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Summary record of the 2665th meeting

Topic:

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Extract from the Yearbook of the International Law Commission:-

2001, vol. I

INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FIRST PART OF THE FIFTY-THIRD SESSION

Held at Geneva from 23 April to 1 June 2001

2665th MEETING

Monday, 23 April 2001, at 3.10 p.m.

Outgoing Chairman: Mr. Chusei YAMADA

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Idris, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Simma, Mr. Tomka.

Opening of the session

1. The OUTGOING CHAIRMAN declared open the fifty-third session of the International Law Commission and extended a warm welcome to all members.

2. Having represented the Commission at the fifty-fifth session of the General Assembly, he was able to say that the report of the Commission on the work of its fifty-second session[1] had been well received by the Sixth Committee, which had held a substantive and useful debate. The General Assembly, in paragraph 2 of its resolution 55/152 of 12 December 2000, had endorsed the Commission's proposal to complete the second reading of the draft articles on State responsibility and on international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) at its fifty-third session, in 2001. It also expected the Commission to make progress on the topics of reservations to treaties, diplomatic protection and unilateral acts of States. A very heavy workload thus awaited the Commission, which could not afford to waste time.

3. He wished to draw attention to the important fact that, while approving the split session for the fifty-third session, the General Assembly had reiterated its request that the Commission should implement cost-saving measures, which were an important element of the Assembly's consent to such a session in the current biennium. He hoped that the Commission would take a viable decision on that question as soon as possible. Otherwise, it could well lose a great deal of credibility with the Sixth Committee.

4. Lastly, he wished to express gratitude for the valuable assistance given to him during his tenure as Chairman.

Election of officers

Mr. Kabatsi was elected Chairman by acclamation.

Mr. Kabatsi took the Chair.

5. The CHAIRMAN thanked the members of the Commission for the trust they had placed in him and said he would make every effort to deserve it. With their cooperation, he hoped to make the current session a successful and productive one that would achieve all its objectives, despite the heavy workload. He wished to pay tribute to the outgoing Chairman and the Bureau for a job well done.

Mr. Hafner was elected first Vice-Chairman by acclamation.

Mr. Candioti was elected second Vice-Chairman by acclamation.

[1] *Yearbook . . . 2000*, vol. II (Part Two).

Mr. Tomka was elected Chairman of the Drafting Committee by acclamation.

Mr. He was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/512)

6. The CHAIRMAN invited the Commission to adopt the provisional agenda (A/CN.4/512).

The agenda was adopted.

Organization of work of the session

[Agenda item 1]

7. The CHAIRMAN invited the members of the Commission to inform Mr. Tomka, Chairman of the Drafting Committee, of their interest in participating in the Committee on the topics of State responsibility or international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), with which it would be concerned initially.

State responsibility[2] (A/CN.4/513, sect. A, A/CN.4/515 and Add.1–3,[3] A/CN.4/517 and Add.1,[4] A/CN.4/L.602 and Corr.1 and Rev.1)

[Agenda item 2]

Fourth report of the Special Rapporteur

8. Mr. CRAWFORD (Special Rapporteur), introducing his fourth report on State responsibility (A/CN.4/517 and Add.1), said he wished to pay tribute to the previous Chairman for his efforts over the past year. The consultations on the draft articles led by the previous Chairmen had been of particular importance since the complete text adopted at the fifty-second session differed in important respects, especially regarding Part Two and Part Two bis, from the text adopted on first reading.[5] Important issues had found a new articulation, but much remained to be said about them. Governments had had an opportunity to express initial views, both during the discussions in the Sixth Committee and in writing. It had been said in the past that only a few States provided comments on the Commission's drafts, but that was not true in the current instance. Statements, often very well thought out, had been made in the Sixth Committee by countries from all sectors. Some Governments had further refined their remarks through detailed written comments. The process of consultation had thus been extensive and was reflected in the topical summary of the discussion in the Sixth Committee on the report of the Commission during the fifty-fifth session of the General Assembly (A/CN.4/513, sect. A), and in the comments and observations received from Governments (A/CN.4/515 and Add.1–3).

9. His original intention had been to introduce the fourth report in terms of two major issues, settlement of disputes and the form of the draft articles, and to move on to the remaining questions of substance. It had been pointed out, however, that all three areas were closely intertwined, so that one's position on form or on dispute settlement might affect one's attitude to some of the substantive issues outstanding, especially countermeasures. The advantage of an early informal exchange of views to explore the possibility of achieving consensus had likewise been mentioned. He was therefore revising his approach and would present a general introduction to the entire report so as to provide a basis for the informal consultations.

10. He would introduce what seemed to be the remaining issues of principle, relating both to form and to substance, and would then deal with suggested changes to the text. Some of them related solely to drafting, while others were more substantive, yet did not raise issues of general principle. As some of the articles in Part One were non-controversial, he anticipated that the Drafting Committee could be usefully employed, even before completion of the work of the Commission in plenary, on the rest of the text, in dealing with Part One.

11. One other preliminary remark concerned the commentaries, which had in the past become the last refuge of the disaffected, a place where members who had lost on a matter of substance could at least have their point made. Such an approach would have to come to a halt. In recent months, he had circulated a preliminary version of the commentaries to some of the articles, asking members for opinions on overall style. It was a difficult issue because, from the Commission's point of view, the commentaries by the Special Rapporteur Roberto Ago were unusual both in their detail and their excellence. There was a marked difference between the Ago commentaries to Part One and the existing commentaries to Part Two or the commentaries prepared by the Commission on other draft articles. The question had arisen whether it was desirable to adopt the Commission's standard approach to commentaries or some form of the Ago model. He had proposed a compromise between, on the one hand, the model of the Vienna Convention on the Law of Treaties (hereinafter "the 1969 Vienna Convention"), as it were, which consisted of brief commentaries essentially confined to explaining the language of the text without going into matters of substance to any great degree and, on the other hand, Ago's lengthy and somewhat academic commentaries. The final proposed text of the commentaries to chapters I and II, which would soon be available in English as a working document, represented his effort to strike a balance between the two models. His commentaries were considerably longer than the 1969 Vienna Convention model, but not as long as those of Special Rapporteur Ago. For example, the Ago commentary to former article 10 (new article 9) was 28 pages long. The commentaries to the draft articles as a whole would probably be about

[2] For the text of the draft articles provisionally adopted by the Drafting Committee on second reading, see *Yearbook . . . 2000*, vol. II (Part Two), chap. IV, annex.

[3] Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

[4] *Ibid*.

[5] For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook . . . 1996*, vol. II (Part Two), chap. III, sect. D.

150 pages long. It amounted to only three pages an article, although admittedly it was longer than the Commission's standard model. Of course, the commentaries would not be considered for adoption by the Commission until the articles had returned from the Drafting Committee, presumably during the second half of the session. It would nonetheless be helpful to have feedback on the commentaries as they were produced, so as to address any questions members might have and make it easier to deal with the substantial body of material along with the articles in the second part of the session. If possible, it would be useful to establish a working group to that end.

12. His fourth report dealt, apart from the drafting matters taken up in the annex, with the five remaining general issues of principle. They were matters that either had not yet been discussed in plenary—for example, Part Three on dispute settlement—or, although they had been debated, sometimes at great length, were still somewhat controversial. That was certainly true of aspects of the provisions on countermeasures and, in fact, the whole approach to countermeasures in the draft. It was also true of Part Two, chapter III, on serious breaches. Governments had made many comments on both those issues. Apart from the questions of countermeasures and serious breaches, the general tenor of the observations had been very positive. Governments had felt that the text had made significant progress and strongly endorsed the Commission's wish to complete it at the current session. Although individual drafting suggestions had been made, there had been a high level of support for the text's general balance and even for the approach adopted to the two remaining controversial questions.

13. Three general questions of principle still called for further discussion. The first was the cluster of issues associated with the concepts of injury, damage and the injured State, and in particular the wording of articles 43 and 49. Incidentally, he proposed in the report to use the numbering of the articles as provisionally adopted by the Drafting Committee at the fifty-second session, referring to the earlier numbering only where necessary for the sake of clarity. The term "damage" cropped up in various places and seemed to raise difficulties, as did the precise formulation of the distinction between "injured State" and "other States", although he was pleased to say that there had been a high degree of support in the Sixth Committee and in the comments and observations received from Governments for making the basic distinction between article 43 and article 49. Indeed, he could not recall a single proposal to revert to the old, undifferentiated approach to the injured State taken in article 40. That could be regarded as an *acquis*.

14. There had been a comparable level of support for the idea that any differentiation between general breaches of international law incurring responsibility and serious breaches should be reflected in Part Two rather than in Part One. There had been no significant support, either in the Sixth Committee or in the comments and observations received from Governments, for a reversion to an article 19 [in Part One]. It was hoped that that, too, could be taken as an *acquis*.

15. If he had to single out one question as the most difficult in the entire text, it would undoubtedly be countermeasures, because it was a sensitive issue, and also because article 54, on countermeasures by States other than the injured State, caused particular controversy. That extremely difficult matter would require further attention. All questions other than those three outstanding questions of principle could, in his view, be resolved in the Drafting Committee.

16. Two underlying questions of form had been deliberately set to one side by the Commission during its consideration of the articles on first reading, namely, the dispute settlement provisions in Part Three and the form of the draft articles. There was a clear link between them, as one could not sensibly include provisions on dispute settlement if the draft was to take the form of a declaration or some other non-treaty form. However—and to simplify somewhat—there were at least three options regarding the relationship between dispute settlement and the form of the draft. First, it could be maintained that the draft should become a convention because the Commission had done its best work in treaty form: for instance, the 1969 Vienna Convention, the Vienna Convention on Diplomatic Relations, and the Geneva Conventions on the Law of the Sea. One could quite coherently propose the convention form without any provision for dispute settlement: it was the form in which the Commission had proposed the draft articles on the law of treaties[6] prior to the insertion of article 66 at the United Nations Conference on the Law of Treaties.[7]

17. Secondly, one could coherently take the view that the international community had become weary of codifying conventions, or, in any event, that the existing codifying text was of a quite different character from the other, more specific, texts; that, by reason of its generality, its focus on secondary rules and the underlying importance of the issues it dealt with, it should take the form of a declaratory text rather than of a convention. Those who held to that view would, of course, oppose dispute settlement simply because it would not fit into the framework of their preferred option.

18. The third position was that there should be a convention, and that it should include provision for the settlement of disputes, at least on cardinal questions such as countermeasures, much as the 1969 Vienna Convention contained provisions for dispute settlement on the cardinal issue of article 53. That was an intermediate position, and again entirely defensible. Indeed, some members might take the perfectly tenable position that dispute settlement was so important to the adequate resolution of questions of State responsibility that it determined the other question: that the reason for preferring a convention was to ensure the inclusion of dispute settlement.

19. Accordingly, it would be best to deal first with the question of dispute settlement on its own terms, irrespec-

[6] See *Yearbook . . . 1966*, vol. II, p. 177, document A/6309/Rev.1, para. 38.

[7] See *Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March–24 May 1968* (United Nations publication, Sales No. E.68.V.7); *ibid*., *Second Session, Vienna, 9 April–22 May 1969* (United Nations publication, Sales No. E.70.V.6); and *ibid*., *First and Second Sessions, Vienna, 26 March–24 May 1968* and *Vienna, 9 April–22 May 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

tive of other arguments about the final form of the draft; otherwise that intermediate position would be unfairly excluded.

20. The first question to be considered was thus the desirability of the retention—on the assumption that the text was to become a convention—of Part Three in some form, focusing initially on the principle of compulsory dispute settlement in respect of State responsibility disputes, or at least of a significant sub-sector of such disputes.

21. There seemed to be no merit in proposing yet another system of non-binding dispute settlement. Simply specifying that States should or might settle their disputes by some other procedure would add nothing to the text. It might of course be desirable to include in Part Four some general provision on the settlement of disputes, but it would not be helpful to propose an optional form of dispute settlement. States already had a full range of choices, whether under the optional clause or otherwise, for the settlement of disputes involving State responsibility. There was no need to add to them. The case for dealing with dispute settlement was different, namely, the claim that disputes about responsibility—or at any rate those relating to countermeasures, to serious breaches, and possibly to breaches of obligations *erga omnes*—were so important that some compulsory system of dispute settlement should be available.

22. Indeed, even sceptics might adopt that position. It was those who had expressed scepticism about *jus cogens* who had wanted article 66, not its advocates; it was those who had felt that article 53 of the 1969 Vienna Convention could be used to unsettle treaty relations who had wanted to link the *jus cogens* provision with compulsory dispute settlement. That had been the basis for objections made by some States when others had ratified the Convention with a reservation as to article 66. They had claimed that a specific linkage between the two articles had been intended in order to make article 53, as it were, "safe for humanity". One might take the same view about chapter III of Part Two: if it was to be "safe for humanity", given the almost necessarily vague and general language it had to adopt, it must at some level be a chapter of indeterminate reference. Progressives and sceptics alike could thus consider that the articles did require provision for dispute settlement. He had tried to put that case fairly, although it was not his own view, as was clear from his fourth report.

23. The argument against that case was, briefly, that, if the draft was to take the form of a treaty, adopting compulsory dispute settlement would be a step too far, rendering the text as a whole unacceptable. In some respects, the draft was clearly progressive, extending the boundaries of international law, dealing with all, rather than merely with bilateral, obligations, and adopting quite advanced positions on certain questions. While such a text might prove acceptable, it was debatable whether it would be acceptable where dispute settlement was concerned.

24. Moreover, the generality of the text, which was one of its great virtues—the central feature of the Ago principle, that the text dealt with the whole of the law of the secondary rules of State responsibility, both treaty and non-treaty—had been consolidated and was at the current time generally accepted in the jurisprudence, not merely in the Commission. That was a major advance. But it carried with it the proposition that compulsory dispute settlement in respect of the draft articles would be compulsory dispute settlement in respect of most of international law, because issues of international law were currently about, or could in some sense be reduced to, compliance with obligations.

25. It was thus clear that questions of dispute settlement in relation to the text as a whole had a very comprehensive range. His own, entirely personal, judgement was that to try to associate the articles as a whole with dispute settlement was more than the international diplomatic marketplace would currently stand, and that to do so might indeed imperil some of the significant advances made elsewhere in the text. Without prejudice to that general assessment, it might be possible to identify subsets of issues within the draft articles where dispute settlement might be envisaged, in the event that the text was to take the form of a convention. However, a general system of dispute settlement in respect of State responsibility would amount to the adoption of a general principle of dispute settlement for questions of international law more or less at large—a very progressive step in a general sense, but the international community was not, in his view, quite ready for it.

26. Moreover, the significant progress currently being made on dispute settlement was being made incrementally, by introducing systems of dispute settlement in particular fields. On balance, it seemed better to allow that progress to continue, and to allow the articles, whatever their final form, to infiltrate the general process of international law-making, as they were currently doing to no insignificant degree, in the work of ICJ, that of the WTO Appellate Body, and elsewhere. The time was ripe for an exchange of views in informal consultations, with a view to reaching a conclusion on the matter. His own proposal was that Part Three should be deleted.

27. The form of the draft articles should be discussed independently of the question of dispute settlement, given the three options available in that regard. It was still open, even to those who wished to delete Part Three, to favour adopting the draft articles in the form of a treaty; at various stages in the proceedings, that had actually been his own position. It was plain that, notwithstanding certain difficulties it posed, the 1969 Vienna Convention had contributed more to international law as a convention than it would have done as a set of articles attached to a resolution. In convention form, it quite clearly possessed more life and solidity than would otherwise have been the case. The same was true of other sets of articles, such as those on diplomatic immunity. Should not the same advantage be pursued in the field of State responsibility? It should be borne in mind that the consolidating effect of the Convention had not been felt solely with respect to parties thereto. As yet, only a minority of States were parties to the Convention, but it was universally accepted as the starting point, and for most purposes as the finishing point, on questions of the law of treaties. There was hardly a multilateral treaty in existence to which the Convention applied as a convention, because the conditions for its applicability set out in article 4 were so stringent.

Admittedly, it applied to some bilateral treaties, but probably only a minority of the bilateral treaties concluded were as yet governed by the Convention as a convention. Yet that formal point had had no significance at all in terms of the weight of the Convention—it carried weight by virtue of the mere fact of its existence and fairly widespread ratification, and was accordingly taken as an authoritative standard. The same could become true of the articles on State responsibility, always assuming that they were concluded in a satisfactory form.

28. What was the case against a convention? That was an issue on which he was somewhat more neutral than on certain other questions associated with the text, and one on which, as Special Rapporteur, he held no particular brief. First of all, it could be claimed that, because of its comprehensiveness—a feature to which he had already referred—the text dealt with so much of international law that it was inappropriate for it to take the form of a treaty. The text would have more influence—the proponents of a non-treaty form argued—as a set of articles endorsed in some way and associated with the commentary approved by the Commission than it would have as a treaty. If—it was claimed—the Commission proposed the draft articles as a text that would be endorsed in some way by the General Assembly and would thereafter simply become part of the customary law-making process in the field of responsibility, even Governments that were relatively unhappy with particular aspects of the text would be likely to accept it, on the grounds that to revisit it might make matters worse rather than better. The choice was between adoption of a relatively uncontentious text, and adoption by a consensus different from the one that had emerged in the Commission of a text revisited by a Sixth Committee preparatory committee: a text bearing little relationship to the one currently before the Commission; perhaps, even, a garbled text.

29. That, essentially, was the case for the declaratory form. The details of such a form—whether the General Assembly would endorse it, take note of it, welcome it, refer it to courts, or some other formula—were much less significant than the basic choice between a convention that would inevitably involve a preparatory committee and a subsequent diplomatic conference, on the one hand, and on the other, some form of endorsement by the Assembly.

30. In the process of reform over the past 10 years, the Commission had become much more open to the variety of forms its work might take. State practice was more likely to be influenced by a text endorsed by the General Assembly than by a convention which remained largely unratified, such as the Vienna Convention on Succession of States in Respect of Treaties (hereinafter "the 1978 Vienna Convention") and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (hereinafter the "1983 Vienna Convention") which had preceded the articles on the nationality of natural persons in relation to the succession of States.[8] On balance, he believed the non-treaty form was to be preferred for the articles on State responsibility, though some delegations in the Sixth Committee, when consulted, had expressed the view that so much progress had been made on the topic that a convention form could be envisaged at the current time.

31. As to the three issues of substance still to be dealt with, it was currently generally agreed that the distinction of principle between articles 43 and 49 was valuable and should be retained. There was a problem with the language of article 43, subparagraph (*b*) (ii), because of a tendency to confuse integral obligations with those obligations which were seen as being of general interest to the international community. The Drafting Committee should re-examine those articles, but it was important to retain the basic structure of the two articles. It was clear that there could be obligations towards the international community as a whole or to all States in which individual States had a particular interest, because they were singularly affected by a breach. That was true of obligations in the environmental field, for instance, and perhaps certain areas relating to the law of the sea. Accordingly, article 43 States, in other words, injured States, must be able to be covered by the whole range of obligations. However, the language in which integral obligations were framed should be looked at afresh, if only because the question of integral obligations raised in turn the question whether a breach would be of such a magnitude as to threaten the obligation as a whole.

32. Of greater concern was the formulation of "injury" and "damage", especially in article 31, paragraph 2, which had been adopted in the Drafting Committee for the sake of compromise. It was desirable to clarify the relationship between injury and damage, because at the current time the equation between the two went too far, and the language of paragraph 2 was defective in that respect. In paragraph 33 of his fourth report he had suggested an alternative wording.

33. On the general question of reparation, the distinction adopted in the draft articles between the obligations associated with cessation and those associated with reparation had been generally endorsed. The subject of assurances and guarantees of non-repetition was an issue for ICJ in the *LaGrand* case. Its decision would be relevant to the Commission's treatment of the subject.

34. As for the questions associated with Part Two, chapter III, on serious breaches of essential obligations to the international community, some Governments had interpreted "the international community" as meaning the community of States as a whole. There was of course precedent for both interpretations: in the *Barcelona Traction* case, the *fons et origo* of the concept, the term used was "the international community as a whole" [p. 32], and the same phrase appeared in the preamble to the Rome Statute of the International Criminal Court. Yet the United Nations Conference on the Law of Treaties, when adopting article 53 of the 1969 Vienna Convention, had referred to "the international community of States as a whole". He had explained in the report why that term was not desirable. One reason was that the European Union was regarded by many as a part of the international community, although it was not a State. International organizations with international legal personality, such as ICRC, also participated in the international community in a direct and substantive way and precisely in relation to the very obligations with which the Commission was

[8] See *Yearbook . . . 1999*, vol. II (Part Two), para. 47.

concerned, focusing especially on compliance with international humanitarian law.

35. There had been a vigorous debate on Part Two, chapter III, described in paragraphs 43 to 53 of the report. In his opinion, chapter III was harmless, but it did contain an important concession to the emerging truth that there were obligations of concern to the international community as a whole whose effect was felt within the field of responsibility. There was a case for recognizing a category of serious breaches, although the form of language used in chapter III required discussion in the Drafting Committee. To delete the chapter at the current time would wholly unbalance the text and create very considerable difficulties in achieving consensus. He hoped that any proposals would be designed to improve chapter III, and not to exacerbate the problem of which it was a manifestation.

36. The issue of countermeasures was still extremely delicate, because of its relationship to questions of the allocation or misallocation of powers in the international community and the prospects opened up for their widespread use, especially in the context of article 54. The Commission's excellent work had contributed to the development of standards in the field of countermeasures, but it had to be asked whether full-scale treatment of the subject in the draft articles would be conducive to an overall consensus. He would prefer to keep chapter II of Part Two bis as a separate chapter, subject to drafting improvements. He was particularly unhappy with article 51, containing the list of prohibited countermeasures, which was not based on any principle and had been the subject of some justified criticism. A simpler version would definitely be desirable. The articles adopted on first reading containing lists, such as article 19 or 40, had been a catastrophe. Article 54, too, raised a number of problems. The principles in it were quite defensible, but they raised various questions which neither the proponents nor the opponents of countermeasures seemed happy to treat. One solution would be to retain the treatment of countermeasures, while substituting some kind of saving clause for article 54. It was not possible to say that, in the light of State practice, only article 43 States could take countermeasures. Countermeasures by States under article 49, in other words, States other than the injured State, would be exceptional. They raised questions of the relationship between the draft articles and the international arrangements for the maintenance of peace and security under the Security Council and regional organizations that went beyond the scope of the text. An alternative solution would be to transfer the uncontroversial limits on countermeasures, such as proportionality, to article 23 in Part One, chapter V (Circumstances precluding wrongfulness). A number of Governments had supported that option, which would involve having a Part Three dealing only with the invocation of responsibility. In any event, in the light of the balance of opinion in the Commission and in the Sixth Committee, it was necessary to rule out a passing reference to countermeasures in article 23; that would be taken by those who were concerned about the proliferation of countermeasures as a form of unqualified licence. Something, and something reasonably substantial, would have to be inserted in article 23. It was not feasible to delete countermeasures entirely: the Governments most hostile to chapter II of Part Two bis were the most enthusiastic about article 23. One option was to retain the general balance between article 23 and chapter II of Part Two bis, but with significant drafting improvements, and a possible reconsideration of article 54 to make it less controversial. Article 54 was perhaps the article that called for the most attention. The other option was the longer version of article 23. Countermeasures could not be deleted, but some changes were probably needed in the way they were treated.

The meeting rose at 5.40 p.m.

2666th MEETING

Tuesday, 24 April 2001, at 10.05 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Idris, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Mr. Yamada.

Organization of work of the session (*continued*)

[Agenda item 1]

1. The CHAIRMAN said that the meeting would be devoted to the announcement of the final composition of the Drafting Committee for the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities).

2. Mr. TOMKA (Chairman of the Drafting Committee) announced that the Drafting Committee for the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) would be composed of the following members: Mr. Sreenivasa Rao (Special Rapporteur), Mr. Baena Soares, Mr. Brownlie, Mr. Gaja, Mr. Galicki, Mr. Hafner, Mr. Herdocia Sacasa, Mr. Kateka, Mr. Melescanu, Mr. Opertti Badan, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Yamada and Mr. He (ex officio).