

Document:-  
**A/CN.4/SR.2562**

**Summary record of the 2562nd meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1998, vol. I**

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81. Mr. Sreenivasa RAO (Special Rapporteur) said that, as six months was too short a period in the case of difficult negotiations, he could accept the deletion of the phrase.

82. Mr. BROWNLIE said that he would like the phrase to be retained.

83. Mr. PELLET said that he was totally opposed to the inclusion of the phrase.

84. Mr. MIKULKA said that he had more serious problems with paragraph 3 as a whole, whose very position in the draft appeared erroneous. According to the logic of articles 11, 12 and 13 taken together, in cases where disputes had arisen as to the risk of transboundary harm, it appeared that States were being asked to take measures to minimize such risk before they had agreed that it existed. It would be more appropriate, therefore, to move paragraph 3 to article 11 and to re-examine its intent.

85. Mr. Sreenivasa RAO (Special Rapporteur) said that in cases where an activity had already started and States which thought themselves to be affected by it had asked the State of origin to enter into consultations, the State of origin could either dispute their understanding of the effects of the activity, or agree to enter into consultations with them, or explain to them that the activity in question was not to their detriment and that suspension of it was not the only method available to satisfy their concerns. If none of those alternatives proved satisfactory, the State of origin could then agree to suspend the activity for six months.

86. Mr. PELLET said that he wanted the commentary to reflect the Commission's lack of unanimity on paragraph 3 owing to the arbitrary nature of the phrase "for a period of six months" and the incompatibility of that phrase with the phrase "where appropriate".

87. Mr. MIKULKA asked why paragraph 3 had not been included in article 11 instead of in article 13 and why a State of origin was under no obligation to suspend a disputed activity if it had initiated consultations.

88. Mr. Sreenivasa RAO (Special Rapporteur) said that paragraph 3 would be out of place in article 11, which called for a State to consult with other States prior to initiating a potentially risky activity. Article 13, on the other hand, dealt with situations in which a State had reason to believe that a planned activity or an activity initiated earlier posed a risk of transboundary effects.

89. Mr. ROSENSTOCK said that, according to the logic intended, article 11 dealt with situations in which the State of origin was asked to refrain from an activity which it had not yet authorized or begun, while article 13 dealt with situations in which a State of origin had already initiated the activity.

90. Mr. SIMMA (Chairman of the Drafting Committee) said that providing for a six-month cooling-off period in article 11 would not really make sense, because at the stage envisaged by the article there was no activity yet to suspend.

91. Mr. MIKULKA said that he failed to see the justification for including paragraph 3 in article 13 in view of

the allusion in article 7, paragraph 2, to activities already in existence.

92. Mr. Sreenivasa RAO (Special Rapporteur) said that article 7 was not relevant because it dealt with a different situation. Once a State decided unilaterally to go ahead with an activity, a court of law could request the suspension of that activity.

*Article 13 was adopted.*

*The meeting rose at 1.20 p.m.*

## 2562nd MEETING

*Thursday, 13 August 1998, at 3.10 p.m.*

*Chairman:* Mr. João BAENA SOARES

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

### **International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (concluded) (A/CN.4/483, sect. D, A/CN.4/487 and Add.1,<sup>1</sup> A/CN.4/L.556, A/CN.4/L.568)**

[Agenda item 3]

CONSIDERATION OF DRAFT ARTICLES 1 TO 17 PROPOSED BY THE DRAFTING COMMITTEE AT THE FIFTIETH SESSION  
(concluded)

#### ARTICLE 14 (Exchange of information)

1. Mr. PELLET said that in the French version, the word *pertinentes* should be replaced by the word *disponibles*.

*Article 14, as amended, was adopted.*

#### ARTICLE 15 (National security and industrial secrets)

2. Mr. GOCO wondered whether it was not somewhat inconsistent to allow the State of origin not to provide

<sup>1</sup> Reproduced in *Yearbook* . . . 1998, vol. II (Part One).

data and information vital to its national security or to the protection of its industrial secrets, while requiring it to cooperate in good faith with the other States concerned in providing as much information as could be provided under the circumstances.

3. Mr. Sreenivasa RAO (Special Rapporteur) said that the idea was to encourage Member States to provide information, but that it was essential to leave them some room for manoeuvre.

*Article 15 was adopted.*

ARTICLE 16 (Non-discrimination)

*Article 16 was adopted.*

ARTICLE 17 (Settlement of disputes)

4. Mr. BENNOUNA, summarizing views which he had previously expressed in detail, said that the draft article was incomplete, as it neither stipulated the composition nor the operational modalities of the fact-finding commission. The article could be adopted, provided that it was completed at a later stage. The other solution would be to send it back to the Drafting Committee.

5. Mr. SIMMA (Chairman of the Drafting Committee) said he shared that view.

6. Mr. RODRÍGUEZ CEDEÑO, while recognizing that article 17 was weak, said he believed it could not be otherwise. The mechanism referred to in paragraph 2 could be described more precisely in an annex, on the model of the provisions contained in the Convention on the Law of the Non-navigational Uses of International Watercourses. In any case, the draft article was important and should be adopted. In the Spanish version of the document, the word *diferencia* should be deleted, as had been agreed in the Drafting Committee.

7. Mr. ELARABY said that he, too, deemed the draft article to be extremely weak; it restated Article 33 of the Charter of the United Nations without any additions thereto, glossed over the operational modalities of the fact-finding commission and committed the parties merely to act in good faith, which they were already presumed to do. The link between the first and second paragraphs also left something to be desired; it would have been better to conclude with the reference to judicial settlement. In spite of those reservations, he would not object to the adoption of the article; he hoped, however, that it would be revised as needed at the fifty-first session.

8. Mr. AL-KHASAWNEH said he believed that, in dealing with a draft whose operative provisions suffered from a lack of precision, the third-party dispute settlement mechanism should be described in greater detail. He hoped it would be stated in the commentary and in the report of the Commission to the General Assembly that the Commission would revert to that provision.

9. Mr. GALICKI said that he, too, recognized that article 17 was inadequate; he believed, however, that the text under consideration would be incomplete without the article. He was therefore prepared to adopt it, on condition

that it be made clear in the commentary that work on the draft article would continue at a later date.

10. Mr. ROSENSTOCK said that it was important not to confuse two tasks, each of which must be undertaken in due course: the adoption of a general provision on dispute settlement, and the definition of the operational modalities of the mechanism to be established. Those questions should be addressed in the commentary. Nevertheless, it would be completely illusory to think that in a very general and very broad text, a large number of States represented on the Sixth Committee would accept a provision of a more binding nature than one establishing a fact-finding commission.

11. Mr. ECONOMIDES said he recognized that article 17 was weak; he recalled, however, that the negotiations over the draft article had not enabled further progress to be made. It was therefore necessary to accept it in spite of its gaps. With regard to the modalities for establishing the fact-finding commission, about which the text was silent, the Commission could proceed as Mr. Rodríguez Cedeño had suggested, by explaining in the commentary that it would revert to the drafting of the text at the fifty-first session. Another solution, which would have the virtue of simplicity, would simply be to reproduce the annex to article 33 of the Convention on the Law of the Non-navigational Uses of International Watercourses, which the members of the Commission had agreed to take as their model.

12. Mr. SIMMA (Chairman of the Drafting Committee) conceded that article 17 did not go very far, as it merely restated the dispute settlement methods provided for in Article 33 of the Charter of the United Nations, with a minor addition, the establishment of a fact-finding commission, for which no procedure was stipulated. It would be very easy to fill that gap, but it would be a waste of time to do so at the current stage, inasmuch as there had been no decision on the legal form of the text in preparation. He urged the members of the Commission to adopt the text as drafted and to indicate to the Sixth Committee that the proposed article fundamentally provided, in addition to the methods referred to in Article 33 of the Charter, for a fact-finding procedure which could be spelled out in detail at the fifty-first session.

13. Mr. MELESCANU agreed that article 17 should be elaborated further; that was hardly possible, however, so long as there had been no decision on the final nature of the document. In view of the comments made by Mr. Rosenstock and Mr. Simma, he proposed that States should be consulted as to what form, in their view, the mechanism for the peaceful settlement of disputes in the framework of a convention should take; the question should be included in chapter III of the report of the Commission to the General Assembly, under heading 10, for example.

14. Mr. BROWNIE, while acknowledging the gaps in article 17, said he believed that its chief merit was its consistency with the remainder of the draft. Much thought was needed before its provisions could be finalized, as there was a risk that the question of precautionary measures might arise, and that the question of the nature of compulsory settlement might be raised again in relation to

the text as a whole. On the political level, moreover, such a move was apt to alarm Member States. It was therefore preferable to leave the text as it stood.

15. Mr. RODRÍGUEZ CEDEÑO said that negotiation had not been mentioned in paragraph 1 because the measures provided for in article 10 and the following, which were presumed to substitute for it, constituted the stage preceding mutual agreement. Negotiation was therefore implied. It was regrettable, however, that it had not been mentioned; it was the best way of defining the dispute, and a dispute existed at that stage. What was involved was by its nature a dispute settlement mechanism which could facilitate substantially the choice of methods referred to in paragraph 1.

16. The last sentence of paragraph 2 should be amended, as it had been decided not to retain the reference to the "recommendatory" nature of the report of the Commission to the General Assembly. It was understood, however, that the report was not binding.

17. Mr. PELLET said that he had no objections to paragraph 2. To provide for the establishment of an independent and impartial fact-finding commission meant progress, and it was impossible to go beyond that. Regarding paragraph 1, he associated himself with the objections raised by Mr. Bennouna, viewing the paragraph as an example of poor codification, which, while it could not harm the draft, harmed the very notion of codification of international law. In lieu of recalling obvious principles which were not specific to the draft, it would have been sufficient to begin paragraph 2 with the words "Failing an agreement between the parties on another dispute settlement method within a period of six months".

18. Mr. Sreenivasa RAO (Special Rapporteur) said that the drafting process would be facilitated once a decision had been taken on the final form of the text. At the current stage, the Drafting Committee must show that it had addressed the question of dispute settlement. The commentary would make it clear that the article was still incomplete and that the Commission would revert to drafting it at a later stage. He believed, moreover, that even if certain principles were obvious, it might be useful to recall them, especially since the political leaders who might have to apply them would not necessarily have in mind the content of Article 33 of the Charter of the United Nations. Paragraph 1 served as a backdrop for paragraph 2, which would have no likelihood of being adopted by itself.

19. Mr. SIMMA (Chairman of the Drafting Committee) asked whether it might not be possible to adopt Mr. Melescanu's proposal and to include in chapter III, under the heading "Precautions", the question of the nature of the dispute settlement mechanism. The purpose of question 9 was to determine whether Member States preferred a framework convention or a model law. In the second case, the question no longer arose, but if States opted for a framework convention, it would be useful to know their views as to what form third-party settlement should take and the degree to which the relevant provisions should be spelled out in detail.

20. The CHAIRMAN said that the question raised by Mr. Melescanu should be included in the report of the

Commission to the General Assembly. If he heard no objections, he would take it that the Commission wished to adopt article 17.

*It was so agreed.*

*Article 17, as amended, was adopted.*

21. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 3.

### **Draft report of the Commission on the work of its fiftieth session (continued)\***

#### **CHAPTER IX. Reservations to treaties (concluded) (A/CN.4/L.562 and Corr.1 and Add.1 and 2 and A/CN.4/L.564)**

##### **C. Texts of the draft guidelines on reservations to treaties provisionally adopted by the Commission on first reading (A/CN.4/L.564)**

22. Mr. SIMMA (Chairman of the Drafting Committee) said that in the English version of the draft guidelines, the references to arbitration relating to the Mer d'Iroise case did not follow the accepted English terminology.

23. Mr. BROWNLIE suggested that "Mer d'Iroise" should be replaced by "English Channel". In footnote 8 on page 3 "Whitman" should read "Whiteman".

24. Mr. PELLET pointed out several citation errors in the document that would be corrected in the different language versions.

*Section C, as amended, was adopted.*

*Chapter IX, as a whole, as amended, was adopted.*

#### **CHAPTER VII. State responsibility (A/CN.4/L.561 and Add.1-6)**

##### **A. Introduction (A/CN.4/L.561)**

*Section A was adopted.*

##### **B. Consideration of the topic at the present session (A/CN.4/L.561/Add.1-6)**

Document A/CN.4/L.561/Add.2

25. Mr. PELLET having requested clarification of the third sentence of paragraph 5, "That proposal seemed valid, leaving aside any issues of *jus cogens*", Mr. CRAWFORD (Special Rapporteur) explained that what was needed was to make it clear that the general principle of *lex specialis* could not justify any derogation from the rules of *jus cogens*.

26. Mr. PELLET suggested, therefore, that the sentence should be amended to read as follows: "While that proposal seemed valid, it could not be applied to *jus cogens*". He also suggested that the meaning of the third sentence of paragraph 6 should be clarified by having the end of the sentence read "that were not necessarily designed as a convention or a declaration". Lastly, in paragraph 22,

\* Resumed from the 2559th meeting.

“imputability” should be replaced by “attribution”, in accordance with the agreed rule.

*Document A/CN.4/561/Add.2, as amended, was adopted.*

Document A/CN.4/L.561/Add.3

27. Mr. PELLET suggested that, in the French version of paragraph 2, the phrase *n'était pas fatal pour cette disposition*, which appeared in the penultimate sentence, should be replaced by *n'était pas une critique dirimante pour cette disposition*. He then proposed several minor drafting changes in the French version of paragraphs 4, 5 and 9. Lastly, he noted that the content of paragraph 7 did not correspond to the heading under which it appeared.

28. Mr. CANDIOTI said that the last sentence of paragraph 13, which read “to avoid serious damage to its standing in the Sixth Committee”, was very infelicitous; it would be better to delete it.

29. Mr. PELLET, drawing attention to the term “innocent State” in the penultimate sentence of paragraph 31, said that it reintroduced the notion of fault, which was precisely what the Commission was seeking to avoid. It might be possible to use the term “State not responsible for a wrongful act”, or, better yet, “injured State”. Moreover, the sentence in the middle of paragraph 38, which read “However, this did not mean that the two notions were coextensive in terms of their primary norms or their secondary consequences”, seemed to him to be rather opaque.

30. Mr. CRAWFORD (Special Rapporteur) explained that a breach of the rules of *jus cogens* did not necessarily entail an international crime, and that the consequences of a breach of the rules of *jus cogens* were not necessarily the same as the consequences of a crime.

31. Mr. ECONOMIDES felt that paragraph 29 would be difficult for the reader to understand. If the definition of aggression adopted by the General Assembly was “notoriously defective”, it might perhaps be desirable to show why, starting by providing the text of the definition.

32. Mr. PELLET suggested that in paragraph 43, the term “most apparent” should be replaced by “particularly apparent”. He noted, moreover, that in the second sentence of the paragraph, the term “material damage” had been translated into French as *dommage appréciable*. That suggested that the paragraph implied a scale of damage, whereas all that was really involved was the existence or the absence of damage, in a more concrete sense.

33. Mr. CRAWFORD (Special Rapporteur) suggested that the qualifier should be deleted.

34. Mr. PELLET, referring to paragraph 53, said it was surprising to find that the term “delict” was “described as a civil law term borrowed from Roman law”. It seemed to him, rather, that the notion of *delictum* stemmed from criminal law.

35. Mr. CRAWFORD (Special Rapporteur) proposed that the phrase “described as a civil law term borrowed from Roman law” should be deleted.

36. Mr. PELLET, referring to the French version of paragraph 61, suggested that in the last sentence, the phrase *faits qui étaient la cause de leur comparution* should be replaced by *faits qui rendaient possible leur comparution*. Moreover, the last sentence of paragraph 60 (*On a suggéré qu'en seconde lecture la Commission examine, article par article, la catégorie des 'règles primaires' auxquelles s'appliquait la règle secondaire énoncée dans chaque article.*) appeared to be unintelligible.

37. Mr. CRAWFORD (Special Rapporteur) explained that what was needed in connection with the concept of “State crimes” was to examine each specific definition of a crime in order to verify whether the consequences stipulated for each crime were appropriate to it.

38. Mr. PELLET said he did not think it was possible to refer to “the continual adoption of compromise solutions”, as was done in paragraph 83. It would be preferable to refer to “the continual search for compromise solutions”.

39. Mr. ECONOMIDES noted that paragraph 78 began with the words “Several members”, whereas the following paragraph, which was presumed to reflect the opposite view, used the expression “other members”. As the proponents of the two views had been nearly equal in number, it was necessary to find more balanced formulations.

40. Mr. PELLET and Mr. ROSENSTOCK said that the report under consideration appeared to provide an accurate reflection of the Commission’s deliberations and of the complexity of the topic under consideration.

41. Mr. CRAWFORD (Special Rapporteur) said that the two schools of thought referred to in the paragraphs in question had not been on a par with each other. Had a vote been taken, the concept of State criminal responsibility would have been rejected.

42. Mr. ECONOMIDES, referring to paragraphs 80 and 81, said it was his impression that the majority of members had sought to exclude the notion of crimes from the draft articles. After those two paragraphs, he had searched in vain for the presentation of the views of members who held the contrary opinion. The imbalance in the report was glaring from that standpoint.

43. Mr. CRAWFORD (Special Rapporteur) explained that the two paragraphs in question simply presented “possible approaches” to the notion of international crimes, as the title of the relevant section of the report made clear. The option outlined in the paragraphs about which Mr. Economides was concerned was “(vi) Exclusion of the notion from the draft articles”. For that reason, the paragraphs contained only the arguments against retaining the notion of crimes.

44. Mr. SIMMA (Chairman of the Drafting Committee) said that the views of those who had defended the notion of State criminal responsibility were well presented in paragraphs 67 and 79.

45. Mr. PELLET said that it was inadvisable to seek to discover what the majority and minority views had been. The Commission had always avoided that temptation.

46. Mr. ECONOMIDES suggested that paragraphs 80 and 81 should be placed after paragraph 78. Paragraph 79 would then be the final paragraph in that section of the report.
47. Mr. SIMMA said he was opposed to that solution, as it would ruin the structure of the passage.
48. Mr. CRAWFORD (Special Rapporteur) suggested that a new paragraph 81 (a) should be added, to read as follows: "Those members who believed that article 19 was useful were, of course, opposed."
49. Mr. ECONOMIDES suggested that the new paragraph should instead read as follows: "Several other members were opposed to the exclusion of the notion of draft articles for the reasons outlined in paragraph 79."
50. Mr. PELLET noted the statement in paragraph 85 that "there was dissatisfaction with the distinction between international crimes and international delicts". As he had, on the contrary, been satisfied with the distinction, he was surprised at that formulation. In the last sentence of paragraph 85, which stated: "The Commission appeared to be ready to envisage other ways of resolving the problem", it should be stated more explicitly that the Commission had not adopted any other way of resolving the problem and that it had not agreed on any other solution.
51. Mr. CRAWFORD (Special Rapporteur) said that that was indeed the meaning of the expression "ready to envisage". In any event, paragraphs 85 to 89 simply repeated the Special Rapporteur's comments. In order to meet Mr. Pellet's concern, it would be sufficient to begin the paragraph with the words "In the view of the Special Rapporteur".
52. He proposed that the subheading which preceded paragraphs 80 and 81 should be amended by substituting "Question of the exclusion of the notion from the draft articles" for "Exclusion of the notion from the draft articles".
53. Mr. KUSUMA-ATMADJA said that the report was balanced, that it faithfully reflected the views expressed and that there was no reason to redraft it, since the results were obviously provisional.
54. Mr. GOCO said that paragraphs 85 and 90 presented a valid summary of the five major points on which general agreement existed.
55. Mr. ECONOMIDES noted that section B.6 of the draft report, entitled "Concluding remarks of the Special Rapporteur . . .", was a summary of the debate prepared by the Special Rapporteur. Accordingly, the text did not bind the Commission per se and should not normally give rise to discussion. Nevertheless, as some members had commented on certain articles, he wished to state that, for his part, he had strong reservations about that section of the report, particularly paragraph 85. At the Geneva part of the session, a consensus had emerged on three approaches: (a) the distinction between "crimes" and "delicts" would be put aside for the time being; (b) an effort would be made to find a compromise solution by emphasizing the consequences of the most serious breaches; (c) failing such a compromise solution, the Commission would revert to the distinction between "crimes" and "delicts".
56. Mr. CRAWFORD (Special Rapporteur) said that he did not concur with the formulation that had just been given of the third point of agreement. If a compromise solution could not be found, it was not a matter of reverting to the distinction between "crimes" and "delicts", but of deciding whether to maintain that distinction.
57. Mr. PELLET said that the formulas expressing the consensus, as corrected, should be reproduced at the end of the document.
58. Mr. CRAWFORD (Special Rapporteur) said that he would prepare a text along those lines, based on the summary record of the current meeting.
59. Mr. FERRARI BRAVO said that it had been decided at the Geneva part of the session that the matter should be referred to the General Assembly. Nevertheless, in the chapter of the report on State responsibility, the Commission should avoid placing the question before the General Assembly with the implication that the Commission was on the point of reaching agreement.
60. Mr. SIMMA (Chairman of the Drafting Committee) said that caution would indicate that questions on article 19 should not be included in chapter III of the report of the Commission to the General Assembly while the Commission was still debating the matter.
61. Mr. CRAWFORD (Special Rapporteur) said that he shared that view. The Commission could, of course, invite States that had not yet done so to transmit their comments on the draft articles, but it should avoid drawing them into a debate on questions on which it was still undecided.
62. Mr. ROSENSTOCK said he did not believe that the three "Geneva consensus" points should be put in writing to be transmitted to the Sixth Committee for discussion. That did not mean, however, that they could not be the subject of an internal working paper.
63. Mr. PELLET reiterated his view that the "Geneva consensus" should be presented at the end of the report of the Commission to the General Assembly. That would have two advantages: (a) the text could serve as an aide-mémoire for members of the Commission, and (b) it could also initiate certain discussions in the Sixth Committee by showing that the Commission had agreed on an approach and should therefore be allowed to proceed.
64. Mr. DUGARD (Rapporteur) said that the text containing the "consensus" to be prepared by the Special Rapporteur should not be transmitted to the Sixth Committee in the form of detailed questions. States that had not yet done so should be invited to provide their comments on the articles that had been or were being considered by the Commission, including article 19.
65. Mr. BENNOUNA said that the Sixth Committee should not be asked to reopen a debate on article 19 that would not lead anywhere. The Commission was not required to wait for guidelines from the Sixth Committee; like the Sixth Committee, it needed to accomplish the tasks specifically entrusted to it.

66. Mr. ECONOMIDES read out paragraph 81 *bis* which had been proposed for inclusion in document A/CN.4/L.561/Add.3: “Several other members expressed opposition to the exclusion of the notion from the draft articles for the reasons already mentioned, particularly in paragraph 79.”

Document A/CN.4/L.561/Add.4

67. Mr. PELLET said that he was opposed to the term “innocent States”, which appeared in the penultimate sentence of paragraph 10, because it evoked the notion of fault. He proposed that the term should be replaced by “States which had not committed internationally wrongful acts”.

68. Mr. CRAWFORD (Special Rapporteur) suggested that the sentence reading “That would put the onus of showing damage on innocent States, which was unjustified” should simply be deleted.

69. Mr. ECONOMIDES said that in paragraph 28 in the French version, *en droit international* should be replaced by *d’après le droit international*.

*Document A/CN.4/L.561/Add.4, as amended, was adopted.*

**State responsibility<sup>2</sup> (concluded)\* (A/CN.4/483, sect. C, A/CN.4/488 and Add.1-3,<sup>3</sup> A/CN.4/490 and Add.1-7,<sup>4</sup> A/CN.4/L.565, A/CN.4/L.569)**

[Agenda item 2]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
ON SECOND READING

70. Mr. SIMMA (Chairman of the Drafting Committee), introducing the report of the Drafting Committee on the topic of State responsibility (A/CN.4/L.569), recalled that the Commission, in conformity with its general practice, should adopt the articles on second reading as a whole, in other words, once they had been discussed in plenary meeting and worked out by the Drafting Committee, solely on the basis of the text as it appeared in the document under consideration.

71. The Drafting Committee had examined all the articles referred to it at the current session, namely, those in part one, chapters I and II. It had not considered the question of the structure of the draft and the placement of the articles, which would have to be settled at a later stage, when most of the articles had been considered by the Drafting Committee. The original structure adopted on first reading had therefore been maintained. While the Drafting Committee had not proposed a title for part one, it had felt that the current title was not the most felicitous. The titles of chapters I and II had been maintained as

adopted on first reading, with the exception of the removal of the quotation marks from around the words “act of the State” in the title of chapter II.

72. The titles and texts of the draft articles adopted by the Drafting Committee at the fiftieth session read:

STATE RESPONSIBILITY

PART ONE

ORIGIN OF INTERNATIONAL RESPONSIBILITY

CHAPTER I

GENERAL PRINCIPLES

*Article 1. Responsibility of a State for its internationally wrongful acts*

Every internationally wrongful act of a State entails the international responsibility of that State.

[Article 2. Possibility that every State may be held to have committed an internationally wrongful act]

[deleted]

*Article 3. Elements of an internationally wrongful act of a State*

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) Is attributable to the State under international law; and

(b) Constitutes a breach of an international obligation of the State.

*Article 4. Characterization of an act of a State as internationally wrongful*

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

CHAPTER II

THE ACT OF THE STATE UNDER INTERNATIONAL LAW

*Article 5. Attribution to the State of the conduct of its organs*

1. For the purposes of the present articles, the conduct of any State organ acting in that capacity shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.

2. For the purposes of paragraph 1, an organ includes any person or body which has that status in accordance with the internal law of the State.

[Article 6. Irrelevance of the position of the organ in the organization of the State]

[deleted]

\* Resumed from the 2558th meeting.

<sup>2</sup> For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook . . . 1996*, vol. II (Part Two), p. 58, document A/51/10, chap. III, sect. D.

<sup>3</sup> See footnote 1 above.

<sup>4</sup> Ibid.

*Article 7. Attribution to the State of the conduct of entities exercising elements of the governmental authority*

The conduct of an entity which is not an organ of the State under article 5 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the entity was acting in that capacity in the case in question.

*Article 8. Attribution to the State of conduct in fact carried out on its instructions or under its direction or control*

The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

*Article 8 bis. Attribution to the State of certain conduct carried out in the absence of the official authorities*

The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

*Article 9. Attribution to the State of the conduct of organs placed at its disposal by another State*

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it had been placed.

*Article 10. Attribution to the State of the conduct of organs acting outside their authority or contrary to instructions*

The conduct of an organ of a State or of an entity empowered to exercise elements of the governmental authority, such organ or entity having acted in that capacity, shall be considered an act of the State under international law even if, in the particular case, the organ or entity exceeded its authority or contravened instructions concerning its exercise.

*Articles 11 to 14*

[proposed deletion]

*Article 15. Conduct of an insurrectional or other movement*

1. The conduct of an insurrectional movement, which becomes the new government of a State shall be considered an act of that State under international law.

2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles . . . 5 to . . . 10.

*Article 15 bis. Conduct which is acknowledged and adopted by the State as its own*

Conduct which is not attributable to a State under articles 5, 7, 8, 8 bis, 9 or 15 shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

*Article A. Responsibility of or for conduct of an international organization*

These draft articles shall not prejudice any question that may arise in regard to the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

73. With regard to article 1 (Responsibility of a State for its internationally wrongful acts), the Drafting Committee had followed the advice of the Special Rapporteur in his first report on State responsibility (A/CN.4/490 and Add.1-7) and maintained the text as adopted on first reading; it recognized, however, that the use of the word "act" was not an ideal solution, as it usually referred to an action rather than an omission, whereas the article referred to both. The Drafting Committee had not been able to find an equivalent for the French word *fait* or the Spanish word *hecho*, which were more appropriate. That point would be explained in the commentary, but in any event, article 2 dispelled any doubt by stating that an "act" could consist of "an action or omission". Moreover, also on the recommendation of the Special Rapporteur, the Drafting Committee had decided to delete article 2, entitled "Possibility that every State may be held to have committed an internationally wrongful act", on the belief that the notion that the principle of international responsibility applied to all States without exception was implicit in article 1. The relevant portions of the commentary on the deleted article would be included in the commentary on article 1. The other issues raised in the deleted article were outside the scope of the question of international responsibility as such.

74. As to article 3 (Elements of an internationally wrongful act of a State), the Drafting Committee had confined itself to moving the phrase "conduct consisting of an action or omission" into the *chapeau*, so as to avoid repeating the word "conduct". It had been agreed not to add any other requirement, such as the element of damage or fault, to the general rule in the article. In subparagraph (a), the Drafting Committee had preferred to retain the term "attributable", which implied a legal operation, rather than replace it with the term "imputable", which appeared to refer to a mere causal link. It had retained the emphasis in subparagraph (a) on the notion that the attribution of a certain conduct to a State was made "under international law". The Drafting Committee had not deemed it necessary to add a reference to international law also in subparagraph (b); the commentary would, however, make clear that the determination that a particular conduct constituted a breach of an international obligation was to be made under international law.

75. With regard to article 4 (Characterization of an act of a State as internationally wrongful), the Special Rapporteur had proposed no changes to the article in his first report, as it did not seem to pose difficulties for Governments. The article contained two elements. The first was the statement that the characterization of an act of a State as internationally wrongful was governed by international law. The second, by analogy with article 27 of the 1969 Vienna Convention, was the principle that a State should not invoke its internal law as a ground for avoiding international responsibility. There was yet a further concern, namely, to avoid language too similar to that of part one,

chapter V, on circumstances precluding wrongfulness. The Drafting Committee had redrafted the first sentence without affecting its substance, in order to clarify the meaning and, in particular, to make its drafting clearer in other languages. Instead of stating that an act of a State could be characterized as internationally wrongful only “under international law”, the sentence currently referred to the characterization of an act of a State as internationally wrongful being “governed by international law”. The second sentence remained as adopted on first reading, except that the word “cannot” had been replaced by “is not”.

76. With regard to article 5 (Attribution to the State of the conduct of its organs), the first article of chapter II, which set forth the principles governing the attribution of conduct to the State under international law, the opening clause of paragraph 1 (“For the purposes of the present articles”) indicated that chapter II dealt with attribution for the purposes of the law of State responsibility, in contrast to other areas of international law, such as the law of treaties. Article 5 combined the substance of former articles 5 and 6 and article 7, paragraph 1. It addressed the general principle that any conduct of any State organ acting as such was attributable to the State; the remainder of the paragraph confirmed the application of that principle irrespective of the function performed by the State organ in question, its position within the organizational structure of the State and its character as an organ of the central government or of a territorial unit of the State. The commentary would explain that the term “territorial unit” is used in a broad sense so as to apply to different legal systems.

77. Paragraph 2 recognized the significant role played by internal law in determining the status of a person or an entity within the structural framework of the State. That role was decisive when internal law affirmed that a person or an entity was an organ of the State. The commentary would explain that the term “internal law” was used in a broad sense to include practice and convention. The commentary would also explain the supplementary role of international law in situations in which internal law provided no classification or an incorrect classification of a person or an entity. The Special Rapporteur had proposed the deletion of paragraph 1 of article 7, in paragraph 284 of the first report, because the reference to territorial governmental entities was currently contained in new article 5. The Special Rapporteur had also suggested a redrafting of paragraph 2, which dealt with the conduct of other entities that were not part of the formal structure of the State in the sense of article 5. The Commission has supported that approach. The Drafting Committee had made only minor stylistic changes to the proposal by the Special Rapporteur, such as the deletion of the word “also” after the word “shall”, which had been deemed superfluous. The title of article 7 had been slightly redrafted to correspond to its content; it currently read “Attribution to the State of the conduct of entities exercising elements of the governmental authority”.

78. Article 8 as adopted on first reading contained two subparagraphs which dealt with two completely different situations. The Drafting Committee had therefore decided to divide it into two separate articles, article 8 and article 8 *bis*.

79. New article 8 was entitled “Attribution to the State of conduct in fact carried out on its instructions or under its direction or control” and dealt with the question addressed in subparagraph (a) of former article 8. The most important change which the Drafting Committee had made to the text had been the replacement of the phrase “acting on behalf of that State” with “acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”. As pointed out by the Special Rapporteur, the former concept was rather vague for the purposes of attribution. Obviously, that provision had been intended to cover the conduct of a person or group of persons acting “on the instructions” of a State. It would, however, have been unduly restrictive to limit the applicability of article 8 to that situation, since in practice it would be very difficult to demonstrate the existence of express instructions. It was therefore desirable to cover also situations where a person or group of persons was acting “under the direction or control” of a State. He drew attention to the fact that those were alternative requirements: the Drafting Committee did not believe that the scope of article 8 should be restricted through a cumulative requirement in that regard. For the purposes of attribution, however, it was not sufficient that such “direction or control” should be exercised at a general level; it must be linked to the specific conduct under consideration, as indicated by the addition of the words “in carrying out the conduct”. The commentary would make it clear that the term “State” was intended to refer to “an organ of a State” which would give the instructions or exercise control or direction over a certain conduct. The Drafting Committee, on the recommendation of the Special Rapporteur, had deleted the phrase “if it is established”, since that was a general requirement for attribution, and there was no reason to highlight it only in article 8.

80. Article 8 *bis* (Attribution to the State of certain conduct carried out in the absence of the official authorities) addressed the issue dealt with in subparagraph (b) of former article 8. The use of the word “certain” in the title already indicated that the circumstances envisaged in the article were of an exceptional nature, a point that would be further elaborated in the commentary. The Drafting Committee was of the view that the expression “in the absence of” was not wide enough, as it seemed to cover only the situation of a total collapse of the State, whereas the provision was also intended to apply to other cases where the official authorities were not exercising their functions, for instance, in the case of a partial breakdown of the State. The term *carence* in French best covered that point, but the Drafting Committee had been unable to find an exact equivalent in English other than by using two terms instead of one, namely, “in the absence or default of”.

81. A lengthy discussion had taken place in the Drafting Committee with respect to the expression “official authorities”; in the end, it had been decided not to change it. It would be explained in the commentary that the expression covered both organs of the State within the meaning of article 5 and entities exercising elements of the governmental authority within the meaning of article 7. It would be further pointed out that the article did not apply as long as there was some “official authority”, even

if said “authority” was not competent to exercise the particular functions under domestic law; the latter situation was actually dealt with in article 10.

82. On the advice of the Special Rapporteur, the Drafting Committee had introduced another change to the text of former article 8, subparagraph (b), adopted on first reading—the replacement of the verb “justified” by “called for”. It was felt that it might be misleading to use the term “justified” in connection with wrongful conduct. The term “called for” also better conveyed the idea that some exercise of governmental functions was called for under the circumstances, but not necessarily the conduct in question. Finally, as another indication of the exceptional nature of the circumstances in which article 8 *bis* would apply, the Drafting Committee had decided to use the phrase “in circumstances such as to call for” rather than “in circumstances which called for”.

83. Article 9 as adopted on first reading dealt both with organs of other States and of international organizations placed at the disposal of a State. The Special Rapporteur had, for good reasons, deleted the references to international organizations throughout the draft articles; the Commission had agreed with that approach and had worked on the revised text of article 9 (Attribution to the State of the conduct of organs placed at its disposal by another State) as proposed by the Special Rapporteur in paragraph 284 of the first report. Article 9 was an exception to article 5 and dealt with special situations. It was the view of the Drafting Committee that such special situations tended to occur more often than was reported and therefore it was useful to retain the article, at least for the time being. The article might need to be reconsidered in the light of the articles in chapter IV.

84. The words “at the disposal of” had been the subject of some discussion in the Commission. The Drafting Committee had, however, decided to retain those words for lack of a better substitute. The commentary would explain more clearly the meaning of those words. For example, when an organ of a State was placed at the disposal of another State, that organ must be acting for the benefit of the receiving State and, as such, would be reporting to that State. There were, of course, cases where an organ of a State was acting on behalf or for the benefit of another State. Those situations did not fulfil the requirement of being put at the disposal of that State and were not covered by article 9, but fell within the scope of articles 5 and 8. The Drafting Committee had noted, moreover, that the cases of joint representation of States should be addressed somewhere in the draft. Those were situations where a State would represent one or more States, for example, in the territory of another State. The Drafting Committee was also of the view that the issue should be addressed in connection with the consideration of the articles in chapter IV.

85. Article 10 (Attribution to the State of the conduct of organs acting outside their authority or contrary to instructions) dealt with the important question of unauthorized or *ultra vires* acts. In the comments by Governments no concern had been expressed regarding that text. The Special Rapporteur had suggested the retention of the text as adopted on first reading with the exception of a few minor drafting changes. The issue had been

raised as to whether the article should cover the conduct of an agency which overtly committed unlawful acts, but did so under the cover of its official status. The Drafting Committee was of the view that it was better to retain article 10 as proposed by the Special Rapporteur in paragraph 284 of the first report and to address that issue in the commentary.

86. Articles 11 to 14 having been deleted, article 15 (Conduct of an insurrectional or other movement) covered questions dealt with in former article 14, paragraph 2, and former article 15. Paragraphs 1 and 3 of article 14 had been deleted on the recommendation of the Special Rapporteur. Paragraph 3 had been considered to fall outside the scope of the draft articles on State responsibility since it dealt with the international responsibility of insurrectional movements as such. As for paragraph 1, it contained a so-called “negative attribution” clause, and it had been decided not to include such provisions. The commentary to article 15 would, however, make reference to the principle that the conduct of an insurrectional movement established in the territory of a State should not be considered as such an act of that State under international law. It was only in the circumstances set forth in article 15 that the conduct of an insurrectional or other movement was attributable to a State. The word “conduct” was used in article 15 instead of the word “act” for purposes of consistency. The expression “under international law” had been included for the same reason. The Drafting Committee had debated the issue whether reference should be made to “an organ” of an insurrectional movement, but had concluded that it was better not to do so, given the fact that some movements which should have been covered by the article might not be sufficiently structured so as to have “organs”. It would be explained in the commentary that article 15 applied in respect of the conduct of a movement as such, but not to individual acts of their members in their own capacity.

87. Paragraph 1 of article 15 corresponded to the first part of paragraph 1 of article 15 as adopted on first reading. The Drafting Committee had decided that it was preferable not to qualify the term “insurrectional movement” by the insertion of such a phrase as “established in opposition to a State or Government”, taking into account the wide variety of insurrectional movements existing in practice which should be covered by paragraph 1. The Drafting Committee also concluded that the phrase “which becomes the new Government” was the most appropriate in that context. The commentary would explain that in practice the result might not be as clear-cut. For instance, in some cases, the new government might include some members of the previous one. The second sentence in the previous version of paragraph 1 had been deleted since its content was subsumed under paragraph 3 of the new version.

88. In the context of paragraph 2, the Drafting Committee had felt that the concept of “insurrectional movement” might be too restrictive, as there was a greater variety of movements whose action might result in the formation of a new State. It had thus been decided to use the phrase “movement, insurrectional or other, . . .” to indicate that the intention was to cover *ejusdem generis* movements. Thus, as would be stated in the commentary, the actions of a group of citizens advocating separation carried out

within the framework of the legal system established in the State would not be covered by paragraph 2. The Drafting Committee had also replaced the phrase “whose actions result in the formation of” with “which succeeds in establishing”, as that phrase was considered to better express the underlying idea. The commentary would explain that, while paragraph 2 envisaged only the case of the formation of a new State, it would apply, *mutatis mutandis*, to the case where an entity of a State seceded and became part of another State.

89. A number of members had expressed the view that paragraph 2 of former article 14 should become part of article 15. The Drafting Committee had agreed with that suggestion since it made the article more complete. The paragraph provided that article 15 was without prejudice to the attribution to a State of any conduct by an insurrectional movement which was to be considered an act of that State by virtue of other articles. The paragraph had been modified to fit within the text of new article 15. The words “however related to that of the movement concerned” were intended to give a broader meaning to the word “related”.

90. The Drafting Committee had considered the Special Rapporteur’s proposal, in paragraph 284 of his first report, for a new article 15 *bis* intended to fill a significant lacuna in the draft articles, which had failed to cover such cases as that of the taking of hostages. Article 15 *bis* provided for the attribution to a State of conduct not attributable to it under the other articles contained in chapter II but that the State acknowledged and adopted as its own. Those two conditions, acknowledgement and adoption, were cumulative and their order indicated the normal sequence of events in such cases. It was not sufficient for the State to acknowledge the factual existence of the conduct; it must acknowledge and adopt the conduct “as its own”. The State in effect accepted responsibility for conduct that would not otherwise be attributable to it rather than merely giving its general approval thereof. The commentary would explain that the article covered cases in which a State accepted responsibility for conduct which it did not approve of or even regretted. At the same time, the article recognized a limited principle of attribution, as indicated by the phrase “to the extent that”. Other situations of complicity in which one State approved of and supported the conduct of another State would be addressed in chapter IV.

91. The Special Rapporteur had deleted the references to international organizations throughout the articles. To avoid any misunderstanding, the Special Rapporteur had proposed an article which was a saving clause (article A). It was modelled on article 73 of the 1969 Vienna Convention. The purpose of the article was to make clear that the articles were not intended to apply to questions involving the responsibility of international organizations or of any State for the conduct of an international organization. The expression “international organization” would be defined in the commentary; it would, however, include only such organizations as had separate legal personality. The placement of article A would need to be determined at a later stage.

92. Mr. CRAWFORD (Special Rapporteur) pointed out two errors in the French version. Article 8 should read *sous la direction ou le contrôle* instead of *sous la direc-*

*tion et le contrôle*; in article 15 *bis*, on the other hand, *entérine ou fait sien* should be replaced by *entérine et fait sien*.

93. Mr. CANDIOTI said that those corrections applied also to the Spanish version.

94. Mr. HAFNER said that he could agree to the Commission taking note of the draft article, with the understanding that in article 15, paragraph 1, the phrase “which becomes the new government” did not, in his view, correspond to the real meaning of the provision. Greater emphasis should be given to the power to appoint the members of the government than to its composition.

95. Mr. PELLET said it was regrettable that, owing to excessive formalism, the Commission believed that no article could be adopted until the draft as a whole had been completed. It was to be hoped that at the next session, part one of the draft, at least, could be adopted and transmitted to the Sixth Committee.

96. Mr. BENNOUNA said that, by tradition and logic, draft articles should be adopted merely on a provisional basis until the draft as a whole had been completed, especially since questions as important as the distinction between crimes and delicts remained to be resolved.

97. With regard to the articles under consideration, the term “or other” which appeared in the title of article 15 was hardly satisfactory, in that it denoted an inability to define the object in question. Moreover, paragraph 2 of that article could not refer to organs acting in the framework of the legal system. A State could not, for example, be responsible for the conduct of a political party occurring prior to the establishment of the State. The criterion of an insurrection was violence, in other words, the suspension of the rule of law.

98. Mr. PELLET said that article 15 *bis* was too rigid, especially if *entérine ou fait sien* was to be replaced by *entérine et fait sien*. That formulation was tantamount to providing States with a very broad loophole, for instance, in situations such as that involving the United States of America and the contras in Nicaragua. He also had strong reservations concerning article A. To begin with, questions involving the responsibility of an international organization did not belong in a draft on State responsibility. If international organizations were to be included, other subjects of international law should be included as well. The final words of the article, “for the conduct of an international organization”, introduced an aspect of responsibility law with which the Commission did not wish to concern itself, especially in the case of umbrella-type international organizations. It would be better, therefore, to send the text back to the Drafting Committee and to reconsider it at a later stage, together with other possible saving clauses.

99. Mr. CRAWFORD (Special Rapporteur) said that it was premature to adopt the draft articles under consideration, even on a provisional basis. It would be sufficient to take note of the report of the Drafting Committee, and at the next session, when he had completed part one of the draft and the commentaries relating thereto, that part could be adopted provisionally and transmitted to the Sixth Committee. The saving clause contained in article A would certainly be reconsidered at that time.

100. The CHAIRMAN suggested that the Commission should take note of the report of the Drafting Committee on articles 1, 3, 4, 5, 7, 8, 8 *bis*, 9, 10, 15, 15 *bis* and A and of the deletion of articles 2, 6 and 11 to 14, taking into account the comments made during the discussion.

*It was so agreed.*

*The meeting rose at 6.35 p.m.*

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## 2563rd MEETING

*Friday, 14 August 1998, at 10.10 a.m.*

*Chairman:* Mr. João BAENA SOARES

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

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### Draft report of the Commission on the work of its fiftieth session (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of its draft report on the work of its fiftieth session, with chapter III.

#### CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.570)

Paragraphs 1 to 6

*Paragraphs 1 to 6 were adopted.*

Paragraph 7

2. Mr. PELLET said that in the last sentence the term “sanctions” should be replaced by “consequences”.

*Paragraph 7, as amended, was adopted.*

Paragraph 8

3. Mr. BROWNLIE said that the Commission had decided to sever the link between prevention and State responsibility, thereby ending the need to discuss the topic of liability. Paragraph 8 seemed to imply, however, that it planned to resume its discussion of that topic, a course of action which he strongly opposed.

4. Mr. Sreenivasa RAO (Special Rapporteur) said that he had suggested the question of liability because States would undoubtedly raise it and the Commission would be forced to consider it eventually. However, he proposed that paragraph 8 should be deleted from the draft report.

5. Mr. SIMMA (Chairman of the Drafting Committee) said that, while he supported the proposal to delete the paragraph, the Commission should be clear that it would have to revert to the topic at some point.

6. Mr. PELLET, supported by Messrs CANDIOTI, CRAWFORD, GOCO, HAFNER, ROSENSTOCK and YAMADA, said that paragraph 8 should be deleted, but that the Commission should take note of reactions from States on the topic of liability and prepare to hold a final in-depth discussion on the matter at its next session.

*Paragraph 8 was deleted.*

Paragraphs 9 to 11

*Paragraphs 9 to 11 were adopted.*

New paragraph

7. Mr. CRAWFORD (Special Rapporteur) said that he had circulated to members a new paragraph to be inserted after paragraph 11. The list of issues it contained should not be seen as exclusive. He had also felt it important to draw attention to draft article 19 on State responsibility, even though no final conclusions were being presented as yet.

8. Mr. PELLET requested clarification of the phrase “multilateral obligations” in subparagraph (d).

9. Mr. CRAWFORD (Special Rapporteur) said that “obligations owed *erga omnes* or to a large number of States” would express the meaning more clearly.

10. Mr. GOCO asked how the request for comments would be transmitted to States.

11. Mr. CRAWFORD (Special Rapporteur) said that Governments had access to the draft articles and commentaries. The purpose of the new paragraph was simply to identify the six main issues on which a great deal of Government commentary had been received as a way to elicit more reactions from Governments without directly asking for guidance from the Sixth Committee.

*The new paragraph, as amended, was adopted.*

Paragraphs 12 to 15

*Paragraphs 12 to 15 were adopted.*

New section G and new paragraph

12. Mr. BROWNLIE suggested that, in the interest of consistency, the heading of section G should be “Protection of the environment”.

13. Mr. HAFNER said that the working group which had been asked to study issues relating to environmental law had come to the conclusion that it might be useful for the Chairman of the Commission to seek the views of