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THIRTY-FOURTH SESSION
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SIXTH COMMITTEE
40th meeting
held on
Wednesday, 14 November 1979
at 3 p.m.
New York

SUMMARY RECORD OF THE 40th MEETING

Chairman: Mr. ESQUEA GUERRERO (Dominican Republic)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 114: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/34/33, A/34/409, A/34/357, A/34/389 and Corr.1; A/C.6/34/L.8 and L.10)

1. Mr. MARTÍNEZ GARIAZO (Uruguay), noting that the Special Committee had fulfilled its mandate as laid down in operative paragraph 3 of General Assembly resolution 33/94, said that the next stage would be for the Special Committee to suggest specific solutions based on the content of, and general support for, the proposals submitted to it by Member States. The three topics of the Special Committee's mandate were of the utmost importance, and the need to find solutions to the problems involved therefore called for a determined effort on the part of all Member States. His country, which was a founder Member of the United Nations and had always stood for the principles of the Charter, would join in any effort to strengthen the Organization.

2. The question of the peaceful settlement of disputes had been a matter of constant concern to his country, which had long upheld the cause of peace. So strongly was it persuaded of the need for regulation in that sphere that a provision had been included in article 6 of the Uruguayan National Constitution of 1934 to the effect that any disputes arising between the parties to international treaties entered into by Uruguay should be decided by arbitration or other peaceful means. That provision, which had been retained in subsequent Constitutions, including the one currently in force, imposed an obligation on the State. Uruguay had also been active in drawing up, and had been one of the first countries to ratify, the 1948 Bogota Pact. That pact, which was of regional application, was extremely important and could provide a useful source of material for the Special Committee in its work. Provision for the peaceful settlement of disputes had likewise been included in bilateral treaties such as the Treaty on the Delimitation of the River Uruguay and the Treaty on the River De la Plata and its Maritime Outlet, concluded between Uruguay and Argentina. A country with that background could not but welcome the efforts being made to promote the settlement of disputes by peaceful means.

3. His delegation agreed on the need to rationalize existing United Nations procedures but noted that the proposals submitted to the Special Committee were concerned not so much with ways and means of achieving that objective as with ideas for improving the Organization; therein lay the practical difficulty. There were certain deficiencies in the functional organization of the United Nations, for instance, growing bureaucratization and overspecialization, which prevented full use from being made of its work-force potential. In principle, therefore, his delegation viewed with interest the proposals to reduce the number of fixed-term staff and to concentrate on a career service structure. It agreed on the need to develop staff appointment procedures with a view to ensuring a proper level of competence within the Secretariat and considered that there should be a more equitable geographical distribution of senior posts. Among other important proposals submitted were the proposals that the number of items, including supplementary items, considered by the General Assembly at each session should be reduced, that the same items or the same aspects of a given item should not be considered by more than one Committee, and that the number of reports prepared by the Secretariat should be reduced.

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(Mr. Martinez Gariazo, Uruguay)

4. It was clear from the Special Committee's report and from the statements made during the debate that there was a general awareness of the need to establish new machinery with a view to strengthening the role of the United Nations. In that connexion, the question arose whether the means available to the Organization sufficed to enable it to meet its basic objectives, whether its deficiencies were attributable to those who directed it, and whether it was essential either to revise the Charter so as to adapt it to a changed situation or to supplement it by treaties, declarations and regulations. For his country it was an article of faith that the rule of law and the strengthening of the international legal order would help to surmount the obstacles and meet the challenge. At the same time, it should not be thought that merely by formulating normative rules would the panacea for the ills that had to be cared be found. An eminent contemporary jurist had been the first to remark on the conceptual difference between the validity of a legal norm and the effectiveness of that norm. A rule was valid if the procedures required under the legal order had been observed when it was laid down, but it would be effective only if it was accepted by all or most of those for whom it had been framed. In other words, the normative solutions which were being prepared with a view to strengthening the United Nations would have the desired result to the extent that each and every Member State was convinced that they were binding per se and therefore had the political will to abide by them.

5. Mr. MICKIEWICZ (Poland) said that his Government had consistently supported the principles of the United Nations Charter and the activities of the Organization and had always believed in the need to enhance the latter's role and prestige. In its reply to the Secretary-General's questionnaire on the measures undertaken to implement the Declaration on the Strengthening of International Security (A/34/193), his Government had stressed the need for strict respect for the rules of international relations as set forth in the United Nations Charter and in other basic documents of the Organization and had added that any breach of the principles of territorial integrity, inviolability of frontiers and political independence of States was a threat to both regional and international peace and security.

6. His delegation considered that the two elements of the item under consideration - the United Nations Charter, on the one hand, and the strengthening of the Organization's role, on the other - should be treated together rather than separately since, as it had repeatedly stressed, the way to strengthen the role of the United Nations lay not in revision of the Charter but in strict observance of its provisions and fuller use of the possibilities it afforded. If the Organization had been unable to solve all the international disputes that had occurred, it was not because of any inadequacies in the Charter or in the machinery created under it but rather because of a lack of willingness on the part of certain countries to observe the principles of the Charter and of other basic instruments concerned with peaceful international co-operation. That, indeed, was borne out by the history of the past 35 years.

7. The three parts of the Special Committee's report differed not only as to subject but also as to approach. While the first part, relating to the peaceful settlement of disputes, made it quite clear which proposals had and which did not have a chance of receiving general support, the second part, which was concerned

(Mr. Mickiewicz, Poland)

with the rationalization of existing United Nations procedures, had been prepared in a more perfunctory manner as there had been neither a selection nor a full analysis of the proposals submitted. The third part of the report, on the maintenance of international peace and security, merely reproduced various working papers submitted by delegations.

8. Although nine out of the 21 proposals submitted to the Special Committee by Member States on the peaceful settlement of disputes had a chance of receiving general support, the remaining 12 proposals, in particular those relating to the establishment of new machinery for the settlement of disputes and the vesting of additional functions of mediation, conciliation and fact-finding in existing organs, had not received sufficient support. It was therefore only reasonable to ask whether it would not be better, instead of extending the Special Committee's mandate so that it could consider the latter proposals further, to abide by the terms of its existing mandate as laid down in operative paragraph 2 (b) of General Assembly resolution 33/94. In that connexion, it should be noted that international law and practice had developed machinery for the settlement of disputes independently of the United Nations system. Special mention should be made of the 1899 Hague Conference and the 1907 Hague Conference, at the latter of which the Convention for the Pacific Settlement of International Disputes had been adopted, as well as of the Revised General Act for the Pacific Settlement of International Disputes. Clauses governing the settlement of disputes had also been included in many other multilateral and bilateral agreements. There was therefore no lack of machinery, although the most effective methods remained either direct negotiation between the parties concerned or such means as were freely chosen by them. Recourse to any outside elements or to compulsory systems for the settlement of disputes, however, often led only to controversy, as was borne out by the conclusions of the symposium on the judicial settlement of international disputes held at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg in 1972.

9. A number of proposals submitted on the rationalization of existing United Nations procedures merited consideration and possibly implementation, for example, the proposals designed to curb any proliferation of the subsidiary organs of the United Nations and to avoid duplication of its work. Measures for improving meetings and rationalizing certain rules of procedure would also be useful, provided that they were not carried out at the cost of quality of work or freedom of expression. His delegation fully agreed that the principle of consensus should be applied, particularly in the Special Committee and in ad hoc committees, and that wider use should be made of the Sixth Committee to examine the legal implications of matters under consideration by other United Nations organs and to review the preparation of international agreements. On the other hand, it would have reservations about any rigid predetermination of the level of delegates, minimal periods of stay for Ministers of Foreign Affairs during General Assembly sessions, the creation of separate organs to monitor the implementation of resolutions, the allocation to the First Committee of disarmament matters only and any undue limitation on the length of statements.

10. Several suggestions made in regard to international peace and security were misguided, in his delegation's view, and would not receive general support. That

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applied to the suggestions that the principle of unanimity among the permanent members of the Security Council should be curtailed in matters pertaining to peace and security and to the admission of new Members, that the competence of the General Assembly should be modified at the expense of the Security Council, that the Security Council should establish a new permanent organ of inquiry and mediation, that the United Nations should establish its own armed forces and create a peace-keeping reserve composed of contingents of national troops, and that a number of important articles in the Charter should be revised. The adoption of those suggestions would be tantamount to a complete revision of the existing United Nations system of collective security, which was well tried and tested, and rather than strengthening peace and stability would introduce an element of insecurity.

11. Lastly, his delegation would give favourable consideration to such extension of the Special Committee's work as would be in keeping with its existing mandate as laid down in General Assembly resolution 33/94 or in a new resolution along the same lines.

12. Mr. VE (Viet Nam) said that, while it was clear from the proposals submitted to the Special Committee that virtually all Member States were agreed on the need to strengthen the role of the United Nations, a closer examination of those proposals revealed a wide gap in the positions of States on the means to be adopted for ensuring that the United Nations achieved its objectives and better served the international community. In his delegation's view, a solution to the problem lay not in any revision of the Charter but rather in the fight against imperialism, colonialism and racism, which were in violation of the basic principles of the Charter and of the relevant General Assembly resolutions. The experience of those who had fought for their national freedom against imperialist, colonialist and racist aggression had shown all too clearly that the failure to maintain international peace and security resulted from the violation by international reactionary forces of the purposes and principles of the United Nations. The United Nations had been created with the objective of eliminating war, acts of aggression and threats to international peace and security. It was founded on the sovereign equality of States whose friendly relations were based on respect for the principle of the equality of rights of peoples, respect for the right of all peoples to self-determination and the obligation to refrain from the threat or use of force. Those fundamental principles of the Charter were still as valid as they had been over 30 years before, and, had they been properly respected by all Member States, the role and effectiveness of the Organization would certainly have been strengthened.

13. The Charter embodied the fundamental principles of contemporary international law which governed international relations between States having different political and economic structures. Those principles were in keeping with the aspirations of the forces of peace, national independence, democracy and social progress and served to restrain the selfish interests of the imperialist, colonialist and racist forces which were violating the Charter and disregarding the resolutions of the Organization. That was the reason for the ineffectiveness of the United Nations. At the present stage of international relations, the reactionary forces were not able to violate the Charter openly; they therefore did

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(Mr. Ve, Viet Nam)

so more or less discreetly in order to conceal their real intent and mislead public opinion, seeking loopholes in the Charter and taking refuge behind principles only to violate them. The Special Committee should expose those machinations and deceitful practices and propose effective ways and means of counteracting them.

14. In short, the most effective way of strengthening the role of the United Nations so that it could achieve its objectives in regard to the maintenance of international peace and security would be to ensure that the principles of the Charter were respected, that the decisions and resolutions of the General Assembly were implemented by all Member States and that Member States avoided doing anything that might undermine the effectiveness, authority and credibility of the Organization.

15. Mr. KOROMA (Sierra Leone) said that the Special Committee had generated a discussion which had been positive, with the exception of one or two statements which had contained extremely negative elements. The overwhelming majority of members of the Special Committee had expressed their unswerving faith in the purposes and principles of the United Nations, as set forth in the Charter. The world had changed a great deal since 1945. The Special Committee's efforts to reflect those changes in the Charter and to strengthen the role of the Organization and democratize it should not be interpreted as attempts to alter the balance of power in the world. However, if the Security Council was unable to act in cases where there had been breaches of the peace and acts of aggression and if it failed to apply follow-up measures when its decisions remained unimplemented or were openly defied, that led to a diminution of the authority of the Organization and made it absolutely necessary for members to examine the causes of such situations.

16. Draft resolution A/C.6/34/L.10 did not adequately reflect the views of the overwhelming majority of members of the Sixth Committee. If the mandate of the Special Committee was to be renewed, it must be outlined very precisely. If the item on the peaceful settlement of disputes was to be dealt with in another forum, if the question of the non-use of force in international relations was to be given to a different committee and if the question of rationalization of existing procedures was to be regarded as not germane to the work of the Special Committee, then the latter would have virtually nothing to do. The draft resolution in question would only add insult to injury because of the imprecise terms in which it was drafted. If, on the other hand, the Special Committee was given a well-defined, precise mandate, it would be able to achieve positive results at its next session. In due course, his delegation would make known to the sponsors of draft resolution A/C.6/34/L.10 its reservations with regard to certain paragraphs.

17. Mr. ANOMA (Ivory Coast) said he noted that once again the name of his delegation did not appear in the list of sponsors of draft resolution A/C.6/34/L.10. It was the third time that he had had to mention the matter. His original request for inclusion in the list of sponsors had implied a clear political commitment and an endorsement of all the terms of the draft resolution.

18. Mr. ROMANOV (Secretary of the Committee) noted that at the previous meeting the representative of the Ivory Coast had made a statement to the effect that his

(Mr. Romanov)

delegation wished to join the list of sponsors of draft resolution A/C.6/34/L.10. In accordance with that statement, the Journal of the United Nations dated Wednesday, 14 November 1979 (No. 79/221) reported, in the summary of the 39th meeting of the Sixth Committee, that the Ivory Coast and Brazil had joined the co-sponsors of the draft resolution. He wished to assure members that, when the Secretariat had received the original text of the draft resolution for reproduction as a document, the name of the Ivory Coast had not been included in the list of sponsors. That was the only reason why that country had not appeared in the original text of the document.

19. Mr. ANOMA (Ivory Coast) said that he did not wish to engage in a polemic with the Secretariat. He merely wished to point out that he had asked from the outset for the name of the Ivory Coast to be included in the list of sponsors of the draft resolution, even before a second listing of the names of certain sponsors had been prepared.

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

20. Mr. TABIBI (Afghanistan) expressed approval at the manner in which the International Law Commission had reviewed the 25 articles on succession of States in respect of matters other than treaties which it had provisionally adopted from 1973 to 1978 and which now appeared as articles 1-23. The Commission had been wise to delete article 9, entitled "General principle of the passing of State property", and article 11, entitled "Passing of debts owed to the State". His delegation agreed with the reasons given by the Commission for that deletion in paragraphs 43 and 44 of its report (A/34/10). It also agreed with the Commission that the form to be given to the codification of succession of States in respect of matters other than treaties could not be determined until the study of the subject had been completed, and it endorsed the Commission's decision to set out its study for the present in the form of draft articles. His delegation supported the Commission's decision to maintain the correspondence between the structural division of the present draft and that of the Vienna Conventions on Succession of States in Respect of Treaties and on the Law of Treaties. By completing the first reading of the draft articles on succession of States in respect of State property and State debts, the Commission had performed a very important service in that complex area of law, particularly as regarded the rights of the successor State to State property passing to it, the obligations of the successor State in respect of State debts passing to it, the transfer of part of the territory of a State, newly independent State, uniting of States, separation of part or parts of the territory of a State and dissolution of a State. The Special Rapporteur, Ambassador Bedjaoui of Algeria, had very ably adapted the legal theories to the realities of present-day international life, taking a lesson from the history of Africa and such newly independent States as Algeria itself. His delegation also wished to commend the Secretariat for its outstanding work on the very useful volume of the United Nations Legislative Series entitled Materials on succession of States in respect of matters other than treaties (ST/LEG/SER.B/17).

21. His delegation wished to congratulate Judge Ago, the Special Rapporteur on the topic of State responsibility, the subject covered in chapter III of the

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(Mr. Tabibi, Afghanistan)

report, and also to express its appreciation to the International Court of Justice for permitting Judge Ago to help the Commission during its deliberations on the topic. Nevertheless, the Commission's progress on that subject had been very slow, and it was to be hoped that with the appointment of the new Special Rapporteur, Professor Riphagen of the Netherlands, the Commission would be able to speed up its work on that important and vital chapter of law. His delegation recognized the importance of the responsibility of States for internationally wrongful acts as well as the importance of the obligation to make good any injurious consequences arising out of certain activities not prohibited by international law. Although he understood that the latter category of question (risks) could not be treated jointly with the question of the responsibility of States for internationally wrongful acts, he hoped that the decision to treat it separately would in no way mean that the Commission would ignore the topic of international liability for injurious consequences arising out of certain activities not prohibited by international law but rather that its study would be undertaken separately and at an opportune time. The rules formulated by the Commission to date governed all the new legal relationships to which an internationally wrongful act on the part of a State might give rise in different cases in general, not simply in certain particular cases. His delegation understood, as did the Commission, that the international responsibility of a State was made up of a set of legal situations which resulted from the breach of any international obligation.

22. He noted with satisfaction the work done by the Commission on the basis of the eighth report of the Special Rapporteur (A/CN.4/318 and the addenda thereto) on State responsibility for the internationally wrongful act of another State and the various circumstances which might have the effect of precluding the wrongfulness of an act of the State not in conformity with what was required of it by an international obligation. He hoped that at its next session the Commission would finish the outstanding questions of state of emergency and self-defence in order to complete the first reading of part 1 of the draft articles on State responsibility for internationally wrongful acts and take up part 2 dealing with the content, forms and degrees of international responsibility. He noted with satisfaction that the Commission had taken into account the views expressed in the Sixth Committee at the previous session to the effect that the Commission should complete its work on part 1 of the draft on State responsibility and complete its first reading and even perhaps a second reading during the mandate of the present term of its members. His delegation agreed with the Commission that international responsibility was one of the topics in which development of the law could play a particularly important part, especially as regarded the distinction between different categories of international offences and the content and degrees of responsibility. It also agreed that the roles to be assigned, respectively, to progressive development and to the codification of already accepted principles could not be planned in advance and that they would depend on the specific solutions adopted for the various problems. In concluding his comment on that section of the report, he wished to draw attention to a very useful and valuable document prepared by the staff of the Codification Division of the United Nations Office of Legal Affairs relating to State practice, international jurisprudence and doctrine relating to "force majeure" and "fortuitous event" as circumstances precluding wrongfulness (A/CN.4/315).

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23. His delegation was satisfied with the progress of the work done by the Commission and the Special Rapporteur, Professor Paul Reuter, on the question of treaties concluded between States and international organizations or between two or more international organizations. In following the sequence of the Vienna Convention on the Law of Treaties, the Commission had made it easier to follow the logic of the rules, with some differentiation between States and international organizations in some areas. The Commission and the Special Rapporteur had dealt skilfully with some points on which particular problems had arisen. In view of the length of the draft articles adopted to date, it would be useful to submit them to Governments and international organizations for observations and comments, which would be of great value to the Commission when it undertook the second reading of the draft articles. When completed, the draft articles would enhance relations between organizations as well as between States and organizations. The constituent instruments of international organizations and their decisions obviously reflected the collective opinions of sovereign States. The importance of international organizations stemmed mainly from the fact that they derived their power from the will of sovereign States which were members of those organizations and parties to their constituent instruments. Even though the topic parallelled the Vienna Convention on the Law of Treaties, the Commission had had to deal with the important substantive question of the capacity of international organizations so that there had not been unanimity in the Commission. Nevertheless, his delegation commended the Commission for the speed with which it had accomplished its work on the topic.

24. In the view of his delegation, the most important part of the report was chapter V, dealing with the law of the non-navigational uses of international water courses, which concerned all nations, particularly those of Asia, Africa and Latin America. His delegation agreed with the Special Rapporteur and the Commission that the multiple international legal problems of international water courses were of the utmost interest to mankind. The upsurge in population and the needs arising from industrialization made the question of codification of the law in that field an important task, although one to be undertaken with great care and without undue haste. Recently, private institutions and various intergovernmental organizations, including the United Nations and its specialized agencies, had paid considerable attention to the question. Although the topic had recently been under consideration by many learned associations and organizations and was treated under various regional conventions and treaties, it must be stressed that in each region it had been dealt with according to regional and geographical needs and the approach had been different in each case. The principles of international law were evidently not clear and universal on the subject. Many authors had rightly concluded that there were no generally recognized rules of international law concerning the economic uses of international rivers. No decisions directly touching on the question of the diversion of international water courses had been delivered by any international tribunal. The Permanent Court of International Justice, in delivering its judgement on the diversion of water from the Meuse, the only case brought before it concerning the use of international waters, had

(Mr. Tabibi, Afghanistan)

restricted itself to the provisions of the particular treaty in question and had refused to consider the customary rules of international law concerning international waters, as had been suggested by the parties.

25. His delegation felt that law in the field of non-navigable rivers had not been fully developed. The General Assembly and the International Law Commission should be very cautious in formulating rules on that subject, because each river had its own historical, social, geographical and hydrological peculiarities and views on the non-navigable use of international rivers had been subject to much change. Nations must negotiate to find solutions to the particular problems related to international rivers, because each river basin was unique and required different treatment. If an international river basin was to be regarded as a single entity jointly owned by the riparian States concerned, those States had a primary duty to consult each other. Although a duty to enter into genuine negotiations in the absence of legal rules to govern the subject-matter of the negotiations was somewhat problematical, satisfactory results had sometimes been achieved despite the fact that the parties declared their intention not to explore the legal merits of their conflicting claims. The field of international watercourses and non-navigational rivers was very complex, since the law was closely linked with questions of history, geography, security, politics, technology and, above all, the needs of States for fresh water. Much was still not known about return flow, ground water and the cyclical nature of stream flow. Beyond the minimum body of principles that were applicable to all nations, it was difficult to codify the relevant law rapidly. If that task was undertaken, the Commission should work very carefully and take full account of national sovereignty and the rights of people over their natural resources. In the meantime, the rule that every State should behave in such a way as not to damage the rights and interests of other States should be respected. Under the present circumstances, that was the fundamental question to be considered. Direct negotiations on the needs of riparian States and co-operation with regard to flood, pollution and erosion control on the basis of technical advice should be undertaken.

26. The concept of equitable and reasonable apportionment of water was binding on the parties involved except in cases where treaties or custom provided otherwise. Equitable and reasonable apportionment should be determined in the light of all relevant factors, especially the human factors and the particular needs of each case, and should be arranged by agreement through peaceful negotiations and consultations between the parties concerned. International river disputes could best be settled by voluntary agreements based on the recommendations of impartial technical commissions. The definition of an "international watercourse" in the Act of Vienna of 1815 as a river which traversed or separated the territory of two or more States should be used. In view of the vagueness of the term "drainage basin" and in the light of new scientific data, the traditional terms "watercourse" or "international rivers" or "waters" should be kept for the purpose of the Commission's study. The General Assembly and the Commission should take into account the sensitivity of Member States concerning the concept of a drainage basin, which in some cases applied to a whole country and might some day be applied even to oilfields and other mineral resources, thus affecting not only the natural resources of the country but its sovereignty in general. He felt that the Vienna

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concept of successive or contiguous international rivers was better than the concept of drainage basins, which covered the whole river system as well as ground water, lakes, canals and all tributaries. If the Commission went so far as to endorse the drainage basin approach, it should also recognize that all nations stood on a continental shelf and that all coastal States should be ready to share the wealth of the continental shelf and their territorial waters with the other countries on the continent in question, especially land-locked and geographically disadvantaged States. Furthermore, although an obligation concerning data collection and exchange might prove extremely burdensome for certain countries, it might be useful for riparian States if it was voluntary and based on bilateral agreements. His delegation felt that another questionnaire should be sent to Member States because the number of States which had replied to the previous questionnaire constituted only a small proportion of the total membership of the United Nations and could not serve as the basis for any conclusion. The Sixth Committee should also consider the four possible approaches to the problem proposed by the Special Rapporteur (para. 145 of the report).

27. With regard to chapter VI, his delegation attached great importance to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and was in favour of further elaboration of the issues dealt with in existing conventions. His delegation had an open mind regarding the nature and form of the future instrument and would take a final decision on whether it should be a convention or a protocol in the light of future progress on the topic.

28. With regard to the jurisdictional immunities of States and their property (chap. VII), his delegation considered the report of the Special Rapporteur (A/CN.4/323) to be a valuable work of legal analysis and identification of the types of relevant source materials. He felt that chap. IV of that report, which dealt with source materials and the possible content of the law of State immunity, the general rule of State immunity, consent as an element of the rule, exceptions, and immunity from attachment and execution, was the most important part. The Commission and the Special Rapporteur should concentrate on the general principle and general rules of jurisdictional immunities of States and the application of those rules, since that was a very sensitive area. The Commission should also carefully study the application of the rules in modern times in the developing countries of Asia, Africa and Latin America. His delegation agreed that the Special Rapporteur should continue the study of the immunities of States from jurisdiction, leaving aside for the time being the question of immunity from execution of judgement. However, State practice and, particularly, the practice of States during modern times should be the basis of the Commission's study. Information provided by Member States in that regard would be of great assistance to the work of the Commission.

29. With regard to chapter VIII on the question of the review of the multilateral treaty-making process, his delegation was fully satisfied with the high scientific level of the report approved by the Commission. It not only gave a clear picture of the multilateral treaty-making process but explained the great service rendered by the United Nations in the field of international law through the Commission. His delegation requested that a mimeographed copy of the report

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should be circulated among the members of the Sixth Committee in view of its high legal standard.

30. With regard to chapter IX, particularly the part dealing with the programme and methods of work of the Commission, his delegation expressed its warm support for the valuable suggestions and recommendations contained in paragraphs 200-210. All the objectives and priorities were in accordance with the statute of the Commission and the resolutions and recommendations of the Sixth Committee, particularly General Assembly resolution 33/139. His delegation expressed satisfaction with the close relationship between the International Law Commission and the International Court of Justice. It was also pleased that the Commission exchanged observers each year with regional legal bodies. That exchange of views, particularly with the jurists of the newly emerging States, helped to build and strengthen modern international law. Lastly, he expressed the warm support of his delegation for the programme of International Law Seminars.

31. Mr. SUCHARITKUL (Thailand) complimented the Chairman of the International Law Commission for his masterly introduction of the Commission's comprehensive report (A/C.6/34/SR.38). At the current session, the Sixth Committee had been assigned a number of significant questions for its consideration. There had been a time when the lack of items for the Sixth Committee had been a cause for concern. That was no longer the case, and the Sixth Committee was now able to play a constructive role in the process of international lawmaking. It had contributed directly to the progressive development of international law in several fields, including the principles of friendly relations among States in accordance with the Charter of the United Nations, the definition of aggression and the draft articles on special missions, either through special committees whose establishment it had initiated or within the Sixth Committee itself.

32. If international law, as conceived and applied in the practice of States in the seventeenth, eighteenth and nineteenth centuries, had not been "good law", that was partly because the process of lawmaking had been confined exclusively to a handful of States. The whole picture had now begun to change, as more States had become members of the family of nations and more representatives, especially from the developing third world, had participated actively in the discussion of the International Law Commission's reports. Their views deserved the careful attention of the international community. The balanced approach of the Sixth Committee to many delicate legal problems of the complex modern world had won the Committee high prestige for impartiality.

33. With regard to the topic of succession of States in respect of matters other than treaties, a tribute was due the Special Rapporteur, Mr. Bedjaoui, for the devotion he had shown over the past 12 years in his careful preparation of 11 successive reports. On the basis of those reports, the Commission had adopted 23 articles, leaving aside former articles 9 and 11, provisionally adopted earlier, since their inclusion appeared unnecessary in the light of the draft articles as a whole. The Commission had now completed the first reading of the draft articles on succession of States in respect of State property and State debts. Member Governments would no doubt make detailed observations on the draft articles once the Commission had completed its second reading, but in the meantime the articles would receive the attention of the appropriate authorities of the Thai Government.

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(Mr. Sucharitkul, Thailand)

34. The draft articles adopted thus far would serve to supplement the 1978 Vienna Convention on Succession of States in Respect of Treaties. They did not cover succession of States in respect of all matters other than treaties but only in respect of State property and State debts. They did not deal specifically with succession in respect of rights of States to tangible or intangible and corporeal or incorporeal properties other than State property as defined in the draft articles, nor did they apply to succession in respect of non-contractual or quasi-contractual obligations of a non-pecuniary nature or duties to undertake specific performance other than repayment of State debts as defined. That was because the substance of the draft articles dealing with State property and State debts was clearly supported by a sufficient amount of State practice which could lend itself to appropriate codification and progressive development. Treatment of succession of States in respect of other kinds of property to which States could claim certain rights, and of other types of obligations of a non-financial nature, must await further crystallization of customary norms in the usage and practice of nations.

35. The definition of State property in article 5 with reference to the internal law of the predecessor State would have to be re-examined later. The reference to internal law appeared logical, as the question of succession to State property would not have arisen had the property not been owned by the predecessor State under its internal law. However, the possibility could not be ruled out that the same property could be owned by several States under their respective internal laws, which might conflict, or that the property might be part of the common heritage of mankind, such as the sea-bed of the subsoil beyond national jurisdiction, which was regulated by international law and not by internal laws. Thus, further reference to international law or to settlement by the international legal system might be necessary.

36. Some controversy might also attach to the definition of State debt in article 16. Two alternative criteria had been adopted: the international personality of the creditor and the fact that the financial obligation was chargeable to a State, regardless of the public or private, national or international character of the creditor. Some members of the Commission had considered that State debts should be defined in terms of financial obligations arising at the international level.

37. Complete parallelism in the rules applying to succession to State property and State debts could not always be maintained in every type of State succession because of the nature of the property and the debts, which must of necessity contain essential differences; that was particularly true with respect to newly independent States, to which the concept of the "clean slate" might apply, especially with regard to succession to State debts of the predecessor State. The passage was made subject to an agreement between the newly independent State and the predecessor State "in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State" (art. 20, para. 1). Such an agreement "should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should its implementation endanger the fundamental economic equilibria of the newly independent State" (art. 20, para. 2).

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(Mr. Sucharitkul, Thailand)

38. Succession by newly independent States to State property of the predecessor State did not exactly parallel succession to State debts. Referring to draft article 11, he said that the linkage to the territory was clear in cases of immovable property situated in the territory, while the case of movable property provided an alternative criterion for the passage of State property. Agreements between the predecessor State and the newly independent State to determine the succession to State property otherwise than indicated could not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources. The provisions relating to each type of succession of States varied according to the peculiar nature of the type of succession involved. The draft followed the classification of the Vienna Convention on succession of States in Respect of Treaties in its structure. The rules were not the same respecting the different types of succession, namely, newly independnet States (articles 11 and 20), uniting of States (articles 12 and 21), separation of part or parts of the territory of a State (articles 13 and 22), and dissolution of a State (articles 14 and 23).

39. The draft articles did not seek to undo what succession of States had entailed in the past. The draft looked to the future instead of attempting to harmonize past practices. It would apply "only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations" (article 3).

40. The Commission had also examined the original articles A and C of the addendum (State archives), entitled "Transfer of State archives" and "Newly independent States". It had concentrated on that aspect of article A which concerned the definition of State archives, leaving aside general provisions applicable to all types of succession of States. The concept of archives was identifiable with the content rather than the place where the collection of documents was held. The new article B determined the passage of archives to the newly independent State by reference to the relationship with the territory and to ownwership by the predecessor State during the successor State's dependence. In that connexion, there had been reference to UNESCO resolution 18 C/4.212, adopted by the General Conference in 1974 at Paris, "inviting the Member States of UNESCO to give favourable consideration to the possibility of transferring documents from archives constituted within the territory of other countries or relating to their history, within the framework of bilateral agreements". UNESCO had shown particular concern with archives since it regarded them as an important part of the cultural heritage of nations, and its Director-General had appealed for the return of an irreplaceable cultural heritage to those who had created it (UNESCO Courier, July 1978, pages 4-5).

41. In the area of State responsibility, the Commission had concentrated mainly on the text of articles 28-32. His delegation expressed its appreciation to the Special Rapporteur, Judge Roberto Ago, for completing the remaining parts of his valuable report and for continuing to attend the meetings of the Commission, thus enabling it to complete its consideration of chapter IV (Implication of a State in the internationally wrongful act of another State) and of four draft articles under

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chapter V (Circumstances precluding wrongfulness). The assumption of the duties of Special Rapporteur by Professor Riphagen would undoubtedly ensure the continuation of high quality in the Commission's work in the realm of State responsibility. The type of responsibility for an internationally wrongful act defined in article 28, paragraph 1, had sometimes been referred to as "indirect" or "vicarious" responsibility, although, in order to avoid possible ambiguity, those expressions had not been adopted by the Commission. The case in question could arise in several types of relationships between States: firstly, international dependency relationships, especially suzerainty, vassalage or international protectorate; secondly, relationships between a federal State and member States of the federation which had retained their own international personalities, and, thirdly, relations between an occupying and an occupied State.

42. The second category of indirect responsibility arose when an internationally wrongful act was committed by a State as the result of coercion exerted by another State to secure the commission of that act (art. 28, para. 2). Coercion for that purpose was not necessarily limited to the threat or use of armed force, and the concept should cover any action seriously limiting the freedom of decision of the State which suffered it, in other words, any measure making it extremely difficult for that State to act in a manner different from that required by the coercing State.

43. Under chapter V (Circumstances precluding wrongfulness), the Commission had adopted four draft articles on first reading which were all of fundamental importance. Article 29 carefully defined the extent to which consent to the commission of an internationally wrongful act could preclude wrongfulness. It was essential to determine precisely the substance of what a State had consented to; for example, consent to the overflight of a territory did not imply consent to the transport of arms and ammunition contrary to the provisions of the Chicago Convention. Similarly, consent to entry into a territory was not consent to its occupation, and the right of passage or transit could not carry with it the power to exercise sovereign authority over the foreign territory. Paragraph 2 clearly indicated that consent was invalid when the obligation in question arose out of a peremptory norm of general international law.

44. Under article 30, the legitimate application of sanctions, referred to by the Commission as "countermeasures" in respect of an internationally wrongful act, constituted the second type of circumstance precluding wrongfulness. A countermeasure was legitimate when it was permissible in international law and taken in accordance with conditions laid down in international law. Such a measure was distinguishable from the mere exercise of the right to obtain reparation for damage. The application of economic reprisals could be a legitimate sanction with the object of punishing the perpetrator of an internationally wrongful act. Not all countermeasures would be regarded as legitimate under international law, and not all internationally wrongful acts would entail the possibility of countermeasures that would be considered legitimate under international law.

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45. Article 31 related to "force majeure" and "fortuitous event". Either would preclude wrongfulness if it made it "materially impossible for the State to act in conformity with /the/ obligation or to know that its conduct was not in conformity with /the/ obligation" (art. 31, para. 1). The two exceptions would not preclude wrongfulness if the State in question had contributed to the occurrence of the situation of material impossibility or ignorance.

46. Article 32 referred to a situation of distress in which the author of the act of a State had no other means of saving his life or that of persons entrusted to his care. The wrongfulness of the act of a State not in conformity with an obligation of that State was thus precluded. That type of exceptional situation had often been defined as a case of "relative impossibility" of complying with an international obligation. Freedom of choice in that situation was limited to the adoption of the conduct in question or the sacrifice of the life of the person or persons concerned. The exception did not apply if the State in question had contributed to the occurrence of the situation of distress or if the conduct in question was likely to create a comparable or even greater peril.

47. Two types of circumstances precluding wrongfulness to be considered by the Commission at its next session were "state of emergency" and self-defence. When those two cases had been dealt with, chapter V would be completed.

48. In 1979 the Commission had adopted the text of articles 39-60 on the question of treaties concluded between States and international organizations or between two or more international organizations. The text of the draft articles corresponded as far as possible to the provisions of the 1969 Vienna Convention on the Law of Treaties; there were minor changes of wording, particularly where, because of the nature of international organizations, a slightly different set of rules might be required, as in all cases where the indication of consent must be in accordance with the relevant rules of the organization concerned, since the practice of international organizations was not as uniform as the established customary rules of international law in the practice of States. Articles 45 and 46 illustrated differences in the capacity of international organizations to conclude agreements. The Commission had not only examined the practice of States but had also consulted international organizations, whose comments deserved close study. His delegation congratulated Professor Reuter, the Special Rapporteur, on the results achieved not only in the drafting of the articles but also in the illuminating commentary on them. It was hoped that the Commission would be able to complete the first reading of the rest of the draft articles which were to be covered in the ninth report of the Special Rapporteur.

49. At its thirty-first session, the Commission had had before it the first report (A/CN.4/320 and Corr.1) on the law of the non-navigational uses of international watercourses submitted by the Special Rapporteur, Professor Schwebel, which contained four chapters dealing with the nature and scope of the subject and 10 draft articles on user agreements and the question of data collection. The Commission had discussed the subject without examining the details of the draft articles, which would be considered at its next sesseion.

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50. Most watercourses were international, the exception being those confined to an island State or an atchipelago. The concept of an international watercourse could be too narrow as well as too wide: a narrow definition would tend to define a watercourse as a pipe carrying water, while the widest would regard all waters as belonging to one single system of the environment. The sensible approach lay between the two extremes in regarding an international watercourse as a drainage basin involving all riparian or basin States which contributed to the sources as well as those which used the water. The expression "drainage basin" embraced both surface water and groundwater. Legal developments aimed at regulating the non-navigational uses of international watercourses as defined could provide a serviceable guide to nations sharing an international basin. Thailand was such a country; it shared the Mekong Lower Basin with the other members of the Mekong Committee, namely Laos, Kampuchea and Viet Nam. It also shared a number of rivers with Burma, and with Malaysia to the south it shared the Kolok river. The codification and progressive development of rules of international law, whether confined to the adoption of general principles or followed by separate user agreements with other neighbouring riparians, would be a constructive step. The Commission's efforts in that area had been most welcome, and the contribution of the Special Rapporteur was greatly appreciated. One important point was the placing of proper emphasis on scientific facts and data. Without data collection and exchange, little or no progress could be made in the lawmaking process. Co-operation among States was another indispensable principle.

51. International watercourses should be fully and equitably used and shared by all the interested parties, since their many uses affected every aspect of life. They should serve to unite people and never to separate them. His delegation therefore hoped that the Commission would be able to achieve further progress in its consideration of the report already submitted and of possible future reports during forthcoming sessions.

52. Turning to the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he said that the Working Group under the Chairmanship of Mr. Yankov had analysed the general views on the preparation of a protocol on the subject expressed by Governments on the basis of the Commission's preliminary study in 1978, together with summaries of comments and proposals made by Governments since 1976 on specific issues and the Commission's observations on each of the 19 issues tentatively identified in 1978. The Commission had also drawn attention to certain issues examined by the Working Group at the thirty-first session on which study was required. It had reached the conclusion that the Secretariat should continue with the preparation of a comprehensive follow-up report, particularly on the views expressed by Governments at the current session of the General Assembly, and had appointed Mr. Yankov Special Rapporteur for the topic.

53. The Commission's thirty-first session had been a turning point in the history of legal developments on the question of jurisdictional immunities of States and their property. The Commission had given general guidance as to the direction which

(Mr. Sucharitkul, Thailand)

future researches and studies should take. Speaking as the Special Rapporteur, he wished to express his appreciation of the kind words that had been addressed to him by members of the Committee. He was most grateful for the informative materials supplied by many Member Governments on judicial and governmental practice as well as on existing national legislation on the subject. The provision of such information would greatly facilitate the compilation of a more comprehensive survey. Replies to the questionnaire recently sent out by the Secretariat to Member Governments would provide further insight into the various problems to be examined and would help to reveal the views of Governments about the likely trends of legal developments and the possible orientation of future reports which would include, as an initial step, a few draft articles on the general principles of State immunities before an investigation was made, at a subsequent stage, of State practice and the views of Governments on possible exceptions to the general rules of jurisdictional immunities.

54. The subject of the review of the multilateral treaty-making process was of direct concern to the Sixth Committee, reflecting as it did the importance of a healthy relationship between the Committee and the International Law Commission to the codification and progressive development of international law. Other aspects of the same topic were being studied elsewhere and might be included in the Secretary-General's report to the General Assembly in conformity with resolution 32/48.

55. His delegation noted with satisifaction the contents of chapter IX of the report (Other decisions and conclusions). In particular, his delegation was pleased to note the successful organization of the fifteenth session of the International Law Seminar at Geneva for advanced students of international law and junior government officials who normally dealt with questions of international law in the course of their work. The Seminar had been conducted by members of the Commission and other highly qualified jurists. His Government was highly appreciative of the generous gifts from various Governments in the form of scholarship grants which had enabled participants to attend the Seminar. It was to be hoped that the Seminar would be held on a continuing basis, as it had become a constant feature connected with the working sessions of the International Law Commission.

AGENDA ITEM 110: STATE OF SIGNATURES AND RATIFICATIONS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 CONCERNING THE RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS: REPORT OF THE SECRETARY-GENERAL (A/34/445; A/C.6/34/L.9)

56. Mr. DANELIUS (Sweden), introducing draft resolution A/C.6/34/L.9, said that the preamble took note of the fact that only a limited number of States had ratified or acceded to the Protocols and operative paragraph 1 therefore once again called upon States to consider the matter of ratifying or acceding to them. As the depositary Government, the Swiss Government notified States which were parties to the Geneva Conventions or the Protocols of any ratifications or accessions to the Protocols. Operative paragraph 2 requested that the General Assembly should be informed annually of the state of ratifications and accessions in order to be able to take the matter up at a later stage, if it deemed it appropriate. He emphasized

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(Mr. Danelius, Sweden)

that the sponsors did not propose that the matter should be kept on the agenda of the General Assembly but merely that the Assembly should be provided with information and left to decide whether the matter should be discussed again.

57. The preamble also recalled the need for continued improvement and further expansion of the humanitarian rules relating to armed conflict. In that regard, the draft resolution noted the importance of the United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons, which would, it was to be hoped, produce important results for the future development of humanitarian law in armed conflicts. Lastly, he expressed the hope that the draft resolution would be adopted by consensus.

58. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/34/L.9 by consensus.

59. It was so decided.

60. Mr. ROSENNE (Israel) said that his delegation had not joined in the consensus on the draft resolution because it felt that the General Assembly should simply have taken note of the Secretary-General's report in document A/34/445, which spoke more eloquently than the draft resolution. The draft resolution, however, was on the whole unobjectionable. When the Geneva Protocols had been discussed two years earlier, his delegation had been among those which had felt that it was not compatible with the neutrality of the international organs charged with responsibilities in connexion with international humanitarian law that that item should be brought up for debate in the tumultuous conditions of the General Assembly. His delegation had also explained why it felt that certain provisions of the 1977 Protocols were very unsatisfactory and did not reflect genuine attempts to strike a fair balance between the differing interests of the various States represented at the Geneva diplomatic conference. His delegation had been particularly critical of what it had considered to be the unfortunate political terminology which appeared in various articles of Protocol I and of the faulty techniques which had revived or might have revived the spectre of the pernicious theory of a just war and an unjust war to the detriment of humanitarian law in general.

61. His delegation had also drawn attention to the unjust and unjustifiable situation regarding Israel's protective emblem, the Red Shield of David, and its national Geneva Convention Relief Society, the Magen David Adom Society, which had been established in 1930. In the Israeli War of Independence in 1948, the International Committee of the Red Cross and the various parties concerned had accepted a plan for humanitarian activities which embodied full recognition of the Society and of the emblem under the conditions then prevailing. There was no justification whatsoever for the discrimination against the Society and the emblem that seemed to have become embodied in contemporary international humanitarian law, which applied equally to everyone and to all societies except

Israel. That state of affairs, which deliberately excluded Israel from full participation in the International Red Cross, was a source of great resentment to his country. For those and other reasons given at the time, his delegation had indicated that, if General Assembly resolution 32/44 had been put to the vote, his country would have had to abstain.

62. The CHAIRMAN said that Senegal and Uruguay had joined the list of sponsors of draft resolution A/C.6/34/L.9.

The meeting rose at 6 p.m.