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Summary record of the 1742nd meeting

Topic:

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

Extract from the Yearbook of the International Law Commission:-

1982, vol. I

the necessary remedial measures to safeguard the interests of the affected State. That implied a duty of care and should be included in the articles.

43. Balancing the interests of the acting and affected States was an essential element of the draft articles. The absence of such a balance would affect the negotiation of an appropriate regime or of reparations. It would be relatively simple to strike one where the States concerned had a similar level of development or identical interests, but more difficult where the acting State was determined to pursue certain activities and the affected State was particularly concerned that its nationals or territory should not be harmed by them.

44. In regard to reparation, section 4, paragraph 2, of the outline referred to the concept of shared expectations. On that point he was in general agreement with Mr. Evensen at the present meeting and with Mr. Calero Rodrigues (1739th meeting). Since it would not be possible to identify shared expectations in every situation, it might be best if the section omitted any reference to them at all. Perhaps it would be sufficient if the paragraph simply established the need for the acting State to make reparations, unless the affected State agreed otherwise. Paragraph 3 of section 4 referred to the principles set out in section 5 of the outline, namely that States should be free to pursue activities with due regard to the interests of other States, that standards of protection should be commensurate with the nature of the activity in question and that loss or injury should be remedied; in respect of the second principle, he felt that the economic viability of an activity should not be taken into account in determining standards of protection. Section 4, paragraph 1, required States concerned to negotiate in good faith. The obligation to negotiate in good faith was a factor of the utmost importance for the draft articles, as was the section on settlement of disputes.

45. With regard to fact-finding, the report made no reference to the possibility of the acting State inspecting the damage caused by its activity. That was an important consideration in situations where the affected State did not possess the expertise to determine the scale or consequences of a loss and where the acting State could help it to do so. In paragraph 40 of the report it was proposed that the construction of regimes of strict liability should be left to the States concerned. If that was to be the case, he wondered whether the saving clause contained in section I was sufficiently broad to enable States to enter into a special regime to limit liability among themselves.

46. He was gratified to note the comments in paragraph 45 of the report about the "export" of the hazards of high-technology industries to developing countries. He considered that the articles should be drafted in such a way as to protect the interests of developing countries.

The meeting rose at 1 p.m.

1742nd MEETING

Thursday, 8 July 1982, at 11.05 a.m.

Chairman: Mr. Paul REUTER

International liability for injurious consequences arising out of acts not prohibited by international law (*continued*) (A/CN.4/346 and Add.1 and 2,[1] A/CN.4/360, A/CN.4/L.339)

[Agenda item 4]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

SCHEMATIC OUTLINE[2] (*continued*)

1. Mr. KOROMA said that the decision taken by the General Assembly at its thirty-fifth session that the Commission should continue its study of the topic was an indication of the importance and relevance of the subject. It was essential that the Commission should concern itself with issues of immediate relevance to the international community.

2. The subject, although controversial, was one in which the need for codification and progressive development of international law was overwhelming. At present the causing of injury by one State to another was not in itself sufficient to engage the acting State's responsibility. Responsibility could be engaged only by the violation of an existing rule of international law, guilt and fault being separate considerations. However, circumstances had changed since the formulation of those rules. Modern scientific and technological developments had given rise to situations which threatened the welfare of States and could have catastrophic results. In some fields, no protection was afforded by customary international law; affected States could neither prevent such activities nor claim compensation for loss or injury arising from them. An appropriate regime must be elaborated in order to make acting States liable for the consequences of their activities.

3. The Special Rapporteur had indicated in his third report (A/CN.4/360, paras. 24 *et seq.*) that the basic aim of such a regime should be to promote harmony between the activities of States through agreements which took account of the circumstances of each State and struck a balance between States' freedom to act and their right to be protected against the consequences of the activities of other States. The maxim *sic utere tuo ut alienum non laedas* was clearly reflected in the title of the topic. States were not prohibited from engaging in activities such as the operation of ships or aircraft, the improvement of soil quality to increase food production or the carrying out of nuclear explosions. However, when any such activity had injurious consequences,

[1] Reproduced in *Yearbook ... 1981* (Part One).

[2] For the text, see 1735th meeting, para. 1.

liability arose and reparation must be made. The first task of the Special Rapporteur should be to establish the basis of liability for injuries caused by acts which had injurious consequences. The test for liability would be not whether the act was wrongful, but whether it caused injury. The type of injury which attracted liability would have to be determined.

4. The Special Rapporteur had referred in his report to the concept of prevention, but a regime of prevention alone would be insufficient when injury had been caused and liability had to be established. At the same time he did not disagree with the Special Rapporteur's view (*ibid.*, para. 9) that pride of place should be accorded to the duty not to cause injury rather than to the duty to repair damage. That approach would be valuable not only in establishing the relationship between the acting State and the affected State but also in setting the standard of behaviour required of every State. That was possibly what the Special Rapporteur had had in mind in stating, in paragraph 18 of his report, that failing all else, if loss or injury did occur, the acting State could negotiate a settlement with the other State or States concerned. Nevertheless, the Commission should clearly identify the elements of liability. If the acting State failed to adopt the disputes settlement procedure suggested by the Special Rapporteur, its responsibility would be engaged.

5. The scope of the regime should not be confined to the territory under the control of a State, but should extend to the high seas, in order to cover situations in which the depletion or extinction of economic resources had injurious consequences.

6. Mr. YANKOV congratulated the Special Rapporteur on his third report and expressed appreciation of his efforts to take account of the observations made on the topic at the preceding session of the Commission and in the Sixth Committee of the General Assembly. A number of revealing observations had been made in the Sixth Committee regarding the difficulties that were inherent in the topic and of which the Special Rapporteur was undoubtedly well aware. One very positive element of his report had been its emphasis on the fact that the problems involved did not lend themselves to solution by traditional legal means. The main task of the Special Rapporteur was to identify the legal features of liability and to ascertain the grounds for it. The schematic outline given in the report provided an indication of the scope and content of the topic and would be a practical guide for future work on the subject. The outline might also serve to test the viability of the rules which the Commission was to elaborate.

7. The three basic aims set out in the third report were very pertinent to the Commission's examination of the issues, but some points needed further elaboration, in particular the primary nature of the rules of obligation which the topic concerned. In paragraph 9 of the report, the Special Rapporteur stated that pride of place should be given to the duty to avoid causing injury, rather than to the duty to provide reparation for injury caused. However, he himself was not convinced that such an approach would be effective, since the duty to avoid causing injury, if formulated in a general way and not supported by specific agreements, would resemble a norm of moral behaviour rather than a rule of law. As Mr. Ushakov had stated earlier,[3] agreements between the States concerned were important as a legal foundation for the operation of the whole range of rules relating to liability for the consequences of activities which were not prohibited, particularly in regard to reparations. The Special Rapporteur was well aware of the importance of the role of such agreements, as his observations with regard to fact-finding machinery, negotiations and the assessment of costs and benefits indicated. With regard to the question of distribution of costs and benefits, the mere statement of a general principle of international law would not be sufficient. The relevant elements should be defined in such a way as to provide a reliable basis for the activities of States, whether preventive or reparative.

8. In paragraph 24 of his report, the Special Rapporteur stated that the underlying purpose of the topic was to enable States to harmonize their aims and activities so that a benefit which one State chose to pursue did not entail loss or injury to another State. While he agreed with that proposition, he wondered whether it should be elaborated as a rule to operate independently of the sphere of special regimes. Recent legislation contained examples of specific provisions designed to mitigate the adverse economic effects of the legitimate activities of States. Article 151 of the recent Convention on the Law of the Sea,[4] for example, was designed, through the setting of production ceilings, to prevent the adverse effects of deep-sea mining of minerals which were also produced onshore. But it was doubtful, even if the rules envisaged by the Special Rapporteur acquired the form of a general code of conduct, whether and to what extent States would act on them. The question of special regimes was therefore very important. He agreed with Mr. Ushakov that the Commission should proceed with great caution and not attempt to generalize the harmonization rule too much, otherwise it would defeat its aims.

9. The system for assessing loss or injury referred to in paragraph 26 of the report was unlikely to be very viable in the absence of prior agreement or recourse to a dispute settlement procedure. The establishment of general rules to be followed by specific agreements might provide the basis for an effective regime. For example, article 192 of the new Convention on the Law of the Sea stated the obligation of States to protect and preserve the marine environment and had been conceived as a general rule to be implemented by specific arrangements. The same was true of article 196 of that Convention, concerning the use of technologies in the marine environment and the introduction of new and alien species.

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[3] *Yearbook ... 1981*, vol. I, p. 225, 1686th meeting, para. 33.

[4] See 1699th meeting, footnote 7.

10. The scope of the topic, as defined in section 1 of the schematic outline, was expressed in very general terms; for instance, it was difficult to assess the possible implications of defining, in subparagraph 2 (*b*), the term "activity" as "any human activity". In section 2, paragraph 6 (*b*) of the outline, the Special Rapporteur indicated that reports produced by fact-finding machinery should be advisory. He himself believed that that matter too should rest on a contractual basis. Although paragraphs 1 and 2 of section 2 appeared to strike a balance between the duties of the acting State and the interests of the affected State, greater safeguards of the interests of the affected State seemed called for, bearing in mind the implications of paragraph 3, according to which the acting State would be entitled to withhold relevant information for a number of reasons. As far as remedial measures or negotiations to determine an effective regime were concerned, specific agreements were once more crucial, since without them any general provisions formulated by the Commission would be ineffective.

11. The notion of shared expectations described in paragraphs 3 and 4 of section 4 was not sufficient to alleviate legitimate concerns or to ensure the effectiveness of the future articles. A clear definition of the concept of shared expectations should be worked out. Specific agreements were also a basic prerequisite for the effectiveness of any disputes settlement procedure. In general, the Commission should adopt a cautious approach to the topic and not press the Special Rapporteur to provide easy and rapid solutions to the problems which the subject posed.

12. The CHAIRMAN, speaking as a member of the Commission, thanked the Special Rapporteur for his report. Chapter II, containing the schematic outline, was a model of its kind and noteworthy for the determination, clarity and intelligence which it displayed. The questions it raised must be answered, but that could not be done immediately.

13. In his view, the Commission had reached a crossroads. Unlike Mr. Ushakov (1739th meeting), he felt that the Commission could at least elaborate a framework arrangement without drafting those primary rules that would involve it in dealing with questions such as the environment and marine pollution, at the expense of liability. Its first task should be to define the scope of the articles, in other words to identify a number of kinds of situation, such as high-risk activities, activities at the limits of territorial sovereignty, without necessarily specifying examples of each kind. After that, as the Special Rapporteur had suggested, it should draw up procedural rules on consultations and fact-finding.

14. Sir Ian SINCLAIR said that he too realized that the topic under consideration was a difficult and controversial one. In particular, it was difficult to draw a dividing line between the present topic and the separate but closely related topic of State responsibility, which was based on the notion of an internationally wrongful act attributable to the author State. According to article 3 of part 1 of the draft articles on State responsibility,[5] an internationally wrongful act of a State existed when conduct consisting of an action or omission attributable to that State constituted a breach of an international obligation of that State. Because all of part 1 of the draft articles on State responsibility was conceived in terms of "secondary" rules, there was no clear indication of the meaning, in the context of those articles, of the expression "breach of an international obligation". As a result, the Commission was faced with considerable problems in defining the scope of the present topic, whose very title concealed ambiguities.

15. As Mr. Sucharitkul had pointed out (1735th meeting), the first two words of the title immediately raised the question, whose liability? Was it correct to assume that the liability concerned was that of the State which had permitted the conduct in its territory of an activity which had given rise to injurious consequences in the territory of another State? Was it possible to ignore the question of attributability? He raised those questions because at the present stage he was not sure of the answers to them.

16. The regimes of strict liability established by international conventions, many of which were listed in the Special Rapporteur's third report (A/CN.4/360, para. 20, footnote), related to activities in which the State itself was engaged or over which it had at any rate a predominant degree of active control. Accordingly, he did not think that it was necessarily correct to draw from those regimes the conclusion that attributability presented little or no problem in regard to the topic under consideration. He did not think that the principles deriving from the "*Alabama*" arbitration[6] or the *Corfu Channel* case[7] provided a complete answer to the question either. It was one thing to maintain that the author State had been or ought to have been aware that fitting out a vessel to engage in belligerent operations or laying mines in an international strait were likely to have injurious consequences for another State, but it was quite another to assume that the principles involved in those situations necessarily held good where injurious consequences were caused to persons or things in another State as a result of the lawful or apparently lawful activities of a private company located in the State from which the damage was alleged to have occurred. He would therefore welcome any further thoughts which the Special Rapporteur might wish to express on the question of attributability. For example, did the Special Rapporteur agree that what States might accept in the way of strict liability regimes for activities in which they were directly engaged or over which they had predominant control might not be what they would accept for activities over which their powers of regulation were more limited?

[5] *Yearbook ... 1980*, vol. II (Part Two), p. 30.

[6] J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party* (Washington, D.C., U.S. Government Printing Office, 1898), vol. I, p. 653.

[7] *I.C.J. Reports 1949*, p. 4.

17. Another element in the title of the topic, "injurious consequences", seemed quite straightforward, but it had to be determined whether the State to which such consequences were attributable was liable for all of them or only for the ones that could reasonably have been foreseen. That question often arose in domestic law; he thought he was right in saying that, under English law, the author of a wrongful act would be held responsible for all the direct consequences of that act, even if those consequences could not reasonably have been foreseen. The same might not be true of an act which was attributable to a State and which had injurious consequences in another State.

18. To give an example, as a result of internal administrative procedures in State A, a factory in that State which emitted poisonous fumes had installed devices that had reduced the level of toxicity of the fumes so that asparagus being grown in State A within 30 miles of the factory was not harmed. As a result of a change in the direction of the prevailing winds, however, the toxic fumes from the factory were carried over into State B, where the soil differed from that in State A and the main agricultural crop on the border with State A was not asparagus but corn. The toxic fumes destroyed the corn crop. Since State A had not foreseen a change in the prevailing winds or the fact that the toxic fumes from the factory located in its territory would destroy the corn crop in State B, was it liable for the loss sustained? That was a simple example, but one which he believed required further reflection, because if the test of reasonable foreseeability was applied there would be one answer to the question of State A's liability, while if the test of direct consequences was applied there would be another answer.

19. It seemed to him that private law analogies might be more helpful to the Commission than the Special Rapporteur had so far acknowledged. The topic lay in the borderland between State responsibility and no responsibility. Domestic legal systems had developed forms of redress for acts which, although not wrongful in themselves, nevertheless had harmful consequences for others. The development of the law of negligence in the English common law system in the past fifty years constituted a dramatic example of how the law could be adopted and moulded to meet new challenges, particularly through the refinement and enlargement of the concept of the duty of care.

20. With regard to the third element in the title of the topic, "acts not prohibited by international law", the Special Rapporteur had explained (1735th meeting) that what was really meant were "acts whether or not prohibited by international law". As far as the Special Rapporteur was concerned, the wrongfulness or otherwise of an act was irrelevant in the sense that his proposals were intended to be applicable in either case, assuming that the complainant State did not specifically allege wrongfulness. That approach did have a definite advantage in that it did not require the Commission to draw a clear dividing line between acts prohibited by international law and acts not so prohibited, but it also presented certain dangers, the most important of which was that it might have a stultifying effect on the development of the law of State responsibility.

21. Many members of the Commission would agree that there was a nascent norm of international law that no State was entitled to use or permit the use of its territory in such a manner as to cause loss or injury to another State or to persons or things in that other State. That norm was a norm of existing positive international law in that it related to the use of the territory of a State as a base for the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. In that form it was a clear corollary of the peremptory norm of international law prohibiting the threat or use of force; the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations[8] made that clear. Although that norm might constitute clear recognition of the fact that a State committed an internationally wrongful act when it permitted its territory to be used for the purpose of conducting hostile operations against another State, there was no such recognition that the norm governed every activity which might take place in the territory of the author State and cause loss or injury to another State or to persons or things in another State.

22. In other words, the conduct of certain activities in the territory of the author State which had injurious consequences elsewhere might engage that State's international responsibility, whereas the conduct of other activities, particularly if they involved no injurious consequences elsewhere, would not. What the present topic was concerned with was the point at which the author State, if the activities carried out in its territory could be attributed to it, found itself in the borderland between responsibility and no responsibility. Mr. Ushakov would probably deny the existence of such a borderland. At the present stage of development of international law, however, he himself was convinced that there was a grey area in which a penalty, in the form of reparation, might have to be exacted from the author State if the activities which had resulted in injurious consequences for another State or for persons or things in that other State could be attributed to the author State.

23. Consequently, in dealing with the topic under consideration the Commission was concerned not with the law of State responsibility or with the law of no responsibility, but with the law of the borderland. From the positive point of view, the topic was one aspect of the duty to co-operate. The modern world was an increasingly interdependent one where things done or not done in the territory of one State could have harmful consequences in another State. But international law had not reached the stage at which it would prohibit everything of that kind. It therefore seemed to him that the Special Rapporteur would be wise to confine himself largely, if

[8] General Assembly resolution 2625 (XXV) of 24 October 1970.

not exclusively, to those activities which caused or might cause physical or material loss or injury, leaving aside activities which could result in economic or financial loss or injury. That was because the title of the topic, if taken literally, might be regarded as covering, for example, loss or injury caused to industries in developed countries by rapid industrialization in developing countries or, conversely, loss or injury caused to developing countries by their reliance on the monopolistic or quasi-monopolistic production of certain articles by developed countries. If the topic was given such a broad scope, it could never be contained within reasonable bounds.

24. He had studied the Special Rapporteur's third report in the light of the foregoing considerations. The Special Rapporteur had virtually persuaded him that the topic was a viable one that would be relevant to the needs of the international community in the coming decade. It was very much in the field of the progressive development of international law. That suggested that the product of the Commission's work should be a set of guidelines to assist States in giving more positive content to the basic duty of co-operation. Happily that was what the Special Rapporteur seemed to have in mind.

25. With regard to the schematic outline, he had some reservations about the very broad scope of section 1. The question of attributability should be looked at in that context and in the context of the definition of the expression "territory or control". He tended to share Mr. Riphagen's view (1739th meeting) that the operation of ships and aircraft should be excluded from the scope of the topic since it was already regulated by regimes that were designed to limit operators' liability with a view to protecting industries whose functioning was essential to international communications. Consideration should be given to the possibility of limiting the meaning of the expression "loss or injury" to material or physical loss or injury.

26. The acceptability of the guidelines proposed in section 2 of the outline would depend on the general scope of the topic. They might be workable in relation to environmental damage, but they would not be workable in relation to a financial measure, such as the devaluation of a State's currency, whose effectiveness would require secrecy. He agreed with Mr. Calero Rodrigues (*ibid.*), that section 2 seemed to place too much emphasis on fact-finding machinery, which would be necessary in some contexts but not in others.

27. On the whole, he agreed with the content of section 3. If the activities committed in the territory of the acting State could be attributed to that State, it clearly had a duty to negotiate in good faith if loss or injury was suffered in another State. That duty should not necessarily depend on the prior invocation of a fact-finding procedure, since the negotiations themselves might be directed primarily towards an assessment of the extent of loss or injury suffered by the affected State.

28. He agreed with the doubts expressed by some members about the notion of the "shared expectations" of the parties in relation to the assessment of reparation. He would prefer a more objective kind of test, although he was not sure that it was possible to go as far as Mr. Riphagen had suggested (*ibid.*). Assessment of reparation might be related primarily to the common legislative standards normally observed by the States concerned, bearing in mind the duty of the affected State to mitigate any loss or injury that might have occurred.

29. The principles in section 5 were reasonably acceptable, with the exception of paragraph 4, which merely stated an evidentiary point. But he was not sure that all the matters listed in sections 6 and 7 were relevant; perhaps they were simply intended as a check-list. Some of those listed in section 6 could be relevant to a balancing of interests in cases where an activity in one State had adverse physical or environmental effects in another State, but they would not be relevant if the scope of the topic was so broad as to encompass the adverse consequences of financial or economic measures taken by one State and, although not wrongful, causing loss or injury to persons in another State.

30. Lastly, any saving clause inserted into the articles must be expressed in broad enough terms to cover what Mr. Riphagen had referred to in his third report on part 2 of the topic of State responsibility (A/CN.4/354 and Add.1 and 2) as existing subsystems, where regimes of liability might already have been worked out in detail and whose continued operation should be ensured.

31. Mr. OGISO said he had the impression that the Special Rapporteur himself shared the fairly general view stated in his third report (A/CN.4/360, para. 7), namely that the principle of "strict", "absolute" or "no-fault" liability was a product of conventional regimes such as the ones established in the Convention on International Liability for Damage Caused by Space Objects,[9] the Convention on Civil Liability for Oil Pollution Damage[10] and the recent Convention on the Law of the Sea,[11] and that it was not a principle of customary international law. Principle 21 of the Stockholm Declaration[12] was simply a kind of joint policy declaration by the States represented at the United Nations Conference on the Human Environment, not a statement of an existing principle of international law. Moreover, the *Trail Smelter* case[13] and the *Corfu Channel* case[14] were among the very small number of cases in which the principle of strict liability has been recognized. He therefore believed it would be premature to say that, on the basis of existing practice,

[9] See 1739th meeting, footnote 16.

[10] United Nations, *Juridical Yearbook, 1969* (Sales No. E.71.V.4), p. 174.

[11] See 1699th meeting, footnote 7.

[12] See 1735th meeting, footnote 3.

[13] See 1739th meeting, footnote 7.

[14] See footnote 7 above.

there were grounds for codifying the principle of strict liability. At the present stage, any general rule of strict liability could justifiably be criticized as being too abstract.

32. He had some difficulties in that respect with the scope of the topic as proposed in section 1, paragraph 1, of the schematic outline, and in particular with the definition of the term "activity" in paragraph 2 (*b*). That definition was too broad and too abstract, and could even apply to the economic, financial and monetary activities of Governments. It would be entirely impractical for such activities to be included in the scope of the topic. The Special Rapporteur and several members of the Commission had rightly stressed the need for the progressive development of international law, as envisaged in principle 22 of the Stockholm Declaration and in article 235 of the Convention on the Law of the Sea. However, it would be pointless to lay down principles that did not have good prospects of being accepted by the majority of the international community, and he did not think that the international community was ready to accept the principles of absolute or strict liability. At the present stage, therefore, the Commission should aim at proposing guidelines or a framework for the consideration, negotiation or arbitration of specific cases, and not a convention or principles of a legally binding nature. The scope of the guidelines should be more limited and more carefully defined than the scope of the topic as suggested in the schematic outline. They should in fact do no more than supplement or strengthen existing international legal regimes relating to the protection of the environment.

33. The Special Rapporteur had proposed the balancing of interests as a means of solving the problem of reparation under a regime of strict liability. It should be borne in mind, however, that although a balancing of interests could solve that problem in some cases, it could not be used in cases where claims were settled on an *ex gratia* basis, a device to which Governments resorted when they wanted to avoid legal or political difficulties or did not wish to explain the legal basis for their decision to settle a claim. The notion of shared expectations mentioned in section 4, para. 2, of the schematic outline was of great interest and warranted further consideration, but in the light of the international community's experience with strict liability regimes it was difficult to see how it would be interpreted in specific cases.

34. He would appreciate it if the Special Rapporteur could explain whether the question of exhaustion of local remedies came within the topic. For example, could it be said that, in the *Trail Smelter* case, the Canadian Government could have required the United States nationals who had suffered loss or injury to exhaust local remedies before the Canadian courts? If Japan and New Zealand concluded a fishing agreement and Japanese fishing vessels were prevented from fishing in New Zealand waters because of water pollution caused by New Zealand, would the New Zealand Government be entitled to say that the Japanese fishermen concerned had to exhaust local remedies in the New Zealand courts before the matter could be taken up by the two Governments?

The meeting rose at 1 p.m.

1743rd MEETING

Friday, 9 July 1982, at 10 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

International liability for injurious consequences arising out of acts not prohibited by international law (*continued*) (A/CN.4/346 and Add.1 and 2,[1] A/CN.4/360, A/CN.4/L.339)

[Agenda item 4]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

SCHEMATIC OUTLINE[2] (*continued*)

1. Mr. BARBOZA congratulated the Special Rapporteur on his third report (A/CN.4/360), which showed a great effort of will to discharge an extremely difficult task. Where the delimitation of the topic was concerned, what came to mind first was liability for risk as it existed in internal law, where legislative provisions requiring some degree of care and foresight were usually enacted concerning activities that involved risks but were at the same time necessary or useful. In the event of an accident, the persons engaged in such activities were required to make reparation, even if they had exercised all the care and foresight required by the law.

2. This would have been the proper field for the topic of the Special Rapporteur, but it so happened that States had preferred to conclude treaties relating to specific activities, such as the launching of objects into space, oil transport and nuclear operations. The Special Rapporteur had in fact drawn up an exhaustive list of the conventions relating to liability for damage caused by such activities. There was no doubt that the method followed thus far in international law had advantages. It consisted in laying down rules concerning prevention that were adapted to each kind of activity, and prescribing compensation procedures for each case. It might therefore be thought that the States members of the international community would not be much inclined to conclude a convention laying down general rules on dangerous activities, and consequently, this field does not appear as a promising one for the Special Rapporteur.

3. Undoubtedly, the cases covered by part 1, chapter V, of the draft articles on State responsibility[3]

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] For the text, see 1735th meeting, para. 1.

[3] *Yearbook ... 1980*, vol. II (Part Two), pp. 33 *et seq.*