121. Mr. PELLET drew attention to the strong similarity between the fifth sentence of paragraph (2) and the third sentence of paragraph (1).

122. In response to a remark made by Mr. GALICKI, Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the second sentence of paragraph (2), the quotation marks around “intellectual property rights” should be removed.

Paragraph (2), as amended by the Chairman and the Special Rapporteur, was adopted.

Paragraph (3) was adopted.

The commentary to article 14, as amended, was adopted.

The meeting rose at 1.05 p.m.

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2700th MEETING

Thursday, 2 August 2001, at 10 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Montaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodriguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

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

CHAPTER IV. International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities) (continued) (A/CN.4/L.607 and Add.1 and Add.1/Corr.1)

E. Draft articles on prevention of transboundary harm from hazardous activities (continued)


Commentary to article 15 (Non-discrimination)
7. Mr. GALICKI proposed that, in the last sentence, the words “set up by the States concerned” should be deleted.

8. Mr. Sreenivasa RAO (Special Rapporteur) said that the States concerned were those that were members of the competent international organization in question. For greater clarity, however, he proposed that the last sentence should read: “In addition, the coordination of response efforts might be most effectively handled by a competent international organization of which the States concerned are members.”

Paragraph (2), as amended by the Special Rapporteur, was adopted.

Paragraph (3) was adopted subject to minor editing changes.

The commentary to article 16, as amended, was adopted.

Commentary to article 17 (Notification of an emergency)

9. Mr. GALICKI said that, in the article itself, in the phrase “notify the State likely to be affected by an emergency”, the word “by” should be replaced by the word “of”.

10. Mr. CANDIOTI, endorsing Mr. Galicki’s comment, suggested that the words “of any emergency” should be used, as in the Convention on the Non-navigational Uses of International Watercourses, which was referred to in paragraph (1).

11. Mr. Sreenivasa RAO (Special Rapporteur) said that article 17 had already been adopted and that its wording did not seem to give rise to any problems. The aim was to notify States likely to be affected by an emergency of that emergency situation.

12. Mr. PELLET said that the problem was perhaps one of terminology and that the French text also gave rise to a problem. In order to harmonize the French and English texts, he proposed the following wording: “The State of origin shall report the existence of an emergency to the State likely to be affected . . .”.

13. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in order to avoid any ambiguity, the words “notify the State likely to be affected by an emergency” should be replaced by the words “notify an emergency to the State likely to be affected”.

14. Mr. CANDIOTI emphasized that any ambiguity must be lifted because article 17 established an obligation.

15. The CHAIRMAN said that it should be left to the Chairman of the Drafting Committee and the Special Rapporteur to review the text of article 17. He invited the members to consider the commentary.

16. Mr. TOMKA said that the Convention on Biological Diversity had been adopted in 1992, not in 1994, and that that mistake should be corrected.

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

Paragraph (2)

17. Mr. GAJA proposed that, in the last sentence, the words “a State has recourse” should be replaced by the words “a State may have recourse”.

Paragraph (2), as amended, was adopted.

Paragraph (3)

18. Mr. LUKASHUK said he was surprised that a State would not be held liable for the consequences of a natural disaster, as stated in the last sentence. Referring to paragraph (5) of the commentary to article 3, which stated that “a State of origin does not bear the risk of unforeseeable consequences”, he asked what was meant by “unforeseeable consequences”. In paragraph (7) of the commentary to article 3, which stated that “The duty of due diligence involved, however, is not intended to guarantee that significant harm be totally prevented”, he was not sure about the nature of the risks in question. That was why it was necessary, in his view, to explain what risks natural disasters involved and to determine which ones could not be foreseen in advance by a State. He therefore suggested that the last sentence of paragraph (3) of the commentary to article 17 should be deleted.

19. Mr. CANDIOTI said he also thought that the last sentence of paragraph (3), as it stood, was too absolute. In his opinion, a State could be liable for harm because it had not taken the necessary measures.

20. Mr. Sreenivasa RAO (Special Rapporteur) said that the last sentence of paragraph (3) could be deleted without affecting the rest of the commentary.

Paragraph (3), as amended, was adopted.

Commentary to article 18 (Relationship to other rules of international law)

21. Mr. PELLET proposed that the paragraph should be divided into two parts. The first would go from the beginning until the words “its actual or potential transboundary effects”. The second, which would thus become paragraph (2), would begin with the words “The reference in”.

22. Mr. GAJA proposed that, in the first sentence, the words “to which these articles might otherwise, i.e. in the absence of such an obligation, be thought to apply” should be replaced by the words “to which these articles apply” and that the word “apparent” in the second sentence should be deleted.
23. Mr. TOMKA and Mr. GALICKI said that they supported that proposal.

24. Mr. CANDIOTI said that he also supported that proposal and suggested that the words “including any other primary rule” in the second sentence should be deleted.

25. Mr. ROSENSTOCK said that, in the last sentence, it would be better to replace the word “intend” by the word “purport”.

26. Mr. ECONOMIDES said that it would be more logical to change the order in which obligations were referred to in the last sentence, which should read: “between obligations under treaties and customary international law and obligations under the present articles”.

The commentary to article 18, as amended, was adopted.

Commentary to article 19 (Settlement of disputes)

Paragraphs (1) to (4)

27. Mr. GALICKI asked why the Convention on the Law of the Non-navigational Uses of International Watercourses, the provisions on dispute settlement of which the Commission had used as a basis for the wording of article 19, was not cited, if only in a footnote.

28. Mr. Sreenivasa RAO (Special Rapporteur) said that a footnote referring to that Convention on the Law of the Non-navigational Uses of International Watercourses could be added to paragraph (4) of the commentary to article 19, following the words “impartial fact-finding commission”.

Paragraphs (1) to (4), as amended, were adopted.

Paragraph (5)

29. Mr. TOMKA said that, in the last sentence, the word “prevention” should be replaced by the word “settlement” because article 19 dealt with the settlement, not with the prevention, of disputes.

30. Mr. MOMTAZ pointed out that the General Assembly resolution referred to was not the latest on the subject and that the text of the commentary should be updated. If his memory served him correctly, the Assembly had adopted a more recent resolution based on a draft prepared by the Special Committee on the Charter of the United Nations and the Strengthening of the Role of the Organization.

31. Mr. TOMKA said that the resolution in question was referred to in the footnote to the paragraph, but it related more particularly to the maintenance of international peace and security.

32. Mr. CANDIOTI proposed that the words “Inquiry or” at the beginning of the first sentence should be deleted because article 19 referred only to fact-finding commissions.

Paragraph (5), as amended, was adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

33. Mr. GAJA said that the judgment of ICJ in the North Sea Continental Shelf cases referred to in the paragraph had also been between the Netherlands and the Federal Republic of Germany.

34. Mr. PELLET said that paragraph (8) simply repeated what has already been stated in paragraph (4) of the commentary to article 9. He therefore proposed that it should be deleted and that, at the end of paragraph (7), a footnote should be added to indicate that the requirement of “good faith” was discussed in paragraph (4) of the commentary to article 9.

35. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to Mr. Pellet’s proposal.

It was so agreed.

The commentary to article 19, as amended, was adopted.

Commentary to the preamble

36. The CHAIRMAN invited the members of the Commission to decide on the two questions left pending in connection with a commentary to the preamble to the draft articles and paragraph (2) of the commentary to article 1.

Commentary to the preamble

37. The commentary to the preamble, as prepared by the Special Rapporteur, read:

“(1) The preamble sets out the general context in which the topic of prevention is elaborated, keeping in view the mandate given to the Commission to codify and develop international law. Activities covered under the present topic of prevention require States to engage in cooperation and accommodation in mutual interest. States are free to formulate necessary policies to develop their natural resources and to carry out or authorize activities in response to the needs of their populations. In so doing however, States have to ensure that such activities are carried out taking into account the interests of other States and therefore the freedom they have within their own jurisdiction is not unlimited.

“(2) The prevention of transboundary harm from hazardous activities should also be seen in the context of the general principles incorporated in the Rio Declaration and other considerations that emphasized the close interrelationship between issues of environment and development. A general reference in the third paragraph of the preamble to the Rio Declaration indicates the importance of the integrated nature of all the principles contained therein. This is without prejudice
to highlighting specific principles of the Rio Declaration, as appropriate, in the commentaries to follow on particular articles.”

38. Mr. BROWNLIE said that he supported the commentary proposed for the preamble by the Special Rapporteur, but wished to suggest two purely drafting changes. The word “their” should be added before the word “mutual” in the second sentence of paragraph (1) and the word “emphasized” should be in the present tense in the first sentence of paragraph (2). He also found that the penultimate sentence of paragraph (2) was not entirely clear and proposed that the word “integrated” should be replaced by the word “interactive”.

The commentary to the preamble, as amended, was adopted.

Commentary to article 1 (Scope) (concluded)*

Paragraph (2) (concluded)*

39. The CHAIRMAN recalled that the Commission had not adopted paragraph (2) of the commentary to article 1 because of a problem with the penultimate sentence raised by Mr. Simma.

40. Mr. Sreenivasa RAO (Special Rapporteur) proposed that that sentence should be deleted because it was not essential for the definition of the scope of the articles.

Paragraph (2), as amended, was adopted.

The commentary to article 1, as amended, was adopted.

Section E.2, as amended, was adopted.

41. The CHAIRMAN said that the only remaining question with regard to chapter IV of the draft report was that of the text of article 17. He suggested that the Drafting Committee and the Special Rapporteur should be requested to redraft the text with the assistance of the secretariat in order to take account of the comments made on it.

It was so agreed.

CHAPTER VI. Reservations to treaties (A/CN.4/L.609 and Add.1–5)

42. The CHAIRMAN said that the parts of chapter VI of the draft report of the Commission contained in documents A/CN.4/L.609/Add.1 and Add.5 were not yet available and he therefore proposed that the discussion should begin with the parts that were already available.

A. Introduction (A/CN.4/L.609)

B. Consideration of the topic at the present session (A/CN.4/L.609 and Add.1)

* Resumed from the 2697th meeting.
Commentary to guideline 2.2.1, as amended, was adopted.

Paragraph (1)

47. Mr. SIMMA said that the first footnote paid too much attention to the difference between French-speaking and common law authors. The concept of agreements in simplified form was far from unknown to English-speaking writers.

Paragraph (2) and (3)

Paragraph (2) and (3) were adopted.

Paragraph (4)

51. Mr. SIMMA said that he did not agree with the use of the term “Roman law”. Recalling that the English-speaking or common law countries had no problems with the term “agreements in simplified form”, he proposed that paragraph (4) should be deleted.

52. Mr. PELLET (Special Rapporteur) said that he did not see any reason to delete the paragraph, which faithfully reflected the discussions in the Commission.

Paragraph (4), as amended, was adopted.

Paragraph (5)

55. Mr. LUKASHUK said that in the first sentence the words “residual in nature”, should be replaced by “operative provisions” to describe the provisions of the 1969 and 1986 Vienna Conventions.

Paragraph (5) was adopted.

Paragraph (6)

57. Mr. GAJA proposed that the words “illegal (or without effect)” in the last sentence should be replaced by the words “without effect”.

58. Mr. KATEKA said he did not see the need for the double negative at the beginning of the first sentence, which should read: “Accordingly, the Commission decided to endorse”.

Paragraph (6), as amended, was adopted.

The commentary to guideline 2.2.3 [2.2.4], as amended, was adopted.

Cooperation with other bodies (continued) *

STATEMENT BY THE OBSERVER FOR THE COUNCIL OF EUROPE

59. The CHAIRMAN invited Mr. Benítez, Secretary of the Ad Hoc Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, to report to the Commission on new developments in the Council of Europe since the preceding session of the Commission.

Paragraph (5) was adopted.

60. Mr. BENÍTEZ (Observer for the Council of Europe) noted that all the documents he would refer to in his statement were to be found on the Council of Europe website under the heading “Legal affairs”.

61. On 25 January 2001, Armenia and Azerbaijan had become the forty-second and forty-third member States of the Council of Europe. Four other countries, Belarus, *

Paragraph (6), as amended, was adopted.

[Agenda item 8]
Bosnia and Herzegovina, Monaco and the Federal Republic of Yugoslavia, had submitted membership applications, which were still under consideration. The President of the Federal Republic of Yugoslavia, Mr. Kostunica, had attended the 107th session of the Committee of Ministers, at which he had said that his country wished to become a member of the Council of Europe and accede to the 16 conventions to which the Socialist Federal Republic of Yugoslavia had been a party. The Federal Republic of Yugoslavia had already acceded to 11 of those conventions without retroactive effect, i.e. as a successor State.

62. The Committee of Ministers and the Parliamentary Assembly were pursuing their monitoring activities, to which a new theme had been added: the effectiveness of judicial remedies, particularly with regard to the length of proceedings, judicial control of deprivation of liberty, the holding of trials within a reasonable time and the execution of judicial decisions. Other themes being monitored included freedom of the press and local and regional democracy.

63. Since the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, the new European Court of Human Rights had become fully operational. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, on the general prohibition of discrimination, opened up new perspectives for individuals, who could currently be protected autonomously against discrimination.

64. In 2000, the Committee of Ministers had adopted recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation. The Council of Europe was called upon to play a key role during the Second World Congress against Commercial Sexual Exploitation of Children, to be held in Yokohama, Japan, in December 2001. The Committee of Ministers had also adopted recommendation No. R (2000) 13 on a European policy on access to archives, as well as recommendation No. R (2000) 19 on the role of public prosecution in the criminal justice system. That would be a useful tool for countries that were reforming their system of criminal justice. The Committee of Ministers had also adopted recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer. In that connection, he announced that the twenty-eighth Colloquy on European Law, which would be held at Pau University, in Bayonne, France, in 2002, would be devoted to the independence of lawyers.

65. In 2001, the Committee of Ministers had adopted recommendation No. R (2001) 2 concerning the design and redesign of court systems and legal information systems in a cost-effective manner and recommendation No. R (2001) 3 on the delivery of court and other legal services to the citizen through the use of new technologies. He also drew attention to the Framework Global Action Plan for Judges in Europe, which had led to the establishment of the Consultative Council of European Judges, which had met for the first time in November 2000.

66. In the field of new technologies, the Committee of Ministers had adopted the Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows.

67. A convention on cybercrime was being prepared with the active participation of the member States of the European Union and the Council of Europe. In that connection, he pointed out that the mutual communication of documents among member States was becoming an increasing practice of the European Union and the Council of Europe. That increased willingness to cooperate had, moreover, been reaffirmed by the European Union "TROIKA" of the Article 36 Committee (former K4 Committee). He also drew attention to the entry into force in March 2001 of the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings. Lastly, the Council of Europe was currently finalizing the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

68. In the context of its legal cooperation and assistance activities, the Council of Europe gave priority to the countries of South-East Europe, Ukraine, the Republic of Moldova, the countries of the Caucasus and the Russian Federation. With regard to the latter country, the Council of Europe was carrying out a joint programme with the European Union for the establishment of an Academy of Justice. The Russian Government had just submitted four bills for expert appraisal on the reform of legislation governing the judiciary.

69. In respect of action to combat corruption, the Council of Europe had established the Group of States against Corruption (GRECO) in 1999. GRECO currently had 30 member States, including 28 members of the Council of Europe and two non-members, Bosnia and Herzegovina and the United States. Through a dynamic process of peer pressure, GRECO evaluated compliance with undertakings provided for in Council of Europe legal instruments to combat corruption, namely, the Criminal Law Convention on Corruption, signed by 29 States and ratified by 10 others, the Civil Law Convention on Corruption, signed by 24 States and ratified by 3 others, and the Model Code of Conduct for Public Officials. In 2000, GRECO had evaluated the situation of five of its member States, Finland, Georgia, Luxemburg, Spain and Sweden. The evaluation reports were available on the GRECO website.

70. As to international law, CAHDI attached great importance to cooperation with the Commission, as shown by the election, the preceding year, of a member of the Commission, Mr. Tomka, as its Chairman.

71. CAHDI had continued to play its role as the European observatory of reservations to international treaties in the light of the recommendation by the Committee of Ministers on reactions to reservations to international treaties regarded as inadmissible and the Guide to Practice on key questions relating to the formulation of reservations to international treaties. When it had doubts about the admissibility of a reservation or a declaration, CAHDI and the State concerned established a dialogue...
and, on a number of occasions, that dialogue had proved to be very helpful because the State became aware of the dangers the reservation or declaration might involve. CAHDI welcomed the participation of the Special Rapporteur on reservations to treaties, Mr. Pellet, in one of its meetings on that question.

72. In respect of consent of States to be bound by treaties, CAHDI had sent the member States of the Council of Europe and various observer States a questionnaire on that matter, which had provided very useful information on the relevant State practice. CAHDI had also commissioned an analytical report on the question from the British Institute of Comparative and International Law. Country reports and that analytical report would be included in a work to be published jointly by the Council of Europe and Kluwer Law International in September 2001.

73. CAHDI had embarked on the study of the jurisdictional and execution immunities of States. It had decided to implement a pilot project to collect information on State practice in that regard. At its next meeting, CAHDI would discuss key questions relating to the immunities enjoyed by Heads of State and Government and would decide whether or not that question should be studied. In all those areas, CAHDI took full account of the work of the International Law Commission and the Sixth Committee of the General Assembly. The European Union Working Group on Public International Law (COJUR) was also working on that question. It was to be hoped that those activities would be synergistic.

74. In connection with the International Criminal Court, CAHDI would organize, on 14 and 15 September 2001, a second multilateral consultation meeting on the implications of the ratification of the Rome Statute of the International Criminal Court for the domestic legal order of member States. The Council of Europe would like the Rome Statute to enter into force rapidly, as shown by the fact that 41 of its 43 member States had already signed it and nearly one third had ratified it. He pointed out that the European Commission for Democracy through Law (Venice Commission) had set aside one of its sessions for the discussion of the constitutional consequences of the ratification of the Rome Statute and had adopted an opinion thereon.

75. At its next meeting, CAHDI would discuss the work of the International Law Commission on State responsibility. It had invited the Special Rapporteur of the Commission on that topic, Mr. Crawford, to take part in an exchange of views with its members.

76. CAHDI was also interested in the Charter of Fundamental Rights of the European Union and its consequences for the European Convention on Human Rights, as well as in new developments relating to ICJ, whose President had recently taken part in a CAHDI meeting; the tribunals set up to protect the victims of armed conflict; and the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

77. In conclusion, he said that CAHDI continued to take an active part in the discussion of key items of public international law and to strengthen its cooperation with COJUR at the European level and with the Commission at the international level in order to promote the progressive development of international law. It was aware of its responsibilities and would continue to work in the spirit of the values of human rights, democracy and the rule of law that the Council of Europe had been defending for over 50 years.

78. Mr. HAFNER thanked the Observer for the Council of Europe for his statement and congratulated the Council of Europe on the international law activities it was carrying out in connection with reservations to multilateral treaties, State responsibility and jurisdictional immunities. He hoped that those activities would not have a negative impact on the negotiations currently under way in international organizations, including the United Nations.

79. Mr. GALICKI said he knew from experience, for having taken an active part in the work of certain Council of Europe bodies, that it took account of the work of the Commission. For example, the Committee of Experts on Nationality was currently preparing a report on the need to adopt an instrument to supplement the European Convention on Nationality, concerning statelessness in relation to State succession, which was broadly based on the work of the Commission.

80. It was commendable that the Council of Europe had welcomed new members and it was to be hoped that the Federal Republic of Yugoslavia would soon join. That would be important for the activities of the Council in that part of Europe.

81. He also welcomed the open-mindedness of the Council of Europe, which involved observers from non-European countries such as Canada and Asian countries, in its work and whose instruments went well beyond the European framework in scope.

82. Mr. GOCO said that, in general, regional instruments were much more effective than universal instruments, especially in the field of human rights. That was the case, for example, of the American Convention on Human Rights: “Pact of San José, Costa Rica” and the European Convention on Human Rights.

83. With regard to corruption, with which the Council of Europe was dealing, it must be emphasized that that pernicious practice had to be considered in conjunction with problems such as the traffic in human beings, the independence of criminal justice, money laundering and the recovery of funds stolen by corrupt leaders.

84. In that connection, he would like the Commission to have more documents on corruption and related practices.

85. Mr. SIMMA said he would like the Council of Europe to transmit to the Commission all the documents it had prepared on topics such as reservations to multilateral treaties, the practice of States in respect of treaty-making and objections by the Council to reservations to international treaties formulated by States. Care would have to be taken in that regard to ensure that the study which Ms. Hampson, Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights, was to
carry out did not duplicate the work of the Commission and its Special Rapporteur on the topic, Mr. Pellet.

86. Mr. BENÍTEZ (Observer for the Council of Europe) said he wished to reassure the Commission that the Council of Europe in general and CAHDI in particular would not only do nothing to jeopardize the work of a universal nature being carried out by the Commission, but would also take the fullest account of that work and do everything possible to strengthen cooperation with the Commission.

87. It must be noted that the instruments adopted by the Council of Europe often took on an extra-European dimension. For example, at the request of non-European observers, the word “European” had been removed from the Model Code of Conduct for Public Officials adopted by the Committee of Ministers in connection with action to combat corruption.

88. He also noted that the Committee of Ministers and CAHDI had decided to publish the reports of the Committee of Ministers on reservations to international treaties, which had previously been confidential, and that they would be communicated to the Commission. In that connection, he drew attention to the importance the Committee of Ministers attached to the dialogue it entered into with member States in order better to understand the reasons why they formulated the reservations. CAHDI would continue to play its role as the European observatory of reservations to international treaties, to try to understand the reasons underlying the formulation of reservations and to make States aware of the dangers that some of those reservations could entail.

The meeting rose at 1.05 p.m.

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

CHAPTER VI. Reservations to treaties (continued) (A/CN.4/L.609 and Add.1–5)

C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission (continued) (A/CN.4/L.609/Add.2–5)

2. Text of the draft guidelines with commentaries thereto adopted at the fifty-third session (continued) (A/CN.4/L.609/Add.3–5)

Commentary to guideline 2.3 (Late formulation of a reservation) (A/CN.4/L.609/Add.4)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.3 was adopted.

Commentary to guideline 2.3.1 (Late formulation of a reservation)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

1. Mr. PELLET (Special Rapporteur), responding to a comment by Mr. SIMMA, proposed that in the first sentence the word “hypothesis” should be replaced by the word “possibility”.

It was so agreed.

2. Mr. ECONOMIDES queried the inclusion of the footnote concerning the extremely fine distinction made between reservations and reservation clauses as it seemed unnecessary.

3. Mr. PELLET (Special Rapporteur) said that the footnote drew attention to the incorrect use of the term “reservation” in the Convention referred to in paragraph (3). What was meant were reservation clauses, provisions in treaties that authorized reservations under certain conditions.

4. Mr. SIMMA proposed replacing the word “hypothesis” in the footnote on article 38 of the Hague Convention by “provision”.

It was so agreed.

5. Mr. GALICKI, supported by Mr. PELLET (Special Rapporteur), drew attention to the need for editing corrections to the references in paragraph (3) to the Warsaw Convention, the Chicago Protocol and the Hague Protocol.