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Summary record of the 1686th meeting

Topic:
International liability for injurious consequences arising out of acts not prohibited by international law

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mind were problems of pollution, a special area that called for secondary rules. It therefore seemed a foregone conclusion that the Commission would not stay within an abstract framework and that many of the primary rules it would formulate would come close to being secondary rules.

29. Subparagraph (a) of article 1 referred to a physical situation, while subparagraph (b) referred to a legal situation. However, subparagraph (a) stated that the draft articles applied in the event of actual or potential injury. That provision seemed to come more within the scope of subparagraph (b). If reference was made to potential injury, it was because an obligation arose from the fact that the law took so much account of certain legally protected interests that it even prohibited threats to their safety. It was, however, a very serious matter to state as a general rule that endangering legally protected interests was forbidden. In his view, that problem should rather be dealt with in subparagraph (b), since subparagraph (a) applied to material situations while subparagraph (b) added a substantive condition.

30. Last, he shared Mr. Ushakov's view that the title of the topic under consideration should be made less rigid. Most of the activities which the Commission intended to treat were not currently "prohibited by international law", but were on the way to being so prohibited.

The meeting rose at 6 p.m.

1686th MEETING

Wednesday, 8 July 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

International liability for injurious consequences arising out of acts not prohibited by international law (continued) (A/CN.4/346 and Add.1 and 2)

[Item 5 of the agenda]

DRAFT ARTICLE SUBMITTED BY THE SPECIAL RAPporteur (continued)

ARTICLE 1 (Scope of these articles)¹ (continued)

1. Mr. RIPHAGEN joined with other speakers in congratulating the Special Rapporteur on his second

report (A/CN.4/346 and Add.1 and 2). However, he still had some difficulty with regard to the scope and content of the draft articles to be proposed by the Special Rapporteur. In paragraph 10 of his report, the Special Rapporteur appeared to suggest that the Commission was dealing with an inchoate law which had not yet been developed to the point where situations could be appraised in simple terms of right and wrong. In paragraph 78 of the report it was stated that, in the present age of interdependence, the topic could relate to every aspect of human affairs. While he did not disagree with that statement, he wondered whether it was possible to formulate a single set of rules with such wide coverage. Furthermore, while he agreed fully with the statement contained in paragraph 79 of the report that lawyers often regretted that the community of States still lacked the solidarity to respond to the logic of its crowded and disordered situation, it was again difficult to see how that question could be dealt with in one set of articles. The modern world provided examples of situations in which the economic activities of one State had an impact in other States. To meet those situations, rules had been developed which more or less embodied the idea of interdependence and solidarity. While he fully favoured the development of such rules in specific fields of economic intercourse, in which the balancing of interests mentioned by the Special Rapporteur had a role to play, he wondered whether it would be possible to establish an entire set of provisions. It was to be noted, in that regard, that an enormous gap still existed between the solidarity and the consent of States.

2. Since relevant State practice seemed to be directed specifically towards the area of shared resources, it was very difficult to see how the Commission could develop the concept of the balancing of interests in general rules outside the fields of the environment and of recognized ultra-hazardous activities. Even within the framework of the environment, the balancing of interests was a very complicated matter. It entailed determining whether the activity in question was beneficial, what limitations it could sustain and the relative priorities involved. The balancing of interests was a basic goal of all law, which was sometimes worked out in the form of hard and fast rights and obligations and sometimes in some other form. In the draft Convention on the Law of the Sea,² for example, the balancing of interests was provided for in terms of hard and fast rights and obligations and also in the form of very vague rules, such as that in article 87. Article 59 of the same text contained a typical provision concerning the balancing of interests, whereby conflicts between the interests of the coastal State and any other State were to be resolved on the basis of equity and in the light of all the relevant circumstances and of the respective importance of the interests involved to the parties concerned and to the international community as a whole, leaving

¹ For text of the article, see 1685th meeting, para. 1.

² United Nations, "Draft Convention on the Law of the Sea (Informal text)", A/CONF.62/WP.10/Rev.3 (and Corr.1 and 3).

much to the discretion of the States and international tribunals. There also existed *per se* rules where the balancing of abstract interests led to concrete obligations, such as the obligation not to erect installations in recognized sea-lanes, whether they presented a hazard to navigation or not. Given the wide variety of forms in which the concept of the balancing of interests was expressed, he doubted whether it would be possible to formulate very general rules on the question.

3. Since the balancing of interests was a very difficult and sometimes rather arbitrary undertaking, aids thereto might be expected to be furthest developed in the sphere of internal law. Even there, it was very difficult to balance interests because of the inevitable implication that some uses took precedence over others. The rules of international law might be expected to deal rather with three different types of international obligations: first, the obligation of States to ensure the balance of interests by the effective exercise of their national jurisdictions; second, the obligation of States to deal equally with interests within and beyond their own borders; and third, the obligation to co-operate in various forms. In all cases, the first step was the balancing of interests within the framework of internal law.

4. Draft article 1, as it stood, could be regarded as covering all types of activity, including economic and monetary activities which, in practice, often caused loss or injury beyond the territory of the State in which they were undertaken. If such activities were intended to be covered by the topic, their predominantly quantitative aspect would give rise to enormous difficulties in determining the exact nature of the rules. On the other hand, if those activities were not to be taken into account, the Commission would practically be forced to limit itself to consideration of activities in the field of the environment.

5. The words "independently of these articles" would seem to refer to other sources of international law. He wondered what those sources might be. Moreover, the use of the word "obligations" raised some doubts, because some of the obligations in the field in question were of a different kind from other obligations considered by the Commission, in particular those relating to State responsibility. There might, furthermore, be other obligations for which the outcome was not prescribed at all and to which it would be difficult to apply the rules of State responsibility.

6. Lastly, it might be useful to have some clarification of the expression "legally protected interests".

7. Mr. QUENTIN-BAXTER (Special Rapporteur) referring to observations made by members of the Commission, said that, since the mid-twentieth century, emphasis had been placed very largely on the subjective element of State responsibility. The proposition, originally attributed to the dicta in the *Trail Smelter* case (see A/CN.4/346 and Add.1 and 2,

paras. 22 *et seq.*) and the *Corfu Channel* case (*ibid.*, para. 37), that all harm was wrongful, was so rigid in its application as to be quite unacceptable, since its inhibiting affect on the freedom of State action would be enormous. The modern attitude was that, except in clear cases of an international violation of sovereignty, the most that could be expected of States was the exercise of a duty of care. States could not be held responsible simply because harm was generated within their territory. It was at that point that the monster of strict liability—a concept which had dominated doctrinal discussion of the question of State responsibility—raised its head. In that respect, he tended to be critical of legal development. For example, in the case of the United Nations Environment Programme, something was surely amiss when, at the direction of States, considerable resources and efforts were expended in drawing up guidelines on the environment which were then adopted by the Governing Body of UNEP and by the Economic and Social Council, only to be rejected in the General Assembly by the very same States which had called for their elaboration. Lawyers sometimes suggested that such events were due to the primitive nature and conduct of States, which at times thought of the common interest and at other times insisted on their separate right to do whatever they wished, without regard to the consequences. However, another reason might be simply the parting of the ways between economists and social scientists, on the one hand, and lawyers, on the other, as a result of the preoccupation with the question of causality. In his report, he had not urged that causality, as such, should be adopted as a basic generating force.

8. The whole topic with which he was concerned was dominated by a perfectly real concept of the duty of care. However, there was a very wide measure of agreement among legal writers of all persuasions that activities of which a State had knowledge, or which fell within its regulatory capacity, could properly be attributed to that State. There was virtually no tendency, either in literature or in State practice, to seek to escape from obligations of that kind, merely because the cause of harm lay within private hands. There was also a very wide measure of agreement that the care taken should be proportionate to the known dangers of an enterprise. The question of strict liability became relevant, for the time being, only in two contexts. First, in the construction of regimes, where there was no real objection to it because the obligation to compensate was a substitute for the duty of prevention. For example, in the case of the 1971 Convention on International Liability for Damage caused by Space Objects,³ it was clear that science had no way of improving preventive measures. It was equally clear that the preventive measures were inadequate. Consequently, the gap was filled by the obligation to compensate.

³ General Assembly resolution 2777 (XXVI), annex.

9. In the *Trail Smelter* arbitration, it had been found that the Government of Canada could avoid harm completely by taking appropriate preventive measures and that consequently there was no need to include the element of compensation within the regime itself. However, if something happened for which Canada could not be held responsible, or if, as a result of the sheer limitations of science, the regime proved to be less rigorous than was required in order to eliminate all harm, the Government of Canada would nevertheless compensate. That represented the operation of the concept of strict liability in circumstances which were totally unobjectionable or which, if they were objectionable, were so for quite different reasons than that with which theorists tended to be concerned, namely, that the role played by compensation might be too large and that played by prevention too small. He would be most unwilling to propose the construction of a set of rules that dealt solely with the question of compensation, which was a subject that could be dealt with safely only in a larger context.

10. Another and more difficult area in which the element of causality arose was that of unforeseen accident, or situations in which responsibility was precluded under the articles on State responsibility. However, that was a subsidiary question, quite distinct from the main question to be dealt with, and it could be deferred until a proper place had been found for it within the larger framework. At that time, Governments could be asked for their views on the question.

11. A much more important question was that of the objective factor in State responsibility. Once it had been accepted that not all harm was wrongful, it must be decided how much harm was wrongful. Again, that question, although not falling within the confines of the current topic, could not be answered without reference to it. If a scale of harm was to be established, a point of wrongfulness must be fixed somewhere on it. Where that point was fixed must be agreed by the States concerned, but to fix it at all involved a balancing of interests.

12. Relevant State practice and court decisions showed quite clearly that a balancing of interests must be undertaken in situations involving competing uses. Although such situations were quite common as far as shared resources were concerned, matters became more difficult when the question arose in respect of the legitimate exercise of conflicting rights of two States. Naturally, such situations were always governed by a particular rule of wrongfulness, and where that rule itself required a balancing of interests, State practice clearly showed that efforts must be made to find solutions that reduced possible harm and interference to a minimum and provided for the measures of compensation or reparation necessary to complete the balance. Without the possibility of such a balancing process—which it was the purpose of the future draft articles to ensure—it seemed unlikely that the majority of the rules concerning harm, as articulated in the

Declaration of the United Nations Conference on the Human Environment,⁴ would ever have much practical effect.

13. It was necessary to develop the notion that the duties to negotiate, to take account of the representations of other affected parties and to disclose information which might affect the interests of other States were only a beginning. States also had a duty to protect others against harm generated within their own territory and to ensure that broad rules involving a balance-of-interests test were made to work. The alternative would be a deadlock, which would probably not be resolved unless the obligations of States extended beyond simply fixing a point of wrongfulness. It was also necessary to ascertain where a balance of interests existed. The basic principle on which he had proceeded, therefore, was that the draft articles should cover the area in which harm and non-wrongfulness co-existed and should ensure that those rules of primary obligation that had not been reduced to cut and dried formulas were actually applied. Admittedly, there was no limit to the discretion afforded to States in deciding how the rules were to be applied. They often decided to allow the problem to be solved at the level of domestic or private international law, the principles of which were much more developed than those of international law. At the level of international law, such an arrangement could be regarded as a response to a duty.

14. The construction of the proposed draft article was based on the concept that it was necessary to go beyond the mere fixing of a point of wrongfulness, if the freedom of action of States was not to be unduly limited and if those who might be harmed by such action were not to be unduly penalized. In any event, such a point could never be fixed unless States were obligated to undertake wider negotiations based on a balancing of interests. Most conventional regimes did not purport to fix a point of wrongfulness in customary international law, but substituted a definite rule for an indefinite rule and, in so doing, took into account the various interests concerned.

15. Referring to observations made by Mr. Riphagen and Mr. Ushakov (1685th meeting), he said that the governing phrase in subparagraph (b) of the draft article was “independently of these articles”. It might be preferable to use the expression “independently of the rules described in these draft articles”. The rules to which the draft article referred were those based on the general duty of States to give effect to the law and to ensure that damage occurring in their own territory did not harm other States. Moreover, while the legally protected interests referred to in that subparagraph always constituted rights, as had been made clear in the *Lake Lanoux* arbitration (see A/CN.4/346 and Add.1 and 2, para. 61), they did not constitute the right

⁴ See *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), part 1, chap I.

to have the harmful activity prohibited. The rule dealt with in the draft article would permit the activity to continue subject to certain conditions.

16. The draft articles as a whole would be of an auxiliary nature. He could not accept that any situation could exist in which the draft articles alone would apply. In all cases a governing rule must already exist, but must be of such generality that it could not possibly be applied unless the States concerned attempted in good faith to apply it and could be provided with some guidance as to the measures required.

17. Referring to the observation made by Mr. Riphagen concerning economic activities, he recalled that a working agreement had been reached in the Commission that the rules to be drawn up should be of a general nature, although most, if not all, of relevant State practice would be found in the area of the environment or that of ultra-hazardous activities. He had followed those guidelines in preparing his report.

18. Responding to observations made by Mr. Ushakov, he said that he was indeed dealing with the acts, and in particular, the omissions of States. However, it was unusual to find any direct reference to acts of a State in articles defining scope, which tended rather to describe the area to be dealt with. The activities referred to in the draft article meant anything which was manmade within the State concerned and for which it could be held responsible.

19. Finally, the article made it clear that the draft articles would be concerned only with the question of loss or injury; they would not be concerned with whether an activity was wrongful or not. Indeed, States were often content to settle matters involving loss or injury without attempting to establish the wrongfulness of the act concerned.

20. Mr. SUCHARITKUL said that the scope of international liability for injurious consequences arising out of the activities of the State was being increasingly extended as scientific and technological knowledge progressed. In that connexion, the question had been raised whether the concept of injurious consequences should be understood to refer only to physical injury to persons or whether it should also cover loss and damage to property and to the environment in general. While he noted that the Special Rapporteur took the view that injurious consequences included damage caused to the environment by pollution, he was inclined to agree that the law had not developed to the stage where pecuniary loss and damage could be regarded as an injurious consequence for the purpose of attributing liability to a State. It would be difficult, at the present point, to lay down precise rules to govern the matter.

21. It was now recognized that international liability was not the same thing as State responsibility. The former differed from the latter in that, while the State was the party liable, it was liable not only to another

State but also, in the words of draft article 1, to "its nationals".

22. An allied question concerned the attribution of liability. Liability had to be legally grounded in given criteria, and the Special Rapporteur had been very clear in his choice of those criteria. While he (Mr. Sucharitul) endorsed the Special Rapporteur's general approach, he also agreed that the criterion of causation could not be discarded. It might not be the sole basis on which to ground the international liability of the State, but it would at least serve to attribute liability to the State, since, if the consequences were too remote from the act for which the State could be held liable, the chain of causation would be severed. He also agreed, however, that there was no ready-made law whereby a State could be held liable for all consequences arising out of its acts, although, strictly speaking, there was no reason why it should not be.

23. Another criterion, in addition to that of causation, was the duty of care. He agreed that, once injurious consequences had been established, there was no need to inquire further into the wrongfulness of the act or the omission. The Special Rapporteur had rightly observed that the standard of care was increasing, although it had not yet reached the level of strict or absolute liability. It should also be borne in mind that there were differing degrees of care, depending on the circumstances.

24. He further agreed that the Commission could afford to wait a few years before determining the question of compensation and remedies. In practice, States were sometimes prepared to make good loss and damage by the payment of a sum of money which they were not prepared to admit was made in compensation. The States which accepted what were therefore termed *ex gratia* payments did so in the knowledge that such payments were intended as compensation. In that way, yesterday's *ex gratia* payment became tomorrow's obligation.

25. The lack of any prohibition in law was a relative matter, since the law was constantly developing and even so-called conventional arrangements could be regarded as customary law in the making.

26. Another consideration of fundamental importance, particularly for the developing countries, was the balancing of interests. Some of the activities carried on by certain national and transnational corporations in the highly industrialized countries had given rise to injurious consequences, as a result of which those countries had introduced very strict regulations. It was because of such regulations that the countries in question, or their nationals, had decided to set up factories in the developing countries. Since the latter had still not enacted the necessary laws for their protection, it was often difficult to establish liability.

27. Lastly, with regard to draft article 1, he noted that the Special Rapporteur had explained that the word "jurisdiction" in subparagraph (a) was to be

understood in the sense of control: in other words, the State, being in control, would be liable. In subparagraph (b), he took it that the word “obligations” referred to the duty of care. There might, however, also be some liability which was more or less strict or absolute if the intent was to protect the legitimate interests of countries that were still developing and were likely to be adversely affected.

28. Mr. USHAKOV said the Special Rapporteur was wrong to try to establish the existence of primary rules because, once that was done, the Commission would no longer be within the realm of the topic under consideration; it would, instead, be within the realm of the responsibility of States for internationally wrongful acts, for such responsibility was entailed when a State breached an obligation established by a primary rule. If States owed a duty of care to other States, had an obligation to protect those States from injurious acts or could invoke the concept of an abuse of a right, there would be a corresponding number of primary rules to cover those situations, and the subject-matter under consideration would be out of the Commission’s hands.

29. The obligation to repair damage sustained by other States also derived from a primary rule that was embodied in certain treaties on specific subject-matters. That obligation arose not from the conduct of a State—or, in other words, from the breach of that obligation—but from the establishment of damage. In his view, it was not possible to lay down general rules concerning compensation for injuries caused to States as a result of activities that were not prohibited by international law, and that were undertaken by States or by persons under their sovereignty. All that should be taken into account in international relations were the ultra-hazardous activities undertaken by States or by individuals under the jurisdiction of States, which should then control the activities of such individuals. An example could be found in the case of ultra-hazardous nuclear activities. States were now attempting to elaborate treaties on activities of that kind, particularly the carriage of fissionable materials. Thus, the activities of vessels that carried such materials could be attributed to the States whose flags they flew, and those States considered it necessary to conclude agreements on such carriage. There could, however, be no general rule stating that, because they were ultra-hazardous, certain activities undertaken by States or by persons under their control must be conducted in such a way as to prevent damage, failing which an obligation of compensation would arise. The reason for the difficulty in laying down such a rule was the dependence on specific material situations, not on legal factors. At present, the obligation to provide compensation existed only if it was set out in a treaty between States.

30. It was impossible to derive any general legal rule from the *Trail Smelter* case, to which the Special Rapporteur had referred at length in his report. That case had been a special one, and it could not be inferred from it that all transboundary harm caused by

smoke emissions must be repaired. In the *Trail Smelter* case, it had been because of local geographical conditions and, in particular, weather conditions, that smoke from the territory of one State had concentrated in the territory of a neighbouring State. Moreover, the court which had settled the case had not done so on the basis of any generally applicable rule.

31. Referring to the words “actual or potential loss or injury” in draft article 1, subparagraph (a), he said that, in principle, any activity undertaken in the territory of a State could give rise to damage to another State. More generally still, any activity could have an impact in any place. In the present case, however, there was no question of taking into account all activities, regardless of their nature; the Commission must confine itself to the ultra-hazardous activities undertaken by a State or by persons that State had a duty to control.

32. He also pointed out that the introductory phrase of article 1 and the first phrase of subparagraph (b), which were to be read in succession, did not form a coherent proposition.

33. With regard to subparagraph (b), he said that, when obligations existed, their counterparts were rights, not “legally protected interests”. However, when obligations existed, the situation was governed by the draft articles on State responsibility for internationally wrongful acts. It was only in the case of certain activities, such as those conducted in outer space, that it might be necessary to compensate for damage, irrespective of the conduct of the author State and of the fact that the activities were not prohibited. It seemed preferable for States to conclude specific agreements to cater for activities of that kind.

34. The question of environmental protection was another that fell outside the Commission’s field of study, for the liability resulting from a breach of the primary rules which the international community was striving to elaborate in that area came under the heading of the topic of State responsibility. Even if it could be said that there were general customary rules relating to environmental protection, such rules would be primary rules and their breach would entail State responsibility for internationally wrongful acts.

35. In conclusion, he said that although the Commission might try to indicate the areas in which States could attempt to conclude agreements on international liability not arising out of internationally wrongful acts, it would be extremely difficult, if not impossible, to lay down general rules that would be applicable to specific situations.

36. Mr. ŠAHOVIĆ said that the Special Rapporteur’s report, his statement and the Commission’s discussions all showed the complexity of the topic under consideration. In his report, the Special Rapporteur had drawn attention to many problems which the members of the Commission would have to solve, but on which they did not yet seem to have any definite

opinions. Since he himself had been unable to study the report well enough in advance, he needed more time to think about it. He was nevertheless pleased to note that the Special Rapporteur's views had been put into concrete form in draft article 1.

37. At the current meeting, the Special Rapporteur had described the historical backdrop against which his proposals must be considered. Although there was little doubt that the members of the Commission agreed on the need to deal with the topic, the essential requirement was to be able to derive from existing law a number of general rules that could be embodied in draft articles. From an historical point of view, the topic did, of course, raise many problems, but it was on the way of dealing with those problems that the members of the Commission had to adopt a stance. Although he shared the Special Rapporteur's view concerning the possibility of laying down general rules, he was not sure which approach to adopt. In his opinion, the principle that a State had a duty to take account of the interests of other States when activities that might be harmful to those States were undertaken in its territory was paramount. It was, of course, open to question whether that principle derived from treaty practice or whether it was part of general international law and already constituted a rule of customary law. That principle had been invoked not only in the *Trail Smelter* case, the *Corfu Channel* case and the Declaration of the United Nations Conference on the Human Environment, but also in the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water (Moscow, 1963),⁵ of which it formed the basis. Although that principle obviously underlay the topic being considered by the Commission, it was not clear to what extent the Commission could expand upon it with a view to elaborating draft articles.

38. Many members of the Commission seemed to be of the opinion that it would be difficult to lay down a general rule and that it would be better to provide for specific regimes relating to various areas. He was willing to try to formulate a general regime through the progressive development of international law, but he was not sure how far the Commission could go in that direction.

39. In his view, the international liability with which the Commission was now dealing definitely derived from primary rules. The further the Commission went in its study of the topic, the more problems it would encounter in relation to the topic of State responsibility for internationally wrongful acts. In view of the difficulty of drawing a line of demarcation between the two topics, as the Commission must now do, it was debatable whether it had really been wise in deciding to deal with them separately.

40. Turning to article 1, he pointed out that it would be advisable for it to be preceded by definitions. It

would be helpful to know exactly what the Special Rapporteur meant by terms such as "activities" or "potential injury".

41. With regard to subparagraph (a), he said that the draft articles should apply not only to activities that gave rise to loss or injury "to another State or its nationals", but also to areas not within the sovereignty of States, or, in other words, to the common heritage of mankind. Subparagraph (b), which referred to the obligations of a State within whose territory or jurisdiction activities were undertaken, might be made into a separate article, because it was important to define clearly the scope of the draft articles and the present case would not be the first in which a draft contained a safeguard clause of that kind.

The meeting rose at 1.10 p.m.

1687th MEETING

Thursday, 9 July 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Boutros Ghali, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

International liability for injurious consequences arising out of acts not prohibited by international law (continued) (A/CN.4/346 and Add.1 and 2)

[Item 5 of the agenda]

DRAFT ARTICLE SUBMITTED BY THE
SPECIAL RAPPORTEUR (continued)

ARTICLE 1 (Scope of these articles)¹ (continued)

1. Mr. YANKOV said that the topic before the Commission involved questions to which there were no clear-cut answers. It was also complex, and it related to what might be termed the twilight zone of international law. Consequently, it was important to establish a link between it and other topics.

2. He endorsed the Special Rapporteur's statement in paragraph 18 of his report (A/CN.4/346 and Add.1 and 2) that "the new topic is not a competitor in the field of secondary rules, but a catalyst in the field of primary rules". That statement gave some idea of the complexity of the problem, particularly since, as was pointed out in paragraph 19 of the same document, the

⁵ United Nations, *Treaty Series*, vol. 480, p. 43.

¹ For text, see 1685th meeting, para. 1.