Document:-
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Summary record of the 2910th meeting

Topic:
Draft report of the International Law Commission on the work of its fifty-eighth session

Extract from the Yearbook of the International Law Commission:-
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2910th MEETING

Tuesday, 8 August 2006, at 3 p.m.

Chairperson: Mr. Guillaume PAMBOU-TCHIVOUNDA

Present: Mr. Addo, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Dugard, Mr. Economides, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Mansfield, Mr. Melescanu, Mr. Momtaz, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Valencia-Ospina, Ms. Xue.

Draft report of the Commission on the work of its fifty-eighth session (*continued*)

Chapter V. *International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities)* (*concluded*) (A/CN.4/L.693 and Add.1)

E. Text of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (*concluded*) (A/CN.4/L.693/Add.1)

2. Text of the draft principles and commentaries thereto (*concluded*)

Commentary to draft principle 6 (International and domestic remedies) (*concluded*)

Paragraph (6)

1. Mr. MANSFIELD, referring to the amendments to paragraph (5) of the commentary made at the previous meeting, suggested that the first sentence of the English version of paragraph (6) should be amended to read: "The substantive aspect of the principle, on the other hand …".

2. Mr. ECONOMIDES said that it was not clear what was meant by the last sentence, which read: "A number of States may still be in the process of developing the minimum substantive standards as part of their national law and procedures."

3. Mr. Sreenivasa RAO (Special Rapporteur) explained that he had tried to be optimistic by taking account of the fact that, although not all States had minimum substantive standards as part of their national law and procedures, some of them were in the process of amending their legislation for that purpose.

4. Mr. BROWNLIE said that it was the word "may" in the last sentence which gave rise to a problem. He suggested changing it to "are" to make the sentence sound more positive.

Paragraph (6) was adopted with the amendments proposed by Mr. Mansfield and Mr. Brownlie.

Paragraph (7)

5. Mr. MANSFIELD suggested that the word "deliver" in the third line of the English version should be replaced by "the delivery of".

Paragraph (7), as amended in the English version, was adopted.

Paragraph (8)

6. Mr. GAJA suggested that a new subparagraph (*a*) should be inserted in the penultimate sentence, to read: "the act or omission causing injury took place"; the other subparagraphs would be changed accordingly. That was how the Court of Justice of the European Communities had interpreted the 1968 Convention concerning juridicial competence and the execution of decisions in civil and commercial matters.

Paragraph (8), as amended, was adopted.

Paragraph (9)

7. Ms. XUE said that, in the first sentence of the footnote whose reference was at the end of the paragraph, which stated that the "most favourable law principle" had been "adopted in several jurisdictions in Europe, Venezuela, Tunisia and possibly even China", the reference to China should be deleted because it was not entirely in line with that country's practice.

Paragraph (9), as amended, was adopted.

Paragraph (10)

8. Mr. GAJA suggested that the second sentence of the footnote whose reference was placed after "out of court settlement" should be amended to read: "It sought compensation by approaching United States courts first, but the action failed on grounds of *forum non conveniens*. The matter was then litigated before the courts of India."

9. Mr. MOMTAZ said that he had a problem with the footnote on the possibility of a negotiated agreement. In the two cases to which it referred, namely, the reparation by the United States for damage caused to Japanese fishermen by nuclear tests in 1954 near the Marshall Islands[381] and the *Aerial Incident of 3 July 1988* case, the United States had paid compensation to the victims *ex gratia*, with no acknowledgment of any responsibility. A State could thus be led to pay an *ex gratia* compensation without acknowledging responsibility. The footnote should reflect that aspect of the question. Either the two examples cited should simply be deleted or it should be expressly indicated that, in some cases, the victims received compensation from a State on an *ex gratia* basis without acknowledgment by that State of its responsibility.

10. Mr. GALICKI said that the reference to the compensation paid to Canada by the USSR following the crash of Cosmos 954, also in the same footnote, was inappropriate because compensation had been paid *ex gratia* in that case as well. The example should be deleted.

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[381] See "Compensation to Japanese for damage resulting from nuclear test", *Department of State Bulletin*, vol. 32, No. 812 (1955), pp. 90–91.

11. Mr. Sreenivasa RAO (Special Rapporteur) said that, in order to accommodate the concerns of Mr. Momtaz and Mr. Galicki, the following phrase might be added at the end of the fifth sentence: ", sometimes as *ex gratia*, without ascribing any responsibility or liability".

12. Ms. XUE said that paragraph (10) dealt with the question of allocation of loss. Introducing the concepts of responsibility and liability would complicate matters. In order to give the paragraph the desired coherence, she proposed that the words "victims of" in the first sentence be deleted.

13. The CHAIRPERSON said that it would be difficult to delete the reference to the victims in the first sentence and he therefore suggested the following wording: "Paragraph 4 highlights a different aspect in the process of ensuring the existence of other remedies for victims, including the possibility of obtaining *ex gratia* compensation."

14. Mr. MOMTAZ said that he endorsed the Chairperson's proposed wording, because it showed that *ex gratia* compensation was one procedure among others.

15. Ms. XUE said that it was inappropriate to raise the question of *ex gratia* compensation in paragraph (10) because that paragraph referred to paragraph (4) of principle 6, which did not deal with responsibility, but simply specified that States might provide for recourse to international claims settlement procedures that were expeditious and involved minimal expenses.

16. Mr. Sreenivasa RAO (Special Rapporteur) said that, in order to reconcile the positions of Ms. Xue and Mr. Momtaz, he proposed that the words "or proceed to an *ex gratia* settlement" be added at the end of the fifth sentence after the words "negotiate and agree on the quantum of compensation payable".

Paragraph (10) was adopted with the amendment proposed by the Special Rapporteur.

Paragraph (11)

17. Mr. GAJA suggested that the reference, in the related footnote, to the establishment of the Iran–United States Claims Tribunal should be deleted. The example was not relevant as a model for setting up some of the procedures referred to in paragraph 4 of principle 6. A more appropriate example was needed.

Paragraph (11) was adopted, subject to the amendment proposed by Mr. Gaja.

Paragraphs (12) and (13)

Paragraphs (12) and (13) were adopted with several minor drafting changes in the English version.

Paragraph (14)

Paragraph (14) was adopted.

Paragraph (15)

Paragraph (15) was adopted with a minor drafting change in the English version.

Paragraph (16)

18. Following an exchange of views between Mr. GAJA and Mr. Sreenivasa RAO (Special Rapporteur), it was decided that the second sentence should be amended to read: "Such recognition and enforcement would be essential to ensure the effects of decisions rendered in jurisdictions in which the defendant did not have enough assets for victims to recover compensation in other jurisdictions where such assets are available."

Paragraph (16), as amended, was adopted.

The commentary to draft principle 6, as amended, was adopted.

Commentary to draft principle 7 (Development of specific international regimes)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

19. Mr. GAJA said that paragraph (3) dealt basically with the Commission's previous work and was of a general nature. He therefore suggested that the text after the first sentence which refers to the assumption upon which the Commission proceeded be moved to the beginning of the general commentary and perhaps placed in a footnote.

Paragraph (3), as amended, was adopted.

The commentary to draft principle 7, as amended, was adopted.

Commentary to draft principle 8 (Implementation)

Paragraph (1)

20. Ms. ESCARAMEIA proposed that the words "Principle 8" at the beginning of the paragraph should be replaced by the words "Paragraph 1", since paragraph (1) of principle 8 was being referred to, not the entire principle.

Paragraph (1), as amended, was adopted.

Paragraph (2)

21. Ms. ESCARAMEIA said that the word "should" in the first line should be replaced by "shall".

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to draft principle 8, as amended, was adopted.

C. Recommendation of the Commission (A/CN.4/L.693)

22. The CHAIRPERSON said that the Commission had left two sections of document A/CN.4/L.693 in abeyance: section C (Recommendation of the Commission) and section D (Tribute to the Special Rapporteur, Mr. Pemmaraju Sreenivasa Rao). With regard to section C, the recommendation of the Commission might be worded to read:

"At its 2910th meeting, on 8 August 2006, the Commission recalled that, at its forty-ninth session (1997), it had decided to consider the topic in two parts[382] and that, at its fifty-third session (2001), it had completed the first part[383] and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles on prevention of transboundary damage from hazardous activities.[384] The Commission's recommendation was based on its view that, taking into account the existing State practice, the first part of the topic lent itself to codification and progressive development through a convention. The adoption by the Commission of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities completes the second part, thus concluding work on the topic "International liability for injurious consequences arising out of acts not prohibited by international law". In accordance with article 23 of its Statute, the Commission recommends, for this second part, that the General Assembly endorse the draft principles as guidelines and urge States to take national and international action to implement them."

23. Ms. ESCARAMEIA said that, although the recommendation which the Chairperson had just read out referred to article 23 of the Statute of the Commission, it did not correspond to any of the subparagraphs of paragraph 1 of that provision. To remedy that problem, at least in part, she suggested that the words "as guidelines" in the last sentence should be replaced by "in a resolution".

24. The CHAIRPERSON said that, if he heard no objection, he would take it that the Commission wished to insert the text which he had just read out, as amended, as chapter V, section C, of its report.

It was so decided.

Section C, as amended, was adopted.

D. Tribute to the Special Rapporteur (A/CN.4/L.693)

25. The CHAIRPERSON proposed the insertion of the following tribute to the Special Rapporteur in chapter V, section D, of the report:

"At its 2910th meeting, on 8 August 2006, the Commission, following the adoption of the text of the preamble and the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, adopted the following resolution by acclamation:

'*The International Law Commission*,

'*Having adopted* the draft preamble and draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities,

'*Expresses* to the Special Rapporteur, Mr. Pemmaraju Sreenivasa Rao, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft preamble and draft principles through his tireless efforts and devoted work and for the results achieved in the elaboration of the draft preamble and draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.'

"The Commission also expressed its deep appreciation to the previous Special Rapporteurs, Mr. Robert Q. Quentin-Baxter and Mr. Julio Barboza, for their outstanding contribution to the work on the topic."

26. If he heard no objection, he would take it that the Commission wished to insert the text as chapter V, section D.

It was so decided.

Section D was adopted.

27. Mr. Sreenivasa RAO (Special Rapporteur) expressed his thanks and appreciation to all the members of the Commission who had helped him over the years to complete his work on a topic which had been before the Commission for 27 years.

Document A/CN.4/L.693, as amended, was adopted.

Chapter V of the draft report of the Commission, as a whole, as amended, was adopted.

Chapter VII. *Responsibility of international organizations* (A/CN.4/L.695 and Corr.1 and Add.1 and Corr.1 and Add.2)

28. The CHAIRPERSON invited the members of the Commission to consider chapter VII of the draft report on responsibility of international organizations (A/CN.4/L.695 and Corr.1 and Add.1 and Corr.1 and Add.2), beginning with documents A/CN.4/L.695 and Corr.1.

A. Introduction (A/CN.4/L.695)

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Paragraph 3

29. Mr. PELLET said that there should be a reminder of what the number in square brackets meant and, to that end, he suggested that the explanation in the footnote whose references was placed at the end of the paragraph should be included in the footnote whose reference was placed in section C, article 15.

Paragraph 3, as amended, was adopted.

Section A, as amended, was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.695 and Corr.1)

Paragraphs 4 to 11

Paragraphs 4 to 11 were adopted.

Section B was adopted.

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[382] *Yearbook ... 1997*, vol. II (Part Two), p. 59, paras. 165–167.

[383] *Yearbook … 2001*, vol. II (Part Two) and corrigendum, p. 146, para. 97.

[384] *Ibid.*, p. 145, para. 94.

30. The CHAIRPERSON invited the members of the Commission to consider section C.2 of chapter VII of the draft report of the Commission, in particular the commentaries to draft articles 17 to 24, which made up chapter V of the draft articles on responsibility of international organizations (A/CN.4/L.695/Add.2).

C. Text of the draft articles on responsibility of international organizations provisionally adopted so far by the Commission (A/CN.4/L.695/Add.1 and Corr.1 and Add.2)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-EIGHTH SESSION A/CN.4/L.695/Add.2

Paragraph (1)

Paragraph (1) was adopted.

General Commentary

31. Mr. GAJA pointed out that the title preceding paragraph (1) should read "General commentary".

32. The CHAIRPERSON said that the Secretariat would make the necessary change.

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The general commentary was adopted.

Commentary to draft article 17 (Consent)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to draft article 17 was adopted.

Commentary to draft article 18 (Self-defence)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to draft article 18 was adopted.

Commentary to draft article 20 (*Force majeure*)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

33. Mr. PELLET said that he seemed to recall that responsibility of international organizations pursuant to their internal rules had been excluded from the draft. However, paragraph (4) and also paragraph (5) referred to the judgments of international administrative tribunals. He requested the Special Rapporteur to provide an explanation.

34. Mr. GAJA (Special Rapporteur) said that, when it had considered the question of the rules of the organization, the Commission had not reached a firm conclusion on whether they were part of international law. It had decided that those rules were covered insofar as they were part of international law, but there had been differences of opinion as to how far that went; thus, ambiguity persisted. However, even if the rules were not part of international law, they were relevant as an indication of practice. He suggested that a sentence referring to the discussion on the question should be inserted after the first sentence.

Paragraph (4) was adopted, subject to the amendment proposed by the Special Rapporteur.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

The commentary to draft article 20, as amended, was adopted.

Commentary to draft article 21 (Distress)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to draft article 21 was adopted.

Commentary to draft article 22 (Necessity)

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

The commentary to draft article 22 was adopted.

Commentary to draft article 23 (Compliance with peremptory norms)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to draft article 23 was adopted.

Commentary to draft article 24 (Consequences of invoking a circumstance precluding wrongfulness)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to draft article 24 was adopted.

Document A/CN.4/L.695/Add.2, as a whole, as amended, was adopted.

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-EIGHTH SESSION (A/CN.4/L.695/Add.1 and Corr.1)

Paragraph (1)

Paragraph (1) was adopted.

General commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

35. Mr. PELLET, referring to the last sentence, noted that the question of responsibility of entities other than States or international organizations that were also members of an international organization had been the subject of a heated debate in the Commission. It would have been better to say that questions relating to such responsibility went beyond the scope of the draft articles, notwithstanding the opinion to the contrary of many members.

36. Mr. GAJA (Special Rapporteur) said that draft article 1, which defined the scope of the draft articles, related only to responsibility of international organizations and of States. Moreover, dealing with the responsibility of other entities would mean starting a new chapter. Although a few members had in fact been in favour of doing so, that was not a task that should be taken on at the moment.

37. Mr. PELLET suggested that the words "Following the adoption of draft articles 28 and 29" in the penultimate sentence should be replaced by "In addition to draft articles 28 and 29".

38. Mr. GAJA (Special Rapporteur) said that it would be preferable to bring the French version into line with the English text by saying: "*À la suite de l'adoption*".

39. Mr. PELLET said he agreed with that proposal, but without the word "*adoption*".

Paragraph (5), as amended, was adopted.

Paragraph (6)

40. Mr. PELLET said that the last sentence should explain why the heading of Part One should be changed, and that was presumably in order to include the responsibility of international organizations that were members of another organization.

41. Mr. GAJA (Special Rapporteur) said that the current heading of Part One was "The internationally wrongful act of an international organization" and should not cover responsibility of States. As a number of points still needed to be considered, including some in relation to State responsibility, it would however be premature to take a definitive decision. He was nevertheless prepared to insert a footnote indicating the current title and explaining why it might have to be amended.

Paragraph (6) was adopted, subject to the insertion proposed by the Special Rapporteur.

The general commentary, as amended, was adopted.

Commentary to draft article 25 (Aid or assistance by a State in the commission of an internationally wrongful act by an international organization)

Paragraph (1)

42. Ms. ESCARAMEIA said that the use of the word "corresponds" in the first sentence implied that there was a relationship between draft articles 25 and 12. It would be better to say that draft article 25 dealt with a situation parallel to that of draft article 12.

43. The CHAIRPERSON suggested that the Special Rapporteur should reformulate paragraph (1) accordingly and submit the new version to the Secretariat.

Paragraph (1) was adopted, subject to that amendment.

Paragraphs (2) to (4)

Paragraphs (2) to (4) were adopted.

Paragraph (5)

44. Mr. PELLET said it should be made clear that reference was being made to article 16 of the draft articles on responsibility of States for internationally wrongful acts,[385] even if that had already been stated in paragraph (4). Anyone reading the paragraph might have the impression that article 16 of the draft articles on responsibility of international organizations was meant. It should also be specified that the heading had not been amended, but adapted to the purpose of the provision. The same comments applied to paragraphs (4) of the commentaries to draft articles 26 and 27.

45. The CHAIRPERSON asked the Special Rapporteur to amend the text accordingly and to communicate the new version to the Secretariat.

Paragraph (5) was adopted, subject to that amendment.

The commentary to draft article 25, as amended, was adopted.

Commentary to draft article 26 (Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

46. The CHAIRPERSON requested the Special Rapporteur to amend paragraph (4) in the same way as paragraph (5) of the commentary to draft article 25.

Paragraph (4) was adopted, subject to that amendment.

The commentary to draft article 26, as amended, was adopted.

Commentary to draft article 27 (Coercion of an international organization by a State)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

47. The CHAIRPERSON requested the Special Rapporteur to amend paragraph (4) as previously.

Paragraph (4) was adopted, subject to that amendment.

The commentary to draft article 27, as amended, was adopted.

Commentary to draft article 28 (International responsibility in case of provision of competence to an international organization)

Paragraph (1)

48. Mr. PELLET, referring to the first sentence, suggested that the words "a situation which is to a certain extent similar to" should be replaced by "a situation which constitutes to a certain extent the situation symmetrical to".

[385] *Ibid.*, p. 26, para. 76.

49. Mr. GAJA (Special Rapporteur) said that the word "symmetrical" was not exactly correct. "Similar" would be better.

50. Mr. BROWNLIE suggested the word "analogous".

Paragraph (1) was adopted with that amendment, as well as the amendment contained in document A/CN.4/L.695/Add.1/Corr.1.

Paragraph (2)

51. Mr. PELLET said that the last sentence was incomprehensible.

52. Mr. GAJA (Special Rapporteur) drew attention to a mistake in the French version: the phrase "abusing its rights" had been rendered by "*exerçant ses droits*".

53. The CHAIRPERSON suggested that the word "*exerçant*" should be replaced by "*abusant de*".

Paragraph (2) was adopted with this correction to the French version.

Paragraphs (3) to (8)

Paragraphs (3) to (8) were adopted.

The commentary to draft article 28, as amended, was adopted.

Commentary to draft article 29 (Responsibility of a State member of an international organization for the internationally wrongful act of that organization)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

54. Mr. PELLET said that the following clarification should be inserted at the beginning of the second sentence: "Despite the opinion to the contrary of a number of members, the Commission considered that".

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

Paragraph (6)

Paragraph (6) was adopted with, in the English version only, the amendment contained in document A/CN.4/L.695/Add.1/Corr.1.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

55. Mr. PELLET said that the word "globally" in the penultimate sentence was too vague. He wondered whether it meant that the factor in question had to be considered in the global context of the matter, taking account of all aspects of the situation.

56. Mr. GAJA (Special Rapporteur) explained that the size of membership had to be considered together with all other relevant factors.

57. Mr. PELLET suggested the following wording for the French version: "*Les facteurs, parmi lesquels le petit nombre de membres, doivent être envisagés de manière globale*".

58. Following a discussion in which Mr. PELLET, Mr. GAJA (Special Rapporteur) and Ms. XUE took part, the CHAIRPERSON requested the Special Rapporteur to submit to the Secretariat a new version of the sentence taking into account the comments made.

Paragraph (10) was adopted, subject to that amendment.

Paragraphs (11) and (12)

Paragraphs (11) and (12) were adopted.

Paragraph (13)

59. Mr. PELLET said that he was opposed to the reference in the last sentence to "subsidiary responsibility" as a "minor form of responsibility". The latter phrase should be deleted.

60. Mr. GAJA (Special Rapporteur) said that it was still necessary to explain that, in accepting a subsidiary responsibility, States were only agreeing to a lesser responsibility. However, he was open to any proposal for more appropriate wording.

61. Following a discussion in which Mr. PELLET, Mr. MOMTAZ, Mr. CANDIOTI and the CHAIRPERSON took part, it was decided that the words "which is the minor form of responsibility" should be replaced by "which is only residual in character".

Paragraph (13) was adopted with that amendment and with the amendment contained in document A/CN.4/L.695/Add.1/Corr.1.

The commentary to draft article 29, as amended, was adopted.

Commentary to draft article 30 (Effect of this chapter)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

62. Mr. PELLET said that he had great difficulty understanding that very long paragraph. If it referred to article 16 of the draft articles under consideration, it should say so.

63. Mr. GAJA (Special Rapporteur) said that the reference was to article 19 of the draft articles on responsibility of States for internationally wrongful acts.[386] He himself had not been in favour of article 30, but, as the Commission had decided to include it, he had thought it useful to explain why the provision was drafted.

[386] *Ibid.*

64. Mr. PELLET said it should all the same be recalled that article 30 was the counterpart, for States, of article 16 of the present draft articles, by referring to that article and its commentary. Perhaps the Special Rapporteur could submit a sentence along those lines to the Secretariat; there was no need to bring the matter up again in plenary.

65. Mr. ECONOMIDES said that he also found paragraph (2) difficult to understand, especially the first sentence.

66. The CHAIRPERSON suggested that the Special Rapporteur should submit a new version of the paragraph.

67. Mr. GAJA (Special Rapporteur) said that it was very clear that paragraph (2) referred to what was said in paragraph (1). It was also clear that the chapter was on responsibility of States. However, he was prepared to reconsider the paragraph if Mr. Economides had wording to propose.

68. Mr. ECONOMIDES said that he did not have a specific proposal to make at present, but the text might say something to the effect that there appeared to be less need for a "without prejudice" provision for international organizations analogous to the one in the draft articles on responsibility of States for internationally wrongful acts and that, since responsibility had been saved in the case of States, it was deemed advisable, for reasons of symmetry, to save responsibility of international organizations, too, even though it was less useful. The idea was that, if article 19 was omitted entirely, it would be necessary to explain why, especially as that article might prove useful in practice, although it was perhaps poorly expressed.

69. Following an exchange of views in which the CHAIRPERSON, Mr. GAJA (Special Rapporteur), Mr. MELESCANU and Mr. PELLET took part, the CHAIRPERSON suggested that Mr. Economides should communicate his proposal to the Secretariat in writing and that the Commission should adopt paragraph (2) of the commentary to draft article 30 at a later time.

It was so decided.

Paragraph (3)

70. Mr. GAJA (Special Rapporteur) said that "16" should be replaced by "19".

Paragraph (3), as amended, was adopted.

Document A/CN.4/L.695/Add.1 was adopted, subject to paragraph (2) of the commentary to draft article 30.

Chapter VII of the draft report of the Commission, as a whole, as amended, was adopted, subject to paragraph (2) of the commentary to draft article 30.

Chapter X. *Effects of armed conflicts on treaties* (A/CN.4/L.698)

A. Introduction

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraph 4

Paragraph 4 was adopted.

1. General remarks on the topic

Paragraphs 5 and 6

Paragraphs 5 and 6 were adopted.

Paragraph 7

71. Ms. ESCARAMEIA said she was very surprised that the summary of the debate was so short. Many other issues had been considered, in particular the criteria for deciding whether a treaty was applicable or not in the case of armed conflict.

72. Mr. MOMTAZ said that he agreed with Ms. Escarameia. He also thought that the words "the law of war" should be deleted, because that expression was synonymous with "international humanitarian law" in the same sentence.

73. Mr. BROWNLIE (Special Rapporteur), replying to Ms. Escarameia, said that paragraph 7 referred only to paragraphs 5 and 6 and that a summary of the debate was provided after each article. That was why paragraph 7 did not address all the questions that had been discussed.

74. Mr. PELLET said that Ms. Escarameia's comment was justified only if the title of 1 (General remarks on the topic) was taken literally. The debate on the question of criteria had been duly summarized in paragraph 25. The words "law of war" covered both "*jus ad bellum*" and "*jus in bello*" and should not be deleted, since the question of the law of war, i.e. the rules on the use of force, had been left out, as a number of members had regretted. He suggested that the words "the rules of armed conflicts" or "the rules on the use of force in international relations" should be added.

75. Mr. BROWNLIE (Special Rapporteur) suggested that the words "law of war" should be replaced by "*jus ad bellum*".

76. Mr. GALICKI said that he endorsed the use of the words "the rules of armed conflicts", which had the added advantage of being in line with the title of the topic.

77. The CHAIRPERSON, speaking as a member of the Commission, said that he supported Mr. Galicki's suggestion.

78. Following an exchange of views in which Mr. MELESCANU, Mr. ECONOMIDES, Mr. GALICKI, Mr. PELLET and Mr. BROWNLIE (Special Rapporteur) took part, Mr. PELLET proposed that paragraph 7 should read:

"It was reiterated that it was not possible to maintain a strict separation between the law of treaties and other branches of international law such as the rules relating to the prohibition of the use of armed force in international relations, international humanitarian law and the law of responsibility of States for internationally wrongful acts, which were also relevant to the topic."

Paragraph 7, as amended, was adopted.

The meeting rose at 6.05 p.m.