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Chairman: Mr. Baja . . . . . (Philippines)

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The meeting was called to order at 10.05 a.m.

Agenda item 152: Report of the International Law Commission on the work of its fifty-fifth session (*continued*) (A/58/10)

1. **Ms. Swords** (Canada), referring to the topic of the responsibility of international organizations, observed that in 2004 the International Law Commission would address questions relating to the attribution of conduct. Certain parallel issues relating to attribution of conduct to States were dealt with in articles 4 to 11 of the draft articles on responsibility of States for internationally wrongful acts. The Commission had requested the views of Governments on three specific questions. The first was whether a general rule on attribution of conduct to international organizations should include a reference to the "rules of the organization". Draft article 4, in addressing the acts of "State organs", referred to the internal law of the State in question. Following the same logic, it might well be necessary to include a reference to the "rules of the organization" in the case of organs or other equivalent entities of an international organization.

2. With regard to the second question, Canada regarded as adequate the definition of "rules of the organization" contained in article 2, paragraph 1 (j), of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. According to that paragraph, "rules of the organization" meant "in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization". However, it should be made clear that if the Commission followed the framework of the draft articles on responsibility of States for internationally wrongful acts and referred to the organs of an organization and the rules by which they were established, it would also have to address issues relating to the attribution of responsibility for action not contemplated in those rules. The Commission would have to address issues relating to acts undertaken on behalf of international organizations by persons or actors other than organs and acts performed in excess of authority.

3. Concerning the extent to which the conduct of peacekeeping forces was attributable to the contributing State and the extent to which it was attributable to the United Nations, Canada considered that that would depend on the circumstances of the case and the arrangements made between the United Nations and the contributing State. The United Nations might consider the personnel provided by Member States to be experts performing missions for the United Nations as defined in the 1946 Convention on the Privileges and Immunities of the United Nations. In that case, it would appear logical to attribute responsibility for their actions to the United Nations. However, in other cases it might be clear that national contingents were acting on behalf of the sending State. A key issue to be considered in that regard was the extent to which the United Nations controlled the conduct of the individuals in question, particularly since the context was different from that envisaged in article 8 of the draft articles on responsibility of States for internationally wrongful acts.

4. **Mr. Mezeme Mba** (Gabon), replying to the Commission's questions concerning the issue of attribution of conduct and, more specifically, whether it was possible to refer to the "rules of the organization" by analogy with the concept of internal law referred to in the draft articles on State responsibility, said that his country would consider it appropriate to establish a parallel between the internal law of States and the "internal law" of international organizations. The former consisted of the legislation and regulations constituting the legal order of States and similarly, the internal law of international organizations consisted of the texts establishing the rules governing their organization and functioning. However, the definition of "rules of the organization" contained in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was not satisfactory, since in matters involving responsibility it was desirable to have the widest possible sphere of application. The term "constituent instrument" used in the Vienna Convention was limitative and might lead to confusion, since it was only one of the forms that the treaty establishing an international organization could take. It would be preferable to use a more general formula that specifically mentioned the operating rules of the organization.

5. With regard to the extent to which the conduct of peacekeeping forces was attributable to the United Nations, that situation was comparable to the one provided for in article 8 of the draft articles on State

responsibility concerning the attribution to a State of the conduct of organs placed at its disposal by another State. However, that solution would appear to be unsatisfactory, since a clear distinction must be drawn between the conduct engaged in by peacekeeping personnel in connection with their mission, on the one hand, and in their private lives, on the other. In the first case, the United Nations could incur responsibility whereas in the second the responsibility would lie with the contributing State, although the latter could bring an action against the author of the harmful conduct. However, the latter question fell within the sphere of internal law. In that connection, the Commission could also draw upon the responsibility regime established in the agreements between the United Nations and contributing States.

6. The draft articles on responsibility of international organizations, which were based on the earlier work on State responsibility, covered only responsibility for acts that were wrongful under international law and did not require the existence of any damage. He wondered whether the Commission was envisaging the possibility of carrying out a study on the liability of international organizations for acts not prohibited under international law. With regard to draft article 1, he was pleased that paragraph 2 enlarged the scope of the State responsibility regime to include responsibility deriving from acts attributable to an international organization, since that would help to fill gaps in the draft articles on State responsibility. With regard to draft article 2, the definition of an international organization was debatable, since it was based on three criteria: the organization had to be established by a treaty or other international instrument, it had to possess its own international legal personality and its members had to be States or other entities. In principle, it was the treaty establishing an international organization that endowed it with international legal personality and empowered it to perform acts distinct from those of its component entities. Furthermore, it would be difficult to establish formal rules regulating recognition of the international legal personality of a specific organization. Consequently, the reference to the criterion of international legal personality was superfluous and could unnecessarily complicate the definition of the rules governing the responsibility of international organizations. Lastly, the term “entities” was vague and imprecise and should be defined in an unambiguous manner. Draft article 3 met with the full approval of his delegation.

7. Concerning chapter XI of the report, Gabon was opposed to limiting in advance and *in abstracto* the length of reports of Special Rapporteurs and of the Commission itself. With regard to the relations between the Commission and the Sixth Committee, their satisfactory quality was clear from chapters II and III of the report, dealing respectively with the work of the Commission at its fifty-fifth session and the issues on which the comments of Governments would be of particular interest. In that connection, he emphasized the need for delegations to provide the Commission with the fullest and clearest possible information on the issues raised.

8. **Mr. Wood** (United Kingdom) said he fully supported the statement made the previous day on behalf of the European Union on the topic of responsibility of international organizations. It was very important that the Commission should take full account of the practice and concerns of all types of international organization; the European institutions had much to offer in that regard. The draft articles on State responsibility, which paralleled those on which the Commission was currently working, had occupied the latter for decades, even though they referred to the State, a clear and uniform concept in international law, and despite the existence of many studies on the topic. The current topic, on the other hand, related to a category of international persons — international organizations — which were infinitely varied in their functions and powers, in their status, rights and obligations, and in their relationships with members and others. Moreover, it was an area where practice, case law and specialized studies were relatively sparse. Given that background, the Commission should first gather and study such materials as existed across the whole field to be found in the legal branches of the secretariats of the United Nations, the specialized agencies, the international financial institutions and other global and regional institutions, including, for example, the European Community, as well as material available from States and academic circles. Once that had been done, it would be possible to identify the areas ripe for codification or for further study. More thought should be given to the topic, and in that connection it would be helpful to review all sections of the articles on State responsibility and see the magnitude of the issues arising in the current context,

rather than simply reproducing the corresponding articles with the usual word changes.

9. The Commission had asked States three specific questions relating to the attribution of conduct, which were not easy to answer. Assuming that the concept of an "organ of an international organization" was central, he wondered how such an organ would be defined and whether the definition would include any person or entity having the status of organ in accordance with the "rules of the organization". There were obvious differences between the internal law of the State and the rules of an organization, since the organization might not, for example, have any body empowered to change or interpret the rules. The question also arose as to who should decide whether an entity was an organ for the purposes of the articles should a difference of opinion arise in that connection. As to the third question, the term "peacekeeping forces" covered different types of force operating in different relationships with very different organizations which might have widely differing mandates, powers and structures. Furthermore, there was often a specific agreement between the organization and the contributing State setting out the basic relationships of the parties.

10. Lastly, with regard to the three draft articles adopted thus far, article 1 made it clear that the Commission intended to cover not only the responsibility of international organizations but also the responsibility of States for the conduct of such organizations. That was clearly an important issue that had been left pending during the work on the topic of State responsibility. However, given the differences between the two issues, it was doubtful whether it could be studied in the current context. With regard to article 2, he was not convinced of the utility of departing from the very simple definition of "international organization" contained in previous codification exercises. Lastly, article 3 was straightforward and uncontentious but should not lead to the conclusion that the articles on State responsibility could easily be adapted to a very different field such as the responsibility of international organizations.

11. **Ms. Telalian** (Greece) observed that the topic of responsibility of international organizations was a sequel to the draft articles on responsibility of States for internationally wrongful acts and the rules governing responsibility of States might apply, with the necessary modifications, to international organizations. Concerning the draft articles dealing with the scope and general principles of the topic, the Commission was proposing a new definition of "international organizations" which was based neither on the existence of a treaty-based constituent instrument nor on the intergovernmental character of the organization and reflected current reality in that international organizations were also established by instruments which were legally or politically binding and had a mixed membership including both States and non-State entities. The other important element of the definition was the legal personality of the international organization, which should be distinct from that of its member States. That factor was reflected in the wording "possessing its own international legal personality" used in article 2. She noted with satisfaction that the Special Rapporteur had not only elaborated on the separate legal personality of international organizations but had also addressed many other questions, such as whether the organization was to be regarded as having acted as the agent of its members. If so, its conduct should be attributed to the State or States concerned, according to draft articles 4 and 5 on the responsibility of States for internationally wrongful acts. The remarks made by the Special Rapporteur concerning the functions of international organizations were very pertinent and she shared the Commission's view that it should deal only with responsibility under international law.

12. With regard to the draft articles on attribution of conduct, she was in general agreement with the content of article 3, which was based on articles 1 and 2 of the draft on State responsibility and applied the two criteria of breach of an international obligation and attribution of the wrongful act to the State to the determination of an international organization's responsibility. A general rule on attribution of conduct to international organizations should contain a reference to the "rules of the organization". Illegal acts of international organizations were null and void and without legal effect and the organization should be considered liable for any damage caused. The definition of the "rules of the organization" in the Vienna Convention was adequate for the purposes of the draft articles, since the established practice of the organizations was an important factor in determining attribution.

13. The question of the extent to which the conduct of peacekeeping forces was attributable to the contributing State or to the United Nations was closely linked to the question of the responsibility of a State for a wrongful act of an international organization, and the Commission was not opposed to formulating a principle on that issue. To the extent that peacekeeping forces were under the authority and command of the United Nations, breaches of international obligations by the members of those forces had been attributed to the Organization rather than to Member States. However, given the great diversity of peacekeeping missions the Commission should bear in mind the possibility of attributing conduct to States Members of the Organization in the case of concurrent or subsidiary liability.

14. **Mr. Mathias** (United States of America) thanked Austria and Sweden for their initiative aimed at revitalizing the debate on the Commission's work.

15. The issue of responsibility of international organizations was a complex one, in part because of the diversity of such organizations, which was not simply functional but also structural and conceptual, making it difficult to define an "international organization" for the purposes of the topic. The United States intended to comment on that definition in writing.

16. With regard to the attribution of conduct, the Commission should focus initially on determining the manner in which that issue had been addressed by States, international organizations and judicial and arbitral tribunals. In the specific case of peacekeeping forces, it would be very useful to assess the full range of practice in that area before preparing draft articles. Lastly, the Commission should not confine itself to developing rules for international organizations analogous to those applicable to States.

17. **Mr. Troncoso** (Chile) recalled that at the fifty-seventh session of the General Assembly his delegation had said that the Commission should take the draft articles on State responsibility as a guide when considering the responsibility of international organizations. Article 1 defined the scope of the draft articles, i.e., their application, mainly in the case of acts that were wrongful under international law, but no mention was made of wrongful acts of the organization itself. It should be emphasized that the attribution to States of responsibility for wrongful acts of the organization should be an exception, since the organization should be responsible for its own acts. He therefore proposed that the draft articles should state that their text would apply to States "when appropriate" and indicate specifically in which cases such responsibility would be attributed. He agreed with the text of article 2 as submitted by the Commission, which defined an "international organization" on the basis of the traditional elements used for such entities. However, there was no indication why the words "exercises in its own capacity certain governmental functions", proposed by the Special Rapporteur, had been omitted.

18. With regard to article 3, on general principles, the reference to internal law had been omitted because the Commission considered that the characterization of a wrongful act was not affected by its characterization under the internal law of the organization; it was difficult to transfer that principle to international organizations. He doubted whether the omission was pertinent, for although some instruments of the organization constituted international law, many of its internal rules, for example its operating rules, did not.

19. **Mr. Baker** (Israel), referring to responsibility of international organizations, said that guidance might be sought from the work of the Committee of the International Law Association. In draft article 1, paragraph 2, it should be made clear that a State would incur responsibility for an internationally wrongful act of an organization only to the extent that the State acted as a member or organ of the international organization. The term "instrument" required further reflection, since it seemed too broad and vague as a criterion for determining the existence of an international organization. Moreover, the reference in article 2 to "entities" as members of international organizations seemed overly simplistic. According to current practice, an entity could only be a member of an international organization when the constituent instrument of that organization stated very clearly that it could become a member. The statement that there was a "significant trend in practice" towards entities becoming additional members of international organizations seemed too broad and should be further substantiated and evaluated. The Commission's work should focus on intergovernmental organizations and it would therefore be preferable to delete the second sentence of draft article 2.

20. With regard to the rule on attribution, it would be very useful to refer to the "rules of the organization",

which set out the personality of the organization, its mandate and its powers. The rules of international organizations were, of course, not identical, and that reference would help to differentiate between the powers and responsibilities of the many and various organizations in existence. Furthermore, the international personality of an international organization was determined both by its constitution and by its practice, and that should be reflected in the relevant draft article. With regard to the Commission's second question, the definition of the "rules of the organization" set out in the Vienna Convention seemed especially suitable, since it permitted a proper differentiation of the international responsibilities of each organization.

21. With regard to the third question, he agreed with the delegations which had questioned the desirability of addressing the issue of peacekeeping forces at the current stage. Peacekeeping missions could vary greatly and it would be advisable not to become mired in complex concrete cases before elaborating general criteria. Responsibility for the acts or omissions of a United Nations peacekeeping force would prima facie be incurred by the Organization itself, at least when it had effective control over the force. Where the force acted within the "rules of the organization", the logical conclusion would be that the legal responsibility fell to the United Nations, since in most cases the presence of the force and its access to the territory of a State were a consequence of the consent given to the Organization by the territorial State. However, a variety of factors might need to be considered in any given case, including the rules of the organization, its practice, the question of effective control and the existence of a relationship agreement. There might well be cases where the United Nations and contributing States could not have joint or concurrent responsibility; that would depend largely on the relationship between those States and the Organization and on the effective control exercised in any given situation. The general goal was to elaborate rules guaranteeing that the wrongdoing party, whether an international organization or a State, could be held to account in such circumstances.

22. **Mr. Curia** (Argentina) said that his country fully supported the proposal of Austria and Sweden aimed at revitalizing the debate on the Commission's report. His delegation also wished to join those which had emphasized the importance of making the report available at the appropriate time.

23. The questions raised by the Commission were somewhat general and could be made more precise or specific.

24. With regard to the attribution to an international organization of conduct entailing responsibility, Argentina considered that prima facie it would not be advisable to refer to the definition of the "rules of the organization" contained in the Vienna Convention. A State could not invoke a rule of its internal law to justify its failure to comply with an international obligation, and similarly, an international organization could not invoke one of its internal operating rules to justify an act entailing responsibility.

25. **Mr. Tavares** (Portugal) said that the Commission had indicated for each topic specific issues on which the comments of Governments would be of particular interest to it. In that regard, he welcomed the initiative of Austria and Sweden aimed at revitalizing the debate on the Commission's report in the Sixth Committee.

26. The topic of responsibility of international organizations was a complex one. Following closely the draft articles on State responsibility was a good starting point, but it must be borne in mind that there was much diversity among international organizations as subjects of international law and that they differed in many respects from States. Portugal supported the statement made on behalf of the European Union and approved of the current wording of articles 1 and 3. With regard to article 2, he agreed with the Commission's decision to adopt a definition of international organizations that served only the purposes of the draft articles. However, careful consideration should be given to the reference in that article to entities other than States which participated in international organizations. While it was true that a number of such entities did participate in such organizations, they normally did so as associated or affiliated members and not as full members. There was a need to clarify in which circumstances such entities could incur international responsibility for an act of an international organization, taking into account article 1, paragraph 2, of the draft articles. He invited the Commission to give further consideration to the question whether international organizations could be established by other instruments governed by international law, bearing in mind the need to distinguish real international organizations from mere bodies of such organizations.

27. He welcomed the intention of the Special Rapporteur to tackle the complex issue of attribution in his next report and agreed that a general rule on attribution of conduct to international organizations should contain a reference to the "rules of the organization". The definition of those rules appearing in article 2, paragraph 1 (j), of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was an adequate starting point. However, taking into account the fact that the definition contained the words "in particular", other components of the rules of the organization might be considered with a view to formulating a more exhaustive definition. The reference to the established practice of the organization also deserved further attention. The question of the extent to which the conduct of peacekeeping forces was attributable to the contributing State or to the United Nations was a very complex one. First, it could also arise in connection with other international organizations, namely those assisting the United Nations in peacekeeping missions. Second, the agreements concluded by the organization and the contributing State could include specific provisions on the issue of attribution of responsibility. Lastly, before any decision was taken on possible responsibility relationships involving the international organization and the State, the practice of the United Nations and other international organizations should be carefully considered.

28. **Mr. Tarabrin** (Russian Federation) said that his delegation welcomed the progress made by the Commission at its fifty-fifth session, especially with regard to the topic of diplomatic protection and the initiation of work on responsibility of international organizations. Although such organizations were playing an increasingly important role, many aspects of their activities remained controversial. The general approach taken by the Commission in considering that topic deserved support, particularly its decision to take as a basis for the work its articles on the responsibility of States for internationally wrongful acts. That decision would make it possible to limit the work to consideration of the internationally wrongful acts of international organizations, leaving aside questions of material responsibility: the responsibility of States for the conduct of international organizations was one of the issues most urgently requiring regulation by a set of articles.

29. For the first time, efforts were being made to formulate a substantive legal definition of the concept of an international organization. It was clear that such a concept had to form a keystone of the draft articles on responsibility of international organizations. During the discussion in the Commission, doubts had been expressed concerning the need to depart in the draft articles from the official definition of an international organization. An international organization was an intergovernmental organization: that definition appeared in various international conventions, such as the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. His country shared those doubts to some extent. However, since the draft articles referred specifically to intergovernmental organizations as the only category of international organizations that were subjects of international law, that did not seem to be a cause for concern. With regard to the other elements of the definition, the existence of an international treaty or the fact that States were members were necessary only for the purpose of determining the existence of the legal personality of an international organization and could be transferred to the commentary or be included in a separate article.

30. With regard to the attribution of conduct to an international organization, according to the principle established in the articles on State responsibility, conduct was attributed to a State under international law. That principle should also be applied to international organizations, bearing in mind that most of the rules of international organizations formed part of international law. There was no reason to assume that the definition of "rules of the organization" contained in article 2, paragraph 1 (j), of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was not adequate.

31. Concerning the extent to which the conduct of peacekeeping forces was attributable to the contributing State or to the United Nations, the Special Rapporteur, in one of his reports on international responsibility of international organizations, had referred to two cases involving that issue: in the first, armed forces of the United States and other countries, under United States command, had carried out an

operation in Korea in 1950 in the name of the United Nations. The second case had occurred in the Congo, where United Nations forces composed of national contingents had been deployed under the command of a commander appointed by the United Nations. In the latter case, the responsibility for damage caused during the operation had been assumed by the United Nations, while in the first the United States had been willing to provide compensation for the damage. On the basis of those examples, the Special Rapporteur had concluded that a decisive factor in determining whether responsibility was incurred by the State or the organization was the principle of "effective control". His country agreed with that conclusion, although that did not exclude the need for a more thorough study of the subject, and especially the issue of the legality or illegality of the operation. If the organization decided to approve an illegal military operation, it should assume the corresponding responsibility, together with the States carrying out the operation, irrespective of whether it exercised effective control or not.

32. **Mr. Yáñez Barnuevo** (Spain) said that the Commission's 2004 report should indicate the objectives for the quinquennium, and that no new topics should be included for the time being.

33. With regard to the international responsibility of the State, the latter was both an active subject and a passive subject of responsibility relationships; in other words it was sometimes the responsible subject and sometimes the injured subject. However, the Commission's report referred to the responsibility of international organizations, i.e., the international organization as a possible responsible subject, but it was unclear which entity would be the passive or injured subject. In principle, it could be any subject of international law, either a State or another international organization. It was strange that no thought had been given to the inverse relationship, i.e. where the international organization might be the injured subject and the responsible subject might be a State. The Commission should give further thought to that fundamental issue.

34. In addition to the draft articles on the international responsibility of the State, the Commission should take into account current practice and certain academic works, such as those of the International Law Association and a study by the Instituto Luso Hispano Americano de Derecho Internacional on international organizations and responsibility relationships. In that study, organizations were treated both as active subjects and passive subjects. The Commission had taken the same approach when dealing with the topic of the law of treaties, in that it had first codified the law of treaties between States, leading to the adoption of the 1969 Vienna Convention on the Law of Treaties between States, and had subsequently adopted the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Consequently, it would be advisable to undertake a comprehensive study of the law of responsibility relationships of international organizations, both inter-organizational and between organizations and States.

35. With regard to methodology, it was important to take the draft articles on the international responsibility of States as a starting point, but it should be borne in mind that in the international legal order the State was a primary subject with substantially consistent characteristics. International organizations, on the other hand, were secondary subjects established by States and were intrinsically diverse in their methods of establishment, personality, powers and methods of operation. It was therefore necessary to study the practice of international organizations in that regard and analyse carefully those areas of their activities in which questions of international responsibility might arise.

36. International organizations, at least those which were authentic subjects of international law, possessed in principle the general capacity to participate both actively and passively in legal relationships involving international responsibility, but within the limits of their legal personality and the content and scope of their powers.

37. With regard to the articles provisionally approved by the Commission, a provision could be drafted defining the relationship between the new set of draft articles and those on the international responsibility of States. There also seemed to be a certain amount of contradiction between paragraphs 1 and 2 of article 1. Further thought should be given to the scope of paragraph 2.

38. With regard to article 2, the Commission was apparently not satisfied with the definition of the term "international organization" contained in other codification conventions. It was not adequate to define

an international organization simply as an "intergovernmental organization"; it would be more appropriate to refer to an "inter-State organization". The definition proposed by the Commission was likewise unsatisfactory. The first part could serve as a starting point, but the last sentence was particularly infelicitous. There was merit in the alternative version proposed by France, which could serve as a basis for the formulation of acceptable wording. The international organization in question was an international organization established by States and consisting basically of States; that was the only way in which the issue of residual international responsibility could be approached.

39. Article 3 deserved to be approved in principle, although it would probably require more attentive re-examination in the light of subsequent articles.

40. With regard to the Commission's questions concerning the attribution of conduct to an organization, a general rule should be formulated without prejudice to the subsequent formulation of specific rules on various relevant aspects of the subject. The general rule should contain a reference to the "rules of the organization", since that was the basic assumption underlying the attribution of conduct to the organization. However, steps must be taken to prevent an international organization from trying to evade responsibility for the conduct of an entity which was in fact acting as one of its organs by simply denying that the entity was an organ according to the rules of the organization. Consequently, it would be necessary to establish objectively or on the basis of the views of third parties the standing of the individual or entity acting for the account or on behalf of the organization. The best starting point for the definition of the "rules of the organization" would be the definitions contained in the 1986 and 1975 Vienna Conventions, especially the former. In that definition, special attention should be paid to the reference to the "rules of the organization", which in general had the advantage of preserving the individuality of each organization and did not prejudge the degree of systematization required in order for the rules to constitute a genuine internal order of the organization. In that regard, he fully supported the statement made by Italy on behalf of the European Union and the statement by the representative of the Commission.

41. With regard to the conduct of peacekeeping forces, he agreed with the many speakers who had drawn attention to the complexity and sensitivity of that issue, which did not refer or should not refer solely to United Nations peacekeeping forces, since regional or other organizations might well be active in that field. The Commission should study thoroughly existing practice and the agreements between international organizations and contributing States, as well as the practice of States hosting such operations and the practice of the Security Council, the agreements dealing with claims in specific places and the existing incipient arbitral practice. Control was the key, although it was common knowledge that the concept of control was controversial in international law. In the case of peacekeeping forces, the key concept would probably be operative or operational control, but that should be determined in the study his country was proposing. Spain reserved the possibility of discussing that subject more thoroughly in the written comments it would subsequently address to the Commission.

42. **Ms. Kamenkova** (Belarus), referring to responsibility of international organizations, said that the general rule on the attribution of conduct to an international organization should include a reference to the "rules of the organization". From the legal standpoint, the rules of the organization were very important, not only for regulating the inter-institutional issues arising in connection with the activities of international organizations, but also for defining the relationship between their organs and member States and for regulating relations between the organs and officials of the organization. Given the sphere of application of the rules of the organization, those rules could be very useful when tackling the question of attribution to the organization of internationally wrongful acts committed by one of its organs or officials, and when delimiting the responsibility of international organizations and States. The definition of the "rules of the organization" in article 2, paragraph 1 (j), of the 1986 Vienna Convention embodied the main normative means by which international organizations regulated their internal operations and other questions relating to their activities. In attributing conduct to international organizations, the only rules to be taken into account were those of a normative character with special legal significance, and that should be reflected clearly in the draft articles.

43. It was important to delimit the extent of the responsibility of the United Nations and of Member

States contributing military, police or civilian contingents for peacekeeping operations under its control. Two issues arose in that regard: the proportional distribution of responsibility between the United Nations and contributing States for damage caused by United Nations personnel in the course of peacekeeping operations as a result of acts which were not prohibited by international law, and the attribution of responsibility for damage caused by a breach of the norms of international law and the mandate of a given operation. In the first case, the responsibility incurred by contributing States would be divided among them according to the extent to which their contingents had actually participated in the activity linked to the damage caused. In the second case, the starting point should be the mandate of the peacekeeping operation, the efficiency of the general leadership and the control exercised by the United Nations during the operation. The responsibility of a State for damage caused by a breach of the rules of international law by its contingent and the requirements of the mandate of the operation could be secondary or residual in character in relation to the responsibility of the United Nations, provided that the State concerned had not intervened directly in the operations in question.

44. Lastly, she wished to express a reservation concerning paragraph (14) of the commentary to article 2 of the draft articles in the Commission's report, according to which the question of the international responsibility of States as members of an international organization arose only with regard to States that were members of the organization. If a State committed internationally wrongful acts together with other States members of an international organization, its individual material responsibility vis-à-vis a third State which was not a member of the organization should not be entirely excluded. Failure to include in the draft article rules on the responsibility of States as members of international organizations would leave a serious gap in the institution of international legal responsibility and in the regulation of relations between States and international organizations. The question of the material responsibility of States for specific acts performed by international organizations could be resolved within the framework of the draft articles on the basis of the principles of solidarity and residual responsibility.

The meeting rose at noon.