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at 3 p.m.
New York

SUMMARY RECORD OF THE 37th MEETING

Chairman:	Mr. VAN DE VELDE (Vice-Chairman)	(Netherlands)
later:	Mr. MIKULKA (Chairman)	(Czechoslovakia)

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In the absence of the Chairman, Mr. van de Velde (Netherlands), Vice-Chairman, took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 142: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SECOND SESSION (continued) (A/45/10, A/45/469)

AGENDA ITEM 140: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/45/437)

1. Mr. AL-BAHARNA (Bahrain), noting that some members of the International Law Commission had expressed doubts as to the usefulness and the necessity of codifying the topic of relations between States and international organizations, said that it was now too late to raise such doubts. Having received the mandate of the General Assembly, the Commission had no choice but to proceed with the item. Besides, the Special Rapporteur had pointed out (A/45/10, para. 427) that there were many gaps to be filled and problems to be solved with respect to the item under consideration. His delegation shared that opinion. It was also aware that it would not be easy to fill those gaps, as each international organization had its own régime. The Commission should therefore be circumspect in prescribing general norms governing international organizations.

2. With respect to draft article 1, his delegation thought that regional organizations, which were by definition distinct from universal organizations, should be expressly excluded from the scope of the draft articles. It thought that paragraph 2 should be retained, except for the phrase "or the internal law of any State", which, in its view, was outside the purview of the draft articles.

3. His delegation shared the opinion of some members of the Commission regarding the use of the words "without prejudice to" and "are without prejudice to" in draft articles 3 and 4. In its view, the relationship between the draft articles and similar agreements should be regulated by the rules of treaty law, in particular the 1969 Vienna Convention on the Law of Treaties. It would therefore like for the Commission to review the text of draft articles 3 and 4 for the purpose of removing the ambiguity created by that expression.

4. His delegation agreed with the members of the Commission who thought that the wording of draft articles 5 and 6 (legal personality of international organizations) did not distinguish clearly between the legal personality of international organizations under international law and under internal law. It also believed that the consequences of legal personality could not be determined once and for all, as draft article 5 attempted to do.

5. His delegation was afraid that draft article 7 (immunity from legal process of international organizations and their property, funds and assets) might contradict the provisions of the constituent instruments of international financial institutions such as the International Bank for Reconstruction and

(Mr. Al-Baharna, Bahrain)

Development (IBRD), the International Finance Corporation (IFC) and the International Development Association (IDA), which conferred only limited immunity. On the other hand, it had no objection to the immunity of property. Consequently, it suggested that draft article 7 should be divided into two parts, the first providing immunity from legal process in accordance with the relevant norms of the constituent instruments and the second providing immunity for property, funds and assets. As for waiver of immunity, his delegation would like the wording to be strengthened and suggested that the sentence "It is, however, understood that no waiver of immunity shall extend to any measure of execution or coercion" should be replaced by "Waiver of immunity from legal process shall not be held to imply waiver of immunity in respect of the execution of the judgement or order, for which separate waivers shall be necessary."

6. The provisions of draft article 8 regarding the inviolability of the premises of international organizations should be strengthened. The practice of States reflected the doctrine that inviolability meant not only that States were required to refrain from entering the premises of an international organization, but that they were also under the obligation to protect those premises. The formulation proposed in draft article 8, paragraph 1, differed from that of article 22 of the 1961 Vienna Convention on Diplomatic Relations ("The premises of the mission shall be inviolable"), which his delegation preferred, because the phrase "used solely for the performance of their official functions" restricted the principle of inviolability of international organizations. It would therefore like the Commission to reconsider the text of draft article 8, paragraph 1. It also urged the Commission to specify in the text that no agent of the host State might enter the premises of an international organization without its consent.

7. In the opinion of his delegation, article 9 went into too much detail. While it agreed with the principle that international organizations ought not to become a refuge for fugitives from justice of the host country, it did not see the need to include the category of persons wanted on account of flagrans crimen, since that concept might not be the same in the legal systems of all countries. It would also like to see the last phrase ("or against whom a court order or deportation order has been issued by the authorities of the host country") replaced by a phrase such as "or against whom a deportation order has been issued by the courts of the host State", which would be adequate to protect the interests of the host country.

8. Lastly, his delegation considered draft article 11 pointless, since it would introduce an element of uncertainty as to the scope of article 10. Also, in individual cases, it might be difficult to define the nature and scope of the "functional requirements" to be taken into consideration in limiting the provisions of article 10 (a) and (b).

9. Mr. MOMTAZ (Islamic Republic of Iran) said that, with the current term of the members of the Commission drawing to a close, the question of planning the future work of the Commission took on particular importance. With respect to the programme of work that the Commission had established for itself, highest priority should continue to be given to the draft Code of crimes against the peace and

(Mr. Momtaz, Islamic Republic of Iran)

security of mankind. Rapid implementation of that Code would contribute to maintaining international peace and security and would create favourable conditions for the success of the United Nations Decade of International Law.

10. With respect to the Commission's long-term programme of work, his delegation wished to make a few observations on the criteria to be used in choosing new topics. In its view, any operation of gradually codifying and developing international law should consist of adapting existing law to new realities. Given the growing economic disparities among peoples, there was an obvious need to develop legal instruments that would ensure economic co-operation and development. The report on the activities of the Planning Group of the Enlarged Bureau went in that direction. His delegation welcomed the Group's recommendation to give priority to "topics designed to provide practical answers to current issues of legal policy in various areas of international life" (A/45/10, note 325, para. 2), in particular the legal aspects of economic development.

11. While it was still too early to propose specific topics, his delegation emphasized that the real prospects for the success of codification should be taken into account so that the convention drafted would have all possible chance of entry into force within a reasonable amount of time. The negative consequences and uncertainties that failure of the codification process could have for the law in question should be stressed.

12. Regarding working methods of the International Law Commission, the role of the Drafting Committee should be emphasized. Intensification of the work of that Committee could increase the Commission's efficiency and could alleviate the problems resulting from increased membership. That recent reform, a fulfilment of the aspirations of the developing countries, might overburden its mechanisms, however. A meeting of the Drafting Committee between regular sessions of the Commission could facilitate agreement on acceptable language.

13. The need for closer co-operation between the International Law Commission and States Members of the Organization should also be stressed. In that regard, to make its debate more effective, the Commission should request more regularly the opinion of Sixth Committee delegations on specific questions.

14. His delegation had no doubt that, through its unflagging efforts for the progressive development of international law, the International Law Commission would make a valuable contribution to achievement of the fundamental objectives of the United Nations Decade of International Law.

15. Sir Arthur WATTS (United Kingdom) said that the doubts already expressed by his delegation regarding the matter of relations between States and international organizations still remained after detailed study of the Special Rapporteur's fourth report on that topic. Functional requirements of organizations should be one of the main criteria, if not the only criteria, for determining the extent of privileges and immunities to be accorded to international organizations. Yet each international organization had its own characteristics, aims and functions,

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requiring particular privileges and immunities. It was useless to attempt to establish uniform rules applying to international organization of a universal character. Work on that topic should continue only in the direction of developing guidelines and recommendations which States and international organizations might adopt as they saw fit.

16. Concerning organization of work of the International Law Commission and the Sixth Committee, he agreed in general with the thrust of the report of the Working Group considering the long-term programme of work, and in particular the recommendation that topics of practical interest should have priority over theoretical topics and that new topics should be limited in scope, if possible, so that they could be concluded swiftly.

17. Selection of topics was only the starting point: it would be appropriate also to consider the conclusion of work on a given topic in the International Law Commission also. The Commission, and the Sixth Committee as well, should not automatically assume that the most useful outcome was a convention. In many cases, it would be much more valuable to conduct a study, formulate guidelines or state applicable principles.

18. As for working methods, shortcomings could be found in three areas: within the Commission, in the relationship between the Commission and the General Assembly (in practice, the Sixth Committee) and, finally, within the Sixth Committee. The working methods of the Commission had three main characteristics: the length of time spent on some topics, the sometimes excessively theoretical nature of that work, which in practice was not always very useful to foreign ministries, embassies and international organizations, and the modest number of articles submitted to the Commission on some topics over several years. The causes of those shortcomings were, without doubt, complex, but that was simply a statement of fact.

19. In its relationship with the International Law Commission, the Sixth Committee failed to play its proper role in three respects: it did not give the Commission formal guidelines to assist it in the consideration of a topic submitted; it did not give them a precise idea of a time period within which results were expected; and it did little to assist the Commission in setting priorities between the different topics on its agenda.

20. As for the report which the International Law Commission submitted to the Committee each year, it was both too full and too late, and its fullness led to its lateness. His delegation found it unnecessary to present in each report a detailed discussion of debates in the Commission at each stage of its consideration of a proposed draft article. Such discussions would be more appropriate in a summary record. In the second place, consideration and approval of such lengthy reports were time-consuming for the Committee. Finally, its work suffered because the report prompted comments, often long and detailed, which served little practical purpose at the stage at which they were offered.

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21. The role of the Committee with regard to the International Law Commission was, at the least, confused. In consideration of the draft Code of crimes against the peace and security of mankind, that confusion could be illustrated by four examples. First, the Committee considered draft articles without regard to the stage which the Commission itself had reached (proposals by the Rapporteur, articles approved by the Drafting Committee, articles approved at first reading, etc.). Yet the Commission's procedures differed at each of those stages, and it did not always have the opportunity to take into account the comments of the Committee.

22. Secondly, draft articles were discussed piecemeal, often without the Sixth Committee having the least idea of what the rest of the draft would contain. At the national level, if ministries for foreign affairs proceeded in the same way to draw up a draft treaty, it could be called professional negligence.

23. Thirdly, the Committee considered various draft articles without having a clear idea to whom its comments were addressed. Delegations tended to offer statements addressed to the world at large, while different audiences, whether Governments, the International Law Commission, the international legal community or national public opinion, called for different kinds of statements.

24. The fourth example was the confusion resulting from apparent failure on the part of delegations to keep clearly in mind the distinction between their role as Government representatives and the role of Commission members as legal experts. The Committee should not interfere with the expert role of the Commission but, on the contrary, should give it policy guidance.

25. Despite those criticisms, his delegation saw grounds for optimism. Firstly, to recognize the existence of problems was a step in the right direction, and many members of the Sixth Committee agreed that current arrangements could and should be improved. Secondly, the Decade which was beginning, and which was so important for international lawyers, offered a great opportunity to initiate the necessary changes, changes which could represent as valuable a contribution to the United Nations Decade of International Law as the formulation of new provisions of substantive law. Lastly, there was unanimity about the objective, which was to restore the Commission and the Sixth Committee to a central, effective and respected role in the legal work of the United Nations. With that objective in mind, his delegation wished to offer a number of suggestions.

26. Thus, the Commission should not include in its annual report any draft articles or any account of its deliberations until a complete set of articles had been adopted in first reading.

27. Failing that, the report should do no more than set out the text of the Special Rapporteur's proposed draft articles, but without any account of the discussion which had taken place.

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28. Before any complete text had been adopted in first reading, the Commission might, of course, seek guidance from the Committee, in which eventuality it should explain only as much of its discussions as might be necessary for the Committee to understand the issue.

29. The Committee should not comment until presented with a complete first text, while being ready to give guidance to the Commission on particular points.

30. If, contrary to his suggestions, the Commission's report contained an account of its discussions, it should be the firm rule of the Committee not to comment on the topic until the complete first reading text was available.

31. Government comments should wherever possible be in writing, and oral statements by delegations should be limited to broad issues of policy and points of substantial importance, where it was necessary for the Commission to be clearly informed of Governments' views.

32. Delegations should refrain from commenting in oral statements on points of textual detail. It would be useful to consider procedures under which Governments could submit in writing comments of relative detail on texts.

33. The Committee should be ready to ask the Commission to produce a rapid report or opinion on a subject of particular importance. The value of such a way of proceeding had been fully demonstrated in relation to the establishment of an international criminal court.

34. The Committee should make it the normal practice to indicate the time-frame within which the Commission should aim to submit an initial progress report providing an overall view of the direction a particular topic was taking.

35. The Committee should be ready to ask the Commission for a "state of the topic" report, so that it could contribute to work on a topic by ensuring that it evolved in directions which Governments were likely to find acceptable. The Committee would need to be prudent in requesting such reports, since their preparation might interfere with the conduct of the Commission's work on the topic in question.

36. In order to speed up its work, the Commission should be invited to consider ways in which initial studies could begin immediately after the General Assembly's autumn session, rather than waiting until the start of the Commission's annual session, six months later.

37. His delegation believed that adoption of its suggestions would improve the work of both the Commission and the Committee. The Commission's report would be substantially shorter, and so would the Committee's debates. All delegations, particularly those of smaller missions, would find their task more manageable.

38. Mr. MICKIEWICZ (Poland) said that his Government, which had recently deposited with the Secretary-General the declaration provided for under Article 36, paragraph 2, of the Statute of the International Court of Justice for the purpose of recognizing the compulsory jursidiction of the Court, was ready to take a further step and accept in practice the new tendency to limit the immunity of the State from the jurisdiction of the courts of other States in certain well-defined circumstances.

39. With regard to the Commission's draft on the jurisdictional immunities of States and their property (A/45/10, chap. III), his delegation was prepared to accept the replacement, as the Special Rapporteur had done in paragraph 1 (c) of a newly combined article 2 (ibid., para. 168), of the concept of "commercial contract" by that of "commercial transaction". However, with regard to paragraph 3 of that article, it did not seem that the nature of a transaction should be the primary test for determining whether or not a transaction was commercial. It would be desirable also to take into account the purpose of a transaction, in order to separate the acts of the State de jure imperii from acts de jure gestionis. With regard to article 5, his delegation was in favour of the deletion of the phrase "and the relevant rules of general international law" (ibid., para. 169), the retention of which might lead to divergent interpretations. The new article 11 bis on segregated State property proposed by the Special Rapporteur (ibid., para 170) was useful.

40. Concerning the articles dealing with the exceptions to State immunities, care should be taken to ensure, since they departed from the long-established principle of absolute State immunity under international customary law, that they were particularly well balanced. His delegation had no objection to article 10 (original article 11, see A/CN.4/431, p. 20). Nevertheless, the scope of the concept of a "commercial transaction" was not very clear. Different definitions in that regard were used in the national legislations of Great Britain, Australia and Canada. With regard to article 12, dealing with contracts of employment (A/45/10, para. 175), his delegation shared the view of some other members of the Commission that labour law disputes, particularly between locally appointed employees and foreign diplomatic or consular missions, should be settled without violation of the immunity of the sending State under international diplomatic law. It would be difficult to accept the hypothesis that a State could be forced by the court of another State to employ, retain in its employment or re-employ a locally recruited employee. In such cases the rule of non-immunity could be applicable only in respect of quasi-governmental institutions such as cultural, scientific or tourist agencies, particularly those involved in commercial activities. With regard to article 13, his delegation endorsed the observations contained in paragraph 185 of the report. A much greater effort was needed to find a common denominator to reconcile the different views concerning the responsibility of the State to pay monetary compensation for personal injuries and damage to property caused on foreign territory. His delegation supported draft articles 14, 15, 16, 17, 18 and 19, as formulated by the Special Rapporteur, as well as the deletion of article 20.

41. Concerning the articles in Part IV on measures of constraint (ibid., para. 216, et seq.), he said that Poland was now in favour of the new tendency

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among developed countries to restrict State immunity from measures of constraint in respect of some categories of State property and was ready to support draft articles 21, 22 and 23, as provisionally adopted on first reading by the Commission (ibid., footnote 97). His delegation did not, however, regard as satisfactory the changes proposed in 1990 by the Special Rapporteur (ibid., footnote 99), since it considered that greater caution should be exercised in restricting State immunity in that regard. With that in mind, his delegation requested the retention, in subparagraph 1 (c) of the proposed new aritcle 21 of the phrase "[and has a connection with the object of claim, or with the agency or instrumentality against which the proceeding was directed]". It was essential to avoid a situation in which any State property used for commercial purposes might be subject to measures of constraint adopted by a foreign court. His delegation was fully in favour of the new article 23.

42. He wished to raise a number of general questions which required a clear answer if the Commission was to continue its work on the law of the non-navigational uses of international watercourses successfully (ibid., chap. IV). Firstly, although the Commission had stated that its intention was that the instrument that was being prepared should take the form of a "framework agreement" which would set forth basic legal principles and was intended to supplement specific agreements to be concluded between States, taking into account the specific features of a particular watercourse, the draft articles did not always reflect that approach. Moreover, different opinions continued to be expressed as to the meaning of the term "framework agreement". Secondly, he wondered whether the draft articles established a proper balance between the interests of watercourse States whose geographical situations with respect to the watercourse were not the same. It was sometimes difficult to reach a position on specific provisions because they did not make a distinction between contiguous and continuous international watercourses. For instance, in cases of joint institutional management (art. 26, ibid., footnote 123) and the regulation of international watercourses (art. 25, footnote 122), the situation regarding contiguous and non-contiguous riparian States was not the same. Thirdly, it had yet to be decided how the draft articles would apply to existing institutional arrangements (art. 26) and installations (art. 27). Fourthly, he wondered whether the draft articles on international watercourses were fully consistent with the Commission's work on the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law, for instance with regard to civil liability régimes for the compensation of victims.

43. Article 24 (ibid., footnote 120) properly reflected the principle of absence of priority among uses of international watercourses. A reference to that principle should, however, be included in the preamble to the draft articles. His delegation shared the view of the majority of members of the Commission, that article 26 on joint institutional management was one of the most important components of the draft articles, even if it might be regarded as going beyond the scope of a framework instrument. While it agreed with the general thrust of article 27 (ibid., footnote 124), it felt that the article should be limited to the protection of installations, since, as the representative of Brazil had rightly observed, the protection of water resources was indistinguishable from the

(Mr. Mickiewicz, Poland)

protection of watercourses, which was the very object of the draft articles and was contemplated in several provisions.

44. The reluctance of some members of the Commission to include in the draft articles an article on the status of international watercourses and water installations in time of armed conflict (art. 28, ibid., footnote 124) was understandable, since such a provision could be construed as an attempt to alter the delicate balance achieved in the 1977 Protocols Additional to the Geneva Conventions. A final decision would depend on the wording of the provision. For example, consistency with existing law could be achieved by a reference in the text of the draft articles, or better still in the preamble, to the rules of international law governing armed conflicts.

45. With regard to annex I on implementation of the draft articles (ibid., footnote 126), his delegation shared the view that the provisions therein did not correspond to the machinery which should be created by the draft articles provisionally adopted by the Commission. Although the Standing Committee of the International Atomic Energy Agency had examined in depth the relationship between civil and State liability régimes, no concrete proposal had yet been made for a comprehensive system of compensation for nuclear damage based on a combination of the two régimes. His delegation wished to express some reservations with regard to the articles in the annex themselves: article 1 contained a definition which could be incorporated in the article on the use of terms; articles 2 and 5, which did not, strictly speaking, deal with implementation, belonged rather in the part on planned measures; articles 3 and 4 embodied principles that could be expressed in Part II, "General principles"; article 6 could be deleted, since the question of jurisdictional immunities was dealt with under another topic; article 7 had no place in a framework agreement, since it was difficult to see how all the Parties to the draft articles could participate directly in the application of the draft to a particular watercourse (the conventions mentioned by the Special Rapporteur as containing provisions for a conference of the Parties were not, moreover, framework conventions comparable to the draft articles); finally, article 8 was also superfluous, since the Vienna Convention on the Law of Treaties had already laid down the general procedure concerning amendments (in addition, that aspect was usually covered by the final clauses).

46. Despite those few critical remarks concerning annex I, his delegation wished to pay a tribute to the Special Rapporteur, and to express the hope that the Commission would be able to complete the first reading of the draft articles in 1991.

47. The outline (ibid., para. 470) presented by the Special Rapporteur on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (ibid., chap. VII) was extremely helpful for an understanding of the topic as a whole and enabled one to have a clearer view of its relationship to other topics such as State responsibility and the law of the non-navigational uses of international watercourses.

(Mr. Mickiewicz, Poland)

48. With regard to the question whether the draft articles should include a list of dangerous substances in order to clarify the concept of significant risk, his delegation believed that general objective criteria would be preferable: a list was inappropriate in a framework convention; it would have the drawback of having to be updated annually by experts in various fields; and, whether or not it was exhaustive, it would tend to narrow the scope of the topic and to shift the emphasis from liability for causing harm to liability based on carrying out activities involving risk.

49. His delegation considered that the draft articles should provide for the liability of the State of origin for transboundary harm caused by activities carried out under its jurisdiction or control by private persons. In fact, the State alone had the authority to regulate activities carried out in its territory and to ensure that they did not cause harm to other States.

50. His delegation shared the view of those members of the Commission who considered that chapter IV (ibid., footnote 315) of the draft articles should clearly state the obligation to pay compensation for transboundary harm, instead of emphasizing, as it now did the obligation to negotiate compensation.

51. Finally, the chapter of the sixth report of the Special Rapporteur (A/CN.4/428/Add.1) on liability for harm to the environment in areas beyond national jurisdictions (global commons) represented a commendable effort to seek a positive solution to extremely serious problems which threatened the very survival of mankind. While recognizing the complexity of the issue, his delegation strongly encouraged the Commission to continue its efforts on the matter. In that respect, the revival of an old institution of Roman law, actio popularis, could be considered.

52. Mr. THAHIM (Pakistan) said that his delegation was satisfied with the progress of work on the law of the non-navigational uses of international watercourses (A/45/10, chap. IV) and hoped that the Commission would be able to conclude its first reading of the draft articles in 1991. For Pakistan, which suffered from an acute water shortage, the non-navigational uses of watercourses were vitally important. There must be an equitable balance between the rights of downstream and upstream riparian States, and watercourse States must co-operate with each other to mitigate water-related hazards and harmful conditions and to ensure the protection of watercourses.

53. He had noted with interest the principle stated in article 24 (ibid., footnote 120) that in the absence of agreement to the contrary, neither navigation nor any other use enjoyed an inherent priority over other uses, and welcomed the principle of equitable utilization and the provision (art. 24, para. 2) that, in the event that uses conflicted, equitable utilization would be established in accordance with articles 6 and 7.

54. With regard to article 25 (ibid., footnote 122), his delegation agreed with the Special Rapporteur that the term "regulation" should be clearly defined. The Commission should pursue its consideration of the provisions of that article and

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should clearly set forth the legal obligations of each State with regard to the regulation of international watercourses.

55. The idea of establishing joint organizations for the management of international watercourses was very interesting, and the importance of management on an agreed basis could not be over-emphasized. However, in addition to the requirement in article 26 (ibid., footnote 123) for consultation and co-operation among watercourse States, there should be an obligation, in the event of conflicts among the socio-economic interests of watercourse States, to negotiate in order to arrive at a just and equitable solution.

56. Paragraph 2 of article 27 (ibid., footnote 124), instead of merely asking watercourse States to enter into consultations with a view to concluding agreements or arrangements concerning the establishment of safety standards and security measures for the protection of international watercourses and related installations, facilities and other works from hazards and dangers due to the forces of nature, or to wilful or negligent acts, should make it obligatory for such States to use their best attempts to ensure that protection. The article should provide for an obligation to prohibit not only the contamination of water resources but also any attempts to cut off the water supply of other watercourse States, to dry up springs or to divert rivers from their courses. Such acts, whether wilful or negligent, should involve the strict liability of the State.

57. Some of the provisions of annex I on the implementation of the draft articles (ibid., footnote 126) would require changes in national legislation and went beyond the limits of a framework agreement. The Commission should undertake further examination of the issue.

58. On the topic of jurisdictional immunities of States and their property (ibid., chap. III), his delegation hoped that, despite the divergence of views between States which subscribed to absolute sovereign immunity and those which subscribed to restrictive sovereign immunity, the Commission would be able to formulate proposals leading to a resolution of that difficult issue. Pakistani legislation departed from the traditional concept of absolute immunity and restricted immunity to sovereign acts.

59. In regard to the draft Code of crimes against the peace and security of mankind (ibid., chap. II), he regretted that the word "abetting" had been included in the definition of complicity in article 15 (ibid., footnote 27) because, like conspiracy and attempt, abetting was an offence in itself. It should therefore be defined in a separate article. He supported the view that illicit traffic in narcotic drugs should be included among the crimes covered by the Code. However, that would serve no purpose unless the crime was defined with precision and the abetting of drug traffickers was also made a crime. Collective efforts must be undertaken by all countries to eliminate that scourge. In Pakistan, a law had already been enacted (Prohibition Order 1979) to impose penalties up to life imprisonment for possessing, manufacturing, transporting, exporting, importing, selling and trafficking in narcotics. The 1930 Drug Act had been amended in 1983, and again in 1987, to enable the courts to impose penalties up to life imprisonment and confiscation of the assets of those convicted of drug trafficking.

60. Mr. EL HUNI (Libyan Arab Jamahiriya) said that, in the draft Code of crimes against the peace and security of mankind, the Special Rapporteur had rightly treated complicity, conspiracy and attempt as separate international crimes. Attempt always implied an intention, and the common determination to commit an act prohibited by the Code constituted a crime in itself, although it was for the competent courts to determine to what extent the provisions of the Code applied in each specific case. His delegation therefore had no difficulty in accepting draft articles 15, 16 and 17 as presented by the Special Rapporteur. It was also aware of the importance of the question concerning the establishment of an international criminal jurisdiction to ensure the implementation of the provisions of the Code. Under the rule nullum crimen sine lege, that jurisdiction should have competence over the crimes defined in the Code without limiting in any way the applicability of existing international conventions, whose provisions should as far as possible, be included in the text of the Code.

61. With regard to the competence of the jurisdiction ratione personae, the question of extending the scope of the draft Code to States should be left open, as should the possibility of extending it to legal entities other than States, for such crimes as drug trafficking. As to the nature of that competence, the creation of an international criminal court with exclusive jurisdiction seemed to be the solution that would best guarantee the independence of that court, which would constitute a new United Nations international criminal justice organ.

62. His delegation welcomed the Commission's definition of illicit drug trafficking as a crime against humanity because, in addition to fostering instability and terrorism at both the national and the international levels, such trafficking endangered the very survival of humanity. The Commission had also been right in entitling article 16 "International terrorism" in order to show clearly that it concerned terrorism organized and committed by one State against another State, in other words, a form of terrorism that endangered international relations. Finally, the text of draft article 18 made a positive contribution to the elaboration of the Code and supplemented other pertinent international instruments such as the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

63. The Sixth Committee must constantly stress the importance of the question of the jurisdictional immunities of States and their property; it was therefore necessary to indicate clearly in the text of the future instrument any limitations on the immunity of States and to base those limitations on objective considerations that were likely to gain universal acceptance. His delegation agreed with the suggestion, mentioned in Part III of the draft articles, that the title "Cases in which State immunity may not be invoked before the court of another State" would be preferable. The provisions of draft article 12 seemed logical and his delegation had no particular difficulty in accepting them. It shared the opinion expressed in paragraph 181 of the report that recruitment itself could not be challenged in court for the State's freedom to decide whether or not to hire or to renew employment should not be questioned. With respect to personal injuries and damage to property (art. 13), his delegation felt it was important to add another paragraph specifying that the provision did not affect any rules concerning State

(Mr. El Huni, Libyan Arab Jamahiriya)

responsibility under international law. It also considered that there was no contradiction between draft article 13 and the Vienna Convention on Diplomatic Relations. Finally, articles 21, 22 and 23 on State immunities from measures of constraint in respect of their property gave the text a legal homogeneity and took into account in a balanced way the interests of all States.

64. With regard to chapter V of the Commission's report (State responsibility), his delegation approved of draft article 8; it preferred the title "Compensation" to "Reparation by equivalent", and hoped that alternative (a) of paragraph 1 would be retained. Article 10 should be reviewed with the greatest care, particularly because of the importance of the rules of international law concerning human rights and the environment. Juridical injury should be maintained, in addition to moral damage or injury as a justification for the request for, and award of, satisfaction. It was also in favour of drafting a separate article for guarantees of non-repetition and considered, as did the Special Rapporteur, that the importance of the obligation breached and the degree of negligence of the State committing the internationally wrongful act should be taken into consideration in the form or forms of satisfaction.

65. Turning in conclusion to chapter VII of the Commission's report, his delegation considered that international liability for injurious consequences arising out of acts not prohibited by international law should be extended to areas beyond the national jurisdiction of States. It was in favour of drawing up a list of substances which were inherently dangerous in that certain activities using those substances were liable to cause transboundary harm.

66. Ms. DAW HLA MYO NWE (Myanmar), referring to the draft Code of crimes against the peace and security of mankind, and in particular the question of the establishment of an international criminal jurisdiction, said that the Commission was to be congratulated for its in-depth examination of the topic, which it had undertaken in response to the request in General Assembly resolution 44/39. Her delegation had taken note of paragraphs 117 to 121 of the Commission's report, and had observed in particular that, while the Commission felt that certain aspects of developments in international relations and international law led to the conclusion that it would be possible to establish an international criminal court, it was also aware that, for some States, the time might not be ripe to create such a jurisdiction. The Commission also stressed in its report that the system of universal jurisdiction already existed for a large number of crimes and that, in some cases it was being applied by numerous States, and that prosecution was being carried out effectively in national courts. Her delegation concurred in the view of the Commission that proposals for an international court must take into account the danger of disrupting the operation of the existing system, which had so far proved satisfactory. Furthermore, some States were legitimately concerned that the establishment of such a court might result in curtailment of national sovereignty, and such a concern should be fully addressed.

67. The Commission had taken the view that there were three options, mentioned in paragraph 155 of its report, with regard to the competence which the international

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criminal court might have. While it had not arrived at a definitive opinion, her delegation considered that the first two options merited close study. In terms of competence, the Commission had restricted the scope of the draft Code to individuals. Given the divergent views on the question, her delegation concurred with the Commission's opinion that establishment of the court would be successful only if it gained wide support from the international community.

68. The Special Rapporteur for the topic of International liability for injurious consequences arising out of acts not prohibited by international law was to be congratulated on having proposed an almost complete set of draft articles. With regard to the scope of the subject, the approach taken by the Special Rapporteur and most members of the Commission was that the articles should apply to activities involving risk as well as to activities with harmful effects, and that it would be preferable to consider those activities together, since they had much in common in terms of their legal consequences. While it had no strong opinion on the matter, her delegation took the view that the scope of the topic would in no way be narrowed by treating the two aspects together. Similarly, and with the same aim of avoiding narrowness of scope, the list of dangerous substances proposed by the Special Rapporteur should be regarded as illustrative rather than exhaustive.

69. The definitions in article 2, "Use of terms", should be regarded as provisional, in view of the differing opinions within the Commission on some terms, but also because the topic was relatively unexplored, and it might be necessary to amend them as work on the topic proceeded.

70. The possibility of expanding the scope of the draft articles to the "global commons" required careful study and should be approached with caution. The issues it raised were complex and might hinder progress on a topic that was already complicated.

71. As for the topic of Relations between States and International Organizations, her delegation had noted with satisfaction that article 9 enjoyed the support of several members and considered that the provision was justified by the functional approach to privileges and immunities and served as a safeguard against possible abuses.

72. Finally, in view of the magnitude and complexity of the subjects on its agenda, the length of the Commission's sessions should not be changed.

73. Mr. NASIER (Indonesia) said that, notwithstanding the lofty ideals which served as the basis of the draft Code of crimes against the peace and security of mankind, his delegation had certain misgivings regarding adoption of the existing text by all States. Complicity, conspiracy and attempt should not be treated as separate offences, but should be examined in relation to each of the crimes enumerated in the draft Code. Furthermore, while articles 15, 16 and 17 attempted to formulate definitions on complicity, conspiracy and attempt as "crimes defined in this Code", there was no definition of what constituted an international crime. The difficulties to which that complex political issue gave rise could be resolved

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by recognising international conventions as the primary source for the identification of international crimes. A number of issues relating to the binding nature and enforceability of the legal sources invoked, such as custom and general principles, could thus be avoided. It was therefore essential for the Commission to rely on conventional international law as a basis for developing a theory in order to achieve legal certainty. However, it must not be forgotten that there had never been a definitive list of international crimes, nor had there ever been a conclusive theory as to the definition of an international crime.

74. Turning to draft articles X and Y, relating to illicit traffic in narcotic drugs as a crime against the peace and security of mankind, his delegation considered that the new version thereof was ambiguous for the following reasons: firstly, the text failed to specify that the drugs were used for an illegal or unlawful purpose; and secondly, because the provision did not indicate what exactly constituted traffic "on a large scale". The Commission should therefore be more precise in drafting those provisions. At all events, it was unnecessary to deal with the topic in the draft Code, the national legislation and judicial systems of States effectively punished crimes related to drug trafficking. From a legal point of view, it was the responsibility of the State on whose territory the crime was committed to institute proceedings. Furthermore, between 1912 and 1982 such crimes had been the subject of 15 international conventions, of which he gave several examples. As a signatory of the 1988 International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Indonesia was profoundly committed to the international campaign against illicit trafficking, and was in the process of streamlining its national legislation in order to bring it into line with the provisions of the Convention. It was more effective to deal with such offences under domestic legislation and it was premature to tackle them at the international level, if only because of the current lack of an international mechanism to punish those engaged in such traffic.

75. With regard to the establishment of an international criminal jurisdiction, his delegation had fundamental doubts regarding absolute universality, which made it possible for States to impose their political views through criminal prosecution. It was hardly realistic to imagine that an international criminal court could have coercive powers when deciding on the conduct of States in matters that were in essence politically controversial.

76. The International Court of Justice did not have criminal jurisdiction, but if the States Members of the United Nations wished it to have such jurisdiction, they could so decide, and proposals to that effect had occasionally been made. Even if the Charter was not modified, the Court did have the power to deal with issues of international criminal law if those issues were submitted as damage actions or cases calling for injunctive relief. However, recent history had demonstrated that international criminal law was not self-executing or truly enforceable, even when the International Court of Justice had ruled. Attempts to establish a coercive sanction apparatus to enforce obligations imposed by international law presupposed the existence of an international authority which was superior to sovereign States. Practical considerations would seem to favour more flexible and less

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onerous systems that were more compatible with international co-operation, which must allow States to reach a mutual understanding with regard to international problems. Several issues also arose in connection with the legal force of judgements, penalties, implementation of judgements and financing of the court. At present, some serious thinking ought to take place before an international court having competence in accordance with one of the three models described in the report of the International Law Commission (A/45/10, para. 155) was established. It would be advisable to complete the draft Code before considering the establishment of an international criminal court.

77. With regard to the law of the non-navigational uses of international watercourses, his delegation endorsed the framework agreement approach, which consisted of enunciating general principles and allowing the States concerned to adopt measures specific to their own circumstances and requirements, given the diversity of international watercourses. In addition, the many treaties on navigation, pollution and power production should be studied with a view to deducing the rules in question. The general rules to be formulated by the Commission should be more than residual principles, since they would be based on customary law. The international community, particularly the developing countries, increasingly felt a need for rules for the reasonable and equitable use of international watercourse systems. Moreover, water shortages and the general impairment of water quality had made the problem more pressing.

78. Draft article 24 reflected the current view that watercourses were no longer used solely for navigation. Accordingly, there was general recognition that the purpose of article 24 was to indicate that no use should have priority over others. The principle of equitable utilization, well established in international law, also implied that no type of use was superior to another and that the reasonableness of a given type must be determined in the light of a great number of factors in each particular case. Those factors could include geography, climatic conditions, the economic and social needs of individual riparian States, the existence of alternative means, including the availability of other sources to satisfy needs, and the possibility of compensation to one or more riparian States in the context of negotiations between them.

79. His delegation endorsed the wording of article 25, as it considered that the regulation of watercourses could be undertaken regionally or bilaterally as well as through international agreements. That article, which provided for joint institutional management of watercourses, went beyond the scope of a framework agreement. He recommended that, for the time being, individual States, taking into account their own situation and needs, should be considered to be in a better position to define the functions of various forms of management in the context of bilateral watercourse agreements.

80. The provisions of article 27, relating to the protection of watercourses, were welcome. It was essential, however, that that article should focus on the protection of watercourses and not of related installations, facilities or other works. The latter required further clarification and should be dealt with in a

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separate article. The provisions of article 28, on the status of international watercourses in time of armed conflict, should be reviewed in the light of established rules of international law governing armed conflicts.

81. On the issue of jurisdictional immunities of States and their property, the Commission must draft provisions that reconciled the two concurrent theories prevailing in that area, namely, the concept of absolute immunity and the concept of limited immunity. Generally speaking, sovereign States should be immune from legal proceedings, regardless of whether their activities were of a public or a private character. However, a key element that should be taken into consideration when making that distinction was the clauses that were generally included in bilateral, regional and global agreements governing restrictions on jurisdictional immunities of States and their property.

82. Mr. VAN DE VELDE (Netherlands) said that the framework agreement format which the Special Rapporteur had chosen for the draft articles on the law of the non-navigational uses of international watercourses was that of a general instrument containing principles and other general rules which riparian States must supplement according to the needs and other relevant factors associated with a particular watercourse. Thus while accepting in principle article 24 as it related to the various uses of a watercourse, his delegation wished to note that situations differed from one watercourse to another and that, in certain cases, navigation could be considered to be the priority use of a watercourse.

83. His delegation also endorsed the duty of riparian States of a watercourse to co-operate, which was set out in article 25. The question remained, however, as to what that article added to article 9, which contained the general obligation for riparian States to co-operate in order to "attain optimum utilisation and adequate protection of an international watercourse [system]". As worded, paragraph 1 of article 25 raised the question of the form and scope such co-operation should have. To the extent that the reference to the identification of needs and opportunities for the regulation of international watercourses might be interpreted in too restrictive a sense, he wondered whether paragraph 2 of the article should be retained.

84. His delegation was not opposed in principle to article 27, concerning the status of international watercourses and water installations in time of armed conflict; however, further reflection as to how the article related to existing rules of international law on armed conflict, and particularly as to whether the term "inviolable" was appropriate in relation to watercourses, was required. Articles 3 and 4 of annex I contained very important rules concerning recourse under domestic law and equal right of access of any person in another State who had suffered appreciable harm or was exposed to a significant risk thereof. In view of the importance of those rules, one might ask whether it would not be preferable to include them in the main body of the text rather than relegating them to an annex.

85. With regard to the draft Code of crimes against the peace and security of mankind, he concurred with the Commission's conclusion that it was desirable to

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establish a permanent international criminal court as part of the United Nations system, and that such a court would be successful only if it was widely supported by the international community. It might be asked, however, whether it was not premature to deal with the matter; in any case, it would be counter-productive to establish an over-ambitious and unrealistic mechanism. At the same time, he recognized that there might be a need for uniform prevention and punishment of crimes against peace, the threat of aggression, intervention and other acts constituting crimes against the peace and security of mankind. However, the establishment of a criminal court with exclusive jurisdiction over all crimes mentioned in the draft Code seemed not only ambitious but unnecessary for achieving that purpose.

86. The difficulties mentioned in the Commission's report with regard to concurrent jurisdiction between an international criminal court and national courts argued strongly against such a solution. There was no guarantee of a uniform application and the risks of different standards being applied were very great. The most realistic approach might be for the future court to be competent to give either binding or advisory legal opinions. Even in that alternative, there was a significant difference between binding and non-binding legal opinions, as the former required a much more radical elaboration than the latter. As to the jurisdiction of the court rationae personae, the desirability of establishing an international criminal jurisdiction competent to try individuals should be judged in the light of the offences justiciable under such jurisdiction.

87. His delegation could not endorse the two draft articles characterizing illicit drug trafficking as a crime against peace and a crime against humanity, as proposed by the Special Rapporteur, whether in the context of the codification or even of the progressive development of international law. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which strengthened international co-operation in the prevention and punishment of such traffic, did not go so far as to characterize illicit drug trafficking as a crime against humanity. The characterization of "crime against peace" or "crime against humanity" had so far been reserved for crimes such as aggression, genocide or war crimes. In order to warrant such a characterization, the offence must be of a serious nature and be defined with precision. As stated by the Commission in paragraph 77 of its report, such trafficking could affect international peace by giving rise to a series of conflicts, for example, between the producer or dispatcher State, the transit State and the destination State. Any transboundary traffic organized on a large scale did not necessarily meet the criteria for characterization as a crime against peace or a crime against humanity. While the international community should give the highest priority to the suppression of illicit drug trafficking, the concepts of a crime against peace or a crime against humanity should not be extended to the situations under consideration.

88. Mr. SZEKELY (Mexico), referring to the law of the non-navigational uses of international watercourses, said that the principle of absence of priority among uses of an international watercourse, as expressed in draft article 24, was an extremely sensitive issue which must be examined carefully in view of the

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consequences which its general application might have. To apply that principle would be tantamount to disregarding the fact that each watercourse, whether navigable or not, had its own characteristics. Therefore, the draft articles should not lay down general rules, especially in the case of transboundary natural resources which, as such, were meant to satisfy human needs in watercourse States. Nevertheless, it was unquestionable that an order of priority among those needs must be established, so as to give priority to satisfaction of the most urgent. For example, it could hardly be denied that water supply for satisfactory household and agricultural needs was the first priority of a riparian district dependent on a watercourse. Accordingly, the question of priority among uses of a watercourse should be considered on a case-by-case basis; any general provision pertaining to a treaty on the subject could become a serious obstacle.

89. Furthermore, there was a glaring contradiction between the principle of the absence of priority among uses of a watercourse and draft article 25, paragraph 1, which was of noteworthy clarity and simplicity. In order really to be able to co-operate in identifying needs and opportunities for regulation of international watercourses, as provided for in that paragraph, watercourse States must be released from the implicit obligation laid down in draft article 24. The same positive observation applied to draft article 25, paragraph 2.

90. Draft article 26 seemed to confuse the concept of "management" of a watercourse with that of "joint organization" for its management. In seeking to define the concept of "management" in paragraph 2, the wording proposed gave the impression that such "management" would consist of carrying out the functions which were in fact meant for the joint organization intended to provide for management. Accordingly, he suggested that the first sentence of paragraph 2 should be deleted and that paragraph 1 should be reformulated as follows:

> "Watercourse States shall enter into consultations, at the request of any of them, concerning the establishment of an organization or a joint institutional mechanism for the management of an international watercourse [system], as follows:"

and that the management functions to be carried out by such an organization or institutional mechanism should then be enumerated. He was referring to the concept of a joint institutional mechanism, as it was more flexible than that of an organization; such a mechanism would necessarily have an international character and might be either multilateral or bilateral. In addition, he suggested that some concepts presented by previous Special Rapporteurs should be taken up again, such as the idea that the provision in question should be applicable, where necessary, to existing institutional mechanisms so as to strengthen them. Lastly, he suggested that draft article 26 should establish a link between the agreement which must obviously be concluded in order to establish the joint mechanism and the so-called watercourse system agreements to which the initial draft articles referred, because it would be advisable, if not essential, for such agreements to be negotiated simultaneously.

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91. As to draft article 27, even though its title referred only to the "protection" of water resources and installations, it also dealt with the setting up, operation and maintenance of such installations. The title, therefore, should be changed accordingly. Moreover, in paragraph 1 of the article, the words "shall employ their best efforts to" should be replaced by "shall take all possible measures to".

92. Lastly, although in principle he was in favour of draft article 28, he wondered whether such a provision could not be improved by being more detailed.

93. The draft annex proposed by the Special Rapporteur for the implementation of the draft articles raised very many problems. From the standpoint of form, the use of the expression "watercourse State of origin" in article 1 was questionable, while article 2 erred in referring to non-discrimination, since its provisions related, rather, to the principle of reciprocity. In any event, the article gave the impression that the so-called State of origin could unilaterally consider the permissibility of proposed, planned or existing activities. The articles provisionally adopted by the Commission placed obligations on States to act or not act, including with regard to protection and preservation. Accordingly, the provision should in any event oblige States to refrain from undertaking any activities which might cause injurious effects in other watercourse States.

94. As for substance, it was quite inconceivable to make a State seek in the courts of another State reparation and compensation in respect of harm originating in that other State. To so exclude a dispute from the domain of international law and place it under municipal law was tantamount to vitiating the principle of the international legal liability of the State and to contradicting international practice in that field. Such disputes should be settled directly between the States concerned through the peaceful, diplomatic and arbitral means available under international law. That being the case, draft articles 3 to 6 had no raison d'être. Draft article 7, relating to the Conference of the Parties, was irrelevant to a treaty of the form to be taken by the draft articles.

95. With regard to draft articles 22 to 27, provisionally adopted by the Commission at its preceding session, his delegation was still concerned by the fact that the concept of harm continued to be defined by such vague and subjective terms as "appreciable" or "serious".

96. Lastly, he wished to draw attention to what might constitute a serious omission from the draft articles, namely the intensive work done in recent years under the auspices of the World Meteorological Organization and the United Nations Environment Programme on the consequences, including the consequences for water resources, which might stem from a change in the global climate. On the basis of that work consideration should be given to the question whether it would be relevant to include in the draft articles provisions encouraging watercourse States to co-operate with a view to jointly facing the consequences which might arise for the watercourse in question as a result of global warming.

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97. With regard to the jurisdictional immunities of States and their property, he reiterated his concern about the direction given to the work, which, in his view, it was difficult to incorporate in the codification exercise, since the draft articles formulated to date on the matter, such as articles 1 to 11, far from corresponding to the general practice of States, simply reflected the legislative practice of some States. There had been a mistaken attempt to represent the relativity of immunities as an absolute while disregarding the general trend followed by the members of the international community.

98. With regard to immunities in the event of personal injuries and damage to property, referred to in draft article 13, two safeguard clauses should be included providing that immunity would be respected, on the one hand, if the State which was the author of the act or omission had acted in acccordance with an international agreement or treaty in force between itself and the State of the forum, and, on the other hand, if the State which was the author of the act or omission had acted in the discharge of diplomatic or consular functions.

99. Further, the main provision of draft article 14 (Ownership, possession and use of property) must be subordinated to an express reservation respecting the immunity of property protected under diplomatic or consular immunity, in accordance with international law. Moreover, the use or purpose of all property must be established in the same way as was specified in the case of ships, in draft article 18, paragraph 7, by means of a certificate signed by a competent authority of the State concerned.

100. Draft article 15, relating to patents, trademarks and intellectual or industrial property should be deleted, since those topics were regulated by specific conventions, such as those of the World Intellectual Property Organization. In any event the scope of the provision should have been restricted to the commercial domain. Similarly, consideration should be given to the insertion in article 16 (Fiscal matters) of an exception in respect of matters regulated by international law relating to diplomatic and consular privileges and immunities.

101. In conclusion, he trusted that the Commission and Special Rapporteur would take due account of his comments.

102. Mr. RANJEVA (Madagascar), with reference to international liability for injurious consequences arising out of acts not prohibited by international law, said that, with regard to the scope of the draft articles, he fully understood the relevance of enumerating activities involving risk and activities with harmful effects, but feared, on reflection, that the Commission was drowning in sophistry. What should be done with regard to activities not so enumerated? In terms of methodology and the commentary such an approach was acceptable, but it was not to be recommended at the level of international codification. There might be a grave risk of confusion, and the comments contained in paragraphs 474 and 475 of the Commission's report should be endorsed. It seemed that an effort must be made to devise a formula which was sufficiently general and which clearly stated the

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principle of reparation for harm registered, irrespective of its physical or material causes. It was also necessary to believe in the progress of science and accept that at some time in the future mankind would be able to counter the harmful or dangerous effects of a particular activity. It would be desirable for implementation of the régime not to lead to a Byzantine debate on the classification of an activity as dangerous or harmful when the harm had already occurred with sometimes irreparable consequences. However, his delegation had no objection in principle to basing the "quantum" assessment technique on classification studies to apportion the respective degrees of liability in transboundary harm.

103. His delegation welcomed the affirmation and inclusion of the principle of non-discrimination. He wished, however, in view of the practical difficulties encountered, to see reference in the relevant provisions to the means of application of the principle of cautio judicatum solvi in order to avoid excessive resistance inspired by juridical and procedural nationalism. Any such reference to the guarantee of judicatum solvi must, however, take account of the comments that his delegation would make on chapter V of the draft.

104. With regard to chapter III, relating to prevention, his delegation wished to draw the Commission's attention to a practical point. The desire to establish preventive machinery was commendable, but it should be recalled that the principal purpose of liability was to punish an alteration of the status quo or of the law before harm occurred, so that liability was used to establish the status quo ante. In those circumstances, the duty of prevention stemmed more from a general obligation of conduct and prudence, principally under the régime of international co-operation, than from the law of liability. Further work must be carried out with the aim of developing the means of such international co-operation in the prevention of harm, but it was questionable whether that should be done at the level of the Commission. His delegation had its doubts, and a systematic review of the machinery actually employed in the practice of technical international organizations and in the international management of certain activities which were liable to cause harm would clarify the fundamental distribution between liability on the one hand and prevention in the strict sense on the other hand. To facilitate understanding of the general arrangement of the text, the final drafting should highlight the distinction between regulatory standards and guidelines for application. In the light of those remarks, his delegation suggested a re-reading by the Commission of chapter III as a whole, to settle any doubts.

105. Turning to chapter IV, he said that the fundamental principles set out in paragraph 508 gave rise to no objection in principle. It was thus of cardinal importance, as some members of the Commission considered, to mention the obligation to pay compensation for the harm caused. That being the case, the object of chapter IV would be to develop an additional reference mechanism in the event of failure to pay compensation to the victims of the harm.

106. With further reference to the general principles, he said that his delegation could not share the idea that the unlawful activity could be the only source of

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international liability. Scientific progress had led to new risks, and new legal machinery implied the primary liability of the State of origin in inter-State relations. It would be conceivable to exonerate a State from liability only if there was an international régime for the substitution of liability which effectively guaranteed protection of the rights of third parties. That was a significant innovation, admittedly, but the progressive development of international law was first of all a wager oriented towards the future; it was the function of law to contemplate and organize that future.

107. In those circumstances, the conclusion of paragraph 510 prompted certain reservations if looked at from the vantage-point of the law of international relations. Under the concept of primary liability, the State of origin should be regarded as providing an international guarantee of liability for the activities of persons under its jurisdiction, rather than as the source of payment. That comment should not be seen as a rejection, but rather as an appeal for re-examination of the theoretical balance between the rules supposed to govern chapter IV.

108. With regard to article 23, his delegation suggested that the expression "in principle" should be deleted, in order not to weaken the scope of the article.

109. With respect to the régime of civil responsibility, the subject of chapter V, his delegation acknowledged that the difficulty lay in the interrelationship between private civil-responsibility law and international responsibility law, and it was apprehensive that the examination of the terms of the problem in an exclusively theoretical framework might lead to paralysis of the Commission's work. It therefore considered that clarification of that interrelationship was urgently needed. For that purpose, it suggested that at the methodological level, a comprehensive, parallel theoretical analysis should be adopted rather than the traditional sequential and linear approach. That would involve an examination of the parallelism between the two juridical concepts concerned, namely, civil responsibility and international responsibility, with one overriding idea: it was not a matter of reasoning in terms of mutually exclusive or alternative concepts, or of envisaging a war of position between the two forms of responsibility. The difficulty lay in the fact that, while there was only one objective, namely, reparation for the damage caused, two unsynchronized concepts had to be managed simultaneously. Only later would it be possible to take an informed decision on incorporating an article on civil responsibility.

110. The question of liability for damage caused to the environment in areas beyond national jurisdiction was extremely difficult, but his delegation would have liked the Commission to examine the merits of extending the Montego Bay Convention régime to matters other than the law of the sea. It reserved its position on that question pending the conclusions of the Special Rapporteur.

111. Turning to paragraphs 396 and 387 of the report, which dealt with the question whether sanctions should be punitive or not, he said that subjective or individual moral considerations should be excluded from the régime of reparation, especially in international relations. He wondered whether to rely on the concept of punitive

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sanctions was not to foreshorten an intellectual operation which involved a process of legal reasoning composed of five phases: (1) the establishment of a legal norm; (2) the advent of an activity having an impact on the environment; (3) examination of the nature of phase 2 in relation to the prescriptions of the phase 1 norm; (4) determination of the consistency or inconsistency of phase 2 in relation to phase 1; and (5) restoration of the authority of phase 1. Sanctions would thus come into play only with the conclusion of the analytical operation, phase 4, while potestative punishment, should it be concluded that there was inconsistency, belonged to phase 5, and there should be no confusion between the notions of sanction and punishment.

112. Mr. AKAY (Turkey), speaking in exercise of the right of reply, said that a certain delegation had alluded at the previous meeting to the crisis in the Persian Gulf and had drawn a false analogy with the situation in Cyprus. In that connection, he recalled the statement in the General Assembly by his delegation in exercise of the right of reply on the last day of the general debate. It took the view that the Greek-Cypriot delegation should not attempt to mislead the Committee and should refrain from raising the issue. The two Cypriot peoples were involved in a political dispute which could only be settled by direct negotiation within the framework of the mission of good offices which the Security Council had entrusted to the Secretary-General under its resolution 649. The basis of a solution to the Cyprus question had been recently set forth in a statement by the President of the Council, which had been issued as a document of the Council (S/21934). The statement appealed to all the parties concerned not to aggravate the situation only to refrain from making the kind of provocative statements the Greek-Cypriot speaker had made at the previous meeting.

113. Mr. JACOVIDES (Cyprus) said that there was nothing in the statement he had made at the previous meeting which was incompatible with resolution 649 or any other resolution of the Security Council. The position of his Government with regard to the procedures for settling the Cyprus question was quite clear. It supported the Secretary-General's mission of good offices, unlike Turkey, which, by failing to apply either resolution 649 or the other Security Council resolutions, was complicating the task of the Secretary-General. At the previous meeting, he had done no more than make references which were pertinent to the agenda item, a procedure which was neither unusual nor inappropriate.

114. Mr. ROUCOUNAS (Greece) reminded members of the Committee of the statement made by the Greek Minister for Foreign Affairs in the General Assembly on the subject of the Cyprus situation on 3 October 1990, and of the statement made by Greece in the Assembly in exercise of the right of reply on 10 October 1990. He also pointed out that the delegation of the Republic of Cyprus was so designated in all international organizations, and that the rules governing participation in international organizations required that delegations should be designated by their official name.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33; A/C.6/45/L.4)

115. Mr. KUOL (Sudan) said that his delegation had been unable, for reasons beyond its control, to participate in the voting on draft resolution A/C.6/45/L.4, on rationalization of existing United Nations procedures. Had it been present, it would have voted in favour of the draft resolution.

The meeting rose at 6.35 p.m.