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SUMMARY RECORD OF THE 38th MEETING

Chairman: Mr. ZEHENTNER (Federal Republic of Germany)

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The meeting was called to order at 10.45 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN said that the Committee was already 11 meetings behind schedule and he suggested that the number of meetings to be devoted to consideration of the report of the International Law Commission should provisionally be fixed at 12.

2. It was so decided.

3. The CHAIRMAN pointed out that the United States delegation had submitted a proposal designed to rationalize consideration of the report of the International Law Commission (A/C.6/34/CRP.1).

4. Mr. WINKLER (Austria) thought that the proposal was a very interesting one. Consideration of the report of the Commission should indeed be better structured in order to enable the Committee to fulfil its mandate, which was, inter alia, to formulate recommendations on the future work of the Commission. It was nevertheless regrettable that the proposal had been submitted so late. In view of the limited time allotted to consideration of the Commission's report at the current session, it would be better not to change the method immediately but to study the United States proposal carefully in order to be able to implement it at the following session.

5. Mr. SUCHARITKUL (Thailand) said it was unfortunate that the United States proposal had been submitted so late. Moreover, there was no indication that the method suggested therein was the best nor that it would save time. In view of the decision which had just been taken, it would be better for the United States representative to withdraw his delegation's proposal. As the representative of Austria had suggested, the proposal might be studied with a view to being applied at the following session of the General Assembly.

6. Mr. SAMBA BA (Mauritania) said he thought that, although the United States proposal was an interesting one, it would involve a multiplication of statements, which would cause further delays in the Committee's work. Moreover, delegations which had already prepared their statements would be obliged to change them. Accordingly, it would be better for the United States representative to withdraw his delegation's proposal.

7. Mr. LEGAULT (Canada) welcomed the proposal and pointed out that a similar proposal had been submitted the previous year, but very late. The proposal under consideration might delay the consideration of the Commission's report, but it should not be dismissed completely. The Committee could either take a decision at the beginning of the following session or, in its traditional resolution on the report of the International Law Commission, it could ask the Commission itself to make suggestions regarding the organization of the debate on its report in the Sixth Committee.

8. Mr. ROSENNE (Israel) thought that the United States proposal touched on a problem of substance, that of the relationship between the Commission and the Committee. It was not a question of cutting down the debate, but of making it more interesting, more logical and less ponderous. The Commission itself could give its views on the United States proposal in its next report or make its views known through its Chairman when he introduced its report in the Committee. On the question of the relationship between the two bodies, the Chairman of the Commission had just referred to the assistance which the latter expected from the Committee. The question should therefore be studied before the following session of the General Assembly so that at that session the Committee would have before it specific proposals when it considered its programme of work.

9. Mr. ROSENSTOCK (United States of America) said he was gratified that a majority of delegations agreed that there must be a better way of considering the report of the Commission and of helping it in its work than to hear an interminable succession of speakers. The debate in its present form in no way promoted an exchange of views among delegations and the Commission could only benefit from it if its content was communicated to it in writing. It was essential to reform the procedure followed and to devise, in 1979 or 1980, a rational method for the consideration of the report of the Commission, which was one of the principal organs in the field of international law.

10. The United States proposal had not been submitted at the beginning of the session because the report of the Commission had not then been available. For procedural reasons, it would also not have been possible to submit it in the meantime. His delegation agreed to withdraw its proposal, on the understanding that the Committee would consider the question the following year when organizing its work and that the Secretariat would by that time have circulated at least the chapter headings of the Commission's next report. He hoped that the resolution relating to the report of the Commission would reflect the feeling of of the members of the Committee as a whole on the subject and that the Commission would take their views into account when considering the question raised in the United States proposal.

AGENDA ITEM 108: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-FIRST SESSION (A/34/10, A/34/194; A/C.6/34/L.2, A/C.6/34/CRP.1)

11. The CHAIRMAN invited the Chairman of the International Law Commission to introduce the report of the Commission on the work of its thirty-first session (A/34/10).

12. Mr. ŠAHOVIĆ (Yugoslavia, Chairman of the International Law Commission) said that, at its thirty-first session, the Commission had managed to consider almost all the items on its agenda and that it had continued its work in three main directions. Firstly, the Commission had made further progress in the elaboration of draft articles which it had undertaken to prepare several years earlier. Thus, it had completed the first reading of the draft articles on succession of States in respect of matters other than treaties. Moreover, it had

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only two or three more articles to prepare in order to complete, in first reading, the series of articles which constituted the first part of the draft articles on the responsibility of States for internationally wrongful acts. Lastly, with the adoption of 22 articles on treaties concluded between States and international organizations or between two or more international organizations, the Commission had entered on the final phase of the preparation of a draft on the subject.

13. Secondly, the Commission had deemed it necessary, in the light of its future activities, to take up consideration of subjects recently selected for the codification and progressive development of international law, namely those which concerned, on the one hand, the law of the non-navigational uses of international watercourses and, on the other, jurisdictional immunities of States and their property. Since, at its 1979 session, the Commission had been unable to debate the question of relations between States and international organizations or that of international liability for injurious consequences arising out of acts not prohibited by international law, its current programme of work was very full and would require considerable efforts on its part.

14. Thirdly, in accordance with specific requests made to the Commission by the General Assembly in the light of the needs of the Sixth Committee, the Commission had considered the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and it thought that the question was sufficiently far advanced to be the subject of draft articles with a view to the preparation of an appropriate legal instrument. Moreover, the Commission had submitted to the Secretary-General, pursuant to General Assembly resolution 32/48, its observations with regard to the review of the multilateral treaty-making process for inclusion in the report which the Secretary-General had been asked to prepare on the techniques and procedures used in the elaboration of multilateral treaties. The Commission had thus completed its consideration of the matter.

15. The Commission had continued in a satisfactory manner its co-operation with the International Court of Justice and with regional organizations. It had received a visit from a delegation of the International Court of Justice. The Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation had also once again been represented at its session; that co-operation enabled the Commission to take into account, in the preparation of its draft articles, the legal concepts and the needs of States in all parts of the world. On the educational level, but still with a similar aim in view, the Commission continued to organize seminars for younger generations of jurists and diplomats. In that regard, he wished, on behalf of the Commission, to thank the Governments of the Federal Republic of Germany, Austria, Denmark, Finland, Kuwait, the Netherlands and Sweden for the fellowships they had offered to participants from developing countries, as well as the Government of Norway, which had tripled the amount of its contribution. Those fellowships had made it possible to organize the fifteenth session of the International Law Seminar during the latest session of the Commission, at no cost to the United Nations. In that connexion, he appealed to other Member States to associate themselves with an initiative which would effectively contribute to a better understanding of the work of the Commission and the activities of the United Nations in the field of international law.

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16. With regard to the organization of its future work, the Commission had had several tasks to carry out at its 1979 session. In the first place, it had had to elect three new members to fill the vacancies caused by the resignations of members who had been elected to the International Court of Justice, appoint new members to the posts of Special Rapporteur which had become vacant, and appoint a Special Rapporteur on the status of the diplomatic courier. On the basis of the report of its Planning Group, the Commission had also considered its programme and methods of work. In that connexion, attention should be drawn to certain problems which deserved not only to be noted by the Committee, but also to be considered specifically by Member States, the General Assembly organs concerned, and the Secretariat. The first problem was that raised in paragraph 209 of the report under consideration, in chapter IX entitled "Other decisions and conclusions". According to that paragraph, the Commission felt that the outside commitments of its members, and in particular of its Special Rapporteurs and officers of the Commission, had become a serious impediment to the normal working of the Commission and the continuity of its work. At its latest session, that situation had only been overcome thanks to the efforts and exemplary dedication of the Special Rapporteurs, the members of the Commission and its secretariat. The Commission appealed to Member States and the institutions with which members of the Commission were associated to find a speedy solution to the problem. In the following paragraph of its report, the Commission had confined itself to noting that the level of the honoraria paid to its members had remained the same for the past 20 years. He drew the attention of members of the Committee to that anomaly, emphasizing the great services rendered by the Commission to the United Nations and to the progressive development of contemporary international law since its creation and dwelling on the future of the Commission and the complexity of the work facing it. It was not purely an administrative question since it concerned the policies of Member States and of the United Nations in the field of international law, the specific conditions in which it envisaged continuing its work in the codification and progressive development of international law, and the quality of the experts prepared to assist in that task.

17. In that connexion, he wished to mention the decision taken by the Swiss Federal Council on 9 May 1979 to accord "by analogy" to the members of the Commission, for the duration of its sessions, the privileges and immunities to which the Judges of the International Court of Justice were entitled while present in Switzerland, namely those enjoyed by the heads of mission accredited to the international organizations at Geneva. That decision was the result of the effective and practical action taken by the Legal Counsel of the United Nations to promote a better understanding of the legal status of the Commission at the place of its permanent seat.

18. Turning to chapter II of the report, he observed that it concerned the draft articles on succession of States in respect of matters other than treaties, of which the Commission had completed the first reading as recommended in General Assembly resolution 33/139. As a result of the efficient work of the Special

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Rapporteur and the Drafting Committee, the Commission had been able to review the draft and had appended an addendum containing two articles on succession in respect of State archives. With regard to the review of the first 25 articles, which it had provisionally adopted and submitted to the Sixth Committee, the Commission, on the basis of proposals prepared by the Drafting Committee, had reviewed the text as a whole and sought solutions for the provisions in square brackets. The Commission had also endorsed the idea of bringing the text of the draft into line with those of the 1969 Vienna Convention on the Law of Treaties and the 1978 Vienna Convention on Succession of States in respect of Treaties. Since the basic principles had remained the same, he would confine himself to indicating the most important changes.

19. With regard to general structure, the draft articles on succession of States in respect of matters other than treaties were currently divided not into two, but into three parts, entitled respectively "Introduction", "State property" and "State debts". The order of articles 2 and 3 had been reversed so as to make the article on "Use of terms" follow article 1, entitled "Scope of the present articles", conforming to the model of the two aforementioned Conventions. In reviewing the text as a whole, the Commission had concluded that article 9 of the original text, entitled "General principle of the passing of State property" was unnecessary, since the passing of such property had been dealt with in detail in the new part II with regard to both movable and immovable property for each type of succession of States. That article had therefore been deleted. The Commission had likewise deleted article 11 of the original text, which had been placed in square brackets because it had given rise to reservations to the effect that the debt-claims of a predecessor State should constitute an exception to the general rule concerning the passing of property set forth in former article 9. As a result of the deletion of articles 9 and 11, the provisions of the draft concerning the passing of movable property applied to the passing of debt-claims and the draft consisted of only 23 articles.

20. The title of the draft and the wording of article 1, concerning the scope of the draft, had been retained unchanged, although their meaning was broader than that apparent from the text of the draft itself. Currently the draft concerned only succession to State property and to State debts, since the question of the articles on succession to State archives was still pending. The Commission had preferred to await the observations of Governments and the decisions concerning its future programme of work on the subject. It had, however, decided that in the French version of the title and article 1, the definite article "les" before the word "matières" should be replaced by the indefinite article "des" so as to bring the French version into line with the other versions. The Commission had decided to retain former article X (article 9 in the current draft) concerning the "absence of effect of a succession of States on third party State property", because of its general character and the deletion of former articles 9 and 11. After bringing the wording of article 12 (former article 14) concerning the effects of uniting of States on succession to State property into line with the wording of article 21 (former article 23) concerning the effects of uniting of States on succession to State debts, the Commission had concluded there was no reason to leave new article 12 in square brackets.

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21. With regard to the wording of article 16 (former article 18), which defined "State debt", a deep divergence of views had emerged regarding the scope of that concept. The Commission had therefore placed in square brackets the adjective "international" before the words "financial obligation". It had deleted that adjective in the new version of the article and had decided to divide the original text into two subparagraphs, each concerning one category of financial obligations. The first, subparagraph (a), covered any financial obligation of a State "towards another State, an international organization or any other subject of international law", i.e. any obligation that could be described as an international financial obligation. The second, subparagraph (b), covered "any other financial obligation chargeable to a State", a formula which covered the debts of a State whose creditors were not subjects of international law. Some members of the Commission had felt that subparagraph (b) should not apply to a debt when the creditor was an individual who was a national of the debtor predecessor State whether a natural or a juridical person. Other members, however, had been in favour of that subparagraph, taking into account the importance of the credit currently extended to States from foreign private sources. They had felt that the deletion of that subparagraph might be detrimental to the interests of the international community as a whole and, in particular, to those of the developing countries. The article had finally been adopted, but with reservations, and the Sixth Committee could take a decision on that point, which had not yet been finally settled by the Commission.

22. Concerning the articles on succession in respect of State archives, the Special Rapporteur had submitted a report on that question. After a general debate, which had simply confirmed that the problem was extremely complex, the Commission had decided to formulate two articles: article A, which defined the concept of State archives, and article B, which dealt with the question of succession to State archives in the case of newly independent States. Those two provisions had been placed in an addendum to the draft articles and the Commission had left aside the four other articles proposed by the Special Rapporteur, the text of which was reproduced in foot-note 409 to its report. The Commission hoped that Member States would take a decision as to whether the study of that point should be pursued and made the subject of a separate part of the draft or whether draft articles A and B should simply be included in the part on State property. With regard to the wording of those draft articles, the Commission was awaiting with particular interest the views of Governments on the definition of the concept of State archives contained in article A. It was difficult to define that concept in a completely satisfactory manner, given the diversity of the national practice of States, the different solutions that existed at the international level and the wide divergence of principle at the political and doctrinal levels. Generally speaking, the Commission knew that its draft articles on succession of States in respect of matters other than treaties left unsolved a number of substantive and drafting problems, to which it nevertheless hoped to find definitive solutions during its second reading of the text, taking into account the current debate and the observations that States were to submit to the Secretary-General.

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23. Chapter III of the report contained the results of the work on responsibility of States for internationally wrongful acts. The Commission, which was nearing the end of its first reading of the set of articles constituting part I of that vast topic, had made decisive progress at its 1979 session in unusual circumstances. It had considered the reports submitted by the Special Rapporteur, Mr. Ago. After his election to the International Court of Justice he had been obliged to leave the Commission, but at the latter's request and as a result of the understanding shown by the Court, he had been able to take part in the Commission's work in a personal and individual capacity. The Court, as the principal judicial organ of the United Nations, had thus once again demonstrated its support for the Commission's work on the codification and progressive development of international law.

24. At its latest session, the Commission had completed its consideration of chapter IV of the draft, concerning the implication of a State in the internationally wrongful act of another State. It had adopted article 28 on responsibility of a State for an internationally wrongful act of another State, after a long discussion of that extremely delicate question. The article, which consisted of three paragraphs, dealt with the implication of a State in the internationally wrongful act of another State in the very specific case where that implication resulted from the power of direction or control exerted by the first State in the field of activity in which the wrongful act had been committed by the second State, or from the coercion exerted by the first State to secure the commission of the act in question by the second State (paras. 1 and 2). The case involved was therefore that of an internationally wrongful act attributable as such to one State but whose commission entailed the implication of another State, to which the international responsibility for the act committed by another entity was attributed. The Commission had nevertheless concluded that the responsibility of the second State should not completely absolve the first State, which had committed the internationally wrongful act and whose responsibility was maintained in paragraph 3 by virtue of the general rule of responsibility. The Commission had refrained from using the term "indirect responsibility", which it considered too vague since it could cover very diverse situations. By referring only to the international responsibility of one State for the internationally wrongful act of another State, the Commission had intended to limit that rule strictly to the situation envisaged in article 28.

25. The purpose of chapter V, on circumstances precluding wrongfulness, was to define the cases in which, despite the apparent existence of an internationally wrongful act committed by a State, that existence could not be inferred owing to the presence of circumstances that in fact constituted exceptions. The circumstances which the Commission considered to have that effect were consent, countermeasures in respect of an internationally wrongful act, force majeure and fortuitous event, distress, state of emergency and self-defence. The Commission had adopted articles 29 to 32 concerning the first five circumstances. It had sought to define the characteristics of each of those circumstances, to analyse State practice and international judicial practice and to place the operation of those circumstances in the context of international law and, more particularly, of the question of responsibility. Many questions had had to be clarified and those

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articles should be studied very carefully. In article 29, the Commission had sought to define the concept of "valid consent" and had not hesitated to acknowledge that the general rule that consent validly given precluded wrongfulness in a given case could not be applied with regard to an obligation arising from a peremptory norm of general international law (jus cogens). With regard to article 30 concerning countermeasures in respect of an internationally wrongful act, the Commission had sought to clarify, firstly, the legitimacy of the countermeasures and, secondly, their nature and their relation to the traditional reactions of States in dealing with international offences. The members of the Commission had had to settle a number of questions of terminology and had ended by agreeing to use the word "countermeasure". In articles 31 and 32, the Commission had defined the concepts of force majeure and fortuitous event as well as that of distress, and it had made a decision concerning the forms assumed by such circumstances, the conditions governing their existence and the consequences flowing from them which precluded liability. The Commission would continue its study of those questions and would take up the question of a state of emergency and the various aspects of the application of the articles concerning circumstances which precluded wrongfulness, e.g. compensation for damage and the notion of self-defence. Questions relating to extenuating or aggravating circumstances would be taken up during consideration of the degree of liability, i.e. in connexion with part II of the draft articles, which would be devoted to the content, forms and degrees of liability.

26. The Commission had also adopted draft articles 39-60 on treaties concluded between States and international organizations or between two or more international organizations, which were based on many different provisions of the 1969 Vienna Convention on the Law of Treaties. Articles 45 and 46 had posed a number of substantive problems relating to the limited international capacity of international organizations in comparison to that of States. The Commission had tried to adapt the wording of the Vienna Convention to the particular case of consent by organizations but had been unable to gain the agreement of all its members. The same question of adapting the Vienna Convention had also arisen in connexion with other articles drafted in 1979, such as article 52, which, in the opinion of some, did not adequately reflect existing realities.

27. Since it had virtually completed its work on the topic, the Commission had decided, in accordance with articles 16 and 21 of its statute and with General Assembly resolution 2501 (XXIV), to transmit the articles adopted so far, firstly, to Governments for observations and comments and, secondly, to international organizations within the United Nations system and governmental organizations which had been invited to send observers to United Nations codification conferences. The Commission hoped at its next session to complete the first reading of the draft as a whole and to request Governments and international organizations to send it their observations and comments on the matter in time for its 1981 session.

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28. In its discussion of the question of the law of the non-navigational uses of international watercourses, the Commission had had before it a first report by the Special Rapporteur, which had contained a systematic and very detailed analysis of the hydrological, technical, economic and legal aspects of the question as well as of specific proposals for articles, and it had been confronted with numerous substantive problems which it had not been able to clarify. Serious differences of opinion had developed with regard to the approach and methods to be adopted. The over-all framework and basic premises as well as the purposes of the study had not yet been decided; it would be necessary to clarify the notion of an "international drainage basin", the content of the traditional concept of international rivers and lakes and the nature of the rules that would have to be formulated. The Special Rapporteur had suggested four types of approach for that purpose. All those questions called for special attention by States so that their consideration would contribute effectively, in the not too distant future, to the development of international law in that very delicate area of co-operation among States.

29. The Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier had, after two years of study, proposed that draft articles should be prepared. The Commission hoped that the Special Rapporteur for the topic would be able fairly soon to present draft articles which could be submitted to the Sixth Committee.

30. The Commission had also asked the Special Rapporteur on the topic of the jurisdictional immunities of States and their property to clarify, in the first instance, the general principles and the content of the basic rules governing the subject and to endeavour with the utmost caution to define the limits of immunities and determine the exceptions to them. Emphasis had also been placed on the need for detailed analysis of the practice and legislation of all States, particularly the socialist countries and the developing countries. The Commission, which had sent a questionnaire to Member States, felt that consideration of the topic should take the practice of States at its point of departure.

31. Chapter IX of the report was concerned with the Commission's programme and methods of work. The Commission planned to continue its consideration of the topics dealt with in 1979 and also of those which it had not been able to take up, namely international liability for injurious consequences arising out of acts not prohibited by international law and the second part of the topic of relations between States and international organizations.

32. Mr. AL-QAYSI (Iraq) said that the General Assembly's annual consideration of the Commission's report made it possible for every State to participate in the elaboration of instruments governing international relations and was therefore a very important stage in the process of the codification and progressive development of international law. The thirty-first session of the Commission, which had been unusually productive, had brought out the need to adapt certain long-standing concepts of international law to the changing nature of the modern world.

(Mr. Al-Qaysi, Iraq)

33. With regard to the question of succession of States in respect of matters other than treaties, his delegation was pleased that the Commission had been able to complete the first reading of its draft articles and had decided to transmit them to the Governments of Member States for their observations. It was also glad that the Commission had decided to present the conclusions resulting from its work in the form of draft articles which could provide the basis for a convention to be adopted by a conference of plenipotentiaries. As the Commission had pointed out, now that it had been decided to limit the content of the draft articles to succession of States in respect of State property and State debts, the present title of the draft no longer accurately reflected the scope of the articles. However, the other titles proposed in paragraph 49 of the report were not completely satisfactory. In the title "Succession of States in respect of certain matters other than treaties", the word "certain" introduced a degree of ambiguity and gave the impression that the criterion of the succession of States in matters other than State property, State debts and State archives differed from that adopted by the Commission in 1968, namely the matter of succession, i.e. the content of the succession and not its procedural aspects, which was certainly not the Commission's intention. His delegation preferred the title "Succession of States in respect of State property, State debts and State archives", which was more precise even though it was rather inelegant since the word "State" appeared in it four times.

34. The scope of the draft articles had quite properly been limited to the "effects" of succession of States, thus making it clear that the draft governed not succession of States as such but rather the rights and obligations deriving from it. Although it was desirable that the draft articles and the 1978 Vienna Convention on Succession of States in Respect of Treaties should, in so far as possible, contain identical definitions, as was the case with the definition of "succession of States" contained in draft article 2, he was pleased that the Commission had taken account of the special characteristics of succession of States in respect of matters other than treaties. Similarly, he welcomed the inclusion in draft article 3 of a provision identical to that of article 6 of the Vienna Convention, which limited the scope of the draft to situations brought about in conformity with international law. He wondered, however, why it was necessary to define in two other draft articles, 4 and 15, the scope of the articles in part II concerning State property and of those in part III concerning State debts. That unquestionably resulted from the continuing uncertainty with regard to the title of the draft articles. If the Commission adopted a more precise title, articles 4 and 15 could be deleted.

35. With regard to the definition of State property in article 5, his delegation endorsed the principle that, up to the time of succession of States, it was the internal law of the predecessor State that governed the latter's property and determined its status as State property. It should be noted in that connexion that, if some international courts had not taken that principle into consideration, the reason might be the existence of particular provisions which limited their ability to judge the matter. With regard to article 7, his delegation felt that the date of the passing of State property varied from one type of succession to another, but it could agree to the text of that article if the rule set out therein was purely supplementary in nature. The Commission quite properly emphasized in its commentary

(Mr. Al-Qaysi, Iraq)

on articles 5 and 9 that the draft articles related only to succession of States as such and therefore did not prejudge the right of the successor State, as a sovereign State, to alter, within the limits of general international law, the status of the predecessor State's property - a decision which no longer came within the scope of succession of States.

36. The method adopted by the Commission, which was to deal separately with the various types of succession, was completely appropriate because of the differences among them in so far as related to the political conditions governing each case and the limitations which the mobility of certain types of property imposed on the effort to find a solution.

37. With regard to succession of States in respect of State debts, his delegation, which was aware of the volume and importance of the credit currently extended to States from foreign private sources, endorsed article 16 (b), under which State debt included "any other financial obligation chargable to a State". The deletion of that paragraph would be damaging to the interests of the entire international community and, in particular, to those of the developing countries. His delegation also endorsed the reasoning adopted by the Commission in drafting article 18, which was based on the idea that the problem of succession of States in respect of State debts was more akin to that of succession in respect of treaties than to that of succession in respect of State property.

38. The delegation of Iraq attached great importance to the question of the protection and restitution of cultural and historical archives and works of art. It therefore welcomed the decision taken by the International Law Commission to include provisions on State archives in the draft articles. The texts of articles A and B were, on the whole, acceptable since they suitably reconciled the interests of predecessor States and successor States and the rights of their respective peoples.

39. With regard to State responsibility, the Commission was seeking to lay down general rules governing responsibility and not to define the specific rules whose breach entailed responsibility. Its purpose was to formulate the theory of State responsibility by defining the sources, conditions, modalities and effects of such responsibility. The Commission could therefore be considered to have acted wisely in dealing only with State responsibility for internationally wrongful acts, leaving aside the question of international liability for injurious consequences arising out of acts not prohibited by international law.

40. In his delegation's opinion, the draft articles on State responsibility and the accompanying commentaries constituted an important contribution to international law. In drafting the articles the Commission had mostly followed the inductive method, arriving at a general rule on the basis of empirically demonstrated facts. However, it had also stated that the subject of international responsibility was one in which the development of the law could play a particularly important role, particularly in the matter of distinguishing between the various categories of international offences and as regards the content and degrees of responsibility. The Commission should therefore make sure, as it had done in the case of draft article 19, that it assigned due importance to progressive development.

(Mr. Al-Qaysi, Iraq)

41. With regard to article 28, the purpose of which was to determine the conditions in which responsibility for an internationally wrongful act could be attributed to a State other than the perpetrator of the act, his delegation fully subscribed to the reasoning which had led the Commission to consider that that provision belonged in the draft articles on State responsibility. It had done well to point out, in that connexion, that military occupation, in itself, even if it extended to the entire territory, did not bring about any change in sovereignty over the occupied territory and did not affect the international personality of the State subjected to occupation. The Commission was therefore right in saying that a State could be held responsible under international law for an act committed by another State by reason of the subjection of that last-mentioned State to the direction or control by the first-mentioned State. Such an approach must be taken to the completely unjustified pseudo-legal arguments habitually advanced by occupying Powers, such as those in the region of the Middle East.

42. As for the question of treaties concluded between States and international organizations or between two or more international organizations, the Commission had almost completed its study since it now only had to consider some articles in part V, concerning invalidity termination and suspension of the operation of treaties, and eight articles in parts VI and VII. The method followed by the Commission in transferring to the draft, wherever possible, the relevant provisions of the 1969 Vienna Convention on the Law of Treaties, with the necessary changes, had clearly contributed to the progress made. His delegation approved of the Commission's decision to submit the draft articles to Governments for their observations and comments before the draft as a whole was adopted on first reading.

43. Iraq was following with particular interest the work being done by the International Law Commission on the law of the non-navigational uses of international watercourses. The Government of Iraq had not replied to the questionnaire sent out by the Commission because it had considered it advisable, in view of its interests in that area, to wait and see how the Commission's work proceeded. Now that it had more information on the subject it would certainly answer the questionnaire in the near future. The many problems of international law posed by the use of international watercourses were of great practical importance. The topic was different in nature from the kind of topic normally discussed by the Commission since it involved a physical element which, because of its peculiar properties, was unique of its kind. Since account had to be taken of physical data in order to formulate legal rules on the subject, the International Law Commission should have no hesitation in seeking scientific and technical advice.

44. His delegation was aware of the difficulties of interpretation posed by the term "international watercourses" and it endorsed the view that there was no need, for the time being, to define the term. The Commission should give priority to the formulation of general rules for the solution of the problems posed by the particular uses of fresh water. In that connexion, the Special Rapporteur's proposal to include an optional clause in the draft articles could provide a solution to the problem of definition. However, particular care would have to be taken to strike a balance, in the draft articles, between general rules and rules applicable to particular kinds of watercourses uses so that riparian States entering upon negotiations could be given uniform guidelines.

(Mr. Al-Qaysi, Iraq)

45. His delegation would not object if the Commission took, as the basis for its study on fresh water uses, the outline in question D of the 1974 questionnaire, provided that it also comprised flood control, erosion problems and sedimentation. As was stated in paragraph 125 of the report, what was desirable was a set of norms and rules applicable to all kinds of uses of international watercourses rather than rules formulated strictly on the basis of an examination of the individual uses of such watercourses. It was, in fact, only logical to start with the formulation of general rules from which specific rules applicable to a particular use could subsequently be derived.

46. Inclusion of the problem of pollution would only broaden the scope of the Commission's work and unnecessarily complicate the formulation of rules on the subject. The rules dealing with a phenomenon which affected the entire ecosystem of a watercourse would have to be applicable throughout a river system.

47. With regard to the formulation of rules on the subject, his delegation felt that account would have to be taken of the general rules of customary law already in existence. It was a fact that any riparian State, whether upstream or downstream, had an obligation to take due account of the interests of the other State. It was therefore essential, when dealing with the preservation and use of international watercourses, to reconcile the various interests in an equitable manner. In that field it was not possible to carry the principle of national sovereignty or the principle of the right of peoples over their natural resources to extremes, since water was a shared natural resource. Indeed, without water, no life was possible. His delegation was glad to see that that view was widely supported within the Commission. The views expressed in paragraph 133 of the Commission's report did not seem to reflect the general feeling.

48. As for the methodology to be followed in formulating legal rules, his delegation was in favour of drafting a framework convention supplemented by user agreements that would serve as guidelines. As for the relationship between the framework convention and the user agreements it supported the views set forth in paragraph 138 of the report but considered that the question was not a priority issue. As for the notion of "user States" it might be useful to make a distinction between immediate use and advantages derived from such use. Lastly, with regard to the collection and exchange of data with respect to international watercourses, his delegation fully endorsed the views expressed in paragraph 143 of the report.

49. His delegation welcomed the work done by the Commission on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. In a field where the application of existing conventions presented daily difficulties, the work should make it possible to remedy some omissions in the law and to replace unsuitable rules. Accordingly his delegation endorsed the conclusions and recommendations of the Commission, appearing in paragraph 163 of the report. The Commission's consideration of the subject of jurisdictional immunities of States and their property had resulted in the emergence of clear and precise guidelines for further work.

(Mr. Al-Qaysi, Iraq)

50. With regard to co-operation between the Commission and other bodies, he pointed out that, if the rules drafted by the Commission were to be acceptable to the international community as a whole, the Commission must keep abreast of developments in the various legal systems. Moreover, the Commission should endeavour to define a boundary in international law between questions of regional interest and questions that were universal in scope. An exchange of views between the Commission and regional bodies should show what advantages could be derived from a regional approach compatible with the fundamental principles of the international community. Lastly he welcomed the fact that the International Law Seminar was now a well established institution.

The meeting rose at 1 p.m.