

Document:-  
**A/CN.4/SR.2398**

**Summary record of the 2398th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1995, vol. I**

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values''; for instance, the former would include a fish stock that would permit a service such as commercial or recreational fishing, while the latter would include the aesthetic aspects of the landscape, to which populations attached value and the loss of which could cause them displeasure, annoyance or distress. It was difficult to put a value on those if they were harmed. Lastly, the broadest definition also embraced property forming part of the cultural heritage.

59. Those were, in summary, the questions raised in his eleventh report and on which he would appreciate the first impressions of the members of the Commission.

60. In terms of translation, he suggested that the Spanish word *daño* should be translated into English as "damage" rather than as "injury", which, according to common law experts, meant damage produced by a wrongful act.

61. Mr. ROSENSTOCK, referring to the Special Rapporteur's last point, said that the words "harm", "injury" and "damage" had all been used in the topic under consideration and, for practical purposes, a somewhat artificial distinction between the words "harm" and "injury" had been established or tried a few years earlier. He would appreciate clarifications on that point.

62. Mr. BARBOZA (Special Rapporteur) said that it had been decided that in English, "harm" would be more appropriate than "injury", but that "damage" could also be used. The problem arose because some authors made a distinction between "harm" and "damage", the former referring to the actual deleterious effects and the latter referring to the legal consequences of those effects. While he saw no problem in using the word "harm" for the moment, he was suggesting the word "damage" and, with all due respect to the common law experts, it was his view that the two words could be used interchangeably.

*The meeting rose at 12.50 p.m.*

## 2398th MEETING

*Friday, 9 June 1995, at 10.25 a.m.*

*Chairman:* Mr. Guillaume PAMBOU-TCHIVOUNDA  
later: Mr. Pemmaraju Sreenivasa RAO

*Present:* Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bowett, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Kabatsi, Mr. Lukashuk, Mr. Mahiou, Mr. Mikulka, Mr. Pellet, Mr. Robinson, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Vilagrán Kramer, Mr. Yamada, Mr. Yankov.

**State responsibility (continued) (A/CN.4/464/Add.2, sect. D, A/CN.4/469 and Add.1 and 2,<sup>1</sup> A/CN.4/L.512 and Add.1, A/CN.4/L.513, A/CN.4/L.520, A/CN.4/L.521 and Add.1)**

[Agenda item 3]

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

1. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, at the previous meeting, he had asked for the floor to answer two of the questions that had been addressed during that meeting. They concerned the issue of "if" or "whether" and the issue of "when".

2. With regard to the first issue, he would remind members that in 1976 article 19 of part one of the draft had been adopted,<sup>2</sup> that in 1985 and 1986 the proposals of the previous Special Rapporteur, Mr. Riphagen, had been referred to the Drafting Committee<sup>3</sup> and that at the forty-sixth session of the Commission he had himself been entrusted with the task of dealing with the consequences of crimes within the framework of parts two and three of the draft. That being so, he was unable to see how the Commission could now shelve the matter of the special consequences of internationally wrongful acts singled out as crimes in article 19 of part one.

3. It had been said, and rightly so, that there were difficulties. In particular, as had been mentioned at the previous meeting, there were difficulties with regard to the institutional aspect, due to the problems of coexistence between, on the one hand, the law of State responsibility in the part that dealt with crimes in particular, and on the other, the existing system of collective security. There were other difficulties too, such as the multiplicity of differently or equally injured States. But, apart from the fact that some difficulties—for example, those relating to a plurality of injured States—also existed for delicts, was it conceivable that a group of lawyers such as the members of the Commission could abdicate their duty to try to reach a reasonable solution whatever the difficulties? In addition to his own proposals—and he was ready to consider any possible improvements to them—there were the suggestions made by Mr. Pellet (2393rd meeting) and Mr. Mahiou (2395th meeting). There were the preferences expressed by a number of speakers for a purely political solution, while other preferences had been expressed for a purely judicial solution. Mr. Eiriksson (2397th meeting) had also delivered a telegraphic message to that effect. Moreover, he had also seen an informal draft prepared by a member of the Commission which offered a combination of the "political" and the "judicial" roles of international institutions that was different from the one he had proposed.

<sup>1</sup> Reproduced in *Yearbook . . . 1995*, vol. II (Part One).

<sup>2</sup> See 2391st meeting, footnote 8.

<sup>3</sup> For the texts of draft articles 6 to 16 of part two referred to the Drafting Committee, see *Yearbook . . . 1985*, vol. II (Part Two), pp. 20-21, footnote 66. For the text of draft articles 1 to 5 of part three and the annex thereto as proposed by the previous Special Rapporteur, see *Yearbook . . . 1986*, vol. II (Part Two), pp. 35-36, footnote 86. Those provisions were referred to the Drafting Committee at the thirty-eighth session.

4. In his view, all such avenues must be explored in depth and to the necessary extent, and there was no excuse to avoid dealing with the matter properly. It would be very odd if the Commission decided to abandon an issue which was attracting so much interest in international legal literature all over the world and which pertained to problems that arose so frequently in contemporary international society. He had cited a considerable part of that literature in the footnotes to his seventh report (A/CN.4/469 and Add.1 and 2), which included a reference to a very thought-provoking article by Mr. Bowett.<sup>4</sup> In his article, Mr. Bowett had not failed to touch upon article 4, a matter which he had dealt with repeatedly, and was dealt with again in a footnote to his seventh report and to which Mr. Pellet had referred (2397th meeting) his very interesting statement. It would take a long time for the Commission to recover the image of a body seriously dedicated to the progressive development of international law if it surrendered so easily before even trying to find a solution or even a set of alternative solutions for submission to the Sixth Committee of the General Assembly.

5. As to the time element—the second issue he wished to address—he had recently provided the Planning Group with a simple outline of the work that remained to be done on State responsibility. The Drafting Committee had done good work at the present session and part three was close to completion. All that remained to be done—without either minimizing or exaggerating the task—was, first, the section of part two relating to so-called crimes and, secondly, adjustments of the formulation of articles that had already been worked out and were strictly necessary to harmonize the whole of part two, including, of course, the completion of article 5 *bis* on which, as he had recognized in his informal addendum to his seventh report, something more would have to be done than in the past. The very serious problem of revision of article 4 should of course be tackled in connection with mere delicts as well as crimes.

6. For the Commission's effort on first reading to be completed, all that was needed, as he had pointed out in the Planning Group, was a sufficient degree of concentration on State responsibility on the part of the 1996 Drafting Committee. That suggestion had met with the approval of the Planning Group and in particular of Mr. Barboza, Mr. Pellet and perhaps, indirectly, the other two Special Rapporteurs, Mr. Thiam and Mr. Mikulka. In short, his feeling was that much more time and effort should be devoted to State responsibility than had been the case in the past. Despite his endeavours to obtain more time for his topic, he was bound to say that the Commission had not been very generous in that respect. It must remember, however, that it had decided to conclude the first reading of the draft on State responsibility by the end of 1996. If that was well remembered and acted upon at the next session, then there was no reason for undue concern.

**International liability for injurious consequences arising out of acts not prohibited by international law (continued)** (A/CN.4/459,<sup>5</sup> A/CN.4/464/Add.2, sect. E, A/CN.4/468,<sup>6</sup> A/CN.4/471,<sup>7</sup> A/CN.4/L.508, A/CN.4/L.510, A/CN.4/L.511 and Add.1, A/CN.4/L.519)

[Agenda item 5]

TENTH AND ELEVENTH REPORTS OF THE  
SPECIAL RAPPORTEUR (continued)

7. Mr. VILLAGRÁN KRAMER said that the Special Rapporteur's tenth report (A/CN.4/459) and eleventh report (A/CN.4/468), which contained a wealth of doctrinal material and precise information on both regional and international practice, made a significant contribution to the work of the Commission and merited its recognition.

8. The Special Rapporteur drew attention, in his eleventh report, to three areas of the topic that deserved particular attention: the environment *per se*, harm to the environment, and the reparation and assessment of such harm. In that connection, it was important to bear in mind the need for consistency in the approach to the articles on the topic before the Commission, to the articles on the topic of State responsibility, and to the articles on the law of the non-navigational uses of international watercourses. That was particularly true in the case of international watercourses, as had in fact been noted by the General Assembly in 1994, since the draft articles on that topic identified the criterion of significant harm and provided for the international responsibility for such harm to be attributed to the wrongdoing State. The work on the present topic should be consistent with the subject of international watercourses, because in both cases the harm involved was transboundary harm. The Special Rapporteur had also submitted an outline for new articles which, though the system of using letters rather than numbers to refer to them was somewhat confusing, would provide a firm basis for the Commission's efforts.

9. The Special Rapporteur was proposing that the chapter on prevention should be completed with a draft article and that the Commission should then take up other chapters dealing with the substance, namely liability, and with the procedural aspects of the subject. The common denominator in that connection was to be found in the Special Rapporteur's proposed additions to article 2, in regard to response measures, and the meaning of "operator" and "harm and its effects". Prevention, of course, led to the concept of negligence, which in turn led to the concept of due diligence. That meant the Commission was entering the area of fault which was characteristic not of international liability but rather of strict liability. None the less, in the matter of prevention, there was bound to be an element of fault. It also had to be recognized that harm, or damage, was a component of international liability for injurious consequences arising out of acts not prohibited by international law. That was

<sup>5</sup> See *Yearbook . . . 1994*, vol. II (Part One).

<sup>6</sup> Reproduced in *Yearbook . . . 1995*, vol. II (Part One).

<sup>7</sup> *Ibid.*

<sup>4</sup> See 2391st meeting, footnote 17.

not just a personal view but a self-evident fact which called for reflection.

10. The question also arose whether the theory of risk and strict liability lay at the core of international liability for acts not prohibited by international law or whether that area of the law encroached on the topic of State responsibility. In that connection, he had been surprised to note that the Special Rapporteur had referred, in his tenth report, to "civil liability"; he had himself always been taught that the international liability of the State was neither civil nor criminal but was simply international.

11. The Special Rapporteur had, however, been right in saying that it was not possible to consider the liability of the State without considering its relationship with civil liability, one that also helped to pinpoint the concept of what could be termed ancillary, or residual, liability. In that connection, the Special Rapporteur had endeavoured to separate a group of acts that were attributable to the State and thus generated its strict liability from other situations in which residual liability could be incurred. One question which constantly came to mind was whether strict liability could give rise to residual liability: after all, if liability was strict, it could not be shared. Again, it had to be recognized that, in the new field of the topic into which the Commission was moving, the liability not only of States but also of individuals would be at issue.

12. By introducing the concept of operator into the articles, the Special Rapporteur had opened the door to private operators, in other words, to natural persons. Consequently, a relationship would arise between the State and the operator in terms not only of prevention but also of exploitation. Having regard to the presence in that regard of risk capital, responding to private interests, the State would have to decide whether or not its liability would be shared in the event of transboundary harm caused by acts that were not prohibited by international law and involved an imminent and major risk.

13. The Special Rapporteur tended to favour the formula of residual liability and, in alternative A of article 21, proposed in his tenth report, provided for such liability where harm occurred but would not have done so had the State of origin fulfilled its obligations of prevention. In such cases, liability would be limited to that portion of the compensation which could not be satisfied by applying the provisions on civil liability. The Special Rapporteur had, however, also proposed an alternative B under which the State would incur no liability whatsoever. Of the alternatives, he preferred the first. The Special Rapporteur went on to propose a last article to conclude the chapter on prevention, which again was somewhat confusingly identified by the letter X. In effect, it stated that the liability of the State of origin for a breach of or non-compliance with its obligation of prevention would be the same as in the case of a wrongful act. Hence, there was no strict liability in the field of prevention.

14. As for the relationship between international liability and civil liability, the Special Rapporteur had rightly distinguished four major areas: the role of the operator; the role of risk capital; the international mechanism for

risk insurance and financing; and the liability of the operator.

15. Although the specific definitions to be incorporated in article 2 provided a common denominator, a fundamental drafting problem remained, namely whether the draft articles should be divided into two separate chapters, one concerning the rules of liability *per se* (substantive law), and the other concerning procedure (adjectival law). It might well simplify matters to make that division.

16. Perhaps the most important aspect for him was the premise that an operator could have international liability and that the relationship of the State was with the operator. That was a useful premise, because it recognized the existence of the effect of the presence of risk capital in the international field and thus it was no longer the State *per se* that was solely liable for acts or omissions causing transboundary harm, but also individuals. In confronting that new reality, in other words, that risk capital assumed liability but also offered options to cope with it, the Commission could not ignore the situation of the developing countries. The industrial powers were those most actively involved in the production and distribution of goods and services, and they were the powers that would generate an accumulation of activities with a risk of causing significant transboundary harm. Each of their legal systems was able to deal with internal harm, but not with transboundary harm; yet their capacity was so large that the State could spread liability, by proposing that the operator should assume 90 per cent of the liability, itself assuming the remaining 10 per cent of the liability, or vice versa. It could assist in circumstances where insurance did not cover the total liability. But a developing country did not have the resources to do that, so, tragically, it must accept risk capital and its only opportunity would be to use the prevention mechanism, relevant legislation and prior authorization. If significant transboundary harm did occur subsequently, it would have no way of meeting the liability other than from its national budget. Insurance thus had an important role to play in the case of the developing countries and if the State, too, had a subsidiary role, it could take out additional insurance.

17. The basic premise was appropriate: it was the insurance mechanism to cover the risk of significant transboundary harm that enabled the Commission to submit a proper set of articles to the General Assembly. Under the capitalist system, it was the only one to offer developing countries that option. It thus allowed the Commission to move on with more confidence than before.

18. The Special Rapporteur proposed two alternatives in regard to the liability of the operator and it was obvious that the first formula would command the widest support. With regard to procedures and article E (Competent court), contained in the tenth report, the question arose of the appropriate way to tackle the problem of harm internationally. Many States established a rule of connection whereby the competent court was the court at the place where the harm occurred. In the United States of America, a rule applied that courts could be seized of cases involving damage occurring outside its territory under the non-convenience forum model. Nevertheless, a

whole system of law tied the court/damage relationship to the place at which the damage occurred. However, the Special Rapporteur was right not to confine the competence of the court to the State of origin alone, but to allow some leeway to seek options, including the court of the affected State, of the State of origin, and of the domicile of the operator. Yet those three connective factors with regard to the competence of the courts could not all be ranked equally, and some hierarchical order must be established between them, for a judge stood in need of guidelines.

19. As for article F (Domestic remedies), proposed in the tenth report, local remedies obviously existed in many countries, but the Special Rapporteur was rightly proposing that States should be obliged to provide affected persons with legal remedies that allowed for prompt and adequate compensation. In the case of article G (Application of national law), a court or legislator would have difficulties in distinguishing between substance and procedure unless the Commission provided it with some indicators. It should be made clear when national law was to be applied in the area of substance, and when it was to be applied in the area of procedure. In the legal system to which he was accustomed, the area of substance tended to be much wider, encompassing many aspects of form.

20. With regard to article H, it was essential to note that the Special Rapporteur referred to the causal link between the incident and the harm. Probable harm was a highly controversial notion, but one that the judge would have to assess. In other words, if strict liability were to come into play, the causal link between the incident and the probable harm would determine an effect that must be taken into account. Regarding article I (Enforceability of the judgement), the Special Rapporteur adopted the logical solution of stating the rule, namely, that judgements were enforceable. However, the exceptions to that rule enumerated in subparagraphs (a) to (d) of paragraph 1 were truly worthy of examination. It was not easy to take the existing model of private international law as justification for not enforcing a foreign judgement, for example, on the grounds that the judgement was contrary to the rules of public policy. Indeed, the Special Rapporteur was breaking new ground and providing pointers as to why a foreign judgement in a matter of damages might not be enforceable. That question was tied in with article J (Exemptions). Some four or five major areas had been established in which responsibility could not be imputed to a State, for instance, in the event of a state of necessity. In the case of strict liability, however, the situation changed drastically. In his view, it was a substantive issue, because article J made it clear that there was an aspect of liability that fell within the area of wrongful acts, and another area, of exemptions for other acts. The Commission must establish some criteria in that regard, and he would be grateful if the Special Rapporteur would clarify the question. The Special Rapporteur had also found it convenient to have recourse to a limitation period of three years. The exact length of that period was not a highly contentious issue and the one proposed was logical and appropriate.

21. In conclusion, in thinking of two notorious industrial accidents of recent years, one of which had taken

place in India and the other in the former Soviet Union, he could not help but wonder what would have happened if those accidents had occurred closer to the borders with other States. That concern had caused him to view the present topic from a different perspective. He therefore commended the Special Rapporteur for introducing the human factor into his consideration of harm to the environment and transboundary harm. He hoped that the Commission could make an effort to submit a complete text on the topic to the General Assembly in the coming year. Strict liability was no longer viewed by States with the alarm that it had once provoked.

*Mr. Sreenivasa Rao took the Chair.*

22. Mr. YAMADA said that the Special Rapporteur's tenth and eleventh reports were well researched and full of innovative ideas and would contribute significantly to the Commission's work of drafting articles on activities containing a risk of causing transboundary harm. In his tenth report, the Special Rapporteur dealt with the outstanding issue in the field of prevention, namely, prevention *ex post facto*. Previous speakers had opposed the inclusion of prevention *ex post facto* in the chapter on prevention proper, and had advocated placing such a provision in the chapter on reparation. However, he agreed with the Special Rapporteur's view that it should be considered as a question of prevention proper. The concept of "response measures" as discussed by the Special Rapporteur was now found in several agreements, and his proposal represented progressive development of law on that subject. Placing heavier and wider obligations of prevention on States and operators engaging in activities that entailed a risk of causing transboundary harm would certainly have the effect of reducing the likelihood of such harm occurring. Such an addition would deal conclusively with the question of prevention.

23. As to the question of liability, not until the concept of harm had been worked out would he be in a position to make a meaningful contribution. Nevertheless, the Special Rapporteur's in-depth study of the attribution of liability was very illuminating. He endorsed the approach whereby remedial measures other than monetary compensation should not be considered for the time being. There was the question of State liability for wrongful acts when a State failed to fulfil its obligations of prevention, and the Commission must consider the implications of that issue in relation to the convention on State responsibility on which it was currently working.

24. He welcomed the eleventh report, in which the Special Rapporteur focused on the question of the environment, which was most relevant to the present topic. The Commission's work must reflect the recent international trend, which was rapidly gaining pace, towards preserving the natural world. In principle, he endorsed the Special Rapporteur's views on the evaluation and restoration of damaged natural resources. He said he wished to comment on the new text proposed for the definition of "harm". It went beyond the ordinary meaning of a definition, and he wondered whether it might be placed in another part, on regulation of the conduct of the State or operator.

25. He said that also with respect to the new text proposed, in particular the text concerning entitlement to remedial action for harm to the environment, the Special Rapporteur recognized the right of action by the State or the bodies which it designated under its domestic laws. In the course of his explanations, he had referred to non-governmental welfare organizations in the report and to the competence of certain public authorities as "the bodies" designated by the State. However, it was not clear why the bodies designated by the State were entitled to have recourse to the right of action. That might lead to random proceedings. He did not see the need to authorize them as the competent authorities within the State, because the State itself was able to use the right of action without relying on "the bodies". In addition, the State of origin could not waive its privilege against claims presented by "a body" not the State. He hoped that that question would be clarified by the Special Rapporteur.

26. Mr. YANKOV said that the Special Rapporteur's eleventh report offered a number of valuable new elements for the Commission's consideration of an unexplored area of liability.

27. As to the definition of the environment, he was not convinced of the wisdom of excluding the human factor. Beginning with the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration),<sup>8</sup> the human factor had been present in a great many instruments. As an example, one need only cite article 1, paragraph 4, of the United Nations Convention on the Law of the Sea. That Convention, while being very much oriented towards protection of the marine environment in its global dimensions, also set out a number of general concepts that could be applied to the topic under consideration.

28. Certain paragraphs of the report reflected the opinion that, since human life was protected by law in a number of domains, it should not be covered by instruments on the environment. When work had first begun on instruments for environmental protection several decades ago, the title used had been "protection of the human environment". Man had thus been placed at the very centre of the issue from the outset. It therefore seemed questionable that man should now be entirely excluded from consideration in an instrument on liability for environmental damage. Perhaps the Special Rapporteur should reconsider his stance, unless he could provide more arguments than those set out in the report in favour of his restricted concept of the environment.

29. In the report, the distinction between harm and damage seemed to be blurred, nor was the distinction made very clear in the proposed text for the definition of harm. He sensed the Special Rapporteur's reluctance to make a clear-cut distinction, as the words "harm" and "damage" were used interchangeably. Admittedly, that was the case in no less authoritative an instrument than the United Nations Convention on the Law of the Sea. The words "harm" and "harmful" were used only in

article 1, paragraph 1 (4), and article 206. Everywhere else the term "damage" was used: in articles 194 and 195 setting out general principles on prevention, article 232, on liability of States arising from enforcement measures, article 235, on responsibility and liability, and article 263, concerning compensation for damage caused by marine scientific research. Nevertheless, perhaps the Special Rapporteur could use the present session to clear up the ambiguities connected with his use of the words "damage" and "harm".

30. Mr. de SARAM said the comments just made by Mr. Yankov were extremely interesting and he requested the secretariat to provide copies of the articles cited from the United Nations Convention on the Law of the Sea.

31. Since the topic of liability raised fundamental issues on which there was a wide divergence of opinion, and since the time the Commission had available to discuss it was very limited, it would be preferable for members to confine their remarks to comments on the eleventh report, leaving substantive comments on the topic for a later session.

32. The CHAIRMAN said the secretariat would circulate copies of the articles referred to by Mr. Yankov. As for the subjects to be covered in the debate, he preferred to remain flexible and pointed out that the working group on the topic would also be looking into that question.

33. Mr. BARBOZA (Special Rapporteur) thanked members who had already expressed their opinions, to which he would obviously give careful consideration. Responding to the comments made by Mr. de Saram, he recalled that the Commission had decided to devote its discussion of the topic in plenary to the major issues on which progress on the whole topic was dependent. The entire regime for liability was contingent upon the choice of activities that would be covered. The scope of the future convention must be carefully delimited before the topic could be explored to the full. He therefore welcomed the suggestion that discussions in plenary should be confined to preliminary comments aimed at helping him better define his topic. A fully-fledged debate, while desirable, should be reserved for a later stage.

34. With reference to the remarks by Mr. Villagrán Kramer, because the Sixth Committee had insisted on the need for provisions on prevention, it had been necessary to contemplate violations of rules on prevention, and thus, to deal with the consequences of such violations. That inexorably raised the problem of responsibility for wrongful acts. After much debate, it had been decided to incorporate a certain amount of such subject-matter, even though the topic had originally been envisaged as focusing on the consequences of acts not prohibited by international law. Despite the obvious convergence with the topic of State responsibility, his report made absolutely no incursions into the terrain that concerned the Special Rapporteur on State responsibility, Mr. Arangio-Ruiz. His own work involved the formulation of primary rules, the violation of which gave rise to the very consequences proposed by Mr. Arangio-Ruiz. Side by side with State responsibility, there was necessarily a liability *sine delicto* which, under many modern conventions, was being assigned to what was now being

<sup>8</sup> Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), part one, chap. I.

defined more and more frequently as the ‘operator’. Yet at times the two coincided, and that was one of the problems with the subject-matter dealt with in his tenth report. In fact, the report outlined many cases in which treaties had reconciled the liability of the State and of the operator.

35. The points raised by Mr. Yankov were important. Environmental harm and the definition of the environment were evolving issues, and he hoped the Commission would bend its collective efforts towards resolving some aspects of those issues. He agreed that the human factor was important, but he truly did not think it entered into the definition of the environment. A human being could be affected by environmental harm, but was not actually part of the environment.

### Closure of the International Law Seminar

36. The CHAIRMAN said that, over the past three weeks, a new enthusiasm had marked the Commission’s meetings as members had been able to share their concerns with the energetic participants in the International Law Seminar. The freshness of their outlook and the academic atmosphere that accompanied them had encouraged members of the Commission to look to the future and to recover the idealism of their youth. He commended the participants on the results of their work on subjects that the Commission itself had been grappling with. He wished them every success in their future endeavours and was sure international law would be safe in their hands.

37. Mr. SCHMIDT (Director of the Seminar) said that the participants had taken an avid interest in the Seminar and that the recommendations that had emerged from their study groups were remarkably detailed. He hoped the wealth of information they had consumed would not be difficult to digest. Trusting that they would leave Geneva with the sense that their time there had been well spent, he wished them success in their future posts—whether in teaching or in government service. Some day, perhaps, one or more of the participants would be seen again in the Commission’s meeting room—in a different capacity.

38. Mr. TOMUSCHAT said that, as a former participant in the International Law Seminar, he was especially honoured to have headed the study group on consequences of international crimes. The results of the work done by that team, and by its fellow, the study group on unilateral acts under international law, were truly remarkable. The participants, he hoped, had gained a deeper insight into the issues facing the Commission, and the fact that they themselves had been unable to reach agreement on some points mirrored the Commission’s own quandaries. The participants had worked hard and it was his hope that their memories of the past three weeks would always be agreeable.

39. Mr. PANNATIER said that he had the gratifying task of thanking the Commission on behalf of the participants in the International Law Seminar. In the past three weeks they had been able to delve into the world of the Commission and had enjoyed privileged access to its

members. Those contacts had enriched each participant; one of the many gains of the Seminar was also the bonds of friendship that had been forged. All the members of the Commission had given freely of their time and the Director of the Seminar had made excellent arrangements for the organization of the programme. He wished to express thanks to the Governments which, in a time of growing budgetary constraints, had made contributions to facilitate the holding of the Seminar, and to extend to the Commission best wishes for success in its work from the participants in the Seminar, who would not forget what they had learned.

*The Chairman presented participants with certificates attesting to their participation in the thirty-first session of the International Law Seminar.*

### Other business (A/CN.4/L.518)

[Agenda item 11]

40. Mr. TOMUSCHAT, noting that a heated debate was going on in France over the pernicious effects on health of the asbestos used in building construction, asked whether any investigation had been made of whether that product was present in the structure of the Palais des Nations.

41. Ms. DAUCHY (Secretary to the Commission) said some offices had been renovated in 1991 and any asbestos present had been removed, but the secretariat would make further inquiries into the matter.

*The meeting rose at 12.10 p.m.*

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## 2399th MEETING

*Tuesday, 13 June 1995, at 10.05 a.m.*

*Chairman:* Mr. Pemmaraju Sreenivasa RAO

*Present:* Mr. Al-Khasawneh, Mr. Barboza, Mr. Bowett, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. He, Mr. Kabatsi, Mr. Lukashuk, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yankov.

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