembly of the draft articles on State responsibility for internationally wrongful acts, priority should be given to questions that undoubtedly related specifically to international organizations, in order to avoid duplicating the Commission's work on State responsibility or needing to modify any suggested solutions. One such issue was the attribution of wrongful conduct to an organization. The first step would be to define when the conduct of an organ of an organization or of another entity or person could be attributed to that organization. In some cases, the rule might be similar to that applying to States, but in other instances the situation was more doubtful, as in cases in which a State organ acted on behalf of an international organization in the area of peacekeeping, for example, or in an area pertaining to the exclusive competence of the international organization. Some treaty provisions, such as annex IX to the United Nations Convention on the Law of the Sea, linked responsibility with competence. That did not, however, necessarily imply that wrongful conduct on the part of a State organ acting within the organization's exclusive competence was to be attributed to that organization.

7. Another frequently discussed question concerned the responsibility of member States for internationally wrongful acts for which the organization was also responsible. If they were regarded as responsible, it would then have to be determined whether the responsibility was subsidiary, or joint, or joint and several. It was obviously a matter of practical significance, especially when an international organization could not meet its financial obligations or was dissolved. The International Tin Council case and the *Westland Helicopters* litigation had involved situations in which the organization was not in a position to pay its debts, with the result that creditors addressed their claims to member States, with varying degrees of success.

8. The topic would probably involve the examination of most of the questions included in Part One and Part Two of the draft articles on State responsibility for internationally wrongful acts. The Working Group was more hesitant about matters under Part Three. The consideration of the implementation of responsibility could give rise to difficulties in such areas as the invocation by an international organization of the responsibility of another organization and that of States, the possibility of which had been specifically left unprejudiced in article 33, paragraph 2, of the draft articles. Other difficulties concerned the identification of who was entitled to invoke responsibility on behalf of an organization; and the question of countermeasures by international organizations in matters that fell within that competence, when a breach was committed not against the organization itself but against a member State. The Working Group's recommendation was to defer any decision on whether to take up the issue of the implementation of responsibility. The same applied to the settlement of disputes involving international organizations, an issue that had also been excluded from the articles on State responsibility, for a variety of reasons that could also be relevant to international organizations. On the other hand, the methods currently available for resolving disputes involving international organizations were less than satisfactory.

9. All the relevant practice would need to be considered, including cases concerning responsibility under systems of law other than international law, which might contain incidental remarks on international responsibility or concern analogous issues. United Nations practice was mostly published in the *United Nations Juridical Yearbook*, but knowledge of practice relating to other international organizations was harder to acquire. The abundant literature on the topic referred to a limited number of cases. The Commission could accomplish its task only if it gained a wider knowledge of practice. The Working Group therefore recommended that the Secretariat should be requested to approach international organizations with a view to collecting relevant materials (para. 27 of the report).

10. The CHAIR said that the Chair of the Working Group had vividly recalled the feeling of many participants that the Vienna Convention of 1986 had been the result of the activities of a small, determined minority, which would not accept that States and international organizations should be treated in the same context, since to do so would give international organizations ideas above their station.

11. Mr. MANSFIELD said that the activities of the Working Group, of which he was a member, had proceeded smoothly, partly because the topic was a natural consequence of the articles on State responsibility and partly because of the carefully considered guidance of the Chair. The topic was, however, by no means straightforward; indeed, it was proving increasingly complex in such areas as peacekeeping, in which the United Nations was working side by side with national armed forces. The European Union and other regional organizations were in the same position, and the establishment of guidelines delineating the relative responsibility of such organizations and member States in activities ranging from broad issues of peace and security to the details of politically and commercially fraught topics such as fisheries management was all the more important.

12. As to the Working Group's report, he supported the assertion in paragraph 6 that, in the case of non-universal international organizations, responsibility might well be more likely to occur in relation to non-member States.

13. With reference to paragraph 7, he concurred that, for the time being, it was appropriate to defer the related question of liability, pending the outcome of the Commission's work on that topic in relation to States. However, that should not be interpreted as meaning that the question of

the liability of international organizations was not important. As to what the Commission should attempt to cover by the term "international organizations", he accepted the Working Group's conclusion (paras. 8–11) that it should be formally restricted to intergovernmental organizations. Even with that limitation, it would be trying to encompass a very wide range of quite different bodies. Nevertheless, with the emergence of organizations that were adopting a more inclusive approach to participation and even membership, and with the strengthening of civil society and the major involvement of the private sector in many aspects of international life, the variety would continue to increase. Accordingly, as work on the topic proceeded, it might be necessary to verify tentative conclusions to see how they related to some of the hybrid organizations.

14. The question of the relations between the topic of responsibility of international organizations and the articles on State responsibility had been keenly debated in the Working Group, and the general approach set out in paragraphs 12 to 14 seemed eminently sensible.

15. On the issue of attribution, he noted that the case identified in paragraph 16, where the conduct of a State organ was mandated by an international organization or took place in an area that fell within an organization's exclusive competence, was a matter of considerable interest and sensitivity to the wider international community, to which membership in that organization was not open, but whose interests might be greatly affected by its actions.

16. Mr. PELLET said that both the written report and the oral presentation underlined the most important points. However, there were two general issues on which the report took a position that could be debated. The first was a matter of substance, namely the relations between the topic of the responsibility of international organizations and the draft articles on State responsibility for internationally wrongful acts, whether member or non-member States. The second was a question of form, in other words, how to deal with the topic. Members of the Commission who had taken part in the 1986 discussion on the law of treaties relating to international organizations, the 1986 Vienna Convention, appeared to have been traumatized by what had occurred at that time. He had not been present, but he had examined the reports by Paul Reuter, who had finally been obliged to admit that one could only transpose the general law of treaties to the law of international organizations. The Working Group's report showed that it was unlikely that a simple transposition would be made, and, in any case, the matter called for the exploration of very different and in some cases more complex issues than in the case of State responsibility. The title of the topic would in all likelihood remain the same, but he would like the Special Rapporteur to deal with the question of responsibility *linked to* international organizations.

17. He had reservations about the way in which the Working Group had dealt with the formal aspects of the relations between the future work on the responsibility of international organizations and the articles on State responsibility for internationally wrongful acts. On several occasions, for example, in paragraphs 12 to 14, it was said that it would be necessary to include in the new text a general reference to rules adopted in the context of State responsibility. While not objecting to it being said that the principles applicable to State responsibility also applied to international organizations, he deemed it unsatisfactory to continually refer to one set of draft articles in another. The new draft could include a general reference citing the exceptions, which were rather numerous, or it could refer to the rules applicable to State responsibility in each specific case. It should be borne in mind that, unlike States, organizations were not sovereign, and that led to many differences.

18. He disagreed with the statement in paragraph 9 that the definition of international organizations comprised entities of a very different nature. The common principles and general rules that pertained to all intergovernmental organizations should be pinpointed. Plainly, there were some very distinctive international organizations. Organizations such as the European Union or MERCOSUR could pose specific problems and, in view of their role, might represent a sub-category of sufficient importance to make a subheading. As an author of manuals on international law, he had never experienced difficulty in drafting the part on the law of international organizations. States were also very diverse, as were the different commitments they undertook towards regional groupings, but that did not prevent the development of a general theory of States.

19. Paragraph 10 stated that the study could include questions of responsibility arising with regard to hybrid organizations, whose membership included States as well as non-State actors, and mentioned the World Tourism Organization as an example. He was legal adviser to the organization and could confirm that it had never had any relevant legal problems; he believed that most legal advisers of international organizations could say the same. It was true that the World Tourism Organization was essentially a classic intergovernmental organization and the status of its State members differed greatly from that of the other non-State members.

20. In taking up the question of attribution (paras. 15 and 16), it would be worthwhile if the Special Rapporteur looked at how the Commission had dealt, or not dealt, with the responsibility of international organizations when considering State responsibility, before the Commission decided to postpone the examination of several of the problems posed until it studied the specific topic of the responsibility of international organizations.

21. In the French version of paragraph 18, the phrase "a joint or a joint and several responsibility" had been translated as *responsabilité conjointe ou conjointe et solidaire*, which was an anglicism. The phrase should read *responsabilité conjointe ou solidaire*.

22. Paragraph 19 said that the question of succession between international organizations raised several issues that did not appear to fall within the topic of the responsibility of international organizations and could be left aside. That was debatable, in view of the beginning of the paragraph, which referred to member States' responsibility in case of non-compliance with obligations that were

undertaken by an international organization that was later dissolved. The only reason for not including it would be that the study of State responsibility had not examined the question of succession to responsibility. The argument in favour of retaining it related to the fate of the debts of an organization that was dissolved, which was such an important problem that it should perhaps be included, even though it might extend the study of the topic.

23. The statement, in paragraph 20, that the Commission would have to consider the responsibility of an organization in connection with the acts of another organization or a State and to circumstances precluding wrongfulness, including waivers as a form of consent, required clarification.

24. Paragraph 24 said that "given the complexity of some of these issues, it may be wise, at this stage, to leave open the question whether the study should include matters relating to implementation of the responsibility of international organizations and, in the affirmative, whether it should consider only claims by States or also claims by international organizations". In general, he did not see how a draft on the responsibility of international organizations could fail to deal with implementation. However, the Commission had always had a rather hazy conception of implementation; for example, in considering State responsibility it had not examined diplomatic protection, which was the way *par excellence* of implementing responsibility in a case of indirect harm. Functional protection was another important issue that could well be examined.

25. Finally, regarding paragraph 26, he agreed that the report should not examine directly the question of responsibility relating to commercial contracts, provided it was clarified that such responsibility pertained to internal law. However, if international law was directly concerned, he was not sure that the issue should be discarded, even if it had not been considered in the case of States. But, as Mr. Mansfield had mentioned, circumstances changed, and such problems were becoming increasingly important. He himself had made a study of contracts and could provide the Special Rapporteur with the pertinent extracts. He was surprised that the Working Group had not examined the question of responsibility related to the civil service, as it posed very specific problems and was the field in which the law on the responsibility of international organizations was most developed. He was in favour of excluding it because, from a conceptual standpoint, internal law relating to international organizations was another legal sphere, and the Commission was discussing the international responsibility of international organizations and not their responsibility under their internal law; that, however, needed to be explained. Nevertheless the Special Rapporteur would not be able to avoid examining the case law of the international administrative tribunals to see whether it was possible to extract general principles of law.

26. Mr. KATEKA, thanking the Chair of the Working Group on the Responsibility of International Organizations for the Working Group's draft report, said that, while different hybrid international organizations did exist, in examining responsibility the Commission should confine itself to intergovernmental organizations. As to the relationship between that topic and State responsibility, care should be taken when making a linkage. The articles on State responsibility were not yet final: there was a possibility of a diplomatic conference being held, and some of the provisions of those articles could change. Thus, a problem could arise if the Commission merely copied the articles. In any case, there were controversial issues in the draft articles on State responsibility for internationally wrongful acts, for example, with regard to countermeasures, and presumably the work on the responsibility of international organizations would try to avoid examining that issue, insofar as possible. If the topic were to include controversial issues such as countermeasures, or if the final product were to take the form of a convention, there would be a need for a linkage with the question of settlement of disputes. Accordingly, although the Special Rapporteur advocated leaving that question in abeyance, the Commission should not altogether rule out the possibility of taking up the issue of dispute settlement at a later date.

27. As to the pattern the final product should follow, adoption of a comprehensive text on the topic would seem to be the best course, since it was not possible to make cross-reference to a set of draft articles that had not yet been finally adopted, still less entered into force—the analogy with the Vienna regime being incomplete in that regard. Thus, it might occasionally be necessary to reproduce textually some provisions of the draft articles on State responsibility.

28. Like Mr. Pellet, he also wondered why the important issue of functional protection, to which he had drawn attention in the Working Group and in the context of the debate on diplomatic protection, had been excluded from the topic. Last, he stressed that, while a flexible approach was desirable, consistency would also be necessary, in order to avoid the apparently contradictory conclusions that had sometimes characterized the Commission's work in the past.

29. Mr. MOMTAZ said he was concerned that the highly topical issue of delegation of the powers of international organizations to regional organizations was not raised in the section of the report on questions of attribution. He had particularly in mind delegation of the coercive powers of universal organizations, especially the United Nations. A number of recent Security Council resolutions authorized States and regional organizations to use force, one example being authorization to intercept vessels on the high seas in order to enforce an embargo. He wished to ask the Special Rapporteur whether such issues would be dealt with under the rubric of questions of attribution.

30. Mr. GAJA (Chair of the Working Group on the Responsibility of International Organizations, Special Rapporteur) said he would endeavour to clarify some issues and also to dispel some misapprehensions that had arisen with regard to the Working Group's report. The question of authorization of the use of force and delegation of powers to States, raised by Mr. Momtaz, would have to be considered in due course. It was difficult to assert that the conduct of State organs, whether or not authorized, was attributable to the international organization. The question as to whether the international organization shared the responsibility for unlawful conduct was touched upon, albeit perhaps too lightly, in section 4 of the report, under which section the question raised by Mr. Momtaz should

perhaps mainly be addressed. Since the conduct could not be attributed to the international organization, chapter IV of Part One of the draft articles on State responsibility would not cover cases analogous to those that might occur in relations between international organizations and States.

31. The question of functional protection had not been positively excluded from the topic, but simply deferred for consideration at a later stage. His personal opinion was that functional protection might best be dealt with as a separate topic. If, following the pattern of the draft articles on State responsibility for internationally wrongful acts, it was eventually decided that there would be a Part Three dealing with implementation, it would be necessary to treat functional protection, even if briefly.

32. As to Mr. Pellet's comments, he regretted any mistranslations of the original English of the report, for which, however, the Working Group was not responsible. Nowhere did the report propose that cross-references should be made to the draft articles on State responsibility for internationally wrongful acts. The conclusion set forth in paragraph 12 had been that the new text would have to be fully independent of the articles on State responsibility. Where no special feature differentiated international organizations from States, it would be possible to say that the same rules would apply as applied to States, without specifically identifying the rules in question, whether drawn from the articles on State responsibility or from other sources. As to the meaning of the expression "waivers as a form of consent" in paragraph 20, the idea was that a unilateral waiver was one of the two possible forms of consent, the other being an agreement, and that consent was considered a circumstance precluding wrongfulness.

33. As to the question of dissolution of international organizations, the succession of international organizations was usually regulated by the treaties establishing the new organization. Interestingly, when various issues relating to the succession of States had been taken up by the Commission, it had not been proposed that it should also consider succession of international organizations. Insofar as any general rules concerning succession of international organizations existed, the consequence might be that the new international organization would be the debtor to which creditors could address themselves. He doubted that there was any justification for the Commission's becoming involved in that complex issue, particularly as most such questions were dealt with either in agreements among States or by virtue of the new organization's acceptance of succession and assumption of responsibility for any extant debts.

34. On paragraph 9, given the wide variety of international organizations, the nature of the relationship between the respective organization and member States might also differ widely. That would have consequences with regard to the rules applicable. An organization such as the Multinational Force and Observers established by Egypt and Israel following the Camp David Accords[3] was, despite its legal personality, very difficult to treat in isolation from its member States. The purpose of paragraph 9 was to point out that different rules might apply to different types of organization, depending on the nature of the relationship with the member States.

35. Regarding the question of relations between an international organization and its officials and the case-law of administrative tribunals, that issue would not normally be considered to be part of the topic of the responsibility of international organizations, and the Working Group had not envisaged dealing with substantive matters of the content of such relations. However, the case law of administrative tribunals might prove to be of some use, whether to establish a general principle of law or to enable the Commission to draw analogies. In that regard, he would be grateful if members would draw his attention to any relevant material or practice of which they were aware. It would also be helpful if any members who had personal contacts with international organizations could encourage them to cooperate actively with the Commission so as to facilitate its work on the topic.

36. The CHAIR said that if he heard no objection he would take it that the Commission wished to adopt the report of the Working Group.

37. Mr. PELLET said that, while he had no objection to the adoption of the report, he wished to know whether any comments made on it in the plenary meeting would be reflected in the report of the Commission to the General Assembly on the work of its fifty-fourth session. If his own comments were not reflected in the report, he would be obliged to amend it accordingly.

38. The CHAIR said that the report of the Working Group could be adopted or rejected, but not amended, in plenary. Comments on it would become part of the permanent record with the issuance of the summary records.

39. Mr. PELLET said that the section on the report of the Working Group included in the chapter on the responsibility of international organizations should reflect the positions expressed in the plenary meetings of the Commission, as was done in other chapters of the Commission's report.

40. Mr. MIKULKA (Secretary of the Commission) said that, whenever the Commission discussed the report of a special rapporteur, the Commission's report contained an analytical summary reflecting the views expressed on the topic. In the past, when the plenary had discussed the report of a planning group, drafting committee, working group or study group, the fact that the report had been discussed had been reflected in the report, and the dates and numbers of the relevant meetings had been clearly indicated. All those elements provided the special rapporteur on the topic, the general public and Governments with sufficient material to locate the comments made on the report in question. It had not been the practice in the past to prepare an analytical summary of the views expressed where the report of the special rapporteur on the topic had not been discussed.

[3] Framework for peace in the Middle East agreed at Camp David, signed at Washington, D.C., on 17 September 1978 (United Nations, *Treaty Series*, vol. 1138, No. 17853, p. 39).

41. Mr. PELLET said that, while that practice seemed reasonable in the case of reports of the Drafting Committee on texts adopted on first reading, since the views expressed were reflected in the commentaries, it seemed completely unreasonable in the case of the reports of working groups: such a practice would inevitably prompt requests from members for corrections to the report. Regardless of what the practice might have been in the past, he was hostile to its continuation.

42. The CHAIR said that view could be reflected in the report of the Commission when it adopted the chapter of the report on the topic under consideration. If he heard no further objections, he would take it that the Commission agreed to adopt the report of the Working Group on the Responsibility of International Organizations.

It was so agreed.

The meeting rose at 12.15 p.m.

2741st MEETING

Tuesday, 6 August 2002, at 10 a.m.

Chair: Mr. Robert ROSENSTOCK

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Ms. Xue.

The fragmentation of international law: difficulties arising from the diversification and expansion of international law (A/CN.4/L.628 and Corr.1)[1]

[Agenda item 8]

REPORT OF THE STUDY GROUP

1. The CHAIR invited the Chair of the Study Group on the Fragmentation of International Law to introduce the Study Group's report.

2. Mr. SIMMA (Chair of the Study Group on the Fragmentation of International Law) said that, in the course of the last quinquennium, the Commission's Working Group on the long-term programme of work had identified the topic "Risks ensuing from fragmentation of international law" as a subject that might be suitable for further study. Mr. Gerhard Hafner had been assigned the task of conducting a feasibility study on the issue. At the Commission's fifty-second session (2000), he had submitted a document that formed the starting point for the consideration of the topic at the current session.[2]

3. The Study Group, composed of most members of the Commission, had met four times during the session. Its report consisted of two parts: a summary of the discussions and a set of recommendations. One of the main questions that the members of the Study Group had considered was whether the topic of the fragmentation of international law was suitable for study by the Commission; they had also considered the potential scope of the topic and the approach to be adopted. In the end, they had supported taking up the topic, considering that it was an area where the Commission could provide useful guidance, at least in relation to specific aspects of the issue.

4. From the beginning, the members of the Study Group had recognized that the topic was different in nature from others and might require an original approach. They had agreed, however, that fragmentation was not a new development, because international law was inherently the law of a fragmented world. Fragmentation was also the natural consequence of the expansion of international law into areas that were sometimes entirely new. The Study Group had therefore considered that the Commission should not approach fragmentation as a new phenomenon, as that could distract from the existing mechanisms that international law had developed to cope with the challenges arising from fragmentation.

5. The Study Group had also thought it important to highlight the positive aspects of fragmentation, which could be seen as a sign of the vitality of international law. The proliferation of rules, regimes and institutions and the increased diversity of voices were not necessarily negative and, on the contrary, meant that the scope of international law was widening.

6. Regarding procedural issues, the members of the Study Group had questioned whether the topic fell within the Commission's mandate and whether the Commission would have to seek the approval of the Sixth Committee of the General Assembly before taking up the topic, but they had concluded that the necessary support could be obtained.

7. The question of the title of the topic had given rise to considerable discussion because it had been felt that the title of the Hafner report, "Risks ensuing from fragmentation of international law", depicted the subject matter in too negative a light. The word "fragmentation" denoted certain undesirable consequences of the expansion

[1] Reproduced in *Yearbook … 2002*, vol. II (Part Two), chap. IX, sect. C.

[2] See *Yearbook … 2000*, vol. II (Part Two), annex, item 5, p. 143.