times of the year flowed into Lake Constance and into the Rhine, something that had, in the view of the Special Rapporteur, now been recognized for more than half a century.

The Special Rapporteur's second suggestion concerned the inclusion of unrelated groundwater. While noting the importance of the confined groundwater, the Special Rapporteur refers to the existing dependence on groundwater in such diverse areas as Scandinavia and North Africa and the increasing demand due to population growth and industrial use; thus making the case for the elaboration of rules beyond debate. He also refers to calls for such action from the Water Conference held in Mar de Plata in 1977, the interregional meeting in Dakar in 1982 and from elsewhere underscored the timeliness of the issues. According to him the only question that could be debated was whether the Commission should cover such waters in its current exercise or should initiate a new exercise to respond to the need. In his view, the Commission should undoubtedly do so at the current exercise. In his view, the two most detailed efforts to elaborate rules for groundwater in general were the 1986 Seoul Rules on International Groundwater elaborated by the International Law Association and the 1989 Bellagio Draft Treaty on Transboundary Waters—a model bilateral agreement. There were also bilateral and regional arrangements to which reference was made in the annex to the second report. A detailed study of those instruments, as pointed out by the Special Rapporteur, revealed no rule applicable to related confined groundwater that was not applicable to unrelated confined groundwater and no rule applicable to the latter that was not applicable to the former.

The third suggestion proposed by the Special Rapporteur related to notice. Article 12 established an obligation on the part of a State that intended to implement or permitted the implementation of planned measures which might have an adverse effect on other watercourse States to provide them with "timely notification" and Articles 13, 14, 15 and 16 contained the outline for the process. It is pointed out that the problems with the regime contained in those articles was that it did not provide a notifying State with protection from potential harms caused by the failure of notified State to respond. Further, whereas failure to respond should not diminish the responsibility of the notifying State, neither should it increase that responsibility nor create an undue burden for the notifying State. Considering these, the new paragraph (b) in Article 16 was an attempt to safeguard the notifying State from damage flowing exclusively from the failure of the notified State to respond.

In the view of the Special Rapporteur the definitional aspects of Article 21 could have been dealt within the ambit of definitions in Article 2. Leaving this to the discretion of the Drafting Committee, he proposed to add the word "energy" in paragraph 3 of Article 21 while outlining the possible areas of pollution. By way of an example, he referred to a scheme devised by Consolidated Edison to pump water from the Hudson River in the New York State to the top of the abuting palisade during off-peak periods of use and then to generate power during peak periods by allowing the water to fall back into the Hudson River. Although there had been no loss of water from the river, and no substance had been added to the water, the ecology of the stream had been adversely affected because the water returned to the river had been significantly warmer.

The Special Rapporteur's fifth suggestion concerned dispute settlement. The Commission could not, in his view, propose articles which depended on cooperation between States without making provision for resolving differences that would inevitably ensue. He also referred to the joint management arrangements which were, however, not accepted by the Commission. In his comments he had reffered to the Bellagio Groundwater Treaty which had proved indispensable in solving most of the water-related problems that had arisen between the United States and Canada and between the United States and Mexico. He also noted that not all regions enjoyed the fraternal relations that existed between the States Parties to the Bellagio Treaty. He preferred the proposal by the previous Special Rapporteur, Mr. McCaffrey under which arbitration or judicial settlement would be made binding and would not be dependent on the agreement of the parties. He also drew some inspiration from the municipal law arena, particularly the Inter-State Water Disputes Act of 1956 whereby the Government of India was empowered to establish a tribunal if a negotiated settlement among States in its federal system proved impossible. While referring to his proposal in the Report, the Special Rapporteur hoped that the discussion in the plenary would indicate where the centre of gravity lay as between Mr. McCaffrey's proposal and his own.

The major part of the Commission's discussion was concerning "unrelated confined groundwater". There were also different shades of opinions as regards the definition of "common terminus". References were made by the members both to the report and the annex where the question of "unrelated confined groundwater" was discussed elaborately by the Special Rapporteur. In the view of some members the distinction between "confined" and "unconfined" groundwater was essential and must be maintained if the word "*aquifer*" was used. According to the

Special Rapporteur, "*aquifer*" means a substance, water-bearing geologic formation from which significant quantity of water may be extracted, and the waters therein contained. This definition, according to some members, gave rise to the impression that the *aquifer* essentially concerned with only "confined groundwater". Members found that the provisions to regulate the totally independent systems of confined groundwater and *aquifer* posed certain unique problems. There was a general argument as regards the need to require States to cooperate in order to regulate the uses of groundwater when they are situated below international borders. Considering these viewpoints some members had proposed a complete framework Convention or overall model of all water resources in an integrated manner. In the view of certain other members the need for general acceptability of the draft proposal to include provisions on unrelated confined groundwater should be thoroughly examined.

The idea proposed by the Special Rapporteur to delete the notion of "common terminus" did not get complete support. While substantiating his arguments, the Special Rapporteur had illustrated many more examples of rivers where the term "common terminus" was inapplicable. For example, the Irrawaddy River in Myanmar separated into a number of streams, some of which reached the sea over 300 kilometers away from the point where the others terminated. The Ganges, the Mekong and to a lesser extent the Nile, ran into a number of streams that reached the sea at great distances from one another, some as many as 250 kilometers away. They were each unitary systems, but did not have a common terminus.

Some members were critical about the dispute settlement mechanisms as provided in Article 33. Paragraph 2(c) of the article had provided that where neither fact-finding nor conciliation had resolved the dispute, "any of the parties may submit the dispute to binding arbitration by any permanent or *ad hoc* tribunal that has been accepted by all the parties to the dispute". Some members had referred to the "uncertainty" factors existing in the arbitration mechanism where there was no *compromis d'arbitrage*, in other words, an agreement defining the issue to be litigated. In order to overcome some of these uncertainties, some members had suggested an additional clause to Article 33 to supplement the initial agreement to arbitrate by a clear commitment by the parties to the new Convention that it should be read as an agreement to refer all disputes arising from the interpretation or application of the new Convention to the arbitral process. In addition, some members had also proposed the insertion of an additional provision for a referral of a dispute to the International Court of Justice

for a judicial settlement. However, there were some difficulties concerning "voluntary acceptance of jurisdiction". In order to overcome this problem, some members had seen the need for another provision to the effect that States Parties could express reservations on the jurisdiction of the International Court of Justice. In that way, it was felt, the draft articles would command broad acceptance.

Having considered the various strands of opinions existing within the Commission, it would be appropriate now to examine briefly the draft articles from the point of view of Asian-African States, with the available information. First, Drafting Committee to which the draft articles were referred had retained the texts as recommended with the exception of a few minor changes, based on suggestions made by the Special Rapporteur in his second report. Secondly, as pointed out by the Chairman of the Drafting Committee, the Committee had examined on second reading Article 5 and Article 7 which had been left pending, as well as all the articles that the Commission had referred to it at the current session, namely Articles 11 to 32 and the new Article 33 proposed by the Special Rapporteur to deal with the settlement of disputes. Lastly, in accordance with the mandate entrusted to it by the Commission, the Drafting Committee had adopted a draft resolution in which it suggested how the Commission should proceed if it should decide to deal with the confined groundwater in the draft articles.

The AALCC Secretariat concurs with the view of the Drafting Committee to retain the phrase "flowing into a common terminus". This term is qualified by the term "normally" in order to make it clear that there were cases to which this requirement did not apply. The retention of the phrase "common terminus" is crucial for Asian-African States as it involves the whole question of determining the limits of "watercourse". This outlining of limits has a direct impact on the activities undertaken in relation to a river. In the view of the AALCC Secretariat the Drafting Committee was correct when it stated that "the common terminus" requirement did not mean that the watercourse must terminate at a precise geographic location. There was, however, no unanimity in accepting this proposition within the Commission. For instance, it was pointed out that the inclusion of the word "normally" would broaden the scope of the draft articles to such an extent that a smaller country' entire territory might be covered. That, according to one member, would make the draft less acceptable to "States". Some other members had also pointed out that the expresson "common terminus" was inaccurate in hydrological terms. Article 2 was finally adopted on the understanding that watercourses such as Danube and

Rhine would not form one large system but would retain their existence as two separate systems.

Article 5 which incorporates a customary norm relating to law of international rivers, namely, "equitable and resonable utilization and participation" was adopted by the Drafting Committee without any change.Nevertheless, there was no agreement on the use of the term "optimal utilization" in paragraph 1, which according to one member seemed to impose an obligation on States to work to achieve optimal utilization with a view to squeezing the last drop of use out of a watercourse. It was felt that the term "sustainable" would be better as it reflected the new approach taken by States to the use of natural resources. This change was not supported on the ground that it would destroy the balance of the article. There was separate provision in Article 24 which referred to "planning the sustainable development of an international watercourse". Several members while agreeing with this view pointed out that "optimal utilization" did not necessarily mean "maximum utilization". Accordingly, after due deliberations, Article 5 was adopted without any change on the understanding that a reference to sustainable development would be made in the commentary. The AALCC Secretariat concurs with this viewpoint.

Article 6 outlines the "factors relevant to equitable and reasonable utilization". The Drafting Committee added a factor to the list of factors in paragraph 1: the dependency of the population on the watercourse, as an element which watercourse States must take into account to ensure that their conduct was in conformity with the obligation of equitable utilization contained in Article 5. In its view, the concept of dependency was both quantitative and qualitative in that both the size of the population dependent on the watercourse and the extent of its dependence were to be taken into account. This factor was accepted in an amended form to read: "the population dependent on the watercourse in each watercourse State". The AALCC Secretariat finds this addition acceptable and feels that it would enhance the utility of the article.

The Draft Committee had noted that there were opinions which had sought the deletion of Article 7 on the grond that the principle of "equitable and reasonable utilization" provided sufficient protection and incorporated the obligation not to cause "significant harm". However, it was pointed out that despite the existence of the concept of "reasonable and equitable utilization", the watercourse States should not be relieved from the specific obligation not to cause significant harm to other watercourse States. It is also important to note that the matter of utilization and development is related to the life of a vast number of the population living alongside the

watercourse having indigenous and local character. In view of this, due importance could be given to inter-governmental agreement. Considering the examples outlined in the commentaries the AALCC Secretariat finds that there could be situations which may need specific mention so as not to cause significant harm. It is rather difficult to outline such possibilities. Flexibility in defining such situations would be helpful. The proposition of an adequate consultation would be welcome. Some members, however, felt that Article 7 as proposed only obliges a State to make an effort to prevent the occurrance of significant harm; if that effort was not made, the obligation was breached, even before any result had occurred. The effort must fit the "technical and scientific standards commonly accepted by the States". The Commission had to undertake at this stage a fairly long debate on the substantive aspects of the word "significant" and "due diligence". The implication of any reformulation was also discussed. There were some members who preferred the deletion of this article as it was unclear. Finally, it was adopted on the understanding that the views of the members would be reflected adequately in the summary record.

Articles 8 to 31 were adopted by the Commission without any major modification. Article 16 which dealt with "absence of reply to notification", in the view of the Drafting Committee, took some account of the possible hardship caused to the notifying State and to provide an incentive for the notified State to reply to the notification so as to encourage that State to seek solution to problems of conflicting uses consistent with equitable and optimal utilization of watercourses and to protect the interests of the notifying State. It had, therefore, included in Article 16 paragraph 2 which provided that any claim to compensation by a notified State which had failed to reply within the period prescribed by Article 13 might be offset by the costs incurred by the notifying State for action undertaken after the lapse of such period which would not have been undertaken if the notified State had reacted in a timely fashion. Accordingly, as pointed out by the Drafting Committee, the tardy reaction of the notified State would result in the amount to which it was entitled by way of compensation for any damage it had suffered being reduced by the amount of any cost incurred by the notifying State due to the lack of timely response.

Article 32 concerning "non-discrimination" provides "for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse". It also further provides that these persons should not be discriminated on the basis of

nationality or place where the injury occurred, in granting to such persons in accordance with its legal system access to judicial or other procedures or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on under its jurisdiction. In the view of Drafting Committee, the opening phrase, reading that unless the watercourse States concerned have agreed otherwise, preserved the freedom of the watercourse States to agree on different arrangements such as resort to diplomatic channels. Nevertheless, one member of the Drafting Committee had found the article as a whole unacceptable on the ground that the draft article dealt with relations between States and should not extend into the field of actions by natural or legal persons under domestic law. In his opinion, the article dealt inadequately and possibly in a misleading way with the complex problem of private remedies in the context of international law.

The AALCC Secretariat endorses, at the outset, the procedures envisaged in Article 32. It has however, been pointed out that it would be inappropriate to give access to foreigners in the national legal systems without realizing its full implications. To that extent, the AALCC Secretariat finds the minority view of one of the Commission members acceptable. Nevertheless, Article 32 creates enough space for the States to take necessary action through their diplomatic and other channels. Legal remedy to a real sufferer in any system of law should be welcome. It is important to note that a legal system has its own balancing methods to regulate the misuse of such concessions. Such situations are difficult to envisage in the systems of many developing countries.

Article 33 deals with the "settlement of disputes". It provides a basic rule for the settlement of watercourse disputes. The provisions of this article are applicable in cases where the Watercourse States concerned do not have an applicable agreement for the settlement of disputes. First, it obliges watercourse States to enter into consultations and negotiations in the event of a dispute arising concerning a question of fact or the interpretation or application of the present articles. It is one of the unique features of this provision that it provides for the increasing utilization of joint watercourse institutions established by the concerned States while carrying out such consultations and negotiations. These consultations and negotiations should be conducted in good faith and in a meaningful way that could lead to an equitable solution of the dispute. This is a well established principle of international law. Secondly, it sets forth the right of any watercourse State concerned to request the establishment of a fact-finding commission. According to the Commission the purpose of

this provision is to facilitate the resolution of disputes through the objective knowledge of facts. This provision, in the view of AALCC Secretariat, has far-reaching implications. It is uncertain as to how objectively the fact-finding commission can work, particularly while dealing with very sensitive issues. Some States may find it difficult to endorse the constitution of fact-finding missions as its findings may pose problems in the amicable resolution of disputes. The composition of the fact-finding Commission needs to be commented upon. It is composed of one member nominated by each State concerned and in addition a member not having the nationality of any of the States concerned, but chosen by the nominated members shall serve as Chairman. Fact-finding, in a sense, is a highly subjective affair. Nominated members may have problems with the objective assessment of available data. In such instances, it is the Chairman who will be a major deciding factor. Considering the importance of the Chairman, States concerned may not agree with the choice of the Chairman in a given case. However, consultations and negotiations may help in clearing such problems. Nevertheless, it is important to note that the fact-finding commissions are very useful, particularly when the dispute mainly involves a crucial aspect of fact and law. Some of the difficulties mentioned above could be overcome through specific mandate of the fact-finding commission itself.

The next stage in the settlement of disputes deals with the resolution of problems in constituting the fact-finding commission itself. The provision gives the nominated members a period of four months after the establishment of the Commission to agree on a Chairman. If they fail to agree on a Chairman, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairman. The rule also provides for any of the parties to the dispute to request the Secretary-General of the United Nations to appoint a single member Commission if any of the parties fails, within four months, to nominate a member. The person to be appointed may not be a national of any of the States concerned. These provisions, it may be noted, are intended to avoid the dispute settlement mechanisms being frustrated by the lack of cooperation of one of the parties. Furthermore, there is also a provision which obliges all the watercourse States concerned to provide the Commission with the information it may require.

This article also sets out a rule for the submission of the dispute to arbitration or judicial settlement. It is provided: "If, after twelve months from the initial request for fact-finding mediation or conciliation commission has been established, six months after receipt of a report from the

Commission, whichever is later, the States concerned have been unable to settle the dispute, they may by agreement submit the dispute to arbitration or judicial settlement". In order to encourage the acceptability of the dispute settlement mechanism, it is provided in the commentaries certain exceptions to the criteria of jurisdiction. It is stated "in the event that there are more than two watercourse States Parties to a dispute and some but not all of those States have agreed to submit the dispute to a tribunal or the International Court of Justice. It is to be understood that the rights of the other watercourse States who have not yet agreed to the referral of the dispute to the tribunal or the International Court of Justice. It is to be understood that the rights of the other watercourse States who have not yet agreed to the referral of the dispute to the tribunal or the International Court of Justice cannot be affected by the decision of that tribunal or the International Court of Justice."

Some members sought to show certain contradictions in the terminologies. For instance, it was pointed out that the meaning was obscure in the phrase "any of them may... submit" and suggested the idea of a unilateral application, whereas the phrase "subject to the agreement of the States concerned" suggested referral by way of a *compromis*. In the view of the Special Rapporteur, he had intended the phrase to cover several possible cases: a special or *ad hoc* agreement, an agreement within the framework of a watercourse agreement, the case in which the States concerned were parties to an agreement for the peaceful settlement of disputes covering, *inter alia*, that type of problem or the case in which the States concerned had individually accepted the jurisdiction of the International Court of Justice. It should be noted that the Special Rapporteur had proposed this article with a view to providing for the better functioning of the Convention. As already stated, the Commission while sharing this view considered that the proposed dispute settlement mechanism should be simple and realistic and should not depart from the overall tone of the draft which was based on consent and cooperation among riparian States. Furthermore, the dispute settlement mechanism should have room for some different procedures of settlements taking into account regional conditions without imposing a series of fixed procedures.

It is necessary to briefly deal with the resolution adopted by the Commission while concluding its meeting, particularly concerning unrelated confined groundwaters. The resolution recognized that confined groundwater, that is groundwater not related to an international watercourse, was also a natural resource of vital importance for sustaining life, health and the

integrity of ecosystems. It also recognized the need for continuing efforts to elaborate rules pertaining to confined transboundary groundwater and expressed its view that the principles contained in its draft articles on the law of non-navigational uses of watercourses may be applied to transboundary confined groundwater; it recommended States to be guided by the said principles, where appropriate, in regulating transboundary groundwater; it further recommended States to consider entering into agreements with the other State or States in which the confined transboundary groundwater was located; it recommended also that in the event of any dispute involving transboundary confined groundwater, the States concerned should consider resolving such dispute in accordance with the provisions contained in Article 33 of the draft articles, or in such other manner as may be agreed upon.

Several members of the Commission had felt that the confined groundwater needed more indepth study. The Special Rapporteur while responding to this question pointed out that he had submitted a study at the current session on the question of the feasibility of including confined groundwater in the draft articles. The subsequent discussion in the Commission, he noted, showed that there were three broad threads of opinion, such as (a) that the draft articles as a whole should be expressly extended to cover confined groundwater; (b) that confined groundwater should not be included within the scope of the draft articles; and (c) that a provision should be incorporated in the draft articles providing that the principles embodied in them would apply *mutatis mutandis* to confined groundwater. In the view of AALCC Secretariat the resolution balances all these views and also does not foreclose the possibility of a future detailed study on this topic. The Secretariat endorses the views of the Commission that the work on this specific topic simply reflects the current level of knowledge of the members of the Commission on the question. Nevertheless, it offers a useful frame of reference to States for the management of confined transboundary groundwater to which the obligations, *inter alia* not to pollute, not to cause harm, and to exercise due diligence in joint and equitable utilization could be applied.

With these views the Commission adopted on second reading the draft articles on the Law of the Non-Navigational Uses of International Watercourses on the understanding that it would decide at a later stage on the recommendation to be addressed to the General Assembly concerning the follow-up action on the draft articles. The Commission also expressed its deep appreciation and warm congratulations to the Special Rapporteur for his outstanding contribution.

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

Introducing his tenth report at the Forty-sixth Session of the Commission, the Special Rapporteur, Mr. Julio Barboza recalled that the International Law Commission had at its forty-fourth session, *inter alia*, decided that the draft articles on "International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law" should deal first with preventive measures in respect of activities creating a risk of causing transboundary harm and then with the necessary remedial measures when such activities have caused transboundary harm. Once the Commission has completed consideration of the proposed articles on these two aspects of activities having a risk of transboundary harm, it will then decide on the next stage of the work.

The Special Rapporteur expressed the view that once the Commission had completed the consideration of the issue of prevention in the context of the response measures that he had proposed in the second chapter of his report the Commission would need to examine the "two types of liability viz. State Liability for the failure to fulfil obligations of prevention, which constitutes liability for a wrongful act, and the liability in principle of the private operator" i.e. Civil Liability. The Commission in the view of the Special Rapporteur, would also need to consider the relationship between the two types of liability as well as the provisions common to them. Apart from considering these issues the Special Rapporteur also dealt with the issue of "the available *procedural means of enforcing liability*".[1]

The Special Rapporteur, Mr. Julio Barboza, proposed to employ the term "*response measures*" in referring to prevention *ex post facto* since such measures cannot factually and methodologically be dealt with within the sphere of reparation. In doing so, he recalled that several members of the Commission had, during the Forty-fifth Sesson, expressed the view that prevention *ex post* or, to put it differently, measures adopted after the event to prevent or minimize transboundary harmful effects, should not be regarded as preventive measures, as the latter (i.e. preventive measures) always came before the event and not after. Although the Drafting Committee had at the previous session opted for the approach advocated by some members and hence draft article 14 had dealt only with prevention *ex ante*, or measures to prevent incidents, the Special

1. See A/CN.4/459.

Rapporteur, however believed that what had been identified as "prevention *ex post*" is nonetheless not reparation and therefore cannot be included in the chapter on reparation without making a methodological error. In his view, prevention involves two different things— (i) the incident itself; and (ii) the damage it might cause. The *ex post* preventive measures to which he referred are taken *after* the occurrence of an incident but *before* all the damage had materialized. The objective of such *ex post* measures was to control, or intercept, the chain of events that had been set in motion by an accident and resulted in damage or harm. Consequently, it was not possible to deal with them as part of reparation because while harm is a legal concept "it represents actual events."

The Special Rapporteur argued that in the context of the pollution of an international watercourse, measures which could be regarded as rehabilitative in the State of origin could be of a preventive nature in the context of transboundary harm. He referred to several international instruments dealing with prevention of environmental harm or with civil liability regimes where measures were identified as *preventive*. He therefore proposed the inclusion of the following definition of the term "response measures" in Article 2 of the draft articles:

> "Response measures means any reasonable measure taken by any person in relation to a particular incident to prevent or minimize transboundary harm".

Having thus dealt with the question of prevention both *ex ante* and *ex post* in Part III of his tenth report the Special Rapporteur dealt with the issue of State Liability. In his oral presentation he stated *inter alia* in this regard that the first question to be addressed was whether there was some form of strict State liability for transboundary harm or damage. He expressed the view that there could be such (State) liability for transboundary damage and that it could be incurred if all else failed. He pointed out in this regard that although the late Professor Quentin Baxter had also taken a similar view, State practice had not followed that trend but had opted for stipulating the civil liability of the operator. The only instrument, it was emphasized in this regard, that had provided for the "absolute" liability of the State was the Convention on International Liability for Damage caused by Space Objects mainly because at the time of its negotiation and adoption States had regarded space activities as their exclusive concern.

Emphasizing the advantages presented by the civil liability channel the Special Rapporteur stated that compensation of the victims of

transboundary harm was determined by a court, through due process of law so that victims did not have to rely on the discretion of the affected State which might not, for political reasons, take action. It was pointed out that the State of origin did not need to respond to the action of private persons before the municipal courts of another State. It may be mentioned that civil liability is always strict liability and it is in hazardous activities that the application of this form of no-fault liability has its origin. There are two legal principles which cannot be discarded merely because the operator is in one country and the victim in another. The person who created the risk and profited from the hazardous activity must be liable for its injurious consequences and it would be in-equitable to place the onus on the victim. The draft articles proposed to be elaborated could provide the instrument or device on which the strict (no-fault) liability of the operator could be based.

Addressing himself to the question whether the State under whose jurisdiction or control the activity which had caused harm, should share in the operator's liability, the Special Rapporteur stated that a survey of State practice revealed divergent possibilities. A State could have no liability for transboundary damage caused by accidents (*force majeure*); the operator would have strict liability for damage caused and the State would have to furnish the funds for that portion of the compensation which was or could not be satisfied by private operator or his insurance. A third possibility was where the operator would have the *primary strict liability* for the damage caused while the State would have secondary, or rather, residual responsibility for that portion of the compensation which was not satisfied by the operator, provided that the damage would not have occurred if the State had not failed to comply with one or more of its obligations. A fourth scenario was one where the State bore both strict liability and responsibility for a wrongful act depending on where the harm occurred as in the Convention on International Liability for Damage Caused by Space Objects. He pointed out in this regard that both the Commission and the Sixth Committee had in the past expressed their preference for a subsidiary liability of the State. He argued that it would be simplest not to impose any form of strict liability on the State and to draw the sharpest possible distinction between its liability for its failure to fulfil its obligations (liability for wrongful acts) and strict liability for harm caused by incidents resulting from the risk involved in the activity in question. Liability would be incurred in any case by the liable private party and possibly—by a group of liable parties. The advantage of this system would be to simplify the relationship between State liability and