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**Summary record of the 1741st meeting**

Topic:  
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had not specifically considered the point raised by Mr. Riphagen, he himself felt that the idea that the Conciliation Commission should be able to decide on its own competence was implicit in the idea of compulsory conciliation.

75. Mr. USHAKOV said that he found the annex unacceptable. First of all, since he opposed the compulsory arbitration procedure, he could not accept the provisions in the annex which related to it. What was more, even the provisions concerning the conciliation procedure were not entirely appropriate. It would be better for the draft to be based on the example provided by the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. Article 85 of that instrument made no mention of a list of conciliators and the conciliation commission for which it provided consisted of only three members. Moreover, under paragraph 2 of the annex under consideration, the important question of the choice of the members of the Conciliation Commission was not dealt with in a fully satisfactory manner. That paragraph read: "The States and international organizations which constitute one of the parties to the dispute shall appoint by common consent ... one conciliator, who may or may not be chosen from the list referred to in paragraph 1"; that said nothing about the nationality of the members of the Conciliation Commission, whereas paragraph 2 of the annex to the 1969 Vienna Convention on the Law of Treaties provided that the State or States constituting one of the parties to the dispute should appoint one conciliator of the nationality of that State or of one of those States. Even as far as international organizations were concerned, the nationality of the conciliator appointed by an international organization was of great importance; the conciliator, if he was a national of a State member of the organization, would be inclined to favour that organization.

76. In addition, under paragraph 2 of the annex under discussion, the States and international organizations which constituted one of the parties to the dispute must appoint by common consent "one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute". That provision did bring in the nationality of the conciliator, although it seemed peculiar to speak of a conciliator who "shall not be of the nationality of any of the States", an expression which seemed to refer to a stateless person. Also, the words "which constitute that party to the dispute" seemed to relate to the organizations alone, whereas they also referred to the States mentioned earlier in the phrase.

77. With regard to the procedure provided for in the case in which the chairman of the Conciliation Commission or any of the conciliators had not been appointed within the period prescribed, it was not absolutely necessary to call on the Secretary-General of the United Nations or the President of the International Court of

Justice to make the appointment. The 1975 Vienna Convention laid down a different procedure.

78. In conclusion, he pointed out that paragraph 1 of the annex under consideration was a totally unexpected innovation in that it provided for the establishment of a list of qualified jurists who could be both arbitrators and conciliators. Previously, no international convention which had provided for the establishment of such a list had stipulated that the jurists on the list could act in two capacities. That innovation was due to the fact that the Drafting Committee, in going about amending the wording of the annex, had touched on questions of substance.

*The meeting rose at 1.05 p.m.*

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## 1741st MEETING

*Wednesday, 7 July 1982, at 10.05 a.m.*

*Chairman: Mr. Paul REUTER*

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### **Question of treaties concluded between States and international organizations or between two or more international organizations (concluded) (A/CN.4/L.341)**

[Agenda item 2]

DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE (concluded)

CONSIDERATION BY THE COMMISSION

ARTICLE 66 (Procedures for arbitration and conciliation) *and*

ANNEX (Arbitration and conciliation procedures established in application of article 66) (concluded)

1. Mr. LACLETA MUÑOZ said that the changes made by the Drafting Committee in the texts of article 66 and the annex had been based on amendments which he had proposed. Those amendments had been intended not only to preserve the parallelism between the provisions under consideration and the corresponding provisions of the Vienna Convention on the Law of Treaties, particularly with regard to the settlement of disputes which concerned rules of *jus cogens*, but also to provide, in so far as possible, for the submission of disputes to the International Court of Justice. However, when article 66 and the annex had been discussed in the Commission and in the Drafting Committee, it had been agreed that, in view of the requirements for submission of disputes to the International Court of Justice, recourse to an arbitral tribunal should be substituted for recourse to the Court. He had no difficulty in supporting the texts of article 66 and the annex proposed by the Drafting Committee.

2. He found the text of the annex satisfactory because it offered the advantages of being simple and of incorporating the provisions of the annex to the Vienna Convention. Any criticism of the annex would imply criticism of the annex to the Vienna Convention as well. Although the reluctance of some States to agree to procedures for the peaceful settlement of disputes was a political issue and outside the Commission's terms of reference, he did think that the Commission was competent to suggest such procedures. It had been said that, in so doing, the Commission would be doing more than merely codifying existing rules of international law, but in his opinion the Commission should not confine itself to codification; it should also engage in the progressive development of international law and, in the present case, in the progressive development of the rules relating to procedures for the settlement of disputes.

3. Subparagraph 2 (b) of the annex had been said to suggest that the conciliator or arbitrator in question would have to be stateless (1740th meeting, para. 76), but in his view the paragraph 2 made it quite clear that the only persons from the list not eligible for nomination were those who were of the same nationality as any of the States, or nominated by any of the organizations, that constituted a party to the dispute.

4. A further criticism of the annex had been that it provided for only one list of persons to constitute both arbitral tribunals and conciliation commissions, although the qualifications required of conciliators and arbitrators were not the same (*ibid.*, para. 78). However, paragraph 1 of the annex to the Vienna Convention, which related to conciliation alone, referred to a "list of conciliators consisting of qualified jurists". The same requirement could certainly be said to apply to arbitrators. Accordingly he did not foresee any problem with the fact that the proposed annex provided for only one list of persons for both functions, who would all be required to be qualified jurists.

5. Sir Ian SINCLAIR said he had always believed that there should be as much parallelism as possible between the proposed article 66 and annex and the corresponding provisions of the Vienna Convention. Unfortunately, however, exact parallelism was not possible because the draft articles dealt with treaties to which international organizations were parties, and an international organization could not submit a dispute to the International Court of Justice.

6. At the United Nations Conference on the Law of Treaties, particular emphasis had been placed on the importance of ensuring a binding judicial determination of any dispute concerning the application or interpretation of rules of *jus cogens*. That applied to the draft articles under consideration too. For technical reasons, disputes which concerned rules of *jus cogens* and to which international organizations were parties could not be referred to the International Court of Justice, but the Commission should none the less ensure that such disputes were subject to some kind of binding determination. The obvious alternative was recourse to arbitration, for

which article 66 and the annex provided. He therefore fully supported the texts proposed by the Drafting Committee. The reluctance of some members of the Commission to accept those texts was, in his view, based essentially on political considerations and did not take account of the technical merits of the solution proposed.

7. With regard to the doubts raised about the technical suitability of specific provisions of the annex, he agreed with the comments just made by Mr. Lacleta Muñoz. The fact that the annex provided for a single list of conciliators and arbitrators was not likely to cause insurmountable problems. Although conciliation and arbitration admittedly involved different techniques, the basic requirement for nomination to the list was the same. Moreover, the purpose of subparagraphs 2 (a) and (b) was to ensure parallelism with the annex to the Vienna Convention by providing that States or international organizations which constituted one of the parties to a dispute were entitled to appoint their own conciliator or arbitrator, in accordance with the principle that they should be able to nominate a person of their own choice, as well as another person who was regarded as "neutral". Thus, although the annex did have some rough edges, it would be technically operable. He felt that some of the criticisms of the annex tended to exaggerate the difficulties involved.

8. The CHAIRMAN said that, if there were no objections, he would take it that, subject to the observations expressed during the discussion, the Commission agreed to adopt article 66 and the annex.

*Article 66 and the annex were adopted.*

9. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the Drafting Committee had drawn inspiration from the title of the Vienna Convention in deciding on the title of the draft articles. It proposed that the title should read: "Draft articles on the law of treaties between States and international organizations or between international organizations".

*The title of the draft and the titles and text of all the draft articles were adopted.*

10. Mr. USHAKOV congratulated Mr. Reuter warmly on the enormous task he had accomplished as Special Rapporteur. It was thanks to his skill, patience and devotion that the Commission had been able to codify virtually the whole of the law of treaties. His name would remain linked to articles which would be decisive for the stability of treaty relations, from the standpoint of both States and international organizations.

11. Sir Ian SINCLAIR said that, during the years in which the Commission had been engaged in the study of the topic of treaties concluded between States and international organizations or between international organizations, the Special Rapporteur had displayed qualities of patience and erudition which had earned him the admiration of lawyers throughout the world. The international community as a whole would be

grateful to the Special Rapporteur for the work he had done.

12. Mr. QUENTIN-BAXTER paid tribute to the Special Rapporteur for successfully completing the task entrusted to him. The Special Rapporteur had brought to the Commission unrivalled knowledge and understanding of international organizations and of the valuable role they played in the work of the international community.

13. Mr. THIAM said that, in addition to his vast erudition, Mr. Reuter was noted for two qualities essential in a Special Rapporteur—wisdom and patience. During the ten or so years that he had devoted to the study of a difficult topic, he had also been extremely fair and had always sought to reflect the general point of view of the Commission. Moreover, his detailed knowledge of international organizations had enabled him to take account of practical realities.

14. Mr. FRANCIS said that he had been greatly impressed by the Special Rapporteur's authority and the depth of his understanding of the topic entrusted to him. The Special Rapporteur's outstanding contribution to international law and the degree of excellence which he had brought to the Commission's work would be of lasting inspiration to less experienced jurists, particularly those in the developing world.

15. Mr. YANKOV said that he also wished to pay a tribute to the Special Rapporteur, whose wisdom, patience and high standards of intellectual endeavour had enabled the Commission to complete its work on the topic under consideration. That represented a valuable contribution to the codification and progressive development of international law.

16. Mr. McCAFFREY congratulated the Special Rapporteur on the magnificent accomplishment represented by the completion of the study of the topic of treaties to which international organizations were parties. As a new member of the Commission, it had been an honour and privilege for him to take part in the Commission's work on the topic and to witness the Special Rapporteur's patience and ability to understand and reconcile the positions of members from developing and developed countries alike.

17. Mr. NI said that he wished to join other members in paying tribute to the Special Rapporteur for the successful completion of the work on the present topic. It was an achievement of monumental importance in view of the growing number of international organizations and the significance of their work.

18. Mr. DÍAZ GONZÁLEZ said that the Special Rapporteur was to be commended for the patience and skill he had displayed in guiding the Commission through its work on the question of treaties to which international organizations were parties and for the qualities of intellectual honesty and objectivity on which he had drawn during the many years he had devoted to the codification and progressive development of the law on that subject.

19. He proposed that the Commission, in accordance with its usual practice, should adopt a resolution that would express appreciation to the Special Rapporteur and be included in the Commission's report on the work of its current session.

20. Mr. BARBOZA said that the Special Rapporteur was to be congratulated on the completion of the study of his topic. The Commission's work on the subject had been greatly influenced by the Special Rapporteur's deep knowledge and understanding of international organizations and his political awareness and ability to reconcile differing points of view.

21. Mr. MALEK joined in the tributes paid to Mr. Reuter. The admiration he had long felt for him as a great master of international law had been strengthened since he had seen him at work in the Commission.

22. Mr. LACLETA MUÑOZ said that, as a new member of the Commission, it had been a great honour for him to work under the guidance of the Special Rapporteur, who was to be congratulated for the admirable skill he had displayed in dealing with the vast amount of material requiring study and in reconciling different points of view.

23. Mr. STAVROPOULOS said that he had constantly been impressed by the depth and breadth of the Special Rapporteur's knowledge of international organizations. He had therefore never had any doubt that the Special Rapporteur's work on the topic under consideration would be an outstanding achievement.

24. Mr. CALERO RODRIGUES joined in the tribute paid to the Special Rapporteur. He said that the Special Rapporteur's many qualities were a confirmation of the high regard in which he was held.

25. The CHAIRMAN, speaking as Special Rapporteur, said that he was extremely moved by the kind words which the members of the Commission had addressed to him and he thanked them sincerely. Compared with the topics which other Special Rapporteurs had been bold enough to undertake, his own had been fairly easy.

26. It was not only the Special Rapporteur who deserved merit for having brought the work on the law of treaties to a successful conclusion. He wished to emphasize the contribution made by all those who had taken part in preparing the text which had become the 1969 Vienna Convention on the Law of Treaties, a remarkable achievement of which the draft articles were but a pale reflection. He also wished to stress the part which the present members of the Commission had played, in particular Mr. Ushakov, who was noted for his devotion to work and for the courage with which he defended the ideas that prevailed in the great country from which he came. All in all, the fact that the Commission had adopted the draft articles unanimously, with due regard to the excepted question of settlement of disputes, which was not within its competence, was due in part to Mr. Ushakov's spirit of collaboration.

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

[Agenda item 4]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (continued)

SCHEMATIC OUTLINE<sup>2</sup> (continued)

27. Mr. EVENSEN said that the task of the Special Rapporteur was enormous and challenging, involving as it did the progressive development of international law more than anything else. The issues raised by the topic had become especially vital as a consequence of the technological revolution that had taken place since the Second World War; it had transformed human society and had created hazards many of which were so far-reaching as to be beyond man's comprehension. In many respects that revolution had operated in a legal vacuum, yet at the same time it had made States and peoples interdependent.

28. The Commission's work on the topic should perhaps be based on four main elements: first, recognition of the fact that the technological revolution had created new situations in a number of relationships, which in turn called for a legal framework entailing the progressive development of international law; second, recognition of the fact that those new situations had engendered an interdependence which transcended frontiers and differing legal, economic and political systems and which must be reflected in the articles to be drafted by the Commission; third, as rightly emphasized by the Special Rapporteur, the need for the articles to be designed to prevent, minimize or repair, either physically or economically, the injurious consequences of certain lawful activities; and fourth, the requirement that the articles should not unduly or unreasonably prohibit or hamper States' creative activities—including economic ones—or unduly infringe their sovereign rights in respect of activities within their territories.

29. In his third report (A/CN.4/360, para. 11) the Special Rapporteur had emphasized the importance of employing a balance-of-interest test broadly corresponding to Principle 21 of the Stockholm Declaration<sup>1</sup> in assessing obligations of reparation for the injurious consequences of lawful activities. That seemed generally acceptable to the Commission as a starting-point for its treatment of the subject, but he fully agreed with the Special Rapporteur (*ibid.*, para. 22) that at the same time the articles must take account of the idea expressed in Principle 23 of the Stockholm Declaration, namely that environmental standards valid for the most advanced countries might be completely inappropriate for developing countries. He also fully endorsed the Special Rapporteur's view (*ibid.*, para. 9) that the elaboration

of primary rules of obligation to make reparation was an important part of the Commission's task.

30. He agreed too with the Special Rapporteur (*ibid.*, para. 23) that the criterion of foreseeability was of major importance and—in view of the magnitude of the technological revolution, which in many fields might produce material consequences beyond human understanding—that foreseeability must be supplemented by other principles if unforeseen accidents were to be covered as well as foreseeable ones. The Special Rapporteur (*ibid.*, para. 35) had been right to discard the concept of potentiality (of loss or injury), although the considerations underlying it should be borne in mind. The potential of high-technology activities to cause damage and injury in both space and time was almost unlimited. Some nuclear isotopes, for example, retained their devastating radioactivity for millions of years. The manner in which nuclear waste and nuclear weapons were handled and disposed of within the territory of one State was therefore of relevance for other States. The articles must provide for the consequences of high-technology activities, which included the launching of space objects, which might have damaging effects on the ozone layers surrounding and protecting the earth; the wilful modification of the climate; the harnessing of ocean currents; and the manipulation of major international river systems. The Anglo-American concept of "nuisance" might also be considered, in the context of good neighbourliness, friendly relations and peaceful coexistence.

31. The schematic outline presented by the Special Rapporteur in his third report constituted a major contribution to the Commission's work on the topic. The expression "loss or injury" obviously called for further elaboration. Factors to be taken into account included the nature and magnitude of the damage; questions such as whether the acting State could have taken preventive measures and whether it had consulted the affected State beforehand and given it information as to the nature and scale of the consequences of its activity; and the categories of States involved.

32. Section 1, paragraph 2, of the outline raised the question whether omissions on the part of the acting State and its nationals should be considered as activities. In his view they should, and not only in the case of failure to remove a natural danger mentioned in the paragraph. The definition of the expression "territory or control" brought up a number of very delicate legal issues, particularly in relation to ships and aircraft, including that of the extent to which a State could be held responsible for loss and injury caused by vessels or aircraft flying its flag. In view of the technological revolution he had referred to, liability might assume enormous proportions in the case of supertankers carrying highly explosive cargoes such as oil or liquefied gas and that of nuclear-powered or nuclear-armed vessels. Perhaps nuclear-powered ships and supertankers should be placed in separate legal categories and State-owned vessels, particularly those used for State purposes, be treated differently from privately-owned ships used for

\* Resumed from the 1739th meeting.

<sup>1</sup> Reproduced in *Yearbook ... 1981*, vol. II (Part One).

<sup>2</sup> For the text, see 1735th meeting, para. 1.

<sup>3</sup> See 1735th meeting, footnote 3.

commercial purposes. Accidents involving nuclear-armed vessels and causing devastation outside the limits of the owner State created particularly difficult legal and political problems.

33. Bearing in mind section 2, paragraph 2, of the outline, he could not see the merit of the Special Rapporteur's suggestion that loss or injury caused by vessels in course of innocent passage through the territorial sea of another State should not entail liability. On the contrary, the right of innocent passage called for the exercise of special care on the part of the passing vessel in preventing accidents which might damage the interests of the coastal State. Nuclear-powered ships were a source of special concern in that connection.

34. In section 2, the Special Rapporteur had suggested principles which seemed fair and effective. The fact-finding procedure described in paragraphs 4, 5 and 6 should be mandatory. He fully agreed with the Special Rapporteur that any report from a fact-finding body should be advisory and not binding on the States concerned.

35. With regard to section 3 of the outline, he was not entirely convinced that the starting-point suggested by the Special Rapporteur was satisfactory. Regardless of whether a fact-finding body had been established or whether its recommendations were satisfactory, the parties should have an obligation to negotiate unless they found negotiations unnecessary. From that point of view section 3, paragraph 1, which did not make negotiations obligatory in all cases, seemed at variance with section 4, paragraph 1, the last sentence of which appeared to prescribe a wider scope for mandatory negotiations. The expression "shared expectations", defined in section 4, paragraph 4, seemed rather unsatisfactory. Who was to decide, for example, whether shared expectations existed? In any case, shared expectations were only one of many elements to be taken into account in negotiations between the parties.

36. Section 5, paragraph 4, did not seem to have any practical reason for being included in the outline and was perhaps superfluous. Section 7, part II, might contain a reference to material reparation and the prevention of future injuries as well as to pecuniary reparation. Some type of compulsory conciliation might perhaps have a role to play in the disputes settlement procedure covered by section 8.

37. In conclusion, he looked forward to the work which would emerge from the material on the topic which was being put together by the Codification Division, as indicated by the Special Rapporteur in paragraph 49 of his third report.

38. Mr. FRANCIS thanked the Special Rapporteur for his excellent and detailed report, which had clarified a number of very difficult issues and had given the Commission a clear indication of the direction it should take in its work on the topic.

39. When in 1973 the General Assembly had recommended to the Commission that it undertake the study

of the topic, many members of the Sixth Committee might not have realized that it would involve almost exclusively the progressive development of international law. That was an emotive and sometimes contentious area, but past experience had shown that, however divergent the views of its members might be, the Commission always managed to reach an accommodation and discharge its mandate. He was convinced it would be creative and equal to the task in the present case.

40. The two basic principles running through the Special Rapporteur's third report were, first, that States should enjoy freedom of activity within their territory or other areas under their control, subject to municipal law, and second, that loss or injury of a transboundary character should be remedied. In that regard, the Special Rapporteur had been right to clarify the distinction between his own topic and that of State responsibility, which was concerned predominantly with wrongfulness. In the present topic lawfulness was not an issue. The Special Rapporteur had said that the articles would contain a single primary rule, namely the obligation to make reparation for loss or injury; moreover, that only a breach of that obligation would engage the responsibility of a State, and not merely non-compliance with the rules or procedures established by the draft articles. That was only logical, since the rules and procedures to be established would not be exhaustive. Their predominant aim was to bring the States concerned together in order to establish an appropriate regime for the prevention or minimization of loss or injury and the determination of reparations.

41. He was in general agreement with the approach adopted by the Special Rapporteur in his third report and with the overall direction of his schematic outline. In paragraph 10 of his report, the Special Rapporteur stated that the topic was concerned mainly with minimizing the risk of loss or injury and making appropriate advance provision for such risks as could not reasonably be avoided. In the succeeding paragraph he referred to a balance between the freedom to act and the duty not to injure. Those two factors inevitably suggested the notion of a duty of care. While he agreed with the Special Rapporteur's observation, in paragraph 19 of the report, that the term "duty of care" had too many overtones to justify its retention in the vocabulary of the topic, he nevertheless saw the idea of a duty of care as relevant to the articles in two ways: either it was an obligation not to cause injury, the breach of which engaged the responsibility of the State, in which case it would have no place in the present draft, or else it was an obligation to encourage the establishment of an efficient regime for protection against loss or injury and for the minimizing of risks, in which case it would be an essential component of such a regime.

42. In section 2, paragraph 8, of the outline, the Special Rapporteur said that failure to take any step required by the rules of that section would not in itself give rise to any right of action, although the acting State had a continuing duty to keep under review the activity that gave or might give rise to loss or injury, and to take

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

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

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

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

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

*The meeting rose at 1 p.m.*

## 1742nd MEETING

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

*Chairman: Mr. Paul REUTER*

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

[Agenda item 4]

#### THIRD REPORT OF THE SPECIAL RAPPORTEUR (continued)

##### SCHEMATIC OUTLINE<sup>2</sup> (continued)

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

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

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

<sup>1</sup> Reproduced in *Yearbook ... 1981* (Part One).

<sup>2</sup> For the text, see 1735th meeting, para. 1.