Document:-

A/CN.4/SR.2812

Summary record of the 2812th meeting

Topic:

Unilateral acts of States

Extract from the Yearbook of the International Law Commission:-

2004, vol. I

remained vacant. Some slippage was therefore probably inevitable.

82. With regard to the multiplication of judicial bodies, he took the view that the establishment by the United Nations of tribunals in the fields of international criminal law and the law of the sea reflected perceived needs. There was a certain logic, but no strategy, behind their creation. Some members of ICJ believed that multiplication carried risks, but it had to be remembered that the United Nations was an organization which evolved over time. Nevertheless the Security Council and the General Assembly had some reservations about *ad hoc* and mixed criminal tribunals and an analysis of the lessons learnt from the establishment of the International Tribunals for Rwanda and the former Yugoslavia made it well-nigh inconceivable that the Security Council would set up another *ad hoc* tribunal. Other mechanisms must be found to address those needs. In the near future, the Secretary-General would be submitting what promised to be an interesting report to the Security Council on justice and the rule of law, which would describe the lessons learnt from the tribunals.

83. He was personally of the opinion that no progress was likely in the foreseeable future on a draft comprehensive convention on international terrorism, because of the extent to which the question was bound up with a number of political issues which could not be solved by drafting a universal convention. On the other hand, agreement on a convention on the suppression of acts of nuclear terrorism might be possible.

84. He regretted that his knowledge of fisheries was insufficient to answer Mr. Chee's detailed questions. He personally thought that the focus should be on conserving, rather than using, fish stocks. Member States might, however, take a different view, and he was confident that they would find a way of reconciling conservation and utilization. The International Seabed Authority had been in existence for almost 10 years and there was no doubt that new scientific advances and discoveries had prompted renewed interest in developments relating to the law of the sea beyond the limits of national jurisdiction. That impetus would probably have quite an impact on future developments in the law of the sea.

85. The CHAIRPERSON thanked the Acting Legal Counsel for his frank answers and for his historic announcement that a full-text search version of the *Yearbook of the International Law Commission* would be available on the Internet later in the year.

The meeting rose at 5.50 p.m.

2812th MEETING

Tuesday, 6 July 2004, at 10 a.m.

Chairperson: Mr. Teodor Viorel MELESCANU

Present: Mr. Addo, Mr. Brownlie, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kemicha, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Rodríguez Cedeño, Mr. Yamada.

Unilateral acts of States (*continued*) (A/CN.4/537, sect. D, A/CN.4/542[1])

[Agenda item 5]

SEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. BROWNLIE said that the Special Rapporteur's seventh report on unilateral acts of States (A/CN.4/542) showed that the Commission really had been inspired when it had asked him to concentrate on State practice; the result had been a very meaty and highly instructive report. Nevertheless, one unresolved difficulty was that the notion of a unilateral act had not yet been rigorously analysed. Secondly, a number of Commission members and Governments which had spoken in the Sixth Committee were far from convinced that the Commission's aim should be to draw up a set of draft articles. The United Kingdom, for example, would prefer an expository study picking out particular areas or aspects of State practice and the applicable law. Personally, he believed that such a study was a good idea and he was pleased that heavy reliance on analogies with the law of treaties seemed to have been abandoned.

2. Some categories of acts, like that of promise, were still problematical and the term used by States to describe their conduct should not always be accepted because categories were not sharply delimited. The very term unilateral "act" was too restrictive, as it also covered silence. Furthermore, extraordinary caution was required in including recognition: recognition of States or Governments should be excluded from the scope of the study, quite simply because the General Assembly certainly did not consider that that sensitive issue touching on the criteria of statehood formed part of the agenda on unilateral acts.

3. Mr. ECONOMIDES said that the Special Rapporteur was to be thanked for his report, which was probably the fullest and most informative document that existed on unilateral acts of States. He nevertheless had the impression that the Commission was turning in circles because the key concept it had chosen, the legal effects of unilateral acts, was unsuitable. The criterion that it should have selected was the international legal obligations assumed by the State making the unilateral declaration towards one or more States or the international community as a whole. In other words, it should be studying unilateral acts as a source of international law, although it must be admitted that practice was far from abundant. The decision handed down by ICJ in the *Nuclear Tests* case was an isolated case and the institution of unilateral acts creating international legal obligations was likely to remain uncommon, as States disliked it.

4. Mr. CHEE said that, since there seemed to be some confusion about the scope of the topic, some brainstorming

[2] Reproduced in *Yearbook ... 2004*, vol. II (Part One).

might be useful. He agreed with Mr. Brownlie that the recognition of States or Governments should be excluded from any study of the topic, for the reason given by Mr. Brownlie. Lastly, the Ihlen declaration[2] was not an isolated act and it could be said that there had been prior agreement between the States concerned.

5. Mr. PAMBOU-TCHIVOUNDA congratulated the Special Rapporteur on having fulfilled the mandate that the Commission had given him, that of making as complete a presentation as possible of the practice of States in respect of unilateral acts, and on having submitted an extremely detailed and wide-ranging report. There was, however, every justification for feeling rather confused after the submission of seven reports on the topic[3] and for wondering whether the Commission was making any progress or whether it would be able to find a way out of the impasse that it was in. The report under consideration should have been the Special Rapporteur's first or second report, as that would have enabled the Commission to avoid the methodological mistake of dealing with unilateral acts by analogy with treaties and to organize its work differently. The report should now enable the Commission to adjust the definition of unilateral acts that it had adopted somewhat hurriedly.

The meeting rose at 10.40 a.m.

2813th MEETING

Wednesday, 7 July 2004, at 10.05 a.m.

Chairperson: Mr. Teodor Viorel MELESCANU

Present: Mr. Addo, Mr. Brownlie, Mr. Chee, Mr. Daoudi, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Kateka, Mr. Kemicha, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Sepúlveda, Mr. Yamada.

Cooperation with other bodies (*continued*)*

[Agenda item 10]

STATEMENT BY THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1. The CHAIRPERSON welcomed Judge Shi Jiuyong, President of the International Court of Justice, and invited him to address the Commission.

2. Mr. SHI (President of the International Court of Justice) said that his statement at the fifty-fifth session of the Commission had concentrated on the relationship between the International Court of Justice and the Commission, emphasized the respective and complementary roles played by both institutions in promoting and developing international law and underscored the importance of each body being aware of the work accomplished by the other. In an endeavour to enhance the dialogue between the two institutions, he would provide a short but comprehensive review of the judicial decisions taken by the Court over the previous year.

3. The Court had rendered a final judgment in three cases, had issued two orders directing that cases should be removed from the Court's list, and had held five different sets of oral hearings covering no fewer than 12 cases. The hearings of all eight NATO cases concerning the *Legality of Use of Force* had been held simultaneously. One new case had been filed with the Court and an advisory opinion had been requested by the General Assembly, a sure sign of the Court's vitality and the trust States placed in it. The total number of cases on the Court's docket currently stood at 21, three fewer than in 2003.

4. Turning to the judgment delivered by the Court on 6 November 2003 in the case concerning *Oil Platforms*, he explained that, on 2 November 1992, the Islamic Republic of Iran had seized the Court of a legal dispute with the United States which had arisen out of the attack on and destruction of three Iranian offshore oil production platforms by United States warships in October 1987 and April 1988. In its application, Iran had contended that those acts constituted a fundamental breach of international law and of various provisions of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the two countries.[1] The application had invoked article XXI, paragraph 2, of the 1955 Treaty as a basis for the Court's jurisdiction. In a judgment of 12 December 1996 the Court had rejected the preliminary objection raised by the United States as to lack of jurisdiction; but, by an order of 10 March 1998, it had held that the counterclaim contained in the counter-memorial submitted by the United States was admissible and formed part of the proceedings. That counterclaim had alleged Iranian attacks on United States shipping in 1987 and 1988.

5. In its judgment on the merits, the Court had held that, while the attacks on the oil platforms could not be justified as measures necessary to protect the essential security interests of the United States under article XX, paragraph 1 (*d*), of the Treaty of Amity, Economic Relations and Consular Rights, it could not uphold the submission by Iran that those actions constituted a breach of the obligations of the United States under article X, paragraph 1, of the same Treaty, and that accordingly it could not uphold the Iranian claim for reparation. The Court had also rejected the counterclaim of the United States concerning a breach of obligations by Iran under article X, paragraph 1, of the 1955 Treaty and hence its counterclaim for reparation.

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[2] See PCIJ judgment in the *Legal Status of Eastern Greenland* case, pp. 69–70.

[3] First report: *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/486, p. 319; second report: *Yearbook ... 1999*, vol. II (Part One), document A/CN.4/500 and Add. 1, p. 195; third report: *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/505, p. 247; fourth report: *Yearbook ... 2001*, vol. II (Part One), document A/CN.4/519, p. 115; fifth report: *Yearbook ... 2002*, vol. II (Part One), document A/CN.4/525 and Add. 1–2, p. 91; sixth report: *Yearbook ... 2003*, vol. II (Part One), document A/CN.4/534, p. 53.

* Resumed from the 2799th meeting.

[1] Signed at Tehran on 15 August 1955 (United Nations, *Treaty Series*, vol. 284, No. 4132, p. 93).