

Document:-  
**A/CN.4/SR.2675**

**Summary record of the 2675th 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:-  
**2001, vol. I**

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the serious breach involved. Accordingly, he believed the Commission must maintain articles 41 and 42 and bring back the various examples that had been used to illustrate article 19, either within article 41 or in the commentary. In that respect, he agreed with the comment by the Netherlands referred to in paragraph 51 of the fourth report.

41. The fact that the relevant articles did not provide for any special or different consequences in case of “serious breaches” should not lead to the conclusion that there was no difference between ordinary and serious breaches. On the contrary, such a distinction would help to reduce the involvement of States not so directly injured by a wrongful act and to confine their responses to cases of serious breaches. Those responses could be organized without having to go as far as article 54 provided.

42. He felt that the question of countermeasures was a subject that the Commission could usefully have done without. Efforts made in that direction had not yet been able to satisfy either those who opposed the institution or those who supported it. But since the regime of countermeasures was already included in the draft articles, the Commission should not shrink from spelling out the conditions for resorting to them, as defined in article 53. It should also be expressly stated that the offer of a means of peaceful settlement should be a precondition for resort to countermeasures. Furthermore, article 53, paragraph 3, should be deleted because it provided for measures which were not regarded as part of current international law and, as Mr. Idris had said, it could be said to negate the very *raison d'être* of the article.

43. The draft articles on countermeasures successfully captured the dictum of ICJ and the relevant decisions of arbitral tribunals. The message of chapter II of Part Two *bis* was that, if States took the law into their own hands, they must act within its bounds.

44. The CHAIRMAN, speaking as a member of the Commission, said that, in his opinion, the draft articles on State responsibility ought to take the form of a convention. It would be a pity if the long and careful work of the Commission were to become simply an annex to a General Assembly resolution rather than a binding legal instrument. As for the question of the settlement of disputes, he could accept the proposal by China that Part Four should contain a general provision on the peaceful settlement of disputes arising out of State responsibility, which could be based on Article 33 of the Charter of the United Nations.

45. With regard to serious breaches of essential obligations towards the international community as a whole, he favoured retaining the distinction between serious and other breaches, as long as it was made clear that the purpose of consequential damages was not to stigmatize and punish the State which had committed the wrongful act, but to reflect the gravity of the breach in a compensatory way.

46. As to countermeasures, he believed there was a real danger of legitimizing them, irrespective of the situation, and that the draft articles in chapter II of Part Two *bis* could be deleted. At the same time, the presence of that chapter in the draft articles helped to balance the

text as a whole. The solution might therefore be not to delete it, but to limit the scope of its provisions to reduce the risk that was inseparable from the very possibility of resorting to countermeasures. Article 54 could not be watered down and he thought it should be deleted, along with article 53, paragraph 3, as Mr. Idris and Mr. Sreenivasa Rao had suggested.

47. Speaking as Chairman, he declared the debate on State responsibility closed. The Commission seemed to agree that the remaining draft articles should be referred to the Drafting Committee, but without prejudice to any decision which might be taken on the basis of the consultations to be held on the outstanding issues and to be organized by the open-ended working group set up for the purpose under the chairmanship of the Special Rapporteur, Mr. Crawford.

*It was so agreed.*

*The meeting rose at 12.35 p.m.*

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## 2675th MEETING

*Friday, 11 May 2001, at 10.05 a.m.*

*Chairman:* Mr. Peter KABATSI

*Present:* Mr. Addo, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Tomka, Mr. Yamada.

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**International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (A/CN.4/513, sect. E, A/CN.4/516,<sup>1</sup> A/CN.4/L.601 and Corr.1 and 2)**

[Agenda item 6]

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<sup>1</sup> Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

## REPORT OF THE DRAFTING COMMITTEE

1. Mr. TOMKA (Chairman of the Drafting Committee), introducing the report of the Drafting Committee on prevention of transboundary harm from hazardous activities (A/CN.4/L.601 and Corr.1 and 2), said the Committee had completed the second reading of the draft articles on that part of the topic.

2. The Commission had decided to divide the topic "International liability for injurious consequences arising out of acts not prohibited by international law" into two: liability and prevention. The first reading of the draft articles on prevention, entitled "Prevention of transboundary damage from hazardous activities", had been completed at its fiftieth session.<sup>2</sup> The articles had then been circulated to Governments for comments. At its fifty-second session, the Commission had established a Working Group to assist the Special Rapporteur in examining the comments and observations received from Governments.<sup>3</sup> On the basis of the Group's work, the Special Rapporteur had proposed revisions of some of the articles and the Commission had referred those articles to the Drafting Committee.<sup>4</sup> Because the Committee had not had time to consider them during the fifty-second session, it had taken them up as the first item on its agenda at the current session.

3. The Drafting Committee had not made any substantial changes to the structure of the draft articles as proposed by the Special Rapporteur at the fifty-second session, which was based on the text adopted on first reading. Nevertheless, he proposed, as an addition, a preamble and two articles dealing with emergencies. The titles and texts of the draft preamble and draft articles adopted by the Drafting Committee on second reading read as follows:

**PREVENTION OF TRANSBOUNDARY HARM  
FROM HAZARDOUS ACTIVITIES**

*The States Parties,*

*Having in mind* Article 13, paragraph 1 (a) of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

*Bearing in mind* the principle of permanent sovereignty of States over the natural resources within their territory or otherwise under their jurisdiction or control,

*Bearing also in mind* that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,

*Recalling* the Rio Declaration on Environment and Development of 13 June 1992,

*Recognizing* the importance of promoting international cooperation,

<sup>2</sup> For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook . . . 1998*, vol. II (Part Two), para. 55.

<sup>3</sup> *Yearbook . . . 2000*, vol. II (Part One), document A/CN.4/509.

<sup>4</sup> For the draft preamble and revised draft articles 1 to 19, as proposed by the Special Rapporteur in his third report, see *Yearbook . . . 2000*, vol. II (Part Two), para. 721.

Have agreed as follows:

*Article 1. Scope*

The present draft articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

*Article 2. Use of terms*

For the purposes of the present draft articles:

(a) "Risk of causing significant transboundary harm" includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm;

(b) "Harm" means harm caused to persons, property or the environment;

(c) "Transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;

(d) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in draft article 1 are planned or are carried out;

(e) "State likely to be affected" means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;

(f) "States concerned" means the State of origin and the State likely to be affected.

*Article 3. Prevention*

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

*Article 4. Cooperation*

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

*Article 5. Implementation*

States concerned shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present draft articles.

*Article 6 [7].\* Authorization*

1. The State of origin shall require its prior authorization for:

(a) any activity within the scope of the present draft articles carried out in its territory or otherwise under its jurisdiction or control;

(b) any major change in an activity referred to in subparagraph (a);

(c) any plan to change an activity which may transform it into one falling within the scope of the present draft articles.

2. The requirement of authorization established by a State shall be made applicable in respect of all pre-existing activities within the scope of the present draft articles. Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present draft articles.

3. In case of a failure to conform to the requirements of the authorization, the State of origin shall take such actions

\* The numbers in square brackets correspond to the numbers of the articles adopted on first reading.

as appropriate, including where necessary terminating the authorization.

*Article 7 [8]. Assessment of risk*

Any decision in respect of the authorization of an activity within the scope of the present draft articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

*Article 8 [10]. Notification and information*

1. If the assessment referred to in article 7 [8] indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.

2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

*Article 9 [11]. Consultations on preventive measures*

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time-frame for the consultations.

2. The States concerned shall seek solutions based on an equitable balance of interests in the light of article 10 [12].

3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

*Article 10 [12]. Factors involved in an equitable balance of interests*

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 9 [11], the States concerned shall take into account all relevant factors and circumstances, including:

(a) the degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;

(b) the importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;

(c) the risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;

(d) the degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;

(e) the economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;

(f) the standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

*Article 11 [13]. Procedures in the absence of notification*

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of article 8 [10]. The request

shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under article 8 [10], it shall so inform the requesting State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in article 9 [11].

3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a reasonable period.

*Article 12 [14]. Exchange of information*

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as States concerned consider it appropriate even after the activity is terminated.

*Article 13 [9]. Information to the public*

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present draft articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

*Article 14 [15]. National security and industrial secrets*

Data and information vital to the national security of the State of origin or to the protection of industrial secrets or concerning intellectual property may be withheld, but the State of origin shall cooperate in good faith with the State likely to be affected in providing as much information as possible under the circumstances.

*Article 15 [16]. Non-discrimination*

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of an activity within the scope of the present draft articles, a State shall not discriminate on the basis of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

*Article 16. Emergency preparedness*

The State of origin shall develop contingency plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations.

*Article 17. Notification of an emergency*

The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected by an emergency concerning an activity within the scope of the present draft articles and provide it with all relevant and available information.

*Article 18 [6]. Relationship to other rules of international law*

The present draft articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law.

*Article 19 [17]. Settlement of disputes*

1. Any dispute concerning the interpretation or application of the present draft articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties to the dispute, including negotiations, mediation, conciliation, arbitration or judicial settlement.

2. Failing an agreement on the means for the peaceful settlement of the dispute within a period of six months, the parties to the dispute shall, at the request of any of them, have recourse to the establishment of an impartial fact-finding commission.

3. The Fact-finding Commission shall be composed of one member nominated by each party to the dispute and in addition a member not having the nationality of any of the parties to the dispute chosen by the nominated members who shall serve as Chairperson.

4. If more than one State is involved on one side of the dispute and those States do not agree on a common member of the Commission and each of them nominates a member, the other party to the dispute has the right to nominate an equal number of members of the Commission.

5. If the members nominated by the parties to the dispute are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairperson who shall not have the nationality of any of the parties to the dispute. If one of the parties to the dispute fails to nominate a member within three months of the initial request pursuant to paragraph 2, any other party to the dispute may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute. The person so appointed shall constitute a single-member Commission.

6. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties to the dispute setting forth its findings and recommendations, which the parties to the dispute shall consider in good faith.

4. In the title of the topic on prevention, the term “damage” had been changed to “harm” in the English version only, for the sake of linguistic consistency. The Drafting Committee had also deleted the word “Convention” in the title. In its view, the nature of the future instrument was a decision to be made by the Commission in its recommendation to the General Assembly.

5. Article 1, unchanged by the Drafting Committee, defined the scope of the draft articles. According to comments by some Governments, and some made within the Committee, it might be better to delete the words “not prohibited by international law”, because it was not always clear whether a particular activity was or was not prohibited. As that argument ran, a State which was likely to be affected by an activity should always be able to insist that the State whose activity posed a risk of transboundary harm complied with its obligations under the articles, whether or not the activity was prohibited. Moreover, the invocation of those articles by a State likely to be affected should not be used to bar a subsequent claim by that State that the activity in question was a prohibited one. However, the Committee as a whole took the view that the purpose of the words “not prohibited by international law” was to separate the topic from the topic of State responsibility, dealing with activities which were so prohibited or were wrongful. To remove the dividing line between the two topics at present would only create confusion. The Committee shared the concern that the demarcation

between activities prohibited and not prohibited by international law was not always clear, and that invocation of the articles should not per se bar a claim that the activity in question was wrongful. The commentary to article 1 should therefore elaborate on the issue. The title of the article had been amended to read simply “Scope”.

6. Article 2 defined six terms commonly used in the draft. The concept of “risk of causing significant transboundary harm” in subparagraph (a) had been difficult to define. The Commission’s intention was clearly to refer to the combined effect of the probability of an accident occurring, and the magnitude of the harm which would result if it did. The text adopted on first reading had defined the range of the risk as encompassing “a low probability of causing disastrous harm and a high probability of causing other significant harm”. That approach had caused some confusion among Governments as to whether the article referred to a range of alternatives or to only two. With the assistance of the Working Group, the Special Rapporteur had then suggested a new definition, namely, “a risk ranging from a high probability of causing significant harm to a low probability of causing disastrous harm”. In the view of the Drafting Committee, the new formulation merely added to the confusion, since, logically speaking, there was no range of possibilities between two identified sets of activities, involving a high probability or a low probability. The Commission’s preference had been for a modified version of the text adopted on first reading. The text proposed at the current session defined the risk as including both broad categories, rather than ranging between them. An analysis of the probability of causing transboundary harm and the impact of the harm would have to be determined in relation to factual circumstances. The word “transboundary” had been inserted before “harm” in order to exclude any other kinds of harm. In subparagraph (b), the words “means harm” had been substituted for “includes harm”, for the sake of consistency with the text, which followed. No changes had been made in subparagraph (c). The language of subparagraph (d) had been changed to reflect that of draft article 11, according to which the State in whose territory an activity was planned to take place was also considered the State of origin. Consequently, subparagraph (d) spoke of the State in “which the activities . . . are planned or are carried out”. In subparagraph (e), the new wording defined the “State likely to be affected” in terms of the State at risk, as in subparagraph (a), and made clear that more than one State might be affected. The State of origin was defined in the singular, although it was possible to have more than one State of origin, for instance if two neighbouring States were to plan or launch an activity on their common border. Subparagraph (f), on the “States concerned”, had been added for clarity by the Special Rapporteur, and retained by the Committee.

7. Article 3, a key article, set out the general obligation of prevention on which the entire draft was based. It seemed to be acceptable to Governments. “States of origin” had been placed in the singular, to ensure consistency with the definitions in article 2. The phrase “significant transboundary harm” appeared immediately after the word “prevent” in order to make it clear that the primary objective of the measures to be taken by States was to prevent the harm; minimizing risk was a secondary option only,

if prevention could not be achieved. The previous wording might have been seen as placing prevention and the minimizing of risk on an equal footing. To make clear that that was not the intention, the Drafting Committee had also inserted the words “or at any event”. The commentary would explain that “all appropriate measures” included the obligation of the States parties to, inter alia, adopt national legislation incorporating internationally recognized standards, which would form a benchmark for judging the suitability of the measures. The commentary would also emphasize that article 3 complemented articles 10 and 11, and that the three articles fitted harmoniously together.

8. Article 4 had also been accepted by Governments and had been changed only to the extent necessary to accord the same primacy to prevention as in the revised version of article 3.

9. The text of article 5 was unchanged from that adopted on first reading, because Governments had not chosen to comment on it. However, in order to allay the concern that it could be misinterpreted to mean that only States planning activities covered by the articles would be obliged to take the action prescribed, it was considered necessary for the commentary to clarify that the article applied to any State which might become one of the “States concerned”. It would be made clear that the article was binding upon all States parties in regard to legislative and administrative matters, while the measures for the establishment of monitoring mechanisms would be incumbent only on the States concerned.

10. Article 6 corresponded to article 7 adopted on first reading. Some clarifications had been introduced. Paragraph 1, subparagraph (a) referred to “any activity” in the singular, instead of “all activities”, and subparagraph (c) to “any plan” instead of “a plan”. No changes had been made to paragraphs 2 and 3.

11. Article 7, former article 8, provided that, before authorization was granted for an activity within the scope of the articles, there must be an assessment of the possible transboundary harm the activity might cause. The text had been slightly modified from the text adopted on first reading, but only for the sake of clarity. The article reflected the current trend in international law of requiring an environmental impact assessment of any activity which might cause significant environmental harm, but limited that requirement to the effects of transboundary hazards and their assessment. The words “in particular” had been added not simply to emphasize the element of novelty but to indicate the significance of the requirement. However, other factors might also be relevant in deciding whether to authorize an activity. The Drafting Committee had added, at the end of the paragraph, the phrase “including any environmental impact assessment”. The query had arisen whether the concept of “assessment of possible transboundary harm” was the same as “environmental impact assessment”. In the Committee’s view, the former concept should be understood broadly, in line with the definition of “harm” in article 2, subparagraph (b), as “harm caused to persons, property or the environment”.

12. The authorization was not defined as “prior” authorization for two reasons: first, when authorization was

required for a new activity to be undertaken, and secondly, because it might relate to a change in an ongoing activity. As for the title of the article, article 8 adopted on first reading had been entitled “Impact assessment”, and the Special Rapporteur had proposed “Environmental impact assessment”. The new title was sufficiently broad to reflect the content.

13. Article 8, former article 10, applied to situations in which the assessment conducted under article 7 indicated that the planned activity did indeed pose a risk of causing significant transboundary harm. In those situations, article 8, together with articles 9 and 10, provided for a set of procedures to balance the interests of all the States concerned, by giving a reasonable opportunity to undertake preventive measures. The word “prior” had been deleted from paragraph 2 for the reasons explained in connection with article 7. The paragraph also stated more clearly that the time limit for a decision on authorization was “within a period not exceeding six months”.

14. Article 9, former article 11, included all the provisions for consultations on preventive measures. The Drafting Committee had made only minor drafting changes which did not affect the requirement in the sentence added to paragraph 1 by the Special Rapporteur that the States concerned should agree on a reasonable time-frame for the consultations. The first sentence had been brought into line with the changes made in articles 3 and 4. Paragraph 3 of former article 13 had been moved back to its original place in article 11 in order to match the timing of the consultations under the latter article, which might occur after authorization was granted for the activity or even when it had already started.

15. Article 10 corresponded to article 12 adopted on first reading. Its purpose was to provide guidance for States in their consultations about an equitable balance of interests. No major drafting changes had been made.

16. Article 11 corresponded to article 13 adopted on first reading. The phrase “have a risk”, in paragraph 1, had been altered to “involve a risk”, for the sake of consistency with article 1. The words “to it” had been inserted after the phrase “risk of causing significant transboundary harm”, in order to make it clear that only a State actually at risk could request the application of article 8. For the sake of precision, the term “State of origin” replaced the “latter” State. Similarly, in paragraph 2, the words “other State” had been replaced by “requesting State”, and the second sentence redrafted to avoid a second reference to “the other State”. Paragraph 3 had been moved back from article 10 proposed by the Special Rapporteur, in which it had featured as paragraph 2 *bis*.

17. Article 12, former article 14, dealt with steps to be taken after an activity had been undertaken for the purpose of preventing or minimizing the risk of significant transboundary harm. No drafting suggestions had been submitted by Governments, but the Drafting Committee had made minor changes to align the text with articles 3 and 4, specifically in the use of the words “preventing significant transboundary harm or at any event minimizing the risk thereof”. The Committee had also inserted the phrase “concerning that activity” after “all available

information”, thus clarifying the link between the information and the activity.

18. The Drafting Committee had taken the view that since article 12 dealt with exchange of information, it merited reformulation to ensure that it was applicable not only while an activity was being carried out, but even when the activity had ceased: for example, in the case of an activity dealing with nuclear waste. It had therefore inserted a new second sentence, which read: “Such an exchange of information shall continue until such time as States concerned consider it appropriate even after the activity is terminated.” The sentence was a recognition of the fact that the consequences of certain activities continued to pose a significant risk of transboundary harm, even after the activities were terminated. At that point, the obligations of the State of origin did not end, the exchange of information should continue and the States concerned should continue to monitor the potential risk and be prepared to deal with it when and if it materialized. The commentary would elaborate on that issue.

19. Article 13, corresponding to article 9 adopted on first reading, drew on the new trend of seeking to involve in a State’s decision-making process those people whose lives, health and property might be affected, by affording them a chance to present their views to those ultimately responsible for making the decisions. Comments by Governments indicated that they had no substantive or drafting problems with the article, and the Drafting Committee had therefore made no changes. It had merely transposed the article so that it followed article 12, which seemed a more appropriate position.

20. Article 14, former article 15, provided a narrow exception to the obligation of the State of origin to provide information under other articles of the draft. Its formulation had been well received by Governments, although the suggestion had been made that a reference to “intellectual property” should be included, as the term “industrial secrets” was not sufficiently broad. The Drafting Committee had agreed and had inserted the words “or concerning intellectual property”. The phrase “industrial secrets” had been retained, even though it was subsumed in “intellectual property”, to make certain that the article gave sufficient coverage to protected rights. Minor drafting changes had been made for consistency in the use of terms and to avoid redundancy.

21. Article 15, former article 16, was based on article 32 of the Convention on the Law of the Non-navigational Uses of International Watercourses and set out the basic principle that the State of origin was to grant access to its judicial and other procedures without discrimination on the basis of nationality, residence or the place where the harm occurred. The Drafting Committee had taken the view that, since article 32 of the Convention had been the subject of extensive discussions in both the Commission and the Sixth Committee, no substantive modifications were appropriate: only a minor drafting change had been introduced.

22. Article 16 was new and had no equivalent in the text adopted on first reading. There had been general agreement that the scenarios anticipated in the draft could well include situations of emergency, which should therefore

be addressed. Article 16 itself was based on article 28, paragraphs 3 and 4, of the Convention on the Law of the Non-navigational Uses of International Watercourses. It required the State of origin to develop contingency plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations. Two minor amendments had been made to the text originally proposed by the Special Rapporteur in his third report,<sup>5</sup> and the article had been entitled “Emergency preparedness”.

23. Article 17 was also new and was based on article 28, paragraph 2, of the Convention on the Law of the Non-navigational Uses of International Watercourses. The purpose of the article was to require the State of origin to notify the State likely to be affected as expeditiously as possible of an emergency concerning an activity within the scope of the articles and to provide that State with all relevant and available information. While the article did not define “emergency”, the commentary would provide guidance on that issue. The Drafting Committee had made minor linguistic changes, for consistency with other articles, to the text proposed by the Special Rapporteur in his third report. In addition, the word “available”, after “expeditious means”, had been replaced by “at its disposal”, because the means to which States could resort might differ, depending on their level of development. Although particularly expeditious means might exist, and therefore be “available” in a general sense, not all States would, in practical terms, have access to them. The new phrase seemed better suited to capturing that nuance.

24. The Drafting Committee had been of the opinion that the provision might be interpreted as limiting the obligation of the State of origin to mere notification of the emergency, whereas the intention had been to ensure that the State likely to be affected was kept apprised of all the facts concerning the emergency. For greater clarity, the Committee had decided to add the phrase “and provide it with all relevant and available information” at the end of the article.

25. Article 18, former article 6, established the relationship between the rights and obligations of States under the draft articles and other international obligations, whether treaty-based or based in customary international law. In the context of the article, the Drafting Committee had discussed whether the draft represented a framework or traditional convention, and it had become clear that there was no unified definition of a “framework convention”. According to some, in order for a framework convention to be enforceable, its application should be agreed upon by the parties through another treaty, while according to others, a framework convention could be directly applicable without the assistance of any other treaty. Ultimately, the Committee had agreed that it was unnecessary to tackle that issue in the draft article, because it would eventually be a matter for States to decide.

26. The text adopted on first reading had stated that “obligations arising from” the draft were without prejudice to any other obligations incurred by States under relevant treaties or rules of customary international law. The corresponding provision of the Convention on the

<sup>5</sup> *Yearbook* . . . 2000, vol. II (Part One), document A/CN.4/510.

Law of the Non-navigational Uses of International Watercourses spoke of nothing in the convention affecting “any rights or obligations” that might arise from existing agreements. The Drafting Committee had thought that that form of language was not appropriate for the draft articles, but that the text adopted on first reading could prove too restrictive, as it spoke only of “obligations”. The provision in the Convention had dealt only with the relationship between the Convention and agreements in force for a State party prior to the Convention’s entry into force for it. Article 18, however, dealt with existing agreements as well as future ones and the development of customary law through State practice. All questions of overlap between treaties could certainly not be resolved, but the Committee had found it preferable to delete the phrase “Obligations arising from” from the beginning of the text as adopted on first reading, leaving only a reference to “The present draft articles” as being without prejudice to any obligations incurred by States. It went without saying that the word “relevant”, before “treaties”, applied to the rules of customary international law.

27. Article 19, former article 17, retained the provisions of the version adopted on first reading, which had been taken from article 33, paragraphs 1 to 3, of the Convention on the Non-navigational Uses of International Watercourses. The text as adopted on first reading had been a “disabled” dispute settlement mechanism, however, as its operation had required the full cooperation of all parties to the dispute. If one party refused to cooperate, then no fact-finding commission could be set up.

28. The Drafting Committee had taken the view that, while it was prudent not to establish fully-fledged dispute settlement provisions which might serve as a disincentive to ratification by Governments, it was counterproductive to include a disabled dispute settlement provision that might undermine the obligations embodied in the draft. It had also felt that the provisions on fact-finding commissions in the draft articles should be similar to those of the Convention on the Law of the Non-navigational Uses of International Watercourses, the dispute settlement machinery of which had been extensively negotiated by States and found acceptable. On that basis, the Committee had revised and redrafted article 19, in summary form, of article 33 of the Convention.

29. Paragraph 1 set out the obligation of the parties to settle expeditiously any dispute concerning the interpretation or application of the articles by peaceful means of their own choosing. The means were described as including negotiations, mediation, conciliation, arbitration or judicial settlement, that list being, of course, non-exhaustive. In the Drafting Committee’s view, the reference to “mutual agreement” of the parties on a mode of settlement included agreement of the parties in the form of a treaty that provided for a particular mode of settlement: for example, settlement of a dispute by arbitration or other means. That was why the words used in the Convention on the Law of the Non-navigational Uses of International Watercourses, “in the absence of an applicable agreement” between the parties, had not been included, and that would be explained in the commentary.

30. Paragraphs 2 and 3 indicated the establishment of a fact-finding commission as a minimum step if the parties

themselves could not agree on a mode of dispute settlement. Each party was to nominate one member of the commission and the members of the commission were to agree on a chairperson—the gender-neutral term preferred in United Nations usage.

31. Paragraph 4 was a new one which dealt with the composition of the fact-finding commission, a body whose membership must be balanced, so that it could command the confidence of the parties to a dispute. In the context of the draft articles, it was very possible that there would be one State of origin but more than one State likely to be affected. If each State party to the dispute selected a member of the fact-finding commission, there would be a majority of members from States likely to be affected, and the commission’s composition would be unbalanced. The Drafting Committee had opted for allowing the State of origin to appoint the same number of members as the States likely to be affected would appoint. Paragraphs 5 and 6 indicated that the Secretary-General of the United Nations would appoint the members of the fact-finding commission should any of the parties refuse to cooperate and described the modalities for the adoption of the commission’s report.

32. Article 19 did not deal with the rules of procedure and expenses of the fact-finding commission, but those issues could perhaps be addressed in the commentary. The commentary must also underline the fact that the article had been modelled on article 33 of the Convention on the Law of the Non-navigational Uses of International Watercourses in that it created a fact-finding commission that was well balanced and impartial and could be established and could function even in the absence of cooperation from one of the parties to the dispute.

33. The inclusion of the preamble went against the Commission’s usual practice, but the Special Rapporteur had thought that the mention of certain principles might better project the balance-of-interests test that had been applied all the way through the draft. The Drafting Committee had agreed but had wanted the preamble to focus only on the principles central to the draft. Accordingly, the first preambular paragraph referred to the codification and progressive development of international law in line with Article 13, paragraph 1 (a), of the Charter of the United Nations. The second and third preambular paragraphs were intended to set the basis for the balance-of-interests test and referred to the permanent sovereignty of States over natural resources within their territory or otherwise under their control and the fact that the freedom of States to carry on or permit activities in such territory was not unlimited. The fourth preambular paragraph referred to the Rio Declaration on Environment and Development (Rio Declaration)<sup>6</sup> without specifically citing the principles of a precautionary approach and sustainable development, which could be mentioned in the commentary, along with the “polluter-pays” principle.

<sup>6</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex I.

34. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt the titles and text of the draft preamble and draft articles on prevention of transboundary harm from hazardous activities, on the understanding that editing corrections required in some language versions would be made by the secretariat.

*It was so agreed.*

35. Mr. MELESCANU congratulated the Special Rapporteur on his excellent work and his readiness to take account of comments and thanked the members of the Drafting Committee. The conclusion of the work proved that the Commission had been doubly right to decide to confine the draft articles to the prevention of transboundary harm from hazardous activities.

36. The Commission was mandated by the General Assembly to focus its attention on responsibility for wrongful acts and on liability, a word which unfortunately had no translation in the other languages, i.e. responsibility for risk or, quite simply, responsibility for activities that were not prohibited by international law and thus did not constitute wrongful acts by States. The subject of responsibility for consequences arising out of acts not prohibited by international law had been taken up by earlier Special Rapporteurs, in particular Mr. Barboza and Mr. Quentin-Baxter. In his twelfth report,<sup>7</sup> Mr. Barboza had proposed a set of more than 30 draft articles on the subject of liability. The fact that the Commission had decided to deal with one aspect of that topic, namely the prevention of transboundary harm, did not release it from the general obligation to revert to the very topical subject of liability in the future.

37. He raised the point because article 3 might be interpreted as creating a general obligation of State responsibility, even for activities not prohibited by international law. He was reminded of a section of Romania's highway code on speed limits for trams entering depots which stipulated that the driver must slow down to prevent an accident. The Romanian police, in its great wisdom, had always interpreted that as meaning that if an accident occurred, the driver was automatically going too fast, even if the tram had been moving at a snail's pace. Similarly, article 3 allowed the interpretation that, if significant transboundary harm occurred, it could only mean that the State of origin had not taken all appropriate measures to prevent it. Hence the need to return to the subject of liability.

38. Mr. BROWNLIE, speaking on a point of order, said that a number of members did not want to continue the issue of liability. They had not expected a discussion on that important question of principle, and their silence should not be taken as agreement with Mr. Melescanu's position.

39. The CHAIRMAN said he agreed with Mr. Brownlie and appealed to members to confine their comments to the report of the Drafting Committee and not to raise general issues relating to liability.

40. Mr. LUKASHUK expressed his gratitude to the Special Rapporteur for his draft. If the Commission were only able to complete its work on the draft articles on State responsibility with equal success, it would greatly enhance its authority. The draft articles on the prevention of transboundary harm from hazardous activities were well balanced and realistic and there was every reason to expect that the General Assembly would adopt them.

41. Mr. PELLET said that one could, of course, be pleased that the Commission had just adopted a new draft and he joined the concert of self-satisfaction of other members. Admittedly, for him it was difficult to speak of self-satisfaction, for he had hardly participated in the preparation of a draft he had never been excited about, but which could have been important, since the subject was in itself fundamental. Even though formally it did not concern the environment, that was what it was all about. Again, the topic had been ripe for codification and was conducive to a cautious yet determined progressive development of international law. But that was where the problem lay. Not only did the draft fail to contain any elements of progressive development, but it even represented a big step backwards in the area of codification properly speaking. No one would accuse him of being a militant environmentalist; specialists in international environmental law sometimes had an unfortunate tendency to behave like human rights advocates, making disconcerting use of a "wishful-thinking" approach. In the present instance, the opposite was true. At the risk of upsetting the Special Rapporteur, he continued to believe that the draft was rather pointless. Members might quibble over details and provisions adopted, but on the whole the draft did not contain anything reprehensible or fundamentally disputable. What was unfortunate and even alarming in certain respects was what it did not include. Apart from prudent obligations of notification and consultation, which he welcomed, he would perhaps not call the draft lukewarm water, which would be going too far, but certainly decaffeinated coffee, to use Mr. Barboza's words with reference to another draft. By that he meant that all recent advances in positive international law had been carefully ignored. Not a word had been said about the principle of precaution, which was at the heart of recent developments in international environmental law, but which, notwithstanding the Special Rapporteur's assertion in his first report,<sup>8</sup> was no longer a mere political principle, but a genuine, fundamental legal principle. The draft's complete silence on that central issue, a principle which would take on growing importance in the years ahead, was not only regrettable in itself, but might even be a danger for the future, and he feared that the adoption of the draft might put a brake on the strengthening of that principle and on other less marked developments. He was worried that States might make use of the draft's silence to hold up certain important changes. The Commission was codifying with its gaze riveted on the past, not at all on the future, and with a somewhat blinkered attitude towards the present. He had not opposed the adoption of the draft because, to use a banal expression, it was no big deal, and in any case he preferred decaffeinated coffee to no coffee at all.

<sup>7</sup> *Yearbook . . . 1996*, vol. II (Part One), document A/CN.4/475 and Add.1.

<sup>8</sup> *Yearbook . . . 1998*, vol. II (Part One), document A/CN.4/487 and Add.1.

42. He had burst out laughing when reading article 19, paragraph 6, according to which the commission was to adopt its report by a majority vote, unless it was a single-member commission. He could not imagine how the members of the Drafting Committee had got it into their heads to adopt such a wording.

43. The extreme timidity of the draft confirmed for him that the Commission was not made to take on a subject of that kind and that it would do well not to continue to take on the other aspect of the topic, namely liability. If the Commission was unable to reflect recent, clear and well-established trends in prevention, then it would obviously be overwhelmed by an infinitely more controversial subject which was at the centre of a heated debate that could be resolved only through negotiations between States, and not through codification by legal experts. His position in that regard was radically opposed to that of Mr. Melescanu. The draft might become a convention: so much the better, or perhaps, so much the worse. But for him, it was a codification which was, if not a step backwards, then in any case one which simply marked time, and he could not but wonder about the import of such an exercise. Decaffeinated coffee did not keep one awake.

44. Mr. KATEKA said that Mr. Pellet was trying to trivialize the topic of prevention of transboundary harm from hazardous activities. It might be recalled that Mr. Pellet was fond of complaining about the demolition enterprise in the topic of reservations to treaties. What was sauce for the goose should be sauce for the gander. Members should show courtesy to the topics of others. Some members had different opinions on reservations to treaties and all the Special Rapporteur's ingenious work on that topic, but no one had referred to it as decaffeinated coffee. He hoped that such would not be the kind of language to be used in connection with topics on which the Commission had decided to embark. The draft just adopted was not as strong as it could have been, because of the demolition enterprise which had plagued the topic.

45. Mr. TOMKA (Chairman of the Drafting Committee) pointed out for Mr. Pellet's information that the phrase, which he had found so amusing, had been taken by the Drafting Committee from article 33, subparagraph (b) (v), of the draft articles on the law of the non-navigational uses of international watercourses adopted by the Commission at its forty-sixth session.<sup>9</sup> States had adopted the draft and the phrase appeared in article 33, paragraph 8, of the Convention on the Law of the Non-navigational Uses of International Watercourses.

46. Mr. PAMBOU-TCHIVOUNDA commended the Special Rapporteur for his excellent work on the topic and said it was surprising, indeed disturbing, that in a draft on the subject of prevention the preamble should make no mention of that notion.

47. In the French version, the term *jurisdiction* should be replaced by *compétence* and a number of other changes were also required.

48. Mr. KUSUMA-ATMADJA commended the admirable work done by the Special Rapporteur and the Draft-

ing Committee, which he could not but wholeheartedly endorse.

49. Mr. HERDOCIA SACASA praised the dedication of the Special Rapporteur, Mr. Sreenivasa Rao, in building on the achievements of previous special rapporteurs in order to bring the work on the topic to a successful conclusion. One of the principal achievements of the draft was its affirmation, in a preamble which set the topic in a broader context, of the principles of sustainable development, permanent sovereignty of States over the natural resources within their territory, protection of the environment, and cooperation between States. With regard to the latter principle, a particularly valuable achievement of the draft was its establishment of a framework for dialogue and consultation between States.

50. No doubt the Commission could have gone much further in the provisions on the environment but, as Mr. Pellet had himself had occasion to point out in another context, the law was to some extent the art of the possible. Personally, he thought that the draft incorporated some of the most important principles relating to the topic, systematizing the duty of prevention and highlighting the requirements for prior authorization and assessment of risk, including an environmental impact assessment; and drawing the necessary distinction between State responsibility and international liability.

51. Lastly, reverting to the preamble, he wished to draw attention to the important proviso contained therein, that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control was not unlimited. The concept of sovereignty was not being eroded in contemporary international law; on the contrary, it was to be affirmed within a process of interaction enriched by the principle of international cooperation.

52. Mr. KAMTO joined others in congratulating the Special Rapporteur and the Drafting Committee for completing their work on the topic. Admittedly, it would have been difficult to achieve anything revolutionary after the mutilation to which the original draft articles on strict liability had been subjected. Nonetheless, he could to some extent sympathize with the somewhat muted welcome—to say the least—extended by Mr. Pellet to the draft articles. It ought to have been possible, even in the area of prevention, to introduce some new elements taking account of current developments in international environmental law.

53. Several points needed to be dealt with more fully in the commentaries to the articles. First, some explanation should be given of the difference between the new notion of "implementation" and the more classical notion of "application". Secondly, with regard to the highly regrettable absence of any reference to the principle of precaution in article 3—an absence to which Mr. Pellet had also alluded—the commentary should make it clear that the term "prevention" was to be understood in a broad sense, as including the principle of precaution. Thirdly, the commentary to article 17 should indicate that the provisions of that article, requiring the State of origin to provide the State likely to be affected with all relevant and available

<sup>9</sup> *Yearbook . . . 1994*, vol. II (Part Two), p. 134.

information, were subject to the provisions of article 14, on national security and industrial secrets.

54. Mr. Sreenivasa RAO (Special Rapporteur) said that, given the evident strength of his views on the draft articles, it was a pity that Mr. Pellet had been unable to find the time to involve himself more closely in the drafting process. Nonetheless, Mr. Pellet's comments were well taken, nor was he alone in expressing the view that the draft fell short of expectations. The same criticism had been made by other members, as well as by representatives in the General Assembly. It should be borne in mind, however, that between the forty-sixth session, in 1996, and the current session, the draft had passed through no fewer than four readings, in the course of which, as Special Rapporteur, he had had, to the best of his abilities, to take account of members' many comments and suggestions.

55. In his view, there was no substance to the accusation that the draft contained no progressive elements. It highlighted the management of risk as fundamental; it introduced mandatory notification and information; and made authorization a fundamental precondition for any activity to continue, and such authorization applicable even to pre-existing activities once the draft articles had been adopted. Furthermore, as the commentaries should make abundantly clear, such authorization should include all the most modern management techniques as they became available. Such institutional mechanisms would evolve with time, keeping pace with technological advances. Many States had also indicated that non-discrimination, information to the public and other aspects of emergency preparedness were elements of progressive development, rather than current practice in international law.

56. Consequently, the view that the draft was totally "decaffeinated", that it fell short even of existing principles of codification, and that it contained no elements of progressive development was an assertion belied by the facts and contradicted by the views of Governments and members of the Commission alike, though Mr. Pellet was of course fully entitled to his opinion. For his own part, as Special Rapporteur he saw the adoption of the draft after a process that had lasted 23 years as a momentous occasion, albeit one for which credit was due, not to himself, but to his hard-working predecessors. He was happy at the current time to leave it to States to decide whether there was scope for further development of the draft articles.

57. Mr. LUKASHUK said that the extremely emotional statement by Mr. Pellet provided the strongest possible affirmation of the soundness of the Special Rapporteur's draft. If the Commission were to follow Mr. Pellet's proposal, it would need at least another 20 years to come up with any real results. The road to hell was paved with good intentions, and there was no need for the Commission to take that road before its time. Nor was there any need for the Special Rapporteur to justify himself: the draft was profoundly realistic and would make a substantial contribution to the development of international law.

58. Mr. BROWNLIE said that, in point of fact, the draft was not about transboundary harm, but about the management of risk. It was in effect a new subject, and one

that had proved difficult to deal with. As many members who had refrained from taking the floor at the current meeting were aware, the draft was creative, and in certain respects, indeed, radical.

59. Mr. GALICKI said that the subtopic of prevention of transboundary damage from hazardous activities had been fully accepted by the Commission for an in-depth study and the results had been presented by the Special Rapporteur. The question of whether or not to continue the consideration of the topic of international liability for injurious consequences arising out of acts not prohibited by international law was a matter for States to decide. He would like to suggest that the Commission should pay a tribute to the Special Rapporteur, which he truly deserved for the commitment with which he brought the work on the subtopic to a successful completion.

60. The CHAIRMAN said the Commission would return to the question of its recommendation regarding the form of the draft articles at a later stage, following informal consultations.

**State responsibility<sup>10</sup> (continued) (A/CN.4/513, sect. A, A/CN.4/515 and Add.1-3,<sup>11</sup> A/CN.4/517 and Add.1,<sup>12</sup> A/CN.4/L.602 and Corr.1 and Rev.1)**

[Agenda item 2]

FOURTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

61. Mr. CRAWFORD (Special Rapporteur), reporting on the outcome of the consultations concerning the form of the draft on State responsibility and the provisions on dispute settlement, said that, following a discussion involving a considerable number of members, agreement had been reached on four points. First, the report would have fully to reflect the different trends on the issue in the Commission, and to give full weight to the very significant view of many members that the work on State responsibility ought, if not immediately, then in due course, to result in a convention.

62. Secondly, there had been endorsement for the two-stage approach suggested by a number of members, prominent among them Mr. Lukashuk and Mr. Melescanu, that the Commission should recommend in the first instance that the General Assembly should in a resolution take note of and annex the text, with appropriate language emphasizing the importance of the subject and the gap in the present state of codification and progressive development of international law due to the absence of a concluded text on State responsibility. A useful precedent existed for that first stage, in Assembly resolution 55/153 of 12 December 2000, on nationality of natural persons in relation to the succession of States. Obviously, other elements that could be contained in such a resolution might be mentioned in the report. The second phase would be the further consideration of the

<sup>10</sup> For the text of the draft articles provisionally adopted by the Drafting Committee on second reading, see *Yearbook . . . 2000*, vol. II (Part Two), chap. IV, annex.

<sup>11</sup> See footnote 1 above.

<sup>12</sup> *Ibid.*

question at a later session of the Assembly, with a view to the possible conversion of the articles into a convention, if the Assembly judged such a course to be appropriate, as did many members of the Commission.

63. Thirdly, it did not seem necessary for the Commission to specify when that should occur. In any case, that was a matter for the internal organization of the Sixth Committee, which had a number of other texts before it. But the second stage would involve, in due course, consideration of that question.

64. Fourthly, the articles that, it was to be hoped, the Commission would adopt and the General Assembly note in general terms in its resolution, would not contain machinery for dispute settlement, which was not appropriate for articles as such. That was of course without prejudice to the question of provisions on the relationship between countermeasures and dispute settlement and on the Chinese proposal, in the comments and observations received from Governments (A/CN.4/515 and Add.1–3), should the Drafting Committee find it appropriate in the light of the debate to deal with those issues in the text. To repeat, there would be no provision in the articles for dispute settlement machinery. However, the Commission would draw attention to the desirability of settlement in disputes concerning State responsibility; to the machinery elaborated by the Commission in the draft adopted on first-reading<sup>13</sup> as a possible means of implementation, but also to other possibilities; and would leave it to the Assembly in the second phase to consider whether and what provisions for dispute settlement could be included in an eventual convention.

65. It was thought that a procedure along those lines could contribute to the adoption of the articles by consensus, along with a consensus approach to the question of their future treatment.

*The meeting rose at 12.05 p.m.*

<sup>13</sup> See 2665th meeting, footnote 5.

## 2676th MEETING

*Tuesday, 15 May 2001, at 10. a.m.*

*Chairman:* Mr. Peter KABATSI

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

## Organization of work of the session (*continued*)\*

[Agenda item 1]

1. The CHAIRMAN invited Mr. Hafner, the Chairman of the Planning Group, to announce the final composition of the Group.

2. Mr. HAFNER (Chairman of the Planning Group) said that the Planning Group would be composed of the following members: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Galicki, Mr. Idris, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Pellet, Mr. Rosenstock, Mr. Yamada and Mr. He (ex officio).

*The meeting rose at 10.05 a.m.*

\* Resumed from the 2673rd meeting.

## 2677th MEETING

*Friday, 18 May 2001, at 10.05 a.m.*

*Chairman:* Mr. Peter KABATSI

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

## Statement by the Legal Counsel

1. The CHAIRMAN invited Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel, to brief the Commission on the latest legal developments in the United Nations.

2. Mr. CORELL (Under-Secretary-General for Legal Affairs, the Legal Counsel) said that the report of the Secretary-General, "We the peoples: the role of the United Nations in the twenty-first century" (Millennium Report),<sup>1</sup> to the Millennium Summit, held from 6 to 8

<sup>1</sup> A/54/2000.