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SUMMARY RECORD OF THE 44th MEETING

Chairman: Mr. GUNA-KASEM (Thailand)

CONTENTS

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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 (Arabic, English, French, Russian and Spanish only), A/34/194; A/C.6/34/L.2)

1. Mr. LACLETA (Spain) said that if the International Law Commission succeeded in completing the second reading of the draft articles on succession of States in respect of matters other than treaties, part I of the draft articles on State responsibility and the draft articles on treaties concluded between States and international organizations or between two or more international organizations and if it also completed its work on the multilateral treaty-making process and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, before the end of the mandate of its current members in 1981, it would have made significant progress and the Sixth Committee could be optimistic about the Commission's future work on the other questions on which its work was currently at a less advanced stage.

2. The Commission had wisely decided to divide the study on succession of States in respect of matters other than treaties into different headings and had thus achieved great precision in the draft articles currently before the Sixth Committee. That precision made it necessary to consider seriously what title should be given to the set of draft articles. While his delegation understood the reasons which had led the Commission to use the title "Succession of States in respect of matters other than treaties", it felt that the draft articles did not cover all matters other than treaties and that the second alternative formulation mentioned in paragraph 49 of the report of the Commission (A/34/10), namely, "Succession of States in respect of State property, State debts and State archives" would be more appropriate. That title might even be further abbreviated to "Succession of States in respect of State property and State debts". Whatever decision was made concerning the texts relating to State archives, there could be no doubt that such archives were a part of State property and would thus be covered by the abbreviated title he had suggested, regardless of whether or not specific norms on archives were included. In the view of his delegation, such norms could be included in part II of the draft. Article 1 in its final form would of course have to reflect the total content of the draft articles.

3. In principle, his delegation agreed with the deletion of former articles 9 and 11. It also wondered whether it was absolutely necessary to retain former article 10, currently article 9. It was perfectly clear that the articles relating to the passing of property dealt only with property owned by the predecessor State or States and not with the property of other States. Articles 15 to 18 improved the draft as a whole. Article 16 rightly stipulated that a State debt was any financial obligation changeable to a State. His delegation did not agree with those States that would prefer to exclude the debts of a State with respect to creditors who were not subjects of international law from the definition of State debt. The Chairman of the International Law Commission, in his introductory statement, had mentioned some of the problems to which such exclusion would give rise. In addition, it must be stressed that international law had always

(Mr. Lacleta, Spain)

dealt with the relationship between a State and nationals of other States. Although those nationals could not claim their rights directly at the international level and had to exhaust the resources provided by domestic law, it was recognized that the so-called receiving State had the obligation to treat such persons in conformity with international law and that the State of which those persons were nationals had the authority to act on their behalf in order that they might be so treated. At the current stage in the development of international law, when both theory and practice were moving towards recognition of the rights of individuals, it did not seem right to exclude the possibility that a successor State might be a debtor of subjects other than subjects of international law. In that connexion his delegation fully endorsed the comments made at a previous meeting by the representative of the Netherlands, particularly concerning article 18. His delegation also felt that the commentary on article 18 in some respects contradicted the text of the article, inasmuch as paragraph (10) of the commentary stated that the word "creditors" should be interpreted to mean "third creditors", thus excluding successor States or, when appropriate, natural or juridical persons under the jurisdiction of the predecessor or successor States. In the view of his delegation, there was no reason to exclude those creditors from the provisions of article 18 and, thus, of article 16. On the contrary, as the current text provided, the provision on succession to State debts should include all the financial obligations of a State; according to the commentary, that would not be possible.

4. With regard to articles A and B, concerning State archives, his delegation believed that such archives were State property and would therefore be subject to the provisions of the relevant articles. Thus, it might not be necessary to add specific articles on State archives. Nevertheless, the proposed texts might contribute an element of specific interpretation and could therefore be included in part II of the draft articles.

5. The new draft articles on State responsibility represented a significant step forward in the Commission's efforts to complete part I of the draft. Completion of the draft as a whole would constitute important progress in that extremely important field of international law, particularly if part III of the draft contained an effective system for "implementing" international responsibility and for the settlement of disputes in that regard. The new articles adopted by the Commission were satisfactory and his delegation was happy to note that article 28 provided a balanced treatment of a very difficult question. Articles 29 to 32 could not be judged independently of part II of the draft, which was yet to be completed. The fact that certain State conduct might not be wrongful under the circumstances described in the text did not definitively solve the problem of liability, which should not be extinguished, at least not entirely, particularly in the cases referred to in articles 31 and 32. Article 30, which provided that the wrongfulness of an act of a State not in conformity with an obligation of that State was precluded if the act constituted a measure legitimate under international law, opened up a wide range of questions as to the requirements for such legitimacy. Although the commentary provided an interesting treatment of that difficult subject, it would be more appropriate to include more specific indications in that regard in the text itself.

(Mr. Lacleta, Spain)

6. He wished to reiterate the view of his delegation, already stressed on previous occasions, with regard to the use of the word hecho instead of the traditional term acto in the Spanish version of the articles. The word hecho referred rather to a natural event not necessarily linked to human conduct, whether individual or social. The word acto, on the other hand, referred to human action, attributable to a person or a subject of law and regarding which there could and should be a rule establishing whether or not it was wrongful. A hecho, on the other hand, could only be judged right or wrong by reference to the conduct, i.e., an acto of the person causing the hecho. His delegation therefore felt that the Commission should reconsider its decision to use the word hecho.

7. His delegation would not comment at length on chapter IV of the report of the Commission (A/34/10) since it would be submitting written comments in response to the Commission's request. It might be worth mentioning, however, that the proposed articles seemed to follow too closely the model of the 1969 Vienna Convention on the Law of Treaties; the differences between a State and an international organization were considerable and must be borne in mind, particularly since international organizaions and even their subsidiary bodies were to an increasing extent becoming parties to international treaties. In the view of his delegation, the question had not yet been sufficiently studied. His delegation had already commented on article 36 bis, which still appeared in square brackets.

8. The question of the law of the non-navigational use of international water courses was extremely important. His delegation was happy to note that the Commission had before it a first report of the Special Rapporteur, which would enable it to begin its work on the subject. The Commission's appeal to states to help clarify the many complexities it would be facing in its initial study of the subject should be heeded. His Government had already replied to the initial questionnaire, but felt it was worth while stressing certain important issues. The rules to be drawn up by the Commission should be aimed basically at formulating general principles and rules on the non-navigational uses of international watercourses. Those general rules might be accompanied by other general rules relating to co-operation between concerned States. It would be too complicated to attempt to formulate specific rules on specific cases. If the Commision was to concentrate only on problems of pollution and the abuse and effects of the use of watercourses, its work would not be complete and it would be stressing the question of pollution, which should not be its essential aim. Nevertheless, there was nothing to prevent the Commission from including general rules on the subject in a draft prepared along the lines he had mentioned. His delegation agreed with the view of the Special Rapporteur (A/34/10, para. 128) that what was needed was a set of articles laying down principles regarding the use of international watercourses in terms sufficiently broad to be applied to all such watercourses while at the same time providing the means by which the articles could be adapted to the singular nature of an individual watercourse. The elaboration of such general rules should not be aimed at eliminating the natural inequalities between States or reducing the importance of the principle of national sovereignty over natural resoruces. Every riparian State whose territory included an international watercourse, whether the State was upstream or downstream, had the obligation to take into account the interests of the other riparian States. The Commission

(Mr. Lacleta, Spain)

should use the concept of the international watercourse as the basis for its work; his delegation saw no justification for using the drainage basin concept instead.

9. His Government did not think it was essential to carry out a new study on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Conventions on Diplomatic and Consular Relations and Special Missions dealt adequately with the subject. His delegation did not object to having the Commission take up the matter, but wished to stress that the question should be approached from a strictly functional standpoint. The diplomatic courier did not belong to a mission, did not reside in the receiving State and had only a very specific and limited function. It should not be necessary to grant him diplomatic status, although of course he should enjoy the immunities and guarantees necessary for the performance of his duties. By the same token, the diplomatic bag not accompanied by diplomatic courier should be regulated with due regard for the need to harmonize the secrecy requirements of the sending State and the security requirements of the receiving State.

10. His delegation noted with satisfaction that the Special Rapporteur had begun his work on jurisdictional immunities of States and their property. His Government would be submitting its comments on the matter soon. The subject was a very important one at the current stage in the development of international law. The increasing acceptance of restrictive theories of the jurisdictional immunity of States had given rise to new problems, such as the immunity of diplomatic missions, which had not been solved by the Vienna Convention on Diplomatic Relations.

11. His delegation was satisfied with the conclusions mentioned in chapter IX of the report (A/34/10) concerning the programme and methods of work of the Commission. It was happy to note that the Commission enjoyed excellent relations with the International Court of Justice and that it was co-operating with regional bodies, particularly the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation. His delegation fully understood the problems mentioned in paragraphs 209-210 of the report and wished to stress that Governments should allow members of the Commission, particularly the Special Rapporteurs and officers, adequate time for the fulfilment of their responsibilities to the Commission.

12. In conclusion, he wished to congratulate the Commission and its Chairman, as well as the staff of the Codification Division of the Office of Legal Affairs of the Secretariat, for their excellent work.

13. Mr. DIAZ GONZALEZ (Venezuela), speaking on behalf of the signatory States of the Cartagena Agreement, known as the Andean Pact, said it was no coincidence that those countries should speak jointly on the work of the International Law Commission. The Latin American countries had a centuries-old tradition of participation in the development of the law of nations. From their inception, the new States of Latin America had been concerned with strengthening their independence through the creation of a common legal system, as evidenced in the 1826 Congress of Panama and the many inter-American conferences at which the codification of international legal principles had been stressed. It was not

(Mr. Diaz Gonzalez, Venezuela)

surprising, therefore, that the countries of the Andean Pact, with their commitment to integration, should attach special importance to the work being done within the United Nations with regard to the codification and progressive development of international law. The Andean Pact countries were fully aware that full development could not be achieved without the legal foundations necessary to defend and strengthen it. The lengthy debates in the General Assembly had shown that the legal equality of States enshrined in the Charter had gone hand in hand with economic inequalities. There must be a new international law that would further development and reduce economic inequalities, thus opening the way for a new international order. The International Law Commission, as a permanent body of the United Nations, had an important role to play in that regard.

14. Turning to the report of the International Law Commission (A/34/10), he noted with satisfaction that the Commission had completed its first reading of the draft articles on succession of States in respect of State property and State debts. The Commission's decision to supplement the draft articles on State property, which were drafted in abstract terms, by some articles specifically relating to State archives was particularly significant. The excellent report of the Special Rapporteur, and the debates in the Commission, had shown clearly that, whether or not State archives were treated as a type of State property, they constituted a very special case in the context of succession of States. The two draft articles prepared by the Commission contained the minimum provisions desired by many of its members. In the form of written legal rules, they embodied and supplemented the efforts made by the United Nations and UNESCO to preserve the rights of people to conserve and recover their historical and cultural heritage. The Latin American countries had been particularly concerned with that question, as was shown by the "Andrés Bello" Cultural Convention, to which the Andean Pact countries were parties.

15. Article B dealt satisfactorily with cases in which State archives might be essential both to the predecessor State and to the successor State and which, by their very nature, could not be divided. Modern technology made it possible to provide for their reproduction, which was very important to newly independent States. In many cases, archives constituted a common heritage, not only for the predecessor and the successor States, but in some cases for several successor States, as had been the case with the Latin American countries when they had achieved their independence from Spain. The large volume of historical archives kept in Seville, Spain, represented a common heritage of Spain and Latin America and could not be divided among all the countries concerned. They had, of course, always been accessible to researchers from the Latin American countries and, thanks to modern technology, could be reproduced. The importance of paragraph 6 of article B, which established the inalienable right of peoples to their cultural heritage, must be stressed.

16. Turning to the question of State responsibility, he noted with satisfaction that the Commission would not be restricting its study of the subject to a specific area and that it would not undertake to define and codify rules described as "primary", whose breach could be a source of responsibility. The draft articles on consent, legitimate countermeasures, force majeure, and fortuitous events were satisfactory; it should be understood, however, that the individual Governments on whose behalf he was speaking would be submitting their written comments once the draft had been completed.

(Mr. Diaz Gonzalez, Venezuela)

17. He supported the decision of the Commission, in accordance with articles 16 and 21 of its Statute, to transmit to Governments the draft articles on treaties concluded between States and international organizations or between international organizations. The observations and comments of Member States and international organizations would doubtlessly eliminate many of the difficulties involved.

18. The subject of non-navigational uses of international watercourses was very important and many delegations felt that the Commission should give it priority in order to provide the international community with a generally applicable set of norms on that subject. Account should be taken of the fact that each watercourse was unique. He supported the decision to solve the problem of the disparity in the characteristics and uses of watercourses by supplementary agreements between the parties to a general convention. That could lead to the elaboration of general norms and principles permitting the formulation of special rules applicable to the specified uses of different watercourses. In that regard he cited the example of the 1969 Treaty on the River Plate Basin, which considered the river basin as a socio-economic whole with a view to the development of the region for the benefit of States whose territory was situated in the basin. In particular he drew attention to article 6 of the Treaty, which stated that the parties thereto could conclude bilateral or multilateral agreements with a view to furthering the general aim of developing the river basin. The Commission should take account of the studies conducted by other United Nations bodies on related questions, especially those concerning the environment, in order to prevent duplication and make use of acquired experience. The Commission should begin formulating general principles on the legal aspects of the non-navigational uses of international watercourses in such a way that they could be supplemented by user agreements.

19. He attached great importance to the question of jurisdictional immunities of States and their property and agreed with the Commission's decision (A/34/10, para. 180) that work should continue on the immunities of States from jurisdiction, leaving aside for the time being the question of immunity from execution of judgement. Lastly, the Commission should work in close co-operation with the regional juridical bodies; an effective exchange of information with those bodies would prevent duplication of studies and wasted effort.

20. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic), referring to the draft articles on succession of States in respect of matters other than treaties, said his delegation supported the decision to delete former articles 9 and 11, since they were contrary to other articles elaborated at a later stage. With regard to article 16, on State debts, his delegation had no objection to subparagraph (a), since the obligations covered therein were international legal obligations and were subject to succession. However, his delegation was not in favour of subparagraph (b), since the expression, "any other financial obligations" could include obligations to private persons, both natural and juridical, and as such were regulated by internal law, not international law. Despite that fact, certain members of the Commission had insisted on retaining subparagraph (b), which was clearly contrary to principles of international law.

(Mr. Rassolko, Byelorussian SSR)

21. His delegation was in favour of continuing the work on State archives, especially with regard to defining the concept of "State archives" and studying all aspects of the problems related to the possibility of their transfer in the case of different types of successor States.

22. With regard to State responsibility, his delegation proposed that article 28 should be deleted, since it was contrary to both the letter and the spirit of the draft artricle and especially chapter I. The terms "subject to" and "coercion" did not correspond to concepts of contemporary international law. In the contemporary world, no State should be subject to the power of direction or control of another State and no State should coerce another State to commit a wrongful act. If such practices still existed in international relations, they should not be made into norms of international law. That was a question which had not only legal, but also political significance. Articles 29 to 32 on circumstances precluding wrongfulness, were relevant to the topic under consideration. However, article 32, on "distress" should be studied further and possibly redrafted as part of a review of all aspects of extreme necessity on the part of States in general. Since subjective as well as objective factors could influence the conduct of States, it was difficult to determine whether the choice of conduct by a State organ or authorized person was really lawful in the case of "distress". Furthermore, article 32 provided for separate, private cases of extreme distress. He hoped that the Commission would speed up its work on the draft articles so as to promote the progressive development of international law in that extremely important area of international co-operation.

23. With regard to the question of treaties concluded between States and international organizations or between two or more international organizations, articles 42 to 60 at their current stage of development were in general acceptable. However, his delegation felt that article 45, paragraph 2, should refer only to articles 47 to 50. The provisions of article 46 regarding international organizations should in all cases remain independent since they were interrelated with article 45, paragraph 3. The Commission should complete the draft articles on that topic as soon as possible and submit them to Member States for consideration.

24. With respect to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation felt that it was time to begin work on the draft articles, which he hoped would soon be submitted to the Sixth Committee for consideration.

25. His delegation felt that the question of the non-navigational uses of international watercourses needed to be studied further and was not ready for codification. The draft did not define clearly the concept of "international watercourses" and included subjects which had no bearing on the topic under consideration, such as flood control and erosion.

(Mr. Rassolko, Byelorussian SSR)

26. With respect to the work of the Commission in general, his delegation felt that positive results had been achieved in the draft articles on succession of States in respect of matters other than treaties, State responsibility, and treaties concluded between States and international organizations or between two or more international organizations, and serious work had begun on the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Such work should continue. However, the Commission should study the possibility of further improving its methods of work and procedures with a view to the timely and effective completion of the tasks entrusted to it. The Commission must strive to enhance more effectively the role of the United Nations in the legal sphere, namely to promote international co-operation in order to encourage the progressive development of international law and its codification, which would further the work of strengthening the rule of international law, the development of mutual understanding and co-operation between States, and the cause of peace and security in the world.

27. Mr. TOLENTINO (Philippines) said that the draft articles on succession of States in respect of State property and State debts could be used as a basis for a convention, if that was the instrument decided upon. They were, however, still provisional in character and would be further reviewed by the Commission after Governments had made observations on them. With regard to the two alternative formulas mentioned in the Commission's report (A/34/10) as possible amended titles, he preferred the title "Succession of States in respect of State property, State debts, and State archives", but would simplify it further to read "Succession of States with respect to State property, debts and archives". His delegation favoured the inclusion of the draft articles relating to State archives as a separate part IV, and therefore preferred a limited title which included State archives.

28. He was glad to note that the Commission had almost completed the draft articles on treaties concluded between States and international organizations or between two or more international organizations. However, the Commission had not achieved much progress on the non-navigational uses of international watercourses, the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and jurisdictional immunities of States and their property.

29. His delegation noted with particular interest the commendable progress made on the topic of State responsibility. His Government found it difficult to make a full analysis of the draft articles on that topic and might not even find it advisable to comment on part I when it had been completed, since the meaning of that part might depend to a great extent on the provisions of parts II and III. For example, in the case of articles 16, 17 and 19, under which an internationally wrongful act was defined and such acts were classified into international crimes and international delicts, it would be difficult to make a valid assessment of the merits of such a classification without knowing the content of parts II and III.

(Mr. Tolentino, Philippines)

30. A number of questions would also have to be answered before any analysis of the draft articles submitted thus far could be attempted. To what extent, for instance, would the traditional concept of the sovereignty of States have to yield before the overriding interests of the international community? Would sanctions be imposed only on States or also on the natural persons or Government organs which committed an internationally wrongful act on behalf of a State? What machinery would be provided for the enforcement of State responsibility, and under what conditions could recourse to such machinery be had? In view of those considerations, his delegation would defer its final comments pending submission of all the draft articles on State responsibility. At the same time, however, it wished to underline the urgency of the matter and, in that connexion, would suggest that the General Assembly should recommend that the Commission accord the question not merely high priority, as it had done in earlier resolutions, but top priority with a view to its completing the first reading of parts I, II and III within the current term of office of its members. His delegation appreciated that State responsibility was a complex subject and that the Commission was constrained by the demands made upon the time of its members. But the articles on State responsibility would constitute a milestone in the progressive development of international law and, in the light of current events in the world, were a matter of the utmost urgency. The fact that in many instances no sanction was imposed on those who violated international law could in time make a mockery of that law, which should prompt the international community to adopt articles on State responsibility as soon as practicable. The possibility might also be considered of referring the draft articles to an international plenipotentiary conference in the near future. Such a conference would help to avoid duplication of work and would hasten agreement on an international convention on State responsibility.

31. Mrs. KONRAD (Hungary) said that the codification and progressive development of international law should serve to strengthen friendly relations between States and thus to promote peaceful coexistence. The International Law Commission, by preparing drafts of legal instruments on the basis of the fundamental principles of contemporary international law, could make an effective contribution to the development of co-operation among States.

32. Noting that the Commission had achieved positive results at its thirty-first session, she said that her delegation was particularly gratified that the first reading of the draft articles on succession of States in respect of matters other than treaties had been completed, in accordance with General Assembly resolution 33/139. The importance of that topic was underlined by the large number of States which had attained independence since the Second World War and had thus become sovereign members of the international community. The draft articles submitted by the Commission therefore deserved the closest consideration. Her delegation agreed that the title of the draft articles should be amended to reflect their scope more accurately. Also, it endorsed the new structure of the draft, which was similar to that of the Vienna Convention on Succession of States in respect of Treaties. It had doubts, however, about article 16 for, while subparagraph (a) provided an accurate definition of the concept of State debt for the purposes of the draft, subparagrah (b) extended the application of the provisions of part III of the draft to State debts owed to creditors who were not subjects of international law. That

(Mrs. Konrad, Hungary)

gave rise to an obvious contradiction, since the draft articles embodied rules of international law and were therefore applicable only to subjects of international law. Matters relating to the financial obligations of a State to private creditors or, in other words, to creditors who were not subjects of international law should therefore be regulated by internal law, although article 18, paragraph 1, provided a sufficient safeguard for the interests of all creditors, including those who were not subjects of international law. As her delegation, as well as a number of others, had already stressed, the draft articles should deal solely with the international debts of States. It therefore considered that subparagraph (b) of article 16 had no place in an instrument which laid down rules of international law and should be deleted.

33. State archives, which were an essential part of a nation's cultural heritage, constituted a special case within the context of State succession. In that connexion, she considered that the definition of State archives, as laid down in article A, was too vague, although she noted from the commentary on the article that it was intended as a first step towards a final definition.

34. Her delegation trusted that the Commission would complete its second reading of the draft articles on succession of States in respect of matters other than treaties in the near future so that a final draft could be submitted to the General Assembly.

35. Referring next to the draft articles on State responsibility, she said that her delegation had serious doubts about article 28, under which an internationally wrongful act committed by one State could, in certain circumstances, give rise to international responsibility on the part of another State. That was at variance with the underlying principle of the draft, which was that an internationally wrongful act by a State entailed the responsibility of the State to which the act in question was attributable. The weakness of the proposition on which article 28 was based was borne out by the vagueness of the terms used. For instance, what was meant by "power of direction or control"? What degree of "coercion" was required? How could it be proved that coercion had been exerted to secure the commission of a wrongful act, or that a State had thereby been deprived of the freedom to decide on its own conduct? Might paragraph 2 not be used by some States to evade responsibililty by invoking coercion as a pretext, no matter how slight it was? In view of all those considerations, her delegation was unable to accept article 28 in its existing form. At the same time, it trusted that at its thirty-second session the Commission would be able to complete the first reading of the draft articles in chapter V, which dealt with the circumstances precluding wrongfulness.

36. Her delegation was gratified at the progress achieved by the Commission in regard to the draft articles on treaties concluded between States and international organizations or between two or more international organizations. The increasingly important role played by international organizations in international relations was ample justification for the preparation of an instrument to define the rules relating to treaties to which an international organization was a party, and such an instrument would make a valuable contribution to the codification of the law of treaties. The fact that the appearance of international organizations as contracting parties was a relatively new phenomenon, and that there was therefore

(Mrs. Konrad, Hungary)

little practical experience in regard to treaties to which such organizations were contracting parties, did not facilitate the Commission's task. Although it had been possible to transpose many of the provisions of the Vienna Convention on the Law of Treaties, some of the other provisions called for a detailed examination of the special nature of international organizations. In many instances, the Commission had taken sufficient account of the significant differences between States and international organizations in their capacity as contracting parties but in other instances for example, in article 45, it had not done so. Her delegation would however, examine all the draft articles submitted for comment very carefully.

37. It was also gratifying to note the progress achieved by the Commission on the subject of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and the working group appointed to consider that subject was to be commended on its work. The Commission's conclusions confirmed the view that the preparation of an additional protocol would be desirable, since existing conventions made no provision for the numerous questions that arose in practice. Her delegation trusted that, as a result of the Commission's work, that omission would be remedied in the near future.

38. Her country attached special importance to the codification of the law on the non-navigational uses of international watercourses. Consequently, her delegation considered that the Commission should prepare a draft framework convention which would embody general principles of law based on the sovereign equality of States and would take account of the interests of all and of the principles of equity.

39. In conclusion, she expressed the hope that the Commission would shortly be able to complete the drafts which it was currently preparing so that it could submit draft instruments designed to promote international co-operation.

40. Mr. JACOVIDES (Cyprus) said that harmonious interaction between the Sixth Committee and the International Law Commission was of the utmost importance for the codification and progressive development of international law and it had in the past produced very satisfactory results, as was attested to by the list of treaties referred to in the Commission's report (A/34/10, para. 194). The task of the Sixth Committee in that connexion was to scrutinize the results of the Commission's work with a view to providing the guidance that would enable it to pursue that work while taking due account of political realities and the concepts of contemporary international law.

41. As far back as 1960, the Mexican representative on the Sixth Committee had referred to the impact of political, economic and social developments on contemporary international law. One such development was the emergence of the newly independent States, which had tripled the membership of the United Nations. Those new States had been enabled to particpate in the United Nations and in multilateral conferences on international law and thus to put their imprint on international law in a manner consistent with their interests and ideas of justice. Until they had done so, customary and conventional international law had been the product of a few States and consequently had been conditioned by the interests and ideas of justice of those States. The question which currently

(Mr. Jacovides, Cyprus)

concerned the newly independent States was how to view the rules of traditional international law. On an earlier occasion he had suggested that a compromise should be devised whereby national interests would be balanced against the concept of international legal obligation, with a view to ensuring continuity and enabling newly independent States to transform the rules of traditional international law into contemporary notions through progressive development. The validity of that approach had since been demonstrated by the adoption of a number of important conventions, in particular the Vienna Convention on Diplomatic Relations and the Vienna Convention on the Law of Treaties, as also by the embodiment, in the latter Convention, of the concepts of jus cogens and the invalidity of treaties imposed through the threat or use of force. At other conferences, for example, at the United Nations Conference on the Law of the Sea, a number of unprecedented notions, such as the exclusive economic zone and the common heritage of mankind, had also been introduced on the insistence of the newly independent and third world countries, with the result that there had been a radical change in the pre-existing rules. At the same time, many traditional norms of international law had been retained, which demonstrated that novelty was not necessarily synonymous with progress.

42. Another important development was that, during the two previous decades, the Commission's membership had come to reflect the international law concepts held in all parts of the world, so that it was more keenly attuned to contemporary concepts of international law. That welcome change had been reinforced by the Commission's practice of maintaining a close relationship with the International Court of Justice and with regional bodies such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. Some of the Commission's more peripheral activities had likewise developed into useful institutions; the annual International Law Seminar, for example, served not only to educate the students who attended it but also gave those members of the Commission who delivered the lectures an opportunity of learning more about the practical problems faced by participants, many of whom came from developing countries.

43. Referring specifically to the report of the Commission (A/34/10), he said that the topic of succession of States in respect of matters other than treaties was of particular importance to newly independent States. His delegation would, however, reserve the right to comment further on that topic when it had examined the content of the draft articles and the accompanying commentaries.

44. His delegation was gratified to note the progress made in regard to State responsibility. It agreed that the Commission should not confine its study to any particular area, and that the question of international responsibility arising from activities not prohibited by international law should be treated separately. It also agreed with the view set forth in paragraph 63 of the report that, in order to be able to assess the gravity and determine the consequences attributable to the internationally wrongful act, it was necessary to take into consideration the fact that the importance attached by the international community to the fulfilment of some obligations, such as those concerning the maintenance of peace and security, would be of quite a different order from that which it attached to the fulfilment of other obligations, precisely because of the content of the former. His

(Mr. Jacovides, Cyprus)

delegation trusted that the Commission would be able to complete its first reading of part I of the draft articles on State responsibility at its thirty-second session.

45. Of the 32 draft articles on State responsibility adopted thus far, his delegation had taken special note of articles 19, 27 and 29. In regard to article 29, it had noted in particular that consent, as a circumstance precluding the wrongfulness of an act, must be validly given and did not apply if the obligation arose out of a peremptory norm of general international law. It agreed with the basic thrust of the commentary on that article that the principle of volenti non fit injuria, though applicable under international law, was subject to the excception that rules of jus cogens could not be avoided by means of special agreements. It also agreed that consent must be validly expressed and freely given if it were to preclude the wrongfulness of the act, since that was in keeping with the general need for equity and, more especially, with the need to protect weaker States against possible abuses by more powerful States. It further agreed that the most reliable example of a peremptory rule was the prohibition of the use of armed force in violation of the principles of international law as embodied in the Charter. It would, however, have been preferable had the examples and precedents cited in the commentary been extended to include current and outstanding cases of international crimes, where the claim that consent had been given had been rebutted on the basis, inter alia, of the applicability of the rules of jus cogens.

46. The Commission was to be commended on the rapid progress with which it had adapted the provisions of the 1969 Vienna Convention on the Law of Treaties to the draft articles on treaties concluded between States and international organizations or between two or more international organizations, and on overcoming the difficulties that derived from the differing nature and limited international capacity of international organizations. It was particularly gratifying to note that the provisions of the 1969 Vienna Convention had stood the test of time. He would draw attention, in particular, to draft articles 52 and 53, and the excellent commentaries thereon, which underlined what was meant by coercion and jus cogens.

47. The law on the non-navigational uses of international watercourses, though undoubtedly important, concerned other countries which were more directly involved in that area of the law, and the Committee might with profit reflect on the useful comments made by their representative in that connexion.

48. His delegation would reserve its position on the form of the instrument to be adopted with regard to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier until the work on that subject had reached a more advanced stage. It looked forward to receiving the results of the work being carried out on the jurisdictional immunities of States and their property.

(Mr. Jacovides, Cyprus)

49. The review of the multilateral treaty-making process would provide all concerned with an opportunity to reflect on some of the broader aspects of international law-making within the United Nations. His delegation agreed fully with the report which the working group had forwarded to the Secretary-General in that connexion. Although the techniques and procedures adopted by the Commission had made a significant contribution to the codification and progressive development of intertnational law, other techniques and procedures could also be used, either because vital national interests required draft articles to be prepared by Government representatives, as had been the case with the Third United Nations Conference on the Law of the Sea, or because the issues were more scientific and technical than legal. Bearing in mind the enormity of the task that lay ahead and the limitations on the Commission's time, there was a case for allowing both approaches. In terms of legal expertise and of proven techniques and procedures, however, the International Law Commission remained without equal.

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/C.6/34/L.8)

50. The CHAIRMAN announced that Guinea had become a sponsor of draft resolution A/C.6/34/L.8.

The meeting rose at 1.20 p.m.