

Document:-
A/CN.4/2866

Summary record of the 2866th meeting

Topic:
<multiple topics>

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63. The CHAIRPERSON said that the French and Spanish versions would be aligned with the English text.

Paragraph 2 was adopted.

Paragraph 3

64. Mr. PELLET said that the words “and the commentaries thereto” should be inserted after the words “nine draft articles” and also after the words “two draft guidelines” in paragraph 7.

Paragraph 3, as amended, was adopted.

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Paragraph 7

65. Mr. PELLET said that the words “part of” should be inserted after the word “considered” in the first sentence.

Paragraph 7, as amended, was adopted.

Paragraph 8

66. Mr. KOSKENNIEMI (Chairperson of the Study Group on Fragmentation of international law) said that the words “preliminary reports” in the second sentence should be replaced with the words “final report” and that a full stop should be inserted after the words “conflict rules” in the same sentence. The following sentence should be amended to begin: “The Study Group also received the final report on the Study concerning the modification ...”. In addition, he proposed that a sentence should be added at the end of the paragraph, which would read: “The Study Group decided to submit a consolidated study and a set of conclusions, guidelines or principles to the fifty-eighth session of the Commission (2006).”

67. Mr. GAJA asked whether it was wise to announce so categorically what the Study Group intended to do the following year.

68. Mr. MANSFIELD, addressing Mr. Gaja’s comment, suggested that the wording proposed by Mr. Koskenniemi should be reworded to read: “The Study Group considered that it would be in a position to submit a consolidated study ...”.

Paragraph 8, as amended, was adopted.

Paragraph 9

Paragraph 9 was adopted.

Paragraph 10

69. Mr. ECONOMIDES said that for the sake of clarity the words “of the Council of Europe” should be inserted after the words “Public International Law”.

Paragraph 10, as amended, was adopted.

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Chapter II as a whole was adopted, as amended.

The meeting rose at 1.05 p.m.

2866th MEETING

Friday, 5 August 2005, at 10.05 a.m.

Chairperson: Mr. Djamchid MOMTAZ

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Dugard, Mr. Economides, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kolodkin, Mr. Koskenniemi, Mr. Mansfield, Mr. Matheson, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Yamada.

Draft report of the Commission on the work of its fifty-seventh session (concluded)

CHAPTER X. *Reservations to treaties (concluded)* (A/CN.4/L.671 and Add.1–2 and Corr.1)

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter X of the draft report and drew attention in that connection to the portion of the chapter contained in document A/CN.4/L.671/Add.1.

B. *Consideration of the topic at the current session*

Paragraphs 1 to 7

Paragraphs 1 to 7 were adopted.

1. INTRODUCTION BY THE SPECIAL RAPporteur OF HIS TENTH REPORT

Paragraphs 8 to 10

Paragraphs 8 to 10 were adopted.

Paragraph 11

2. Mr. PAMBOU-TCHIVOUNDA drew attention to the French text and said that the words “*Se tournant vers*” in the first sentence should be modified.

Paragraph 11 was adopted.

Paragraphs 12 to 14

Paragraphs 12 to 14 were adopted.

Paragraph 15

3. Mr. GAJA said that the words “permissibility/impermissibility” in the English text should be replaced by “lawfulness/unlawfulness”.

4. Mr. PELLET (Special Rapporteur) said that in the draft guideline, the French word “*licéité*” had been translated as “permissibility”. It would therefore be preferable to reword the beginning of the English text to read: “Furthermore, the French terms ‘*licéité/illicéité*’ could be misleading.”

5. Mr. GAJA said that his preference had been for the terms “lawfulness/unlawfulness” because responsibility was linked not to an impermissible act but to an unlawful one; however, if Mr. Pellet insisted on retaining the words “permissibility/ impermissibility” in the English text, the French words “*licéité/illicéité*” could be added in square brackets.

6. Mr. PELLET (Special Rapporteur) said that he did not insist on retaining the phrase “the terms ‘permissibility/impermissibility’”; on the contrary, he proposed replacing it by “the French terms ‘*licéité/illicéité*’”. For the sake of clarity, it should perhaps even read “Furthermore, the French terms ‘*licéité/illicéité*’, which are translated in the English text as ‘permissibility/impermissibility’ could be misleading.”

Paragraph 15, as amended, was adopted.

Paragraph 16

Paragraph 16 was adopted.

Paragraph 17

7. Mr. GAJA said that the word “*faculté*” in the second sentence of the French text should be rendered in the English text as “freedom” and not “power”.

Paragraph 17, as amended, was adopted.

Paragraph 18

Paragraph 18 was adopted.

Paragraph 19

8. Mr. GAJA said that, as in paragraph 17, the word “*faculté*” should again be translated as “freedom” and not “power”. He also proposed inserting the word “himself” after “asked” in the first sentence of the English text in order to bring it into line with the French text.

9. Mr. BROWNLIE proposed replacing the word “asked” by “considered”.

Paragraph 19, as amended, was adopted.

Paragraph 20

Paragraph 20 was adopted.

Paragraph 21

10. Mr. GAJA said that the word “since” in the penultimate sentence of the English text was an incorrect rendering of the French text and should be replaced by the word “although”.

Paragraph 21, as amended, was adopted.

Paragraphs 22 to 28

Paragraphs 22 to 28 were adopted.

Paragraph 29

11. Mr. GAJA pointed out that the word “text” in the final sentence should read “test”. In addition, the end of that sentence, beginning with the phrase “the same was true of a specified reservation”, was unclear. He proposed replacing the semicolon after the words “the object and purpose of the treaty” with a full stop, deleting the words “the same was true of a specified reservation” and starting a new sentence, which would read: “As they were expressly authorized by the treaty, specified reservations were automatically valid and were not subject to the test of compatibility with the object and purpose of the treaty.”

12. Mr. PELLET (Special Rapporteur) said that he did not see the point of Mr. Gaja’s proposal. In his view, both the French text and the English translation faithfully reflected what he had said.

13. Mr. GAJA assured the Special Rapporteur that his intention was not to make a substantive change in the text but merely to propose clearer wording.

Paragraph 29, as amended, was adopted.

Paragraphs 30 to 32

Paragraphs 30 to 32 were adopted.

Paragraph 33

14. Mr. GAJA suggested deleting the word “nevertheless”, which did not make sense in the context.

15. Mr. PAMBOU-TCHIVOUNDA, referring to the second sentence, said that it might be inconsistent to speak of a “notion” on the one hand and “concepts” on the other.

16. Mr. PELLET (Special Rapporteur) said that in his view the two terms were synonymous; the phrase should be left as it stood.

Paragraph 33, as amended, was adopted.

Paragraphs 34 to 37

Paragraphs 34 to 37 were adopted.

Paragraph 38

17. Mr. PAMBOU-TCHIVOUNDA drew attention to the French text and proposed replacing the words “*Se tournant*” in the first sentence with “*En ce qui concerne*”.

Paragraph 38, as amended, was adopted.

Paragraph 39

Paragraph 39 was adopted.

Paragraph 40

18. Mr. PAMBOU-TCHIVOUNDA said that in the footnote to paragraph 40 of the French text, the word “*traits*” should be replaced by “*traités*”.

Paragraph 40, as amended, was adopted.

Paragraph 41

19. Mr. GAJA said that the word “affirmative” in the second sentence of the English text should be replaced by “categorical”, to bring it into line with the French text.

Paragraph 41, as amended, was adopted.

Paragraph 42

Paragraph 42 was adopted.

Paragraph 43

20. The CHAIRPERSON said that the word “*objections*” in the third sentence of the French text should be replaced by “*réserves*”.

21. Mr. GAJA said that, in order to make the English text consistent with the amended French text the words “also objected” in the third sentence should be replaced by “made reservations”. On a purely editorial matter, he said that the word “to” after “embodying” in the first sentence should be deleted.

22. In order to make the second sentence more understandable, he proposed rewording it to read “States made reservations to such provisions chiefly in order to avoid the consequences of ‘conventionalization’ of the customary rule.”

Paragraph 43, as amended, was adopted.

Paragraphs 44 to 46

Paragraphs 44 to 46 were adopted.

2. SUMMARY OF THE DEBATE

Paragraph 47

Paragraph 47 was adopted.

Paragraph 48

23. Mr. ECONOMIDES said that the statement made in the last sentence was premature, since the Commission had not yet considered the consequences of invalidity; moreover, he had doubts as to the statement’s accuracy. If the last sentence was retained, a further sentence should be added to indicate the existence of an opposing view.

24. Mr. GAJA suggested deleting the last sentence, which was not clear in the context. To make the second

sentence more understandable, he proposed redrafting it after the word “reservation” to read “generally affected the ratification of the treaty itself, which would also be invalid”.

25. Mr. CANDIOTI said that it was not clear whether the term “invalidity” referred to ratification or to the treaty. Deleting the word “itself” might dispel the ambiguity.

26. Mr. PELLET (Special Rapporteur) said that the French text was acceptable as it stood.

27. Mr. GAJA said that while the French text was clear, it was somewhat weak and should therefore be amended along the lines of the text he had proposed for the English text.

28. Mr. MANSFIELD said that the proposition in the second sentence could be succinctly stated: “At the same time, the invalidity of a reservation generally invalidated the ratification of the treaty itself.”

Paragraph 48, as amended, was adopted.

Paragraph 49

29. Mr. GAJA said that the word “achievement” at the end of the third sentence was unclear, and he proposed replacing it with “completion”.

Paragraph 49, as amended, was adopted.

Paragraph 50

30. Mr. GAJA said that the spelling of the Latin word “*ratione*” should be corrected in the English text. On a more substantive point, the word “power” should be replaced by “freedom”, as elsewhere in the text.

Paragraph 50, as amended, was adopted.

Paragraph 51

31. Mr. PAMBOU-TCHIVOUNDA said that the words “*de la pratique*” should be inserted after the word “Guide” in the French text.

Paragraph 51 was adopted, with a drafting change to the French version.

Paragraphs 52 to 57

Paragraphs 52 to 57 were adopted.

Paragraph 58

32. Mr. GAJA again requested correction of the spelling of the word “*ratione*” in the English text and suggested that the word “text” in the third sentence should be replaced by “draft guidelines” for the sake of clarity.

33. Ms. ESCARAMEIA suggested the inclusion of a new sentence that would read: “It was pointed out that article 19 of the Vienna Conventions established, at the most, a presumption of freedom to formulate reservations, which was substantively different from the presumption of validity of reservations.”

Paragraph 58, as amended, was adopted.

Paragraph 59

34. Mr. ECONOMIDES said that a sentence should be inserted at the end of the paragraph to reflect his own contribution to the debate. Such a sentence might read: "Another opinion held that the title that best corresponded to the content of article 19 was 'Limitations on the formulation of reservations'".

35. Mr. PELLET (Special Rapporteur) said that while he had no problem with that proposal, it sounded a bit odd to speak of limitations on formulation. It would be preferable to say "Limitations on the freedom to formulate reservations".

36. Mr. PAMBOU-TCHIVOUNDA said that he could accept the amendment proposed by Mr. Economides but suggested replacing the phrase "best corresponded" with "might best correspond" to make the statement less categorical.

Paragraph 59, as amended, was adopted.

Paragraph 60

37. Mr. GAJA said that the words "their very nature" in the second sentence should be replaced by "implication". The sentence should end after the words "United Nations".

38. Mr. MATHESON suggested that a new sentence should be inserted at the end of the paragraph to reflect what he had said during the debate. It would read: "Others took the view that this guideline should be limited to express prohibitions."

39. Mr. ECONOMIDES said that in the fourth sentence the words "and vice versa" should be deleted.

Paragraph 60, as amended, was adopted.

Paragraph 61

Paragraph 61 was adopted.

Paragraph 62

40. Ms. ESCARAMEIA said that in the final sentence the words "part of the" should be inserted between "last" and "sentence".

41. Mr. GAJA said that the words "the Commission" in the first sentence should be replaced by "according to article 19, subparagraph (b), of the Vienna Convention, one".

42. Mr. PELLET said that the French text made no reference to the Commission.

43. Mr. GAJA agreed that the French text accurately reflected the view he had expressed in the debate; however, there would be no harm in inserting the reference to article 19, subparagraph (b), in the French text as well.

Paragraph 62, as amended, was adopted.

Paragraph 63

Paragraph 63 was adopted.

Paragraph 64

44. Mr. GAJA suggested the insertion of the word "also" before "expressly".

Paragraph 64, as amended, was adopted.

Paragraphs 65 to 68

Paragraphs 65 to 68 were adopted.

Paragraph 69

45. Ms. ESCARAMEIA proposed the insertion of a new second sentence to reflect comments that she had made, which would read: "This term was also seen by others as very restrictive, leading to the result that only very few reservations would actually be prohibited."

46. Mr. GAJA said that, in the final sentence, the words "two terms" should be replaced by "terms 'object' and 'purpose'". The sentence should be split into two after the word "separated". The words "in fact" should be deleted, and the words "the opposite" replaced by "vice versa".

Paragraph 69, as amended, was adopted.

Paragraphs 70 to 72

Paragraphs 70 to 72 were adopted.

Paragraph 73

47. Mr. KOSKENNIEMI said that the entire paragraph, which reflected a comment he had made, should be replaced by the following sentence: "It was pointed out that it might be useful to make express the rationales that the Special Rapporteur's examples sought to illustrate, namely cases where the reservation undermined either the legitimate expectations of the parties or the nature of the treaty as a common undertaking."

48. Mr. PELLET (Special Rapporteur) said that he had no objection to the content of Mr. Koskenniemi's proposal but suggested that the drafting should be improved.

Paragraph 73, as amended, was adopted.

Paragraph 74

49. Mr. GAJA said that the paragraph gave an entirely false impression of the view he had expressed during the debate. Accordingly, the words "said nothing about the important role of" should be amended to read "gave an important role to".

Paragraph 74, as amended, was adopted.

Paragraph 75

Paragraph 75 was adopted.

Paragraph 76

50. Mr. GAJA said that, in the first sentence, the words “the question covered in” should be inserted after “approach” and the words “sought to” replaced by “could be said to intend to”.

51. Mr. PELLET (Special Rapporteur) said that in the French text the word “*et*” should be inserted between “*vagues*” and “*généraux*”.

Paragraph 76, as amended, was adopted.

Paragraph 77

Paragraph 77 was adopted.

Paragraph 78

52. Mr. ECONOMIDES, supported by Ms. ESCARAMEIA, suggested that the paragraph should be broken into two. The first paragraph would consist of a single sentence, as did paragraph 77 and would read: “Several members supported draft guideline 3.1.9”. The actual view reflected in the remainder of paragraph 78 should form a new paragraph, which would immediately follow.

Paragraph 78, as amended, was adopted.

Paragraphs 79 to 82

Paragraphs 79 to 82 were adopted.

Paragraph 83

53. Mr. MATHESON suggested the insertion of a phrase at the end of the paragraph, to read: “and in the meantime reserved their position with respect to the issues raised by this section of the report”.

Paragraph 83, as amended, was adopted.

3. CONCLUSIONS OF THE SPECIAL RAPPORTEUR

Paragraph 84

Paragraph 84 was adopted.

Paragraph 85

54. Mr. PELLET (Special Rapporteur) drew attention to the second sentence and suggested the deletion of the word “still” and the phrase “which was through the solid corpus that was the Guide to Practice”.

Paragraph 85, as amended, was adopted.

Paragraphs 86 to 88

Paragraphs 86 to 88 were adopted.

Paragraph 89

55. Mr. PELLET suggested that the words “on the fact” should be inserted after the word “agreed”.

Paragraph 89, as amended, was adopted.

Paragraph 90

Paragraph 90 was adopted.

Paragraph 91

56. Mr. MATHESON drew attention to a typographical error in the English numbering of the draft guidelines.

Paragraph 91 was adopted, with a drafting change to the English version.

Paragraphs 92 to 93

Paragraphs 92 to 93 were adopted.

Section B as a whole, as amended, was adopted.

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

Chapter III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.680)

Shared natural resources

Paragraph 1

Paragraph 1 was adopted.

Effects of armed conflicts on treaties

Paragraph 2

57. Mr. ECONOMIDES suggested that an additional question should be included to reflect an issue that had been discussed extensively by the Commission: “Can the topic be addressed without taking into account the Charter of the United Nations and, in particular, the distinction between the use of force and self-defence?”

58. Ms. ESCARAMEIA said that there were in fact two points on which there had been much discussion that were not reflected in the list of questions. The first was the point raised by Mr. Economides, although she would have preferred the question to read: “What are the consequences for the topic of compliance or non-compliance with the rules of the Charter of the United Nations on the use of force?”

59. The second point concerned the criterion for distinguishing between different regimes in the light of the emphasis placed by the Special Rapporteur on the intention of the parties to a treaty. She therefore suggested that a second question should be added to the list, which would read: “What would be the best criterion for distinguishing between different regimes of effects on treaties in the case of armed conflict?”

60. The CHAIRPERSON questioned whether all points raised during the Commission’s debate needed to be reflected in the list of questions addressed to Governments represented on the Sixth Committee.

61. Mr. BROWNLIE (Special Rapporteur) said that the list of questions had been distributed some time previously and he would have expected members to propose any amendments to it before the current meeting. He was very surprised by the Commission’s continued obsession with

the relevance of the provisions of the Charter on the use of force, particularly since it had been made clear when the topic had originally been formulated that it would not involve a codification of those principles. If a question along the lines suggested by Mr. Economides should be addressed to the Sixth Committee, it would undoubtedly prompt a negative reaction.

62. Furthermore, the Secretariat had considered that it was premature to transmit the very detailed list of questions he had drawn up to Governments. It had therefore prepared the simplified list of questions based on his first report (A/CN.4/552), on the understanding that more substantive questions would be formulated the following year when the Commission embarked on its first reading of the draft articles. It might have been more appropriate to entitle his first report a "preliminary report". At the present juncture, the intent was to obtain information on State practice, which, together with the Commission's comments on the topic during the current session, would form the basis of his second report.

63. Mr. PELLET said that the discussion under way raised a matter of principle, since the list of questions did not fully reflect the Commission's debate on the topic. Moreover, while the list might well have been distributed in advance, the Commission had not had an opportunity to discuss it. He agreed with Ms. Escarameia that the two key issues that had given rise to some controversy were not included in the list. The first had to do with the consequences for the topic of compliance with the provisions of the Charter of the United Nations concerning the prohibition of the use of force, and despite the Special Rapporteur's assurances some members were still confused by the absence of any reference to that question in the first report. The second issue concerned the intention of the parties, a concept on which the first report was essentially based. He had considerable reservations regarding that approach, a feeling shared by several other members, and it was therefore only logical that those two issues should be referred to the Sixth Committee.

64. He supported the basic thrust of Mr. Economides' proposal, although perhaps not the wording, and suggested that the new question should most logically be placed at the top of the list as subparagraph (a). He also endorsed the intent of Ms. Escarameia's second proposal, but suggested that the question should read: "Should the intention expressed by the parties to a treaty be the criterion on which the draft article should be based?" Lastly, he questioned the need for the word "comprehensively" in subparagraph (b).

65. Mr. KOSKENNIEMI said that paragraph 2 posed a problem of principle as well as a more practical one. The problem of principle lay in the fact that the Commission was still in the early stages of its consideration of the topic, and the usefulness of seeking the views of Governments on issues that might eventually be resolved through further discussion was questionable. The question of the relevance of the provisions of the Charter of the United Nations relating to the use of force was still open, and he doubted that Governments would be able to propose any useful solutions.

66. Turning to the more practical problem of the wording of the proposed new questions, he said that there could be no doubt that Governments would say that the provisions relating to the use of force must be taken into account; the question was to what extent. Similarly, Governments would feel duty-bound to reply that treaties should be interpreted and applied according to the intention of the parties, yet the members of the Commission knew that the intentions of individual parties could be conflicting or difficult to determine. For those reasons he believed that questions formulated in the manner proposed would not, practically speaking, lead the Commission any further forward in its work.

67. Mr. BROWNLIE (Special Rapporteur) shared Mr. Koskeniemi's view. The purpose of the list of questions was to elicit more information on State practice, which was significantly lacking. The questions being discussed at the current meeting would be better asked after the Commission had completed a first reading of the draft articles. The questions drawn up by the Secretariat were fairly simple and would not do any harm, and he would not object to including an additional question concerning the intention of the parties, although he thought it might be premature to do so. However, it would be most inappropriate for the Commission to seek the views of Governments on the relevance of the provisions of the Charter of the United Nations. The Commission knew full well that the Charter of the United Nations was relevant, and it was not true that he had overlooked it in his report: draft article 10 concerned the use of force, and he had already explained why he had drafted the article as he had, although the members of the Commission seemed to have ignored what he had said on that point.

68. Mr. Sreenivasa RAO said that he was confused by the thrust of the debate. The Commission usually yielded to the better judgement of the Special Rapporteurs where lists of issues were concerned. In the case at hand, members who considered that their views on some of the more difficult issues were not reflected should be reassured by the fact that the summary of the debate on the topic in the Commission's report would be available to the Sixth Committee and circulated to relevant Government departments. As the Special Rapporteur had pointed out, the first report should be viewed as a preliminary report, and it would be redrafted in the light of the debate in the Commission and input from the Sixth Committee. He therefore recommended that the Commission should retain the list of questions drawn up by the Secretariat, although he would not object if any member felt strongly that further questions should be added.

69. Mr. PELLET said that the list of questions was not to his liking. The first report on the effects of armed conflicts on treaties was very general in scope and covered a wide range of issues, but the Commission's discussion had focused on only a few of them, in particular on two basic issues: the question of intent and the relevance of the provisions of the Charter of the United Nations relating to the use of force. The list of questions in the document prepared by the Secretariat could be misleading, since it addressed issues that were essentially of secondary importance and disregarded those on which the Commission was divided. There were two possible courses

of action. If the Commission decided to retain the list of questions, he would insist on the inclusion of the two additional questions proposed. Alternatively, the list of questions could be deleted and the Commission could simply request Governments to provide information on State practice. He was in favour of the latter course of action, given that the Commission was in the preliminary stages of its consideration of the topic and would not wish to have ideas imposed on it by Governments.

70. The CHAIRPERSON said that it was important not to confuse the work of the Commission with that of the Sixth Committee.

71. Mr. BROWNLIE (Special Rapporteur) endorsed Mr. Pellet's proposal, which would be in line with the Commission's general approach that reports should be based on State practice. For the time being the Commission should simply request from Governments information on State practice, then, after a first reading of the draft articles, it could seek their views on more substantive questions of principle.

72. Ms. ESCARAMEIA said that she knew from her many years' experience as a representative of a small Southern European country in the Sixth Committee that questions regarding specific issues on which comments would be of particular interest to the Commission were of fundamental importance to small- and medium-sized countries because such States lacked the human resources of larger States and were thus unable to prepare general analyses of a topic for presentation in the General Assembly. They could, however, express their opinions during the Sixth Committee's debates by focusing on specific points raised in chapter III of the Commission's report.

73. However, she agreed that the questions in paragraph 2 should be asked at a subsequent stage in the Commission's consideration of the topic. The questions that ought to be put immediately should be of a fundamental nature and designed to permit the establishment of a framework for further work on the topic. It was vital to ascertain State practice in the matter. Indeed, that had been the whole purpose of the questionnaire proposed by the Special Rapporteur. However, if the Commission asked a very general question, only two or three countries would respond and the Commission would not really know what the real opinion of the majority of States was. For that reason it would be a pity to delete questions (a), (b), (c) and (d), as they might have yielded very useful information.

74. Although the Commission was a body of experts, it was also a subsidiary organ of the General Assembly. It should not therefore allow a project to move in a direction entirely different to that desired by the Assembly. She had been encouraged by what she had believed to be the Special Rapporteur's plan to investigate whether the intention of the parties constituted a good criterion for distinguishing between different regimes in respect of the effects of armed conflicts on treaties. She failed to understand why a question relating to the relevance of compliance with the provisions of the Charter of the United Nations relating to the use of armed force should be problematic. She would therefore be in favour of retaining all four questions and

of adding two more framed in the wording deemed most appropriate by the Commission.

75. The CHAIRPERSON noted that a full account of the discussion of the points on which members' opinions had diverged was faithfully reflected in the summary records, which were available for perusal by the members of the Sixth Committee.

76. Mr. MATHESON agreed entirely with Mr. Pellet's suggestion and said that, while he had no doubt that the questions were quite important and that the Commission would ultimately have to address them, it was premature to put them to Governments at the current stage. In some cases Governments were not yet in a position to understand what the context and alternatives were. Moreover, the Commission would probably resolve some issues and define others more clearly within the coming year. Thus if the Commission sought States' views on the substance of the issues raised when it returned to those points at its next session, the queries would make more sense. What was important at the current stage was to identify State practice.

77. Mr. ECONOMIDES, responding to Mr. Pellet's criticism of the way he had formulated his question, explained that the underlying reason for the wording he had chosen was the fact that the report had completely ignored the Charter and had thus placed aggressor States and States defending their legitimate interests on the same footing. That situation was completely unacceptable in the twenty-first century. He had tried to phrase his question in the clearest and most direct manner possible.

78. He fully agreed with Mr. Pellet that the only issue of central importance was that of State practice. Since the latter was virtually inexistent in many countries, the question should be supplemented with the words "or any other useful information on the subject". He likewise concurred with Mr. Matheson that it was premature to convey the Commission's point of view to the Sixth Committee, since Commission members' opinions were still too divided on the subject. For that reason, questions (a) to (d) could be deleted.

79. The CHAIRPERSON said he took it that the Commission wished to adopt paragraph 2 as amended by Mr. Pellet and Mr. Economides.

It was so agreed.

Paragraph 2, as amended, was adopted.

Responsibility of international organizations

Paragraph 3

Paragraph 3 was adopted with minor drafting changes.

Expulsion of aliens

Paragraph 4

80. Mr. PELLET drew attention to question (d) and asked whether the Commission wished to consider the collective expulsion of aliens in general, or whether it

wished to deal with collective expulsion only in the context of armed conflict. In his opinion, two separate questions ought to be asked: should the Commission deal with collective expulsion of aliens and, if so, ought it also to consider such expulsion in the context of armed conflict?

81. The CHAIRPERSON agreed that it would be wise to reformulate question (d) along the lines suggested by Mr. Pellet.

82. Mr. PELLET said that he wondered whether paragraph 4 (d) was not even wider in scope and whether the Commission ought to consider all forms of expulsion of aliens during armed conflicts, rather than confining its attention to collective expulsion. It might be wise to have one question asking whether the Commission should also consider the subject of expulsion in the event of armed conflict and to add the question he had formulated earlier as a new question (e).

83. The CHAIRPERSON said that the real question was whether, in the event of armed conflict, the rule that had existed in the past—namely that all citizens and nationals of a belligerent State could be expelled—still applied.

84. Mr. PELLET said that the issue to which the Chairperson had referred did arise; however, he had the impression that the Commission was pondering whether it should consider expulsion during an armed conflict in general. That was a query that should be put to the General Assembly. Naturally he believed that the Commission should consider that question, because the problem of expulsion, whether individual or collective, arose mainly in the context of armed conflicts.

85. Ms. ESCARAMEIA said that two issues that had been considered during the debate had been combined in question (d). There had been no doubt as to whether or not the Commission should deal with collective expulsion. The discussion had first turned on the matter of whether or not collective expulsion was legal and had then centred on collective expulsion in the context of armed conflict. While those were two separate questions, the first had not been controversial, as all members had agreed that the Commission should deal with collective expulsion. The only controversy had concerned expulsion during an armed conflict.

86. Mr. MATHESON asked whether it would be possible to treat the topic in the same way it had approached the topic of the effects of armed conflicts on treaties. Once again, the Commission had just embarked on its study of the matter; it did not yet know what the scope of the topic would be and it had not defined the issues. He questioned whether it was useful at that preliminary stage to ask the General Assembly a series of detailed questions. He therefore proposed that paragraph 4 should be deleted and that only the request for information contained in paragraph 5 should be retained.

87. Mr. AL-BAHARNA and Mr. CHEE endorsed that proposal.

88. Ms. ESCARAMEIA reiterated the concerns she had expressed with regard to the deletion of questions in paragraph 2.

Paragraph 4 was deleted.

Paragraph 5

89. Mr. PELLET proposed the deletion of the words “through the Secretariat”, as member States should be able to provide information by all available channels, including the Sixth Committee.

Paragraph 5, as amended, was adopted.

Unilateral acts of States

Paragraph 6

Paragraph 6 was adopted with some minor editorial changes.

Reservations to treaties

Paragraph 7

Paragraph 7 was adopted.

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

Chapter V. *Effects of armed conflicts on treaties (concluded)* (A/CN.4/L.668)*

Paragraphs 5 and 19

90. The CHAIRPERSON drew attention to paragraphs 5 and 19 of document A/CN.4/L.668 and said that the word “questionnaire” in those paragraphs should be replaced with the phrase “a note requesting information”.

Paragraphs 5 and 19, as amended, were adopted.

Section B, as amended, was adopted.

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

The report of the International Law Commission on the work of its fifty-seventh session as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

91. After the customary exchange of courtesies, the CHAIRPERSON declared the fifty-seventh session of the International Law Commission closed.

The meeting rose at 12.35 p.m.

* Resumed from the discussion at the 2863rd meeting.