Document:-

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Summary record of the 2561st 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:-

1998, vol. I

69. Mr. SIMMA (Chairman of the Drafting Committee), replying to Mr. Bennouna, said that the Drafting Committee had avoided using the term "internal law" anywhere in the text because it had realized that it would always give the impression that internal law took precedence over international law.

70. Mr. PELLET said that the article should mention not only "legislative, administrative and constitutional action", as Mr. Bennouna was proposing, but also "measures of international law". It would no doubt be simplest not to use any adjective and simply say "States shall take the necessary action to implement". In any event, the commentary would explain very clearly the nature of article 5, which otherwise might be regarded either as imposing an obligation on States or as merely giving them some advice.

71. Mr. ECONOMIDES said that current article 7 mentioned a whole series of administrative procedures of authorization and control. States would therefore have some hard legislative work to look forward to. That was indeed what article 5 was talking about. International law had nothing to do with the case.

72. Mr. KABATSI said that although the measures envisaged in article 5 were certainly measures of internal law, it should not be forgotten that they might have an international aspect, since for example a State could "seek the assistance of one or more international organizations", as article 4 rightly provided.

73. Mr. RODRÍGUEZ CEDEÑO and Mr. LUKASHUK said that they were willing to adopt article 5 as it stood.

74. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 5.

It was so agreed.

Article 5 was adopted.

75. Mr. ROSENSTOCK said that in one of his statements the Special Rapporteur had given the impression that article 5 was concerned with something other than an obligation of conduct. As he understood it, the provision just adopted was quite definitely concerned with an obligation of conduct.

Membership of the Commission

76. The CHAIRMAN announced that Mr. Ferrari Bravo had tendered his resignation from the Commission in order to take up a seat on a European body. He offered him the Commission's congratulations and thanks.

The meeting rose at 5.55 p.m.

2561st MEETING

Thursday, 13 August 1998, at 10.15 a.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (*continued*) (A/CN.4/483, sect. D, A/CN.4/487 and Add.1,[1] A/CN.4/L.556, A/CN.4/L.568)

[Agenda item 3]

CONSIDERATION OF DRAFT ARTICLES 1 TO 17 PROPOSED BY THE DRAFTING COMMITTEE AT THE FIFTIETH SESSION (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of draft articles 1 to 17 on prevention of transboundary damage from hazardous activities adopted by the Drafting Committee (A/CN.4/L.568).

ARTICLE 6 (Relationship to other rules of international law)

Article 6 was adopted.

ARTICLE 7 (Prior authorization)

2. Mr. PELLET, concerned that paragraph 2 seemed too rigid, questioned whether the provisions of the draft articles should be made retroactive. He asked whether any safeguards had been provided to protect the interests of those engaged in pre-existing activities.

3. Mr. Sreenivasa RAO (Special Rapporteur) said that the provisions of article 7 did not alter the international obligations of States. States must be presumed to authorize activities on their territory with due regard for safeguards and international law. Paragraph 2 simply obligated States to implement the requirement of authorization with respect to pre-existing activities. A constant review of activities in the light of new information or changing realities was in any case a normal part of

[1] Reproduced in *Yearbook . . . 1998*, vol. II (Part One).

the process of ensuring that activities continued to respect changes in safeguards and international standards.

4. Mr. BROWNLIE said that to some extent article 7 broke new ground in that it formalized as part of an international standard a function which States in any case performed within their domestic jurisdiction, namely the exercise of control over activities taking place on their territory.

5. Mr. PELLET favoured the creation of an international standard but stressed that there should be some mention of the obligation of ongoing review and consultation.

6. Mr. MIKULKA shared the concerns expressed by Mr. Pellet concerning the retroactive nature of the provisions in paragraph 2. In his opinion, the second sentence of paragraph 1 should be part of the commentary, not part of the text.

7. Mr. Sreenivasa RAO (Special Rapporteur) said that the intent of paragraph 2 was not to prohibit activities but to accommodate them in the event of a new situation. Changing situations required new measures, but it remained up to the State concerned to decide upon the measures to be taken.

8. Mr. PELLET suggested that the word "prior" should be deleted from the title of article 7, since it certainly did not apply to paragraph 2, and further suggested that an additional article should be included to reflect the concerns expressed by members.

9. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 7, taking into account the comment by Mr. Mikulka and deleting the word "prior" from the title.

Article 7, as amended, was adopted.

ARTICLE 8 (Impact assessment)

10. Mr. PELLET said that, given the increasing importance of impact assessments and the growing body of legal cases involving environmental questions, the language in article 8 was disappointingly weak.

Article 8 was adopted.

ARTICLE 9 (Information to the public) and

ARTICLE 10 (Notification and information)

Articles 9 and 10 were adopted.

ARTICLE 11 (Consultations on preventive measures)

11. Mr. ECONOMIDES, referring to the minority position in the Drafting Committee concerning the relationship between article 11, paragraph 2, and article 17, said that an impartial inquiry should have priority over and precede any decision taken by a State concerning a disputed activity, since it was only right that international procedures should take precedence over national ones. If activities undertaken within a State could cause harm to another State, prevention of such harm was an important part of article 17. In addition, in cases of disputes between States it was a basic principle of public international law that States should avoid any unilateral act which would aggravate the dispute or make a solution more difficult. Those points should be reflected in the summary record of the meeting as well as in the report of the Commission to the General Assembly.

12. Mr. PELLET said that the intent of the articles as currently drafted was for the parties to work together and take advantage of the normal consultative process to avoid harm. With the possible exception of article 11, paragraph 3, the dispute stage had not yet been reached.

13. Mr. ECONOMIDES said that there was a difference between a dispute per se and an activity's impact on another State. Also, the nature of the dispute was an important factor. Since the purpose of the draft articles was to avoid disputes, prevention must be a priority.

14. Mr. BROWNLIE said that, while the concerns of Mr. Economides were understandable, and while it was true that articles 11 and 17 set out a sequence of steps for the resolution of disputes, article 17 was not the final stage of article 11. The draft's intention was not the prevention of damage but rather a balancing of interests between the States concerned.

15. Mr. Sreenivasa RAO (Special Rapporteur) said that the Drafting Committee was attempting to define a process to be followed by the parties concerned, with various steps preceding article 17. He suggested that Mr. Economides could prepare an explanation of his position to include in the commentary, and that there could then be further discussion on second reading.

16. Mr. PELLET, speaking in support of the point raised by Mr. Economides, noted that the second sentence of article 13, paragraph 2, provided for States to enter into consultations pursuant to article 11 in cases of disagreement concerning the obligation to provide notification. Article 11 would therefore be used in fact to settle what could be described as a dispute, even though that was not the stated purpose of article 11.

17. Mr. GOCO wondered whether some wording could be found that would allow third-party States to initiate consultations or seek solutions, rather than restricting such steps to the State of origin and the State affected.

18. Mr. Sreenivasa RAO (Special Rapporteur) pointed out that the intervention of a third party would probably not be acceptable to the States concerned. Generally speaking, States were expected to refrain from interfering in each other's affairs. In any case, should mutual consultations fail, the provisions of article 17 would take effect and third parties would certainly play a role at that stage of the mediation process.

19. Mr. MIKULKA questioned the inclusion of the phrase "at its own risk" in paragraph 3 and requested a definition.

20. Mr. Sreenivasa RAO (Special Rapporteur) said that the phrase was explained in the commentary; it was designed to cover cases in which unforeseen costs arose, at a later date, from an authorized activity, and it implied

that the State authorizing the activity incurred a risk that could not be transferred.

21. Mr. SIMMA (Chairman of the Drafting Committee) said that the Drafting Committee had not recently debated the point. It had considered that the explanation provided by Mr. Sreenivasa Rao and contained in the commentary to the draft articles at the forty-eighth session[2] was convincing.

22. Mr. MIKULKA suggested that the phrase should be eliminated and asked whether that would entail any consequences.

23. Mr. PELLET wholeheartedly agreed with Mr. Mikulka that the phrase should be eliminated because it could have unexpected results. It had been used twice in the draft at the forty-eighth session but in a different context. If it was left in the current text with the same meaning as in the draft at the forty-eighth session, it prejudged the regime of liabilities and attributed a prior responsibility to the State which carried out an activity.

24. Mr. Sreenivasa RAO (Special Rapporteur) said that the Drafting Committee had considered the point very carefully at the forty-eighth session and had concluded that the phrase "at its own risk" could be included without referring to liabilities. It could also be eliminated. However, in the latter case, it should be borne in mind that the courts would have to decide who would bear costs in cases where a State took a unilateral decision that affected the interests of other States and the other States pressed for their rights.

25. Mr. HAFNER said that he would prefer to retain the phrase. Also, when paragraph 3 was compared with the draft at the forty-eighth session, there was a difference: previously only procedural rights had been protected, but currently the rights of "any State likely to be affected" were protected.

26. Mr. BROWNLIE said that the phrase should be removed as the reader of the articles would not have the explanations of the accompanying commentary. Moreover, the words "without prejudice" in paragraph 3, read in conjunction with article 6, resolved the problem.

27. Mr. ECONOMIDES said that the phrase should stay, as it served as a reminder that a State did not have unlimited competence and could incur liability.

28. Mr. AL-BAHARNA recalled that the phrase had been in the draft article for a number of years without eliciting objections.

29. Mr. Sreenivasa RAO (Special Rapporteur) said that the general opinion of the Commission appeared to be that the phrase should be eliminated and that the commentary should reflect the different points of view.

30. Mr. HAFNER asked whether paragraph 2 referred only to States which had embarked on consultations or had a more extended meaning.

31. Mr. Sreenivasa RAO (Special Rapporteur), supported by Mr. KABATSI and Mr. ROSENSTOCK, said that both paragraph 1 and paragraph 2 referred to the same group and the word "concerned" should be added after "States" in paragraph 2.

32. Mr. AL-BAHARNA said that the word "concerned" was not needed if the order of paragraphs 2 and 3 was reversed. In his interpretation, paragraph 1 said that the States concerned would enter into consultations, paragraph 3 referred to the situation if consultations failed to produce an agreed solution, and paragraph 2 was addressed to all parties.

33. Mr. HAFNER said that the word "concerned" should not be introduced, as the exact phrase used in paragraph 2 had already been used in other conventions. Also, the order of the paragraphs should be retained.

34. Mr. ROSENSTOCK, supported by Mr. BENNOUNA, said that the commentary would make the meaning clear and it was therefore not important to include the word "concerned". Moreover, the order of the paragraphs reflected the logical order of events and should stand.

35. Mr. RODRÍGUEZ CEDEÑO agreed that the order of the paragraphs should remain the same, although he suggested that paragraphs 1 and 2 should be combined. Moreover, the word "concerned" should be inserted or an explanation should be provided in the commentary.

36. Mr. SIMMA (Chairman of the Drafting Committee) said that the order could not be changed as paragraph 2 ensued directly from paragraph 1. He suggested that the text should be allowed to stand and that clarifications should be included in the commentary.

37. Mr. Sreenivasa RAO (Special Rapporteur) agreed with Mr. Simma. The commentary would read:

> "States referred to in article 11, paragraph 2, are those States which have already entered into consultations and it is expected that during the course of their consultations they shall take into consideration the equitable balance of interests."

He recalled that it had already been agreed to eliminate the word "causing" in paragraph 1.

Article 11 was adopted.

ARTICLE 12 (Factors involved in an equitable balance of interests)

38. The CHAIRMAN said that in subparagraph (*f*) the word "protection" should be replaced by the word "prevention".

39. Mr. GALICKI said that in the English text the word "of" should be deleted from subparagraph (*a*) before the words "repairing the harm". Moreover, he had two reservations. Subparagraph (*d*) currently referred to both "the States likely to be affected" and "the States of origin", whereas earlier it had referred only to the former. Yet, the costs of prevention should not be apportioned on an equal basis. Also, it was unclear whether "are prepared" referred to a subjective readiness or an objective preparation to contribute.

[2] See 2527th meeting, footnote 16.

40. Mr. Sreenivasa RAO (Special Rapporteur) said that "prepared" referred to what States were ready to offer and should not alter the "balance of interests" to which the title and *chapeau* alluded. The words "as appropriate" were important in that regard.

41. Mr. GALICKI said that he accepted the explanation, and he suggested that the commentary should clarify the point.

42. Mr. PELLET observed that subparagraph (*d*), which referred to "States of origin" in the plural, should be brought into line with the rest of the text, which referred to "State of origin" in the singular. Moreover, he objected to the translation into French of the word "restored" in subparagraph (*c*), as it implied that the environment had to be returned to its original state, thereby placing undue emphasis on protection of the environment rather than on prevention of damage, which was the spirit of the draft articles.

43. Mr. SIMMA (Chairman of the Drafting Committee) said that the English term "restoring" was not equivalent to the French term used.

44. Mr. Sreenivasa RAO (Special Rapporteur) said that the intent was to encourage States to choose the most environmentally friendly option.

45. Mr. BENNOUNA said that the problem was one of translation, not of substance.

46. Mr. AL-BAHARNA enquired whether the term "restoring" was used in the major environmental conventions. If not, perhaps a formulation such as "repairing damage to the environment" would be appropriate.

47. Mr. Sreenivasa RAO (Special Rapporteur) said that the Drafting Committee had felt it best, if a phrase occurred in an earlier draft and if the commentary on the topic was clear, to retain that language rather than embark on new drafting at the current stage of consideration.

48. Mr. PELLET said that principle 2 of the Rio Declaration[3] used the phrase "not cause damage to the environment", which might be appropriate in subparagraph (*c*). At any rate, the French version should be aligned with the English and Spanish versions.

49. Mr. ROSENSTOCK suggested that "restoring" could be replaced by "preserving".

The meeting was suspended at 11.45 a.m. and resumed at 12.15 p.m.

50. Mr. HAFNER said that principle 7 of the Rio Declaration used the term "restore". However, lengthy discussions of that term had taken place during the negotiations on the United Nations Convention on the Law of the Sea, in which a compromise had been reached because of the impossibility in many cases of restoring the environment to its prior state. The term "preserve" was preferable.

51. Mr. MIKULKA said that the relationship between subparagraphs (*a*) and (*c*) was unclear. Since "significant transboundary harm" included environmental damage, he did not understand why "harm to the environment" was mentioned separately in subparagraph (*c*), thereby implying that environmental damage was not covered by subparagraph (*a*).

52. Mr. SIMMA (Chairman of the Drafting Committee) said that subparagraph (*a*) had been intended to refer to cases with a high degree of risk, counterbalanced by measures to reduce that risk, whereas in subparagraph (*c*) the risk was counterbalanced by the availability of means to prevent harm.

53. Mr. ROSENSTOCK said that the difference could be explained by looking at the definition of transboundary harm: the term "transboundary" meant activities occurring within the territory of an affected State, while "to the environment" was not as restrictive and could refer to the global commons, for example.

54. Mr. MIKULKA said that the latter type of activity appeared to lie outside the field of application of the article.

55. Mr. SIMMA (Chairman of the Drafting Committee) said that article 12 simply contained a listing of activities and factors to be taken into account, some of which went beyond the transboundary concept.

56. Mr. BROWNLIE said that it was inappropriate to reopen consideration of the issue at the current stage.

57. Mr. Sreenivasa RAO (Special Rapporteur) said that the elements in question had been deliberately retained from an earlier draft because they provided a mechanism to eliminate unwitting damage to the global commons. The factors listed in the article were intended to help States to provide a better response with respect to harm than they otherwise might have.

58. Mr. GOCO said that article 12 was simply a listing of factors involved in an equitable balance of interests which was not intended to be exhaustive. He therefore urged its adoption.

59. Mr. MIKULKA said that he had not been convinced by the arguments advanced but would be satisfied if the commentary indicated that one member believed that the content of subparagraph (*c*) had already been covered by subparagraph (*a*).

60. Mr. PELLET said that he could support the suggestion to replace "restoring" by "preserving".

61. Mr. SIMMA (Chairman of the Drafting Committee) suggested that in subparagraph (*a*) "of" should be inserted before "the availability of means" as a clarification. With regard to subparagraph (*c*), however, he doubted whether the terms "preserving the environment" and "restoring the environment" were equivalent. The latter term implied that a change in the environment had already occurred, and that action was required to bring it back to its former condition.

62. Mr. KUSUMA-ATMADJA said that he shared the concerns expressed by Mr. Mikulka and Mr. Pellet. Where transboundary harm was concerned, there was a difference between protecting and restoring the environ-

[3] Ibid., footnote 8.

ment. However, he would reserve any further comments until the next session of the Commission.

63. Mr. BROWNLIE said that, while he preferred the term "preserving", the meaning of "restoring" was perhaps less rigidly fundamentalist and more relative than some members thought. He could therefore accept either of the terms.

64. Mr. ROSENSTOCK, referring to a point raised by the Chairman of the Drafting Committee, said that in determining whether to go ahead with an activity, it was necessary to make sure that the status of the environment after the activity had been undertaken would not be significantly worse than it had been before that activity was undertaken, without reference to a theoretical "state of nature". If the word "preserving" was easier to work with in the other official languages, he would prefer to substitute that word, although the distinction between it and "restoring" in the English language was minor.

65. Mr. BENNOUNA said that the word *rétablir* could be used in the French version to indicate the idea of returning the environment to its former state. That change would accord well with accepted concepts of international responsibility, while avoiding excessive environmentalism.

66. The CHAIRMAN asked if there were any objections to replacing the word "restoring" by the word "preserving" in the English version, with appropriate translations in the other official languages.

67. Mr. HAFNER said that he would prefer to retain the word "restoring" and its equivalents in the other language versions, since it was used in principle 7 of the Rio Declaration.

68. Mr. PELLET said that he could accept the terms "restoring and preserving" as long as they did not imply a return to the original state of the environment.

69. Mr. ROSENSTOCK said that he could accept either of the terms, but that using both would imply a greater difference between them than he felt existed.

70. Mr. ECONOMIDES, supported by Mr. CANDIOTI, said that the two terms complemented each other but that he would prefer to place "preserving" first.

71. Mr. BROWNLIE said that inserting both words would have the effect of raising the standard, because, as used in an environmental context in English, the word "preserve" often did imply at least the desire to replicate an earlier state. He suggested that only "restoring" should be used, and that it should be explained in an appropriate commentary.

72. Mr. HE said that the two words also had different meanings in Chinese. He preferred that both should be included or, if only one was chosen, that an appropriate explanation should appear in the commentary.

73. Mr. Sreenivasa RAO (Special Rapporteur) said that the word "restoring" should be retained for the reason advanced by Mr. Brownlie, and that if necessary an explanation could be included in the commentary to the effect that the Commission had considered the possibility of replacing it with "preserving", but that the meaning intended in either case was to repair environmental damage to the extent technologically feasible.

74. Mr. SIMMA (Chairman of the Drafting Committee) said that the insertion of the word "of" between "and" and "the availability" in subparagraph (*a*) would clarify the distinction between that paragraph and subparagraph (*c*).

75. The CHAIRMAN said that, if he heard no objection, he took it that the Commission wished to adopt article 12 as amended by inserting the word "of" in subparagraph (*a*) and retaining the word "restoring" in subparagraph (*c*) with appropriate commentary.

Article 12, as amended, was adopted.

76. Mr. Sreenivasa RAO (Special Rapporteur), in response to concerns raised by Mr. Mikulka, read out the following paragraph for inclusion in the commentary to article 12:

> "Subparagraph (*c*) of article 12, according to one view, should be deleted. It was suggested that subparagraph (*a*) already would have covered harm to the environment as given in the definition in subparagraph (*b*) of article 2. Besides, it was noted that the environment in general is not within the scope of this topic. Other members, however, felt that subparagraph (*a*) is more directly concerned with the degrees of risk and of availability of means of prevention, while subparagraph (*c*) deals with ensuring measures which are more environmentally friendly."

ARTICLE 13 (Procedures in the absence of notification)

77. Mr. PELLET said that the reference to a six-month suspension period in article 13, paragraph 3, was troubling and incomprehensible. It appeared to impose an onerous burden on the State of origin, and the period of time specified seemed arbitrary as well.

78. Mr. SIMMA (Chairman of the Drafting Committee) said that the Drafting Committee had considerably softened the original wording of the paragraph by adding the words "appropriate and feasible" and "where appropriate", thereby lessening the potential burden on the State of origin in such cases.

79. Mr. Sreenivasa RAO (Special Rapporteur) said that the six-month period had originally been arrived at after a difficult debate on the Convention on the Law of the Non-navigational Uses of International Watercourses. Moreover, the phrase "unless otherwise agreed" in paragraph 3 had been intended to cover every contingency, allowing States to freely undertake measures which suited them; the six-month time period was simply intended to be applied as a minimum in such situations, taking into account the difficulty and potential financial and economic effects of suspending large-scale projects.

80. Mr. PELLET said that, while it was acceptable to suggest the suspension of a project, it was entirely inappropriate for the Commission to stipulate a specific time period for such a suspension. He therefore proposed that the phrase "for a period of six months" should be deleted.

81. Mr. Sreenivasa RAO (Special Rapporteur) said that, as six months was too short a period in the case of difficult negotiations, he could accept the deletion of the phrase.

82. Mr. BROWNLIE said that he would like the phrase to be retained.

83. Mr. PELLET said that he was totally opposed to the inclusion of the phrase.

84. Mr. MIKULKA said that he had more serious problems with paragraph 3 as a whole, whose very position in the draft appeared erroneous. According to the logic of articles 11, 12 and 13 taken together, in cases where disputes had arisen as to the risk of transboundary harm, it appeared that States were being asked to take measures to minimize such risk before they had agreed that it existed. It would be more appropriate, therefore, to move paragraph 3 to article 11 and to re-examine its intent.

85. Mr. Sreenivasa RAO (Special Rapporteur) said that in cases where an activity had already started and States which thought themselves to be affected by it had asked the State of origin to enter into consultations, the State of origin could either dispute their understanding of the effects of the activity, or agree to enter into consultations with them, or explain to them that the activity in question was not to their detriment and that suspension of it was not the only method available to satisfy their concerns. If none of those alternatives proved satisfactory, the State of origin could then agree to suspend the activity for six months.

86. Mr. PELLET said that he wanted the commentary to reflect the Commission's lack of unanimity on paragraph 3 owing to the arbitrary nature of the phrase "for a period of six months" and the incompatibility of that phrase with the phrase "where appropriate".

87. Mr. MIKULKA asked why paragraph 3 had not been included in article 11 instead of in article 13 and why a State of origin was under no obligation to suspend a disputed activity if it had initiated consultations.

88. Mr. Sreenivasa RAO (Special Rapporteur) said that paragraph 3 would be out of place in article 11, which called for a State to consult with other States prior to initiating a potentially risky activity. Article 13, on the other hand, dealt with situations in which a State had reason to believe that a planned activity or an activity initiated earlier posed a risk of transboundary effects.

89. Mr. ROSENSTOCK said that, according to the logic intended, article 11 dealt with situations in which the State of origin was asked to refrain from an activity which it had not yet authorized or begun, while article 13 dealt with situations in which a State of origin had already initiated the activity.

90. Mr. SIMMA (Chairman of the Drafting Committee) said that providing for a six-month cooling-off period in article 11 would not really make sense, because at the stage envisaged by the article there was no activity yet to suspend.

91. Mr. MIKULKA said that he failed to see the justification for including paragraph 3 in article 13 in view of the allusion in article 7, paragraph 2, to activities already in existence.

92. Mr. Sreenivasa RAO (Special Rapporteur) said that article 7 was not relevant because it dealt with a different situation. Once a State decided unilaterally to go ahead with an activity, a court of law could request the suspension of that activity.

Article 13 was adopted.

The meeting rose at 1.20 p.m.

2562nd MEETING

Thursday, 13 August 1998, at 3.10 p.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (*concluded*) (A/CN.4/483, sect. D, A/CN.4/487 and Add.1,[1] A/CN.4/L.556, A/CN.4/L.568)

[Agenda item 3]

CONSIDERATION OF DRAFT ARTICLES 1 TO 17 PROPOSED BY THE DRAFTING COMMITTEE AT THE FIFTIETH SESSION (*concluded*)

ARTICLE 14 (Exchange of information)

1. Mr. PELLET said that in the French version, the word *pertinentes* should be replaced by the word *disponibles*.

Article 14, as amended, was adopted.

ARTICLE 15 (National security and industrial secrets)

2. Mr. GOCO wondered whether it was not somewhat inconsistent to allow the State of origin not to provide

[1] Reproduced in *Yearbook . . . 1998*, vol. II (Part One).