

Document:-
A/CN.4/3097

Summary record of the 3097th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2011, vol. I

*Downloaded from the web site of the International Law Commission
(<http://legal.un.org/ilc/>)*

23. Ms. JACOBSSON, speaking as a member of the Commission, congratulated Sir Michael on his working paper. At the previous session, she had underlined the link between international peace and security and the rule of law and the peaceful settlement of disputes. It would therefore be useful for the Commission to make a contribution to the debate on the topic.

24. With respect to the five topics proposed by Sir Michael for the Commission's consideration, the most important were those mentioned in paragraph 20, subparagraphs (c), (e) and (b), in that order. The proposal for improving procedures for dispute settlement involving international organizations referred to in subparagraph (b) could be treated as a separate topic, despite the view to the contrary expressed by Mr. Dugard at the previous meeting.

25. Consideration of the topic proposed in subparagraph (c), namely a study of access to and standing before different dispute settling mechanisms of various actors, would be an important contribution by the Commission, particularly if it was accompanied by concrete proposals on how to improve the mechanisms and fill gaps.

26. The proposal contained in subparagraph (e) concerning declarations under the optional clause, including the elaboration of model clauses for inclusion therein, was timely. The issue was less sensitive now and seemed to be undergoing a new and positive development, and the Commission could take advantage of the work done by other legal bodies, such as the Committee of Legal Advisers on Public International Law (CAHDI).

27. She was not convinced of the value of elaborating model dispute settlement clauses for possible inclusion in drafts prepared by the Commission, as referred to in subparagraph (a). It would be better if the Commission more routinely included such clauses when preparing draft conventions. There was no "one-size-fits-all" solution and model clauses had to be tailored to each specific case.

28. She had stated at the previous session that it was important to widen the discussion and include not only genuine dispute settlement clauses but also alternative tools and mechanisms, such as fact-finding mechanisms. Fact-finding could be of a legal nature and it did not have to be political. That aspect was not expressly mentioned in the working paper and was not listed among the proposals. She was glad to note that other members had raised those issues during the debate and hoped that they would be included in the Commission's future work on the topic, if it was included in the long-term programme of work. It was also important to discuss mechanisms which had never been used, such as the mechanism of the OSCE and the mechanism provided for under article 90 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (known as the International Fact-Finding Commission). Mention should also be made of the rosters of experts listed under various treaties, which were never used.

29. It would be helpful if a workplan was presented to the Working Group on the long-term programme of work during the current session.

30. Sir Michael WOOD proposed that, in the light of the words of caution expressed by Mr. Gaja and Mr. McRae, chapter III of the Commission's annual report indicate that the Commission was planning to consider a new topic, namely the peaceful settlement of disputes, and list possible subtopics, in a different order from that set out in paragraph 20 of the working paper, with additions as appropriate. That approach would enable the Commission to see the reaction of States and international organizations.

31. A paper should be drawn up for the Working Group on the long-term programme of work. The paper could be prepared during the current session, but it would probably be wiser, in view of the comments that had been made, to wait until the 2012 session. Rushing ahead with the topic might raise concerns.

32. Mr. HMOUD said that he supported Sir Michael's proposal to refer to the topic in chapter III of the Commission's report. However, with respect to the issue of including the topic in the Commission's long-term programme of work, he wondered whether it could not be discussed in the Working Group at the same time as other points that had been raised by members of the Commission. It would be preferable, before establishing a workplan and preparing a paper, to decide on the approach to adopt and the aspects on which to focus.

33. Sir Michael WOOD said that, rather than taking a hasty decision, the best solution would perhaps be to ask the enlarged Bureau to decide in the light of the programme of work for the second part of the current session and the 2012 session.

The meeting rose at 11.05 a.m.

3097th MEETING

Friday, 3 June 2011, at 10 a.m.

Chairperson: Mr. Bernd H. NIEHAUS
(Vice-Chairperson)

Later: Mr. Rohan PERERA (Rapporteur)

Present: Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Nolte, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Wisnumurti, Sir Michael Wood.

Responsibility of international organizations (concluded)* (A/CN.4/636 and Add.1–2, A/CN.4/637 and Add.1, A/CN.4/640, A/CN.4/L.778)

[Agenda item 3]

REPORT OF THE DRAFTING COMMITTEE

1. Mr. MELESCANU (Chairperson of the Drafting Committee) introduced the titles and texts of the draft articles adopted by the Drafting Committee on the responsibility of international organizations, which read:

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

PART ONE

INTRODUCTION

Article 1. Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

Article 2. Use of terms

For the purposes of the present draft articles:

(a) “international organization” means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;

(b) “rules of the organization” means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(c) “organ of an international organization” means any person or entity which has that status in accordance with the rules of the organization;

(d) “agent of an international organization” means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

PART TWO

THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

GENERAL PRINCIPLES

Article 3. Responsibility of an international organization for its internationally wrongful acts

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

Article 4. Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(a) is attributable to that organization under international law; and

(b) constitutes a breach of an international obligation of that organization.

* Resumed from the 3085th meeting.

Article 5. Characterization of an act of an international organization as internationally wrongful

The characterization of an act of an international organization as internationally wrongful is governed by international law.

CHAPTER II

ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION

Article 6. Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

Article 7. Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Article 8. Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

Article 9. Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under draft articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

CHAPTER III

BREACH OF AN INTERNATIONAL OBLIGATION

Article 10. Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

Article 11. International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

Article 12. Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 13. Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

CHAPTER IV

RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION
IN CONNECTION WITH THE ACT OF A STATE OR
ANOTHER INTERNATIONAL ORGANIZATION

*Article 14. Aid or assistance in the commission
of an internationally wrongful act*

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

(a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that organization.

*Article 15. Direction and control exercised over
the commission of an internationally wrongful act*

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

(a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that organization.

*Article 16. Coercion of a State or another
international organization*

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(b) the coercing international organization does so with knowledge of the circumstances of the act.

*Article 17. Circumvention of international obligations through
decisions and authorizations addressed to members*

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

*Article 18. Responsibility of an international organization member
of another international organization*

Without prejudice to draft articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in draft articles 61 and 62 for States that are members of an international organization.

Article 19. Effect of this Chapter

This Chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

CHAPTER V

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 20. Consent

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

Article 21. Self-defence

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

Article 22. Countermeasures

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in Chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

(a) the conditions referred to in paragraph 1 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 23. Force majeure

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the organization has assumed the risk of that situation occurring.

Article 24. Distress

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the act in question is likely to create a comparable or greater peril.

Article 25. Necessity

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(a) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(b) does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(a) the international obligation in question excludes the possibility of invoking necessity; or

(b) the organization has contributed to the situation of necessity.

Article 26. Compliance with peremptory norms

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27. Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

(a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) the question of compensation for any material loss caused by the act in question.

PART THREE

CONTENT OF THE INTERNATIONAL RESPONSIBILITY
OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

GENERAL PRINCIPLES

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

Article 29. Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 30. Cessation and non-repetition

The international organization responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31. Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

Article 32. Relevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

Article 33. Scope of international obligations set out in this Part

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

CHAPTER II

REPARATION FOR INJURY

Article 34. Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

Article 35. Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36. Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage, including loss of profits insofar as it is established.

Article 37. Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 38. Interest

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39. Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 40. Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

CHAPTER III

SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Article 41. Application of this Chapter

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 42. Particular consequences of a serious breach of an obligation under this Chapter

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of draft article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of draft article 41, nor render aid or assistance in maintaining that situation.

3. This draft article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this Chapter applies may entail under international law.

PART FOUR

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Article 43. Invocation of responsibility by an injured State or international organization

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

(a) that State or the former international organization individually;

(b) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 44. Notice of claim by an injured State or international organization

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

(a) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(b) what form reparation should take in accordance with the provisions of Part Three.

Article 45. Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.

2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

Article 46. Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(a) the injured State or international organization has validly waived the claim;

(b) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 47. Plurality of injured States or international organizations

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

Article 48. Responsibility of an international organization and one or more States or international organizations

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(a) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(b) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Article 49. Invocation of responsibility by a State or an international organization other than an injured State or international organization

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with draft article 30; and

(b) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under draft articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Article 50. Scope of this Chapter

This Chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

CHAPTER II

COUNTERMEASURES

Article 51. Object and limits of countermeasures

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

Article 52. Conditions for taking countermeasures by members of an international organization

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(a) the conditions referred to in draft article 51 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 53. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) obligations for the protection of human rights;

(c) obligations of a humanitarian character prohibiting reprisals;

(d) other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(a) under any dispute settlement procedure applicable between it and the responsible international organization;

(b) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

Article 54. Proportionality of countermeasures

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 55. Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State or international organization shall:

(a) call upon the responsible international organization, in accordance with draft article 44, to fulfil its obligations under Part Three;

(b) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and, if already taken, must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

Article 56. Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

Article 57. Measures taken by States or international organizations other than an injured State or organization

This Chapter does not prejudice the right of any State or international organization, entitled under draft article 49, paragraphs 1 to 3, to invoke

the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

PART FIVE

RESPONSIBILITY OF A STATE IN CONNECTION WITH THE CONDUCT OF AN INTERNATIONAL ORGANIZATION

Article 58. Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this draft article.

Article 59. Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this draft article.

Article 60. Coercion of an international organization by a State

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(b) the coercing State does so with knowledge of the circumstances of the act.

Article 61. Circumvention of international obligations of a State member of an international organization

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 62. Responsibility of a State member of an international organization for an internationally wrongful act of that organization

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(a) it has accepted responsibility for that act towards the injured party; or

(b) it has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

Article 63. Effect of this Part

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

PART SIX

GENERAL PROVISIONS

Article 64. Lex specialis

These draft articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

Article 65. Questions of international responsibility not regulated by these draft articles

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these draft articles.

Article 66. Individual responsibility

These draft articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

Article 67. Charter of the United Nations

These draft articles are without prejudice to the Charter of the United Nations.

2. The Drafting Committee had held 11 meetings, from 29 April to 19 May 2011. It had concluded its work on the 67 draft articles and had decided to report to the plenary Commission with the recommendation that the draft articles should be adopted on second reading.

3. It was a historic moment for the International Law Commission. Its work on international responsibility, which had been among the original topics selected for consideration in 1949, was now drawing to a close, something that unquestionably constituted one of the Commission's most important contributions to the codification and progressive development of international law. Following the completion in 2001 of the articles on the responsibility of States for internationally wrongful acts,²⁴³ the Commission had turned its attention to the question of the responsibility of international organizations, which had kept it busy for the better part of the past decade.

4. The Commission had been particularly fortunate to have had at its disposal the services of extremely well-qualified and experienced Special Rapporteurs, who had put much of their energy and intellectual talent into conceptualizing and developing the international regime

²⁴³ General Assembly resolution 56/83 of 12 December 2001, annex. The draft articles adopted by the Commission and the commentary thereto are reproduced in *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 26 *et seq.*, paras. 76–77.

of responsibility for States and for international organizations. The current Special Rapporteur, Mr. Giorgio Gaja, had joined a select list of special rapporteurs who had made their mark on the contemporary understanding of international law. On behalf of the Drafting Committee, he expressed his deep appreciation to the Special Rapporteur for the efficient manner in which he had approached the second reading of the draft articles. His mastery of the subject had greatly facilitated the Drafting Committee's task. He also expressed his appreciation to the Committee's members for their constructive work and thanked the secretariat for its valuable assistance.

5. The draft articles on responsibility of international organizations were divided into six parts, Part One being entitled "Introduction".

6. Draft article 1 pertained to the scope of the draft articles. Paragraph 1 had been adopted as formulated on first reading,²⁴⁴ with the exception that the concluding phrase, "act that is wrongful under international law", had been amended to read "internationally wrongful act".

7. The Drafting Committee had amended paragraph 2 so as to more closely reflect the scope of the draft articles. It had sought a formula that took into account the fact that, in draft articles 60 and 61, the text covered the scenario of State responsibility for acts committed by an international organization that were not wrongful acts of that organization. Various formulations had been considered. The paragraph also had to cover the situation envisaged in draft article 62, where a State was responsible not for its own wrongful acts but for those of an international organization. The Committee had drawn inspiration from the title of Part Five in reformulating the concluding phrase of the paragraph as "for an internationally wrongful act in connection with the conduct of an international organization".

8. The Drafting Committee had also considered including a specific reference to Part Five, but had decided against it since, although the provisions relating to State responsibility were grouped in Part Five, it was not only that Part which applied to State responsibility: other parts, such as Part One and Part Six, were also relevant. The Committee had considered various formulations in order to capture the manner in which the draft articles dealt with the responsibility of States, including the use of terms such as "relates to", "refers to" and "concerns", but in the end it had decided to retain the more general reference, "apply to" State responsibility.

9. The Drafting Committee had also opted for the indefinite article "an" instead of "the" internationally wrongful act so as to align the formulation with the wording of paragraph 1. The title of draft article 1, "Scope of the present draft articles", remained unchanged.

10. Draft article 2 pertained to the use of terms. The version being proposed for consideration on second reading contained the definitions of four terms, as opposed to three in the text adopted on first reading.

11. Subparagraphs (a) and (b), defining "international organization" and "rules of the organization", respectively, retained the wording adopted on first reading, save for the insertion of the word "international" before the first reference to "organization" in subparagraph (b). That had been done for the sake of consistency in how the articles referred to international organizations. The same minor improvement had been made in a number of places throughout the text. For subparagraph (b), the Drafting Committee had decided not to adopt a proposal to emphasize those rules that were part of international law, since there were other rules of an organization that were not necessarily rules of international law but were nonetheless relevant—for example, in determining competence or the granting of consent. The Committee had also not considered it appropriate to include a hierarchy of rules, since such a hierarchy could vary according to the international organization concerned.

12. New subparagraph (c) and subparagraph (d) had raised the most difficult issues. Subparagraph (c) had been introduced in order to provide a definition of the phrase "organ of an international organization". That had been done on the basis of a proposal by the Special Rapporteur inspired by article 4, paragraph 2, of the articles on State responsibility.²⁴⁵ The word "means" had been chosen over "includes" so as to align the text with the definition of "agent" in subparagraph (d). The Drafting Committee had also considered a proposal to establish a more substantive definition of an organ than by reference to the rules of the organization. The definition would thus have been "person or entity through whom the organization acts and who is charged by the organization with carrying out, or helping to carry out, one of its functions". The Drafting Committee had decided to retain the more general formulation proposed by the Special Rapporteur, since the concept of "organ" had different connotations for different international organizations. An individual or entity that might not be covered by the definition of "organ" by reference to the rules of an international organization could nonetheless be considered an "agent" if the terms of subparagraph (d) were satisfied.

13. Subparagraph (d) defined an "agent of an international organization". Two changes had been made to the text adopted on first reading. First, the words "of an international organization" had been added after "agent", so as to align the text with the formulation used in new subparagraph (c). The second change had involved bringing the provision closer to the broader definition contained in the advisory opinion of the ICJ on *Reparation for Injuries* by adding the phrase "who is charged by the organization with carrying out, or helping to carry out, one of its functions". The phrase "through whom the organization acts" had been moved to the end of the subparagraph and rendered as "thus through whom the organization acts". The word "thus" served to indicate that it was not a cumulative requirement, but rather a further specification of the requirement of carrying out, or helping to carry out, one of its functions, as the Court had put it in its advisory opinion. The reference to "person or entity" had been included in recognition of the practice whereby international organizations delegated their functions to other persons or entities, such as other organizations or companies.

²⁴⁴ *Yearbook ... 2009*, vol. II (Part Two), p. 25.

²⁴⁵ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 40.

14. The Drafting Committee had considered the related issue of whether to avoid an overlap between the categories of “organ” and “agent” through the inclusion of the phrase “other than an organ”. While there might be situations where, under the rules of the organization, persons or entities were designated as both organ and agent, it made sense to draw a distinction between the two. Draft articles 6 to 8, for example, included the phrase “organ or agent”. The combined effect of subparagraphs (c) and (d) was that for the purposes of the draft articles, whatever the rules of the organization considered to be an organ was an “organ”; everyone or everything else that was charged by the organization with carrying out, or helping to carry out, one of its functions, was an “agent”.

15. The title of draft article 2, “Use of terms”, remained unchanged.

16. Part Two was entitled “The internationally wrongful act of an international organization” and consisted of five chapters.

17. Chapter I was entitled “General principles” and consisted of three draft articles, including the only new draft article introduced during the second reading.

18. Apart from changing the second reference to “the international organization”, in both draft articles 3 and 4, to “that organization”, the texts and titles of those two draft articles had been adopted without substantive change. A suggestion had been made by one State to include the requirement of causation of damage in draft article 4. The Committee had decided against that, since it was not clear how such an element could be required for acts committed by international organizations but not for those committed by States: the articles on State responsibility for internationally wrongful acts adopted in 2001 made no such allusion.

19. Draft article 5 was new. It had arisen out of the discussion on *lex specialis* in the context of draft article 64, specifically whether the provision could be interpreted as implying that if an act was lawful under the rules of an international organization, then it was necessarily lawful under international law. As a matter of policy, the Drafting Committee had felt that the draft articles should not allow for such an interpretation.

20. Accordingly, new draft article 5 dealt with the characterization of an act of an international organization as internationally wrongful. It used, with the necessary amendment, the formulation found in the first sentence of article 3 of the articles on State responsibility,²⁴⁶ and established the principle that it was international law that decided whether an act of an international organization was wrongful or not.

21. The Drafting Committee had not, however, included the second sentence of article 3 on State responsibility, since in the present context it did not seem possible to assert that the characterization could not be affected by the rules of the organization. The rules of the organization could include rules of international law that might be

relevant to the characterization of an act as being internationally wrongful. Although the Committee had attempted to capture that nuance, including by a proposed reference to the “internal law” of the organization, it had been unable to find a satisfactory reformulation. Accordingly, it had settled for the current version, on the understanding that it was best to leave the question of interaction with the rules of the organization for further explanation in the commentary.

22. The Drafting Committee had agreed that the provision should appear early in the draft articles, in a similar location to the equivalent text in the articles on State responsibility. It had initially envisaged it as a second paragraph in draft article 4 but had decided to make it a separate provision, since it dealt with a different set of issues than those covered by draft article 4.

23. Draft article 5 was entitled “Characterization of an act of an international organization as internationally wrongful”, by analogy with the title of article 3 of the articles on State responsibility.

24. Chapter II comprised four draft articles. The title adopted on first reading, “Attribution of conduct to an international organization”, had been retained.

25. Draft article 6 covered the conduct of organs or agents of an international organization. The provision had been retained largely in the form adopted on first reading, with some drafting amendments. In paragraph 1, the word “as”, before “an act”, had been deleted to bring the text more into line with the articles on State responsibility.

26. It had been suggested that the text specify that the conduct in question should be undertaken under the instruction and control of the organization or in an official capacity. However, the Drafting Committee had decided not to include that element so as not to seem to be establishing an additional requirement. The issue had been resolved through an amendment to draft article 8.

27. Paragraph 2 had been refined through the amendment of the opening phrase, which now read “The rules of the organization apply”. The purpose was to make it clearer that the rules of the organization were not the exclusive basis for determining the functions of the organ or agent, a point made in the commentary but not made clear in the text adopted on first reading. On the one hand, the fact that the attribution of functions to an agent went beyond its rules should not enable an international organization to deny that the conduct of the agent was attributed to it. On the other hand, the rules of the organization would normally apply in the determination of the functions of its organs and its agents. The shift from “shall apply to” to “apply in” was intended to convey that nuance.

28. The title of draft article 6 had been changed to read “Conduct of organs or agents of an international organization”, which was clearer and corresponded to the articles on State responsibility.

29. The Drafting Committee had noted that many of the comments made by States and international organizations on draft article 7 concerned the commentaries. It had considered a proposal by one State to specify that the organs

²⁴⁶ *Ibid.*, p. 30.

placed at the disposal of the international organization were used to carry out its functions. The Committee had not thought that necessary, and, accordingly, the text adopted on first reading had been retained.

30. The title of draft article 7 had been amended to read “Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization”, in order to align it more closely with the text itself.

31. In draft article 8, the indefinite article “an”, before the phrase “agent of an international organization”, had been deleted in accordance with the wording used throughout the draft articles. The Drafting Committee had further decided to replace the reference to “in that capacity” with “in an official capacity and within the overall functions of that organization”. The word “and” had been included in that phrase to make it clear that there were two separate issues. The new phrase was intended to align the text with the practice of international organizations. Although the Drafting Committee had been concerned that this might unnecessarily limit the ability of victims to seek recourse against international organizations, it had been of the view that the question of the wrongful conduct of an international organization for failure to control its organs or agents came under the scope of draft article 6.

32. The phrase “even though” had been changed to “even if”, the formulation used in the corresponding article of the articles on State responsibility. The title of draft article 8, “Excess of authority or contravention of instructions”, remained unchanged.

33. Draft article 9 concerned conduct acknowledged and adopted by an international organization as its own. The provision had elicited no changes other than the minor improvements of replacing the phrase “the preceding draft articles” with “draft articles 6 to 8” and deleting the second reference to “international”, before “organization”.

34. The title of draft article 9, “Conduct acknowledged and adopted by an international organization as its own”, remained unchanged.

35. Chapter III comprised four draft articles. The title adopted on first reading, “Breach of an international obligation”, had been retained.

36. Draft article 10 dealt with the existence of a breach of an international obligation. For paragraph 1, the Drafting Committee had taken note of a suggestion made by an international organization that it should be made clearer that breaches of the rules of an organization were not as such breaches of international law. The Committee had considered conveying that nuance by replacing the words “international obligation” with “obligation under international law”, but had decided against doing so, since it would have meant introducing the same change in other draft articles, which could have led to unnecessary *a contrario* interpretations arising from a difference between the draft articles on responsibility of international organizations and the draft articles on State responsibility. The commentary would clarify that what was meant by “international obligation” was obligations arising under international law.

37. The Drafting Committee had then focused on amending the concluding phrase, which in the version adopted on first reading had read “regardless of its origin and character”. The Committee had considered the use of the word “its” to be confusing and had decided to reformulate the phrase to read “regardless of the origin or character of the obligation concerned”. The words “origin and character” had been rendered as “origin or character”, in line with the formulation used in the draft articles on State responsibility.

38. In paragraph 2, the Drafting Committee had changed the phrase “breach of an international obligation” to “breach of any international obligation” so as to indicate that it was by no means all obligations that might arise under the rules of the organization that were international obligations. The Committee had discussed alternative formulations for the words “that may arise”, including “on the basis of”, “under” and “arising out of”. However, it had decided to retain the formulation adopted on first reading as an indication that, while the rules of the organization might not *per se* be rules of international law, they might nonetheless serve as the basis of obligations which arose under international law.

39. The Drafting Committee had also introduced the phrase “for an international organization towards its members”, after “international obligation that may arise”, as a reminder that the rules of the organization constrained the organization primarily in its relations with its members. Obligations in relation to non-members arising out of the rules of the organization were not likely to be obligations under international law. The phrase served to confirm what was also stated in draft article 32 and implied in draft article 5, namely that the rules of the organization could not be relied upon as a way of justifying the non-application or modification of rules of international law that would otherwise be applicable to the organization.

40. The title of draft article 10, “Existence of a breach of an international obligation”, remained unchanged.

41. Some minor improvements had been made to the texts and titles of draft articles 11, 12 and 13.

42. Chapter IV of Part Two was entitled “Responsibility of an international organization in connection with the act of a State or another international organization” and consisted of six draft articles. The Drafting Committee had decided to make no changes to the texts and titles of draft articles 14 to 16, 18 and 19, other than a minor improvement to subparagraph (a) of draft articles 14 and 15, replacing the words “that organization” with “the former organization”. Draft article 17 was the only draft article in the chapter that had been amended.

43. Under draft article 14, the Drafting Committee had considered the question of whether the element of intention should be added to that of “knowledge of the circumstances of the ... act”, since the commentary to the corresponding article on State responsibility made reference to that element. In the commentary to the text adopted on first reading, the Special Rapporteur had declined to reproduce the reference to the criterion of intention,²⁴⁷ out of concern that it would give rise to a discrepancy with the draft article,

²⁴⁷ *Yearbook ... 2009*, vol. II (Part Two), p. 42 (draft article 13).

which did not include such an element. While there had been support for the inclusion of the criterion of intention in the draft article, the Drafting Committee had decided against doing so, since it would imply a shift of emphasis regarding the concept of responsibility that could have implications for the text on State responsibility.

44. Draft article 17 had been the subject of some discussion in the Drafting Committee, and the provision had been significantly redrafted. The Special Rapporteur had proposed making the draft article subject to what were now draft articles 14 to 16 by including a phrase to that effect at the beginning of former paragraph 1. That would remove any overlap between those provisions and draft article 17 and would make it clear that draft article 17 was an additional basis for establishing responsibility. The Drafting Committee had decided that such a clarification was not strictly necessary, and that this could be explained in the commentary.

45. The central issue for the Drafting Committee, as in the plenary debate, had been whether the provision should be extended to cover circumvention through recommendations. The Special Rapporteur had proposed the deletion of paragraph 2 so as to limit the scope of the draft article to responsibility for binding decisions. Another proposal retained the text adopted on first reading,²⁴⁸ including paragraph 2, but deleted references to the organization's incurring responsibility for the recommendations it adopted, leaving only the concept of responsibility for authorizations. A further proposal included the element of a recommendation that caused members to commit an act. The Committee had ultimately preferred the proposal to limit the responsibility for non-binding acts to authorizations granted by an organization. The view had been that different organizations ascribed different meanings and legal consequences to the notion of "recommendations". What mattered was whether, by making a recommendation, the organization was, in effect, authorizing its members to act in a particular manner. The concept of "authorization" included within it those types of recommendations that constrained members of the organization to act in a certain manner. That would be explained in the commentary.

46. Working on that understanding, the Drafting Committee had adopted a provision similar to the one adopted on first reading, the key difference being that the concept of "circumvention" had been given greater prominence by being placed at the beginning of both paragraphs 1 and 2.

47. Paragraph 1 maintained the thrust of the text adopted on first reading. Paragraph 2 extended the scenarios under which an international organization incurred responsibility to its circumvention of one of its international obligations by authorizing its members to commit an act that would be wrongful for the organization if it had committed it. The earlier reference to the actual performance of the act had been strengthened by linking it to authorization, with the new words "and the act in question is committed because of that authorization". The underlying idea was abuse by the international organization of its separate legal personality.

48. Paragraph 3 had been retained basically in the form adopted on first reading. The only changes had been to refer to members in the plural and to delete the reference to recommendations. The Drafting Committee had also decided to replace the word "directed" with "addressed", used in the title, so that the final phrase now read "to which the decision or authorization is addressed".

49. The title of draft article 17 had been amended to read "Circumvention of international obligations through decisions and authorizations addressed to members", so as to reflect more closely the content of the provision. The new formulation had the additional benefit of being similar to the titles for draft articles 14, 15 and 16.

50. Chapter V was the final chapter of Part Two. Its title, "Circumstances precluding wrongfulness", had remained unchanged. Of the eight draft articles in the chapter, the Drafting Committee had made changes to only two. It had adopted the texts and titles of draft articles 20, 23, 24, 26 and 27 exactly as on first reading. It had discussed draft article 21 without making changes, and amendments had been introduced to draft articles 22 and 25.

51. Draft article 21 on self-defence had been discussed at some length with a view to providing the Special Rapporteur with guidance for the preparation of the commentary. After considering some tentative proposals for refining the text by replacing "constitutes" with "may be regarded as", "may amount to" or "is", the Committee had decided to retain the provision as proposed on first reading, while recognizing that the situation it provided for was, to some extent, theoretical, and not analogous to that raised in the context of the responsibility of States. That had been shown through the inclusion of the new words "and to the extent that", which did not appear in the corresponding provision in the articles on State responsibility.

52. The title of draft article 21, "Self-defence", remained unchanged.

53. Draft article 22 dealt with the characterization of resort to countermeasures as a circumstance precluding wrongfulness. It had been the subject of much discussion in both the Drafting Committee and the plenary Commission. The main problem was with former paragraph 2 and the question of when an international organization might take countermeasures against one of its members.²⁴⁹ The Drafting Committee had accepted the working hypothesis suggested during the plenary debate that it was possible, though difficult in practice, to distinguish between countermeasures taken against a member for breaches of obligations unrelated to membership and those taken against a member for obligations binding on it because of its membership. The Committee had thus focused on possible scenarios for the taking of countermeasures by an international organization against its members. One of the options considered had been to convert paragraph 2 into a "without prejudice" clause, but that idea had not garnered sufficient support. Instead, the Committee had decided to structure the provision in line with its working hypothesis.

²⁴⁸ *Ibid.*, p. 43 (draft article 16).

²⁴⁹ *Ibid.*, p. 47 (draft article 21).

54. Paragraph 1 established the general scenario of countermeasures taken against non-member States. The Drafting Committee had retained the text adopted on first reading. Paragraph 1 applied, subject to the exceptions set out in paragraph 2 and new paragraph 3.

55. Paragraph 2 covered the situation where countermeasures were taken against a member State or international organization for the breach of an obligation unrelated to the State's or organization's membership. As a policy matter, the Drafting Committee had been of the view that even if a dispute concerned an obligation unrelated to membership, there were institutional reasons for limiting the possibility of taking countermeasures, so as to preserve the relationship between the organization and its member. Paragraph 2 therefore presented several criteria retained from the text adopted on first reading, with some drafting changes.

56. Paragraph 3 dealt with the final scenario: when countermeasures were taken against a member in response to a breach of an obligation arising as a consequence of membership. Given the legal complexity that that implied, the Drafting Committee had felt that countermeasures should be permitted in such a situation solely where they were expressly provided for by the rules of the organization. Another restriction consisted in making it clear that paragraph 3 referred to an obligation arising for the wrongdoing member State or international organization under the rules of the organization. In such cases, the issue of whether countermeasures were possible would be decided by the rules of the organization. If the obligation on the member arose from other rules of international law, then paragraph 2 would apply. The relationship between the two paragraphs was indicated by the qualifying phrase at the beginning of paragraph 2, "Subject to paragraph 3".

57. The title of draft article 22 remained "Countermeasures".

58. Draft article 25 dealt with the invocation of necessity as a circumstance precluding wrongfulness. The Drafting Committee had retained the formulation adopted on first reading, with refinements in paragraph 1 (a) and (b). It had amended the scope of paragraph 1 (a) so as to add to the list of essential interests being safeguarded by the international organization the "interest of its member States", since the first-reading version might have excluded many international organizations whose functions did not involve protecting the interest of the international community as a whole. A comma had been inserted after "international community as a whole" and the final clause of paragraph 1 (a) had been changed from "the function to protect that interest" to "the function to protect the interest in question", to make it clearer.

59. In paragraph 1 (b), the word "international" had been inserted before "obligation". Concern had been expressed that the new reference to the interest of the members of the international organization in paragraph 1 (a) disturbed the balance between that text and paragraph 1 (b). The Drafting Committee had felt that the reference to an "international obligation" helped to clarify the fact that that part of the paragraph referred to the interest of the State or States, including non-member States, against which the circumstance precluding wrongfulness was being invoked.

60. The Drafting Committee had also considered, but rejected, a proposal to refer to the interests of the international organization itself in paragraph 1 (b). Its reasoning had been that such interests were not provided for in paragraph 1 (a) and that international organizations did not have "essential interests" on which they could rely to invoke necessity as a circumstance precluding wrongfulness or to prevent another entity from invoking necessity against them. That approach, agreed upon during the first reading, had been retained, since changing it would have meant broadening the concept of "essential interest".

61. The title of draft article 25 remained "Necessity".

62. The title of Part Three was, as before, "Content of the international responsibility of an international organization".

63. Chapter I was still entitled "General principles". The texts and titles of draft articles 28 to 30 had been adopted without any change to the formulation adopted on first reading.

64. For draft article 31, the Drafting Committee had considered the possibility of replacing the phrase "caused by the internationally wrongful act" with "caused by its internationally wrongful act", but had decided against it for fear of inadvertently changing the meaning. The Committee had further agreed to reflect in the commentary the point that international organizations could negotiate bilateral agreements to regulate the form and extent of reparation as a means of mitigating the potential impact of the obligation to make full reparation.

65. The title of draft article 31 remained "Reparation".

66. Draft article 32 had its roots in the corresponding provision in the articles on State responsibility for internationally wrongful acts. Paragraph 1 corresponded to article 32 of that text²⁵⁰ and established the general proposition that the responsible international organization could not rely on its rules as justification for failure to comply with its obligations under Part Three. The rules of the organization were not applicable to non-member States or organizations unless those third States or organizations had accepted them as governing their relations with the international organization or they applied as a matter of customary international law.

67. During the first reading, the Commission had accepted the view that, in the relations between the international organization and its members, the organization's rules could in fact derogate from the provisions of paragraph 1.²⁵¹ That flowed from draft article 10, which recognized that some rules of the organization might give rise to obligations under international law. Accordingly, paragraph 2 simply addressed the relations between the international organization and its members and recognized that the rules of the organization might play a role in the operation of Part Three.

²⁵⁰ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 28 and 94.

²⁵¹ *Yearbook ... 2009*, vol. II (Part Two), p. 53 (paragraph (4) of the commentary to article 31).

68. During its consideration of draft article 32, the Drafting Committee had heard a proposal to include a general statement of principle as to the applicability of the rules of the organization, corresponding to that in article 3 of the articles on State responsibility. That statement of principle had now been inserted as new draft article 5, which replicated the first part of article 3 on State responsibility. The Drafting Committee had also felt no need to mention situations when the rules of the organization characterized an act as wrongful or not, out of recognition that international law and the rules of the international organization were to some extent intertwined in the relations between members and the organization and that the rules of the organization could apply as part of international law.

69. No change had been made to draft article 32, paragraph 1. The Drafting Committee had considered a proposal to insert the words “as such” after “may not rely on its rules”, as an indication of the nuanced role that the rules of the organization played, but had decided against doing so, since that could suggest that there might be situations where the rules of the organization could apply to non-members, which was not the case.

70. As to paragraph 2, the Drafting Committee had decided to replace the concluding phrase, “of the responsibility of the organization towards its member States and organizations”, with “to the relations between the organization and its member States and organizations”. The aim was to make the provision clearer and to convey the idea that paragraph 2 was only carving out an exception to paragraph 1 for the purposes of Part Three of the draft articles.

71. The earlier title of draft article 32 had been “Irrelevance of the rules of the organization”. After considering various options for amending it, the Committee had settled on inverting it, since paragraph 2 was less about the “irrelevance” of the rules and more about their “relevance” in relation to Part Three. The title of draft article 32 had thus become “Relevance of the rules of the organization”. Far from reversing the position of the State responsibility articles, that change simply reflected the operation, in the context of the responsibility of international organizations, of the exception in paragraph 2 in relation to the general proposition in paragraph 1.

72. Draft article 33 dealt with the scope of the international obligations set out in Part Three. The only change introduced by the Drafting Committee had been in paragraph 1, regarding the manner in which the many possible groupings of States and international organizations was described. One suggestion had been to change the phrase “to one or more other organizations, to one or more States, or to the international community as a whole” to “to a State or another international organization, to several States or international organizations, or to the international community as a whole”, which was closer to the formulation in draft article 47 of the current text and to that used in the articles on State responsibility. The Drafting Committee had felt that the proposal added an unnecessary element of imprecision and had preferred to work on the basis of the formulation adopted on first reading. Other suggestions had been to add “or combination thereof” or “singularly or jointly”, to suggest that there were

many possible combinations of groupings, but neither proposal had garnered sufficient support. The Committee had retained the first-reading text, merely reversing the references to States and to international organizations, since it was the practice to refer to States first.

73. The title of draft article 33 remained “Scope of international obligations set out in this Part”.

74. The title of chapter II was, as before, “Reparation for injury”. The Drafting Committee had adopted the texts and titles of draft articles 34 to 39 in the form adopted on first reading, without change.

75. Draft article 40 dealt with fulfilment of the obligation to make reparation. The Special Rapporteur had presented a revised text in his eighth report, combining the text adopted on first reading, slightly modified and presented as a new paragraph 1, and another text, proposed during the debate on the first-reading text in 2009 but not adopted by the Drafting Committee.²⁵² That provision had been reproduced as a new paragraph 2 in the Special Rapporteur’s proposal in his eighth report.

76. The Drafting Committee had noted that such a course of action had been supported by the plenary Commission. The Committee had accepted a suggestion to reverse the order of the paragraphs in order to present the obligation placed on the international organization first and then deal with the obligations of members of the organization, now addressed in paragraph 2.

77. The title of draft article 40 was “Ensuring the fulfilment of the obligation to make reparation”. It was an amended version of the title adopted on first reading. The earlier reference to “effective performance” had been replaced by “fulfilment”, so as to align the title with the text of the draft article, and the phrase “obligation of reparation” had been refined to read “obligation to make reparation”.

78. The title of chapter III remained “Serious breaches of obligations under peremptory norms of general international law”. The texts and titles of draft articles 41 and 42 had been adopted by the Drafting Committee without change.

79. The titles of Part Four and chapter I remained “The implementation of the international responsibility of an international organization” and “Invocation of the responsibility of an international obligation”, respectively. The texts and titles of draft articles 43, 44, 46 and 47 had been adopted in their first-reading form, without change. Modifications had been introduced in draft articles 45 and 48 to 50.

80. Draft article 45 dealt with the admissibility of claims. The text adopted was substantially the same as that agreed on first reading, with the following changes. The definite article “the” had been inserted before “nationality of claims” at the end of paragraph 1. The phrase “When a rule requiring the” had been replaced by “When the rule of” in paragraph 2. The Drafting Committee had considered

²⁵² *Ibid.*, p. 57 (paragraph (4) of the commentary to article 39).

refining the phrase “provided by that organization”, towards the end of paragraph 2, to read “provided by the rules of that organization”, but had felt that that would be too restrictive. It was possible for an international organization simply not to assert its immunities, but it was not clear that that would necessarily be undertaken in accordance with the rules of the organization. Concern had also been expressed that the proposed phrase could be read as being discretionary, which was not what was intended. The Committee had ultimately decided to delete the phrase altogether, thereby aligning the text with the articles on State responsibility.

81. If, under draft article 49, paragraph 5, responsibility was invoked by a State or international organization other than an injured State or organization, then only draft article 45, paragraph 2, was applicable. In other words, there was no requirement with respect to nationality of claims.

82. The title of draft article 45 remained “Admissibility of claims”.

83. The Drafting Committee had considered proposals for refining draft article 47 by finding a better formula for expressing the possible combinations of States and international organizations that might be injured by the same internationally wrongful act. The proposals included using the word “plurality”, as in the title. The Committee had decided not to make any changes to the text or title, noting that the potential constellations of arrangements were covered by the phrase “each injured State or international organization may separately”.

84. Draft article 48 dealt with situations where there was a plurality of responsible States or international organizations. In paragraph 1, the Drafting Committee had once again considered the manner in which the group of entities was described. It had recognized that the formula used earlier in the text was not appropriate, since the draft article dealt with the situation where one international organization was responsible together with one or more States or international organizations. Accordingly, it had retained the formulation adopted on first reading, with the minor refinement of inserting the word “international” between the words “or more States or other” and “organizations” and deleting the word “international” before “organization may be invoked”.

85. As to paragraph 2, the Drafting Committee had noted that the Special Rapporteur intended to clarify in the commentary the question of the sequence for the invocation of subsidiary responsibility in relation to that of primary responsibility. The commentary would make it clear that a temporal sequence was not a rigid requirement. The Committee had considered a proposal to say that in the text itself by replacing the words “has not led to reparation” with “does not lead to reparation” or “has not resulted in reparation”, but had decided to retain the formulation adopted on first reading.

86. The first-reading text had included a reference to the current draft article 62. The Drafting Committee had considered ways of formulating it differently, including by saying “as in the case provided for in”, but had eventually decided to delete the reference altogether, since it implied

that subsidiary responsibility was provided for in other draft articles.

87. The title of draft article 48 had been slightly amended to read “Responsibility of an international organization and one or more States or international organizations” so as to more clearly align it with the text of paragraph 1.

88. Draft article 49 dealt with invocation of responsibility by a State or an international organization other than an injured State or international organization. The Drafting Committee had focused its attention on paragraph 3. It had added the words “as a whole” after “international community”, thus using the standard phrase. The Drafting Committee had also considered a proposal to append at the end of paragraph 3 the phrase “and such invocation is within the powers and functions of the international organization invoking responsibility”. However, opposition had been expressed to the introduction of the concept of “powers”, and the Committee had settled for replacing “is included among the functions” with “is within the functions”, which it had felt was clearer. The current formulation allowed an international organization that had the task of promoting a certain interest to invoke responsibility for breaches of obligations in the area covered by that interest.

89. Draft article 49, paragraph 5, limited the requirements for the invocation of responsibility by interested non-injured States or international organizations by excluding the applicability of the nationality of claims rule. It had been suggested in the plenary Commission that the issue be clarified, but the Drafting Committee had considered the formulation adopted on first reading to be satisfactory.

90. The title of draft article 49 remained “Invocation of responsibility by a State or an international organization other than an injured State or international organization”.

91. Draft article 50 was a saving clause concerning the scope of chapter I. In the first-reading text, the equivalent article had described the scope of the entire Part Three. The Drafting Committee had focused on whether the saving clause applied also to chapter II on countermeasures. It had felt that it did not. Draft article 50 dealt with the entitlement to invoke the international responsibility of an international organization. Making it applicable to the entire Part implied recognition of the right of persons or entities other than a State or international organization to take countermeasures, which was not intended. The commentary would make that clear. Accordingly, the Committee had decided to limit the provision by replacing “Part” with “Chapter”.

92. The title of draft article 50 had been modified to read “Scope of this Chapter”.

93. The title of chapter II remained “Countermeasures”. The texts and titles of draft articles 51, 54, 55 and 56 had been adopted without change, except for the addition of the words “of countermeasures” in the title of draft article 54, so that it now read “Proportionality of countermeasures”. Modifications had been introduced in draft articles 52, 53 and 57.

94. Draft article 52 dealt with conditions for taking countermeasures by members of an international organization. The Drafting Committee had aligned the article with draft article 22 by introducing the distinction drawn there between obligations which arose generally for members of an international organization independently of the rules of the organization and those which were based on the rules of the organization. That had required the inclusion of an additional paragraph, with the former scenario captured in paragraph 1, and the latter in new paragraph 2. The relationship between the two was established by making paragraph 1 subject to new paragraph 2.

95. The Drafting Committee had moved a phrase in the former *chapeau* of the draft article, “under the conditions set out in the present chapter”, into a new paragraph 1 (a) and redrafted it as “the conditions referred to in draft article 51 are met” so as to align it with draft article 22.

96. Paragraph 1 (b) retained the text of former subparagraph (a).

97. Paragraph 1 (c) was based on the first-reading text of former subparagraph (b), but had been rewritten in order to follow the wording of draft article 22, paragraph 2 (c).

98. Paragraph 2 was new. The wording was based on that of draft article 22, paragraph 3, with some adjustments.

99. The Drafting Committee had considered different options for the title of draft article 52, including “Countermeasures by members of an international organization”. It had settled on “Conditions for taking countermeasures by members of an international organization”.

Mr. Perera (Rapporteur) took the Chair.

100. The CHAIRPERSON, reading out the report of the Chairperson of the Drafting Committee in the absence of the latter, said that draft article 53 dealt with the types of obligations that were not affected by countermeasures. The text was substantially the same as that adopted on first reading, with the following modifications.

101. For paragraph 1 (b), the Drafting Committee had taken into account comments made by Governments and in the plenary Commission to the effect that the reference to “fundamental human rights” was not in line with contemporary practice. After some discussion, the Committee had decided to delete the word “fundamental” on the understanding that the commentary would explain that the intention was not to widen the scope of draft article 53, thereby limiting the possibility of taking countermeasures. The change had been introduced simply to reflect contemporary usage when referring to human rights, including in the Commission’s own work.

102. The Drafting Committee had decided to simplify paragraph 2 (a) by replacing the phrase “the injured State or international organization” with the word “it”. The Committee had considered a suggestion from an international organization to redraft paragraph 2 (b) so as to reflect the privileges and immunities of international organizations. However, it had declined to do so because

it had not felt that it was the paragraph’s function to list the types of privileges and immunities that international organizations enjoyed. The proposed change could also not be accepted because not all international organizations enjoyed privileges and immunities to the same degree. The Committee had considered changing the word “any” to “the”, but had decided against it, since it suggested that there was a general rule that all organs and agents enjoyed immunities and privileges, which was not the case. Some organizations had no immunities at all. The commentary would explain that the word “any” meant wherever such privileges and immunities existed.

103. The only change made to paragraph 2 (b) had been to replace the word “agents” with the phrase “organs or agents”, as a consequence of the introduction of the new definition of “organs of an international organization” in draft article 2.

104. The title of draft article 53 remained “Obligations not affected by countermeasures”.

105. Draft article 57 was a “without prejudice” clause dealing with measures taken by States or international organizations other than an injured State or organization. It had its origin in the corresponding provision of the articles on State responsibility. The Drafting Committee had focused on aligning the text more closely with that provision and on improving the wording without making changes in substance.

106. The phrase in the first-reading text, “is without prejudice to the right”, had been refined to read “does not prejudice the right”. The words “responsibility of an international organization” now appeared as “responsibility of another international organization”. The phrase “measures against the latter international organization” had been amended to read “measures against that organization”. Finally, the words “injured party” were now “injured State or organization”.

107. The title of draft article 57 had been amended to read “Measures taken by States or international organizations other than an injured State or organization”, to more closely track the content of the draft article.

108. The title of Part Five had been changed to read “Responsibility of a State in connection with the conduct of an international organization”. The text and title of draft article 60 had been adopted without change. Modifications had been introduced in draft articles 58, 59, 61, 62 and 63.

109. Draft article 58 dealt with the responsibility of a State when it aided or assisted an international organization in the commission of an internationally wrongful act. Other than a drafting improvement to paragraph 1 (a)—modifying “that State” to “the State”—the Drafting Committee had retained the text adopted on first reading, which had become new paragraph 1.

110. The focus of the Drafting Committee’s discussion had been what was now new paragraph 2. The Committee had taken note of the fact that several Governments had called for a clearer distinction to be drawn between participation in the decision-making process within an international

organization and aiding or assisting the organization in the commission of an internationally wrongful act. While the issue had been mentioned in the eighth report as the subject of a possible clarification in the commentary, the Committee had nonetheless decided to include a reference to that point in the text of the draft article itself.

111. As had been done in respect of countermeasures, the Drafting Committee had drawn a basic conceptual distinction between member States acting as members and member States acting in a capacity other than as members. It had felt that the possibility of responsibility for aid or assistance in the commission of an internationally wrongful act should be restricted to the latter scenario.

112. One possibility considered had been to include a general saving clause, possibly in draft article 62 or draft article 63, stating that nothing in Part Five implied that the responsibility of a State arose simply because of a State's membership in an organization. However, that proposal had not found favour, since it was unclear what its effect might be on draft articles 61 and 62. As a matter of presentation, the Committee had preferred to deal with the matter early in Part Five, giving an accurate representation of the scope of draft articles 58 and 59 by including a second paragraph in both.

113. The new paragraph 2 sought to make it clear that the responsibility of a member State for aid or assistance to an international organization in the commission of an internationally wrongful act did not arise in situations where the State was acting as a member in accordance with the rules of the organization. The commentary would explain that this did not affect the State's responsibility for its own actions. In other words, the provision did not mean that a State member of an organization did not incur responsibility for the breach of its own international obligations arising from its participation in the activities of the organization. For example, a State voting within an organization in favour of the commission of an act which amounted to genocide continued to be held responsible under international law on its own account. When such a vote was taken in accordance with the rules of the organization, that State would not in addition be considered responsible for aiding or assisting the organization in the commission of the act in question.

114. That concern about preserving the obligations of the member State under international law was captured by the formula "[a]n act by a State member ... does not as such engage the international responsibility of that State", which suggested that it could do so in another capacity.

115. The title of draft article 58 remained "Aid or assistance by a State in the commission of an internationally wrongful act by an international organization".

116. Draft article 59 concerned responsibility for direction and control exercised by a State over the commission of an internationally wrongful act. As with draft article 58, the Drafting Committee had retained the provision adopted on first reading as paragraph 1, with the technical refinement in paragraph 1 (a) of replacing "that State" with "the State". The Committee had decided to repeat draft article 58, paragraph 2, as a new paragraph 2 in draft article 59.

117. The title of draft article 59 remained "Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization".

118. The Drafting Committee had decided not to include in draft article 60 a second paragraph like the ones it had added to draft articles 58 and 59. It had felt that, as a matter of policy, to suggest that coercion could be undertaken in accordance with the rules of an international organization was unacceptable. The provision therefore made no distinction between acts of coercion undertaken as a member and those undertaken by member States acting in a different capacity.

119. The text and title of draft article 60 had been adopted in the same form as on first reading, with some drafting improvements in subparagraph (a), replacing "that international organization" with "the coerced international organization", and in subparagraph (b), replacing "that State" with "the coercing State".

120. Draft article 61 concerned the responsibility of a member State for circumvention of one of its international obligations. The Drafting Committee had adopted a reformulated version of paragraph 1.

121. The Special Rapporteur had proposed the inclusion at the beginning of the paragraph of a qualifying phrase subjecting draft article 61 to what were now draft articles 58 to 60, so as to limit any overlap between the provisions, but the proposal had subsequently been withdrawn, as it had not garnered enough support in the plenary Commission. The Drafting Committee had then proceeded to reformulate paragraph 1. It had decided to place the phrase "by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations" earlier in the text. Further changes included resorting to the word "circumvents" to replace "seeking to avoid complying with", so as to align the provision with the wording adopted in draft article 17, and replacing the reference to "prompting" with "causing", which was considered clearer.

122. The Drafting Committee had considered the question of intention and a proposal to include the words "seeks to" before "circumvent" so as to highlight the fact that intention was required. However, the Committee had decided not to adopt that language, since it could be interpreted as allowing for inchoate responsibility for merely seeking to circumvent, without actually succeeding. The Committee had considered proposals for making the text clearer by including the terms "intentionally", "deliberately", "purposefully" or "is able to" before "circumvents", but had decided against doing so, to avoid suggesting a shift in the way responsibility was envisaged within the draft articles. The requirement of intention was deemed to be implicit in the words "circumvents" and "caused". Not including an additional qualifier had the further benefit of producing a text that emphasized the commission of the act of circumvention by taking advantage of the fact that the organization had competence. That would be explained in the commentary.

123. No change had been made to paragraph 2.

124. The Drafting Committee had considered a proposal to include another paragraph along the lines of the new paragraph 2 in draft articles 58 and 59, but had decided against doing so, as it would limit the practical impact of draft article 61.

125. The title of draft article 61, having been amended several times, now read “Circumvention of international obligations of a State member of an international organization”, wording chosen to align the title more closely with the content of the draft article.

126. Draft article 62 concerned the responsibility of a State member of an international organization for an internationally wrongful act of the organization. The Drafting Committee had amended the wording adopted on first reading by way of taking into account some of the comments received.

127. In the *chapeau* of paragraph 1, and in line with what it had done in previous draft articles, the Drafting Committee had decided to delete the qualifying phrase “without prejudice to articles 58 to 61”. While that would leave a measure of overlap with those draft articles, it was thought to be generally tolerable.

128. In paragraph 1 (*a*), the Drafting Committee had taken into account a recommendation that the text make clear the need for acceptance *vis-à-vis* the State or international organization invoking responsibility, since acceptance could be an internal matter for the organization. The Committee had decided to add the phrase “towards the injured party” at the end of paragraph 1 (*a*) to clarify the point.

129. The Drafting Committee had considered several proposals to clarify paragraph 1 (*b*). First, it had considered the possibility of emphasizing the element of conduct by saying “it has by its conduct led”, but it had decided to cover the point in the commentary. Another proposal had been to replace the word “led” by “induced” or “caused”, but that, too, had not been taken up.

130. With regard to paragraph 2, in line with suggestions about emphasizing that the responsibility that was contemplated therein, namely subsidiary responsibility, was exceptional in nature, it had been decided to change the opening phrase, “The international responsibility”, to “Any international responsibility”. The commentary would also cover that point. The Drafting Committee had further refined paragraph 2 by replacing the phrase “which is entailed in accordance with” with “under”, in the English text, so as to align it with the French. The Committee understood paragraph 2 as implying that the responsibility of a member State arose in a residual manner, being subsidiary to that of the international organization itself. The invocation of such responsibility took place in accordance with draft article 48, paragraph 2. The fact that the responsibility of the international organization remained unaffected was clarified in draft article 63.

131. The title of draft article 62 had been slightly amended to read “Responsibility of a State member of an international organization for an internationally wrongful act of that organization”.

132. Draft article 63 was the final draft article in Part Five and dealt with the effect of that Part. The Drafting Committee had made three drafting improvements to the text adopted on first reading: introducing the definite article “the” before “international responsibility”; inserting “State or” before “other international organization” at the end, so as to align the provision with draft article 19; and deleting the phrase “under other provisions of these draft articles”. The third amendment was a consequence of the second and was also intended to avoid the implication that State responsibility was dealt with by provisions other than those in Part Five.

133. The title of draft article 63 remained “Effect of this Part”.

134. The final part of the draft articles, namely Part Six, continued to be entitled “General provisions”. The Drafting Committee had considered a proposal to adopt the title “Miscellaneous provisions”, but had decided against it.

135. Draft article 64 dealt with the *lex specialis* principle. The Drafting Committee had not accepted a proposal to include language to the effect that, regardless of the application of *lex specialis*, there should always be a responsible subject—such a general proposition could not be sustained. The Committee had also not accepted a proposal to add a provision requiring that the special characteristics of an organization be taken into account.

136. The Drafting Committee had accordingly limited itself to refining the first-reading text. The phrase “or a State for an internationally wrongful act of an international organization” had now become “or of a State in connection with the conduct of an international organization”, so as to align the text with the title of Part Five. A single lengthy sentence had been broken into two, the second sentence dealing with the rules of the organization.

137. The Drafting Committee had considered a proposal to expand the scope of the new second sentence to indicate that it was not just the rules applicable in the relations between the organization and its members that were being considered, although it would primarily be those rules that were relevant. That would leave it open for some rules of the organization also to apply in the relations between the organization and third States or organizations. The proposal had not been accepted out of concern that it would allow room for an interpretation that the rules of the international organization always trumped general rules of international law. The Committee had been of the view that the rules of the organization were relevant in the relations with third States or organizations, not as special rules, but in the application of general rules—for example, in determining the validity of consent—or where the third State or organization had accepted the rules of the organization as binding on it. In the latter case, the basis for applicability would be acceptance by the State, and not the *lex specialis* rule.

138. The focus had then turned to breaking the provision into two sentences for ease of understanding, without necessarily making any substantive changes. The formula that had been agreed upon used the phrase “special rules of international law” to make it explicit that it was that quality, namely the fact that they were

rules of international law, that was significant. The phrase “may be contained in” served to indicate that not all such rules of the organization operated as special rules. It had been decided to render the words “between the international organization and its members” as “between an international organization and its members”.

139. As a consequence of that discussion, the Drafting Committee had considered the possibility of including a statement of the principle that an organization could not rely upon its internal rules to avoid its international responsibility, in line with a similar statement in article 3 of the articles on State responsibility and further to its discussion of draft article 32. That idea had been realized, in a revised form, as new draft article 5.

140. The title of draft article 64 remained “*Lex specialis*”.

141. The texts and titles of draft articles 65 to 67 had been adopted without change to the first-reading formulations.

142. Draft article 67 was a saving clause relating to the Charter of the United Nations. The Drafting Committee had decided to retain the text and title as adopted on first reading. It considered that the provision should not be interpreted as meaning that the United Nations, as an international organization, was exempt from the draft articles. The Committee had also considered a proposal to indicate that the draft articles had to be interpreted in conformity with the Charter of the United Nations, as had been done in the commentary to the equivalent provision in the draft articles on State responsibility.²⁵³ It had decided against such a clarification in either the provision itself or in the commentary, however, because it felt that such an assertion could be more easily sustained in the context of State responsibility than in that of the responsibility of international organizations. Contrary to States, international organizations were not capable of becoming parties to the Charter of the United Nations and as such could not become members of the Organization. Nor were they necessarily bound by the provisions of the Charter of the United Nations or even by the decisions of the organs of the United Nations. The preference had therefore been for a provision that merely preserved the Charter of the United Nations without taking a position on whether or not it was binding on international organizations generally. A proposal to make that clearer by adding the words “to any obligations arising under” before “the Charter of the United Nations” had not succeeded in the Committee, out of concern that modifying the formulation adopted in the articles on State responsibility could have unintended consequences.

143. In conclusion, and on behalf of the Chairperson of the Drafting Committee, Mr. Perera expressed the hope that the plenary Commission would be in a position to adopt the draft articles on the responsibility of international organizations, on second reading, as presented.

144. He then invited the Commission to adopt the titles and texts of the draft articles on responsibility of international organizations, as reproduced above, on second reading.

PART ONE.

INTRODUCTION

Draft articles 1 and 2

Draft articles 1 and 2 were adopted.

PART TWO.

THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION

CHAPTER I. GENERAL PRINCIPLES

Draft articles 3 to 5

Draft articles 3 to 5 were adopted.

CHAPTER II. ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION

Draft articles 6 to 9

Draft articles 6 to 9 were adopted.

CHAPTER III. BREACH OF AN INTERNATIONAL OBLIGATION

Draft articles 10 to 13

Draft articles 10 to 13 were adopted.

CHAPTER IV. RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION IN CONNECTION WITH THE ACT OF A STATE OR ANOTHER INTERNATIONAL ORGANIZATION

Draft article 14

145. Mr. NOLTE, supported by Sir Michael WOOD, said that, as he understood it, the draft article did not in any way alter the scope of responsibility for aid or assistance in the commission of an internationally wrongful act by comparison with the corresponding article 16 in the articles on State responsibility. The Drafting Committee had simply been considering whether the reference to intention in the commentaries to the text on State responsibility should be reflected in the text of draft article 14. The result of the Drafting Committee’s discussion had been that that was not advisable. He had not understood the discussion to mean, however, that the commentary to draft article 14 should not refer to intention.

146. He asked whether the Special Rapporteur shared his understanding of the situation.

147. Mr. GAJA (Special Rapporteur) said that Mr. Nolte was correct that the result of the discussion had been that in the text on responsibility of international organizations there should be some reference, if only an indirect one, to the part of the commentary to article 16 on State responsibility that cited intention as one of the criteria applying to aid or assistance in the commission of an internationally wrongful act. He undertook to include such a reference in the commentary to draft article 14, which would be examined in due course by the Commission.

Draft article 14 was adopted.

²⁵³ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 143 (paragraph (2) of the commentary to article 59).

Draft articles 15 to 19

Draft articles 15 to 19 were adopted.

CHAPTER V. CIRCUMSTANCES PRECLUDING WRONGFULNESS

Draft articles 20 to 27

Draft articles 20 to 27 were adopted.

PART THREE.

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I. GENERAL PRINCIPLES

Draft articles 28 to 33

Draft articles 28 to 33 were adopted.

CHAPTER II. REPARATION FOR INJURY

Draft articles 34 to 40

Draft articles 34 to 40 were adopted.

CHAPTER III. SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Draft articles 41 and 42

Draft articles 41 and 42 were adopted.

PART FOUR.

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I. INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Draft articles 43 to 50

Draft articles 43 to 50 were adopted.

CHAPTER II. COUNTERMEASURES

Draft article 51

148. Mr. CANDIOTI said that the French text of draft article 51, paragraph 1, should be verified to ensure that the negative formulation “*ne peuvent prendre de contre-mesures*” is aligned on the English words “may only take countermeasures”.

With that proviso related to the French text, draft article 51 was adopted.

Draft articles 52 to 57

Draft articles 52 to 57 were adopted.

PART FIVE.

RESPONSIBILITY OF A STATE IN CONNECTION WITH THE CONDUCT OF AN INTERNATIONAL ORGANIZATION

Draft article 58

Draft article 58 was adopted.

Draft article 59

149. Mr. GALICKI pointed out that the first word in draft article 59, paragraph 1 (a), “that”, should be amended to the definite article “the”, to mirror the wording of draft article 58, paragraph 1 (a).

Draft article 59 was adopted, subject to that editorial amendment.

Draft articles 60 to 63

Draft articles 60 to 63 were adopted.

PART SIX.

GENERAL PROVISIONS

Draft article 64

150. Mr. CANDIOTI pointed out that in the second sentence of draft article 64, the English words “an organization” should read “the organization”, in line with the French, “*l’organisation*”.

Draft article 64 was adopted, with that editorial amendment to the English text.

Draft articles 65 to 67

Draft articles 65 to 67 were adopted.

151. The CHAIRPERSON said he took it that the Commission wished to adopt on second reading the titles and texts of the draft articles on responsibility of international organizations, as a whole, subject to editorial amendments to the English and French texts.

It was so decided.

152. Mr. GAJA (Special Rapporteur) welcomed the fact that the Commission had been able to adopt the text on second reading before the close of the first part of its sixty-third session, as that was a precondition for its adoption of the commentaries to the text in the next part of the session. The work was a collective endeavour that deserved to be pursued.

Organization of the work of the session (continued)*

[Agenda item 1]

153. After the customary exchange of courtesies, the CHAIRPERSON declared the first part of the sixty-third session closed.

The meeting rose at 12.25 p.m.

* Resumed from the 3095th meeting.