

Document:-
A/CN.4/SR.2660

Summary record of the 2660th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2000, vol. I

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70. Mr. ECONOMIDES, supported by Mr. SIMMA, said that, in the last sentence of paragraph (9), the second use of the word “optional” should be corrected to read “compulsory”.

71. Mr. BROWNLIE said that the wording was correct as it stood: the jurisdiction of ICJ was optional at the stage of proceedings described in the paragraph. Once that jurisdiction had been accepted, it was compulsory.

72. Mr. TOMKA suggested deletion of the phrase “optional clause recognizing the optional”.

It was so agreed.

Paragraph (9), as amended, was adopted.

The commentary to guideline 1.4.6 [1.4.6, 1.4.7], as amended, was adopted.

Commentary to guideline 1.4.7 [1.4.8]

73. Mr. SIMMA queried the use of the word “with” in the first sentence of paragraph (12).

74. The CHAIRMAN suggested that the words “with reservations” should be replaced by the phrase “between these statements and reservations”.

It was so agreed.

Paragraph (12), as amended, was adopted.

The commentary to guideline 1.4.7 [1.4.8], as amended, was adopted.

Commentary to guideline 1.7 (A/CN.4/L.596/Add.4)

75. Mr. PELLET (Special Rapporteur) and Mr. SIMMA drew attention to some editing changes required at the beginning of the commentary.

76. Mr. ECONOMIDES said that the end of the last sentence in paragraph (1) might lend itself to the wrong interpretation. He proposed that the phrase “while safeguarding the ‘hard core’ of the treaty” should be deleted.

It was so agreed.

Paragraph (1), as amended, was adopted.

77. Mr. HAFNER asked whether the “treaty clauses” referred to in the first sentence of paragraph (2) were clauses entitling States to conclude treaties or whether they were treaty provisions themselves. If the latter was the case, the word “treaties” would be preferable to “treaty clauses”.

78. Mr. PELLET (Special Rapporteur) said that, if it made the meaning clearer, the words “treaty clauses” could be replaced by the words “clauses in the treaty itself”.

It was so agreed.

Paragraph (2), as amended, was adopted.

The commentary to guideline 1.7, as amended, was adopted.

The meeting rose at 6 p.m.

2660th MEETING

Wednesday, 16 August 2000, at 10 a.m.

Chairman: Mr. Chusei YAMADA

Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma.

Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/504, sect. E)

[Agenda item 8]

REPORT OF THE CHAIRMAN OF THE PLANNING GROUP

1. The CHAIRMAN invited Mr. Kamto, Chairman of the Planning Group, to report on the work of the Planning Group.

2. Mr. KAMTO (Chairman of the Planning Group) said that the Planning Group had held four meetings at the Commission’s current session. It had discussed section E of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-fourth session, entitled “Other decisions and conclusions of the Commission” (A/CN.4/504, paras. 181 to 188) and had also taken account of paragraphs 8 to 11 of General Assembly resolution 54/111 of 9 December 1999. It had decided to re-establish the Working Group on the long-term programme of work and the working group on split sessions. It had also had before it a proposal submitted by Mr. Pellet entitled “Elections to the International Law Commission” (ILC(LII)/PG/WP.1).

3. Having considered the reports of the two working groups at its meeting on 10 August 2000, the Planning Group had decided, first, to adopt the report of the Working Group on the long-term programme of work (ILC(LII)/WG/LT/L.1 and Add.1), replacing the words “might be worth” by the words “are worth” in the first

sentence of the last paragraph of document ILC(LII)/WG/LT/L.1; secondly, to adopt the report of the working group on split sessions (ILC(LII)/WG/SPS/L.1); and, thirdly, to include on the agenda for the Commission's next session the proposal made by Mr. Pellet entitled "Elections to the International Law Commission".

4. Chapter IX of the Commission's draft report (A/CN.4/L.598) would reflect decisions on the long-term programme of work and on the work of the working group on split sessions dealing with the length, nature and place of the Commission's future sessions. He thanked all members of the Planning Group and the two Working Groups and, in particular, Mr. Brownlie, Chairman of the Working Group on the long-term programme of work, and Mr. Rosenstock, Chairman of the working group on split sessions, for their spirit of cooperation and efforts to achieve concrete results.

5. The CHAIRMAN thanked the Chairman of the Planning Group and suggested that the Commission should take note of his oral report.

It was so agreed.

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

CHAPTER VII. Reservations to treaties (concluded) (A/CN.4/L.596 and Add.1-4)

C. Text of the draft guidelines on reservations to treaties provisionally adopted by the Commission on first reading (concluded) (A/CN.4/L.596/Add.2-4)

2. TEXT OF THE DRAFT GUIDELINES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-SECOND SESSION (*concluded*) (A/CN.4/L.596/ADD.3-4)

6. The CHAIRMAN invited the members of the Commission to continue their consideration, paragraph by paragraph, starting with the commentary to guideline 1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4].

Commentary to guideline 1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] (A/CN.4/L.596/Add.4)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

7. Mr. SIMMA proposed that, in order to make the text clearer, the reference to article 19, paragraph 3, of the ILO Constitution contained in footnote 4 should be moved to the end of the introductory sentence.

Paragraph (2), as amended, was adopted.

Paragraph (3)

8. Mr. SIMMA, referring to the last sentence, said that he did not understand the meaning of the word "injunction" and thought that it might be deleted.

9. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to delete the words "injunction or a".

It was so agreed.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

10. Mr. SIMMA said that, in the second subparagraph, the word "derogations", whose meaning was purely factual, should be replaced by the words "derogation clauses".

11. Mr. PELLET (Special Rapporteur) said that that proposal was not applicable in French.

12. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to amend the English text on the basis of Mr. Simma's proposal.

It was so agreed.

Paragraph (6), as amended, was adopted.

Paragraphs (7) and (8)

Paragraphs (7) and (8) were adopted.

Paragraph (9)

13. Mr. SIMMA said that there was a contradiction between the introductory sentence, which referred to draft guidelines in section 1.4, and the first subparagraph, which referred to draft guideline 1.1.8.

14. Mr. PELLET (Special Rapporteur) proposed that, in order to remove that contradiction, the first subparagraph should be deleted.

Paragraph (9), as amended, was adopted.

Paragraph (10)

15. Mr. SIMMA said that he was not sure what the word "others" meant in the first sentence and whether it would not be better to say "other statements" or "other clauses".

16. Mr. PELLET (Special Rapporteur) said that he would prefer the words "other alternative procedures".

17. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to the amendment by the Special Rapporteur.

It was so agreed.

Paragraph (10), as amended, was adopted.

Paragraphs (11) to (19)

Paragraphs (11) to (19) were adopted.

Paragraph (20)

18. Mr. SIMMA said there appeared to be a contradiction between paragraph (19), which said that the bilateralization regime could be traced back to the 1947 General Agreement on Tariffs and Trade, and paragraph (20), which implied that the idea of bilateralization dated from 1971.

19. Mr. PELLET (Special Rapporteur) said that there was no contradiction because the drafters of the General Agreement on Tariffs and Trade had been involved in bilateralization without knowing it, before that idea had been theorized in 1971. The apparent contradiction could be explained by a translation problem, since the French word *théorisée* had been translated as “examined” in the last sentence.

20. Mr. BROWNLIE proposed that the word “elaborated” should be used in English.

Paragraph (20), as amended in English, was adopted.

Paragraph (21)

21. Mr. SIMMA said that the words “Below is a list of 23 possible ways” seemed to announce a list which was not to be found anywhere.

22. Mr. PELLET (Special Rapporteur) said that that problem was also caused by a translation error. Those words should read: “This is followed by a list ...”.

Paragraph (21), as amended in English, was adopted.

Paragraph (22)

Paragraph (22) was adopted.

Paragraph (23)

23. Mr. SIMMA said that, in the second sentence, the words “difference with” should be replaced by the words “difference from”.

Paragraph (23), as amended in English, was adopted.

Paragraph (24)

Paragraph (24) was adopted.

Commentary to guideline 1.7.2 [1.7.5]

Paragraph (1)

24. Mr. ECONOMIDES proposed that the last sentence should be redrafted by deleting the words “and hardly more than two procedures of this type can be mentioned”, since draft guideline 1.7.2 [1.7.5] contained a list which was only indicative and there were other alternatives to declarations such as unilateral acts. In exchange for that deletion, the word “nearly” might be added between the words “not” and “as”.

25. Mr. PELLET (Special Rapporteur) said that, since the last phrase was a kind of introduction to what followed, he would like the last sentence to be divided in two. There would be a full stop after the words “is nonetheless not as great” and the last sentence would read: “As an indication, two procedures of this type can be mentioned”.

26. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to the amendment by the Special Rapporteur.

It was so agreed.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Paragraph (2) was adopted.

Paragraph (3)

27. Mr. SIMMA said that, although the French word *interprète* could mean a jurist who interpreted a legal text, the English word “interpreter” had a much more technical meaning which was not appropriate in the current context.

28. Mr. HAFNER proposed that the words “the interpreter” should be replaced by the words “in the course of interpretation”.

29. Mr. PELLET (Special Rapporteur) said that the easiest solution would be to delete the words “the interpreter”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Section C, as amended, was adopted.

Chapter VII as a whole, as amended, was adopted.

CHAPTER IV. State responsibility (A/CN.4/L.593 and Corr. 1 and Add.1–6)

30. The CHAIRMAN invited the members of the Commission to consider chapter IV of the draft report.

A. Introduction (A/CN.4/L.593)

Paragraphs 1 to 9

Paragraphs 1 to 9 were adopted.

Paragraph 10

31. After a debate in which Mr. BROWNLIE, Mr. CRAWFORD (Special Rapporteur), Mr. PAMBOU-TCHIVOUNDA and Mr. PELLET took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to retain paragraph 10.

It was so agreed.

Paragraph 10 was adopted.

Paragraphs 11 to 17

Paragraphs 11 to 17 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.593 and Corr.1 and Add.1-6)

Paragraphs 18 and 19 (A/CN.4/L.593/Corr.1)

Paragraphs 18 and 19 were adopted.

Paragraph 20

32. Mr. CRAWFORD (Special Rapporteur) proposed that the consideration of paragraph 20 should be deferred until the following day.

33. The CHAIRMAN said he took it that the Commission agreed to that proposal.

It was so agreed.

Paragraphs 1 to 12 (A/CN.4/L.593/Add.1)

Paragraphs 1 to 12 were adopted.

Paragraph 13

34. Mr. PELLET, referring to the last sentence, said it was impossible to say that it had been considered preferable to complete the consideration of certain articles at the next session of the Commission and, at the same time, to request the Sixth Committee to provide feedback on the end of the articles at the fifty-fifth session of the General Assembly.

35. Mr. CRAWFORD (Special Rapporteur) said that he was aware of that contradiction and proposed that the sentence should be amended to read: "It was noted that the fifty-fifth session of the General Assembly would give the Commission a last opportunity to obtain feedback from the Sixth Committee on certain questions such as counter-measures and dispute settlement."

Paragraph 13, as amended, was adopted.

Paragraph 14

36. Mr. PELLET said that, in the first sentence of the French text, the word *article* should be replaced by the word *paragraphe*.

Paragraph 14, as amended, was adopted.

Paragraph 15

37. Mr. PELLET, referring to the first sentence, said it should be made clear that reference was being made to paragraph 7 of the report of the Special Rapporteur. The second sentence was awkward and should be redrafted.

38. Mr. CRAWFORD (Special Rapporteur) proposed that the second sentence should be divided in two. The first would end after the words "in the draft" and the second would then begin with the words "Others thought it would be preferable".

Paragraph 15, as amended, was adopted.

Paragraph 16

39. Mr. PELLET said that he would like the French text of paragraph 16 to be rewritten.

40. The CHAIRMAN said that the secretariat would bring the French text into line with the original English text.

Paragraph 16 was adopted on that understanding.

Paragraph 17

41. Mr. PELLET, referring to the first sentence, proposed that the words "including its purpose" should be deleted. In the antepenultimate sentence, it was difficult to say that the quantification of compensation came within the field of diplomatic protection. That was true at best when the victim was a private individual, but it would not be wise for all the problems involved in the determination of the amount to be referred to the topic of diplomatic protection.

42. Mr. CRAWFORD (Special Rapporteur) proposed that the words "were of equal if not greater concern in the field of diplomatic protection" should be replaced by the words "and varied from one context to another".

Paragraph 17, as amended, was adopted.

Paragraph 18

Paragraph 18 was adopted.

Paragraph 19

43. Mr. PELLET proposed that, in order to reflect the debate faithfully, the word "Strong" should be added before the word "support".

Paragraph 19, as amended, was adopted.

Paragraph 20

Paragraph 20 was adopted.

Paragraph 21

44. Mr. PELLET said that, for the readers' enlightenment, it should be explained to what chapter III, Part Two bis and chapter II bis referred.

45. Mr. CRAWFORD (Special Rapporteur) proposed that, in order to meet Mr. Pellet's concern, the first sentence of the paragraph should be deleted, since the rest of the paragraph was comprehensible.

Paragraph 21, as amended, was adopted.

Paragraph 22

46. Mr. PELLET, referring to the second sentence, said that, as a matter of social convention, the name of the now deceased former Special Rapporteur, should not be preceded by "Mr.", at least not in French. In the same sentence, he proposed that the word *matière* should be replaced by the word *sujet*.

Paragraph 22, as amended in French, was adopted.

Paragraph 23

Paragraph 23 was adopted.

Paragraph 24

47. Mr. PELLET said that, in the second sentence of the French text, the word *proposerait* should be replaced by the word *proposait*.

Paragraph 24, as amended in French, was adopted.

Paragraph 25

Paragraph 25 was adopted.

Paragraph 26

48. Mr. CRAWFORD (Special Rapporteur), replying to a comment by Mr. Pellet, proposed that, in the last sentence, the words "even if rearranged" should be deleted.

49. Mr. CANDIOTI said that, in the French text, a comma should be added between the word *maintenues* and the word *complétées*.

Paragraph 26, as amended, was adopted.

Paragraph 27

Paragraph 27 was adopted.

Paragraph 28

50. Mr. CRAWFORD (Special Rapporteur) said that the number "28", which did not actually introduce a paragraph, should be deleted and that the following paragraphs should be renumbered accordingly.

Paragraph 29

Paragraph 29 was adopted.

Paragraph 30

51. Mr. PELLET said that the word *réparations* in the last sentence did not mean anything and probably showed how difficult it was to translate the word "remedies".

52. Mr. CRAWFORD (Special Rapporteur) proposed that, in order to solve the problem, the words "of remedies, such as declarations, aimed" should be amended to read: ", for example, of declarations aimed".

Paragraph 30, as amended, was adopted.

Paragraphs 31 and 32

Paragraphs 31 and 32 were adopted.

Paragraph 33

53. Mr. PELLET said he was surprised that the fourth sentence included the words "multilateral obligations". In the case of the injured State, reference should be made to "rights".

54. Mr. CRAWFORD (Special Rapporteur) proposed that the words "multilateral obligations" should be replaced by the words "multilateral legal relations".

55. Mr. KAMTO said that he agreed with the amendment proposed by the Special Rapporteur, but, if it was adopted, the words "by attributing them" would have to be replaced by the words "by attributing the rights".

56. Mr. PELLET said that the reference to countermeasures in the penultimate sentence was irrelevant because paragraph 33 related to the general principle of reparation.

57. Mr. CRAWFORD (Special Rapporteur), replying to Mr. Pellet's comment, proposed that the penultimate sentence should be deleted.

Paragraph 33, as amended, was adopted.

Paragraph 34

58. Mr. PELLET said that, in the fourth sentence, the word "certain" should be added before the word "Governments" and that, at the end of the seventh sentence in the French text, the words *de le faire* should be replaced by the words *d'y procéder*.

59. The CHAIRMAN said that the secretariat would amend the French text.

60. Mr. PELLET asked why the concept of “guarantee” appeared at the end of the antepenultimate sentence.

61. Mr. CRAWFORD (Special Rapporteur) proposed that the word “guarantee” should be replaced by the word “limit”.

Paragraph 34, as amended, was adopted.

Paragraph 35

Paragraph 35 was adopted.

Paragraph 36

62. Mr. PELLET said that, in the first sentence, the words “if it was retained” should be added before the words “article 38” because, at the time, it had not been certain whether the Commission would keep that article.

63. Mr. CRAWFORD (Special Rapporteur) said that he agreed with the amendment proposed by Mr. Pellet.

Paragraph 36, as amended, was adopted.

Paragraph 37

64. Mr. CRAWFORD (Special Rapporteur) said that, since paragraph 37 was not a paragraph, the paragraph number should be deleted and the paragraphs that followed should be renumbered accordingly.

Paragraph 38

Paragraph 38 was adopted.

Paragraph 39

65. Mr. PELLET said that “paragraph 50 (c) of the report” should read “paragraph 50 of the report”.

Paragraph 39, as amended, was adopted.

Paragraphs 40 and 41

Paragraphs 40 and 41 were adopted.

Paragraph 42

66. Mr. PELLET said that the last sentence, particularly the phrase “since there could be a pattern of individual breaches not itself separately classified as a wrongful act” was not clear.

67. Mr. CRAWFORD (Special Rapporteur) proposed that the end of the paragraph should be amended to read: “since there could be a pattern of individual breaches which were not continuing breaches, but were a continuation of the pattern. This nonetheless ...”.

Paragraph 42, as amended, was adopted.

Paragraph 43

Paragraph 43 was adopted.

Paragraph 44

68. Mr. PELLET said that, in the last sentence of the French text, the words *On a remis en cause* should be replaced by the words *On a émis des doutes sur*.

69. Mr. BROWNLIE said that, in the second sentence, the comma after the words “While recognizing that” should be deleted.

Paragraph 44, as amended, was adopted.

Paragraph 45

Paragraph 45 was adopted.

Paragraph 46

70. Mr. PELLET, supported by Mr. CRAWFORD (Special Rapporteur), said that, in the third sentence, the words “a law organizing an act of genocide” should be replaced by the words “a law organizing genocide”.

71. Mr. ROSENSTOCK proposed that the end of the last sentence, as from the words “international law” should be amended to read: “since, inter alia, such a text could be implemented in a way consistent with international law”. The fact that provisions could be so implemented was not the only reason why they did not in themselves constitute a breach of international law.

72. Mr. ECONOMIDES proposed that the word “explicitly” in the third sentence should be deleted because it might imply, *a contrario*, that a law implicitly empowering the police to commit torture would not entail the responsibility of the State.

Paragraph 46, as amended, was adopted.

Paragraphs 47 to 49

Paragraphs 47 to 49 were adopted.

Paragraph 50

73. Mr. PELLET, supported by Mr. ECONOMIDES, said that the opinion reflected in paragraph 50 had been his and that of Mr. Economides and that it had not been referred to accurately in the first sentence, which should therefore be amended to read: “Referring to paragraph 1, the view was expressed that it was not logical to speak in Part Two of the consequences of an internationally wrongful act; this consequence was the responsibility itself. Part Two dealt with consequences arising from responsibility.”

Paragraph 50, as amended, was adopted.

Paragraph 51

74. Mr. BROWNLIE said that, in the third sentence, the word “reparations” should be in the singular.

75. Mr. PELLET said that the same was true in the second sentence.

Paragraph 51, as amended, was adopted.

Paragraph 52

Paragraph 52 was adopted.

Paragraph 53

76. Mr. KAMTO said that the words in Latin in the fourth sentence should be translated.

77. Mr. BROWNLIE said that the terms in question were commonly used in some legal systems.

78. Mr. HAFNER confirmed that that was so.

79. Mr. KUSUMA-ATMADJA pointed out that the word “cause” was not an accurate translation of the Latin word *causa*. In his opinion, the use of the Latin was justified in the current case.

80. Mr. PELLET said that, for those not familiar with the common law, the words in question were incomprehensible. He therefore proposed that the list of “causes” should be deleted and that the phrase should read “make a general study of causality”.

81. Mr. GAJA said that he agreed with that proposal.

82. Mr. CRAWFORD (Special Rapporteur) said that he also agreed with the proposal, but indicated that the word “causation” should be used instead of the word “causality”.

Paragraph 53, as amended, was adopted.

Paragraph 54

83. Mr. PELLET said that he did not understand the logic of the second sentence.

84. Mr. CRAWFORD (Special Rapporteur) said that he also found the sentence obscure. He proposed that it should end after the words “compensation and satisfaction”.

Paragraph 54, as amended, was adopted.

Paragraphs 55 and 56

Paragraphs 55 and 56 were adopted.

Paragraph 57

85. Mr. PELLET, supported by Mr. CRAWFORD (Special Rapporteur), said that, in the first sentence, it was

impossible to refer to “grounds for annulling or quantifying obligations”. He proposed that the words “or quantifying” should be deleted.

Paragraph 57, as amended, was adopted.

Paragraphs 58 to 61

Paragraphs 58 to 61 were adopted.

Paragraph 62

86. Mr. KABATSI asked why there was a change of point of view, as indicated by the use of the word “personally” in the last sentence.

87. Mr. CRAWFORD (Special Rapporteur) proposed that the last sentence should be deleted.

Paragraph 62, as amended, was adopted.

Paragraphs 63 to 65

Paragraphs 63 to 65 were adopted.

Paragraph 66

88. Mr. PELLET, referring to the second part of the fourth sentence, said that there was a contradiction between the beginning, which stated that there were very few examples of guarantees of non-repetition, and the rest, which stated that they were common in diplomatic practice.

89. Mr. CRAWFORD (Special Rapporteur) said that the logic of the sentence could be brought out more clearly if the last phrase “even though they were common in diplomatic practice”, was amended to read: “on the other hand, they were common in diplomatic practice”.

Paragraph 66, as amended, was adopted.

Paragraph 67

Paragraph 67 was adopted.

Paragraph 68

90. Mr. CRAWFORD (Special Rapporteur) said that, in the first sentence, the word “causality” should be replaced by the word “causation”.

Paragraph 68, as amended, was adopted.

Paragraph 69

Paragraph 69 was adopted.

Paragraphs 1 to 5 (A/CN.4/L.593/Add.2)

Paragraphs 1 to 5 were adopted.

Paragraph 6

91. Mr. ROSENSTOCK said that paragraph 6 cited as an argument a certain passage of the report by the Special Rapporteur. In accordance with the decision taken earlier in the meeting, some idea should probably be given of the content of that passage.

92. Mr. CRAWFORD (Special Rapporteur) proposed that the reference to paragraph 96 of his report should be amended to read: "... in a number of respects, as noted by the Special Rapporteur in paragraph 96 of his report and as shown in the topical summary of the Sixth Committee ...".

Paragraph 6, as amended, was adopted.

Paragraph 7

93. Mr. PAMBOU-TCHIVOUNDA said that the words *Plusieurs membres ont applaudi* at the beginning of the French text were excessive. He proposed that the usual wording should be used, such as *Plusieurs membres se sont félicités*.

Paragraph 7, as amended, was adopted.

Paragraphs 8 to 10

Paragraphs 8 to 10 were adopted.

Paragraph 11

94. Mr. GAJA, referring to the last sentence, which reflected the view that the expression "international community as a whole" meant the international community of States, recalled that several members who had taken part in the discussion had not shared that opinion. He proposed that the following sentence should be added at the end of the paragraph: "Other members considered that 'international community as a whole' was a wider concept."

95. Mr. SIMMA, referring to the non-governmental organizations mentioned in the third sentence, said he did not think that "which did not have the constituent elements to qualify as States" had to be stated. He proposed that that phrase should be deleted.

96. Mr. CRAWFORD (Special Rapporteur) said that he endorsed those two amendments.

Paragraph 11, as amended, was adopted.

Paragraph 12

97. Mr. SIMMA said that the first sentence was not clear.

98. Mr. CRAWFORD (Special Rapporteur) said that matters would be clearer if the words "while ignoring the international community" were replaced by the words "while ignoring the existing institutions of the international community".

Paragraph 12, as amended, was adopted.

Paragraph 13

99. Mr. CRAWFORD (Special Rapporteur) proposed that the word "However" at the beginning of the paragraph should be deleted because the paragraph did not stand in logical opposition to the paragraph which preceded it.

100. Mr. ECONOMIDES said that the words "applied in practice to such a loose and theoretical characterization" in the first sentence were incomprehensible.

101. Mr. CRAWFORD (Special Rapporteur) proposed that those words should be amended to read: "applied in practice, given such a loose and theoretical characterization".

102. Mr. PELLET said that the word *caractérisation* did not work in French. The word *qualification* should be used instead.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted.

Paragraph 15

103. Mr. SIMMA said that he did not understand why in the fourth sentence "all the consequences of international responsibility... should be applied to all States". The point was to make it clear that States must be able to invoke all the consequences of international responsibility.

104. Mr. CRAWFORD (Special Rapporteur) proposed that the fourth sentence should be replaced by the following: "It was further suggested that all States should be entitled to invoke responsibility in respect of all its consequences, except perhaps that of compensation, in cases of such serious breaches. Of particular importance was the principle of restitution in the form of a return to the *status quo ante*."

105. Mr. ROSENSTOCK proposed, that the words "or any qualitative distinction among wrongful acts" should be added at the end of the last sentence.

Paragraph 15, as amended, was adopted.

The meeting rose at 1 p.m.