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Chairman: Mr. GUNA-KASEM (Thailand)

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- (b) RESOLUTION RELATING TO THE APPLICATION OF THE CONVENTION IN FUTURE ACTIVITIES OF INTERNATIONAL ORGANIZATIONS

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The meeting was called to order at 10.40 a.m.

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

1. Mr. HISAEDA (Japan) drew attention to certain ambiguities in paragraph 2 (a) of article 18 of the draft articles on succession of States in respect of matters other than treaties. His delegation did not understand to which draft articles the words "the other applicable rules" referred. Moreover, the conclusion that could logically be drawn from paragraph 1 and paragraph 2 (a) of the same article - namely, that the predecessor State or the successor State could invoke an agreement concluded between those two States against a third State which was not a party to that agreement if the consequences of that agreement were in accordance with certain applicable rules contained in the draft articles - was clearly in conflict with article 34 of the Vienna Convention on the Law of Treaties. If the words "a third State or an international organization" used in paragraph 2, meant exclusively a State or an organization party to the draft articles, then the predecessor State or successor State or States were not invoking against the third State the agreement in question, but rather the applicable rules of the draft articles.

2. In his delegation's opinion, State archives should be considered as State property and should be treated as such in most cases. Accordingly, the scope of the draft articles devoted to that question should be limited, in so far as possible, so that they included, for example, only those documents indispensable for administrative purposes. As for other types of archives, such as historical archives, they could very well be covered by the provisions relating to State property. With regard to article B, his delegation thought that the words "having belonged to the territory", and "should be in that territory", in paragraph 1 (a) and (b), and "of interest to the territory", in paragraph 2, were much too ambiguous to be included in a legal text. It was therefore necessary to formulate more explicit wording in order to minimize possible disputes over those criteria. If the scope of the draft articles was limited to official documents connected with administration, drafting difficulties would be reduced to some extent. Other paragraphs also contained ambiguities, for example, the words "the right of the peoples of those States to development, to information about their history and to their cultural heritage" in paragraph 6 of article B. An attempt must be made to render the intended meaning in clear legal terms.

3. With regard to the draft articles on State responsibility, his delegation considered the formula in article 28 to be appropriate, since it would discourage States from committing internationally wrongful acts, even under the influence of another State. Nevertheless, such wording as "subject to the power of direction or control" or "as the result of coercion" was somewhat ambiguous. In fact, there were no criteria stipulating what acts constituted coercion, or the extent to which coercion or control must be exerted in order for a State to be able to claim that it had committed a wrongful act as a result of such coercion or control exerted by another State. In particular, it was not clear whether the word "coercion" used in article 28 included economic pressure, which was not universally

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(Mr. Hisaeda, Japan)

recognized as an internationally wrongful act in the same category, for example, as the threat of force. Paragraph 2 of article 29, interpreted in the light of paragraph 1, could be taken to mean that the validity of the consent itself was not affected by the fact that the commission of the act had been in conflict with obligations arising out of a peremptory norm of general international law. However, his delegation considered that no State should have the right to consent to the commission by another State of an act that was not in conformity with a peremptory norm of general international law. In such a case, the validity of the consent itself should be denied. He therefore suggested that that paragraph should be reworded to read: "In the application of paragraph 1, no consent shall be considered to be valid if the obligation arises out of a peremptory norm of general international law". In order to reflect more precisely the original intention (A/34/10, para. 20, p. 326), the last part of article 30 should be redrafted to read, for example: "if the act was committed in consequence of an internationally wrongful act of that other State, and it constitutes a measure legitimate under international law against that other State". In addition, his delegation thought that, for the sake of consistency, the word "conduct" in paragraph 1 of article 31 should be replaced by the word "act", since all the draft articles used the word "act" in connexion with States, whereas the word "conduct" was used in connexion with "State organ". His delegation also thought that paragraph 2 of article 31 was unnecessary because, according to the Commission's commentary (A/34/10, paras. 36 and 41, pp. 357 and 361), it was clear that when a State contributed to the occurrence of the situation of material impossibility, intentionally or through negligence, "force majeure" or "fortuitous event" could not be invoked. The same argument also applied to the first part of paragraph 2 of article 32. In general, with regard to chapter V concerning circumstances precluding wrongfulness, his delegation wished to emphasize that no provision should be interpreted too loosely. In particular, the validity of consent, referred to in article 29, should be judged strictly and objectively, and the legitimate countermeasures provided for in article 30 should be limited to those based on established international law.

4. As to chapter IV of the report, he emphasized that the obligations of international organizations as parties to international agreements should not be unduly mitigated in relation to those of States parties. In his delegation's opinion, article 46 was unnecessarily favourable to international organizations.

5. Concerning the law of the non-navigational uses of international watercourses, he thought that it would be meaningless to draw up abstract principles. First, it was necessary to define the rights and obligations that would facilitate the adoption of decisions on questions regarding all types of watercourses and their uses. Accordingly, his delegation supported the Commission's decision to examine concrete problems and to postpone, for the time being, the definition of international watercourses.

6. With regard to the jurisdictional immunities of States and their property, the current trend was somewhat in favour of a restrictive interpretation of the sovereign immunity of States. Exceptions to the principle of State immunity were steadily growing in number and complexity. However, no common criteria had yet

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(Mr. Hisaeda, Japan)

been established to determine the extent of such immunity. While there was a large measure of agreement on the principle itself, differences of view and uncertainty about its application were obvious, not only between States, but also in the international jurisprudence of States. It was important to bear in mind the fundamental doctrine that States enjoyed the privilege of immunity. Accordingly, in formulating exceptions and in studying them one by one in terms of their practical necessity, it was important not to infringe upon the sovereignty, equality and prestige of States.

7. In conclusion, his delegation supported the programme and working methods of the Commission and hoped that it would be able to complete the first reading of part I of the draft articles on State responsibility and also to review all the draft articles adopted to date. However, his delegation wished to reserve the right to speak on any matter at a later date.

8. Mr. KOLESNIK (Union of Soviet Socialist Republics) hoped that exchanges of views would be held at the following session, when the organization of the Committee's work would be discussed, so that the best possible arrangements might be made for consideration of the report of the International Law Commission, as suggested by several representatives.

9. With regard to the draft articles on State responsibility, his delegation could not endorse article 28, which was founded on a concept of responsibility that contradicted the principles set forth in chapter I of the draft, articles 1 to 4. Under those articles, a State was responsible for its own acts in violation of its own international obligations. Thus a State that committed an act of aggression or resorted to force to establish or perpetuate its colonial domination was totally responsible for its crimes, but a State which forced another to commit a wrongful act was responsible only for its own act, namely, its coercive action; however, article 28, paragraph 2, gave the opposite impression. On the other hand, articles 29 to 32 seemed satisfactory. Nevertheless, his delegation reserved its position and would await the completion of the entire draft before giving its definitive opinion.

10. The Commission had made a great deal of headway in preparing the draft articles on the succession of States in respect of matters other than treaties. Although useful clarifications had been made, his delegation could not accept all the changes, such as the new wording of article 16 on State debt, subparagraph (b) of which gave rise to serious objections. Deletion of that subparagraph would not imply exemption of a State from its obligations to private parties (art. 18, para. 1). On the other hand, State archives, which constituted a special category of State property, should be subject to special treatment. The Commission should therefore continue its work on the matter.

11. With regard to the question of treaties concluded between States and international organizations or between two or more international organizations, the draft articles appeared to imply that an international organization could not invoke its own rules to justify non-application of a treaty. In his delegation's

(Mr. Kolesnik, USSR)

view, to accept that implication was to lose sight of an essential difference between States and international organizations. Whereas a State was required to make its internal legislation conform to its obligations under treaties concluded by it, the statute of an international organization, itself a treaty, took precedence over any other treaty that the organization might subsequently conclude, and an international organization could always refuse to carry out an obligation when that obligation conflicted with its statute or regulations. For that reason article 45, paragraph 2 should refer not to articles 46 to 50 but to articles 47 to 50. Subject to that reservation, his delegation was willing to accept article 45.

12. With regard to the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation hoped that the Commission would speed up its work and be in a position to prepare draft articles on the subject at its next session.

13. Turning to the law of the non-navigational uses of international watercourses, he observed that the method followed by the Commission in examining the question was not satisfactory. Definition of the expression "international watercourses" could not be postponed to a later date. In the opinion of his delegation, the term must be taken to mean waters flowing along a certain course, that is to say, international rivers. That had also been the intention of the countries, such as Finland, that had proposed consideration of the subject. Moreover, the Commission should be concerned with the users of the watercourses themselves and not with the uses of the water from such watercourses. Problems such as the control of floods, erosion and sedimentation, which were matters separate from the uses of the watercourses, were outside the limits of the subject.

14. His delegation had reservations concerning the definition of user State in article 2 of the draft articles drawn up by the Special Rapporteur. That draft article, defining a user State as a State which contributed to and made use of water of an international watercourse, referred to the concept of an international drainage basin, which included both surface waters and ground water. The concept was not acceptable, as it would have the effect of turning into an international watercourse any watercourse flowing in the territory of a single State but fed by ground water from beyond the territorial boundaries of that State. In fact, regulation of the uses of international watercourses should be the concern only of the riparian States themselves.

15. In conclusion, he said his delegation hoped that the Commission would continue its work of codification in various fields of international law which were of practical interest to the international community.

AGENDA ITEM 118: RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS:

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16. Mr. EL-BANHAWI (Egypt) recalled that the Committee had put off considering agenda item 118 from one session to another ever since it had first been included in the agenda, at the thirtieth session. Following the decision taken the preceding day to bring forward the consideration of the item, some delegations apparently were not in a position to discuss its substance at the present meeting. His delegation therefore proposed that the Committee should call upon the United Nations Secretariat to undertake a study of the matter, taking into account the views expressed by Member States, or should bring the matter before the International Law Commission.

17. Mr. QUATEEN (Libyan Arab Jamahiriya), supported by Mr. SAMBA-BA (Mauritania), said that yet another postponement of the item to a later session would be unacceptable. He proposed temporarily deferring consideration of the item until the following week, so that delegations would have time to study the documents and arrange the necessary contacts and consultations with a view to working out a more acceptable formula.

18. Mr. FREELAND (United Kingdom), supported by Mr. KIRSCH (Canada), felt that it would be premature to take a decision on the matter, since the Vienna Convention, to which all the resolutions concerned made reference, had not yet entered into force and there did not seem to be in that connexion any difficulties that justified a decision by the Committee. Furthermore, it would be desirable to have the Egyptian delegation's proposals submitted to the Committee in writing, in order that delegations might hold the necessary consultations. Although his delegation did not oppose postponing consideration of the item to a later date, it considered it preferable to defer consideration to the following session.

19. Mr. KOLESNIK (Union of Soviet Socialist Republics) agreed with the representatives of Egypt, the Libyan Arab Jamahiriya and Mauritania. His delegation felt that consideration of the item could not be postponed to the following session. If the Committee was to adopt draft resolutions that would have broad support, it must be able to work under normal conditions and must, in particular, have enough time to conduct preliminary consultations. The date for consideration of the item should be set forthwith.

20. Mr. ARMALI (Observer, Palestine Liberation Organization) said he felt he was to a large extent expressing the views of other national liberation movements in pointing out that consideration of the item had been postponed from year to year for reasons which were no longer valid. The Committee must discuss the substance of the question at its present session; if necessary, the discussion could be held at a later date, so as to take documentation problems into account. He hoped that the Chairman would set a date for consideration of the item in order that all delegations might be in a position to discuss it and possibly to decide on draft resolutions.

21. The CHAIRMAN observed that a majority of Committee members would like to hold a substantive debate on the item and to postpone consideration of it for a few days in order to allow time for the necessary consultations. He therefore proposed that the Committee should discuss item 118 when it had completed consideration of item 108.

22. It was so decided.

The meeting rose at 11.50 a.m.