

Document:-  
**A/CN.4/2994**

**Summary record of the 2994th meeting**

Topic:  
**Draft report of the Commission on the work of its sixtieth session**

Extract from the Yearbook of the International Law Commission:-  
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Paragraphs (4) and (5)

*Paragraphs (4) and (5) were adopted.*

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

Commentary to article 2 (Use of terms)

Paragraphs (1) to (9)

*Paragraphs (1) to (9) were adopted.*

*The commentary to article 2 was adopted.*

Commentary to article 3 (Non-automatic termination or suspension)

Paragraph (1)

39. Mr. NOLTE proposed deleting “in practice” in the last sentence and adding “under certain circumstances” after “may”.

40. Mr. BROWNLIE (Special Rapporteur) said that he agreed to the deletion of “in practice” but not to the insertion of “under certain circumstances”.

*Paragraph (1), as amended, was adopted.*

Paragraph (2)

*Paragraph (2) was adopted.*

Paragraph (3)

41. Mr. GAJA proposed replacing the phrase “which the Special Rapporteur had used in his initial proposal, on the basis of articles 2 and 5” with the following phrase: “which was frequently used in this context as in articles 2 and 5”.

*Paragraph (3), as amended, was adopted.*

Paragraphs (4) and (5)

*Paragraphs (4) and (5) were adopted.*

*The commentary to article 3, as amended, was adopted.*

Commentary to article 4 (Indicia of susceptibility to termination, withdrawal or suspension of treaties)

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

42. Mr. McRAE proposed deleting the words “in the chapeau” in the first sentence of paragraph 2.

*Paragraph (2), as amended, was adopted.*

Paragraphs (3) to (5)

*Paragraphs (3) to (5) were adopted.*

*The meeting rose at 1 p.m.*

## 2994th MEETING

*Wednesday, 6 August 2008, at 3.05 p.m.*

*Chairperson:* Mr. Edmundo VARGAS CARREÑO

*Present:* Mr. Brownlie, Mr. Caffisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Mr. Yamada.

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

CHAPTER V. Effects of armed conflicts on treaties (*concluded*) (A/CN.4/L.732 and Add.1–2 and Add.2/Corr.1)

1. The CHAIRPERSON invited the members of the Commission to continue their consideration of chapter V, of the draft report (A/CN.4/L.732/Add.2 and Corr.1).

C. Text of the draft articles on effects of armed conflicts on treaties adopted by the Commission on first reading (*concluded*)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO (*concluded*)

Commentary to draft article 5 (Operation of treaties on the basis of implication from their subject matter)

Paragraph (1)

2. Mr. GAJA observed that it was not the Commission’s practice to include so much background information in the commentary. He therefore proposed that the first sentence only should be retained in the commentary and that the remaining text in the paragraph should be placed in a footnote.

3. Mr. BROWNLIE (Special Rapporteur) said that, while he endorsed the general thrust of Mr. Gaja’s proposal, it was nonetheless important to retain the second sentence in the commentary, in view of the reference it contained to article 7.

4. The CHAIRPERSON said he would take it that Mr. Gaja’s proposal, as amended by the Special Rapporteur, was acceptable to the Commission.

*It was so decided.*

*Paragraph (1), as amended, was adopted.*

Paragraphs (2) to (4)

*Paragraphs (2) to (4) were adopted.*

Paragraph (5)

5. Ms. JACOBSSON drew attention to the first sentence and questioned the appropriateness of the word “carefully” in the phrase “the object of carefully articulated

comment by the United States". It seemed to reflect a value judgement and she was not sure whether it was the Commission's practice to make such judgements. If that was not the case, she proposed that the word "carefully" should be deleted.

6. Mr. BROWNLIE (Special Rapporteur) said that the phrase in question was an objective comment made by him in his capacity as Special Rapporteur, and he saw no reason to change it.

*Paragraph (5) was adopted.*

Paragraph (6)

7. Mr. NOLTE drew attention to the phrase in the third sentence which read "only the subject matter of particular provisions of the treaty may invoke the necessary implication of continuance" and proposed that the word "their" should be inserted before "continuance" to make it clear that "continuance" referred to particular provisions and not to the treaty. Furthermore, in order to emphasize that the sentence was referring to the phrase "in whole or in part" in article 5, which had been discussed at some length by the Commission, he proposed that a new sentence should be added immediately afterwards, which would read: "This consideration is reflected in the words 'in whole or in part'."

8. Mr. BROWNLIE (Special Rapporteur) expressed support for Mr. Nolte's first proposal. He pointed out that the word "invoke" should be replaced by "carry", as indicated in the corrigendum (A/CN.4/L.732/Add.2/Corr.1). However, he was not in favour of the second proposal: an additional sentence seemed superfluous. The point had already been made in the third sentence; moreover, the phrase "in whole or in part" already appeared in the second sentence.

9. The CHAIRPERSON said he would take it that the Committee wished to adopt the paragraph with the amendments to the third sentence proposed by Mr. Nolte and the Special Rapporteur.

*It was so decided.*

*Paragraph (6), as amended, was adopted.*

Paragraphs (7) to (9)

*Paragraphs (7) to (9) were adopted.*

Paragraph (10)

*Paragraph (10) was adopted with a minor editorial amendment.*

Paragraphs (11) and (12)

*Paragraphs (11) and (12) were adopted.*

Paragraph (13)

10. Mr. NOLTE proposed that the first sentence should be aligned with paragraph (b) of the indicative list of categories of treaty to read: "The doctrine ranging over several generations recognizes that treaties declaring, creating, or regulating a permanent regime or status or related permanent rights, are not suspended in case of an armed conflict."

*Paragraph (13), as amended, was adopted.*

Paragraphs (14) and (15)

*Paragraphs (14) and (15) were adopted.*

Paragraph (16)

11. Mr. BROWNLIE (Special Rapporteur) drew attention to the footnote citing Guggenheim and said that the words "2nd edition" should be inserted before the word "Genève". He drew attention also to the correct name of the last of the writers listed in the paragraph, which was given in the corrigendum (A/CN.4/L.732/Add.2/Corr.1).

*Paragraph (16), as amended, was adopted.*

Paragraphs (17) to (19)

*Paragraphs (17) to (19) were adopted.*

Paragraph (20)

12. Mr. BROWNLIE (Special Rapporteur) drew attention to the last sentence and proposed that the words "special category attached to such regime" should be replaced by the phrase "special status attached to these types of regime".

*Paragraph (20), as amended, was adopted.*

Paragraphs (21) and (22)

*Paragraphs (21) and (22) were adopted.*

Paragraph (23)

13. Mr. NOLTE said that the argument put forward in the second sentence could apply to almost any treaty. He suggested that it might be strengthened if the phrase "dislodge the mutually beneficial status quo" was replaced by the phrase "impair the rights and interests of private individuals".

14. Mr. BROWNLIE (Special Rapporteur) said that much of the case law on the subject highlighted the importance of reciprocity, a well-known motivation in international relations. He had no strong objection to Mr. Nolte's proposal but considered that it would detract from the arguments put forward in the paragraph.

15. Mr. NOLTE said that he recognized the important role played by reciprocity; nevertheless, he believed that the second sentence ought to be either reworded along the lines he had proposed or else deleted.

16. Mr. BROWNLIE (Special Rapporteur) said that he would prefer its deletion.

*It was so decided.*

*Paragraph (23), as amended, was adopted.*

Paragraph (24)

17. Mr. CAFLISCH said that the title of the Swiss authority mentioned in the first sentence should be correctly rendered "the Swiss Federal Department of Justice and Police".

*Paragraph (24), as amended, was adopted.*

Paragraphs (25) to (27)

*Paragraphs (25) to (27) were adopted.*

Paragraph (28)

*Paragraph (28) was adopted with a minor editorial amendment.*

Paragraphs (29) to (32)

*Paragraphs (29) to (32) were adopted.*

Paragraph (33)

18. Mr. NOLTE expressed concern about a statement which seemed completely out of place in the penultimate sentence, namely that “the appropriate criterion was the intention of the parties”. If there was no compelling reason to retain it, he proposed that it should be deleted.

19. Mr. BROWNLIE (Special Rapporteur) observed that the text of the commentary had already existed for some considerable time and questioned why it should now be changed.

20. Ms. ESCARAMEIA (Rapporteur) said that she shared Mr. Nolte’s concern. Such a statement had not been made in the commentary relating to other categories of treaties, and it would seem that in the case of human rights treaties—the most likely category to remain in force in a situation of armed conflict—a criterion was being established which had not existed previously. As currently worded, the sentence would cause confusion and should therefore be deleted.

21. Mr. SABOIA said that he, too, shared Mr. Nolte’s concern and endorsed the arguments put forward by Ms. Escarameia.

22. Mr. BROWNLIE (Special Rapporteur) proposed that the words “intention of the parties” should be replaced by “subject matter of the treaty”. That would be in line with the terminology used in other contexts when members of the Commission had rejected the idea of the object and purpose of the treaty as the appropriate criterion.

23. Mr. McRAE said that the appropriate criteria had already been established in draft article 4 and consisted of the subject matter of the treaty. He therefore proposed that the penultimate sentence should be amended to read: “At the end of the day, the appropriate criteria were those set out in article 4.”

*Paragraph (33), as amended by Mr. McRae, was adopted.*

Paragraphs (34) to (43)

*Paragraphs (34) to (43) were adopted.*

Paragraph (44)

24. Mr. BROWNLIE (Special Rapporteur) said that he was not satisfied with the paragraph as it stood and that it should be redrafted. He would welcome suggestions to that end. The point he sought to convey was that the

indicative list of treaties should be neither too restrictive nor too extensive, and that there were some categories that only just qualified for inclusion.

25. Mr. CAFLISCH proposed the more neutral wording: “There is, therefore, a case for including the present category in the indicative list.”

*Paragraph (44), as amended, was adopted.*

Paragraph (45)

26. Mr. NOLTE proposed that the phrase “achievable in its area” in the penultimate sentence should be amended to read “achievable in this area”, and that a footnote referring to the draft articles on the law of transboundary aquifers should be added.

*Paragraph (45), as amended, was adopted.*

Paragraphs (46) to (48)

*Paragraphs (46) to (48) were adopted.*

Paragraph (49)

27. Mr. BROWNLIE (Special Rapporteur) drew attention to the correction to the paragraph contained in document A/CN.4/L.732/Add.2/Corr.1.

*Paragraph (49), was adopted.*

Paragraphs (50) to (53)

*Paragraphs (50) to (53) were adopted.*

Paragraph (54)

28. Mr. NOLTE said that he found the whole paragraph problematical, since he disagreed with the sweeping statement that the decisions of municipal courts must be regarded as a problematical source. In some countries, municipal courts did depend on explicit guidance from the executive, but he did not believe that this was true in most continental European States. Municipal courts sometimes relied on policy elements not directly related to the principles of international law in areas other than the effects of conflicts on multipartite law-making treaties. Moreover, he found it somewhat contradictory that the Special Rapporteur should go on to say that a decision of a national court had supported one of those principles. He therefore proposed the deletion of the paragraph, which was unnecessary in that it concerned the more general question of the Commission’s evaluation of the position of national courts with respect to international law.

29. Mr. BROWNLIE (Special Rapporteur) remarked that he was not being asked simply to delete a sentence, but to excise a whole area in which he had done an enormous amount of research based on the plentiful material supplied to him by the Secretariat. That paragraph summarized his findings, which were set out in greater detail in his second report.<sup>309</sup> In the English language, “problematical” did not mean wholly negative, but simply that something presented a problem. At the end of the day,

<sup>309</sup> *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/570.

English municipal law had been applied in the *Pinochet* case, but that did not mean that the *Pinochet* case should be ignored. In fact, the number of cases in which the reasoning of a municipal court's judgement was based directly on the relevant international law was very limited. The Scottish court's decision in *Masinimport v. Scottish Mechanical Light Industries Ltd.* happened to be one of them. He had consulted an extensive range of literature, including Rank<sup>310</sup> and Verzijl,<sup>311</sup> which were major sources. The deletion of paragraph (54) would mean that a significant element of his own work had been vetoed by one member of the Commission.

30. Mr. CAFLISCH said that paragraph (54) must stand, but suggested that it could be recast to read: "The decisions of municipal courts may be regarded as a problematical source. In the first place, such courts often depend upon the explicit guidance of the executive. Secondly, municipal courts may rely on policy elements not directly related to the principles of international law. Nonetheless, it can be said that the municipal jurisprudence is not inimical to the principle of survival. The general principle was supported in the decision of the Scottish Court of Session in *Masinimport v. Scottish Mechanical Light Industries Ltd.* (1976)."

31. Mr. KOLODKIN said that, even granting that the Special Rapporteur's analysis of a large number of cases heard by municipal courts had formed a significant part of his work, he was still puzzled by the fact that a whole paragraph had been devoted to an assessment of national court decisions in the section of the commentary dealing with multilateral law-making treaties, rather than in the part dealing with international treaties concerning private rights, where decisions by national courts were likewise of great importance. Like Mr. Nolte, he wondered why a general assessment of national court practice was being made in that context, given that there were a number of other topics on the Commission's programme of work which drew heavily on the practice of national courts.

32. Mr. BROWNLIE (Special Rapporteur) said that the decisions of municipal courts were of substantial importance in the area in question and that was why he had included paragraph (54) in the commentary. It was unprecedented that a Special Rapporteur should be invited to disregard a source of law. Most of the commentaries had been taken verbatim from his first report.<sup>312</sup> When that report had been considered, one member had taken issue with a statement in the report concerning the unreliability of municipal cases in that area. In response to that criticism, he had sifted through the wealth of material provided by the Secretariat on municipal court decisions which related in particular to the issue of multilateral law-making treaties.<sup>313</sup> The decision by the Scottish Court of Session—in other words, by the supreme civil court of

Scotland—was highly relevant, and the suggestion that the paragraph should be deleted was therefore extremely inappropriate.

33. Mr. CAFLISCH said that the whole section on multilateral law-making treaties was set out in a very logical manner. It started with doctrine, then went on to consider the attitude of Governments and ended with the decisions of courts. The position of the paragraph in the report could therefore be defended.

34. Mr. NOLTE said that he was not suggesting that the Special Rapporteur should delete all reference to national courts. His objection concerned the sweeping statement regarding the manner in which national courts' decisions should be interpreted. He could support the wording proposed by Mr. Cafilisch if the paragraph began with the phrase "In this particular context".

35. Mr. KOLODKIN said that while he was still uneasy with Mr. Cafilisch's proposal insofar as it contained an evaluation of national court practice, he would not hinder consensus on the paragraph.

36. Mr. BROWNLIE (Special Rapporteur) said that he agreed with the wording proposed by Mr. Cafilisch, as supplemented with the phrase proposed by Mr. Nolte.

*Paragraph (54), as amended, was adopted.*

Paragraph (55)

*Paragraph (55) was adopted.*

Paragraph (56)

37. Mr. GAJA said that the term "validity" in the third line was incorrect since the validity of a treaty in full depended on whether there was a defect in the process of concluding that treaty. "[O]peration" would be more apt.

*Paragraph (56), as amended, was adopted.*

Paragraph (57)

38. Mr. GAJA said that the decision of the Italian Court of Cassation had concerned the 1923 Geneva Protocol on Arbitration Clauses, which, the Court had held, had not been terminated in spite of the Italian declaration of war on France. He suggested that the fifth sentence should be amended to reflect that.

*Paragraph (57), as amended, was adopted.*

Paragraphs (58) to (66)

*Paragraphs (58) to (66) were adopted.*

*The commentary to draft article 5, as amended, was adopted.*

*Commentary to draft article 6 (Conclusion of treaties during armed conflict)*

*The commentary to draft article 6 was adopted.*

<sup>310</sup> R. Rank, "Modern war and validity of treaties: a comparative study", *Cornell Law Quarterly*, vol. 38 (1952–1953).

<sup>311</sup> J.H.W. Verzijl (ed.), *International Law in Historical Perspective*, Leiden, Sijthof, 1973.

<sup>312</sup> *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/552.

<sup>313</sup> "The effect of armed conflict on treaties: an examination of practice and doctrine", document A/CN.4/550 and Corr.1–2 (mimeographed; available on the Commission's website, documents of the fifty-seventh session).

*Commentary to draft article 7* (Express provisions on the operation of treaties)

Paragraph (1)

39. Mr. GAJA said that the last sentence, which concerned the making of lawful agreements, was in fact related to the previous article and should therefore be deleted.

40. Mr. BROWNLIE (Special Rapporteur) agreed with Mr. Gaja.

*Paragraph (1), as amended, was adopted.*

Paragraphs (2) to (4)

*Paragraphs (2) to (4) were adopted.*

*The commentary to draft article 7, as amended, was adopted.*

*Commentary to draft article 8* (Notification of termination, withdrawal or suspension)

*The commentary to draft article 8 was adopted.*

*Commentary to draft article 9* (Obligations imposed by international law independently of a treaty)

*The commentary to draft article 9 was adopted.*

*Commentary to draft article 10* (Separability of treaty provisions)

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

41. Mr. NOLTE said that the commentary should contain a reference to draft article 5, because the question of whether the whole treaty was suspended was also dealt with in that article. He therefore suggested the insertion before the last sentence of a new sentence that read: “Article 5 therefore recognizes that the subject matter of a treaty may involve the implication that it continues in operation only in part during armed conflict.” If that sentence was not included, the reader might gain the mistaken impression that draft articles 5 and 10 were unrelated.

42. Mr. BROWNLIE (Special Rapporteur) said that he would be happy to include Mr. Nolte’s proposal. In fact, all the draft articles interacted, so draft article 5 was naturally related to draft article 10. The text was a single instrument consisting of a composite draft of a set of articles.

*Paragraph (2), as amended, was adopted.*

Paragraph (3)

*Paragraph (3) was adopted.*

*The commentary to draft article 10, as amended, was adopted.*

*Commentary to draft article 11* (Loss of the right to terminate, withdraw from or suspend the operation of a treaty)

*The commentary to draft article 11 was adopted.*

*Commentary to draft article 12* (Resumption of suspended treaties).

*The commentary to draft article 12 was adopted.*

*Commentary to draft article 13 [10]* (Effect of the exercise of the right to individual or collective self-defence on a treaty)

Paragraph (1)

43. Mr. NOLTE observed that the final sentence stated that draft article 13 was a modified version of article 7 of the resolution of the Institute of International Law, which was reproduced in the footnote to this paragraph.<sup>314</sup> The only difference was that the reference in the Institute’s article 7 to the determination by the Security Council that a State was an aggressor had deliberately been dropped in the Commission’s draft article 13. The decision to do so had been taken after intense discussion. However, the final sentence of paragraph (1) might be construed as reopening that debate.

44. Mr. BROWNLIE (Special Rapporteur) said that it would not be desirable to reopen the debate. He accordingly proposed that the sentence, together with the footnote, should be deleted.

45. Mr. CAFLISCH said that the Commission had relied heavily on article 7 as the main source for draft article 13, and it was only appropriate to pay proper tribute to the Institute’s work. Perhaps paragraph (1) might say that the draft article had been inspired by article 7.

46. Mr. VALENCIA-OSPINA pointed out that the first sentence of paragraph (1) specified that draft article 13 was the first of three draft articles based on the relevant resolution of the Institute, and that statement ought to address the concern raised by Mr. Caflisch. On the other hand, the Commission had made a significant change to the Institute’s text, and he saw no reason to keep silent about it. Anyone comparing the two would see the discrepancy and wonder why it was not explained.

47. Mr. McRAE said that the text of draft article 13 should be described as an adaptation of article 7; that would indicate that the Commission had changed it significantly.

48. Mr. BROWNLIE (Special Rapporteur) said that the problem was merely one of semantics; there seemed to be agreement on the substance. Perhaps the final sentence could be deleted and the footnote placed at the end of the preceding sentence; the text of the footnote could be reworded to indicate that draft article 13 was a new version of article 7, and the final phrase—“subject to any consequences resulting from a later determination by the Security Council of that State as an aggressor”—could be deleted.

49. Mr. NOLTE said it was true that the work done by the Institute ought to be acknowledged; however, saying that one text was a version of the other implied strong similarities between the two which did not exist. He would prefer to delete the final sentence and to retain the footnote, which would then apply to the preceding sentence, as currently drafted.

50. Mr. CANDIOTI endorsed that proposal; the Commission should neither ignore article 7 of the Institute’s text nor delete the footnote. The final sentence, however, could be deleted.

<sup>314</sup> Institute of International Law, *Yearbook*, vol. 61, part II (session of Helsinki 1985), Paris, Pedone, 1986, pp. 278–282.

51. After the suggestion of additional drafting changes by Mr. WAKO and Ms. ESCARAMEIA (Rapporteur), Mr. VALENCIA-OSPINA proposed that the words “In particular” should be inserted at the beginning of the footnote and that the text of the amended footnote should be placed after the first sentence of paragraph (1). In addition, the final sentence of the paragraph should be deleted.

*It was so decided.*

*Paragraph (1), as amended, was adopted.*

Paragraph (2)

*Paragraph (2) was adopted.*

*The commentary to draft article 13, as amended, was adopted.*

*Commentary to draft article 14* (Decisions of the Security Council)

*The commentary to draft article 14 was adopted.*

*Commentary to draft article 15* (Prohibition of benefit to an aggressor State)

*The commentary to draft article 15 was adopted.*

*Commentary to draft article 16* (Rights and duties arising from the laws of neutrality)

*The commentary to draft article 16 was adopted.*

*Commentary to draft article 17* (Other cases of termination, withdrawal or suspension)

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

52. Mr. GAJA proposed that a new sentence be added to the paragraph. The new sentence would read: “It intends to avoid the possible implication that the occurrence of an armed conflict gives rise to a *lex specialis* precluding the operation of other grounds for termination, withdrawal or suspension.” The word “other” referred back to the title of the draft article and the text of paragraph (1) of the commentary.

*Paragraph (2), as amended, was adopted.*

*The commentary to draft article 17, as amended, was adopted.*

*Commentary to draft article 18* (Revival of treaty relations subsequent to an armed conflict)

*The commentary to draft article 18 was adopted.*

*Section C of chapter V, as amended, was adopted.*

*Chapter V of the draft report as a whole, as amended, was adopted.*

53. The CHAIRPERSON paid a tribute to the Special Rapporteur, Mr. Brownlie, who had done commendable work on the topic.

#### CHAPTER VIII. *Expulsion of aliens* (A/CN.4/L.735 and Add.1)

54. The CHAIRPERSON invited the Commission to consider document A/CN.4/L.735, which contained most of chapter VIII of the draft report, and document A/CN.4/L.735/Add.1, which contained paragraph 5 *bis* of that chapter.

##### A. Introduction (A/CN.4/L.735)

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

*Section A was adopted.*

##### B. Consideration of the topic at the present session (A/CN.4/L.735 and Add.1)

Paragraph 5

*Paragraph 5 was adopted.*

Paragraph 5 *bis*

*Paragraph 5 bis was adopted.*

##### 1. INTRODUCTION BY THE SPECIAL RAPporteur OF HIS FOURTH REPORT

Paragraphs 6 to 17

*Paragraphs 6 to 17 were adopted.*

##### 2. SUMMARY OF THE DEBATE

Paragraphs 18 to 23

*Paragraphs 18 to 23 were adopted.*

Paragraphs 24 to 28

*Paragraphs 24 to 28 were adopted.*

Paragraph 29

55. Ms. ESCARAMEIA (Rapporteur) said that since the paragraph dealt mainly with questions of denationalization, it should be transposed to section 2 (c), entitled “Loss of nationality, denationalization and expulsion”.

*It was so decided.*

*Paragraph 29 was adopted.*

Paragraphs 30 and 31

*Paragraphs 30 and 31 were adopted.*

Paragraphs 32 to 34

*Paragraphs 32 to 34 were adopted.*

Paragraph 35

56. Ms. ESCARAMEIA (Rapporteur) drew attention to the second sentence and proposed that the phrase “non-democratic regimes or in” should be inserted after the words “most often in”. She further proposed that the words “in any circumstance” should be added at the end of the final sentence.

*Paragraph 35, as amended, was adopted.*

Paragraphs 36 to 38

*Paragraphs 36 to 38 were adopted.*

Paragraph 39

57. Mr. GAJA proposed that the word “sentence” in the first sentence should be replaced by the words “partial award” and that the word “sentence” in the second sentence should be replaced by “award”.

58. Mr. BROWNLIE endorsed that amendment.

59. Mr. CAFLISCH said that the word used in the French text, “*sentence*”, should remain unchanged.

60. Ms. ESCARAMEIA (Rapporteur) drew attention to the second sentence and said that the word “Claims” should be inserted before the word “Commission” in order to avoid any confusion with the International Law Commission. In the same sentence, the word “individual” should be inserted between “various” and “cases”.

*Paragraph 39, as amended, was adopted.*

**C. Concluding remarks of the Special Rapporteur (A/CN.4/L.735)**

Paragraphs 40 to 45

*Paragraphs 40 to 45 were adopted.*

Paragraph 46

61. Mr. GAJA drew attention to the final sentence and suggested that, as in paragraph 39, the word “Claims” should be inserted before the word “Commission”.

62. Mr. VALENCIA-OSPINA proposed that the word “sentence” in the first sentence should be replaced by “partial award”.

*Paragraph 46, as amended, was adopted.*

*Chapter VIII of the draft report as a whole, as amended, was adopted.*

*The meeting rose at 5.35 p.m.*

## 2995th MEETING

*Thursday, 7 August 2008, at 10 a.m.*

*Chairperson:* Mr. Edmundo VARGAS CARREÑO

*Present:* Mr. Brownlie, Mr. Caflich, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Mr. Yamada.

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

### CHAPTER IX. *Protection of persons in the event of disasters* (A/CN.4/L.736)

1. The CHAIRPERSON invited the members of the Commission to adopt chapter IX of the Commission’s draft report on the work of its sixtieth session.

#### A. Introduction

#### B. Consideration of the topic at the present session

Paragraphs 1 to 11

*Paragraphs 1 to 11 were adopted.*

Paragraph 12

2. Mr. GAJA proposed deleting the word “uniquely” in the first sentence of the paragraph.

*Paragraph 12, as amended, was adopted.*

Paragraph 13

*Paragraph 13 was adopted.*

Paragraph 14

3. Mr. GAJA said that the beginning of the third sentence of the paragraph was phrased somewhat awkwardly. He proposed deleting the words “solidly grounded in positive law”.

4. Ms. ESCARAMEIA (Rapporteur) proposed amending the beginning of the third sentence to read: “Such an approach, solidly grounded in positive law, would draw upon, in particular, international humanitarian law”. The rest of the sentence would remain unchanged.

*Paragraph 14, as amended by Ms. Escarameia, was adopted.*

Paragraph 15

5. Mr. NOLTE said that the wording of the last sentence of the paragraph implied that the view it reported was incompatible with the view reported in the preceding sentence, which was not the case. He therefore proposed replacing “Some other members” at the beginning of the sentence with “Some members”.

*It was so decided.*

6. Mr. PERERA said that the discussion that had taken place in the General Assembly had focused on the principle of subsidiarity, mentioned in the penultimate sentence of the paragraph, with States emphasizing the paramount role of the affected State. He therefore proposed adding at the end of the sentence the words “which should not be taken unilaterally”.

*It was so decided.*

*Paragraph 15, as amended, was adopted.*