

Document:-
A/CN.4/SR.1849

Summary record of the 1849th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1984, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

did not come within the scope of the current study, which related only to activities which were not intended to have harmful effects as such. He also pointed out that the dangerous nature of the activities in question had not been referred to in the definitions contained in the draft articles. Perhaps further consideration should be given to draft articles 1 and 2 to see whether greater precision was necessary and whether, for example, a distinction should be made between the disastrous consequences and the insidious effects of a particular activity. That was not the only distinction which the Commission would have to introduce. The problem of damage and, hence, of causality which was encountered in the context of responsibility for wrongfulness also arose in connection with the topic under consideration, and if the possibility of a disaster was taken into account, the Commission would have to decide whether bilateral relations alone could provide a solution or whether, in some cases, action by the international community as a whole was not required.

The meeting rose at 1 p.m.

1849th MEETING

Wednesday, 27 June 1984, at 10 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Balanda, Mr. Barboza, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Ushakov.

International liability for injurious consequences arising out of acts not prohibited by international law (*continued*) (A/CN.4/373,¹ A/CN.4/378,² A/CN.4/383 and Add.1,³ A/CN.4/L.369, sect. H, ILC (XXXVI)/Conf. Room Doc.6, ST/LEG/15)

[Agenda item 7]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR
(*continued*)

ARTICLE 1 (Scope of the present articles)

ARTICLE 2 (Use of terms)

ARTICLE 3 (Relationship between the present articles and other international agreements)

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ *Idem.*

ARTICLE 4 (Absence of effect upon other rules of international law) *and*

ARTICLE 5 (Cases not within the scope of the present articles)⁴ (*continued*)

1. Mr. REUTER, reverting to the draft articles on which he had made some comments at the previous meeting, reiterated his satisfaction at the Special Rapporteur's decision to submit them. For while the Commission needed a well documented report by the Special Rapporteur to examine the topic entrusted to him, it also needed draft articles to clarify its thinking. He was not sure that, at the present stage in the work, the draft articles could usefully be examined by the Drafting Committee, but they had the great advantage of facilitating reflection.

2. The first two articles were intended to delimit the scope of the draft by defining the transboundary nature of the activities in question and certain elements relating to the material character of the situations which the Commission was to examine. While glad of that progress, he thought the particulars insufficient. It might be necessary to make a deeper analysis and inquire whether the problems arose in exactly the same way when the material consequences were abrupt and isolated in time as when they made themselves felt more slowly, gradually or continuously. The Special Rapporteur had chosen the broadest formula. Should the Commission adopt that solution? Should it introduce distinctions, or exclude particular cases? He could not give an opinion at present. But as the Special Rapporteur had observed, the situations and activities in question could be seen as being due to natural or to human action. If one were tempted to exclude from the scope of the draft situations and activities which pertained solely to man, because they came within the economic or moral sphere and were already subject to a multitude of primary rules, one found that the heart of the subject lay in situations involving human intervention and something which seemed to be beyond human control, namely situations created by advanced technology.

3. The Special Rapporteur had evoked situations which at first sight appeared to be facts of nature, such as forest fires. It was true that some might be due to malice, but generally they were natural disasters. Should such cases be included? There was also the case of the destroying swarms of locusts which attacked African countries. That kind of phenomenon, which had received attention from international organizations in the past, should not be excluded from the scope of the draft; but it called for special procedure. For instance, a riparian State on a river subject to periodic flooding might offer to collaborate with the other States concerned in dealing with the problem. The proposal might be accepted or refused, but a refusal might have legal consequences. Research should therefore be continued in order to determine what cases should be included and delimit the scope of the undertaking.

4. Articles 3 and 4 differed from the first two articles,

⁴ For the texts, see 1848th meeting, para. 3.

but seemed to have the same purpose. They appeared to be well conceived and useful, and he had no objection to them. But, as the Special Rapporteur had intended, they were purely provisional texts. They expressed a certain concern which they endeavoured to meet. He noted that, as in the case of other drafts being prepared, there was some difficulty in defining the legal effect of the articles in relation to other instruments, bilateral or multilateral. The Commission should therefore ponder that problem, since it would be led to draft provisions that were intended to be binding but would not have a very marked legal character.

5. Article 5 was drafted on the model which would henceforth be found in all the Commission's draft conventions. He doubted the validity of the very principle of excluding international organizations from the scope of the draft because the Commission was not prepared to include the liability of international organizations in its programme of work. He was not certain that it was justified in leaving that question aside. He reminded the Commission of the precedents created by treaties relating to outer space, in particular the 1972 Convention on International Liability for Damage Caused by Space Objects⁵ and annex IX of the 1982 United Nations Convention on the Law of the Sea,⁶ which made provision for international organizations. Those organizations should be bound by the rules stated in international instruments if they had made a declaration to that effect, if a reasonable number of member States accepted the principles involved and if member States showed their solidarity in that respect. On that basis he could accept article 5 provisionally, but he suggested that the Commission should revert to the matter later.

6. Lastly, the schematic outline annexed to the fourth report (A/CN.4/373) called for a number of comments concerning the Commission's methods of work. In his opinion, that question was too serious to be left to the Planning Group; the Commission should discuss it in plenary meeting. Faced with a subject as difficult as international liability and so large a body of work for the Special Rapporteur, for which a programme would have to be drawn up, the Commission should invite members to formulate their comments in writing, especially as several members who held high positions were not always able to attend the Commission's sessions regularly. The topic under study provided a unique opportunity for making that experiment. Members of the Commission invited to submit their views in writing would feel morally obliged to respond.

7. Mr. USHAKOV said that, in spite of the efforts made by the Special Rapporteur, he still believed that the topic was artificial and in the nature of a dead end. He knew of no provision of international law which would establish material liability for activities that were lawful and even necessary for mankind and society. The only instruments applicable were special agreements—universal, multilateral or bilateral—relating to particular dangers, activities or situations. The terms used in the first two articles suggested that they might be dealing

with the problem of protection of the environment. But was the Commission competent in that matter? Moreover, was it supposed to draft substantive rules or rules relating to material liability?

8. Co-operation between States was the only way to check the transboundary effects of any particular injurious activity. He had in mind, in particular, the abusive exploitation of forests. The irrational exploitation of the forests of the Soviet Union, for instance, which extended over millions of square kilometres, could have dramatic effects on climate for the whole of mankind. Similarly, increased production of energy in the world could cause climatic changes which would have dangerous chain reactions, such as warming of the atmosphere and consequent melting of the polar ice-caps.

9. It was not by rules on material liability that the problem could be solved. The solution was to be found in the conclusion of agreements fixing quotas, whether for forest exploitation or energy production. International co-operation could also guard against the dangers to humanity caused by nuclear energy production and nuclear weapons. The consequences of a breakdown in a Soviet nuclear power station might well remain confined to the Soviet Union, but what would happen in a country of Western Europe with less extensive territory? He also had in mind the transboundary damage that might be caused by the use in agriculture of chemical fertilizers or insecticides—the use of DDT was a good example. Could an "affected State" claim compensation because it had suffered from the effects of an activity that was lawful and even necessary? The answer was in the negative and he remained convinced that secondary rules could not solve the problem.

10. Mr. NI congratulated the Special Rapporteur on his scholarly report (A/CN.4/383 and Add.1), and the Secretariat on its survey of relevant State practice (ST/LEG/15). As a result of rapid scientific and technological development and increasing contacts between States, the world was becoming smaller. The topic under study was therefore of practical importance, especially for developing States; it was usually they that suffered injury from the activities of neighbouring and industrially more developed States, which had the know-how to avoid harm within their own boundaries. The development of a régime to regulate such matters would persuade developed States to pay more regard to their less developed neighbours, and prepare the latter to abide by the same rules when they themselves became developed and might become "source States".

11. With regard to the scope of the topic, he noted that the Special Rapporteur had referred in his fifth report (A/CN.4/383 and Add.1, paras. 17-21) to a number of phenomena which could result in harmful consequences to neighbours if prompt steps were not taken to avert the danger. Those phenomena included the flow of water, which was perhaps more specifically connected with the topic of the law of the non-navigational uses of international watercourses, air pollution, which had been the subject-matter of the *Trail Smelter* arbitration,⁷ as well

⁵ United Nations, *Treaty Series*, vol. 961, p. 187.

⁶ See 1848th meeting, footnote 4.

⁷ *Ibid.*, footnote 10.

as noise, vibration, ionizing radiation, radioactive waste, the spread of forest fires and contagious diseases, depletion of natural resources, stockpiling of weapons, and the growing dangers from ships, aircraft and space objects. As the Special Rapporteur observed (*ibid.*, para. 31), the topic was thus concerned “almost exclusively with obligations arising from human activities”, and those activities entailed “initiatives within the territory or control of the source State taken in pursuance of its own rights of use or enjoyment, but with a proper regard for their transboundary implications”. Legitimate and beneficial human activities could not be prohibited, but consequential harm that was foreseeable should be regulated.

12. It was therefore necessary to strike a balance between the freedom of a State to engage in activities within its own territory, and the freedom not to suffer harm done by another State. To achieve that balance, a spirit of good-neighbourliness and co-operation would be required. States were not only bound by a moral obligation to assume responsibility for the consequences of any activities in which they engaged that caused harm to a neighbouring State; as was clear from the Secretariat’s survey (ST/LEG/15), they were also bound by legal principles of justice and equity to avoid transboundary harm resulting from lawful activities. The 1972 Convention on International Liability for Damage Caused by Space Objects⁸ clearly set out, in articles IX, XI and XIV, the procedure by which any damage caused should be made good. Of the many bilateral treaties on the subject, the Special Rapporteur had selected the 1909 Boundary Waters Treaty between the United States of America and the United Kingdom and the 1964 Finnish-Soviet Agreement concerning Frontier Watercourses, the contents of which he had summarized (A/CN.4/383 and Add.1, paras. 23-25). As the Special Rapporteur had noted, those treaties tended to show “that States attach equal significance to their freedom to undertake activities and to their freedom from transboundary interference” (*ibid.*, para. 25, *in fine*).

13. From the practice of States it could perhaps be inferred that the source State had a prior duty to notify the affected State or States of the occurrence or possible occurrence of danger or harm, since it was the source State which engaged in the activity and was able to foresee the possibility of danger or harm. Sometimes, however, the affected State might notify the source State, for example if the affected State was the more apprehensive of some impending harm or if it had advance information. In both cases, good faith and co-operation were essential. An investigation might follow to determine the apportionment of costs, which should, of course, be fair and reasonable. In the *Trail Smelter* arbitration, very complicated and expensive arrangements had been made to carry out the necessary investigation. Developing States, which were often the affected States, might be unable to meet or even share in the costs of such an arrangement, which could deter them from notifying the source State.

14. It was therefore necessary to devise appropriate criteria for the allocation of costs. More weight should be

given to abuses in use or enjoyment on the part of the source State than to the “benefit” that might accrue to the affected State if the danger of doing harm was removed as a consequence of investigation and settlement. The affected State gained nothing from such investigation or from any measures taken to avoid or mitigate the adverse consequences. For the affected State, freedom from transboundary harm was not a positive “benefit” and should not be taken into consideration in allocating costs. He therefore had some doubts about the evaluation and distribution of benefits and costs suggested by the Special Rapporteur (*ibid.*, paras. 29 and 31, *in fine*), and he trusted that those doubts could be dispelled.

15. As to the draft articles submitted, in his view only article 1 involved a matter of substance; article 2 covered use of terms and articles 3, 4 and 5 were in the nature of saving clauses. In general, he thought it would be preferable to place the articles that dealt with substantive matters at the beginning of the draft.

16. Initially, he had had some difficulty with the expression “territory or control” in article 1; in other contexts the expression sometimes used was “under the jurisdiction and control” of a State. He had, however, been convinced to a certain extent by the Special Rapporteur’s explanation in his report (*ibid.*, paras. 7-8). While he was still not entirely free from doubt, therefore, he believed that he could accept the Special Rapporteur’s three-point partial definition of “territory or control”.

17. Another source of doubt was the omission of the word “adversely” before “affecting the use or enjoyment”, in draft article 1. Although the Special Rapporteur had explained (*ibid.*, para. 47) that the proposed scope article was widely drawn, if the physical consequences involved did not adversely affect the use or enjoyment of areas within the territory or control of another State, there would be no question of international liability and hence no claim for settlement between the parties. In view of the Special Rapporteur’s further explanation in the penultimate sentence of paragraph 47, he wondered whether the word “affecting” could not be replaced by the words “likely to affect adversely”.

18. Lastly, the Special Rapporteur had stated (*ibid.*, para. 46) that the strength of the proposed articles lay in four main points. While the first three points were convincing, the fourth point, the theme of voluntarism, was perhaps a chimera of fact and law. In particular, in view of the opinion expressed in the last sentence of paragraph 6 and the last two sentences of paragraph 48 of the report, he wondered whether it would not be possible to reverse the argument and say that the draft articles should constitute “framework articles” or what the Special Rapporteur had referred to as “the general law”, leaving any gaps to be filled by bilateral agreements.

19. Sir Ian SINCLAIR said that his initial doubts about the apparently almost limitless scope of the topic had dissipated, at least partly, and he was able to see rather more clearly the outline of what the Special Rapporteur had in mind. The topic was very much one of the present and the future. As had rightly been observed, the innovative genius of scientists and the ever-improving expertise

⁸ See footnote 5 above.

of technologists were rapidly outstripping the regulatory and other techniques available to those who bore political responsibility. More and more activities were being undertaken within States, or within their jurisdiction or control, which, while not dangerous in themselves, had the potential to cause significant transboundary harm. Although the Commission was concerned only with transboundary effects, it should not neglect the broader considerations, to some of which Mr. Ushakov had drawn attention.

20. It was possible to start from the traditionalist approach, which held that international law made a clear distinction between the legal consequences of an internationally wrongful act, for which the State concerned was responsible, and the legal consequences, if any, of an act or activity not prohibited by international law, and to deny that there was any State responsibility or liability for the latter. While the logic of that argument was not easy to refute, it failed to take account of the growing demand for regulatory techniques that would go some way towards avoiding, minimizing and repairing transboundary harm resulting from non-prohibited activities. The wealth of material consulted by the Special Rapporteur provided sufficient evidence of the willingness of States to acknowledge and accept certain procedures for preventing and, where necessary, repairing transboundary harm arising out of activities within their territory or subject to their control.

21. The Special Rapporteur's fourth report (A/CN.4/373) clearly showed that the lineaments of the topic were becoming apparent. The Commission was concerned with activities within the territory or control of a State that gave rise or might give rise to physical consequences affecting the use or enjoyment of matters or things in another State. It was identifiable or foreseeable physical consequences which generated the rules or procedures that would follow. As he understood it, the Commission was not required to elaborate any additional rules about the wrongfulness of causing transboundary harm. On that point, he referred the Commission to the phrase "dynamics of the distillation process", used in the fourth report (*ibid.*, para. 24), which described very well what the Commission was trying to achieve. An adjustment or adaptation of the Commission's traditional techniques for preparing drafts would be required, and it would have to concentrate much more on the elaboration of suitable procedures and modalities than on drafting legal rules in the strict sense. As the very title of the topic indicated, the Commission would not have to deal with general rules of prohibition, but would be required to propose a framework instrument incorporating generally acceptable procedures for reducing the danger of transboundary harm.

22. In its task, the Commission could not take too strict a view of its own competence. The Special Rapporteur's thought-provoking remarks in his fourth report were particularly pertinent:

... In one sense, therefore, the question which underlies this topic is whether lawyers take so narrow a view of their discipline that they do not share the sense of responsibility of others who influence the behaviour of States, and wait until the latter have provided the materials from which general rules of prohibition may be discerned. (*Ibid.*, para. 38, *in fine.*)

23. The further development of the topic presented a considerable challenge to the Commission: it overlapped with the topic of international watercourses and was also highly relevant to the topic of State responsibility. But that did not cause him undue concern; as he saw it, the topic would develop into a residual framework instrument applicable to all activities having physical transboundary consequences which were not regulated or governed by other international instruments. The Special Rapporteur did not appear to have any intention of interfering with the conventional régimes regulating certain specific activities. In so far as they embodied rules establishing strict liability for certain dangerous activities, those rules would continue to apply in the relations between the States parties to agreements.

24. There was already a mosaic of differing régimes covering specific activities which had foreseeable injurious consequences for other States, and those régimes were tailored to the particular circumstances of the events with which they dealt. That was commendable, since the legal consequences of a particular activity could differ from case to case, calling in some cases for a régime of strict liability and in others for some form of risk-sharing. Clearly, the Commission should not make recommendations which would cut across and perhaps dilute the content of existing conventional régimes.

25. The course suggested by the Special Rapporteur would not have any such adverse effects. It might perhaps be fraught with risk, but given ingenuity and courage it should be possible to devise procedures to prevent and minimize transboundary harm. He did not underestimate the difficulties which the Commission would have to face in following the bold path set for it by the Special Rapporteur. In particular, he was concerned at the implicit assumption in the Special Rapporteur's approach that the source State was, if not responsible in the strict sense of the term, at least answerable for—or possibly required to assume some measure of quasi-vicarious liability for—the injurious transboundary consequences of activities carried on lawfully by private entities within its territory. That aspect of the matter should, in his view, be more fully investigated. Attributability to the State was a basic factor of the law of State responsibility and it could not be ignored in the present related field.

26. Referring to draft article 1, he suggested that the word "situations", which was unduly passive, should be replaced by the word "occurrences". The word "occurrences" would cover anticipated occurrences and hence most natural disasters, such as those mentioned by the Special Rapporteur in his fifth report (A/CN.4/383 and Add.1, para. 32). The word "situations" could give the impression that the source State might have certain duties even in cases where nothing had been done, or nothing had occurred or happened, within its territory. He also had some doubts about the expression "affecting the use or enjoyment of areas". Harmful transboundary effects could extend beyond areas; they could, for example, damage the health of populations in the affected State. He suggested that the Drafting Committee should be asked to find a broader expression to cover all possible harmful transboundary effects.

27. He would reserve his position on draft article 2; the definitions it contained were bound to be affected by subsequent decisions on the content of the draft. He had some doubts, however, about the definition of a "source State", because, particularly in cases of transboundary air pollution, it would be difficult to identify which of several States was the actual source State.

28. Article 3 was an absolutely essential provision and had rightly been placed early in the draft so as to make it amply clear that the régime established was a residual régime. Article 4 was equally necessary in order to preserve the operation of other rules of international law. He shared Mr. Reuter's doubts about the wisdom of including draft article 5.

29. Chief AKINJIDE said that he supported without reservation the view that the Commission should accept the challenge presented to it. He commended the Special Rapporteur for his penetrating analysis of the issues, and the Secretariat for its valuable contribution to the preparatory work. The topic was one which concerned all human beings, regardless of country or race. When a disaster occurred, the human element invariably came to the fore; the nationality or race of the victims was immaterial.

30. The Special Rapporteur had analysed the leading cases, such as the *Trail Smelter* arbitration, the *Cosmos 954* satellite case, the "*Fukuryu Maru*" case, the *Poplar River Project* case, the *Colorado River* case and the *Lake Lanoux* award (A/CN.4/373, paras. 25-52), as well as the cases concerning nuclear tests between Australia and New Zealand on the one hand, and France on the other. Those cases illustrated the modern aspects of the topic, with which a number of speakers, including Mr. Malek (1848th meeting), Mr. Ni and Mr. Ushakov, had dealt in detail.

31. For his part, he proposed to dwell on the interests of the developing countries of Africa, which were particularly concerned with the issues raised by the present topic. For Africa, because of its historical development, was affected more than any other continent by those issues. At the end of the last century, it had been divided into colonial spheres of influence and, as a result, with the coming of independence in the 1960s, many small States had emerged. Furthermore, tribes had been divided between States: for example, his own tribe had been split between Nigeria and Benin. A similar position obtained between Nigeria and Chad, and between Nigeria and Niger.

32. Because of the smallness of many African States, a number of rivers flowed from one country into another. An example was the Yuroro River between Nigeria and Niger, which fed Lake Sokoto; if that lake dried up, at least 50 per cent of the agriculture of Niger would be ruined, but there was no treaty or law to regulate the use of those river and lake waters. Again, because of climatic conditions in the Sahel region, cattle-breeding nomads in Niger had to cross the border into Nigeria for part of the year, so that their cattle could graze there. At other times, it was the cattle-breeding peoples of Nigeria who had to cross into Chad for the same reason. Boundaries

meant nothing to nomadic peoples, and in those circumstances it was possible for one State to take action which caused grave transboundary harm to another's livestock and could even ruin its economy.

33. To take an example from another area, much of the paper used in his country came from New Zealand and Australia; deforestation in the paper-pulp producing countries could thus quite possibly have transboundary effects. Offshore oil drilling in his own country and Cameroon could produce transboundary harm as a result of oil spills. He was not aware of any treaties or other international instruments covering those matters. Accordingly, the present work could go a long way towards protecting the various interests at stake, and he welcomed the Special Rapporteur's proposals.

34. With regard to the procedure to be adopted, he strongly urged that it should be simple, inexpensive and informal, so as to avoid placing the developing nations at a disadvantage. More important, there should be no statute of limitations, since the harmful effects of transboundary emanations could well remain unknown for a very long time. On no account should claims for reparation be barred by the lapse of any period of time.

35. The Special Rapporteur's proposals were intended to cover issues which affected the sea, the land, the air and outer space. It was worth noting, however, that only a very few States knew what was happening in outer space. Lastly, he pointed out that a source State could itself become an affected State as a result of the reaction of another State. In Africa, where States were often small, that point was particularly important and should be borne in mind when examining the definition of the term "source State".

Co-operation with other bodies

[Agenda item 10]

STATEMENT BY THE OBSERVER FOR THE INTER-AMERICAN JURIDICAL COMMITTEE

36. The CHAIRMAN invited Mr. Herrera Marcano, Observer for the Inter-American Juridical Committee, to address the Commission.

37. Mr. HERRERA MARCANO (Observer for the Inter-American Juridical Committee), referring to the visit of Mr. Reuter, Chairman of the thirty-fourth session of the Commission, to the Committee, said that his report on the work of the Commission, his participation in the Committee's discussions and the personal contacts he had made with its members had been of immense value.

38. Since the previous session of the Commission, the Committee had met twice, in August 1983 and January 1984. As the Committee's activities extended to both private international law and public international law, those two sessions had been characterized mainly by the desire to contribute to the success of the Third Inter-American Specialized Conference on Private International Law, which had been held at La Paz, Bolivia, in May 1984. On the basis of a draft submitted by one of its members, the Committee had adopted a draft convention which had in turn served as the basis for the Inter-

American Convention on the Legal Personality and Capacity of Juridical Persons in Private International Law, which had been adopted by the Conference. That Convention had concluded the work which had begun with the Inter-American Convention on Conflicts of Laws concerning Commercial Companies, adopted at Montevideo in 1979. The Convention open for signature at La Paz was not confined to regulating, between the parties, recognition of the existence and capacity of juridical persons in private law; it also extended to States and to public law corporations on the one hand, and to international organizations on the other. For juridical persons in the first category, the basic principle was that their existence and capacity were governed by the law of the place of their constitution, and that they were fully recognized by the States parties. The conditions in which such juridical persons could exercise the capacity accorded to them were also specified. Although the Convention related to private international law, it contained more substantive rules than rules on competence. With regard to public international law, it introduced recognition of the capacity of international organizations to act as juridical persons under private law, even if the State on whose territory they acted was not a member of the organization. For obvious reasons, the Convention did not extend to acts *jure imperii* of States, public institutions or international organizations, and it did not deal with problems relating to immunity from jurisdiction.

39. At its session in August 1983, the Committee had also responded to the request made to it by the General Assembly of OAS regarding the possibility of setting up machinery for appeals against decisions of the OAS Administrative Tribunal. Unlike the Administrative Tribunal of the United Nations and those of some specialized agencies, whose decisions could be appealed before the ICJ in certain cases, the Administrative Tribunal of OAS was a sole instance without appeal. On the basis of a report by one of its members, the Committee had proposed a procedure before an *ad hoc* chamber of the Tribunal and had specified the modalities. At the same session, the tenth Course in International Law had been given, which was organized by the Committee and at which several foreign ministers had lectured.

40. At its session in January 1984, the Committee had been mainly occupied in drafting an inter-American convention on conflicts of laws concerning the adoption of minors, on the basis of a text submitted by one of its members. The international regulation of that matter had become urgent as a result of the increase in international adoptions due to the lack of adoptable children in some countries, and the number of abandoned children in others. The situation was complicated by the great diversity of national laws. The Committee's draft was based on the principle of protection of the interests of the minor and was designed especially to guarantee the continuity and recognition of international adoption. With regard to the applicable law, the draft had adopted a harmonious system which combined the law of the domicile of the adoptive parents and the law of the habitual residence of the minor. The draft had served as a basis for discussion at the Third Inter-American Specialized Conference on Private International Law, which had led to the adoption of an

inter-American convention on the subject. The Conference had also adopted an Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad and the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, both of which had been based on drafts prepared by the Committee.

41. Also at its session in January 1984, the Committee had adopted a document, based on a draft by one of its members, which proposed that machinery be set up for the inspection of armaments and military forces. That document, which had been addressed to the Permanent Council of OAS, contained recommendations on the criteria for negotiation, qualitative and quantitative limitations on armaments, the limitation of military budgets and co-operation by arms manufacturers, and suggested concrete measures. Lastly, mention should also be made of a resolution by the Committee proposing the establishment of an international association of national societies for international law.

42. The items on the Committee's agenda for its forthcoming sessions were the following: the powers of the Secretary-General of OAS as depositary for a convention; the law of international peace and security, including definition and development of the principles governing relations between States in addition to those embodied in the Charter of OAS and in other inter-American instruments; the meaning of the word "aggression" in the context of article 9 of the Inter-American Treaty of Reciprocal Assistance; international judicial co-operation in criminal cases; the prohibition or restriction of the use of extremely cruel or indiscriminate weapons; inter-American co-operation to facilitate disaster relief; the principle of self-determination and its scope; the promotion, updating and development of means for the peaceful settlement of disputes; international maritime transport and international overland transport; measures to promote the access of non-self-governing territories to independence within the inter-American system; the right to information; the forms of development of the law of the environment; revision of the Committee's statute and rules of procedure; and revision of the inter-American conventions on industrial property.

43. Finally, he emphasized that the Committee wished to maintain and develop its relations with the Commission, in the interests of the work of both bodies, which, in the last analysis, contributed to co-operation and peace between nations.

44. The CHAIRMAN thanked the Observer for the Inter-American Juridical Committee for his most interesting statement. He had been greatly impressed by the broad range of subjects considered by the Committee and by the equally important programme of future work in the spheres of both private and public international law. The activities of the Committee had often been an inspiration to the Commission. In its work, the Committee had shown itself remarkably close to the realities of international life and to the requirements of international co-operation in the western hemisphere. It had thus set an admirable example to all those who worked in the same field.

45. He asked Mr. Herrera Marcano to convey to the

Committee the Commission's appreciation and its best wishes for future success. He also took that opportunity to express the Commission's gratitude to Mr. Reuter for representing it at the Committee's session. Lastly, he assured Mr. Herrera Marcano of the Commission's earnest wish for continuing co-operation with the Inter-American Juridical Committee.

46. Mr. DÍAZ GONZÁLEZ congratulated Mr. Herrera Marcano on his excellent statement. The members of the Commission were well aware of the work which the Committee was doing, not only in the sphere of inter-American relations, but also as a research body working on international law in general. It had often been said that Latin Americans were inclined to be too active in the legal field. That was explained by their heritage of two very strong cultural influences: on the one hand, the Graeco-Roman and Judaeo-Christian influence exerted through Spain, a country in which the law had played a primordial role, and on the other hand the cultural influence of France, another country much attached to legal rules, whose influence on the legislation of the Latin countries had been decisive. It was in the interests of the whole international community that the close co-operation established between the Committee and the Commission should continue.

47. Mr. BARBOZA thanked Mr. Herrera Marcano for his detailed statement on the Committee's activities, the extent of which should not surprise those who had followed its progress and knew how it honoured the legal tradition of Latin America.

48. Mr. REUTER asked Mr. Herrera Marcano to convey his gratitude to the Inter-American Juridical Committee for the welcome it had given him. The Committee differed from the Commission in that it held two sessions a year, had a permanent secretariat and concerned itself with both public and private international law. He took pleasure in emphasizing the family spirit which prevailed among its members.

49. Mr. MAHIOU, speaking on behalf of the African members of the Commission, thanked Mr. Herrera Marcano. His statement on the contribution of the Inter-American Juridical Committee to international law had shown the mutual interest of co-operation between the Committee and the Commission, both of which were trying to promote the rule of law, though sometimes by different means.

50. Mr. McCAFFREY, speaking also on behalf of the Western European members and Mr. Quentin-Baxter, expressed admiration for the fruitful and ambitious work of the Inter-American Juridical Committee. Like the Commission itself, the Committee provided an excellent example of what could be achieved by constructive co-operation between experts representing not only different cultural traditions, but also different legal systems. That remark was fully borne out by the Committee's past achievements and also by its programme of work, which covered the most important problems of the day in both public and private international law. The Commission had greatly benefited, both directly and indirectly, from the work of the Inter-American Juridical Committee.

The meeting rose at 1.10 p.m.

1850th MEETING

Thursday, 28 June 1984, at 10 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Balanda, Mr. Barboza, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Ushakov.

International liability for injurious consequences arising out of acts not prohibited by international law (*continued*) (A/CN.4/373, ¹A/CN.4/378, ²A/CN.4/383 and Add.1, ³A/CN.4/L.369, sect. H, ILC(XXXVI)/Conf. Room Doc.6, ST/LEG/15)

[Agenda item 7]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR
(*continued*)

ARTICLE 1 (Scope of the present articles)

ARTICLE 2 (Use of terms)

ARTICLE 3 (Relationship between the present articles and other international agreements)

ARTICLE 4 (Absence of effect upon other rules of international law) *and*

ARTICLE 5 (Cases not within the scope of the present articles) ⁴ (*continued*)

1. Mr. SUCHARITKUL recalled that, when he had spoken on the Special Rapporteur's fourth report (A/CN.4/373) at the previous session, he had concurred with the approach adopted by the Special Rapporteur. ⁵ As the representative of his country in the Sixth Committee of the General Assembly at its thirty-eighth session, he had expressed similar views and had supported the Special Rapporteur's schematic outline. ⁶ He was therefore pleased to see that there appeared to be growing support for the topic under consideration.

2. The Special Rapporteur's fifth report (A/CN.4/383 and Add.1) contained general provisions in the form of draft articles 1 to 5. As it now stood, draft article 1 afforded a very satisfactory working basis for further discussion. It contained many useful elements, such as the reference to "activities and situations", which adequately covered all possibilities. The reference to the

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ *Idem*.

⁴ For the texts, see 1848th meeting, para. 3.

⁵ *Yearbook ... 1983*, vol. I, p. 266, 1801st meeting, paras. 1-6.

⁶ See *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 36th meeting, para. 59.