Document:-
A/CN.4/SR.2699

Summary record of the 2699th 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:-
218 Summary records of the second part of the fifty-third session

Paragraph should reflect that understanding reached in the Committee.

Paragraph (4), as amended by Mr. Crawford, was adopted.

The commentary to article 5, as amended, was adopted.

The meeting rose at 6.10 p.m.

2699th MEETING

Tuesday, 31 July 2001 at 10.05 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Tribute to the memory of Ignaz Seidl-Hohenveldern

1. The CHAIRMAN said that Ignaz Seidl-Hohenveldern, who had just died, had been an eminent jurist and practitioner of international law who had had many links with the Commission. He had been an emeritus professor in Austria and Germany and a member of the Institute of International Law, as well as the author of numerous learned works on international claims, jurisdictional immunities of States, property and corporation law and protection of private property.

2. Mr. HAFNER, after recalling various aspects of Ignaz Seidl-Hohenveldern’s career, paid a special tribute to his qualities as a teacher and friend.

At the invitation of the Chairman, the members of the Commission observed a minute of silence in tribute to the memory of Ignaz Seidl-Hohenveldern.

Draft report of the Commission on the work of its fifty-third session (continued)

E. Draft articles on prevention of transboundary harm from hazardous activities (continued)


Commentary to article 6 (Authorization)

Paragraph (1)

3. Mr. BROWNIE said that in the first sentence “undertaken in their territory or otherwise under their jurisdiction or control” should read: “undertaken in its territory or otherwise under its jurisdiction or control”. The reference was to the State, not to the plural noun “activities”.

Paragraph (1), as amended, was adopted.

Paragraph (2)

4. Mr. PELLET pointed out, in relation to footnote 38 and a number of other footnotes, that “op. cit.” was not used in French in referring to a case.

Paragraph (2) was adopted.

Paragraph (3)

5. Mr. BROWNIE said that the quotation from the Corfu Channel case should be checked: the order of words sounded wrong.

Paragraph (3) was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

6. Mr. TOMKA said that the direction of take-off and landing was constantly being changed on airport runways; such a practice could not be called a major change in an activity. The reference to runways in the second sentence should therefore be deleted.

Paragraph (5) was adopted.

7. Mr. Sreenivasa RAO (Special Rapporteur) said that the provision could usefully be reworded but should be retained, since it was intended to apply to the laying down of new lanes.

Paragraph (5), as amended, was adopted.
Paragraph (6)

9. Mr. LUKASHUK said that the first two sentences begged a number of questions, with their reference to States “adopting” the regime contained in the articles or “assuming obligations”. Legally, both phrases were dubious, since States would be complying not with a convention but with a General Assembly resolution. He would therefore prefer to replace the phrase “once a State adopts the regime contained in these articles” with the less specific formulation “after adoption by States of these articles”. He would not insist on his proposal, however, if it found no support.

Paragraph (6) was adopted.

Paragraph (7)

Paragraph (7) was adopted.

Paragraph (8)

10. Mr. ROSENSTOCK said that, in order to bring the commentary into line with the article itself, the last sentence should read: “As appropriate, the State of origin shall terminate the authorization, and where appropriate prohibit the activity from taking place altogether.”

11. Mr. CANDIOTI, supported by Mr. GAJA, said that the word “requirement” was used in two different senses in the paragraph: once to mean the conditions under which authorization was granted and the other time to mean “obligation”. For clarity, in the first sentence the word should be replaced by “conditions”.

12. Mr. TOMKA said that the same ambiguity arose in article 6 itself, in paragraphs 2 and 3. Although the Commission had already adopted the article, he proposed that, as an exceptional measure, the phrase “requirements of the authorization” in paragraph 3 should be changed to “terms of the authorization”, with a corresponding change in the commentary.

13. Mr. MELESCANU said that Mr. Tomka’s proposal complicated the issue. The word “requirement” appeared once in the singular and once in the plural; the difference in meaning was perfectly comprehensible.

14. Mr. GALICKI said he strongly supported the amendment proposed by Mr. Tomka. The use of the word in two entirely different meanings could easily lead to misunderstandings.

15. Mr. LUKASHUK said he supported Mr. Melescanu’s suggestion. Such matters should be left to the Drafting Committee; the Commission should concentrate on substance.

16. Mr. Sreenivasa RAO (Special Rapporteur) said that the phrase “terms of the authorization” was perfectly acceptable, if it made better sense. As for any distinction between “requirement” and “requirements”, there was none in English.

17. Mr. PELLET said that, if the text of article 6 was to be revisited, he proposed that in paragraph 2 the words La règle de l’autorisation, which sounded strange in French, should be replaced by Les exigences de l’autorisation.

18. The CHAIRMAN said, in response to Mr. Lukashuk, that it was incumbent on the Commission to improve the text, if it could. The Special Rapporteur had indicated his approval of Mr. Tomka’s proposal.

Paragraph (8), as amended, was adopted.

Article 6 was amended in English and French.

The commentary to article 6, as amended, was adopted.

Commentary to article 7 (Assessment of risk)

Paragraph (1)

19. Mr. KAMTO pointed out that the French text contained a phrase at the end that was redundant and, in any case, did not appear in the English text. It should be deleted.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Paragraph (2) was adopted.

Paragraph (3)

20. Mr. BROWNLIE said that in the second sentence the word “Requirement” should read “The requirement”. Moreover, in the third sentence the words following “the Convention on Environmental Impact Assessment in a Transboundary Context” stated the obvious and should be deleted.

Paragraph (2), as amended, was adopted.

Paragraph (3)

21. Mr. SIMMA said that in the footnote to the second sentence the phrase “the two multilateral treaties regarding communication systems” was ambiguous. It was not clear whether the phrase applied to the two conventions mentioned later in the footnote, but in any case there were more than two such treaties.

22. Mr. TOMKA concurred. Since impact assessment had not existed as a concept in the international law of that period, the two conventions referred to were not to the point and the reference to them could usefully be deleted.

23. Mr. PELLET said he saw a value in retaining the references. The conventions had had a considerable impact in their time and still had much to offer. The Commission should not altogether delete the references.

24. Mr. SIMMA said that, of the two treaties, the International Radiotelegraph Convention could be perceived as having an environmental element, in that the parties were required not to interfere with the radioelectric communications of other contracting States. The International Convention concerning the Use of Broadcasting in the Cause of Peace, on the other hand, which concerned the incitement of populations against their own Governments, had no environmental connection at all. If “impact
assessment” was to be given such a broad meaning, it could be found throughout international law, such as in the customary rule that each State should see that no hostile activities were undertaken from its territory. The entire second half of the footnote should be deleted.

25. Mr. PELLET said that he had been won over by Mr. Simma’s arguments with regard to the International Convention concerning the Use of Broadcasting in the Cause of Peace, but the reference to the International Radiotelegraph Convention was still worth retaining.

26. Mr. TOMKA said that the Commission seemed to be in broad agreement about deleting the reference to the International Convention concerning the Use of Broadcasting in the Cause of Peace, from which, indeed, some States had withdrawn. As for the International Radiotelegraph Convention, the impact assessment element had emerged only in the light of modern international law, as could be seen from the Gabčíková-Nagymaros Project case, for example. There was, however, no requirement of impact assessment in the Convention itself. Both references should be deleted.

27. Mr. Sreenivasa RAO (Special Rapporteur) said he could agree to the deletion, if the references were felt to be inappropriate.

28. Mr. GAJA said that—if the whole reference was not to be deleted—the word “signatories” should be replaced by “parties” for the sake of accuracy.

29. The CHAIRMAN suggested that the reference to the International Radiotelegraph Convention and the International Convention concerning the Use of Broadcasting in the Cause of Peace should be deleted in the footnote to the second sentence and paragraph (3) should end with the words “the Convention on Environmental Impact Assessment in a Transboundary Context”.

It was so agreed.

Paragraph (3), as amended, was adopted.

Paragraph (4)

30. Mr. SIMMA, supported by Mr. GAJA, said that in the first sentence the phrase “a statement on environmental impact assessment” was tautological. The assessment was itself a statement. The words “statement on” should be deleted. Secondly, the words “necessary obligation” in the fourth sentence was ambiguous: it was unclear whether it meant simply “an obligation” or whether the meaning would be better conveyed by the words “necessary condition”. He himself would prefer the latter.

31. Mr. ROSENSTOCK pointed out that if the word “obligation” were replaced by the word “condition”, the word “before” would need to be changed to “for”.

Paragraph (4), as amended, was adopted.

Paragraph (5)

32. Mr. PELLET proposed that in the third sentence, in the interests of clarity, the words “or applicable international instruments” should be amended to read: “or as parties to international instruments”.

33. Mr. KAMTO said that the French version should read dans le cadre d’instruments internationaux.

34. Mr. GOCO said that the second sentence seemed to be rendered redundant by what followed.

35. Mr. Sreenivasa RAO (Special Rapporteur) said that the second sentence was intended to dispel any erroneous impression that the State itself was obliged to carry out the environmental impact assessment.

Paragraph (5), as amended, was adopted.

Paragraph (6)

36. Mr. HAFNER proposed inserting a short sentence, after the second sentence, to read: “This corresponds to the basic duty expressed in article 3.”

37. Mr. KAMTO said that, in the interests of logic, the second sentence should be moved to the end of the paragraph. Alternatively, given that its substance was reproduced in paragraph (7), it could be deleted altogether.

38. Mr. Sreenivasa RAO (Special Rapporteur) said that paragraphs (6) and (7) seemed to him to fulfill their purpose adequately, namely, to provide guidance to countries that had little experience of risk assessment.

39. Mr. KUSUMA-ATMADJA endorsed the Special Rapporteur’s comment.

40. Mr. KAMTO said he would not press for his amendment.

Paragraph (6), as amended by Mr. Hafner, was adopted.

Paragraph (7)

41. Mr. GALICKI, supported by Mr. KUSUMA-ATMADJA, said that the third sentence of the paragraph, which related not to article 7 but to article 8, should be deleted.

42. Mr. TOMKA said that, if the third sentence was to be deleted, the fourth sentence would become meaningless and should therefore also be deleted.

43. Mr. GALICKI said that Mr. Tomka’s concern could be addressed by amending the last sentence—which should be retained—by replacing “those States to evaluate” by “the States likely to be affected to evaluate”.

Paragraph (7), as amended by Mr. Galicki, was adopted.

Paragraphs (8) and (9)

Paragraphs (8) and (9) were adopted.
The commentary to article 7, as amended, was adopted.

Commentary to article 8 (Notification and information)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

Paragraph (5) was adopted with a minor editing change.

Paragraph (6)

Paragraph (6) was adopted.

Paragraph (7)

44. Mr. HAFNER proposed deleting the last sentence of the paragraph.

Paragraph (7), as amended, was adopted.

Paragraph (8)

Paragraph (8) was adopted.

Paragraph (9)

45. Mr. GAJA said that the words “the States concerned”, in the first sentence, should be replaced by “the States likely to be affected”. Consequently, the same words in the second sentence should read “these States”.

46. Mr. LUKASHUK said it was important for paragraph (9) to specify that, notwithstanding the very strict requirement set forth in article 8, paragraph 2, some preparatory work could nevertheless be permitted.

47. Mr. Sreenivasa RAO (Special Rapporteur) said that Mr. Lukashuk’s concern could be addressed by adding a “without prejudice” clause to paragraph (9). That, however, was already implicit in the wording.

Paragraph (9), as amended, was adopted.

Commentary to article 9 (Consultations on preventive measures)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

Paragraph (2) was adopted with a minor editing change.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

48. Mr. PELLET said that the third sentence should be recast to read: “The decision of the Court […] is also relevant to this article.”

49. Mr. BROWNLIE said that, since the North Sea Continental Shelf cases had not, formally speaking, been adversarial proceedings, the citations Federal Republic of Germany v. Denmark and Federal Republic of Germany v. Netherlands should read Federal Republic of Germany/Federal Republic of Germany/Netherlands.

50. Mr. SIMMA supported Mr. Pellet’s and Mr. Brownlie’s remarks.

51. Mr. TOMKA proposed that the third sentence should be deleted, and the fourth sentence recast so as to reflect its contents.

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (9)

Paragraphs (5) to (9) were adopted.

Paragraphs (10) and (11)

52. Mr. PELLET said that the word “even” should be deleted in the last sentence of paragraph (10).

53. Mr. BROWNLIE asked why the second sentence of paragraph (11) appeared to give such prominence to domestic law as such.

54. Mr. Sreenivasa RAO (Special Rapporteur) said that rights under domestic law were simply one component in the enumeration in that sentence of rights of States likely to be affected.

55. Mr. HAFNER proposed deleting the word “also” from the first sentence in paragraph (11), and the reference to domestic law from the second sentence.

56. Mr. BROWNLIE said that the thrust of the first sentence was actually weakened by the elaboration contained in the second sentence, which should be deleted in toto.

57. Mr. GALICKI said that, if the second sentence was to be deleted, the first sentence should be amended to read: “The last part of paragraph 3 is without prejudice to the rights of States likely to be affected.”

58. The CHAIRMAN suggested that, if the second sentence of paragraph (11) was to be deleted, the first sentence might be moved to the end of paragraph (10), without further amendment.

It was so agreed.

Paragraphs (10) and (11), as amended, were adopted.

The commentary to article 9, as amended, was adopted.
Paragraph (1) was adopted.

Paragraph (2) was adopted.

Paragraphs (3) to (5) were adopted.

Paragraph (6), as amended, was adopted.

Paragraph (7) was deleted.

Commentary to article 10 (Factors involved in an equitable balance of interests)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (5) were adopted.

Paragraph (6)

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was deleted.

Mr. LUKASHUK said that the extremely important and accurate statement contained in the third sentence appeared to be incompatible with the title of article 10. The title should be amended to read: “Equitable balance of interests”.

Mr. HAFNER proposed deleting the fourth sentence, beginning “Some of the factors may be relevant”.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (5) were adopted.

Paragraph (6) was adopted.

Mr. TOMKA said that some chronological discrepancies in paragraphs (6) and (7) could be eliminated by deleting the adverb “first” from the first sentence of paragraph (6).

Mr. HAFNER drew attention to the need to harmonize the references to “precautionary principle” and “principle of precaution” in paragraphs (6) and (7).

Paragraph (6), as amended, was adopted.

Mr. KAMTO said that the last sentence of the paragraph begged for examples to be given of previous treaties that applied the precautionary principle in a very general sense without making any explicit reference to it; they should be either in the text or in a footnote.

Mr. Sreenivasa RAO (Special Rapporteur) proposed that the last sentence should be deleted and the beginning of the first sentence amended to read: “The precautionary principle has been incorporated, without any explicit reference, in various other conventions”.

Mr. CANDIOTI proposed that the beginning of the first sentence should read: “The precautionary principle has been referred to or incorporated, without any explicit reference, in various other conventions”.

Mr. PELLET said that the order in which the conventions and declarations were listed in paragraph (7) and the preceding paragraph was not very rational. If the Vienna Convention for the Protection of the Ozone Layer had provisions similar to those of the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, the United Nations Framework Convention on Climate Change and the Treaty on European Union (Maastricht Treaty), they should be placed before; if, however, the provisions were of a different nature the reference should be placed elsewhere.

Mr. BROWNIE said that the Commission was not supposed to be engaging in a drafting exercise. The source of the problem was that the precautionary principle had a large penumbra of uncertainty, and paragraph (7) and the first line of paragraph (8) unnecessarily enlarged that penumbra. It did not help to invoke a row of rather specialized conventions and then make the bold assumption that they all applied the precautionary principle in a very general sense. It was not a very good idea for the commentary to make quite so many claims for the principle.

Mr. GALICKI said he shared Mr. Pellet’s view that there was a need to put some order into the list, or to shorten the paragraph or move some of it into footnotes. That would make the paragraph more proportional to the sometimes questionable nature of the precautionary principle.

Mr. PELLET said that paragraph (6) should be retained because the Bergen Ministerial Declaration on Sustainable Development in the ECE Region (Bergen Declaration)1 was more explicit than principle 15 of the Rio Declaration.2 In his opinion, the whole of paragraph (7) should be incorporated in the footnote at the end of paragraph (6), with the first part of the first sentence reworded as had been proposed, the colon replaced by a full stop and the word “See”, followed by the conventions and treaties placed in a more rational order, and the last sentence deleted.

Mr. HAFNER said that what ever else happened to paragraph (7) the reference to the Maastricht Treaty had to be changed. It was already outdated to refer to “article 130r” and would give a wrong picture of the Commission if it were to cite only the Maastricht Treaty as if it did not know that the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts had entered into force in May 1999.

Mr. Sreenivasa RAO (Special Rapporteur) said that Mr. Pellet’s proposal dealt with much of the problem. His own proposal, however, was to incorporate the amended first part of the first sentence into paragraph (6), reorder the references to treaties and conventions, with Mr. Hafner’s proposed amendment in respect of the Treaty of Amsterdam, place the references in the footnote at the end of paragraph (6), and delete the last sentence, thereby in effect deleting paragraph (7) as a whole.

The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt the proposals just outlined by the Special Rapporteur.

It was so agreed.

Paragraph (7) was deleted.

---

1 A/CONF.151/PC/10, annex I.
2 See 2675th meeting, footnote 6.
Paragraph (8)

73. Mr. Sreenivasa RAO (Special Rapporteur) said that the inelegance of the first sentence had been brought to his attention. The words “conduct of” should be deleted.

74. Mr. PELLET said that the footnote at the end of the paragraph was rather strangely drafted. He proposed that in the first sentence “could” should be replaced by “did”.

Paragraph (8), as amended, was adopted.

Paragraph (9)

Paragraph (9) was adopted.

Paragraph (10)

75. Mr. ROSENSTOCK proposed that in the last sentence, the words “cost-effective” should be deleted and the paragraph should end with the words “in the first instance” because there was no need to repeat the obligation.

76. Mr. KAMTO proposed that “cost-effective” be replaced by “any other”.

77. Mr. Sreenivasa RAO (Special Rapporteur) said the issue was that article 3 imposed certain obligations on States, and over and above the basic duty there were additional measures that the States likely to be affected might wish the State of origin to implement because, for example, they had the means and technology and were prepared to assist. “Other measures” might be taken to refer to the measures that the State of origin was currently incorporating by way of cooperation. There was a need to specify which “other” measures were meant; otherwise the reader would assume that there were measures over and above cooperation, whereas in fact cooperation itself was over and above what was required.

78. Mr. KAMTO said that he would not press for his proposed amendment.

79. Mr. HAFNER proposed that the last sentence of the paragraph should be amended to read: “This however should not underplay the measures the State of origin is obliged to take under these articles.”

80. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt paragraph (10) as amended by Mr. Hafner.

It was so agreed.

Paragraph (10), as amended, was adopted.

Paragraph (11)

81. Mr. PELLET said that the reference in the footnote to the OECD environment directive should be direct, quoting the OECD document symbol, rather than indirect, quoting A/CN.4/471, which might not be very accessible to readers. In any event, it was not appropriate to cite the survey in question, which was an internal document of the Commission. If it had been published in the Yearbook of the International Law Commission, reference should be made to that. Otherwise, researchers would not be able to find it. The omission of the reference to the survey would require the same amendments in respect of other footnotes. In the footnote at the end of the paragraph the second reference to the work edited by Winfield Lang should read: “Winfield Lang, ibid.”

82. In the fifth sentence the words “essentially an economic principle” did not mean much and should be deleted or, in extremis, replaced by a phrase such as “a principle of an essentially economic nature”. The words “of course” in the penultimate sentence were superfluous and highly arguable. They should be deleted.

83. Mr. ROSENSTOCK wondered whether the last sentence of the paragraph was appropriate in a commentary. It might be preferable to incorporate it at the end of the footnote to the penultimate sentence rather than refer to a controversy in the commentary.

84. Mr. HAFNER supported Mr. Pellet’s comments on the words “essentially an economic principle” and proposed that the sentence be amended to read: “The principle is conceived as the most efficient means of allocating . . . ” As for the penultimate sentence, it should be amended so that there was clear-cut reference to European Community treaty language. It should then read: “This principle is even referred to in the Treaty establishing the European Community”, with a footnote to the source of the reference.

85. Mr. KAMTO felt that the first sentence was not very clearly understood and did not render well the idea the Special Rapporteur was trying to get across. He proposed that it be changed to read: “These considerations are in line with the content of the basic polluter-pays principle.” As to the discussion on the reference to “an economic principle”, it was very common in international environmental law texts to refer to the polluter-pays principle as a principle of an economic nature.

86. Mr. PELLET said that, as far as the first sentence was concerned, some confusion had arisen because of an error in the French translation. The original English “basic policy” had been rendered as “basic principles”.

87. Mr. Sreenivasa RAO (Special Rapporteur) said he agreed to Mr. Rosenstock’s proposal that the last sentence be deleted but resisted the proposed deletion of the words “an economic principle” in the fifth sentence immediately following the quotation from the Rio Declaration because it was necessary to draw an inference from that quotation. He would prefer the formula “a principle of an economic nature”. The idea he wished to convey was that, rather than being an established principle that was rigid, it should be accepted and implemented as flexibly as possible. Deleting the reference to European practice would give the impression that the Europeans were virtually unanimous about the principle, which was not the case.

88. Mr. TOMKA proposed that the word “environmental” in the fifth sentence should be deleted.

Paragraph (11), as amended, was adopted.
Paragraph (12)

Paragraph (12) was adopted.

Paragraph (13)

89. Mr. PELLET, referring to the last sentence, proposed the deletion of the word “much” before “lower risk”.

Paragraph (13), as amended, was adopted.

Paragraphs (14) and (15)

90. Mr. GALICKI suggested that paragraph (14) should be deleted, as it dealt with a subject that was not that of article 10, subparagraph (f).

91. Mr. Sreenivasa RAO (Special Rapporteur) said the material in paragraph (14) had seemed to him to be useful as guidance, but he would not insist on retaining it.

92. Mr. HAFNER said the explanations in paragraph (14) were useful and should be retained. If the paragraph was to be deleted, the first sentence of paragraph (15) should be amended by inserting the phrase “in the State likely to be affected” between the words “comparable activities” and “in other regions”.

93. Mr. ROSENSTOCK supported deletion of paragraph (14), since the essential point made therein was covered more simply and clearly in paragraph (15).

94. Mr. GOCO said he, too, favoured deleting paragraph (14) but suggested that the heading, “Subparagraph (f)”, should be transposed to paragraph (15).

95. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to delete paragraph (14) and amend paragraph (15) as proposed by Mr. Hafner and Mr. Goco.

It was so agreed.

Paragraph (14) was deleted and paragraph (15), as amended, was adopted.

The commentary to article 10, as amended, was adopted.

Commentary to article 11 (Procedures in the absence of notification)

Paragraph (1)

96. Mr. KAMTO proposed replacing the words “private entity” with “private source”.

97. Mr. Sreenivasa RAO (Special Rapporteur) said he was opposed to such a change as the term “private source” was much broader than “private entity”, a legal term which could refer to a corporation, an individual or a combination of the two.

98. Mr. KUSUMA-ATMADJA endorsed the Special Rapporteur’s remark and added that in some countries oil or gas was exploited by a State company, which could not be described as an entity.

99. Mr. GOCO suggested retention of the word “entity”.

100. Mr. HAFNER proposed replacing that word by “operator”.

101. Mr. PELLET, responding to a question raised by Mr. KAMTO, said that paragraph (1) was not so much about a source of information as it was about who or what was carrying out a certain activity.

Paragraph (1), as amended by Mr. Hafner, was adopted.

Paragraph (2)

102. Mr. TOMKA, referring to the last sentence, proposed that the phrase “of the activity” should be deleted.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (6)

Paragraphs (3) to (6) were adopted.

The commentary to article 11, as amended, was adopted.

Commentary to article 12 (Exchange of information)

103. Mr. TOMKA pointed out the need for an editing correction to the text of article 12.

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

104. Mr. TOMKA proposed that, in the last sentence of the footnote, the word “conventions” should be replaced by “instruments”, as the Code of Conduct on Accidental Pollution of Transboundary Inland Waters cited in the footnote could not be described as a convention.

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were adopted.

The commentary to article 12, as amended, was adopted.

1 United Nations publication, Sales No. E.90.II.E.28.
Commentary to article 13 (Information to the public)

Paragraph (1)

105. Mr. PELLET pointed out that the phrase “that might result from an activity subject to authorization” did not appear in article 13 and was ambiguous.

106. Mr. Sreenivasa RAO (Special Rapporteur) suggested that the phrase “subject to authorization and” should be deleted as it conveyed no essential information.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (4)

Paragraphs (2) to (4) were adopted.

Paragraph (5)

107. Mr. BROWNLIE proposed that the word “agreements” in the first sentence should be replaced by “instruments”.

108. Following a discussion in which Mr. CANDIOTI, Mr. GALICKI and Mr. TOMKA took part, the CHAIRMAN suggested that the secretariat should be asked to verify the consistency of the references to watercourse conventions in paragraph (5) and to ensure that no important instruments had been omitted.

It was so agreed.

Paragraph (5), as amended, was adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

109. Mr. CANDIOTI proposed that the phrase “before responding to the notification”, at the end of the paragraph, preceded by the word “and”, should follow the words “State of origin”.

Paragraph (8), as amended, was adopted.

Paragraph (9)

110. Mr. LUKASHUK said that the penultimate sentence departed from the general style of the commentaries and could easily be deleted.

111. Mr. Sreenivasa RAO (Special Rapporteur) said any problem of style could be rectified but the substance was important and he would prefer to keep it in.

112. Mr. GOCO suggested deleting the second sentence because it conveyed the idea that individuals who were not organized into groups did not form part of the public.

113. Mr. KUSUMA-ATMADJA pointed out that the concept of the “public” covered not only individuals organized into groups, such as those who participated in the production process, but also the potential victims of industrial processes.

Paragraph (9) was adopted.

Paragraph (10)

114. Mr. GAJA proposed that the last sentence should be deleted.

115. Mr. Sreenivasa RAO (Special Rapporteur) said he could go along with that proposal as long as the footnote to the sentence was transposed to paragraph (9).

116. Mr. PELLET urged that the numbering of the footnotes should be reviewed and that in the French text of the footnote, the title of the work, which was given in English only, should be translated into French, in conformity with academic style and as had been done elsewhere in the draft.

Paragraph (10), as amended, was adopted.

The commentary to article 13, as amended, was adopted.

Commentary to article 14 (National security and industrial secrets)

Paragraph (1)

117. Following a discussion in which Mr. BROWNLIE, Mr. PELLET and Mr. YAMADA took part, Mr. Sreenivasa RAO (Special Rapporteur) proposed that, to take account of the concerns expressed, the last part of the second sentence beginning with “or is considered”, should be deleted.

Paragraph (1), as amended, was adopted.

Paragraph (2)

118. The CHAIRMAN suggested that the word “even” in the third sentence should be deleted.

It was so agreed.

119. Mr. LUKASHUK said that the third and fourth sentences implied that a very broad interpretation might be given to the concept of industrial secret, one that might amount to abuse of domestic law. To clarify the scope of industrial secret, he suggested that the phrase “in accordance with internationally recognized standards” should be inserted in the fourth sentence, between the words “is considered” and “an industrial secret”.

120. Mr. TOMKA said he was opposed to such a change. The phrase “internationally recognized standards” was better suited to the field of human rights than to intellectual property rights, which was a very precise area of the law, covered in both international conventions and domestic legislation.
121. Mr. PELLET drew attention to the strong similarity between the fifth sentence of paragraph (2) and the third sentence of paragraph (1).

122. In response to a remark made by Mr. GALICKI, Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the second sentence of paragraph (2), the quotation marks around “intellectual property rights” should be removed.

Paragraph (2), as amended by the Chairman and the Special Rapporteur, was adopted.

Paragraph (3) was adopted.

Paragraph (3) was adopted.

The commentary to article 14, as amended, was adopted.

The meeting rose at 1.05 p.m.

2700th MEETING

Thursday, 2 August 2001, at 10 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Montaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodriguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Draft report of the Commission on the work of its fifty-third session (continued)

CHAPTER IV. International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities) (continued) (A/CN.4/L.607 and Add.1 and Add.1/Corr.1)

E. Draft articles on prevention of transboundary harm from hazardous activities (continued)


Commentary to article 15 (Non-discrimination)