UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
39th meeting
held on
Tuesday, 13 November 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 39th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

later: Mr. LUKABU KHABOUJI N'ZAJI (Zaire)
(Vice-Chairman)

CONTENTS

Distr. GENERAL
A/C.6/45/SR.39
21 November 1990

ORIGINAL: ENGLISH

90-57090 3085S (E)

The meeting was called to order at 10.20 a.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. DJIENA WEMBOU (Cameroon) welcomed the substantial progress made by the International Law Commission at its forty-second session on the draft Code on Crimes against the Peace and Security of Mankind. His delegation agreed with the Special Rapporteur that complicity, conspiracy and attempt should be treated as separate offences.

2. The original version of draft article 15, on complicity, was reproduced in footnote 26 of the Commission's report (A/45/100). While his delegation had no problem with the inclusion in the draft article of accessory acts committed prior to the principal offence and subsequent accessory acts, it agreed that distinctions should be drawn. When acts subsequent to the crime were committed on the basis of an agreement or understanding reached before or during its commission, they undoubtedly constituted acts of complicity. However, acts committed after the crime without any prior agreement could, strictly speaking, constitute separate criminal offences. Accordingly, the Commission should provide guidelines, but it should be for the judge, in each specific case, to determine the responsibility of each of the accused.

3. Contrary to those members of the Commission who felt that draft article 16, on conspiracy, was unnecessary, his delegation believed that the provision should be maintained and strengthened. Only the notion of conspiracy would make it possible to put forward such elements as criminal intent, agreement with another person and the attempt to execute the crime. He drew attention, in that connection, to the first sentence of paragraph 66 of the report, which summarized the Special Rapporteur's response to certain questions raised.

4. Preparatory acts, such as participation in a plan to incite or carry out a war of aggression, were punishable and called for an appropriate penalty. Moreover, certain acts, such as genocide and apartheid, were precisely the kind of crimes which could be perpetrated only where there was a conspiracy between one group and the State against other ethnic, religious, racial, tribal or cultural groups.

5. His delegation could accept the definition of attempt contained in draft article 17. States should be able to appeal to an international criminal jurisdiction if a State in which a criminal act was being prepared refused to try the conspirators in its own courts or even to take prompt and urgent enforcement measures.

6. With respect to illicit traffic in narcotic drugs, his delegation believed that the two draft articles proposed by the Special Rapporteur should be combined, and that the crime should be identified both as a crime against peace and as a crime against humanity.

(Mr. Djiena Wembou, Cameroon)

7. Turning to the topic "Jurisdictional immunities of States and their property", he said that State immunity was a fundamental principle of international law which did have certain limits. Accordingly, the title of part III of the draft should read along the following lines: "Limits on the application of State immunity". Moreover, the existing version of draft article 19, on the effects of an arbitration agreement, was too vague regarding the court before which a State party to an arbitration agreement lost its right to invoke immunity. In practice, arbitration agreements determined the competent court or were sufficiently clear to avoid any uncertainty as to the nationality or location of the court. Draft article 19 therefore should permit the State party to an arbitration agreement to retain the right to invoke immunity from jurisdiction before a court of a State which was not involved or was not designated by the agreement unless the agreement otherwise provided.

8. His Government would transmit its written views to the Commission regarding the law of the non-navigational uses of international watercourses, State responsibility, relations between States and international organizations, and international liability for injurious consequences arising out of acts not prohibited by international law. It welcomed the significant progress made on those questions during the Commission's forty-second session.

9. It also welcomed the report submitted by the Working Group established to consider the Commission's long-term programme of work, and was particularly pleased that the specific topics suggested included "legal principles regulating the protection of the environment", and "the international law of economic relations", in particular, "the regulation of foreign indebtedness", "legal aspects of contracts between States and foreign corporations" and "legal aspects of economic development".

10. In view of the importance which his delegation attached to the Commission's work on the codification and progressive development of international law, it wished to emphasize that such codification must not be limited merely to reaffirming existing positive law. Rather, the Commission also should strive to adapt international law to the changes taking place in international society, in order to help the international community to meet the many challenges which faced it. The items which were to be placed on the Commission's long-term agenda should truly reflect the concerns of all groups of States. His delegation accordingly agreed that in the selection of new topics, account should be taken of the pressing needs of the international community at its present stage of development in the last decade of the twentieth century.

11. Mr. HAMAI (Algeria) said that although the chapters of the report of the International Law Commission (A/45/10) were equally important, it was essential, if only to make the best use of time available for discussion, to accord priority to certain topics.

12. Turning initially to chapter III, on jurisdictional immunities of States and their property, he drew attention to part III of the draft articles provisionally

(Mr. Hamai, Algeria)

entitled "[Limitations on] [Exceptions to] State Immunity". Without wishing to reopen the debate between the adherents of absolute and restricted immunity of States, he wished to reaffirm that the guiding principle in that area was that of immunity, accompanied by exceptions whose consequences should be carefully measured. That had in general been the approach of the Commission so far.

13. The current report offered a number of exceptions to the principle of immunity which were worthy of note. Tho first category consisted of exceptions whose origin - either in the legislation or in the practice of a limited number of States - did not lend them to international codification of universal scope. That was the case with the exceptions in article 13 and subparagraphs (c), (d) and (e) of paragraph 1 of article 14. A further category of exceptions should be re-examined, as they tended to impose a considerable restriction on the principle of State immunity - so much so that the legal system which would be applicable to States, if such provisions were to be included, would not adequately safeguard the sovereignty of States. It seemed similarly inappropriate to rely on the judge in the court of the forum State to determine the illicit character of an act or omission of a foreign State. In international law, it was recognized that only clearly established rules and procedures applied in that field.

14. His delegation had noted a tendency, not confined to the draft articles, to limit the jurisdictional immunity of States before the courts of other States; the tendency had appeared in only a small number of States and was thus unrepresentative. His delegation left it up to the Commission to re-examine the current wording of some of the provisions and to submit a more balanced version which would more closely reflect the international consensus on such issues, and would thus be more likely to gain the acceptance of States.

15. Turning to more specific matters raised by the draft articles, he stated his delegation's preference for the deletion of subparagraphs (c), (d) and (e) of paragraph 1 of article 14, and also for retaining the term "non-governmental" in article 18, paragraphs 1 and 4, and the term "commercial contract" instead of "civil or commercial matter" in article 19. It would also support the Special Rapporteur's recommendation for the elimination of article 20, on cases of nationalization, since nationalization was an act of sovereignty which must be excluded from the competence of foreign courts.

16. Turning to the chapter of the report which dealt with the law of the non-navigational uses of international watercourses, he said that his delegation noted with satisfaction that the Commission unanimously accepted the principle of equitable regulation of watercourses, excluding any form of unilateral regulation and stipulating consultation and co-operation between watercourse States.

17. His delegation similarly welcomed the general trend towards the establishment of joint management organizations, as it encouraged joint and mutually beneficial utilization by the watercourse States.

18. In connection with draft articles 8, 9 and 10 proposed by the Special Rapporteur on the topic of State responsibility, his delegation felt that, in

(Mr. Hamai, Algeria)

general, the definition given of "reparation by equivalent" seemed equitable in that such reparation had a compensatory function and was intended to restore the situation which would have existed had the wrongful act not been committed. It would in fact be immoral if the State committing the wrongful act was not required to make reparation, equitably, for the harm caused. In the light of that consideration, it would be logical to re-examine the wording of paragraph 1 of article 8 in order to impose upon the State committing the wrongful act an obligation of reparation. The current wording of the paragraph did not confer on the injured State anything more than an entitlement (alternative (a)) or the right (alternative (b)) to claim compensation. There was no formal requirement for the State which had committed the wrongful act to pursue the matter. It would also seem preferable to substitute the term "compensation" for "reparation by equivalent". Compensation should cover all the types of damage suffered, both material and moral, by a State and its nationals, including both lucrum cessans and damnum emergens.

19. Doubt had been expressed as to the timeliness of codification, at the current stage of international law, with regard to international liability for injurious consequences arising out of acts not prohibited by international law (A/45/10, chap. VII). In his delegation's view, the increasing interdependence of the international community, particularly in such sensitive areas as the survival of mankind, the physical environment and the ecological balance, demanded an approach that was carefully considered, realistic, innovative and bold. In the context of that topic, it had been asked whether it was appropriate to deal with the obligations arising from activities involving risk and activities with harmful effects jointly or separately. His delegation was convinced that the two notions should be treated together, since, as the Special Rapporteur had noted, they had more features in common than distinguishing features (para. 473). Moreover, the prevention which the two notions necessarily implied covered both measures aimed at preventing the occurrence of an accident and those taken to contain or minimize the damage which might result from an accident. When an accident occurred and occasioned transboundary harm, the obligation of reparation arose whether the accident resulted from an activity involving risk or an activity with harmful effects.

20. Mr. Lukabu Khabouji N'Zaji (Zaire), Vice-Chairman, took the Chair.

21. Mr. GARRO (Peru), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that the phrase "related offences" should be defined in general terms in the Code. It should be left to the courts to determine the applicability of the definition in each specific case. The articles on complicity, conspiracy and attempt dealt with crimes which were very difficult to characterize. Those articles therefore had to be drafted with the greatest care.

22. His delegation fully agreed that illicit traffic in drugs should be characterized as a crime against humanity. The relevant draft article should include all possible subjects, whether private individuals or government officials, and should cover all internationally controlled substances. The title of the

(Mr. Garro, Peru)

article, therefore, also should include a reference to psychotropic substances. All aspects of the crime of drug trafficking should be included in the definition. While paragraph 3 of draft article X provisionally adopted by the Commission was by and large complete, it did not include the illicit sale of chemicals required for drug production. Money-laundering, one of the most illicit aspects of the criminal process, was covered by paragraph 2 of that draft article. He emphasized the importance of mounting a very broad, multidisciplinary international attack on the scourge of drug trafficking.

23. His delegation welcomed the adoption of the draft articles on international terrorism and on the recruitment, use, financing and training of mercenaries. Draft article 18 on mercenarism, used the definition contained in the 1989 International Convention on mercenaries, an instrument which should prove effective in combating a scourge that plagued many parts of the developing world. It was essential to include a draft article in the Code on the crime of international terrorism, and the crime should be characterized as an act or omission. He was pleased that the act of tolerating terrorist acts against another State was included in the definition. The inclusion of a list of acts would underscore the dangerous nature of the crime.

24. The Commission should link the crimes of drug trafficking and terrorism in the draft Code, with a view to prompting action by the international community to combat that terrible conspiracy. The Commission also should include in the Code the topic of "breach of a treaty designed to ensure international peace and security".

25. If the draft Code was to be truly effective and not a mere declaration, it was necessary to establish an international criminal court having jurisdiction with respect to the crimes defined in the Code. The court also should be authorized to consider other crimes which States might decide to bring before it. Accordingly, a combination of the options in paragraph 123 subparagraphs (i) and (iii), of the report (A/45/10) would be desirable. As to the structure of the court, it should be a permanent body and its members should be elected in the same manner as the judges of the International Court of Justice. As to penalties, in view of the trend in many countries, the death penalty should be ruled out. Life imprisonment also should be excluded, since the objective was to rehabilitate the offenders. His delegation agreed with the Commission that the proposed court would be successful only if it was widely supported by the international community.

26. Peru welcomed the progress made on the question of jurisdictional immunities of States and their property, and hoped that the Commission would be able to complete its second reading of the draft at its next session. His delegation also welcomed the progress on the questions of the law of the non-navigational uses of international watercourses, and international liability for injurious consequences arising out of acts not prohibited by international law. His Government would transmit its views on those topics to the Commission.

27. Mr. LOULICHKI (Morocco), referring to chapter VI of document A/45/10, said that since many existing instruments, such as headquarters agreements, dealt with the privileges and immunities of international organizations, their officials and experts, the Commission should confine itself to identifying the gaps to be filled and solving the problems revealed by the practice of previous decades. The Commission's work could take the form either of supplementary rules or of a framework agreement containing a statement of general principles intended to facilitate the interpretation of existing provisions.

28. His delegation supported the approach taken in draft article 2 of limiting the scope of the draft to international organizations of a universal character. However, the phrase "when the latter have accepted them" in paragraph 1 contained an element of uncertainty.

29. The parallel between draft article 4, which stated that the future Convention was without prejudice to existing agreements and would not preclude the conclusion of other international agreements, and draft article 11, which enabled the scope of privileges and immunities to be limited by mutual agreement of the parties concerned, made it difficult for the Commission to formulate general rules in that area.

30. Draft article 7 should be reconsidered in the light of general practice with regard to jurisdictional immunities. He had difficulty in accepting the idea that international organizations could, for functional reasons, enjoy an absolute immunity from jurisdiction, which would be greater than the immunity enjoyed by their member States. He hoped that the next report of the Special Rapporteur would be more substantial and would provide clear guidance with regard to the main topics of discussion.

31. Throughout its history, the Commission had constantly sought to improve its working methods. The fruitful dialogue between the Commission and the Sixth Committee was a valuable tool for improving the effectiveness of the Commission's deliberations. His delegation had taken note of the discussions of the Working Group on the Commission's long-term programme of work, and the suggestions made during the debate on that topic within the Committee, particularly by the German delegation. It was regrettable that the discussion of that part of the Commission's report had begun so late. Nevertheless, he had the following suggestions to make with regard to certain organizational and methodological aspects of the Commission's work. First, the holding of special sessions should not be considered unless the Commission was to finalize a set of draft articles; secondly, while the appointment of a co-Rapporteur did not appear to be advisable, a Special Rapporteur could be assisted by an expert who was not a member of the Commission; thirdly, a research group within the Commission could assist a Special Rapporteur in determining the approach to be taken with regard to the topic assigned to him; fourthly, expert bodies, such as the Institute of International Law, could be more closely associated with the Commission's work; and lastly, the idea of dividing the Commission into representative sub-committees on particular topics might be attractive, although it entailed the risk that such sub-committees might work independently of each other.

32. Mr. DELON (France), speaking on chapter VI of the report (A/45/10), said that discussions at the Commission's forty-second session on the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States had once again raised the question of the feasibility and desirability of establishing uniform rules on that subject. His delegation had already expressed doubts in that connection at the previous session of the General Assembly. While it was true that certain basic principles, such as the principle of the equality of member States and that of the independence of international civil servants, were to be found in all existing agreements relating to the status of international organizations, it was also true that those agreements had been negotiated on a case-by-case basis and with due consideration being given to the functional requirements of the particular organization concerned and, in particular, to the nature of its activities. To take an extreme example, an organization concerned with trade activities would not necessarily have to enjoy the same jurisdictional immunities as a major political organization. Indeed, it was difficult to see why international organizations, which were not sovereign entities, should in all cases enjoy more extensive immunities than the States of which they were composed.

33. His delegation continued to take the view that article 11 (footnote 295), which was designed to limit, i.. the light of the functional requirements of each particular organization, the very extensive scope of its rights under the draft's other provisions, would not ensure the necessary flexibility and balance between the interests of the international organization concerned and those of the host State, and indeed of all its member States and their nationals. The fact should never be overlooked that immunities could conflict with public or individual rights.

34. Furthermore, his delegation was not convinced that matters such as the capacity of an international organization to conclude treaties or to file an international claim, referred to in paragraph 441 of the report, fell within the scope of the topic. The Commission should not proceed on the assumption that a convention on the topic was necessarily to be aimed at. Since the subject was already covered by conventions which, on the whole, were proving satisfactory, there was no need for haste. The Commission could, at a leisurely pace, envisage the preparation of a set of alternative rules for purposes of reference, as appropriate.

35. Mr. VILLAGRAN KRAMER (Guatemala), referring to chapter VI of document A/45/10, said that regional organizations such as those referred to in Chapter VIII of the Charter of the United Nations should be taken into consideration in the proposals submitted by the Commission. Chapter VIII established machinery for regional arrangements and organizations when their field of action included the settlement of international disputes. Accordingly, if the Charter attributed specific competence to such organizations, it would be illogical not to consider them in the context of relations between States and international organizations. The Special Rapporteur and the Commission should take into account the parameters established under Chapter VIII and incorporate regional organizations, such as the Organization of American States and the Organization of African Unity, into the draft if it was feasible to do so.

(Mr. Villagran Kramer, Guatemala)

36. Concerning the waiver of jurisdictional immunities, he was of the view that in the contractual sphere, international organizations should not be subject to the limitations laid down in draft article 7. The last sentence of that article provided that no waiver of immunity should extend to any measure of execution or coercion. An international organization should have the capacity to contractually establish a waiver. However, such a waiver must be explicit.

37. He associated himself with the comments made by the representative of Australia concerning the recognition of international organizations. States which were members of an international organization recognized its capacity to enter into contracts, but non-member States had discretion as to whether or not such capacity should be recognized. He hoped that the Commission would take that point into consideration.

38. Mr. SHI Jiuyong (Chairman of the International Law Commission) expressed satisfaction at the thoroughness with which the Commission's report had been analysed and welcomed the General Assembly's decision to give Special Rapporteurs the opportunity to attend the Sixth Committee's debates on their respective topics. The wealth of constructive ideas and suggestions which had been presented would be carefully studied by the Commission and would be of great help in finding workable solutions to the complex issues with which it was confronted.

39. The large number of statements on the topic "Draft Code of Crimes against the Peace and Security of Mankind" testified to the interest elicited within the Committee by the elaboration of the draft Code, as well as by the question of establishing an international criminal jurisdiction. With regard to the draft Code, although opinions on specific aspects had varied, the prevailing view was that the Commission should continue its elaboration with a view to prompt completion of the first reading. As to the question of an international criminal jurisdiction, the Commission had generally been praised for the way in which it had approached the difficult task assigned to it, and for the promptness with which it had done so. It was for the Committee to determine what further action should be taken in that regard.

40. Concerning the topic "Jurisdictional immunities of States and their property", he appreciated the recognition by many members of the Committee of the substantial progress made on the draft articles during the Commission's forty-second session and was confident that the Commission would do its utmost to complete the second reading of the draft articles at its next session, thereby making its first contribution to the United Nations Decade of International Law.

41. He was grateful for the general guidelines and detailed comments provided by delegations on the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law. Although the element of progressive development was not present to the same degree in the two topics, there were in both cases important policy questions at stake for which the Commission had always relied on the views of the Committee. It was in relation to those two topics that he had detected a degree of uneasiness as to the

(Mr. Shi Jiuyong)

Commission's pace of work. It was true that State responsibility had been on the agenda for more than 30 years, and that current concerns, particularly the protection of the environment, gave a degree of urgency to the topic of international liability. On the other hand, it was equally true that both topics were infinitely complex and that draft articles on such sensitive areas of international law would have a lasting influence only if they were the result of an in-depth study.

42. In that context, he would not fail to convey to the Special Rapporteur and the Commission the idea of presenting the Committee with a "state of the topic" report.

43. Concerning the topic "The law of the non-navigational uses of international watercourses", he noted with pleasure that although certain key provisions of the draft articles had occasionally given rise to divergent views, satisfaction had been expressed at the fact that most of the groundwork had already been laid. There were good prospects for the Commission to complete the first reading of the draft by the end of the current term of office of its members.

44. The discussion had also revealed a convergence of views on the framework-agreement approach, the concept of the balance of interests, and the need for consistency in dealing with related topics. Even where views differed, he had detected a willingness to address the issues and to keep an open mind concerning possible solutions.

45. As to the topic "Relations between States and international organizations", several speakers had welcomed the resumption of the Commission's work, and had made useful comments on various draft articles. Those comments would be duly taken into account by the Drafting Committee and the Special Rapporteur.

46. Many valuable ideas had been presented on the question of the Commission's working methods and the relationship between the work of the Commission as an expert legal body and the process of political decision-making by Governments and the General Assembly. The Commission, with the help of its Special Rapporteurs, would make every effort to provide timely and extensive legal expertise, and was counting on the guidance of the General Assembly in helping it to achieve its goals.

47. The Commission attached importance to the International Law Seminar, which enabled young professors and lawyers, especially those from developing countries, to familiarize themselves not only with the work of the Commission, but also with the activities of the many specialized agencies located at Geneva and with international-law topics of general interest or of current international concern. The Commission regretted, however, that in 1990 not all qualified applicants from developing countries had been able to participate in the Seminar, simply because voluntary contributions from Governments had been insufficient for the grant of fellowships. He hoped that the General Assembly would appeal to States which were able to do so to make the financial contributions needed to ensure the holding of the Seminar in 1991 with the broadest possible participation.

AGENDA ITEM 138: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/45/430 and Corr.1 and Add.1-3, A/45/666; A/C.6/45/L.5)

48. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General (A/45/430 and Corr.1 and Add.1-3), recalled that the main purposes of the Decade of International Law, launched by General Assembly resolution 44/23, were to promote acceptance of and respect for the principles of international law; to promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice; to encourage the progressive development of international law and its codification; and to encourage the teaching, study, dissemination and wider appreciation of international law. As requested by the above-mentioned resolution, the Secretary-General, in his notes of 23 January and 8 February 1990 and letters of 16 January and 2 February 1990, had sought the views of States and appropriate international bodies and non-governmental organizations to assist him in the preparation of the report. The large number of replies received and the value of the information they contained demonstrated clearly the international community's great interest in the subject. The intensive exchange of views between delegations during the 11 meetings held by the Working Group on the United Nations Decade of International Law further illustrated that interest.

49. With regard to chapter II of the report, it would be noted that the Secretary-General had considered it useful to outline first the general comments made on the subject of the Decade. Those general comments were presented in section A of the analytical summary. The rest of the analytical summary outlined the views containing suggestions on how to implement the specific purposes of the Decade as spelt out in resolution 44/23. Those specific suggestions were summarized in sections B to F. Section G dealt with the proposal to convene a third international peace conference or other suitable international conference at the end of the Decade, a question on which the Secretary-General had been specifically requested by resolution 44/23 to seek the views of States and international organizations and bodies.

50. In connection with one of the specific purposes of the Decade, namely, promoting resort to the International Court of Justice, he drew the Committee's attention to the last paragraph of section III of the 1990 report of the Secretary-General on the work of the Organization (A/45/1):

> "The rule of law in international affairs should also be promoted by a greater recourse to the International Court of Justice in not only adjudicating disputes of a legal nature, but also in rendering advisory opinion on the legal aspects of a dispute. Article 96 of the Charter authorizes the General Assembly and the Security Council to request such an opinion from the Court. I believe that the extension of this authority to the Secretary-General would greatly add to the means of peaceful solutions of international crisis situations. The suggestion is prompted by the complementary relationship between the Security Council and the Secretary-General and by the consideration that almost all situations bearing upon international peace and security require the strenuous exercise of the good offices of the Secretary-General."

(Mr. Fleischhauer)

51. In conclusion, he expressed the hope that the report on the Decade would provide a good basis for discussion, and assist the Committee in formulating a realistic programme of action for its present and future work on the item. He wished the members of the Committee success in their first substantive work in connection with the launching of the United Nations Decade of International Law.

52. Mr. VUKAS (Yugoslavia), speaking as the Chairman of the Working Group on the United Nations Decade of International Law, introduced the Working Group's report (A/C.6/45/L.5). The Working Group had held 11 meetings, as well as informal consultations; as its Chairman, he had also conducted extensive private consultations with delegations.

53. Annex I, which contained the draft programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law, should become an integral part of the resolution on the Decade to be drafted in the course of informal consultations. The draft programme had been prepared on the basis of the suggestions made by States and international organizations in their replies to the Secretary-General and in the course of the discussions held in the Working Group. It included activities that should be commenced in the period 1990-1992. The suggestions were set out in annex II to the Working Group's report. That comprehensive list should remain a source of inspiration during the preparations for the following programmes for the Decade.

54. The proposed activities to be commenced during the first term were grouped under four headings, referred to in General Assembly resolution 44/23 as being the "main purposes" of the Decade. Compared with the long list of suggestions set out in annex II to the report, the draft programme for the first term might seem narrow and insufficiently ambitious. However, the draft programme addressed the four main purposes in an appropriate manner for the initial stage of the Decade. At the beginning of the Decade, a cautious approach should be taken to such topics as acceptance of and respect for international law, the codification and progressive development of international law, and the peaceful settlement of disputes. It was essential that particular attention should be devoted to all those major topics, if the Decade was to meet the international community's expectations and contribute to the development of a new, peaceful international legal order.

55. States, international organizations and scholarly institutions were invited to contribute to the study of such matters as: the existing procedures for the progressive development of international law and its codification; areas of international law that might be ripe for progressive development or codification; measures to strengthen the United Nations system for the maintenance of international peace and security; methods of early identification and prevention of disputes and their containment; and means and methods for the peaceful settlement of disputes between States. Once all the aspects of those main topics of contemporary international law had been analysed, the future programmes for the Decade should address specific goals necessary for the enhancement and implementation of international law.

(Mr. Vukas, Yugoslavia)

56. However, the draft programme for the first term also suggested many forms of immediate action. For example, it was suggested that States should be invited: to act in accordance with international law; to become parties to multilateral treaties; and to provide assistance and technical advice to other States in order to facilitate their participation in the multilateral treaty-making process. Particularly numerous were the activities suggested in order to encourage the teaching, study, dissemination and wider appreciation of international law. The draft programme for 1990-1992 contained a long list of such activities that could be carried out by the organizations of the United Nations system, regional organizations, States, and educational and scientific institutions.

57. Mr. VOICU (Romania) said that the importance his delegation attached to the topic was quite natural in the light of his country's total commitment to the principles and norms of international law. Romania's foreign policy had undergone a radical change, the artificial barriers the former régime had put in the way of international co-operation had been removed, traditional contacts had been renewed and reassessed, and decisive action had been taken to open up Romania to the major trends taking place in the world. Against that background, Romania had once again affirmed its right and its resolve to participate as an equal partner in the building of Europe.

58. Romania believed that international law, the principles and norms of which had been reflected in the documents of the Conference on Security and Co-operation in Europe, had a major role to play in co-ordinating joint actions aimed at building a peaceful future for Europe and the other continents. In its view, world co-operation in all fields should be based on the rule of law.

59. His delegation was satisfied with annex II to the report of the Working Group (A/C.6/45/L.5). Referring to the document as a whole, he said that the programme for the Decade should include legal and practical procedures to reinforce the part played by the principles and norms of international law in laying down rules for the conduct of all members of the world community, thus helping to stabilize international relations.

60. With regard to the second main objective of the Decade, namely, to promote means and methods for the peaceful settlement of disputes between States, Romania welcomed the recommendations contained in the report. In that context, it recalled Romania's recent decision to favour greater recourse to the International Court of Justice. With that aim in view, his country had begun to withdraw its reservations concerning the compulsory jurisdiction of the Court in respect of multilateral treaties in the humanitarian and human-rights fields. At the same time, it supported the initiative to draft a general international legal instrument on the peaceful settlement of disputes, on the lines suggested in paragraph 8 of section II (a) of annex II to the report. In that context, it also wished to stress the relevance of the provisions of General Assembly resolution 44/31, which underscored the need to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations in

(Mr. Voicu, Romania)

that field. It also welcomed the adoption by the Sixth Committee, by consensus, of decision A/C.6/45/L.7, which determined that the question of the peaceful settlement of disputes between States should be examined within the framework of the programme for the United Nations Decade of International Law and in the Special Committee on the Charter, as appropriate.

61. With regard to the third purpose of the Decade, namely, to encourage the progressive development of international law and its codification, Romania hoped that the programme for the Decade would help to expedite the preparation of new international legal instruments, in particular those currently before the International Law Commission and the United Nations Commission on International Trade Law.

62. Inasmuch as the Decade of International Law covered the same period as the International Decade for Natural Disaster Reduction, there was a need for further efforts, within both the United Nations Secretariat and all the other competent organs of the United Nations system, to ensure an optimal level of co-ordination and harmonization in areas where the objectives of the two Decades overlapped. It would therefore be useful to pool efforts to develop international humanitarian law, as an ever more important branch of general international law. It would also be advisable, as suggested in annex II to document A/C.6/45/L.5, to formulate recommendations on ways and means of stimulating the development of international humanitarian law applicable in the area of natural disasters, including the preparation of new legal instruments of a universal character on mutual assistance.

63. In broader terms, the programme for the Decade of International Law should contain recommendations on how to expedite the ratification process for multilateral legal instruments adopted under the auspices of the United Nations in the area of public and private international law, with special emphasis on instruments relating to social and humanitarian issues and fundamental human rights and freedoms. It was also important to begin drafting new legal instruments in such areas as the elimination of all forms of religious intolerance, in accordance with the relevant General Assembly resolutions.

64. The fourth purpose of the Decade, namely, to encourage the teaching, study, dissemination and wider appreciation of international law, was of particular importance in fostering universal respect for the principles and norms of international law and in consolidating the role of international law in promoting and maintaining world peace and security. The programme for the Decade should accordingly contain specific recommendations in that regard, drawing inspiration from a variety of sources. Romania supported the proposal made by the United States to develop model curricula and materials for the teaching of international law in primary and secondary schools. Such a project would involve combining the skills of educators with an expertise in international law. Efforts should also be made to enhance the effectiveness of the work of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

(Mr. Voicu, Romania)

65. Romania favoured the proposal to convene an international peace conference at the end of the Decade of International Law, with a view to adopting legal instruments of a universal character to govern inter-State relations throughout the coming century.

66. It fully endorsed the recommendation that States should be encouraged to establish national, subregional and regional committees to assist in the implementation of the programme for the Decade. Romania was considering the setting up of a national committee for the Decade, and also the creation of an institute for human rights which would function under the auspices of Parliament.

67. The Decade would lead to a strengthening and diversification of the activities of the United Nations in the legal sphere, and would help it to fulfil its supreme mission under the Charter, which was to save present and succeeding generations from the scourge of war.

68. Mr. SZEKELY (Mexico) said that at the time of the adoption of the Convention for the Pacific Settlement of International Disputes, at The Hague in 1899 an earlier generation of diplomats had on the threshold of a new century looked forward, full of hope, to a genuinely lasting peace. Those hopes had, of course, been frustrated. Furthermore, even though, half-way through the twentieth century, the peoples of the United Nations had been determined to save succeeding generations from the scourge of war, over the following 45 years the international community's failure to achieve that goal had resulted in indescribable suffering for mankind.

69. The States Members of the United Nations must nevertheless persevere in their endeavour to maintain peace. Now, another generation of diplomats had the enormous responsibility of boldly seeking to achieve the rule of law in international relations as they stood on the threshold of another century.

70. Following weeks of negotiations on the activities to be conducted under the Decade, the current debate above all represented an opportunity to assess what had been achieved and to lay the foundation for future action. It was extremely important that the Decade's impact should not be ephemeral. The goal should be to promote the adoption of measures to enhance observance of the rules of the law of nations. Mankind had long aspired to achieve peace through the rule of law, and that goal could now be achieved.

71. Deciding on the content of the Decade would not be an easy task, since there was much to be done. The enthusiastic response from Member States and a large number of intergovernmental and non-governmental organizations to the Secretary-General's request for comments on the programme for the Decade was a demonstration of the importance that the international community attached to the topic under consideration. Mexico had, for its part, gladly participated in the Working Group's activities, and hoped that the draft programme for the activities to be commenced during the first term of the Decade would be adopted both by the Sixth Committee and by the General Assembly.

(Mr. Szekely, Mexico)

72. Now that the initial task had been completed, it was necessary to guard against inertia. It would, for example, be insufficient merely to adopt follow-up measures, such as measures to promote the dissemination and wider appreciation of international law. The results achieved at the current session were highly satisfactory, but they were just a starting-point and should lead to the adoption of more ambitious measures. Some delegations, including his own, had accepted a modest, excessively general beginning for the programme for the Decade where substance was concerned, on the understanding that substantive international legal topics urgently calling for codification and progressive development would be addressed without delay. In that connection, his delegation had in mind such subjects as: international illicit arms trafficking; the glorification or justification of violence; unilateral coercive measures; the right to food; and illicit traffic in and international exploitation of minors.

73. the purposes of the Decade, as laid down in General Assembly resolution 44/23, must permeate all activities, both within and outside the Sixth Committee. Issues dealt with in the context of the Decade must in fact be given priority over other topics. In that connection, Mexico welcomed the fact that the International Law Commission had approached the task of establishing its future programme of work in the context of the purposes of the Decade. It was also of great importance that both States and international organizations should set themselves the task of encouraging the dissemination and wider appreciation of international law, which called for effective use of existing machinery, without prejudice to the development of any new forms of machinery that might become necessary.

74. For example, Mexico believed that the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should be strengthened, and that at the next session of the General Assembly, more time should therefore be set aside for consideration of the matter, both by the Advisory Committee on the Programme and by the Sixth Committee. In due course, Mexico would put forward some proposals in that connection. At the current stage, it simply wished to draw attention to the fact that the role played by the Office of Legal Affairs and, more particularly, by the Codification Division, was often not fully appreciated. The Division's experts had supplied excellent tools for enhancing the application of international law, such as the draft handbook on the peaceful settlement of disputes between States, which the Committee had submitted to the General Assembly for adoption. The Legal Counsel must remain closely involved in such activities. A handbook on international law might be prepared on the basis of the work that the Secretariat had been carrying out for a number of years.

75. The primacy of international law must be recognized, particularly in view of the growing trend towards globalization. The principles on which Mexico's foreign policy was based were entirely in keeping with the fundamental principles of peaceful coexistence. In the past, Mexico's belief in international law had often been considered ingenuous, to say the least. However, the approach now being taken by the international community, and the revitalization of the United Nations,

(Mr. Szekely, Mexico)

proved that Mexico had been right. Mexico hoped that the members of the international community would mark the completion of the Decade by meeting at The Hague, and that such a meeting would augur well for the world.

76. Mr. PADMANABHAM (India) recalled that the Ministers for Foreign Affairs of the Movement of Non-Aligned Countries, meeting at The Hague in June 1989, had called upon the General Assembly to declare a Decade of International Law to begin in 1990 and conclude in 1999, to provide for the establishment of a commission to organize and conduct the Decade's activities, and to prepare for a third peace conference at its conclusion. After summing up the main purpose of the Decade as set forth in General Assembly resolution 44/23, he said that the Decade was also called upon to fulfil an extremely praiseworthy purpose in reaffirming faith in the usefulness of international law in safeguarding peace and security. It was because of similar initiatives that the world community had been able to conclude important agreements for the promotion of the rule of law in international relations, such as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes and, more recently, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations. In pursuing those efforts, it was essential to show flexibility by seeking such means as might be appropriate to the circumstances and nature of each particular dispute. Both the Charter of the United Nations in its Article 33, paragraph 1, and the Manila Declaration in its paragraph 5 emphasized free of choice of means in connection with the peaceful settlement of disputes between States. While promoting the rule of law in international relations and encouraging the parties to any dispute to employ one or other of the means listed in Article 33, paragraph 1, of the Charter, it was essential not to do anything that might restrict the wide choice of means available to States.

77. The cause of peace and peaceful settlement of disputes could be adequately served only by structurally modifying the contemporary world order and taking pioneering decisions on certain vital issues facing mankind. The Movement of Non-Aligned Countries had identified such issues and emphasized their importance in its various declarations: establishment of a non-violent world order; total elimination of nuclear weapons, leading to complete and general disarmament; introduction of new dimensions in international economic relations, with emphasis on fairness and justice to all the peoples of the world; guaranteeing of fundamental civil, political, economic and social rights; and freedom and dignity for all peoples. The development of effective alternatives to the threat or use of force in international relations should be treated as being closely linked with the prospect of human survival. Recent world developments offered encouragement to work towards that noble objective. In a climate of growing readiness on the part of countries to interact on the basis of reason, goodwill, dialogue and compromise, any exercise designed to strengthen confidence in international law could be expected to produce significant results.

78. Mr. SUN Lin (China), after expressing appreciation of the work done by the Working Group on the United Nations Decade of International Law and its Chairman, said that his delegation was in favour of formulating a short-term programme of activities first, so that activities under the Decade might achieve tangible results within the next few years; the Sixth Committee should meanwhile continue with the study, discussion and formulation of further programmes for the Decade. His delegation took the view that the programme of activities as a whole should be feasible, action-oriented and acceptable to all.

79. His Government attached great importance to the Decade and hoped that activities under the Decade would strengthen the rule of international law and enhance its role in relations among States, thus helping to maintain international peace and security. China had first had submitted its proposals for the Decade in June 1990. They were reproduced in the report of the Secretary-General (A/45/430), and further proposals were to be found in document A/45/430/Add.2. One proposal was for a study on developing countries and international law. Another was for a study on developing countries and international legislation on the environment. His Government also wished to conduct some specific activities, including production of study reports or co-sponsorship of international seminars. His delegation was pleased that the proposals had met with the Working Group's general understanding and approval.

80. Another proposal submitted by his Government concerned the strengthening of the role of the International Court of Justice. China was ready to discuss the issue with other interested countries. In making the proposal, it was guided by the following initial considerations: the role of the Court should be strengthened within the framework of its Statute and Rules, whose potentialities should be fully utilized; serious study should be given to various forms of acceptance of the Court's jurisdiction, including compulsory jurisdiction under Article 36, paragraph 2, of the Statute, it being borne in mind, however, that the Court's jurisdiction was founded upon the free consent of States; States should be encouraged to accept the Court's jurisdiction in the form of special agreements or dispute-settlement clauses in conventions; wider resort to the Court for advisory opinions should be encouraged; as should be the appropriate use of the ad hoc chamber as an institutional means of trying cases; lastly, States should be encouraged to take steps, individually or collectively, to submit international disputes more frequently to international judicial settlement.

81. His Government intended, should a third international peace conference be convened at the end of the Decade, to propose the adoption of a declaration on principles of international law concerning peace and development. The principles of respect for sovereignty and territorial integrity, non-aggression, non-interference in internal affairs, equality and mutual benefit, and peaceful co-existence, first enunciated in 1954, by China, India and Myanmar (then known as Burma) had since achieved the status of basic principles of international relations. They should, together with other basic principles of international law, constitute an important component of the proposed declaration. The decision to adopt such a declaration would, of course, depend entirely on a consensus among all

(Mr. Sun Lin, China)

States, and his Government's position on the issue would be consistent with that of others.

82. In conclusion, he informed the Committee that his Government had decided to contribute the sum of $10,000 to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. Moderate as the sum was, it was intended as a concrete contribution to the United Nations Decade of International Law.

83. Mr. LEORO F. (Ecuador) said that his delegation had strongly supported the adoption of General Assembly resolution 44/23, just as it had supported the original initiative put forward in 1989 at The Hague, at the meeting of the Movement of Non-Aligned Countries. Clearly, the initiative could not have come at a better time, since the international community was now seeking to build a stable peace on the sound foundation of international law.

84. The contemporary world was developing in the context of complex interrelationships calling not only for greater respect for the principles of international law, but also for a willingness on the part of the members of the international community to co-operate with one another with a view to reducing the major discrepancies in the standards of living of the peoples of the world. More extensive co-operation clearly strengthened peace and friendly relations between peoples.

85. In order to achieve peace, States must not only refrain from using force, they must also observe the principle of peaceful settlement of disputes between States and follow the corresponding procedures. It would be appropriate, in that connection, to investigate the underlying reasons for the failure on the part of States to resort to peaceful means of settling their disputes. The prevention of international conflicts was of great importance, and States must have at their disposal appropriate ways of preventing disputes from becoming serious international conflicts. However, even more important than amendments to international agreements on the peaceful settlement of disputes was the willingness of States to resort to peaceful means of settling their disputes. States must give serious thought to the ways in which the instruments in question should be amended, and if new agreements were to be concluded States must consider what innovations would be appropriate.

86. Where the promotion of the progressive development of international law was concerned, care must be taken to ensure that the fundamental needs of all States were taken into consideration. Important though declaratory rules of international law might be, they must be supplemented by appropriate implementation procedures. A clear example of such evolution in international law was to be found in the field of human rights, where declaratory norms had led to ways and means of safeguarding such rights to an unprecedented degree. The Sixth Committee should play a more active role in activities relating to the progressive development of international law, since Governments would thus more frequently have occasion to express their views on legal instruments being prepared by the United Nations. Moreover,

(Mr. Leoro F., Ecuador)

delegations from different regions of the world could thus share experience in the legal field and provide specific examples of the activities of their various regional bodies.

87. On the issue of the encouragement of the teaching, study, dissemination and wider appreciation of international law, he said that priority must be given to the need for universities to update their relevant programmes and promote research, which, of course, called for adequate financial and scientific resources. A greater awareness of the role of both international law and international organizations would do much to promote a greater appreciation of the need for the international legal community to act in accordance with legal principles, rejecting the use of force in any form and promoting the concept of the maintenance of peace through the rule of law.

88. With regard to the issues to be considered in the context of the Decade, it was necessary to clarify which United Nations organ was to be entrusted with the task of following up the various activities and was to be responsible for the set of activities that had not been assigned to the General Assembly, the Sixth Committee, the Secretary-General or the International Law Commission.

89. Member States would be called upon to carry out intensive, demanding activities at the domestic level designed to encourage the teaching and dissemination of international law, and similar demands would be made on international organizations. Naturally, all such activities called for greater efforts and more expenditure on the part of Member States.

90. As a member of the Inter-American Juridical Committee, he wished to request the Sixth Committee's secretariat to ascertain why a note such as the one addressed by the Secretary-General to appropriate regional organs requesting their views on the Decade had not been sent to the Juridical Committee. Unfortunately, the Juridical Committee had been unaware that the Secretary-General had been addressing such a request to regional organs. It would certainly have submitted suggestions concerning the programme for the Decade, had it been invited to do so. He noted, in that connection, that the Juridical Committee was not mentioned in section II, paragraph 1, of annex I to document A/C.6/45/L.5.

91. His Government endorsed the recommendations made by the Working Group and would give the draft programme careful consideration. It would do everything within its power to carry out suitable activities at the national level, and would also co-operate in every possible way in activities at the international level.

The meeting rose at 1.10 p.m.