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**Summary record of the 3015th meeting**

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## SUMMARY RECORDS OF THE SECOND PART OF THE SIXTY-FIRST SESSION

*Held at Geneva from 6 July to 7 August 2009*

### 3015th MEETING

*Monday, 6 July 2009, at 3.05 p.m.*

*Chairperson:* Mr. Ernest PETRIČ

*Present:* Mr. Cafilisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

**Protection of persons in the event of disasters**<sup>163</sup> (A/CN.4/606 and Add.1, sect. F, A/CN.4/615,<sup>164</sup> A/CN.4/L.758<sup>165</sup>)

[Agenda item 8]

#### SECOND REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON declared open the second part of the sixty-first session of the International Law Commission and welcomed the participants in the International Law Seminar, who would be observing the Commission's proceedings. He invited the Special Rapporteur, Mr. Valencia-Ospina, to introduce his second report on the protection of persons in the event of disasters, contained in document A/CN.4/615.

2. Mr. VALENCIA-OSPINA (Special Rapporteur), introducing his second report, said that he had been mindful of the recommendations of the General Assembly in its resolution 63/123 of 11 December 2008 that the Commission should take into account the comments

<sup>163</sup> See the Special Rapporteur's preliminary report in *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598. For the discussion of the preliminary report by the Commission, see *ibid.*, vol. II (Part Two), chap. IX.

<sup>164</sup> Reproduced in *Yearbook ... 2009*, vol. II (Part One).

<sup>165</sup> Mimeographed; available on the Commission's website. See also the 3029th meeting below.

and observations of Governments and undertake consultations with key humanitarian actors (para. 16); accordingly, in the introduction to his second report, he had highlighted the oral comments and observations of States in the Sixth Committee and his contacts with other entities in the United Nations system. Moreover, he would like to draw attention to two informal documents<sup>166</sup> containing observations of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the International Federation of Red Cross and Red Crescent Societies (IFRC), submitted in response to a question addressed to them by the Commission<sup>167</sup> about how the United Nations system and the IFRC had institutionalized roles and responsibilities with regard to assistance to affected populations and States in the event of disasters. He greatly appreciated their prompt response to that question, which reflected concerns voiced by a number of Commission members.

3. With regard to other recent developments, paragraph 14 of his report listed three documents relevant to his topic that had been issued after the close of the Commission's sixtieth session. To those should be added the *2009 Global Assessment Report on Disaster Risk Reduction*,<sup>168</sup> which was the first biennial global assessment of disaster risk reduction prepared in the context of the International Strategy for Disaster Reduction (ISDR), adopted by the General Assembly in its resolution 54/219 of 22 December 1999. Mention should also be made of the second session of the Global Platform for Disaster Risk Reduction, on the theme of disasters, poverty and vulnerability, held in Geneva from 16 to 19 June 2009. Lastly, a report by the Secretary-General<sup>169</sup> on the progress made in the strengthening of the coordination of emergency humanitarian assistance of the United Nations had just been submitted to the substantive session of the Economic and Social Council now being held in Geneva. The report described the major humanitarian trends and challenges of the past year

<sup>166</sup> ILC (LXI)POPD/INFORMAL/1 and 2 (distribution limited to the members of the Commission).

<sup>167</sup> *Yearbook ... 2008*, vol. II (Part Two), para. 32.

<sup>168</sup> United Nations, *2009 Global Assessment Report on Disaster Risk Reduction: Risk and Poverty in a Changing Climate*, 2009 (available from [www.preventionweb.net](http://www.preventionweb.net)).

<sup>169</sup> A/64/84-E/2009/87.

and analysed two thematic issues: respecting and implementing guiding principles of humanitarian assistance at the operational level and addressing the impact of current global challenges and trends on the effective delivery of humanitarian assistance.

4. The General Assembly had devoted particular attention, from different perspectives, to disasters and their multiple implications, especially over the past two decades. At its sixty-third session, the Assembly had adopted no less than five resolutions devoted in a general way to distinct aspects of the disaster cycle in all its phases.<sup>170</sup> Five other resolutions dealt with concrete disaster situations around the globe.<sup>171</sup> Reference to the subject of disasters could also be found in resolutions covering a variety of other matters: for example, resolution 63/90 of 5 December 2008 on international cooperation in the peaceful uses of outer space emphasized the need for space technology to be improved so as to help mitigate disasters and for international cooperation to minimize space debris.

5. The Special Rapporteur's second report sought to provide concrete guidance on the questions posed in the preliminary report, which had led to productive discussions in the Commission and in the Sixth Committee, chiefly with regard to the proper scope of the topic (A/CN.4/606, paras. 79–81). The discussions had centred on four main questions: what was the proper understanding of “protection of persons” in the context of the topic; whether the Commission's work should be limited to the rights and obligations of States or should provide a framework for the conduct of other actors; which phases of disaster the project should address; and what was the proper definition of a disaster. Members of the Commission and Governments in the Sixth Committee had offered varying opinions as to which principles should inform the Commission's work, and some had been particularly interested in the relevance of the emerging principle of the responsibility to protect.<sup>172</sup> The draft articles proposed in the second report constituted an attempt to answer those questions in the light of the prevailing opinion emerging from the debates.

6. To properly identify the contours of the topic, it was necessary to determine how to approach the concept of protection applicable in the event of disasters. An illustrative definition might be the one provisionally formulated by the drafting committee of the second workshop

<sup>170</sup> General Assembly resolutions 63/139 on strengthening of the coordination of emergency humanitarian assistance of the United Nations, and 63/141 on international cooperation on humanitarian assistance in the field of natural disasters, from relief to development, of 11 December 2008; resolutions 63/147 of 18 December 2008, entitled “New international humanitarian order”; 63/216, entitled “International Strategy for Disaster Reduction”; and 63/217 of 19 December 2008, entitled “Natural disasters and vulnerability”.

<sup>171</sup> In particular, General Assembly resolutions 63/136 entitled “Humanitarian assistance and reconstruction of Liberia” and 63/137 on strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster, of 11 December 2008; and resolutions 63/211 entitled “Oil slick on Lebanese shores” and 63/215 on international cooperation to reduce the impact of the El Niño phenomenon, of 19 December 2008.

<sup>172</sup> See, in this regard, General Assembly resolution 63/308 of 14 September 2009 and the report of the Secretary-General on implementing the responsibility to protect (A/63/677), in particular paragraphs 1–10.

on protection convened by the International Committee of the Red Cross (ICRC) in March 1998, according to which “[p]rotection, in the case of humanitarian actors, includes all activities designed to assist the competent authorities [to] prevent, put a stop to or avoid the occurrence or the recurrence of violations of international human rights, humanitarian law, refugee law and to ... persuade them to take the appropriate measures”.<sup>173</sup> The text reflected the agreement among participants that the definition should state that it included all activities designed to shield the individual from violations of inalienable universal human rights.

7. To circumscribe the concept of protection of persons for the purposes of the topic, his second report addressed two aspects of the question. Paragraphs 16 to 18 discussed the proposed rights-based approach and paragraphs 19 to 27 suggested that the rights and obligations of States should be understood with reference to the relationships both of States *vis-à-vis* each other and States *vis-à-vis* individuals. As noted in paragraph 8 of the report, many States in the Sixth Committee had supported a rights-based approach to the topic. That approach had also found support in the Commission;<sup>174</sup> some members had emphasized that since the main question was how individual rights would be enforced, the focus should be on the obligations of States and non-State actors.

8. The rights-based approach did not endeavour to set up a regime that would compete or overlap with human rights or related regimes. Rather, it would provide a framework in which the legitimacy and success of a disaster relief effort could be assessed according to how the rights of affected parties were respected, protected and fulfilled. Paragraphs 16 and 17 of the second report discussed the origins of the rights-based approach as a paradigm shift in the study of international development, as States had come to understand that rights standards were crucial to evaluating development agendas and formulating development policy.

9. Of particular significance were some of the key findings and recommendations of the *2009 Global Assessment Report on Disaster Risk Reduction*.<sup>175</sup> According to the report, global disaster risk was highly concentrated in poorer countries with weaker governance. Particularly in low- and middle-income countries with rapid economic growth, the exposure of people and assets to natural hazards was growing at a faster rate than risk-reducing capacities were being strengthened, leading to increasing disaster risk. Countries with small and vulnerable economies, such as small island developing States and landlocked developing countries, had the highest economic vulnerability to natural hazards. Poorer communities suffered a disproportionate share of disaster loss.

10. The rights-based approach was not exclusive and must be informed by other considerations when appropriate. In particular, the IFRC had suggested that the Commission focus on the needs of disaster victims (para. 17

<sup>173</sup> *Protection: toward Professional Standards, Report of the Workshop (17–19 March 1998)*, ICRC, 1998, p. 22 and annex 2, p. 82.

<sup>174</sup> *Yearbook ... 2008*, vol. II (Part Two), paras. 227–229 and 231.

<sup>175</sup> See footnote 168 above.

of the report). In the current inquiries into the subject by interested international organizations, the rights-based and needs-based approaches had been made to appear almost mutually exclusive. However, needs and rights were two sides of the same coin, and the difference in approaches could be reduced to a question of emphasis. Seen in that light, the suggestion of the IFRC could usefully complement a rights-based approach to the topic.

11. In pursuing that approach to the protection of persons, the Commission should be mindful that it was dealing with two essentially different relationships: that of States *vis-à-vis* each other, and that of States *vis-à-vis* affected persons. The conceptual distinction between those two axes, which was at the basis of the operation of the relevant rules of international law, had been articulated by the ICJ in recent decisions rendered in a variety of contexts, as discussed in paragraphs 19 to 27 of the report. Also of interest was the Court's pronouncement, in October 2008, in its order on the request for the indication of provisional measures submitted by Georgia in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. The Court had indicated, with binding effect, the following provisional measure: "Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination" [para. 149B of the order]. The conceptual distinction thus illustrated suggested a two-stage approach to the discussion, focusing first on the rights and obligations of States *vis-à-vis* each other. Once that relationship had been clarified, it should aid the Commission in its understanding and formulation of the rights and obligations of States *vis-à-vis* affected persons.

12. Disaster response involved a range of actors, including domestic and foreign governmental agencies and the military, the United Nations, intergovernmental and non-governmental organizations, the IFRC and private actors. Developing a comprehensive framework to guide the conduct of all those actors would not only prove to be a vast and time-consuming undertaking, it would also overlap significantly with the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance<sup>176</sup> adopted by the IFRC in 2007. For those and other reasons discussed in paragraph 28 of the report, the Commission would be well advised to begin by concentrating on the rights and duties of States, without prejudice to specific provisions that might be applicable to non-State actors. Doing so would place manageable limits on the work, and should the Commission later determine that it must more fully examine the rights and obligations of non-State actors, its work concerning the conduct of States would provide a useful point of departure.

13. The topic's focus on protection also suggested a broad temporal scope, one that might encompass preparedness and mitigation, response and early recovery

and long-term rehabilitation. That interpretation was supported by the fact that there was no clear demarcation between each of those phases, particularly in the case of so-called "creeping" or "slow-onset" disasters such as desertification. However, members of the Commission and the Sixth Committee had warned strongly against overextending the scope of the topic and had suggested that the Commission's work should be limited to the disaster proper and the immediate post-disaster relief phases (paras. 7 and 29 of the report). Moreover, the Commission should avoid needlessly duplicating the work of other bodies in the field of preparedness and risk-reduction, for example, under the ISDR. Still, as noted in paragraph 29 of the report, disaster preparedness was critical to protecting affected persons. The Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters<sup>177</sup> (hereinafter "Hyogo Framework for Action") noted that strengthening disaster preparedness was vital to strengthening a community's resilience, and the General Assembly, in resolution 63/141 of 11 December 2008, entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", noted the importance of international cooperation to support preparedness efforts in countries with limited capacities. Given the central role of preparedness in reducing vulnerability and protecting affected persons, the Commission could not completely foreclose any discussion of the pre-disaster phase. Instead, it would be wise to follow the suggestion of many of its members and States in the Sixth Committee and focus on the response and early recovery stages, without prejudice to subsequent consideration of the pre-disaster phase (A/CN.4/606, para. 80).

14. Those considerations were reflected in the proposed text for draft article 1, contained in paragraph 30 of the report, which aimed to define the topic's scope *ratione materiae*, *ratione temporis* and *ratione personae*. The draft article read:

*"Draft article 1. Scope*

"The present draft articles apply to the protection of persons in the event of disasters, in order for States to ensure the realization of the rights of persons in such an event, by providing an adequate and effective response to their needs in all phases of a disaster."

15. In seeking to delimit the scope of the project by linking it to its purpose, the text kept the primary focus on the actions of States and their ability to realize the rights of persons in the event of disasters by providing for their needs. It reflected the fact that the Commission should be primarily concerned with the conduct of States in the exercise of their rights and the fulfilment of their obligations *vis-à-vis* the victims of disasters.

16. With respect to affected persons, draft article 1 adopted a rights-based approach, but also emphasized the paramount importance of meeting the needs of disaster victims. It was based on the assumption that the

<sup>176</sup> IFRC, *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, Geneva, 2008.

<sup>177</sup> Report of the World Conference on Disaster Reduction, held in Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6 and Corr.1), resolution 2.

rights- and needs-based approaches were complementary, and that a disaster-response effort could not adequately protect the rights of affected persons without endeavouring to respond to their needs in the face of such an event. The phrase “in all phases of a disaster” underscored the primary focus on disaster response and early recovery and rehabilitation but did not preclude an effort to address preparedness and mitigation in the pre-disaster phase.

17. Proposed draft article 1 was not sufficient, however, to delimit the Commission’s work on the topic. In order to complete the task, paragraphs 31 to 49 of the report were devoted to formulating a definition of the term “disaster”. Although some international instruments had been able to be implemented without such a definition, one was indispensable in the current draft articles in order to identify the persons entitled to protection and the circumstances in which such protection was called for.

18. The definition of “disaster” in the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations offered useful guidance. It adhered to the convention of defining “disaster” as a “serious disruption of the functioning of society”, implying that a disaster was to be identified by the degree of dysfunction it caused to the society in which it occurred. The Tampere definition also recognized that a disaster might be caused by a complex set of factors extending over a long period of time.

19. The proposed definition, contained in paragraph 45 of the report, read:

*“Draft article 2. Definition of disaster*

“ ‘Disaster’ means a serious disruption of the functioning of society, excluding armed conflict, causing significant, widespread human, material or environmental loss.”

20. The definition proposed in draft article 2 used the Tampere wording as a starting point, but with several notable changes. First, it expressly excluded armed conflict *per se*, since there was already a comprehensive body of international humanitarian law applicable in that situation. Second, whereas the Tampere definition included events that merely threatened harm to life, property or the environment, the definition in draft article 2 included a criterion of actual loss. The definition nevertheless remained sufficiently broad since it encompassed situations of widespread property damage or environmental degradation, both of which warranted protection inasmuch as they affected persons.

21. The proposed definition also omitted any requirement of causation, unlike several of the earlier definitions referred to in paragraphs 34 to 43 of the report which required some causal link. In some of those definitions, however, a mention of causes served only to reveal that an inquiry into causation was immaterial, since they provided that a disaster could be caused by virtually any set of factors, natural or otherwise, so that ultimately an event should be characterized according to its effects. That was particularly true in the case of complex causation where a single condition could not be said to be the sole and

sufficient cause of a disaster—a problem that took on added complexity when natural phenomena merged with and were reinforced by human activity. Moreover, as many representatives in the Sixth Committee had pointed out, attempts to draw such a distinction would be immaterial to the purpose of protecting disaster victims, since both natural and man-made disasters produced similar effects. An inquiry into causation should thus be omitted from draft article 2.

22. Lastly, the draft definition did not establish a criterion according to which a disaster, in order to be considered as such, had to overwhelm a society’s response capacity. The inclusion of such a criterion would, in effect, shift the focus of the topic away from the victims of a disaster, who were the persons in need of protection.

23. After determining the scope of the Commission’s work on the topic in draft articles 1 and 2, the next task would be to decide on the principles that would inform the remainder of the draft articles. Although the responsibility to protect had been mentioned as one such principle, recent developments<sup>178</sup> and discussions in the Commission and in the Sixth Committee had suggested that the responsibility to protect might not be applicable in the context of disasters. Although some Commission members regarded it as an emerging principle and thought that it would need to be considered, many members of the Commission and the Sixth Committee had doubted its relevance to the topic (A/CN.4/606, para. 87). Some had expressed doubt as to whether the responsibility to protect carried any legal weight whatsoever, and others thought that its legal effect was confined to gross violations of human rights and could not be transferred by analogy to disaster relief.

24. In the report of the Secretary-General on implementing the responsibility to protect, issued in January 2009, the Secretary-General had clearly stated that the responsibility to protect did not apply to disaster response.<sup>179</sup> His conclusion, noted in paragraph 14 (c) of the second report, was that the responsibility to protect applied only in the case of genocide, war crimes, ethnic cleansing and crimes against humanity, until Member States decided otherwise, and that extending it to cover other calamities, such as natural disasters, would “undermine the 2005<sup>180</sup> consensus and stretch the concept beyond recognition or operational utility”. Such a clear-cut statement by the highest United Nations official in his most recent and comprehensive report, devoted exclusively to the subject, was an authoritative indication that the responsibility to protect could not be regarded as the core principle of the current topic. That role more appropriately belonged to the legal duty of cooperation. In order successfully to accomplish its task of progressive development and codification of the rules of international law on the topic, the Commission did not need to base the draft articles on the doctrine of the responsibility to protect, as there were other more solid and pertinent legal grounds on which it could rely.

<sup>178</sup> See the report of the Secretary-General (A/63/677) and the related discussions of 21, 23, 24, and 28 July 2009 in *Official Records of the General Assembly, Sixty-third Session, 96th to 101st plenary meetings* (A/63/PV.96–101).

<sup>179</sup> A/63/677, para. 10 (b).

<sup>180</sup> 2005 World Summit Outcome document, General Assembly resolution 60/1 of 16 September 2005, paras. 138–139.

At most, the Commission might wish to frame its efforts in a way that would not prejudice any future agreement by States to extend that principle to situations of disaster.

25. In arguing against having recourse to the responsibility to protect, some Commission members had emphasized the primary responsibility of the affected State to provide protection and assistance, noting that the international community played a subsidiary role in conformity with the principles of international solidarity and cooperation. Even though the primary responsibility of the affected State was fundamental and should be reiterated, its international dimension was a direct function of the duty of the State to respect, protect and give effect to the human rights of affected persons within its territorial jurisdiction. On the other hand, a disaster—even if not transnational in its material effects—nevertheless gave rise to a legitimate concern that was inherently international and rooted in the principles of shared responsibility and solidarity, and that triggered the international legal duty to cooperate. The principles of international solidarity and cooperation jointly formed the lens through which the role to be played by foreign Governments and non-State actors in disaster situations could be placed in proper perspective.

26. Although several principles had been discussed in the memorandum by the Secretariat on the protection of persons in the event of disasters,<sup>181</sup> including the principles of sovereignty, neutrality, impartiality, humanity and cooperation, the second report of the Special Rapporteur proposed, as a first step, a draft article on the core legal principle of cooperation, in recognition of the fact that even a highly localized disaster produced some consequences in the international realm, bringing into play the duty to cooperate. Other relevant principles also merited restatement and would be the subject of proposed draft articles in subsequent reports, particularly in connection with assistance and access in the event of a disaster. The proposed draft article read:

*“Draft article 3. Duty to cooperate*

“For the purposes of the present draft articles, States shall cooperate among themselves and, as appropriate, with:

“(a) competent international organizations, in particular the United Nations;

“(b) the International Federation of Red Cross and Red Crescent Societies; and

“(c) civil society.”

27. Cooperation was a fundamental principle of international law that was enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970. In its

memorandum, the Secretariat had noted that cooperation was “a *conditio sine qua non* to successful disaster relief actions”.<sup>182</sup> The proliferation of international actors responding to a disaster required mutual cooperation in order to avoid inefficient, overlapping or conflicting relief efforts. The affected State had to cooperate with foreign Governments and non-State actors in order to ensure the effective delivery of external resources and funds and the prompt response of foreign aid workers. The General Assembly had recently reaffirmed the importance of cooperation in the context of disaster response, emphasizing in its resolution 63/141 that the affected State had the primary responsibility for disaster response, while at the same time recognizing the importance of international cooperation in all phases of a disaster, including preparedness, response and recovery. Numerous international instruments had recognized the importance of regional and global cooperation and the coordination of risk-reduction and relief activities, and many had focused specifically on efforts to improve the capacities of developing countries. International cooperation was thus essential to effective disaster response.

28. Solidarity and cooperation, as legal principles, did not constitute charity; rather, they provided for a system of mutual interaction in which reciprocal obligations were placed on all parties. The clearest expression of those principles could be found in international environmental law instruments, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, which mandated that developed nations should provide technological and financial assistance to developing countries, while the latter were bound to comply with certain pollution control measures. Instruments such as the Declaration of International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of Developing Countries, adopted by the General Assembly at its eighteenth special session in resolution S-18/3 of 1 May 1990, had noted that the revitalization of economic growth in developing nations required efforts on the part of all countries. Cooperation in those contexts entailed reciprocal obligations: both States providing assistance and those receiving it incurred a duty to act responsibly.

29. The principle of cooperation was by no means new to the Commission. In its work on shared natural resources<sup>183</sup> and prevention of transboundary harm from hazardous activities<sup>184</sup> the Commission had recognized that international law imposed a general duty on States to cooperate with one another. The commentary to the draft articles on non-navigational uses of international watercourses<sup>185</sup> explained that the duty of States to cooperate in the protection and development of a watercourse system could be enshrined in a treaty but did not depend on any international agreement. The duty to cooperate could therefore be understood to flow from principles that were inherent in the international legal order, giving rise to an

<sup>182</sup> *Ibid.*, para. 18.

<sup>183</sup> *Yearbook ... 2008*, vol. II (Part Two), paras. 53–54, draft articles on the law of transboundary aquifers with commentaries thereto.

<sup>184</sup> *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, paras. 97–98, draft articles on prevention of transboundary harm from hazardous activities with commentaries thereto.

<sup>185</sup> *Yearbook ... 1994*, vol. II (Part Two), para. 222, especially the commentary to draft articles 8 and 9.

<sup>181</sup> A/CN.4/590 and Add. 1–3 (mimeographed; available on the Commission’s website, documents of the sixtieth session).

obligation to share information, work together in drafting emergency response plans and bring domestic laws or regulations into line with international obligations.

30. The principle of cooperation had played an important role in the Commission's final drafts on a range of topics. The Rome Statute of the International Criminal Court, modelled on a Commission draft,<sup>186</sup> had included in article 86 a general obligation to cooperate with the Court. The Commission's work on the law of the high seas had resulted in an obligation for States to cooperate in fighting piracy and preventing the pollution of the seas with radioactive waste.<sup>187</sup> Its work on the most-favoured-nation clause had led to recognition of the need for economic cooperation between developed and developing countries,<sup>188</sup> while its articles on State responsibility for internationally wrongful acts<sup>189</sup> required all States to cooperate in ending a breach of a peremptory norm of international law. In short, where the international community needed to work together to resolve a situation of concern to all its members, the Commission had not failed to find that States had an obligation to do so. The current topic evoked notions of international solidarity and interdependence to an extent far greater than any topic previously addressed by the Commission. Hence, any articles or guidelines to be developed on the topic by the Commission would be of limited use if they were not informed by a spirit of international cooperation.

31. Draft article 3 therefore reaffirmed the international legal duty of States to cooperate with one another and, in appropriate circumstances, with non-State actors, in recognition of the important and often crucial role the latter played in helping to ensure the effective protection of persons in the event of disasters. Draft article 3 thus delimited the topic's scope *ratione personae*. The layout of the text was intended to highlight the distinct status accorded by international law in the context of the present topic to the principal non-State actors, namely the United Nations and other intergovernmental organizations, the IFRC and civil society.

32. The three proposed draft articles were intended to offer guidance for future work on the topic by setting the limits of its scope, but they were drafted in such a way as not to prejudice any decisions the Commission might wish to make in the light of new developments.

33. Mr. MURASE, commending the Special Rapporteur for his excellent work on the topic, said that he had a few questions concerning some of the basic premises underlying the Special Rapporteur's second report. To begin with, he was puzzled by the approach to the topic described in paragraph 17, whereby "both rights and needs enter the equation, complementing each other when appropriate".

<sup>186</sup> *Yearbook ... 1996*, vol. II (Part Two), para. 50, draft code of crimes against the peace and security of mankind.

<sup>187</sup> *Yearbook ... 1956*, vol. II, document A/3159, para. 33, articles on the regime of the high seas and regime of the territorial sea and commentaries thereto, arts. 38 and 48, respectively.

<sup>188</sup> *Yearbook ... 1978*, vol. II (Part Two), para. 74, draft articles on most-favoured-nation clauses, especially draft articles 23–24. See also *Yearbook ... 2008*, vol. II (Part Two), annex II.

<sup>189</sup> *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, paras. 76–77, especially art. 41.

In his view, the word "rights" was a legal term, while "needs" referred to a factual situation, and accordingly the two notions were not on the same conceptual level. Needs were taken into account in determining the contents of the relevant rights and obligations. It was unclear whether the phrase "rights of persons" contained in draft article 1 referred to rights recognized under international law, rights recognized under the domestic law of the affected State or rights under some sort of natural law, independent of positive international or domestic law.

34. His second point concerned the definition of "disaster" in draft article 2. The definition was crucially important, because it would form the basis of the operation of the draft articles as a whole, providing the trigger for participation or intervention in an affected State by other States or intergovernmental or non-governmental organizations. Draft article 2 referred to "a serious disruption" and "significant, widespread ... loss", but it was essential to be clear on the meaning of those terms. An affected State might refuse outside assistance, claiming that the disaster was not really serious, since it had not resulted in either significant or widespread loss.

35. Although circumstances of armed conflict were excluded from the draft articles, some lessons could be learned from the law of armed conflict. Article 1 of the Convention on the prohibition of military or any other hostile use of environmental modification techniques ("the Environmental Modification Convention"), of 1976, restricted the application of the Convention to techniques having "widespread, long-lasting or severe effects". Because the three conditions were combined by the word "or", only one of them needed to be satisfied for the application of the Convention. According to one of the understandings of the Conference of the Committee on Disarmament,<sup>190</sup> "widespread" was to be understood as "encompassing an area on the scale of several hundred square kilometres", "long-lasting" as "lasting for a period of months, or approximately a season", and, "severe" as "involving serious or significant disruption or harm to human life, natural and economic resources or other assets".

36. By contrast, the 1977 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims or international armed conflicts (Protocol I) set much higher thresholds than the Environmental Modification Convention. The Protocol provided, in article 35, paragraph 3, that it was prohibited to employ methods or means of warfare that caused "widespread, long-term and severe damage" to the natural environment. In the Protocol, the term "long-term" was understood as meaning a period of decades rather than a few months and the terms "widespread" and "severe" were similarly understood as implying a much wider and heavier scale of damage than was contemplated in article I of the Environmental Modification Convention. Moreover, the three conditions were combined by the word "and" rather than "or", which meant that all three must be met. In draft article 2, however, neither "and" nor "or" appeared between the words "significant" and "widespread" and

<sup>190</sup> Report of the Conference of the Committee on Disarmament, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 27 (A/31/27)*, vol. I, annex I, understanding relating to article I, p. 91.

he wondered what the Special Rapporteur's intention had been in dividing the words by a comma. The examples given showed the importance of defining the scale of loss, which had a direct bearing on the scope of application of the draft articles.

37. He also had some misgivings about draft article 3. First, he wondered whether the word "duty" in the subtitle signified a legal obligation, a moral obligation or something in between. Secondly, he had strong reservations about the term "civil society". Even if qualified by the phrase "as appropriate" in the *chapeau*, the term was very broad and ambiguous. Some groups and organizations were good, while others were not; a group might even be a front for terrorists. He had nothing against NGOs: he himself was a member of a relief organization founded by one of his former students that was active in post-disaster activities, not only in Japan, but also in various countries in Asia and Africa. It was, however, the case that NGOs had some intrinsic problems of representativeness and accountability. A stricter definition was therefore required.

38. If, as stated in paragraph 69 of the report, the civil society that the Special Rapporteur had in mind was "local", the Commission should be cautious in imposing on an affected State the obligation to cooperate with its own domestic groups and organizations, since that might be viewed as direct interference in matters within the State's domestic jurisdiction. In most countries, private groups were encouraged to participate in relief activities in the event of a disaster, but some Governments might not welcome their involvement, because it might be perceived as demonstrating the Government's inability to cope with the situation. He was not certain that a provision referring to domestic groups would be useful or appropriate in the draft articles.

39. On the other hand, the transnational elements of NGO activities should feature more positively in the draft articles. He wondered whether a competent international organization could, at the pre-disaster stage, establish a roster of qualified and reliable NGOs that could be accredited to conduct relief activities. Such NGOs should meet accepted international standards as being competent, reliable and effective relief organizations. The affected State could then choose suitable NGOs from the list in the event of a disaster. Such a mechanism might alleviate some of the concerns of an affected State.

40. His suggestion was based partly on his own country's experience. When something went wrong, even if it was a natural disaster, the Japanese would tend to see it as a disgrace and try to pretend that they could manage without outside help. Thus, in January 1995, when Kobe (Hyogo, Japan) was hit by a huge earthquake that killed more than 6,000 people, the Government's attitude to receiving foreign assistance had reportedly been negative. For example, trained rescue dogs brought in by a Swiss NGO had been required to go through the quarantine procedure and detained for 40 days at the airport, which, of course, had made no sense when victims were waiting for rescue from the rubble of collapsed buildings. The public had severely criticized the Government, which had changed its policy after a few days. Such a reaction might be unique to Japan. It would be useful, however, to

stress the importance of cultivating a culture of mutual assistance and willingness to receive foreign assistance in the event of a disaster or, as the Special Rapporteur had put it, solidarity and cooperation. The Convention on nuclear safety referred, in its preamble, to a "nuclear safety culture". A reference to a "culture of mutual assistance in case of a disaster" might be similarly appropriate in the preamble to the draft articles.

41. Mr. SABOIA said that the report was a carefully thought out and well-prepared document that would help the Commission to advance with the topic, while the Special Rapporteur's oral introduction was so thorough as almost to constitute an addendum to the report.

42. He wished to reiterate some of the positions that he had expressed on general issues in his intervention at the previous session. As he had said then, he supported the idea of a rights-based approach, which should not be seen as incompatible with a problem-based approach. It would take into account all categories of rights, but with particular emphasis on economic and social rights, which might be more seriously affected by disasters. Human rights—both individual and collective—were also important, because such groups as refugees, minorities or indigenous people might be more vulnerable in the event of disasters.

43. In his oral presentation, the Special Rapporteur had rightly emphasized the view of the Secretary-General in his report on implementing the responsibility to protect that it would be a mistake to extend such a responsibility to other calamities, such as HIV/AIDS, climate change or the response to natural disasters.<sup>191</sup>

44. The Special Rapporteur should place more emphasis in his work on the relationship between poverty, under-development and exposure to disaster situations. In paragraphs 16 and 17 of the report, the Special Rapporteur had shown how the notion of development had come to incorporate the aspects of both rights and needs. Although the Special Rapporteur was correct in saying that the Commission should avoid duplicating the work under the ISDR, it should not fail to take account of the important ISDR conclusions concerning the unequal distribution of exposure to the risk of disaster among different categories of countries, according to their level of development, their geographical location and other circumstances.

45. At a recent meeting in Bahrain, on 17 May 2009, attended by the Secretary-General to discuss the *2009 Global Assessment Report on Disaster Risk Reduction*,<sup>192</sup> it had been stressed that the risk of disasters and their effects arose not only from the severity of the disaster itself, but also from factors related to social and economic development. As the Secretary-General had said, poor people in developing countries suffered most from disasters. For example, three quarters of those who had died from floods lived in just three countries, and 17 times more people had perished as a result of tropical cyclones in the Philippines than in Japan, although the two countries' exposure to cyclones was the same. The Commission could translate those realities into legal terms by giving special

<sup>191</sup> A/63/677, para. 10 (b).

<sup>192</sup> See footnote 168 above.

consideration to the needs of developing countries, particularly the least developed, and to the issue of poverty as a factor relevant to the risk and impact of disasters.

46. He agreed with the proposal to limit the scope *ratione temporis* by focusing on the disaster and post-disaster phases without prejudice to the examination at a later stage of the issues of prevention and preparedness.

47. He endorsed the view contained in paragraph 28 of the report on the need to focus on the rights and obligations of States, not only *vis-à-vis* other States, but also *vis-à-vis* persons in need of protection. A State affected by a disaster was most likely to have its ability to provide assistance and protect certain rights restricted by the effects of the disaster. That point should be taken into account when the Commission came to deal with the implementation by States of their obligations. He supported the Special Rapporteur's proposals regarding the treatment of States and non-State actors, giving priority to the examination of the rights and duties of States without excluding the consideration of the role of non-State actors at a later stage. He therefore endorsed draft article 1.

48. The material presented in paragraphs 31 to 37 of the report testified to the difficulty of finding a proper definition for the term "disaster". He had doubts, however, about using, as a first element, the idea of "serious disruption of the functioning of society", without at least some preceding causal elements. A society's functioning could be disrupted by factors unrelated to a natural disaster, such as a political crisis or a general strike. On the other hand, a serious disaster could cause severe damage without necessarily disrupting a society's functioning. He therefore suggested that the Commission should adopt the form of words "seriously affecting the functioning of society". The element of causation should not be overstressed, since that might exclude events with a complex origin. He would, however, favour using some elements of the definition used in the Agreement Establishing the Caribbean Disaster Emergency Response Agency, followed by a reference to "serious disruption of the functioning of society" (art. 1 (d)).

49. As for the issue of whether harm alone should be a requirement for the definition, or whether the risk of harm should be included, he considered that actual harm should be referred to, with a possible second clause indicating that an "imminent threat of serious harm" was also included in the scope, since persons seriously threatened by a disaster might need urgent assistance in order to limit the extent of the damage caused by the actual disaster.

50. The definition of disaster should also encompass situations that seriously undermined crops, such as severe drought or pests and plant diseases that caused famine. As for the question of a reference to destruction of, or damage to, property or environment, he considered that both should be included, to the extent that they affected people's ability to recover from disaster. Draft article 2 was a useful starting point for the definition of the word "disaster" and could be referred to the Drafting Committee, although further elaboration was required.

51. He commended the thorough analysis of the duty of solidarity and cooperation in the report. That duty was

firmly anchored in legal rules, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 2007). The concept had been further developed by the Stockholm Declaration,<sup>193</sup> the 1992 Rio Declaration on Environment and Development<sup>194</sup> and the Vienna Convention for the Protection of the Ozone Layer. All stressed the need to provide appropriate attention to the special situation and needs of developing countries. In that connection, he suggested that the important principle of "shared but differentiated responsibilities", which had become an accepted rule in international environmental law, should be mentioned specifically in the context of environmental damage caused by a disaster.

52. He expressed his support for the safeguards mentioned in paragraphs 63 and 64 of the report concerning the need not to extend the obligation of solidarity and cooperation to the point of trespassing on the prerogatives of sovereign States, which had primary responsibility for the protection of their people in the event of disasters. On the other hand, the international community should not be left in the position of a passive observer in situations where persons affected by disasters were deprived of their basic needs and rights. There must be a balance between the prerogative of the State and the legitimate concerns of the international community, which could result in ties of interdependence and cooperation between States and could, where appropriate, include a legitimate role for non-State actors that had emerged as important in the field. Draft article 3 provided an appropriate point of departure for discussion and could be referred to the Drafting Committee. He would, however, be in favour of adding a new subparagraph indicating the need to pay proper attention to the special needs of developing countries, in particular the least developed countries and those most vulnerable to disaster.

#### **Responsibility of international organizations (concluded) (A/CN.4/606 and Add.1, sect. D, A/CN.4/609, A/CN.4/610, A/CN.4/L.743 and Add.1)**

[Agenda item 4]

#### REPORT OF THE DRAFTING COMMITTEE (concluded)

53. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee) introduced the titles and texts of draft articles 3, 3 *bis*, 28, paragraph 1, and 61 to 64 adopted by the Drafting Committee on 2 June 2009, as contained in document A/CN.4/L.743/Add.1, which read:

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

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

<sup>193</sup> See footnote 156 above.

<sup>194</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigendum), vol. I: *Resolutions adopted by the Conference, resolution 1, Annex I.*

*“Article 3 bis. Elements of an internationally wrongful act of an international organization*

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

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

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

*“Article 28. Responsibility of a member State seeking to avoid compliance*

“A State member of an international organization incurs international responsibility if it seeks to avoid complying with one of its own international obligations by taking advantage of the fact that the organization has competence in relation to the subject matter of that obligation, thereby prompting the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

*“Article 61. Lex specialis*

“These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or a State for an internationally wrongful act of an international organization, are governed by special rules of international law, including rules of the organization applicable to the relations between an international organization and its members.

*“Article 62. Questions of international responsibility not regulated by these articles*

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

*“Article 63. Individual responsibility*

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

*“Article 64. Charter of the United Nations*

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

54. Mr. Vázquez-Bermúdez recalled that, at its 3009th meeting, on 22 May 2009, the Commission had referred six new draft articles proposed by the Special Rapporteur in his seventh report (A/CN.4/610) to the Drafting Committee, together with a proposal for the restructuring of the draft and some modifications or revisions suggested in respect of draft articles which had

already been provisionally adopted by the Commission. In its earlier report on the topic “Responsibility of international organizations” (A/CN.4/L.743), presented on 5 June 2009, the Drafting Committee had introduced the new structure of the draft articles, as well as draft articles 2; 4, paragraph 2; 8; 15, paragraph 2 (b); 15 bis; 18; 19 and 55, which had been adopted by the Commission (see the 3014th meeting above). He would now introduce the results of the Drafting Committee’s consideration, on 2 June 2009, of the other draft articles referred to it.

55. He wished to pay tribute to the Special Rapporteur, whose invaluable expertise had placed the Commission in a position to adopt provisionally an entire set of draft articles on responsibility of international organizations.<sup>195</sup>

56. Turning to draft articles 3 and 3 bis, he said that the proposal put forward by the Special Rapporteur in his seventh report to make article 3 the sole article of chapter I of Part Two of the draft articles, entitled “General Principles”, had been endorsed by the Drafting Committee. That modification made it necessary to reconsider the title of that draft article which, as provisionally adopted, embodied provisions parallel to those contained in two separate articles, namely articles 1 and 2, on responsibility of States for internationally wrongful acts.<sup>196</sup>

57. As the draft article would be placed in a separate chapter of the text, the Drafting Committee had seen no obstacle to copying the structure adopted for the draft articles on State responsibility. It had therefore decided that former paragraph 1 of draft article 3 would be retained as draft article 3 (Responsibility of an international organization for its internationally wrongful acts), while former paragraph 2 would become a new draft article 3 bis entitled “(Elements of an internationally wrongful act of an international organization)”. The text of the two articles, as previously adopted by the Commission, remained unchanged.

58. He recalled that the Special Rapporteur, in his seventh report, had considered various ways of restricting the responsibility of member States when an international organization had been provided with competence in respect of a particular international obligation and that, to that end, he had proposed recasting draft article 28, paragraph 1, in order to clarify the conditions entailing responsibility in such circumstances and to avoid a reference to circumvention. A number of suggestions had been made in the Drafting Committee with a view to improving the text proposed in the seventh report. The phrase proposed by the Special Rapporteur, “purports to avoid compliance”, had been replaced with “seeks to avoid complying”, which added clarity while retaining the requisite subjective element of intent on the part of a member State. It had also been considered more appropriate to speak of a member State “taking advantage” rather than “availing itself” of a situation.

59. The Drafting Committee had further discussed whether it was necessary to retain an explicit reference to the provision of competence to an international organization.

<sup>195</sup> *Yearbook ... 2008*, vol. II (Part Two), chap. VII, sect. C.

<sup>196</sup> *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, paras. 76–77.

Some Committee members had considered that the reference was needed in order to strengthen the linkage between the organization's act and the member State's intention. The view had, however, been expressed that the use of the phrase "by providing the organization with competence" would overemphasize the temporal element, namely the provision of competence prior to the commission of an act. In any case, stating that the organization "has competence" already implied that the member State must have contributed to the provision of that competence.

60. The Drafting Committee had also considered the need to establish a causal link between the advantage taken by a member State of an organization's competence and the commission of given act by that organization. Some Committee members had been of the view that such a linkage was unnecessary and indeed misleading, since it would favour the subjective element of the State's intention to the detriment of a description of an objective situation, in which an organization using competence provided to it by a State would commit an act which would be wrongful if committed by that State. Furthermore, demonstrating the existence of intent always proved difficult. It had also been suggested that a distinction should be drawn between exclusive or concurrent competence; if the organization had been provided with concurrent competence, it would be necessary to stress the link between the exercise of that competence and the impetus from the member State.

61. Other members of the Drafting Committee had been in favour of retaining a link between the advantage taken of an organization's competence and the commission of a given act. One member had argued that a State should be held responsible if it had sought to gain an illicit advantage by using the organization's competence, whether or not the organization had committed the act in question. While that opinion had been thought to rely too heavily on the element of intent, there had been broad consensus that a link should be established between a given act by an organization and the member State's conduct which had encouraged the act. Several options for expressing the appropriate degree of linkage had been considered: "because of", "as a result of" or a reference to an organization being "induced" to commit the act by a State. In the end, the Drafting Committee had opted for the words "thereby prompting", which was an apt description of the process by which responsibility was incurred.

62. A further issue which had to be addressed with regard to draft article 28, paragraph 1, was the reference to the subject matter of the obligation. The previous version of the provision and the redrafting proposal by the Special Rapporteur both seemed to allow some confusion to persist as to the respective obligations of the State and the international organization. The Committee had attempted to resolve that difficulty by referring to the organization's competence "in relation to the subject matter" of the member State's obligation. In addition, the title of draft article 28 had been changed to "Responsibility of a member State seeking to avoid compliance" in order to reflect the changes in the wording of paragraph 1.

63. As for the four draft articles which would make up Part Six (General Provisions), he said that the text of draft

article 61 (*Lex specialis*) adopted by the Committee was very similar to that which the Special Rapporteur had proposed in his seventh report. Within the Drafting Committee, the various proposals made in relation to that draft article had given rise to extensive discussion, which had mirrored the substance of the plenary debate.

64. The Drafting Committee's only modification to the text of draft article 61 proposed by the Special Rapporteur was the replacement in the last sentence of the phrase "such as the rules of the organization that are applicable" with the phrase "including rules of the organization applicable". As the Special Rapporteur had explained, the rules of the organization provided an obvious example of the special rules envisaged by draft article 61, although there could be other kinds of special rules, such as those relating to particular situations relevant to an international organization. Some members of the Drafting Committee had contended that the initial drafting of the provision could create the impression that all the rules of the organization were covered, regardless of their specificity. The modification of the last sentence was designed to address those concerns.

65. The purpose of the change was not, however, to deal with the broader issue, raised in the plenary Commission, of the need to take into account considerations resulting from the specific characteristics and great variety of international organizations. Some drafting suggestions had been made in that regard, including the addition of a new article to deal with that concern. A revised proposal of such a provision introduced in the Drafting Committee had stated in substance "in applying these draft articles, the specific characteristics of the particular organization shall be taken into account". The proponents of that proposal had maintained that it would lay some welcome emphasis on the diversity of existing international organizations and the corresponding need to apply the draft articles with flexibility and that it would merely highlight the importance of differentiating among international organizations when applying the draft articles.

66. Several members of the Drafting Committee, while not necessarily disputing the underlying idea, felt uncomfortable about the inclusion of a specific provision for that purpose. In their view, the proposed additional article, with its rather ambiguous drafting, could either be interpreted as stating the obvious, namely that the draft articles had to be applied in context, or could be used by some international organizations as a means of evading their responsibility. In other words, there had been some concern within the Committee that the inclusion of such a provision would jeopardize the draft articles, since an international organization might be tempted to invoke its specific characteristics in order to avoid altogether the consequences of its wrongful conduct. The argument that there was a huge variety of international organizations should not be used to undermine the whole codification exercise.

67. The Drafting Committee had ultimately decided not to include a provision along the lines suggested, but to add a sentence to the commentary to the introductory draft articles which would clearly indicate that particular factual or legal circumstances relating to the international

organization concerned might have to be taken into account when applying the draft articles. That addition to the commentary should not be interpreted to mean that an organization could plead its specific characteristics in order to claim that it was exempt from responsibility, or to obtain the application of double standards in the implementation of the draft articles.

68. Two issues had been discussed in relation to draft article 62 (Questions of international responsibility not regulated by these articles). The first concerned the words “continue to”, which could be interpreted as freezing the situation in time, so that questions of responsibility would have to be regulated by the rules of international law applicable at the time the articles were adopted. Nevertheless, it had been considered that the use of the phrase in the present tense, which was common in a number of conventions, made it sufficiently plain that the rules covering issues not otherwise regulated in the draft, to which proper consideration had to be given, were the rules in force at the time when the draft articles were applied.

69. The second issue had been the proposed addition, at the end of draft article 62, of an illustrative phrase which would have read “such as the invocation by an international organization of the international responsibility of a State”. The merit of such an addition would have been that it would have drawn attention to the gap existing between matters covered by the draft articles on the responsibility of international organizations and those dealt with by the articles on State responsibility. The Drafting Committee had, however, taken the view that the proposed addition would not fill that lacuna, especially as the draft articles on responsibility of international organizations were not intended to cover questions of State responsibility towards an international organization, which, arguably, had been addressed by analogy in the articles on State responsibility. The commentary to draft article 1 (Scope of the present draft articles) would refer to that lacuna and the possible application by analogy of the articles on State responsibility. The Drafting Committee considered that it would be misleading to add the phrase “of an international organization” after “internationally wrongful act”, because some issues of State responsibility in relation to the action of an international organization were covered in the text.

70. For that reason, draft article 62 as well as draft article 63 (Individual responsibility) and draft article 64 (Charter of the United Nations) remained unchanged. As far as the latter provision was concerned, the Drafting Committee had agreed to refer in the commentary to the effect that obligations under the Charter of the United Nations might have for international organizations, even when they were not formally bound by it. The commentary would also make it clear that draft article 64 was not intended to affect the application of the draft articles to the United Nations.

71. The Drafting Committee recommended that the Commission should adopt the draft articles just introduced.

72. The CHAIRPERSON invited the Commission to proceed to adopt the draft articles contained in document A/CN.4/L.743/Add.1.

Draft article 3 (*Responsibility of an international organization for its internationally wrongful acts*)

*Draft article 3 was adopted.*

Draft article 3 bis (*Elements of an internationally wrongful act of an international organization*)

*Draft article 3 bis was adopted.*

Draft article 28 (*Responsibility of a member State seeking to avoid compliance*)

*Draft article 28 was adopted.*

Draft article 61 (*Lex specialis*)

*Draft article 61 was adopted.*

Draft article 62 (*Questions of international responsibility not regulated by these articles*)

*Draft article 62 was adopted.*

Draft article 63 (*Individual responsibility*)

*Draft article 63 was adopted.*

Draft article 64 (*Charter of the United Nations*)

*Draft article 64 was adopted.*

*The draft articles contained in document A/CN.4/L.743/Add.1, as a whole, were adopted.*

*The meeting rose at 5.30 p.m.*

## 3016th MEETING

*Tuesday, 7 July 2009, at 10.05 a.m.*

*Chairperson:* Mr. Ernest PETRIČ

*Present:* Mr. Caffisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

## Cooperation with other bodies

[Agenda item 14]

STATEMENT BY THE PRESIDENT OF THE  
INTERNATIONAL COURT OF JUSTICE

1. The Chairperson welcomed Judge Hisashi Owada, President of the International Court of Justice, and invited him to address the Commission.