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## Sixth Committee

**Summary record of the 12th meeting**
Held at Headquarters, New York, on Tuesday, 25 October 2005, at 10 a.m.

*Chairman*: Mr. Yáñez-Barnuevo . . . . . (Spain)

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05-56880 (E)

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session** (*continued*) (A/60/10)

1. **Mr. Braguglia** (Italy), welcoming the preliminary report of the Special Rapporteur on the expulsion of aliens (A/CN.4/554), said that the Special Rapporteur seemed to favour the elaboration of rules focusing on individual expulsions that would supplement those set out in article 13 of the International Covenant on Civil and Political Rights. A text produced by the Commission could serve as the basis for an additional protocol to the Covenant. If that were the intention, it would be useful for the Commission to collaborate with bodies that had specific competence in the field of human rights protection, such as the Human Rights Committee, which had valuable experience with regard to the application of the Covenant.

2. Referring to the Commission's invitation to States to supply information concerning their practice in relation to the expulsion of aliens, he said that it would be useful to have more details about what approach the Commission intended to take and what specific issues it intended to address. Rules on the expulsion of aliens were often complex and linked to constitutional, administrative and procedural rules that needed clarification so as to provide an accurate idea of how practice was developing.

3. With regard to the draft articles on responsibility of international organizations, his delegation supported the current formulation of draft article 15, on decisions, recommendations and authorizations addressed to member States and international organizations (A/60/10, para. 206). In its future work, the Commission should make it clear that, in general, States had no responsibility for the conduct of an organization of which they were members because international organizations possessed distinct international legal personality. However, certain exceptional cases might arise in which the responsibility of such member States would be incurred.

4. It was not strictly necessary for the Commission to formulate draft articles that provided expressly for the responsibility of States that aided, assisted, directed or coerced an international organization, on the basis of articles 16, 17 and 18 of the articles on responsibility of States for internationally wrongful acts. However, such an express provision would make the draft articles more transparent.

5. **Mr. Tajima** (Japan) said that the diverse legal status, structure, activities and membership of international organizations made it difficult to lay down universally applicable guiding principles on responsibility. The general thrust of the Special Rapporteur's well-considered third report (A/CN.4/553) was, however, correct. It would be prudent to follow the basic structure of the articles on State responsibility, but to modify them when they were not apposite and to be mindful of the fact that those articles could serve only as a starting point when considering the responsibility of international organizations.

6. An international organization was not only itself a subject of international law; its members were subjects as well, which meant that, theoretically, an internationally wrongful act committed by a member State of an international organization might give rise to responsibility on the part of both the organization and the State. The draft articles and the commentary were rather ambiguous about the sole difference between the responsibility of an international organization and that of a State. Hence further analysis was required.

7. Similarly, draft article 15, as provisionally adopted by the Commission at its fifty-seventh session (A/60/10, para. 206), should be clarified in order to say whether the member State, or States, that had committed an internationally wrongful act at the behest of an international organization also shared responsibility. Allocation of responsibility ought to be analysed in the light of the content, nature and circumstances of the act committed by the member State and of the rules of the organization concerned. Moreover, the draft did not make it clear if States bore the same responsibility under draft article 15, paragraph 1, as under paragraph 2. In the situation referred to in paragraph 1, member States were obliged by the international organization to take illegal action, whereas in that referred to in paragraph 2 they were not. The commentary contained no mention of that distinction or its possible consequences. Further exegesis of those points by the Special Rapporteur would be welcome.

8. Discussion of the topic of the expulsion of aliens was particularly important in a world where the transboundary movement of people had intensified in the wake of globalization. The Special Rapporteur's preliminary report (A/CN.4/554) had provided a summary of the issue, but further study of the scope, definition of concepts and scrutiny of the legitimate grounds for expulsion were plainly needed. The applicable rules did not stem from customary law alone, but were closely linked to human rights regimes and other fields of international law. The topic's relationship with those regimes must therefore be taken into account.

9. Since the expulsion of aliens was a matter of concern to many countries, the Commission must be encouraged to complete its work on it in a timely manner. For that reason, it was to be hoped that further progress would be made at the Commission's fifty-eighth session.

10. **Sir Michael Wood** (United Kingdom), speaking on behalf of the European Union; the acceding countries Bulgaria and Romania; the candidate countries Croatia and Turkey; the stabilization and association process countries Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia; and, in addition, the Republic of Moldova and Ukraine, welcomed the progress made by the International Law Commission on the draft articles on responsibility of international organizations. The European Union and the aforementioned countries also aligned themselves with the following statement.

11. **Mr. Kuijper** (Observer for the European Commission), speaking on behalf of the European Community, said that the European Community was a specific international organization and therefore had a specific perspective on the work of the International Law Commission relating to the responsibility of international organizations. Draft article 8, paragraph 2, referred to "an obligation under international law established by a rule of the international organization" but did not give any guidance as to what sort of rules qualified as "obligations under international law". In the case of the European Community, the crucial question was whether a violation of secondary Community law by an institution of the Community triggered the international responsibility of the European Community. Given that the Court of Justice of the European Communities characterized the Community as having a legal order of its own, the prevailing view in the Community would be that such a violation did not trigger the Community's international responsibility.

12. The same would be true of a breach of secondary Community law by a member State. The commentary might be of some help in that it stated that the draft article did not intend to take a position between those who regarded the "internal" law of international organizations as partly or wholly autonomous in relation to international law and those who regarded it as an integral part of international law. Nonetheless, the European Community wondered whether draft article 8, paragraph 2, was an essential part of the draft articles.

13. With regard to draft article 15, the European Community agreed that there were no clear practical examples to assist in the formulation of the provision. He therefore encouraged the Commission to approach further discussions on the issue with great care. He welcomed the distinction in draft article 15 between binding decisions of an international organization (draft paragraph 1) and mere authorizations or recommendations (draft paragraph 2), which meant that an international organization would not be liable for acts of its member States if the latter were not required by the organization to take a certain action but decided to do so of their own volition. However, the distinction might require further refinement. In the European Community, secondary Community law could be binding in its entirety and directly applicable in all member States (regulations), or binding only as to the result to be achieved, leaving to the national authorities the choice of form and methods (directives), or binding only upon those to whom it was addressed (decisions). An obligation of result (as in a Community directive) came close to a binding decision, but might nonetheless leave a certain amount of discretion to the individual member State.

14. With regard to draft article 15, paragraph 1, the European Community wondered whether the notion of circumvention was superfluous, given that compliance by members with a binding decision was to be expected, as stated in the Commission's own commentary on the draft article. If so, it might be desirable to replace the word "circumvent" with the word "breach". On the other hand, if the idea that the mere adoption of a law constituted a breach of international law was restricted to the domain of World Trade Organization law and had not taken hold in

general international law, or depended in any case on what the law actually stated, then the notion of circumvention did have a function. It would be useful for the Commission to clarify the draft article and the comments pertaining to it.

15. **Mr. Lammers** (Netherlands), referring to the draft articles on responsibility of international organizations, said that there was an inconsistency between draft articles 2 and 15. According to draft article 2, "international organizations may include as members, in addition to States, other entities". The word "entities" included, but was not limited to, international organizations. Draft article 15 was narrower in that it referred to "member States and international organizations". He therefore suggested that draft article 15 should refer simply to a "member" or to a "member of the organization".

16. Draft article 15, paragraphs 1 and 2, established international responsibility of an international organization for acts committed by its members that would be internationally wrongful if committed by the organization. That criterion for the incurring of responsibility was appropriate and clear. However, the act concerned would also have to circumvent an international obligation of the organization concerned. That criterion had not been included in the draft article as proposed by the Special Rapporteur; it had been only briefly mentioned in his third report (A/CN.4/553) for the purpose of explaining the rationale of the draft article. Moreover, the meaning and scope of the criterion were not clear: he wondered how it would be demonstrated that a given act circumvented an international obligation of the organization.

17. Paragraphs 1 and 2 of draft article 15 drew a useful and necessary distinction between binding decisions, which gave a member little room for manoeuvre, and authorizations or recommendations. However, it might be preferable to use the more general term "non-binding decision" instead of "authorization or recommendation", as suggested in the commentary on draft article 15. Moreover, while the Commission distinguished between authorizations and recommendations, no distinction was drawn as to the implications for responsibility of the organization. Authorizations and recommendations were subject to the same criteria as binding decisions and to one additional criterion: the member committing the act in question must do so "in reliance on that authorization or recommendation". That additional criterion was not mentioned with regard to binding decisions in paragraph 1 of the draft article because members were bound to comply with those decisions.

18. Under draft article 15, paragraph 2, an international organization could not be held responsible for the mere adoption of an authorization or recommendation. It would incur responsibility only if the member actually committed the act in question and did so in reliance on those non-binding decisions. However, it was difficult to see how that provision would operate in practice. For example, the General Assembly, in its resolution 2105 (XX), had recognized the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and had invited all States to provide material and moral assistance to the national liberation movements in colonial Territories. He wondered whether, if a State Member of the United Nations provided such assistance to a particular people, the colonizing State could claim that the United Nations carried responsibility, distinct from the possible responsibility of the Member State concerned. Moreover, he would like to know how it would be determined that the act had been committed by the Member State "in reliance on" the resolution. He therefore requested the Special Rapporteur to provide examples of situations in which that paragraph had found application or, at least, could or should have been applied.

19. With regard to the question of the expulsion of aliens, his delegation agreed that a State's right to expel aliens was inherent in the sovereignty of that State but could not be considered absolute. It was regulated by various instruments of international law or by rules of customary international law, which provided a balance between legal and humanitarian issues. It might not be necessary for the Commission to elaborate draft articles on the expulsion of aliens, although the possibility need not be ruled out. He agreed with the approach envisaged by the Commission, which was to consider what rules already existed on the topic, to develop them further where possible or appropriate and to codify them, taking into account the factual problems arising from the expulsion of aliens. The outcome, in whatever form, should fill in the gaps in existing rules and regulations and should not be at odds with existing international instruments. It should also address problems that States had or might have in practice, such as those relating to

the expulsion of stateless persons. On the other hand, the approach taken should not be too broad and should exclude elements that were of purely theoretical interest.

20. The Netherlands was not engaged in the collective expulsion of aliens and agreed with the view that, while an expulsion might involve a group of people sharing similar characteristics, the decision to expel should be taken at the level of the individual and not of the group. A basic rule of that kind could be included in the possible draft rules.

21. His delegation was pleased that the question of the expulsion of aliens was on the Commission's agenda and viewed the Special Rapporteur's preliminary report on the subject (A/CN.4/554) as the first step in an important discussion.

22. **Mr. Buchwald** (United States of America) said that the issue of expulsion of aliens was complex and challenging. States had to find a delicate balance between their national immigration laws and policies, their international legal obligations, national security concerns and respect for the rule of law. His delegation welcomed the acknowledgement in the Special Rapporteur's preliminary report (A/CN.4/554) that careful attention must be paid to the long-recognized sovereign right of States to expel aliens. Efforts to identify the limitations on that right under international law should focus on those derived from obligations freely assumed by States, particularly under international human rights treaties. The Commission should not address the refusal to deny entry to aliens at the border; it should observe the distinction between aliens who were lawfully present and those who were not; and it should not consider issues already addressed by other specialized bodies, such as the transfer of aliens for law enforcement purposes or issues relating to diplomatic personnel.

23. The issue of the responsibility of international organizations was similarly complex. Unlike States, which shared fundamental qualities, international organizations varied greatly in their functions and structures, which made it difficult to develop uniform rules. For example, the relationship between a government official and his country was significantly different from that between an individual and the international organization that employed him. The draft articles should not, therefore, simply parallel the rules set forth in respect of States in the articles on responsibility of States for internationally wrongful acts. It was to be hoped that the Commission would place particular emphasis on relevant practice.

24. Under the articles on State responsibility, a State incurred vicarious responsibility only if it aided or directed another State in committing an act that would be internationally wrongful if committed by the first State itself. That condition might operate quite differently, however, when applied to the vicarious liability of international organizations. For example, under articles 12 and 13 of the draft articles on international responsibility of international organizations, an international organization might be authorized to provide assistance for States to take certain kinds of action but not to take such action itself. In that case, the taking of the action by the international organization could be said to be internationally wrongful. Yet it was not evident that the provision of assistance for such action should be a trigger for international responsibility. It was true that, for responsibility to arise under articles 12 and 13, the State in question would need to be acting in breach of an international obligation. It was not clear, however, that that would provide a sufficient safeguard where the responsibility of the international organization was concerned. There might be a variety of reasons why it was unlawful for a particular State to act in a certain way. A State might have conflicting obligations. It was an area that merited further reflection.

25. Draft articles 12 and 13 turned on whether an international organization had taken action "with knowledge of the circumstances of the internationally wrongful act". Yet again the provision was drawn from the draft articles on responsibility of States for internationally wrongful acts. Such a requirement applied very differently for an international organization from the way it did for a State. For example, it was not clear what kind of knowledge was involved. An international organization did not take direction from its secretariat or professional staff in the way that a State did from its leaders and other employees. Indeed, it was States that constituted and directed the action of an international organization; and States might have very different assessments of the legality of a contemplated course of action.

26. Draft article 15 was intended to cover cases beyond those already covered by draft articles 12 and 13. It gave rise, however, to a similar difficulty, namely, what it meant for an international organization

to be circumventing one of its obligations. It would therefore be helpful for the Commission to make clearer the intended meaning of "circumvention". Draft article 15 went further, however, in that it did not require, as a condition for an international organization to incur liability, that the State to which the recommendation, authorization or decision was directed should be prohibited from undertaking the action in question. It appeared to follow that an international organization could be liable for directing, authorizing or recommending that a State should take action that was in fact lawful for that State to undertake. The practice or policy considerations on which such a principle would be based was unclear.

27. Moreover, it was hard to see how authorizations or recommendations could trigger liability. They could be implemented in a variety of ways and, so long as there was no question of assisting or controlling — an issue that was covered by other draft articles — it seemed illogical to hold an international organization responsible if a State unlawfully implemented recommendations or authorizations that it could have implemented lawfully or could have freely decided not to implement.

28. His delegation was considering whether it would be beneficial for the draft articles to account more explicitly for the fact that binding decisions, authorizations or recommendations by an international organization could substantively affect the underlying legal obligations of States to which they were addressed in a way that decisions, authorizations or recommendations by States rarely could. One example was decisions under Chapter VII of the Charter of the United Nations; but the same considerations might apply to other international organizations, whose decisions could affect the legal rights and obligations of member States to each other. The fact that an international organization took a particular action, for example, might result in a situation in which a State was no longer prohibited from taking a previously prohibited action. One implication of that was that the responsibility of an international organization towards its members differed in practice from its responsibility towards non-members.

29. **Mr. Tavares** (Portugal) expressed the hope that the Commission would be able shortly to complete the second reading of the draft articles on diplomatic protection and on international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities). It was important that some topics should be completed during the current quinquennium, given that, no work had been finalized for State action since 2001. In that context, he welcomed the growing interaction between the Commission and the Committee. Special rapporteurs increasingly referred in their reports to the views of Governments as expressed in the Sixth Committee. Conversely, the Commission's work had become more acceptable to States.

30. The interaction could be enhanced still further if summary records were replaced by a verbatim record of government statements submitted by delegations to the Secretariat in electronic form. The efficient allocation in time to each topic and proper progression through the scheduled agenda would also be beneficial. His delegation was concerned, however, about the Commission's increasingly frequent practice of requesting comments from States before a special rapporteur had written his report. Such an approach was unacceptable, since it distracted Governments' attention from the general progress of work on draft articles. States should comment on progress made, not on forthcoming work in the abstract.

31. Not an easy topic in the first place, "Responsibility of international organizations" was becoming increasingly complex. First, it was progressing at a different speed from the topic of responsibility of States for internationally wrongful acts, which would not help with the formation of a coherent body of law. Secondly, the draft articles were too closely modelled on the articles on State responsibility. The effect was of growing incoherence. International organizations were subjects of international law that differed in several respects from States, being very diverse in their structure and nature. Where the Special Rapporteur had tried to be innovative, on the other hand, new problems arose. However, innovations appeared only in draft article 8, paragraph 2, and draft article 15.

32. The draft articles adopted by the Commission at its fifty-seventh session demonstrated the inadequacy of following too closely the articles on State responsibility. Article 11, paragraph 1, for example, seemed too complex to apply to international organizations, owing to the fact that — by contrast with the situation of States — issues of attribution arose. Not only was it difficult to determine what

should be considered an aggregate act, but different parts of a composite act might be performed by different organs of the organization, in such a way that some might be performed by the organization and another by member States. Bodies like the Security Council, the Council of the European Union and the United Nations Secretariat were both intergovernmental and international.

33. Draft articles 12, 13 and 14 seemed to overlook the nature of international organizations and their relationship with member States, third States and other international organizations. Whereas assistance, control or coercion could exist in relations between sovereign States, the issue was more complex when it came to international organizations. Various questions arose: how it could be legally determined that a given international organization was aiding or assisting another State or international organization for the purposes of article 12; whether the State referred to in draft article 13 was a member State or a third State; and how one international organization could direct or control another. The same applied with even greater force to draft article 14, which dealt with coercion. His delegation preferred the Special Rapporteur's approach in draft article 15, which seemed to cover the situations dealt with in the preceding three articles. That being so, draft articles 12 to 15 were redundant. He could envisage no situation that might be subject to the provisions of draft articles 12, 13 and 14 that was not also covered by draft article 15. Draft articles 12, 13 and 14 should therefore be deleted and draft article 15 redrafted.

34. As for the innovative provisions, his delegation considered the provision in draft article 8, paragraph 2, unsatisfactory, for several reasons. First, a rule of an international organization was of necessity an international rule and not merely a rule of that organization. Draft paragraph 2 was therefore redundant. Secondly, it opened up the possibility of endless discussion of whether and when a rule of an organization was international or internal. Thirdly, the definition of "rules of the organization" contained in draft article 4, paragraph 4, was unsatisfactory. The so-called "established practice" of an organization could not give rise autonomously to an international obligation whose breach would constitute an internationally wrongful act.

35. In draft article 16, as set forth in the Special Rapporteur's report (A/CN.4/553), and then provisionally adopted as draft article 15, the Special Rapporteur had recognized the need for a provision addressing the specific nature of international organizations, which functioned internationally through decisions, recommendations and authorizations. The draft article should, however, be redrafted, so as to incorporate the provisions of draft articles 12 to 14. Moreover, although States and international organizations were required to determine the conformity of their conduct with international law, prior to taking action, there was a significant difference between acts by States in accordance with binding decisions of an organization and acts by States with a large measure of discretion. Moreover, due regard had not been paid to the fact that, while the provision applied to member States and other international organizations, the position of third States was unclear. Member States were ipso facto bound by a decision of an international organization, but that did not apply to other international organizations or third States.

36. Some other questions were being overlooked. For example, there was no institutional forum at which substantive rules on the responsibility of international organizations could be addressed. That, should not in itself, prevent the codification and progressive development of such rules, but the fact should be borne in mind. Another concern was that the Commission was seemingly formulating general abstract rules on the basis of the special case of one international organization, the European Community. References to the Community practice were, of course, acceptable, given its richness, but the European Union was an organization of such a specific nature that it could hardly be called a model for other international, intergovernmental organizations. It might therefore be wise to exclude regional integration organizations from the scope of application of the draft articles.

37. Overall, the draft articles should be simpler, and more leeway should be given to those interpreting and applying the law. Perhaps a better approach would be to make a general reference to the applicability, mutatis mutandis, of the principles of State responsibility, followed by draft articles or guidelines dealing with the specific problems raised by the question of responsibility of international organizations, as already proposed by the International Law Association and the Institut de Droit International.

38. With regard to the expulsion of aliens, there was a question mark over the true scope of the topic.

Important though it was, there was no evidence that it deserved autonomous treatment or that it had a sufficient theoretical and practical background. His delegation could detect only issues that were already being dealt with by national legislation or the international human rights system. It was therefore questionable whether the topic was suitable for codification and progressive development. His delegation doubted, for example, whether the expulsion of a foreigner could be qualified as a unilateral act of a State, in the sense of being grounded in international law. The expulsion might be unilateral, but the source was the national legislation.

39. His delegation agreed that, despite sovereignty rules, the right of a State with regard to the admission, permanence and expulsion of aliens was not absolute. On the contrary, the State was bound by a range of obligations deriving directly from international human rights law. That constituted no novelty, however. And there were no other discernible limits to a State's actions than those already provided for by customary and treaty law. He challenged the Commission to convince the Committee that the topic deserved autonomous treatment. If it met that challenge, explanations would also need to be found to some other questions: whether a single study should deal with both individual and collective expulsions; whether it was appropriate to refer to diplomatic protection, which seemed out of place in that context, in that it arose only where there was a breach of international law and after the exhaustion of local remedies; and whether it was right to include in the topic the issues of State responsibility with regard to wrongful expulsions, which was already dealt with under the relevant rules of responsibility of States for internationally wrongful acts.

40. **Mr. Taksoe-Jensen** (Denmark), speaking on behalf of the five Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden), said that those countries believed it was important to recognize the significant role the Commission had played as a strong promoter of an international legal order. The task of building an international legal order was perhaps more important now than ever before. The Commission's work, in their view, should be even more efficient and focused, and greater effort should be made to prioritize its work on individual topics. Certain topics had been on the agenda for years, such as the matter of international liability, of great interest to the Nordic countries.

41. The broad agenda of the Commission was perhaps responsible for the protraction of the latter's work. As the Nordic countries had previously pointed out, once a topic had been included, it was impossible to strike it out. It would be useful, at an earlier stage, to identify what the realistic outcome of the Commission's work on a topic would be, a task which would of course be the joint responsibility of the Commission and of Member States. The Nordic countries believed that the Commission had done a remarkable job through the years. However, they would like it to take a frank look at its agenda and consider the removal of certain topics, which would make it possible to work faster and more efficiently on those that remained.

42. Turning to the topic of unilateral acts of States, the Nordic countries encouraged the Commission to conclude its work in 2006. It should not aim at producing a comprehensive set of rules on unilateral acts, but should focus instead, if feasible, on formulating general conclusions based on the Commission's work on the topic, perhaps by adopting guidelines on that topic.

43. The Nordic countries had commended the Commission for its draft articles on international liability for injurious consequences arising out of acts not prohibited by international law as a valuable and pragmatic achievement. As for the form of the final instrument, they favoured options other than a convention, such as the adoption of principles by way of a General Assembly resolution. In addition, they believed that the draft principles on allocation of loss in the case of transboundary harm arising out of hazardous activities should be adopted in conjunction with the adoption of the draft principles on international liability.

44. Noting the interesting and thought-provoking work done by the Study Group on Fragmentation of International Law, he said that the Nordic countries would submit more detailed comments during the session devoted to the topic.

45. Although the report of the Special Rapporteur on effects of armed conflicts on treaties included a complete set of draft articles that suggested the readiness of the topic for codification, much work remained to be done. A topic that called for further

discussion was the legality of conduct of the parties to an armed conflict and the possible asymmetry in the relationship between an aggressor State and a victim State. In that regard, the main rule of continuation of treaties during an armed conflict was well-argued and grounded. The Nordic Group agreed that the topic should form part of the law of treaties, and not part of the law relating to the use of force.

46. **Ms. Kamenkova** (Belarus) said that her country attached great importance to the Commission's work on the draft articles on responsibility of international organizations. The draft articles, together with the articles on responsibility of States for internationally wrongful acts would strengthen the international legal regime and encourage the development of a new branch of international law — a law of international responsibility — which should, in her delegation's view, encompass all types of responsibility of the various subjects of international law.

47. The Commission's approach of basing the draft articles on responsibility of international organizations on the articles on State responsibility was a useful one. However, the articles on State responsibility were not automatically applicable in every case to the responsibility of international organizations.

48. Draft article 15 constituted a clear provision that an international organization incurred responsibility for the authorization of an internationally wrongful act, which would make it incumbent upon the organs of an international organization to analyse all the relevant circumstances when they authorized member States or another international organization to commit an act.

49. The question of the responsibility of a State for the internationally wrongful act of an international organization required further detailed work. The exclusion of that responsibility from the scope of application of the draft articles would amount to the preservation of a substantial lacuna in international law.

50. Because the international legal nature of an international organization was derived from States, such an organization might use certain member States to implement a wrongful policy and to distribute responsibility for it among all their members. It was therefore vital to include in the draft articles a provision allowing for a member State to incur responsibility for the internationally wrongful conduct of an international organization. Specifically, a State should incur responsibility if it coerced an international organization to commit a wrongful act, if it directed other States to do so or if it exercised control over them in the commission of a wrongful act under the auspices of an international organization.

51. A nuanced approach should be taken to the establishment of responsibility of a State for an internationally wrongful act of an international organization, in particular for participation in the commission of a wrongful act. Account should be taken of whether an individual State had the freedom to choose whether or not to participate in the commission or authorization by the international organization of the act. Recognition of the responsibility of States for internationally wrongful actions or omissions of an international organization would force States to take a more considered approach to their membership of international organizations and, in general, would strengthen legality in the activities of all international organizations.

52. The concept of joint or additional (subsidiary) responsibility, which should be both political and material in nature, might be useful in determining the responsibility of States for certain actions of international organizations. In certain situations, it would be appropriate to absolve international organizations of responsibility for internationally wrongful acts and to provide instead for the collective responsibility of member States, particularly with regard to international organizations with limited resources and a small membership, where each member State had a high level of control over the organization's activities.

53. The Commission's work on responsibility of international organizations was still in its early stages and complex issues remained to be resolved, such as the development of an implementation mechanism, which would to a large extent determine the success of the Commission's efforts.

54. Her delegation welcomed the Commission's work on the topic of the expulsion of aliens. At the current stage, the Commission should focus on existing international practice in that area. The eventual outcome of its work could take the form of a guide to practice or a political declaration. A balanced approach was necessary, based on respect for the sovereign right of a State to regulate the presence of aliens in its territory and taking into account the importance of the

fulfilment by States of their international human rights obligations. Belarus supported the view that the topic of expulsion of aliens covered both the removal of aliens who were illegally present in the territory of a State and the removal of those who were legally present.

55. Belarusian law set out in detail the grounds and procedure for the removal of aliens. Her country was willing to transmit extracts from its legislation to the Commission to be used in the analysis of international practice.

56. **Mr. Grexa** (Slovakia) said that the expulsion of aliens was of particular interest since it remained a common practice in all parts of the world. The status of aliens formed the subject of numerous bilateral and multilateral treaties and was also covered by the domestic legislation of many States. It was therefore a factor in international relations. In his preliminary report (A/CN.4/554), the Special Rapporteur had rightly identified the key issues and the main difficulties inherent in the subject matter.

57. Although, in international law, a State possessed a generally recognized right to expel aliens, that right was neither absolute nor discretionary. International law, especially human rights law, set limits on the exercise of that sovereign right. It was therefore essential that the Commission should first establish the scope of the topic before dealing with definitions.

58. The scope should not be unnecessarily broad; it must stay within the framework provided by international customary law. It should exclude not only the admission of aliens, which raised a separate set of issues, but also the status of internally displaced persons and people in transit, and the expulsion of a State's own nationals. It should, however, cover the removal of foreign nationals regardless of whether they had entered the country legally or illegally.

59. The Special Rapporteur had correctly defined the two main terms "expulsion" and "alien", since expulsion was indeed the removal of an alien from the territory of a State forcibly or under the threat of forced removal. Nevertheless, it might not always be a formal measure. At the current stage of the Commission's work, the term "alien" should at least encompass all categories of persons residing in the territory of a State who did not have the nationality of that State, including political refugees, asylum-seekers, migrant workers and stateless persons.

60. Expulsion must be in keeping with the law, and the expulsion order must explicitly state the grounds on which it was based, so as to prevent abuse of that right and ensure legal certainty and the rule of law. Some restrictions on the exercise of that right might already exist under international law in order to guarantee the application of human rights norms.

61. In response to the Commission's request for information concerning State practice, he explained that Slovak domestic legislation recognized administrative and judicial forms of expulsion of aliens. Judicial expulsion could be imposed as an additional sentence in criminal proceedings. Administrative expulsion was rather wider in scope and could be ordered in the context of administrative proceedings. Expulsion was defined as a legal act terminating the stay of an alien, setting a deadline for leaving the country and imposing a ban on re-entry for a specified period of time. Any decision regarding expulsion had to be in conformity with the law and the legal grounds for it must be specified in that decision. Such justification was broadly defined in terms of security and public order concerns. The expulsion procedure was the same for legal and illegal aliens, but the illegal presence of a person in Slovak territory could alone constitute grounds for his or her expulsion. Collective expulsion was prohibited.

62. The law also defined impediments to expulsion, most of which stemmed from international human rights law. Hence aliens could not be expelled to a State where their life or personal freedom could be jeopardized on account of their race, gender, nationality, religion, social status or political belief or where they could be subjected to torture, cruel, inhuman or degrading treatment or punishment.

63. The Commission ought to pursue its identification of the applicable rules of customary international law and continue to review State practice and relevant domestic legislation in order to gain a clearer picture of existing rules. It would also be essential to consider multilateral conventions, especially those relating to human rights.

64. **Mr. Panin** (Russian Federation) said that the Commission's impressive attainments in the sphere of the codification and progressive development of international law, which had resulted in the drafting of numerous seminal international agreements of a universal nature, meant that it should be given optimal

working conditions. Its sessions should not therefore be curtailed. Similarly, it would be advisable to restore the practice of paying special rapporteurs a fee.

65. The growing role of international organizations necessitated the codification of the rules governing their responsibility. Many facets of international relations that had once been the exclusive prerogative of States were being regulated through the binding decisions or recommendations of such organizations. Hence it was likewise vital to determine the relationship between their responsibility and that of member States. The Commission's approach to the topic was judicious, in that it had pinpointed the aspects which had particularly required regulation. For example, in chapter III, on breach of an international obligation, the Commission had ascertained that the general principles for establishing the existence of such a breach on the part of a State might also be applicable to international organizations. Despite the fact that the rules had been borrowed from the articles on State responsibility, they should be accompanied by commentaries which were as detailed as possible in order to reflect the specific standards governing international organizations' activities. Although practice in the sphere of the responsibility of international organizations was not extensive, the commentary should describe instances in which a particular norm had applied to international organizations.

66. The principle established in draft article 8, paragraph 2 was of great significance. The Commission had managed to find an elegant solution to the academic dispute as to whether the rules of an organization were provisions of international law. The wording of article 8 made it possible, without prejudging that question, to emphasize that an international organization bore responsibility under international law for a breach of its own rules. The precise circumstances in which a breach of the rules gave rise to such responsibility obviously had to be decided in each specific case in the light of the type of rule in question.

67. Chapter IV dealt with a much more complex and sensitive issue, namely the relationship between the responsibility of an organization and that of its member States and even other States on behalf of which the organization was competent to take a decision. That draft articles did not, however, fully reflect the difference between regulating the responsibility of international organizations and regulating the responsibility of States. For example, when determining the responsibility of international organizations in connection with assistance in, or direction and control of, the commission of an internationally wrongful act, due heed had to be paid to the fact that some actions could be taken only by States and not by international organizations. In that connection, it was doubtful if there was any justification for introducing in articles 12 and 13 the criterion that the act would be internationally wrongful if committed by that organization.

68. In the future, a study must be made of the relationship between classical articles about assistance, coercion and control in the context of the commission of an internationally wrongful act and draft article 15 on decisions, recommendations and authorizations addressed to member States and international organizations. The commentaries stated that articles 13, 14 and 15 might partially overlap, but that finding was not enough. Since the adoption of a binding decision by an international organization must be regarded as a means of coercion, it was unclear why establishment of the responsibility of the international organization for a binding decision had been made contingent on an additional condition. Why had it been necessary to stipulate that an act would be internationally wrongful if it were committed by the organization itself and if it would circumvent an international obligation of that organization? That criterion was absent in the draft article on coercion. If not all binding decisions were coercive, in what circumstances did they constitute coercion?

69. Article 15, paragraph 2 (b), which referred to responsibility in connection with an authorization or recommendation, also prompted some misgivings. If an international organization recommended that its members should breach an obligation binding on that organization, or authorized them to do so, then obviously the organization must incur responsibility, even when its members did not use its recommendation or authorization. Responsibility in that case would clearly be different in nature and might consist solely in a duty to cease such calls for action or to revoke such authorizations. At all events, more work needed to be done on chapter IV at its second reading.

70. Turning to the questions addressed to Member States on that topic, he said that particular attention must be paid to the section on circumstances

precluding wrongfulness in the context of the responsibility of international organizations. It would be wrong to mechanically transfer to that section the rules governing State responsibility. Certain difficulties might arise if an attempt were made to apply certain circumstances precluding wrongfulness, such as self-defence, to international organizations. On the other hand, the notion of "necessity" must obviously be fleshed out and extended to situations in which an international organization decided to introduce sanctions. Similarly, a circumstance such as coercion must fully apply to international organizations, especially coercion by States, an important aspect which deserved thorough study by the Commission. The topic must likewise include the aid or assistance of an international organization in the commission of a wrongful act by a State.

71. Whether there were other circumstances in which a State might bear responsibility for the internationally wrongful act of an international organization was a question which could be decided when the Commission considered possible means of influencing an international organization (aid, assistance, control or coercion). To that end, it would be wise to delineate what was meant by those terms.

72. He welcomed the start of work on the topic of the expulsion of aliens. His Government shared most of the Commission's views on the subject, especially the thesis that expulsion was a sovereign right of a State. A State had very broad, but not limitless, discretion to decide on expulsion. The Commission ought to concentrate its attention on the limitations placed on expulsion by international law. It would be useful to ascertain in what circumstances expulsion might constitute an internationally wrongful act and either give rise to State responsibility or prompt the use of means of diplomatic protection by the State of nationality of the person concerned. Furthermore, a distinction ought to be drawn between aliens legally and illegally present on the territory of a State. In the case of illegal immigrants, any restrictions could concern only the methods of expulsion.

73. The comprehensive approach to the topic suggested by the Special Rapporteur was correct and should include a detailed perusal of the provisions of existing conventions on the expulsion of aliens, particularly those covering refugees and migrant workers. Attention must focus on those aspects of the topic which had not yet been regulated in international law. There was no reason to exclude subjects such as a change in citizens' status due to a change in status of the territory in which they were residing. The analysis should not deal with States' policy in the field of immigration or emigration, but with refusal of entry. There was no justification for examining expulsion in the course of an armed conflict, since that issue was already covered by international humanitarian law.

74. At first glance, the Special Rapporteur's decision to class not just foreign citizens but also stateless persons as "aliens" and to encompass not only official or lawful acts of States in the term "expulsion" seemed to be well founded. His Government would be pleased to place its national legislation on the expulsion of aliens at the Commission's disposal.

75. **Ms. Gavrilescu** (Romania), speaking on the topic of responsibility of international organizations, said that her delegation shared the opinion of the Special Rapporteur that articles 8 to 11, concerning the breach of an international obligation, should follow the general pattern of the corresponding provisions of the articles on responsibility of States for internationally wrongful acts. Her delegation also considered entirely justified the analogy drawn between the situation of an international organization held to be responsible for the act of a State or another international organization, on the one hand, and that of a State responsible for the act of another State, on the other. There was no reason to adopt different conditions or approaches with regard to the two types of subject.

76. Her delegation also wished to affirm the need to bear in mind, in establishing the conditions under which an international organization might be held responsible, the specific nature of certain international organizations and the way in which powers were distributed between such organizations and their member States. One example was the European Community and its practice with regard to the responsibility of States for the implementation of legislation adopted by the Community. The very specific nature of the rules applicable in the context of the Community would also have to be taken into account in considering the responsibility of an organization for a breach of an obligation set by a rule of the organization (draft article 8, paragraph 2), given that it would be inconceivable that the Community should be found to be responsible for the breach by one of its institutions of a rule of secondary legislation.

77. On the question of the responsibility of a State for aid or assistance given to an international organization in the commission of an internationally wrongful act, her delegation was of the opinion that it was preferable to incorporate such provisions in the current draft, inasmuch as the text on the responsibility of States did not contain any reference to that type of situation. In that context, the State should be held responsible in the event that it directed, controlled or coerced an international organization in the commission of an internationally wrongful act.

78. As concerned the issue of the expulsion of aliens, she agreed that it was necessary to give close attention to reconciling the right to expel with the requirements of international law, in particular those relating to protection of human rights, while other aspects, such as those relating to immigration policy or a State's control of its frontiers, fell outside the scope of the topic. In any event, she felt that the work of the Commission should look first at national legislation and at all the rules on the subject that existed in customary international law, in international treaties and in the practice of States and then, after that analysis, determine whether the existing rules were sufficient or new ones needed to be developed.

79. **Mr. Curia** (Argentina), referring to the topic of responsibility of international organizations, noted that international organizations had four main features: their composition was essentially intergovernmental, they were generally treaty-based, they had a permanent organizational structure and they enjoyed legal autonomy. At the same time, international organizations were entities created by the will of States for specific purposes. That being the case, his delegation found the reference to other entities in draft article 2 inappropriate, as it might introduce variants that deviated from the traditional concept of what constituted an international organization. For that reason and in order to correctly identify their potential members, it would be wise to clearly establish what was meant by "other entities", even if the definition was not included expressly in the text of the instrument.

80. The necessary interrelationship between the organization and the States that had created it, which was part of the very nature of an international organization, seemed to be reflected in paragraph 2 of draft article 1. However, as currently drafted, that article seemed to suggest that responsibility might be attributed to a State for a wrongful act committed by the international organization. That was not consistent with the principle expressed in draft article 4, which limited attribution of responsibility to the conduct of an organ or agent of the organization. It might be prudent to limit the responsibility of States for internationally wrongful acts exclusively to the terms of General Assembly resolution 56/83 and not introduce new criteria on the attribution of that responsibility.

81. The clear correspondence between the draft articles and the articles on State responsibility was both appropriate and desirable, since the general principles, the characterization and the attribution of the wrongful act and the consequent responsibility therefore had to follow the same parameters. That correspondence was evident not only in the substance but also in the form of the draft articles. Hence, it might be necessary to redraft some of the subheadings in the draft articles. The articles on State responsibility, for example, referred to "elements of an internationally wrongful act of a State", whereas the draft article referred to "general principles", which, moreover, did not accurately describe the content that followed.

82. In relation to draft article 4, a matter that deserved further thought was whether or not there was a limit in regard to the attribution of responsibility for the conduct of an organ or agent of an international organization. For example, should the attribution of responsibility extend to short-term staff or personnel deployed in peacekeeping operations? Also with reference to draft article 4, in his delegation's view, the term "organs" should be included in paragraph 2 along with "agents". In addition, the definition of "rules of the organization" in draft article 4, paragraph 4, should include the rules of procedure and statutes of its organs.

83. Another important point was that the frame of reference for assessing the conduct of an organ or agent of an international organization would always be based on the rules of the organization. Otherwise, there was risk of imprecision or subjectivity. As for draft article 8, paragraph 2, it pointed up a controversial issue, as was reflected in the commentary thereon. Indeed, whether or not the rules of an international organization constituted international obligations was still under discussion. The text that was ultimately adopted should leave no doubt and should be the result of consensus.

84. In sum, the articles on State responsibility provided an appropriate framework for the draft articles, eliminating ambiguities and avoiding the reopening of unnecessary debate on the topic. In his delegation's view, the draft articles were an exemplary work that shed light on a new aspect of responsibility for wrongful acts: that of international organizations.

85. Turning to the topic of expulsion of aliens, he said that there was a need to clearly delimit the scope of the topic in order to formulate principles and rules that would reconcile the power of States to set the conditions for admission and residence of aliens with the protection of human rights. As was the usual practice, the Commission should begin with a careful examination of customary and treaty rules on the matter. It should also look at international practice and at national legislation.

86. In respect of the latter, information provided by States would be of great importance. Argentina's law on migration might contribute some useful elements for the work of the Commission, particularly as it incorporated the principle that the admission and residence criteria and procedures applied to aliens should be non-discriminatory, in accordance with the rights and guarantees recognized under the national Constitution and international treaties. In Argentina, the latter took precedence over national legislation; moreover, the provisions of many human rights agreements, including the American Convention on Human Rights and the International Covenant on Civil and Political Rights, were enshrined in the Constitution. Argentina therefore welcomed the Commission's decision to examine the issue of expulsion of aliens and looked forward to a detailed study and discussion of the topic.

87. **Ms. Telalian** (Greece), said that the topic of expulsion of aliens lent itself to codification, as there was a significant body of national legislation and practice as well as of international and regional jurisprudence on the subject. The topic also raised important questions of international law, particularly human rights law, and treaty-based judicial and other monitoring bodies had formulated a series of human rights principles and standards that might be applicable to it. Her delegation fully agreed with the Special Rapporteur that one of the most important problems with respect to the expulsion of aliens was how to reconcile the right to expel, which seemed inherent in State sovereignty, with the demands of international law, in particular the fundamental rules of human rights law. What really mattered in that respect was the obligation of the State to strike a fair balance between the individual's rights protected by the relevant rules of human rights law on the one hand and the State's interests in pursuing legitimate aims, such as the protection of public order, on the other.

88. When, however, the right at stake was an absolute one, such as the right to life or the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, her delegation believed that expulsion could not be justified on any grounds. The most important human rights treaties provided procedural guarantees to those under expulsion who were lawfully residing in the territory of a State. That was the case, for example, with article 13 of the International Covenant on Civil and Political Rights. Likewise, human rights treaties provided indirect protection of a substantive character to individuals under expulsion — for example, articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights had most frequently dealt with the sensitive issue of the right to respect for family life and private life. It should be stressed that while in those cases the Court had relied on various criteria in order to determine the lawfulness of expulsion, it would be difficult to ascertain that there existed a body of uniform rules that could apply to all cases of removal. That was mainly because the Court examined each case on its own merits.

89. The Special Rapporteur had given a broad provisional interpretation of the term "expulsion", which was in line with the concept of expulsion as defined by the Human Rights Committee in its General Comment No. 15 concerning the position of aliens under the Covenant. However, in her delegation's view, such a broad approach to the topic could lead to an unnecessary enlargement of the scope of the report and of the principles that the International Law Commission might decide to draft in that respect. That was because not all the forms of the removal of an alien from the territory of the host State could fall within the same legal regime. It should be noted that both article 13 of the Covenant and article 1 of the seventh protocol to the European Convention covered aliens who were lawfully present in the country concerned — hence the preference expressed by the Commission for carefully delimiting the scope of the

study to those measures which concerned resident aliens. In that respect, her delegation also supported the distinction made by the Special Rapporteur between persons in a regular situation and those in an irregular situation (including those who had been residing for a long time in the State seeking to expel them).

90. Her delegation also agreed with the Special Rapporteur that displaced persons should be left outside the scope of the topic. The same applied to refoulement, non-admission of asylum-seekers, refusal of admission for regular aliens and questions relating to immigration or emigration policies, all of which should be excluded from the study of the topic. As for issues related to mass population expulsions in periods of armed conflicts that were regulated by international humanitarian law, her delegation felt that they could be considered under the future study. Nevertheless, should the Commission eventually opt to enlarge the scope of the present topic, an attempt should be made to draw up a minimum of guarantees in some areas, such as the prohibition of maltreatment of aliens who had been or were being expelled and the protection of their human dignity.

91. Her delegation agreed with the Special Rapporteur's comment in paragraph 20 of his report (A/CN.4/554). Grounds for expelling aliens, such as preservation of the public order or national security or even the violation of rules relating to the entry and stay of aliens were admissible under international law. Decisions for expulsion based on discriminatory grounds, such as religious belief, national or ethnic origin, or sexual orientation or behaviour, on the other hand, should be inadmissible. In that connection, it should be recalled that the Committee on the Elimination of Racial Discrimination, in its General Recommendation No. 30 on discrimination against non-citizens, affirmed that States must ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party did not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin. In any case, given that grounds for expulsion could be interpreted broadly, what was really important was preservation of the principle of proportionality.

92. In paragraph 22 of his report, the Special Rapporteur mentioned that the lawfulness of the expulsion depended on two factors: conformity with the expulsion procedures in force in the expelling State and respect for fundamental human rights, thus rightly underlining the procedural and the substantive aspect of the protection of persons under expulsion. As concerned the procedural aspect, article 13 of the Covenant contained a range of significant safeguards for aliens legally residing in a State, including respect for the procedures provided by the respective legislation. Furthermore, the European Court of Human Rights had ruled that States could not mislead aliens, even those who were in breach of immigration rules, in order to deprive them of their liberty with a view to expelling them. Members of the Commission had referred to a wide range of fundamental guarantees applied to the entire process of expulsion. The possibility for administrative and judicial appeals against the act of expulsion had particular significance, especially in situations in which the alien was under detention.

93. With regard to collective or mass expulsions, her delegation noted that such measures were prohibited by the fourth protocol to the European Convention, and article 13 of the Covenant also seemed to be incompatible with such practices. The Human Rights Committee, in its General Comment No. 15, had found that article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. That understanding, in the opinion of the Committee, was confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by, and to be represented before, the competent authority. It was true that the procedural rights of aliens could be limited on grounds of national security. Those grounds, however, had to be really compelling, according to General Comment No. 15.

94. Similarly, the European Court of Human Rights had ruled that even where national security was at stake, the concepts of lawfulness and the rule of law in a democratic society required that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be, with appropriate procedural limitations on the use of classified information.

95. The Special Rapporteur, in paragraphs 26 and 27 of his report, raised delicate issues that required careful consideration, including diplomatic protection, compensation and the right of expellees to return to

countries from which they had been improperly expelled. In that respect, her delegation agreed with the view expressed by some members of the Commission, namely, that the focus at the present stage should be on the basic questions of the rights and duties of States with respect to expulsion, leaving for a later stage the question of whether to attempt to elaborate on the consequences for breaches of those duties.

96. Her delegation also agreed that the Special Rapporteur should be encouraged to undertake a detailed consideration of existing customary international law and treaty law, including a comparative study of international case law, both at the global and the regional levels, as well as of national laws and practice. However, her delegation was quite sceptical about the need to draw up a comprehensive legal regime. Although it would be useful to include in the definitions the various categories of aliens and the many forms of expulsion, the scope of the future set of draft rules should be carefully delimited. A set of draft rules that would cover a broad array of issues coming under different legal regimes, or for which there were already settled rules, would be of limited added value.

97. **Mr. Lavalle-Valdés** (Guatemala), referring to the topic of international responsibility of international organizations, said that members of United Nations peacekeeping operations necessarily exercised some control over the inhabitants of the areas where they were assigned. Such powers resembled those normally exercised by Governments. Therefore the question arose whether the articles on the responsibilities of international organizations should include some articles that, mutatis mutandis, reflected articles 8 and 9 of the articles on State responsibility.

98. Whether or not the change was made that had been recommended in paragraph 17 of the third report of the Special Rapporteur (A/CN.4/553*), paragraph 2 of draft article 8 implied that an organization incurred responsibility under international law for the violation of one of its internal rules only if that rule coincided with a rule of international law which was not in itself part of those internal rules. That also implied that the internal rules of an international organization were not necessarily part of international law.

99. Accordingly, an objective criterion could be established for the purpose of determining which internal rules of an international organization belonged to the sphere of international law. A subjective criterion, however, could also be applied. Thus, the only internal rules that would be considered to be part of international law would be those that bound, or granted rights to, persons or entities that were subjects of international law. By adopting a similar but more restrictive criterion, it might also be maintained that an internal rule would be part of international law only if its violation caused injury to a subject of international law.

100. Such criteria, besides being difficult to apply, became even more complicated in view of the possibility that the relations between an international organization and a person or entity not subject to international law could amount to something similar to diplomatic protection, on the part of the State of which the injured person or entity was a national.

101. There would presumably be no need for such criteria in all cases, or at least in most cases, where the internal law of an international organization contained a provision equivalent to Article 100 of the Charter of the United Nations and where the State in question was a member of the organization. And yet, something similar to diplomatic protection might also exist for international organizations. In any event, draft article 8 and the commentary should be amended to eliminate any doubt about the problems described. Furthermore, in the interests of precision, it would be useful to insert into draft article 8, paragraph 1, before the word “when”, between commas, the words “if that obligation is binding on the international organization”.

102. His questions with regard to draft articles 12 and 13 were also related to the fact that those articles were the same, mutatis mutandis, as articles 16 and 17 on State responsibility. He doubted that paragraph (b) of articles 16 and 17 could be directly applied to draft articles 12 and 13, in respect of cases in which an international organization acted in general conformity with the provisions of draft articles 12 and 13, but where paragraph (b) did not apply. The wording of those articles might imply that such conduct conformed to international law. And yet, going further into the question, it was difficult not to conclude the contrary. That conclusion would be based, in the absence of a customary international law prohibiting such conduct, on general principles of law, which, in accordance with article 38, paragraph 1 (c), of the Statute of the International Court of Justice, were part of international law.

103. In his view, there was no country in the world in which an individual who was not a party to a contract with two other individuals could knowingly assist one of them in violating that contract without incurring responsibility for injuries caused to the other party to the contract as a consequence of the violation. However, in order for an international organization to act as set out in draft articles 12 and 13, but without the application of paragraph (b) of either article, the rule that the international organization would be violating would be a fundamental principle of international law. Naturally, the same could be said, mutatis mutandis, for such conduct carried out by a State.

104. With regard to the word "State" as it appeared in draft articles 12, 13 and 14, he felt that, for the purposes of those articles, the term applied as much to a State that was a member of an international organization as to one that was not. Those provisions should be modified so that that idea was expressed explicitly.

105. With respect to paragraphs 1 and 2 of draft article 15, he wondered whether the words "and would circumvent an international obligation of the former organization" might be superfluous. His doubts were confirmed in paragraph (4) of the commentary to article 15. The international organization referred to in the first line of paragraph 2 of the article would presumably incur responsibility only if, in the absence of an authorization or recommendation by the international organization, the State or international organization referred to in subparagraph (b) had not committed the internationally wrongful act. In most cases, it would be extremely difficult to prove that the condition had been fulfilled. That would be so, for instance, if the commission of the act benefited the State that had committed it.

106. To the extent that the act was lawful for the State or international organization in question, paragraph 3 of draft article 15 did not seem logical. Was there, for example, any country in the world in which it would be unlawful for Juan to recommend to Pedro to tear down a building that belonged exclusively to Pedro? Moreover, if the provision contained in paragraph 3 were reasonable, it would also presumably figure in the articles on responsibility of States, which was not the case.

107. Turning to the matter of the expulsion of aliens, he said that topic was of particular interest to his Government, and he was therefore closely following the consideration and evolution of the topic.

108. His delegation was also interested in a suggestion made the previous year on behalf of the Nordic countries to the effect that the International Law Commission should take up the topic of law applicable to humanitarian assistance in the event of natural disasters.

109. **Mr. van Bohemen** (New Zealand) said that his delegation welcomed the Commission's progress on a number of topics, and hoped, in particular, that it could complete its work on the topics of diplomatic protection, international liability in case of loss from transboundary harm arising out of hazardous activities, and fragmentation of international law in the coming year.

110. His delegation supported the approach the Commission had taken to the topic of responsibility of international organizations and agreed with the practice of following the articles on responsibility of States, unless there was good reason to depart therefrom. With regard to draft articles 12 and 13, it supported the decision to model them on the corresponding articles on responsibility of States, mutatis mutandis. It also agreed that the Special Rapporteur was right to consider situations in which an international organization that was bound by a particular obligation used its power to compel member States not so bound to take actions that would circumvent the organization's obligation, or, for the same purpose, authorized or recommended that such actions should be taken. The distinction was appropriately drawn between binding decisions of the organization and decisions that only authorized or recommended the action in question; New Zealand supported that formulation.

111. **Mr. Kessel** (Canada) expressed his Government's interest in the ongoing work of the International Law Commission on the issue of expulsion of aliens, and took note with appreciation of the Special Rapporteur's preliminary report. Canada supported the general approach that had been proposed by the Special Rapporteur, and looked forward to the Secretariat's compilation of relevant international and domestic law. In order to facilitate that process, the Secretariat might look to the important work done over the past four years under the Berne Initiative and through the International Organization for Migration, as well as

through the Global Commission on International Migration, which had recently presented its report to the Secretary-General. A comprehensive study of that more focused topic, including State practice, might be of assistance in clarifying the relevant rules of international law.

112. The work of the International Law Commission could also usefully take into account the duty of States of origin to accept the return of their nationals, including the return of stateless persons who had been deprived of their nationality prior to obtaining a new nationality in a manner contrary to international law. With respect to migrant workers, it should be noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families imposed obligations only on States parties.

113. **Mr. Gaja** (Special Rapporteur on responsibility of international organizations) said he would attempt to clarify the scope of the current work of the Commission on the complex relations of responsibility of States and responsibility of international organizations. According to draft article 1, the draft articles were intended to deal with responsibility of States only to the extent that a State might incur responsibility for the intentionally wrongful act of an international organization.

114. A first set of issues, within the scope so defined, concerned cases in which a State aided or assisted or directed and controlled an international organization in the commission of an internationally wrongful act or coerced it to commit such an act. The question raised by the Commission was whether it was necessary to spell out those cases in which a State incurred responsibility. The rules provided in the articles on responsibility of States only dealt with inter-State relations. However, those rules could be applied by analogy to the case in which a State aided or assisted an international organization. Therefore, it might seem unnecessary to reiterate those rules in the draft articles on responsibility of international organizations. Views on that point would be very useful to the Commission.

115. The second set of issues, also not covered by the articles on responsibility of States but which fell within the scope of the draft articles under discussion, was that of the possible responsibility of member States when an international organization was held responsible. That was the most extensively discussed question relating to responsibility of international organizations. It was also considerably relevant in practice. Since the Commission would address that topic the following year, preliminary views of Governments would provide helpful guidance.

116. There were further cases in which the responsibility of States and the international responsibility of international organizations were connected. Draft article 15 considered the international responsibility of an international organization in the case of decisions binding its member States to commit what might be an internationally wrongful act. A further question would be to assess whether the fact that a State was bound by the organization might provide a justification for the State and exonerate it from international responsibility. That important question, which was part of the responsibility of States, seemed to lie outside the scope of the draft articles under discussion. The same was true for cases in which infringement by a State on an international obligation paralleled an infringement by an international organization.

*The meeting rose at 1.05 p.m.*