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SUMMARY RECORD OF THE 49th MEETING

Chairman: Mr. GUNA-KASEM (Thailand)

later: Mr. ZEHENTNER (Federal Republic of Germany)

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

AGENDA ITEM 114: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/34/33, A/34/409, A/34/357, A/34/389 and Corr.1; A/C.6/34/L.8/Rev.1, L.10/Rev.1, L.11 and L.13)

1. Mr. ROMULO (Philippines), introducing draft resolution A/C.6/34/L.10/Rev.1, on the continuation of the mandate of the Special Committee, said that body's achievements should constitute a source of satisfaction; after 35 years, the future of the United Nations in all its aspects was being systematically reviewed, with a view to making whatever improvements might help the Organization to deal with the rapidly growing tasks resulting from increased membership and changing world conditions. The Special Committee had several important functions. It provided an opportunity for the two thirds of the Member States which had not been present at the founding of the United Nations to make known their views on its structure and operation and on the principles underlying its activities. Secondly, it was giving all Member States a chance to examine the adequacy of the Organization and to consider necessary improvements. Thirdly, it fulfilled a Charter obligation concerning the re-evaluation of the United Nations and its major instruments.

2. The contemporary world was not the same as that in which the United Nations had been founded and its Charter drafted. It made far greater demands both on individual Members as responsible elements of a world community, and on the Organization itself as the major guidance system for the planetary age. The United Nations might fail either from internal inadequacies or because Member States did not take their responsibilities seriously. Much of the world leadership was not yet ready for the pooling of efforts in a collective assault on the problems facing mankind, but that was what the state of the world demanded, and mankind had a limited time to find constructive solutions for its common problems. Thus the work of the Special Committee should also be concerned with the preparation of Member States for fuller participation in community institutions.

3. The world required institutions sufficiently responsive to provide a margin for error against disasters of all kinds. The new international economic order, disarmament, and better machinery for the maintenance of international peace and security and for the promotion of human rights, were inconceivable outside the framework of a fully functioning and fully supported United Nations. All those aims must be achieved within the next two decades if disaster was to be averted.

4. As the significance of the Special Committee's work became clearer, Members were giving more attention to its procedures and to the substance of its work. It was desirable to have as much general agreement as possible on its substantive results, but at the same time it would be wholly inappropriate for the Special Committee to veto, in the name of consensus, proposals on which the General Assembly as a whole might wish to decide. The option of voting if necessary should be retained, so that proposals clearly favoured by a majority of members of the Special Committee could be submitted to the General Assembly. The General Assembly

(Mr. Romulo, Philippines)

would eventually have to decide how it would approach the Special Committee's recommendations. That prerogative would be usurped by the Special Committee if it decided which proposals were to be seen by the General Assembly and which were not, merely because not all members could agree to them in advance. That still applied even if the recommendations included proposals that might require changes in the Charter, since the permanent members of the Security Council would have their own opportunity to apply the rule of unanimity to such proposals when they came before the Security Council. He could not accept that the practices of the Security Council be enforced in the Special Committee.

5. Draft resolution A/C.6/34/L.10/Rev.1 had been sponsored by 32 countries, plus the Federal Republic of Germany, which had asked to be added to the list. The purpose of the resolution was the renewal of the Special Committee's mandate with the same terms of reference, and the resolution should therefore be able to win unanimous support. The Special Committee's work on the peaceful settlement of disputes was nearing its end, and the resolution accordingly asked the Special Committee to develop and recommend a means of concluding its work on that subject. It provided for the Speical Committee to design the means for transmitting to the General Assembly the result of its labours in an appropriate form, so that the Assembly would have before it a full picture of the positions of States on each proposal. At the Special Committee's next session highest priority should be given to that most significant subject, the maintenance of international peace and security. That was the area in which the insufficiencies of the United Nations were most severely felt. There was unanimous agreement that that was the most vital of all items on the agenda, and was basic to continued human existence.

6. Although the diversity in the international community might be vexing at times, it reflected the genius of the human spirit. Through the United Nations that diversity could be expressed and harnessed to the benefit of all. Through the work of the Special Committee all members had a responsibility to make known their visions of the future world and its institutions, and to shape a better future for the people of the world. The Special Committee had been invited to hold its next session in Manila, in the Philippines. As there had been no opposition to that proposal, he took it to be confirmed that that session would be held in Manila, and it would be the pleasure of the Philippines to welcome the Special Committee there.

7. Mr. NISIBORI (Japan) said that he wished to reiterate his delegation's appreciation for the Philippine Government's invitation to host the 1980 session of the Special Committee in Manila. He sincerely hoped that the Philippine invitation would receive positive consideration by the Sixth Committee.

8. Mr. MUNTASSER (Libyan Arab Jamahiriya) introducing draft resolution A/C.6/34/L.8/Rev.1, said the revised version took into account the constructive views expressed by a large number of countries belonging to the African Group, the non-aligned movement and the Group of Islamic Countries.

9. The abusive use that permanent members of the Security Council had made of their right to accept or reject draft resolutions had on many occasions been detrimental to the maintenance of international peace and security and to the right

(Mr. Muntasser, Libyan Arab Jamahiriya)

of peoples to achieve self-determination and join the United Nations. For example, the veto had often been used to impede the struggle of the South African and Palestinian peoples against oppression and tyranny and to prevent Viet Nam and Angola from joining the United Nations. Fortunately, one of the permanent members of the Security Council, namely the People's Republic of China, had never used its veto in that way and the Soviet Union had also played an important role in supporting peoples in their struggle for liberation and self-determination. The conduct of the Soviet Union could not be likened to that of other permanent members of the Security Council which had acted in a manner inconsistent with the the principles and purposes of the United Nations.

10. Because of misuse of the right of veto, the United Nations had been criticized for its inability to deal with certain important issues and doubts had been raised regarding the effectiveness of its resolutions concerning peoples suffering as a result of racist régimes, foreign domination, colonialist domination and occupation. The international community had therefore come to regard the misuse of the prerogatives of the permanent members of the Security Council with considerable apprehension and dissatisfaction and calls had been made for the review, abolition or replacement of those prerogatives by a new rule that would strengthen the United Nations and increase its effectiveness.

11. Operative paragraph 1 (a) of the revised draft resolution referred to the principle of equality among States, which was incompatible with the privileged right of veto enjoyed by certain States in the Security Council. In connexion with operative paragraph 1 (b), he said that, while it could not be denied that the two major Powers possessed considerable material resources and had made progress in various fields, it was not easy for any State to live in isolation in the changing modern world in which all countries were interdependent. Experience had shown that responsiblity for the maintenance of international peace and security could not be left to the five permanent members of the Security Council since, although the world had been spared the horrors of a new world war, the smaller countries had not escaped the ravages of hostilities on a more limited scale. Far from restraining the aggressive racist régimes, certain permanent members of the Security Council had used their prerogatives to defend them. As a result of the radical changes that had taken place during the past 35 years, the criteria of strength and progress on which those prerogatives had been based were no longer valid. In response to the wishes of some delegations, operative paragraph 1 had been redrafted to make it more consistent with operative paragraph 2

12. His delegation was of the opinion that the views referred to in operative paragraph 2 (a) should be collected and classified by the Secretariat and evaluated by the Special Committee on the Charter. In connexion with operative paragraph 2 (b), he said that the smaller countries that had taken part in the drafting of the Charter had realized that the granting of prerogatives to certain countries was inconsistent with the principle of equality and had predicted the adverse effects of the misuse of those prerogatives. The great Powers at that time, however, had insisted on obtaining those prerogatives while declaring that

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they would always be guided by a feeling of responsibility towards the smaller countries and would make minimum use of their right of veto. Nevertheless, experience had shown that the misgivings of the smaller countries had not been misplaced and that the great Powers had not respected their promises. The smaller countries had subsequently made a number of unsuccessful attempts to alleviate the effects of the use of the veto. Operative paragraph 2 had therefore been redrafted so that the study would reflect the views of the various countries and in order to remove any embarrassment that the first draft might have caused to the Secretariat.

13. Operative paragraph 3 had been introduced into the revised draft in order to provide an opportunity for further views and observations to be expressed on the right of veto, while operative paragraph 4 had been introduced to allow time for the Secretariat to prepare factual and detailed study.

14. The draft resolution that he had introduced was in no way incompatible with draft resolution A/C.6/34/L.10/Rev.1 concerning the general responsibilities of the Special Committee, since draft resolution A/C.6/34/L.8/Rev.1 related to a matter that fell within the scope of those same responsibilities. Both resolutions could, therefore, be adopted together.

15. Some delegations seemed to be under the impression that the draft resolution originally sponsored by his delegation had called for an immediate change in the rule of unanimity of the permanent members of the Security Council. He hoped that that confusion would be dispelled by the revised draft. He was well aware of the political and legal ramifications of that delicate issue. The purpose of the draft resolution was to highlight the adverse effects of the rule of unanimity of the permanent members of the Security Council and to stress the need to conduct a study to formulate an alternative rule that would avoid those adverse effects. The completion of such a study would require about one year, although it was not known how long it would take to establish an alternative rule since it would have to be approved by the permanent members of the Security Council in accordance with Article 108 of the Charter. He thought that there should be no objection to the principle of conducting the study.

16. The draft resolution did not contain anything new, since it was only a faithful echo of the wishes expressed by the Organization of African Unity, the Non-Aligned Movement and the Group of Islamic Countries. Some delegations believed that it would be inappropriate to raise the issue of the veto at the current juncture. However, since most of the countries enjoying that prerogative did not want the issue to be raised, they would always consider the time inappropriate and even if it were accepted that discussion of that issue might lead to the dissolution of the Special Committee, that was only one of many possibilities. The draft resolution might also lead to the revitalization of the Special Committee. Certain delegations thought that some of the permanent members of the Security Council would boycott the Special Committee if the draft resolution were adopted. If that happened, it would be a negative and unjustified decision, since a joint discussion of the issue might lead to a solution acceptable to all.

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17. Some delegations had said that the right of veto was related to the question of the maintenance of international peace and security which the Special Committee might consider at a later date. However, the issue of the veto should be raised at the current stage, for a number of urgent reasons: first, the importance of the issue and its effect on the role of the Security Council; second, the complexity of the issue and the need for its early consideration; third, the various attempts that were being made to divert the Special Committee from its main objective towards issues that were being studied by other bodies; and fourth, the use of the veto within the Special Committee itself under the terms of operative paragraph 4 of General Assembly resolution 33/94, in which the Special Committee was requested to be mindful of the importance of reaching general agreement, without regard for the rules of procedure of the General Assembly. He urged the Sixth Committee to adopt draft resolution A/C.6/34/L.8/Rev.1 by consensus or, failing that, by taking a vote.

18. Mr. Zehentner (Federal Republic of Germany) took the Chair.

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)

19. Mr. SEALY (Trinidad and Tobago) said his delegation was pleased that the Commission had been able to complete its first reading of the draft articles on succession of States in respect of matters other than treaties. The Commission had sought to draft rules of international law applicable to State property and State debts in different cases of succession. One area of succession of special interest to his delegation was the position of newly independent States. The practice of States that had been analysed appeared to deal extensively with French colonial practice, and to a lesser extent with Belgian, Netherlands and Spanish colonial practice, but much less with British colonial practice, except for a few countries in Asia which had gained their independence in the 1940s and 1950s. There was some difference between those administrative practices; for example, British colonial territories were considered separate administrative units and were largely fiscally autonomous. Consequently all borrowings by British colonies were made by the colonial authorities and constituted charges on colonial revenues alone. When British colonial territories needed capital it was raised by the colony itself, under the Colonial Stocks Act or the Colonial Welfare and Development Loans Act, from the World Bank, or from the London or local stock markets. Accordingly in those instances there was no question of succession to State debts as defined in the draft articles, since the debts were debts not of the predecessor State, but of the colonial territory itself. On its accession to independence in 1962, his country's public debt had consisted of financial obligations under the United Kingdom Colonial Stocks Act of 1877, to the World Bank, and to local natural or juridical persons. Those financial obligations had been honoured after independence, and legislation had been enacted just prior to independence to secure that aim, especially in the case of inscribed stock under the United Kingdom Colonial Stocks Act. It therefore appeared that British colonial practice differed from that of other colonialists, and consequently draft article 20 would have little

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direct consequence for such countries as Trinidad and Tobago. The Commission's report itself acknowledged that in the light of British colonial practice such local debts might fall outside the scope of the draft articles concerned with the debts of the predecessor State.

20. Turning to the articles on State archives, he said that since British dependent territories constituted separate administrative units, archives, at least those required for the normal administration of the territory, were already to be found in the territory at independence.

21. With respect to succession to State property, British colonial practice appeared to have provided that on the attainment of independence the property of the territorial Government that had been held by the corporation named "The Chief Secretary" would be transferred to and vested in the Crown in right of the newly independent State. For Trinidad and Tobago its administration was assigned to the Minister of Finance. Thus the differentiations made in draft article 11 did not appear to have been made by the British colonial authorities in respect of property held by the Chief Secretary either prior to or on the granting of independence to their former dependent territories.

22. He noted that the Commission had decided against drafting general provisions on the topic of "odious debts" in the expectation that the rules being drafted would be sufficiently wide to cover that situation. "Odious debts" were considered to be those imposed upon a country without its consent and contrary to its true interests, and debts intended to finance the preparation for or the prosecution of war against the successor State. The proposals submitted earlier by the Special Rapporteur were quite interesting. The Commission might wish, in the light of the comments of Governments, to review its decision regarding "odious debts" when it took up the articles on second reading.

23. His delegation had taken note of the new draft articles on State responsibility. It was somewhat concerned that the State practice, judicial or arbitral decisions, and writings of jurists upon which those articles had been constructed were in some cases very old, few in number, or reflected primarily the thinking of European jurists. Nevertheless, his delegation found the argumentation in the commentary in support of the draft articles highly persuasive. With regard to article 28, on responsibility of a State for an internationally wrongful act of another State, he noted that although the commentary referred to situations such as States with a federal structure, situations arising from military occupation, and international dependency agreements such as protectorates or mandated territories, the wording of the articles seemed to suggest that it was permissible, despite the international responsibility attaching thereto, to breach certain basic precepts of international law, such as the principle of the sovereign equality of States, the non-use of force in international relations, the non-acquisition of territory by force, and the prohibition against interference in the internal or external affairs of States. The Commission should re-examine the substance of that article in the light of contemporary international relations. His delegation shared the concern expressed by previous speakers regarding article 30, permitting an individual State that had been wronged to apply measures which would otherwise be

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unlawful against the wrongdoer. The taking of sanctions against countries that had breached a rule of fundamental importance for the international community had been placed within the institutional framework of the United Nations, and that fact should be better reflected in article 30.

24. With respect to the diplomatic bag not accompanied by diplomatic courier, a means of diplomatic communication extensively used, particularly by the developing countries, the relevant provisions in the various Conventions appeared to indicate quite clearly the relevant legal régime. Although technological developments might require some changes in that régime, his delegation agreed with some previous speakers that there did not seem to be any problems associated with the transmission of the unaccompanied diplomatic bag that would require further international regulations.

25. With respect to the jurisdictional immunities of States and their property, it would seem appropriate, in view of divergent State practice and recent legislation, for the Commission to undertake progressive development and codification of that branch of international law. Governments had become increasingly engaged in economic and commercial activities in order to promote their national development aims, and the conduct of those activities might give rise to legal disputes, so it was necessary to determine whether a sovereign State could be sued in foreign courts, and if so under what conditions. His delegation hoped that many Governments would reply to the questionnaire on that subject circulated by the Secretary-General so that work on the topic could proceed on the basis of representative views.

26. In conclusion, he congratulated the International Law Commission on the results achieved at its thirty-first session.

27. Mr. BEDJAOUI (Algeria) said that he had had some misgivings as to how his comments might be received by the Sixth Committee, since he was both a member of the International Law Commission and a Special Rapporteur for the Commission. However, he felt sure that members would understand that he would be speaking strictly in his capacity as the representative of Algeria.

28. His delegation felt that the Commission had chosen the right method of work for its examination of the draft articles on succession of States in respect of matters other than treaties. It was to be hoped that a convention would eventually be adopted on that subject. Although some of the draft articles could have been improved in order to better meet the needs of the international community, they were in general acceptable. The Commission was to be commended for its work on a topic that was particularly difficult because there were no previous codification efforts on which it could base its efforts. His delegation was particularly pleased that the draft articles on succession of States in respect of State property, State debts and State archives were based on the concept of equity. It would be impossible to devise a legal norm that could cover in detail the wide range of complex situations that could arise in matters of succession. Only by applying

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the principle of equity would it be possible to determine what was reasonable in a given case, at a given place and at a given time. In the draft prepared by the Commission, equity was not an abstract concept, but the very stuff of which the rules were made. Thus, in the Commission's draft, equity became a material source of law. If one could predict probable future trends, one might say that international law would no longer be a reflection of unequal or hegemonic relationships, or of strictly equal relationships, but rather that it would be a body of homogeneous rules in which an increasingly important role would be played by equity.

29. His delegation was aware of the problems that the Commission had faced, particularly on the question of succession of States in respect of State debts. It was very difficult to define State debts and the Commission had held lengthy discussions on the question whether State debts should be viewed strictly as international obligations governed only by public international law and covering only subjects of international law, or whether the definition might also provide for a possible relationship under private international law between a debtor State and a private creditor. The scope of the proposed articles would depend on which approach was chosen.

30. Another complex issue was the question of the financial relationships which were established, in every case of succession of States, between the predecessor State and the successor State. The draft articles prepared by the Commission should help to expedite the often excessively lengthy proceedings that were required in such cases.

31. The taking over of State debts by a newly independent State would be incompatible with that State's right to receive compensation for the exploitation of its resources by the colonial Power. That right had been affirmed in the Declaration on the Establishment of a New International Economic Order, and in the Charter of Economic Rights and Duties of States and had been proclaimed for the first time at the First Conference of Heads of State or Governments of Non-Aligned Countries in September 1961. The assumption of State debts by newly independent States was also incompatible with the legal obligation of the industrialized States to provide assistance to newly independent States. His delegation appreciated the Commission's efforts in drafting the positive provisional conclusions in that regard.

32. The draft articles on succession of States in respect of matters other than treaties should be ready to be sent without delay to Governments for their comments. The Commission should be able to complete its second reading of the articles before the end of the current mandate of its members. The question of succession of States had been on the agenda of the International Law Commission since its establishment and a Convention on Succession of States in respect of Treaties had already been completed. It was to be hoped that a conference of plenipotentiaries on succession of States in respect of State property, State debts and State archives could be convened as soon as the Commission completed its second reading of the draft articles on those matters.

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33. Nevertheless, the over-all issue of succession between subjects of international law would still not have been covered in its entirety. The Commission would not have examined the questions of succession of Governments, succession of one international organization to another, succession in respect of territorial rights, nationality and the status of inhabitants of transferred territories, succession in respect of legislative and judicial matters and others. Even on the question of succession of States in respect of economic and financial matters, the Commission had restricted its work to State property, State debts and State archives, while leaving out other aspects of the economic and financial relations between predecessor and successor States. The draft articles were confined to issues of succession to State patrimony and had not dealt with problems of succession relating to property and debts of public enterprises, national corporations, public establishments, or local or provincial territorial units. Nevertheless, in view of the wide range of questions involved in the issue of succession in international law, it was quite appropriate that the Commission should have thus limited its work, so as to avoid turning the preparation of the draft articles into an interminable task.

34. His delegation noted with satisfaction that the Commission had supplemented its draft articles on succession of States with two articles on State archives, one of which dealt quite appropriately with the situation of newly independent States. National archives were an important part of any country's heritage and, in modern times, the production and preservation of archives had become a key to power. It was particularly appropriate that the problem of archives in the context of succession of States should be dealt with at a time when both UNESCO and the General Assembly had taken an active interest in the protection of the cultural heritage of nations, of which archives were an integral part. In the view of his delegation, the problem of archives should be dealt with in terms of the right to development, the right to information and the right to cultural identity, within the framework of the establishment of a new international order in all those areas. It was to be hoped that the International Law Commission would be able to complete its study of that question at its next session and to submit to the Sixth Committee and to the General Assembly two or three draft articles on archives dealing with cases of succession of States other than those resulting from decolonization.

35. The Commission's work on State responsibility had been particularly fruitful and he wished to congratulate the Special Rapporteur, Mr. Roberto Ago, on his remarkable accomplishments in that regard. The Commission had heeded the recommendations of the General Assembly by assigning high priority to its work on State responsibility. The Commission had pointed out (A/34/10, para. 62) that the purpose of the draft articles was not to define the "primary" rules whose breach could be a source of responsibility, but rather to define the "secondary" rules, aimed at determining the legal consequences of failure to fulfil obligations established by the "primary" rules. His delegation noted with satisfaction that the Commission had taken a strictly legalistic approach to its examination of articles 28 to 32. Article 28 established a general rule which could nevertheless cover specific situations that might arise with regard to the involvement of a State in the internationally wrongful act of another State. The Commission had restricted its study to situations resulting from the total

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or partial occupation of the territory of one State by another State, rightly considered to be the typical case of responsibility of a State for acts committed by another State in a sphere in which the freedom of action of the latter State was limited by the former. His delegation agreed with the Commission that military occupation should not impair the sovereignty or international personality of the occupied State. However, if the internationally wrongful act had been committed by the occupied State in an area of activity where that State was subject to the control of the occupying State, the responsibility fell upon the occupying State, regardless of whether the occupation was total or partial, legitimate or wrongful. In situations of "occasional" dependence, where a State was coerced by another State, against its will, to breach an international obligation to a third State, the State applying coercion should be internationally responsible for the act, as if it had committed the act itself. Clearly, however, the responsibility of the State applying coercion against another State which had committed a wrongful act did not preclude the responsibility of the State committing the act under other articles of the draft. His delegation endorsed the view of the Commission on all those matters, as well as on the matters covered by chapter V of the draft articles, concerning circumstances precluding wrongfulness.

36. The work of the Special Rapporteur and of the Commission on the question of State responsibility had been as forward-looking as was possible when dealing with a subject of such a traditional nature. Throughout the draft articles, the Commission had tried to be responsive to the needs of the modern world and had tried, although cautiously, to open a window on contemporary life. In some instances, it had succeeded in taking some bold steps within the confines of the subject-matter. Within the limitations inherent in any attempt at codification of a subject which had always been approached with traditional restraint, the Commission had made remarkable progress and its work would be invaluable to the international community.

37. His delegation was not concerned only with the need to supplement the existing draft articles on State responsibility as soon as possible with another set of draft articles on responsibility without fault designed to provide for compensation for injurious consequences arising out of certain activities not prohibited by international law. The aim was to meet the new needs of the international community by drafting provisions covering injurious consequences arising out of State activities linked to modern technological advances and involving high risk. International responsibility, conceived in more modern terms, would derive rather from the concept of damage suffered than from that of the wrongful act. Moreover, any State, not simply the State which suffered damage, could invoke the responsibility of the State that caused the damage. His delegation trusted that, when the time came, the Commission would draw up appropriate rules to take account of that development, which was indicative of a significant change in the needs of the international community.

38. Much remained to be done, however, even within the framework of State responsibility for internationally wrongful acts, to make the position regarding conduct of States completely clear. Economic aggression and political destabilization were more than ever a tangible reality, save in the case of

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traditional international law which had unfortunately been unable, notwithstanding the arsenal of rules afforded by the draft articles, to impose sanctions in that regard. There was no redress in the event of sudden retaliatory measures or acts of pressure of limited duration or in the event of the more surreptitious annihilation of the economic sovereignty of small States without any apparent undermining of their political sovereignty.

39. It was therefore essential not only to develop the existing primary rules, which defined the obligations of States, but also to broaden the rules on responsibility itself. Too often, the formal nature of those rules, and in particular the definition of an internationally wrongful act as well as the conditions on which it could be imputed, guaranteed impunity for burgeoning imperialism. He trusted that when the Commission took up the question of sanctions with their all-too-evident and sometimes highly topical political, and even military, implications, it would ensure that international law served the cause of justice, equity, peace and development.

40. There had been significant developments in regard to the topic of treaties concluded between States and international organizations or between two or more international organizations. The Commission, apparently in recognition of the need for uniformity and simplification, had wisely drawn on the Vienna Convention on the Law of Treaties, an approach which would serve to confirm the principle of consensus and to ensure clarity in the rules. His delegation was in general agreement with the solution proposed under the articles in parts IV and V of the draft and was pleased to note that the draft articles on the topic provisionally adopted thus far were to be submitted to Governments and international organizations for comment.

41. The topic of the law of the non-navigational uses of international watercourses was particularly important in a number of respects. The diversity of those uses and the multiplicity of legal bodies involved in the matter highlighted the need to codify the relevant principles of international law and to establish procedures for their implementation. International law should take account of the special properties of water and of a combination of scientific and technical, and even economic and political, factors. The attempt to overcome the very real difficulties inherent in the definition of an international watercourse by including an optional clause in the draft articles, under which States would themselves define the scope of their obligations, afforded a flexible and satisfactory solution. Since the question of that definition would arise again, and in a more acute form, many difficulties would be avoided if the General Assembly could provide the Commission with specific directives in the matter. The scope and complexity of the topic should not discourage a multidimensional approach designed to take account of scientific and technical factors, international and regional legal instruments, customary law in various parts of the world, the principles of the new international economic order, the provisions of the Charter of Economic Rights and Duties of States and the principle of equity which, once again, should be to the forefront. Water was a domain in which the community of States could demonstrate to the full the solidarity that should reign among its members; the permanent sovereignty of States over their wealth and natural resources and the

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spirit of co-operation that should govern relations between States were the twin elements that would promote fruitful co-operation in that area.

42. The Commission's work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier would serve to complement existing international legal instruments, while the question of the jurisdictional immunities of States and their property was of legitimate interest given its practical importance and the absence of obstacles to codification. The Commission's work on the review of the multilateral treaty-making process was also to be welcomed.

43. The Commission's progress on all items on its agenda, its consideration of new and equally important matters and the fruitful co-operation which it had established with the International Court of Justice and a number of regional legal bodies all attested to its vitality and its desire to improve the quality of its work. The favourable verdict which the Sixth Committee delivered each year after considering the Commission's report was an added encouragement to work towards the codification and progressive development of international law. At the same time, it would be regrettable if the Commission were to be excluded from a new legal dialogue that reflected the aspirations of the world community, and if its work were to be confined to the codification of traditional subjects, no matter how necessary that was. It had shown that it could respond to the General Assembly's expectations by dealing rapidly with highly topical matters and could thus satisfy the new needs of international society. The legal definition of shared resources, which was under consideration by the Second Committee, was one example of a question that could be speedily solved by the Commission. In a more general sense, however, it could make a greater contribution to the new international legal order. The importance of international law in all areas was recognized under the Charter. Admittedly, the "principles of justice and international law" were referred to only in relation to world peace (Article 1, para. 1) and the "progressive development of international law and its codification" only in relation to international co-operation in the political field, (Article 13, para. 1 a) but that omission would be repaired if the Charter also recognized the connexion between economic development and the progressive development of international law. The Organization was itself seeking to do so in its endeavour to replace the old order by a new order imbued with reason and equity. The Commission should likewise be enabled to contribute to the collective effort to promote a new international law which was characterized by co-operation, equity and solidarity and whose objective was the development of mankind.

44. Mr. SANYAOLU (Nigeria) said that, as the Committee would be unable to consider the Commission's report in detail owing to lack of time, he would suggest that in future the Commission should confine itself to one or two items at each of its sessions, and that the General Assembly should indicate in the resolution to be adopted on the matter which items should be treated as matters of priority. Also, the Commission's report should be circulated at least one month before the opening of the General Assembly's regular session and considered at a much earlier stage in the session.

(Mr. Sanyaolu, Nigeria)

45. The title of the draft articles on succession of States in respect of matters other than treaties should, in his delegation's view, be retained in its existing form. Admittedly, it did not adequately reflect the scope of the draft articles but it was in accordance with General Assembly resolution 2634 (XXV) and a similar title had been used in the case of the Vienna Convention on Succession of States in respect of Treaties. So far as the two other titles which had been suggested were concerned, the word "certain", in the first was too vague and the second was unduly restrictive.

46. His delegation could accept article 3 in principle for the time being since, in the light of the commentaries to the Vienna Convention on Succession of States in respect of Treaties and the Commission's report on its work on the article at its twenty-fourth session, it appeared to reflect settled law. The time had, however, come for a more dispassionate appraisal of the rules of international law as embodied in the United Nations Charter. In the recent past those rules had been flagrantly abused to serve selfish national interests and wars of aggression had been waged by States on the pretext that they had been acting in self-defence or collective defence authorized by the Charter. Those acts of aggression, which were in no way proportionate to the acts that had prompted them, often resulted in armies of occupation becoming entrenched and were not in conformity with the rules of international law as laid down in the Charter.

47. With regard to the definition of State property in article 5, he would suggest that it be included, together with the definitions of State debt and State archives, under article 2, so as to provide a ready indication of the matters covered by the convention.

48. His delegation had some doubts about the phrase "unless otherwise agreed or decided" in article 7, and considered that that article should be brought into line with article 2 (d). It was pleased to note that the same phrase did not appear in article 11, and it fully endorsed the views set forth in the commentary to article 11, particularly the statement in paragraph (5) to the effect that the phrase had been omitted principally in recognition of the very special circumstances accompanying the birth of newly independent States as a consequence of decolonization, which in many instances led to results that were unfavourable to such States because of their unequal relationship with the former metropolitan country. No loophole should therefore be left, which could operate to the detriment of newly independent States when the date of the passing of State property or State archives was determined. Article 7, as drafted, was too permissive and would favour the interests of those metropolitan countries which were reluctant to relinquish their claims to certain State property or works of art and culture expropriated by them. He therefore trusted that the Commission would examine the article objectively at its thirty-second session.

49. He noted that the definition of State archives, as laid down in article A, had been given a very restrictive interpretation in the commentary. Although at one point it stated that the expression "documents of all kinds" was to be understood in its widest sense, and also that documents could be in written or

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unwritten form and made of a variety of materials, at another it stated that that expression excluded objets d'art which might also have cultural value. His delegation saw no justification for making such an exception. If the expression "documents of all kinds" was to be interpreted in the widest sense, then applying the sui generis rule, all documents relating to the cultural heritage of a people, whether written or unwritten, should be regarded as falling within it. Moreover, a definition which excluded works of art and culture presupposed that all civilizations used only writing as their means of expression. Yet, in Africa, the cradle of civilization, documents had also been expressed through the medium of objects of art. He therefore trusted that the definition in its final form would include objects of art and culture, wherever they were housed. Had there been an international convention in force at the time, his own country would have been able to recover most of its valuable works of art and culture; he wished to spare other countries the same sad experience as his own when they attained independence. He would offer more detailed comments on the substance of the draft articles when the Commission had completed its consideration of them.

50. With regard to the draft articles on the law of the non-navigational uses of international watercourses, he noted that a very fine distinction had been drawn between a "user State" and a "contracting State". In its further consideration of the matter, the Commission should, in his delegation's view, cover the questions of drainage basins, pollution and abuses, as well as settlement of disputes. It should also take account of existing institutional arrangements for regional co-operation among Member States. The latter point was of particular interest to his country since it had entered into multilateral agreements on the Chad Basin, the Niger River and the River Benue. He therefore saw merit in the proposal that the Commission should examine more closely the effects of the principle of permanent sovereignty over natural resources on the right of riparian States to use international watercourses.

51. Under article 34 of the Vienna Convention on the Law of Treaties, a treaty could create neither obligations nor rights for a third State without that State's consent, subject however to the terms of articles 35 to 37 of that Convention. It was therefore his delegation's view that, under the terms of the Vienna Convention on the Law of Treaties, the draft articles would call into play the erga omnes principle.

52. Lastly, he trusted that the followships which certain Governments had offered in connexion with the International Law Seminar would enable young international lawyers, particularly from the developing countries, to benefit from the Seminar.

The meeting rose at 12.55 p.m.