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SIXTH COMMITTEE
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at 10:30 a.m.
New York

SUMMARY RECORD OF THE 46th MEETING

Chairman: Mr. GUNA-KASEM (Thailand)

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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. ROSENNE (Israel) asked that the table of correspondence (A/C.6/34/L.2) concerning the draft articles submitted in chapter II of the Commission's report (A/34/10), which the Secretariat had submitted at his request, be included in the printed version of the report to be issued in due course. He also suggested that the resolution on item 108 to be adopted by the Committee at its current session should include an expression of appreciation to the Swiss Government for the decision which it had taken regarding the privileges and immunities of the members of the Commission.

2. The new structure of the draft articles on succession of States in respect of matters other than treaties met with his delegation's general approval, and it had noted with interest the cautious wording of paragraph 46 relating to the form of the draft. While it could in principle accept the Commission's usual approach, whereby each case was dealt with in the form of a draft article accompanied by a commentary, it considered that the end product did not necessarily have to be a set of draft articles designed to form the basis for an international convention. The commentaries to the draft articles incidentally should be as short as practicable, and should seek merely to justify or explain the Commission's conclusions without entering unduly into the lengthy doctrinal dissertations on which such conclusions were based.

3. Articles 2, paragraph 1 (d), and 6 related to the impact of the time factor on the subject under consideration and, if read together, prompted the question: to what was the draft as a whole intended to refer? The Commission had touched on that time factor in connexion with succession of States in respect of treaties in the report on its twenty-fourth session (A/8710, para. 41) but it had apparently been referring to the temporal element as an outward-looking factor, in other words, as it related to the date on which codification of the topic should be completed. Time, however, could also be an inward-looking factor, in which case it referred to the temporal conflict element as an integral part of the substantive rule which, in the draft articles before the Committee, was present in one case but absent in another. The question was one which would have to be faced squarely; and the fact that that had not been done in the case of succession in respect of treaties, might account for some of the difficulties experienced by the Vienna Conference on Succession of States in respect of Treaties as well as for the difficulties currently arising in connexion with the ratification of the Convention adopted at that Conference (A/CONF.80/31). Most of the States which had attained independence had dealt with the main problems of State succession without the benefit of any written codification of the international law and he therefore wondered whether it was consistent with the principle of the sovereign equality of States to require those, or any other, rules to be applied in future political situations which could not be foreseen. He recognized that the considerations which the Commission had found relevant to succession in respect of

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treaties might not be equally relevant to succession in respect of other matters. In the case of treaties, the inward-looking time factor was probably of short duration, since once the State concerned had reached its decision, within the accepted legal framework, that decision immediately produced continuing effects. In matters other than treaties, however, the time-span throughout which the effects of the succession might be felt could be quite long, and even unexpected, so that the rule could not necessarily be a momentary one.

4. Furthermore, in a rapidly changing world, cases of double and triple succession could occur within a relatively short time-span. He had himself had occasion to deal with cases of succession involving the Ottoman and British Empires in their suzerainty over the territory which had become Israel, and also with a succession which had run from the time of the Kaiser's Reich in the nineteenth century to that of the Federal Republic of Germany. He mentioned those two instances, which were probably not unique, to underline the complexities which the time factor could introduce into State succession. The Commission should take account of, and provide for, all those elements.

5. Article 1, which was meant to serve as an introduction to the draft as a whole, missed the point in that respect. In particular, the expression "matters other than treaties" was too negative. His delegation therefore suggested that the article should be redrafted to state specifically to what the articles did apply rather than to imply to what they did not apply. Article 1 of the Vienna Convention on the Law of Treaties would provide a better model in that regard than article 1 of the Vienna Convention on Succession of States in respect of Treaties.

6. In regard to the definition of "third State", as laid down in article 2, paragraph 1 (f), he would refer members to the remarks he had made at the Committee's 41st meeting on the need to avoid attributing new, and not necessarily clear, meanings to established expressions. It was incumbent on the Commission, given the central role it played in the development of international law, to preserve the integrity and clarity of the lexicon of that law. His delegation also doubted whether the intent of article 2, paragraph 2, should be restricted in the manner suggested in paragraph (8) of the commentary. Terminology was a secondary matter; the real purpose of the provision, as it originated in the law of treaties, being to safeguard the internal law and usages of States in general.

7. The draft articles on succession to State property suffered from one major defect in that they failed to deal with the question whether the property had been lawfully acquired by the predecessor State. He failed to see how property that had been acquired unlawfully could fall within the scope of the rules. Such property should be returned as of right to its lawful owners or their successors in title, and there should be no actual or presumed escheat to or through the wrongdoer. That principle, which had been applied by the military Governments of the United States, the United Kingdom and France in Germany following the Second World War, was one of general application. The principle of equity, which the Commission had dealt with at some length in paragraphs 16 et seq. of its commentary, was likewise one of general application and was not confined to colonial situations. Running through the draft articles was the notion that

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coercive policies gave rise to claims of restitution which took priority over other claims arising out of State succession. Care should therefore be taken to protect the necessary priorities when competing claims arose under different branches of law.

8. His delegation further considered that the rule laid down in article 6 should deal with any legal encumbrances, rights and duties on or over the property which passed to the successor State. Assuming, for example, that the predecessor State had granted a concession for the instalment of kiosks and snack-bars in the stations of its State-owned railway system, the Government of the successor State should not be obliged to maintain that concession on a proper passing of the State property from the predecessor State to the successor State. That was in accordance with the view expressed by the Israeli Supreme Court, which his Government accepted. The expression "agreed or decided", which occurred in article 7 and elsewhere in the draft, was a pleonasm, and its use could not be justified by the explanation given in paragraph (4) of the commentary to the article. His delegation therefore suggested that it be replaced by "unless otherwise determined". It also considered that article 9 could safely be deleted, but would reserve its position on articles 10 to 14.

9. In general, part III of the draft, dealing with State debts, was an improvement on the earlier versions submitted by the Commission. It should, however, be made quite clear, in article 16, that part III referred not to "any" financial obligations but only to financial obligations that had been legally incurred, since a very delicate problem could arise in practice. For instance, at the time of the termination of the mandate for Palestine, the United Kingdom had submitted a claim against his Government in respect of costs incurred in the course of the United Kingdom Government's attempt to suppress "illegal Jewish immigration" into the country. The Jewish authorities had taken the view that, since the purported limitation on Jewish immigration during the period 1939-1948 had been contrary to the terms of that mandate, his country could not be expected to assume the financial obligations incurred in pursuing action which was therefore deemed to be illegal. The differences between the United Kingdom Government and his country had since been settled amicably.

10. The introduction of a reference to international organizations, in article 16 and elsewhere, seemed to be an unnecessary complication, and it might therefore be advisable to confine the draft to the effects of succession "between", rather than "of" States, and to modify article 1 accordingly.

11. Article 17 should be amended to provide that the successor State would take over State debts that passed to it, subject to any lawful encumbrances. If that were the intent of article 18, paragraph 1, it should be reworded and placed at some other point in the draft, possibly as a separate article.

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12. In his delegation's view, article 18, paragraph 2, and in particular the expression "the consequences of that agreement", which appeared in subparagraph (a), required clarification. It agreed, however, with the statement in paragraph (10) of the commentary to the effect that the provision was equally valid in cases where the creditors were not States, which was an added reason for deleting the references to international organizations.

13. He would reserve his delegation's position on articles 19-23, although the numerous references made to source material which was not of a legal character and which emanated largely from economic agencies prompted the question whether there were not some interdisciplinary factors to which the Commission should be alerted.

14. With its work on State archives, the Commission had entered a virtually unexplored area of international law and, the problem of double and triple succession could present special difficulties in that regard. For example, the inquiries which his country had addressed to certain Governments regarding archival material relating to its territory had on occasion met with a rather unsatisfactory response. His delegation would therefore like the Commission to consider whether earlier governments, apart from the immediate predecessor Government, were not under some more specific legal obligation in that regard. Also, while it agreed entirely with the reference, in article B, paragraph 6, to the right of peoples to information about their history and to their cultural heritage, it would go still further since, in its view, all peoples had a right to the restoration of objects of their cultural heritage of which they had been despoiled. That right had already been recognized, under the Treaty of Versailles, in connexion with a part of Egypt's cultural heritage which had been found in Germany. Scattered throughout the world were many documents of great value to his country's cultural heritage. In some cases, those documents were well maintained and there was full access to them; in others, they were not treated with the degree of care they required. Very often they were of no use in the places where they were situated, since the languages in which they were written were not known in those places. There were no scholars to study them and ensure their scientific dissemination, nor a general public anxious to behold part of its national cultural heritage. Access to such material was often extremely difficult, if not impossible, and the argument that those items of Jewish cultural heritage formed part of the cultural heritage of the State in which they were situated had a hollow ring, particularly when that State had been to the forefront in anti-Jewish persecution, had not come by such material lawfully, and had no real need of it. His country had met with varying degrees of understanding in its endeavours to obtain repatriation of that material and he therefore trusted that the Commission would be able to express in more specific terms the right of new States to the restoration of all materials that formed part of their cultural heritage, which was the logical outcome of the age of decolonization.

15. Turning to chapter III of the Commission's report, on State responsibility, he invited the Commission to refer, when it came to the second reading of the draft articles on the topic, to the oral remarks he had made on the subject at previous sessions. He would, however, reiterate that the articles would be greatly simplified if they were stripped of all the elements which, though

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necessary for an examination of the jurisprudential aspects of the topic, were not necessary for an international convention or other international instrument. His delegation agreed that the Commission should not confine its study of the topic to a particular area, such as responsibility for injuries to the person or property of aliens, and considered that, in view of the evolution of the concept of the international protection of human rights, the Commission should recognize that international responsibility could be entailed as a result of the illegal action of a State towards its own nationals, as had been recognized in regard to the treatment of Jews of German nationality by the Government of the Third Reich. Consequently, if article 19 were to be retained, the scope of paragraph 3 (c) should be extended to cover crimes against humanity and violations of internationally protected human rights. In that connexion, he regretted that a number of claims arising out of nazism and Nazi atrocities still awaited settlement and trusted that the States concerned would shortly agree to meet their obligations. His delegation would reserve its position on the remaining articles on the topic, although its general impression was that there were further instances of legal niceties which might be irrelevant to the Commission's preparation of the final draft articles.

16. He noted from paragraph 84 of the Commission's report that, although the Commission had not completed its first reading of draft articles 1-60 on treaties concluded between States and international organizations or between two or more international organizations, it intended to ask Governments for their written comments. His delegation doubted whether the analogy with the law of treaties, as referred to in paragraph 84, was strictly relevant, but it was prepared to accept the Commission's decision as an exception to the general principle that only completed drafts should be formally submitted to Governments for comment.

17. His delegation fully supported the Commission's decision that each article of the Vienna Convention on the Law of Treaties should be examined individually, for the purposes of study only, with a view to determining its possible application to a treaty to which an international organization, as well as one or more States, was a party. In that context, it was not necessary to examine treaties to which only international organizations were parties. Once the initial study had been completed, the Commission should reduce the number of its conclusions in so far as practicable. His delegation doubted whether the matter should be consummated by the conclusion of a treaty and considered that it would suffice if the Commission embodied its conclusions in the form of a report.

18. On the basis of the study of the individual articles carried out thus far, one general conclusion had emerged which related to the "life" of the treaty as an international legal instrument. In the case of reservations, for example, the guiding principle should be that international organizations should not be able to challenge the actions of States that were legitimate by virtue of their autonomy under contemporary treaty law in circumstances in which other States, acting in concert through an international organization, could arrive at positions having legal effect which those self-same States could not take if they acted individually. Furthermore, the Vienna Convention made no provision for the collective evaluation of a reservation which a State sought to make on giving its

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consent to be bound by a treaty: that was a matter for the individual States concerned. It was therefore not right to create a legal system under which an organ of an international organization, which was a party to a multilateral treaty most of the other parties to which were States, could, acting on the basis of a majority decision, challenge a reservation made by a State in conformity with that treaty and with the residual rules laid down in the Vienna Convention. The same approach should be adopted in regard to all the matters dealt with in part V of the Vienna Convention, which did not provide, as a matter of course, for intervention by an international organ in the application of any individual article relating to the invalidity or termination of a treaty concluded between States. The Commission should therefore be careful to preserve the autonomy of will of the States parties to the treaties concerned, within the framework of the Vienna Convention, and should not open the door to intervention through an international organization which might be or become a party to a multilateral convention. It would then avoid many of the pitfalls that lay ahead.

19. Referring next to the law of the non-navigational uses of international watercourses, he said that his delegation did not agree that the Helsinki Rules, adopted by the International Law Association in 1965, and the resolutions adopted by the Institute of International Law in 1961 and 1979, were in themselves premature. The issues involved were so complex, and the role of water in human existence so vital, that any dispassionate international examination of the problems was to be welcomed and would serve as a step towards agreed international rules of conduct. In that connexion, consideration should perhaps be given to producing supplements to the Secretary-General's report on "Legal problems relating to the utilization and use of international rivers" (A/5409) and to the 1963 volume in the United Nations Legislative Series (ST/LEG/SER.B/12), which were referred to in paragraph 87 of the Commission's report. Such supplements would be in keeping with the spirit of General Assembly resolution 2669 (XXV) and, if the Commission were to submit a request to that effect at the next session of the General Assembly, his delegation would be prepared to support it.

20. The notes circulated on the Commission's behalf by the Secretary-General would receive his Government's close attention, although he was not in a position to state whether it would decide to reply to them. He would, however, draw attention to what he regarded as the two basic elements in the philosophy that should underlie the Commission's work on the topic and which he trusted would be adequately reflected in the draft articles. In the first place, formal agreements between the States concerned were of fundamental importance and to such an extent that all the rules drafted, apart from those dealing with general principles, would probably have to be cast in the form of true residual rules, which raised the question whether the topic could properly be consummated in the form of a codification convention. The second basic element concerned the equitable apportionment of the rights and duties of the States concerned; the matter was all the more delicate where a State was, at one and the same time, an upstream and a downstream State in relation to a single river or river system. Such equitable apportionment had two consequences, the first being that it buttressed the significance of agreement as the foundation for the practical application of the rules of law, and the second that it excluded any automatic application of

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the rules of law, and the second that it excluded any automatic application of compulsory third party settlement if the States concerned did not reach agreement. Negotiation and possibly conciliation would therefore seem to be the only alternatives.

21. His delegation agreed with paragraph 147 of the Commission's report, from which it was implicit that the topic required interdisciplinary treatment. That had to some extent been recognized by the International Law Association and he trusted that the necessary arrangements could be made to provide the Commission with the requisite professional and technical advice.

22. His Government's views on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as expressed at the Committee's previous session, had been carefully noted in paragraph 161 of the Commission's report. His delegation remained of the view that no additional protocol was needed and that the Commission would discharge its duties by submitting a report along the lines of section C of chapter VI of the Commission's report before the end of the current term of office of its members.

23. His delegation was in general agreement with the conclusions reached by the Commission on the preliminary report on jurisdictional immunities of States and their property (A/C.4/323). It wished to stress the delicacy with which the topic had to be approached, not only on account of the practice of socialist and developing countries which was referred to in paragraph 179 of the Commission's report. The topic could impinge on some of the most sensitive areas of international relations at a time when the pattern of those relations, and the concepts of the rights and duties of States, were themselves in the throes of rapid change. One aspect of the matter which called for special attention, and which also arose in connexion with State responsibility and liability without fault, concerned the implications for the rules of imputability of a claim of immunity, whether diplomatic or State: the two were not always readily distinguishable. There had, for example, been cases involving difficult questions of the legal personality of foreign consulates and their entitlement to State immunity. He raised the point since it did not appear to have been covered in the Commission's report. A claim of immunity would go a long way to solving any question of imputability.

24. Chapter VIII of the report (A/34/10), constituted the formal part of the Commission's contribution to the review of the multilateral treaty-making process called for in General Assembly resolution 32/48, and should be read in conjunction with the Commission's substantive report (A/CN.4/325).

25. His delegation regretted that, without any of the documentation being made available to Governments other than the report of the Working Group of the International Law Commission (A/CN.4/325), the General Committee, acting on the advice of the Secretariat, had decided to recommend postponement of the item until the next session of the General Assembly. Although he understood that the original sponsors of the 1977 item had agreed to that, his delegation considered that the material currently available should be present to the Sixth Committee.

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The decision to postpone the discussion should have been left to the Sixth Committee, and he hoped that if a similar situation arose the following year the matter would be put to the Sixth Committee before there was any further postponement. There were many reasons why Governments should be reluctant to respond to the questionnaire circulated in accordance with resolution 32/48. That resolution was one of the few adopted without full regard for what had been said in the Sixth Committee, and it was possible that if the Sixth Committee had been able to take even a brief look at the matter as it currently stood, it could have reduced the topic to more manageable proportions.

26. The report of the Commission's Working Group had been adopted by the Commission and had been transmitted to the Secretary-General, who would presumably submit it to the General Assembly in 1980. Accordingly, his delegation would suggest to the Commission that it undertake further examination of the matter and present a supplementary report in 1980. The report apparently reached the conclusion that the techniques and procedures provided in the Commission's Statute, as they had evolved in practice, were well-suited to the tasks entrusted to the Commission by the General Assembly (A/34/10, para. 195). However, to say that was merely to beg the question. In paragraph 194 of the report there was a list of important conventions concluded by the States on the basis of drafts prepared by the Commission, but the Commission did not examine the current status of those conventions from the standpoint of the number of parties to them. Nor had it attempted to analyse why entirely new techniques had had to be evolved to deal with the law of the sea, or whether the Commission's techniques had anything to do with the fact that despite efforts by Mr. Stavropoulos, the then Legal Counsel, the Commission had been excluded from any role in the preparation of the new law of the sea. The Commission had not considered why other techniques had been used for the draft Convention against the Taking of Hostages. It had not considered the implications of the virtual rejection of many of the conventions prepared on the basis of its drafts when they were put to the test of signature and ratification.

27. His delegation also thought that the Commission should closely re-examine its practice of concluding its work on a given topic only by submitting draft articles intended to form the basis of a convention. There were other effective ways of concluding work on a topic, and he drew attention to the recent discussion in the Institute of International Law, in which several current and past members of the Commission had participated, on whether the Institute's work on a given topic should be concluded only by adoption of a draft resolution. After careful examination the Institute had decided that other methods could be explored, and he hoped that the International Law Commission would follow the same course. A report that included some self-criticism would be of great value when the matter was taken up at some future date.

28. He welcomed the appointment of Mr. Diaz Gonzalez as Special Rapporteur for the second part of the topic of relations between States and international organizations, but his delegation considered that no urgency attached to that topic.

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29. With respect to the question of the honoraria paid to the Commission's members (A/34/10, para. 210), his delegation considered that appropriate rectifications were long overdue.

30. His statement had been long because he was required to state his Government's position on the major points of the Commission's voluminous report. The United States delegation had made some wise proposals for the organization of the debate on the report in future, and other delegations had welcomed the idea of restructuring the debate in order to allow the Sixth Committee to perform its function in relation to the work of the Commission. One useful step would be the division of the debate into several subdivisions, as suggested by the United States. In fact, each substantive chapter of the report should be a subitem of its own, and the debate could frequently be concluded by a simple statement that the General Assembly took note of that chapter. Another step would be the return by the Commission to its earlier practice of submitting more succinct reports. The recently adopted practice of transmitting the articles to Governments almost immediately after the termination of the Commission's session was of limited value, and study of the debate showed that the real interest lay in the Commission's justifications for its decisions. The excessive length of the reports made it impossible for the report to be the first item of business for the Sixth Committee, as it had once been. It was currently treated in a routine way in the latter half of the session, the debate itself being interrupted by debates on other items, which made proper concentration impossible. The debates on the reports of the International Law Commission, and the United Nations Commission on International Trade Law (UNCITRAL) were probably the most important items on the Sixth Committee's agenda. The Sixth Committee needed a calm atmosphere for its debate on those reports, and that was impossible under the current arrangements. He hoped that a major co-operative effort would be made, involving the Commission, all the branches of the Secretariat, Governments, and their representatives in the Sixth Committee, to restore the proper conditions for thoughtful examination of the report of the International Law Commission.

31. Mr. SEYDOU (Niger) said that the report of the International Law Commission (A/34/10) was a source of inspiration to lawyers all over the world, and reflected the progressive development of international law. Although all the topics covered were important, he wished to speak only on the question of the law of the non-navigational uses of international watercourses.

32. The first aspect of that question he would consider was the Commission's aim. Both the Commission and the Sixth Committee agreed that the draft articles should be of a general nature in order to leave room for specific agreements on the use of individual international watercourses. His delegation supported that approach, which was a compromise between the principle of permanent sovereignty of States over their resources and the essential unity of the water. That approach was required not only by the special nature of water but also by the differing characteristics of individual watercourses. His delegation would favour the preparation of a code of conduct to which States wishing to conclude regional agreements could refer, and paragraphs 129 and 132 of the Commission's report showed that a majority of its members shared that view.

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33. The Special Rapporteur could find a guiding line in the practice of States, and there were many conventions on the subject. Several had been concluded in Africa, in relation to the rivers Senegal, Niger and Gambia, and to Lake Chad. It might be useful to circulate a further questionnaire to States and to the competent international organizations whose archives contained useful information.

34. His delegation considered that the Commission had been wise not to attempt at the outset to define an "international watercourse". However, some clarification was now required. The draft articles showed that the Special Rapporteur had taken into account the two generally accepted concepts of an inernational watercourse. Thus in the preparation of each article a choice had to be made in accordance with the different consequences that would arise from adopting one concept or the other, as indicated in paragraph 38 of the report of the Special Rapporteur (A/C.4/320 and Corr.1) (English only)). It was clear that the Commission would not be able to base its choice on isolated replies to the questionnaire by States, whose attitude to the definition of an international watercourse was likely to be coloured by their geographical situation regarding a watercourse. Upstream States would tend to favour the concept adopted in the 1815 Treaty of Vienna of a river separating or crossing the territory of two or more States, while downstream States would generally favour the concept of a drainage basin. However, his delegation did not consider that the choice of one concept rather than the other should necessarily apply to the draft articles as a whole. The choice should be made for each individual article. In some cases the drainage basin concept would be satisfactory, while in others it would be better to use the concept of an international river; it should always be borne in mind that the aim was to establish a code of conduct for States.

35. His delegation considered that article 2 reflected an extensive concept of what constituted an international watercourse that was close to the concept of a drainage basin, which appeared to be the concept that the Special Rapporteur had chosen in that case. That choice resulted in a somewhat vague wording. It was difficult to establish exactly which States could be regarded as contributing to a watercourse and which were making use of it. His delegation would have preferred somewhat more restrictive criteria, and would be inclined to interpret a contributor State as one whose territory was crossed by the international watercourse or whose rivers were important tributaries, thus excluding States whose rivers contributed to the international watercourse. Similarly, his delegation considered that a user State was one which made direct use of the international watercourse. The Commision had discussed whether State A using electricity produced by a dam operated by State B, which was crossed by an international watercourse, could be regarded as a user State, and it appeared from article 2 that the answer was affirmative. His delegation considered that the answer should be negative, since State A was only an indirect user of the international watercourse, with which it had no direct relation. Consequently new wording should be found for article 2, in order to avoid misunderstanding.

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36. A different problem arose regarding articles 8, 9 and 10, which emphasized the unitary character of the water and the need for rational exploitation and were based on the principle embodied in article 3 of the Charter of Economic Rights and Duties of States. It appeared from articles 8 and 10 that the Special Rapporteur had intended to impose a mandatory rule. If that was so, he appeared to have forgotten the special situation of the developing countries in the technological area. The obligations laid on States under the articles concerned could not be properly assumed without the possession of certain instruments that most developing States did not possess. His delegation therefore thought that while these articles should follow the same general line, the obligations imposed should be made more flexible. He suggested that subparagraph 1 of article 8 should be worded in the same way as subparagraph 2 of that article, or subparagraph 2 of article 9, so that instead of begining with the words "A contracting State shall collect and record data ...", it would read "Each contracting State shall employ its best efforts to collect and record data ...". His delegation also hoped that in the future application of the draft articles, article 10, paragraph 3, would be invoked more often than article 10, paragraph 1, since the effect of the latter was to make the State providing the data bear all the costs of collection and exchange. In the case of a common resource like water it was illogical that the costs of data that benefited all States should not be shared.

37. In conclusion he expressed the hope that the State that had generously contributed to the organization of the International Law Seminar would, if possible, increase their contributions so that more young lawyers could particpate.

38. Mr. BARBOZA (Argentina) said that the Sixth Committee had a decisive role to play in the task entrusted to the General Assembly in Article 13, paragraph 1 (a), of the Charter, and that must be remembered in considering the relations between the International Law Commission and the Sixth Committee. The two organs were maintaining the necessary co-ordination, and the Commission was listening attentively to the comments made by Governments through their representatives in the Sixth Committee, since its work required close and constant contact with Governments, and with world opinion as reflected in the General Assembly and, in particular, the Sixth Committee. Thus the report of the International Law Commission was one of the most important items on the Sixth Committee's agenda. It was unfortunate that lack of time at the current session had led to a reduction in the number of meetings available for that item.

39. Turning to the question of succession of States in respect of matters other than treaties, he said that it was a vast topic and not easy to codify, but satisfactory progress had been made, particularly concerning newly independent States, which required special protection, particularly with respect to cultural property, including archives, and natural resources. The Special Rapporteur had succeeded in producing a coherent and legally functional synthesis out of a vast mass of material.

(Mr. Barboza, Argentina)

40. He had some doubts about the title, since it must be determined whether the draft articles were to be limited to the subjects already covered, namely succession of States with respect to property, debts and archives, or whether more ground should be covered, including such difficult subjects as acquired rights and nationality. One indication of the general intention in that respect could be found in General Assembly resolution 33/139, which pointed towards a relatively early conclusion of work on the topic. If it were decided to include such controversial subjects as those he had mentioned, it would be impossible to conclude consideration of the topic soon. His delegation would have no objection to ending the Commission's work on the subject at the current stage, although perhaps at its next session it could continue consideration of articles on State succession with respect to archives in order to complete that subject.

41. Clearly the title would have to be changed, since if the work were concluded at the current stage the draft articles would not cover succession in respect of all matters other than treaties, and he thought it would be better to indicate specifically that the draft articles dealt with State property and State debts, on the assumption that the draft articles on archives could be included under the heading of State property. His delegation found that the final text that the Commission had adopted for the draft articles was an improvement on the original text, and it approved of the deletion of the former articles 9 and 11.

42. Argentina attached importance to the draft articles on archives, which constituted as if were the memory of a country, had a special value in terms of its cultural and historical heritage, and were of practical importance in relation to the administration of the State and to certain rights both of the State and of individuals. Consequently, inclusion of that subject in the draft articles was fully justified.

43. Although archives might be regarded to some extent as included under the heading of State property, and the rules applying to State property might also be applied to archives, his delegation thought that the special characteristics of archives made it appropriate to deal with them separately. Some of the criteria applying to their passing by succession as specified in the draft articles were different from the criteria that applied to State property. His delegation accordingly endorsed the Commission's general commentary to the articles on State archives. However, that did not mean that the provisions on that subject could not be included in part II, under State property, as special rules.

44. Because of the special features of the subject, his delegation considered that the Commission might usefully consider at its thirty-second session some of the draft articles, identified as articles B, D, E and F, originally included in the report of the Special Rapporteur (A/CN.4/322 and Corr.1 and Add.1-2). The first reading of the draft articles had been virtually completed, and what remained to be done would require little time, since the Commission already had the draft articles on State archives. His delegation took that view because the solutions provided in those draft articles could not be deduced from the general provisions on State property, and the special nature of the subject made those articles necessary.

(Mr. Barboza, Argentina)

45. As the text stood it contained two articles, a general article defining State archives, and another article considering the case of newly independent States. The text did not include, as in the original draft by the Special Rapporteur, the various cases of succession covering the transfer of a part of the territory of one State to another State, the uniting of States, the separation of part or parts of the territory of a State, or the dissolution of a State. All those possibilities had been considered in relation to State property and State debts, and there appeared to be no reason why they should not also be considered in relation to State archives. The Commission should take draft articles B and F as a working basis, perhaps dropping draft articles D and E. If draft article B was compared with the corresponding article for State property, article 10, it could be seen that the criteria for passing were different. Article 10 established for succession respecting movable property, which most closely corresponded to archives, that movable property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States related should pass to the successor State. In article B, on the other hand, paragraph 2 (a) (i) provided that archives of every kind - and not only State archives - belonging to the territory to which the succession of States related should pass to the successor State. The clause in question was important, since it sought to protect the cultural heritage of a certain territory. The concept of "belonging" to the territory was original, and could not be inferred from any article on passing of State property.

46. The other criterion for passing based on article B, paragraph 2 (a) (ii), and paragraph 2 (b) was also necessary. It referred to archives, in that case State archives that concerned exclusively or principally the territory to which the State succession related. That was a much broader concept than that in article 10 concerning the transfer of movable property, which might well include items that had nothing to do with the activity of the predecessor State in respect of the territory.

47. The same applied to article F, which invoked the same criterion, but also imposed a logical and just obligation on the State retaining the archives to make an appropriate reproduction thereof for the use of the State or States which did not receive the archives. The article also covered the case of indivisible archives.

48. Possibly the maintenance of article D was less justifiable, since it would be easy to invoke the provisions of article 12, if State archives were regarded as property, or article E which, except for the obligation to make reproductions of the archives in paragraph 3, closely followed the text of article 13 on separation of part or parts of the territory of a State.

(Mr. Barboza, Argentina)

49. He also wished to refer to article A, which attempted to define State archives. The Commission should consider revising the definition, which had been the subject of reservations by some members of the Commission. His country considered that there should be an international definition of archives; once it was established, independently of the internal law of States, what archives were, then there could be a reference to internal law in determining which of the existing collections in a given country belonged to the State and therefore became subject to the rule of succession.

50. The Commission also took that view, according to paragraph (1) of its commentary to article A. That view likewise seemed to be reflected in the first part of article A, but not in the last part, "and had been preserved by it as State archives". Thus, if the article had been intended to embody the view he had outlined, it did not appear to do so, for the text seemed to provide in a contrary sense, since the documents preserved by a State as State archives were surely those regarded as such in its internal law. Moreover, if the current text was accepted, it might not cover collections that might be held in State museums or libraries but which, not being preserved as State archives - a concept that was not defined - might not be covered by article A. His delegation therefore wondered whether the last part of article A fulfilled its purpose. He was confident that the second reading of the draft articles would result in a text in line with the aim of establishing an international standard for archives that would make it possible to extract from the varied domestic legislations the substance of what was covered by the legal rule.

51. His delegation considered that article B, on newly independent States, was acceptable and should be adopted.

52. His delegation felt that the draft articles on State responsibility were the most important ones considered by the Commission. He reiterated that his Government approved of the general approach taken in the draft articles, was in favour of the use of the word "hecho" instead of "acto" in the Spanish text, and objected to article 23, which seemed to imply an illogical causal connexion between an omission, or "non-conduct", and a certain result. His delegation was generally in favour of articles 28 to 30. Concerning article 31, which represented an improvement with regard to the text submitted by the Special Rapporteur, his delegation found paragraph 2 timely and useful. The Commission had been right to draw a distinction between the concept of "distress", covered in article 32, and that of force majeure, covered in article 31. With respect to state of emergency (état de necessité), to be covered in a forthcoming draft article, it was not clear whether the fact that the choice between the sacrifice of legally protected property in order to safeguard other property which was also legally protected changed radically depending on whether that property belonged to the State itself or one of its organs.

(Mr. Barboza, Argentina)

53. With regard to treaties concluded between States and international organizations or between two or more international organizations, he expressed the hope that at its next session the Commission would complete the first reading of its draft articles to include those yet to be submitted by the Special Rapporteur.

54. His delegation noted with satisfaction the work done on the law of the non-navigational uses of international watercourses especially with regard to the scientific and technical data accumulated. That topic was in urgent need of codification and progressive development, since Governments needed legal principles to guide them in negotiations on that vital natural resource. His delegation felt that the drainage basin approach would be the most satisfactory and would lead to an equitable and rational use of international watercourses. It also felt that whatever rules were finally adopted should consider the water in such watercourses as a shared natural resource. The draft should take the form of a convention containing a small number of very general principles to serve as a guide for agreements between users in particular cases. His delegation did not understand the argument that the attempt to formulate general principles should be abandoned because of the wide diversity of circumstances relating to particular cases. In its view, such general norms as that calling for an equitable and rational use of water, formed part of contemporary general international law. His delegation considered that international rules that guaranteed such use would not infringe the sovereignty of States over their territory or natural resources, for the reasons set forth in his Government's reply to the Commission's questionnaire. His delegation agreed with the conclusion that the topic was ready for codification and called upon all States to co-operate in that effort.

55. Although jurisdictional immunities of States and their property concerned both internal law and private international law, the norm which should regulate jurisdictional immunity of States was a norm of international law. His delegation would follow the work on that topic with special attention in view of its importance and the many practical repercussions it could have owing to the extension of the functions of States and the assumption by States of a number of activities previously performed by private persons. The time had come for States to discuss that topic in order to seek areas of agreement which would permit progress to be made.

56. With regard to the review of the multilateral treaty-making process, he observed that the Commission had provided a very complete and clear study of the internal mechanisms guiding its work, which would be very useful for those interested in international law, and especially in the process of its codification. He drew attention to the conclusions mentioned in the Commission's report (A/34/10, para. 193) to the effect that the techniques and procedures provided for in the Statute of the Commission, as they had evolved in practice during a period of three decades, were well-adapted for the object stated in article 1 and further defined in article 15 of its Statute, i.e., the progressive development of international law and its codification.

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57. Lastly, he expressed satisfaction with the other decisions and conclusions of the Commission regarding the appointment of Special Rapporteurs, the programme and method of work of the Commission, relations with other international juridical bodies and the fifteenth session of the International Law Seminar.

58. Mr. YANKOV (Bulgaria) said his delegation had always felt that the consideration of the Commission's report was the most important part of the deliberations of the Sixth Committee in connexion with the current report (A//34/10), which reflected the fruitful work done at the Commission's thirty-first session. He noted with satisfaction that the Commission had completed the first reading of the draft articles on succession of States in respect of State property and State debts, and had suggested for consideration certain articles on succession in respect of State archives; those articles were, generally speaking, in conformity with the Vienna Convention on the Law of Treaties and the Vienna Convention on Succession of States in respect of Treaties. The 23 draft articles adopted thus far were a further improvement of the text with regard to both substance and drafting. His delegation shared the view that the title of the draft in its current form did not accurately reflect the scope of the articles, since they encompassed only succession in respect of State property, State debts and State archives, and did not include succession in respect of other matters. His delegation had reservations with regard to article 16, subparagraph (b), because it felt that the legal concept of State debt under international law should be limited to international financial obligations, i.e., financial obligations at the international level, and should not involve obligations to juridical or natural persons, which should be governed by municipal law or private international law. The creditor-debtor relationship affecting the rights and obligations of natural or juridical persons should fall outside the scope of State succession, as provided by international law. The recourse of a State to diplomatic protection of its nationals in accordance with the rules of international law was also a matter which should be considered outside the scope of the current articles on State succession.

59. The question of State archives was of particular importance, not just in the case of newly independent States, but in a much broader field of application, and should be treated mutatis mutandis within the framework of the rules governing State succession in respect of State property, with the proviso that the specific aspects of the subject-matter of State archives should be given due consideration.

60. With regard to the draft articles on State responsibility, he observed that contemporary international law based on the principle of sovereign equality did not condone or justify any kind of subjection of one State to the power of direction or control of another State, or tolerate the exercise of coercion in relationships beteen States. However, article 28 provided some protection if a State was indeed compelled by another State to commit an internationally wrongful act under such circumstances. Although paragraph 3 of that article stipulated that paragraphs 1 and 2 were without prejudice to the international responsibility of the State which had committed the internationally wrongful act, there were certain ambiguities arising out of the doctrine of so-called "indirect responsibility" which needed very careful consideration and further clarification. Articles 29-32, dealing with the various circumstances precluding wrongfulness, and the future articles on

(Mr. Yankov, Bulgaria)

"state of emergency" (état de necessité) and self-defence should be made very clear in order to avoid any ambiguities or unjustified claims for exceptions from the rule of State responsibility for internationally wrongful acts.

61. With regard to the draft articles on treaties concluded between States and international organizations or between two or more international organizations, he reiterated his delegation's warning that caution should be exercised with respect to analogies between the draft articles and the Vienna Convention on the Law of Treaties and that due account should be taken of the specific features of the international personality of international organizations as well as the limitations and requirements of their treaty-making capacity.

62. His delegation noted with satisfaction that initial work accomplished on the law of the non-navigational uses of international watercourses. The draft articles to be elaborated should contain general rules concerning the rights and obligations of riparian States, whether situated upstream or downstream, and provisions concerning the rights and obligations of third States, which might be particularly concerned in matters relating to the aquatic environment, especially since contamination of the environment caused by modern technology and intensive urbanization went beyond political boundaries. He did not rule out the elaboration, on the basis of general rules and principles, of specific rules which might be applied to regional or specific conditions in international river systems. The concept of international watercourses should be defined as precisely as possible. When considering the scope of the draft articles, special consideration should be given to matters relating to the protection and preservation of the aquatic environment, and international co-operation in the use of non-navigational watercourses, including scientific and technical co-operation.

63. With respect to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he agreed with the Commission's conclusion (A/34/10, paras. 163 and 164) that the further elaboration of specific provisions was desirable and that the Commission should undertake the preparation of a set of draft articles for an appropriate international legal instrument.

64. With regard to the priorities to be accorded in the treatment of jurisdictional immunities of States and their property, it would be desirable to concentrate increasingly on the immunities of States from jurisdiction, leaving aside for the time being the question of immunity from execution of judgement. The range of the sources of materials on State practice should be as wide as possible and should include the socialist and developing countries.

65. His delegation greatly appreciated the Commission's study on the review of the multilateral treaty-making process.

(Mr. Yankov, Bulgaria)

66. His delegation generally agreed with the decisions and recommendations of the Commission concerning its programme and methods of work, and felt that in elaborating its programme the Commission should try to concentrate at a given session on a limited number of topics, in order to be able to produce a comprehensive set of draft articles which would facilitate more coherent consideration by the Sixth Committee.

The meeting rose at 1 p.m.