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Chairman: Mr. CALLE Y CALLE (Peru)

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AGENDA ITEM 121: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION (continued)

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

AGENDA ITEM 121: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION (continued) (A/36/10 and Corr.1 (English and French only) and A/36/428)

1. Mr. KOSTOV (Bulgaria) said that the draft articles on the succession of States in respect of property, archives and State debts constituted a suitable basis for elaborating and adopting a convention within the framework of an international conference. The decision of the International Law Commission (ILC) to change the title of the draft articles was fully justified; the new title and the new text of article 1 reflected more precisely the field of application of the draft articles and the new article 5 would contribute to an even better specification of the regulated area.

2. During the deliberations both in the Commission and in the Sixth Committee some reservations had been expressed with regard to article 11. However, his delegation felt that it was a carefully formulated and well-balanced article. The basic provision of the article to the effect that the passing of State property should take place without compensation was in compliance with the established practice in that field and was of special importance for the newly independent countries. On the other hand, the subsidiary clauses "subject to the provisions of the articles in the present Part" and particularly "unless otherwise agreed or decided" provided States with the opportunity to choose, in every particular instance, the most convenient option in conformity with the principle of equity on which the concept of succession espoused by the Commission was based.

3. It was noteworthy that in article 26 concerning the succession of newly independent States in respect of archives the provisions were more limited in scope than in other cases of succession, for instance, unification or separation. In view of the importance of archives for newly independent States, consideration should be given to the possibility of enhancing the scope of succession in such cases.

4. The Bulgarian delegation welcomed the Commission's decision that the definition of State debt should cover only financial obligations arising on the international level between subjects of international law. That definition narrowed to reasonable limits the scope of the draft articles and was based on the clear delineation of the legal status of the subjects of international and private law. It should also be borne in mind that the draft articles contained an explicit clause providing for the legal protection of the interests of private, natural and juridical persons, including the creditors (art. 6). Consideration should be given, however, as to whether the Special Rapporteur's proposal to exclude the provisions concerning the non-transferability of war debts and so-called "odious" debts was appropriate or would not have a negative political impact.

5. Turning to the question of treaties concluded between States and international organizations or between two or more international organizations, he wished to

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express his delegation's satisfaction at the considerable progress made in the legal regulation of that highly important field of international law. The close link existing between the Vienna Convention on the Law of Treaties and the draft articles on that question had been recognized by both the Commission and the Sixth Committee. It had also been recognized, however, that such a link could not by any means be regarded as giving rise to direct parallels between States, as sovereign subjects of international law, and international organizations, which were entities of secondary, derivative and limited international legal capacity. The 26 articles which the ILC had so far adopted on second reading were generally acceptable. On the whole, the new draft articles 19-23 concerning reservations followed the relevant articles of the Vienna Convention on the Law of Treaties and established a liberal but monolithic regime in that field. The Bulgarian delegation had experienced considerable difficulties with paragraph 4 of draft article 20 as it had been adopted on first reading because it assimilated international organizations to States with regard to the tacit acceptance of reservations within a specific period. The provision adopted during the second reading represented a certain improvement in that it allowed the tacit acceptance of reservations only on the part of States. Nevertheless, the question of acceptance of reservations by international organizations was still left open.

6. Turning to the responsibility of States and in particular Part 2 of the draft articles, he recalled the Commission's discussion of articles 4 and 5 which dealt with the first parameter defined by the Special Rapporteur, namely, the obligations of a State which had committed an internationally wrongful act, and which stipulated that the State in question must discontinue the wrongful act, re-establish the initial situation, pay a reparation and provide moral satisfaction to the injured State. Certain members of the Commission had stated that the question of the obligations of the "author" State arising from an internationally wrongful act should be viewed rather in the context of the right of the "injured" State to demand a certain conduct from the "author" State. His delegation, for its part, felt that the main emphasis should be laid on the new obligations of the "author" State vis-à-vis the "injured" State. Generally speaking, two approaches were possible. First, the "injured" State could prove the breach of the "author" State and demand international responsibility of the "author" State. Secondly, the "injured" State could take counter-measures in advance of any request for restitution or for reparation. His delegation was opposed to the second approach since it could easily lead to conflicts and disregard for international law in the settlement of such disputes. However, that attitude should not be regarded as a rejection of all legitimate counter-measures which a State could take, particularly in the case of a new legal relationship arising from an international crime. In all cases, the sanction should be proportionate to the character and degree of the breach committed.

7. Turning to the question of the liability of States for injurious consequences arising from acts not prohibited by international law, he pointed out that the obvious link between that issue and the problem of State responsibility for internationally wrongful acts was more of an impediment than a help to the settlement of the problem. The distinction of approach between primary and

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secondary rules gave rise to additional difficulties in that field. A more pragmatic approach emphasizing reparation rather than the theoretical aspects of the origin of responsibility would probably prove to be more constructive.

8. With regard to the question of the jurisdictional immunity of States, the Bulgarian delegation fully supported the concept of sovereign equality whereby the jurisdictional immunity of a State was a fundamental principle which allowed for exceptions only in the case of the explicit expression of the State's consent. For that reason, Bulgaria could not subscribe to the present wording of article 6, paragraph 1, which stated: "A State is immune from the jurisdiction of another State in accordance with the provisions of the present articles". His delegation would like to see that article redrafted along the following lines: "The State and its property are immune from the jurisdiction of any other State except in the cases provided in the present articles". The remaining draft articles would be redrafted accordingly. The general principles governing that question should be elaborated only after the problem of the exceptions from the jurisdictional immunity of States and their property had been considered. His delegation had some misgivings concerning article 10, which provided for the possibility of making counter-claims. Although the Vienna Convention on Diplomatic Relations provided for the possibility of making a counter-claim against a diplomatic agent, the application of the same legal regime to States was not warranted.

9. The second report of the Special Rapporteur on the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/347 and Add.1 and 2) together with the report of the ILC (A/36/10, chap. VII) contained all the elements necessary for the elaboration of the draft articles and was a good basis for further work on that matter. His delegation welcomed the method of work chosen by the Special Rapporteur, which was based on an analysis of all official communications and legal instruments relating to the topic as a whole, such as the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. His delegation supported the decision of the Special Rapporteur to include in the scope of the draft articles couriers and bags employed not only for the official communications of the sending State with its missions, but also between the various missions or delegations of that State situated abroad, for they were all based on the same principles of sovereign equality of States and freedom of communication. His delegation also supported the Special Rapporteur's decision to exclude from the scope of the draft articles couriers and bags used for official purposes by international organizations. Indeed, in the case of codification of the communications of international organizations, it would probably be more expedient to seek a formula that would correspond to article 3 of the Vienna Convention on the Law of Treaties. In the view of his delegation, the terms "official courier" and "official bag" were sufficiently flexible and would reflect more precisely the general scope of the draft articles. With regard to the "official courier" of States, an examination of the four Conventions he had mentioned and of State practice indicated that the status of

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the "official courier" should come as close as possible to that of the diplomatic courier as defined in article 27, paragraph 5, of the Vienna Convention on Diplomatic Relations, which provided for full immunity. Article 35 of the Vienna Convention on Consular Relations of 1963, on the other hand, provided for certain restrictions on the immunity of the consular courier, and the fact that a large majority of States had not accepted that Convention (unlike the case of the 1969 and 1975 Conventions) and that most bilateral consular conventions provided expressly for the full immunity of the consular courier and the consular bag, proved that most States were reluctant to restrict that immunity. Finally, his delegation would like to see incorporated in the draft articles, possibly in the general provisions, the fundamental principles enunciated in the four Conventions mentioned, namely, freedom of communication for all official purposes effected through official couriers and official bags, strict respect for international law and the laws and regulations of the receiving and the transit States, and non-discrimination and reciprocity with regard to the treatment of diplomatic couriers and diplomatic bags.

10. His delegation welcomed the Commission's expressed intention "to continue to keep under review the possibility of improving further its present procedures and methods with the flexibility which the study of particular topics may require, with a view to the timely and effective fulfilment of the tasks entrusted to it by the General Assembly" (A/36/10, para. 260). His delegation considered it essential for the Commission to try at each of its sessions to concentrate on a limited number of topics, so as to be able to submit comprehensive and internally consistent sets of articles to the Committee.

11. Mr. MAYNARD (Bahamas) said that, with the mandate of the members of the Commission about to expire, it was a good time to reflect upon the Commission's work programme and methods. His delegation stressed the necessity of giving the Commission a clear mandate to consider matters to which Governments accorded high priority, while at the same time refraining from giving it an unrealistic workload. Concern had been expressed in the Committee at the current session, and several issues, such as access by the Commission to adequate resources, had been taken up in a booklet recently published by UNITAR. The resolution to be adopted on the item under consideration would undoubtedly have to take account of such concerns.

12. A convention based on the excellent draft articles on succession of States in respect of State property, archives and debts would certainly consolidate opinio juris on the matter. A new State, even if not formally bound by the convention, could be guided by its norms; and, of course, draft article 4 provided for participation of a successor State in such a convention from the date of succession, unless otherwise agreed. Article 4 addressed the principle of non-retroactivity of treaties, codified as a rule of general application in article 28 of the Vienna Convention on the Law of Treaties, by asserting in paragraph 1 that the articles applied only in respect of a succession of States which had occurred after their entry into force. A measure of flexibility was nevertheless achieved by the inclusion in paragraph 1 of the phrase "except as may be otherwise agreed", and paragraphs 2, 3 and 4 permitted the successor State to apply the articles, even provisionally, to its own succession even if it had occurred before the entry into force of the articles.

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13. The Commission had aptly placed primary emphasis on agreement between the States concerned, notably in each section 2 of Parts II, III and IV of the draft articles, providing for specific categories of State succession, in which the Commission had laid down residuary rules which would take effect only in the absence of such agreement. Furthermore, the concept of equity that was treated by the Commission as a basic principle in the rules regarding the passing of State property, archives and debts, was that "equity, in addition to being a supplementary element throughout the draft, is also used therein as part of the material content of specific provisions and not as the equivalent of the notion of equity as used in an ex aequo et bono proceeding, to which a tribunal can have recourse only upon express agreement between the parties concerned" (A/36/10, para. 85). With respect, to, for example, the passing of movable State property connected with the activity of the predecessor State in respect of the territory to which the State succession related, it was recognized that the principle of equity was not pre-eminent but more of a corrective factor aimed at preserving a reasonable link between the movable State property and the territory. On the other hand, the principle had a greater part to play in the provisions relating to the passing of State property other than that connected with the activity of the predecessor State in respect of the territory to which the State succession related, and in similar provisions relating to the passage of State archives and debts. In that connexion, it would be useful to include also provisions on the settlement of disputes.

14. In view of the fact that there were still a number of dependent or non-self-governing territories, that the problems related to State succession, and particularly to the passing of property, in many cases persisted after independence, and that it was useful to have the draft articles parallel, as far as possible in structure and terminology those of the 1978 Vienna Convention on the Succession of States in Respect of Matters other than Treaties, the Commission had been quite right to retain the case of the newly-independent State as a separate category of State succession, and article 14 should prove useful. With regard to immovable State property, paragraph 1 (a) of article 14 incorporated the criterion of linkage of the property to the territory. The two additional criteria which emerged from the remaining subparagraphs were the viability of the territory and the contribution of the dependent territory to the creation of certain immovable and movable State property of the predecessor State. In the latter case, the rule of equitable apportionment of property was applied, and such property passed to the successor State in proportion to the contribution made by the dependent territory. In addition, subparagraphs (b) and (e) contained a rule of restitution of immovable and movable property to the territory to which the State succession related. It was interesting that the Commission envisaged, by way of example, that subparagraphs (e) and (f) might apply to movable property in the form of capital shares of international or regional financial institutions such as the World Bank. Those provisions reflected a number of improvements made in the text in second reading. Article 14, paragraph 4, and article 36, paragraph 2, were also noteworthy, since they set forth the principle of the permanent sovereignty of every people over its natural resources. It was interesting to note that some members of the Commission had been of the view that certain devolution agreements were void ab initio.

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15. The formulation of article 9, on the effects of the passing of State property, was commendable, for it implied that a succession of States necessarily entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State to the State property in question, and acknowledged the break in continuity involved in a succession of States. Nevertheless, the expression "the arising" of the rights of the successor State was, perhaps, not felicitious. Further refinement would, no doubt, be possible on that point, as on others, at the plenipotentiary conference recommended by the Commission.

16. As the Commission had properly recognized, State archives constituted a special type of State property, particularly since they could be duplicated through modern technology, which made it easier to satisfy the interests of both the predecessor and the successor States. The definition given in article 19 was satisfactory. In addition to paragraph 7 of article 26 on the right of the peoples of both the predecessor State and the newly-independent State to information about their history and heritage, paragraph 3 of that article was a useful provision on the obligation of the predecessor State to provide the newly-independent State with the best available evidence from its State archives which bore upon title to the latter's territory or boundaries. The Commission had placed a welcome emphasis in Part III of the draft articles on co-operation and agreement among the States concerned, taking into account the relevant recommendations of international organizations such as UNESCO.

17. On the question of State debts, his delegation had noted with concern that the International Law Commission, by a tied vote, had rejected in second reading the inclusion in article 31 of a new subparagraph on the definition of State debts which would have included "any other financial obligation chargeable to a State". Since, under article 6, the debts owed by a State to private creditors, whether natural or juridical persons, were not prejudiced by a succession of States, it was evident that an effort must be made to produce a convergence of views. The rest of the commentary on article 31, particularly paragraphs 13 to 28, was quite useful in the light of the differing views on a number of subjects, including the distinction between local and localized debts. The provisions of article 34, particularly paragraph 2 (b), were also satisfactory.

18. On the topic of State responsibility, the Commission had started its consideration of the draft articles in Part 2, which covered the content, forms and degrees of international responsibility; his delegation commended the judicious approach adopted by the Commission to that sensitive topic, on which there were significant differences in State practice and in judicial and arbitral decisions.

19. With regard to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, his delegation considered that the Commission had made appreciable progress in coming to grips with such structural attributes of the topic as the duty of care, the balance of interests and the distinction between primary and secondary rules. Inasmuch as judicial and decisions, such as those in the Trail Smelter, Corfu Channel, Alabama and

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Lake Lanoux cases, yielded a useful but rudimentary working model, his delegation believed that the Commission had been right to turn from an exploratory examination of the boundaries of the topic to its inner content. The Commission had rightly refrained from adopting a proposed draft article, the text of which was contained in foot-note 654 of its report. The Commission would benefit from the preparation of an empirical study of relevant multilateral instruments, such as the draft convention prepared by the United Nations Conference on the Law of the Sea, the Stockholm Declaration, and other instruments prepared by international bodies such as IMCO.

20. The Commission had made satisfactory progress in its work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. While care should be exercised not to detract from the existing body of the law on the topic, it might be beneficial to establish a single convention which lent itself to the systematization and consolidation of norms which were currently widely dispersed. In that connexion, paragraphs 244, 246 and 247 of the report merited attention. The drafting of the initial six draft articles, however, left something to be desired. In article 1, for example, the disjunctive "or" was used in paragraph 1, whereas in paragraph 2 the conjunctive "and" was employed, although the two paragraphs applied, respectively, to diplomatic couriers and bags, and to consular couriers and bags and those of special missions or other missions or delegations. In any event, paragraph 2 could well be shortened or combined with paragraph 1. Such points could, however, be adjusted at a later stage.

21. His delegation fully understood the reasons why it had not been feasible for the Commission to continue its consideration of the law of the non-navigational uses of international watercourses, but it was concerned that the delay might be viewed as according the item less priority than it deserved. The importance of the subject, both in terms of promoting the formulation of rules aimed at establishing balanced and effective regimes for international watercourses and in terms of its broader implications for co-operation among States and for the rules governing international conduct generally, could hardly be over-emphasized. The work should be continued, and his delegation hoped that the Commission would appoint a new Special Rapporteur at the earliest opportunity.

22. Mr. KHERAD (Afghanistan) emphasized the empirical nature and importance of the efforts which had been made to codify international law prior to the second World War. The codification and progressive development of international law were being hindered by opposition from States which were hostile to co-operation and detente. Those States had not, however, been able to stop the continuing advance of the peace-loving forces, which had opened up unprecedented prospects for the establishment of new relationships among States. The old international law, which had recognized the supremacy of force and had given legal sanction to the colonial system, had emanated from a few States, been based solely on their interests and been unjust. The coexistence of different social systems had, however, weakened many reactionary institutions while developing and strengthening long-standing democratic principles and institutions through profound changes in the international

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scene, such as the collapse of the colonial system and the emergence of new independent States. International law had therefore been altered in such a way as to consolidate peaceful coexistence by strengthening the principles of respect for sovereignty and non-interference in the internal affairs of other States.

23. In that connexion, due recognition should be given to the important work of the International Law Commission, which had already led to the conclusion of a number of international conventions. His delegation welcomed the fact that the Commission had gradually eliminated certain obsolete concepts of the old international law and had striven to take State practice into account. It should continue its efforts in that field and broaden the scope of its action with a view to bringing international law into line with contemporary conditions. The Commission should not confine itself to considering legal problems from a purely technical point of view, but should also bear in mind the requirements and needs of the international community, the evolution of relations among States and the overriding need for detente. For the same reasons, the role of the Sixth Committee should also be strengthened.

24. Mrs. OYEKUNLE (Nigeria) said, with reference to the topic of the succession of States in respect of matters other than treaties, that her delegation supported the recommendation of the International Law Commission that a conference of plenipotentiaries should be convened to study the proposed draft articles and to conclude a convention on the subject for the benefit of States that might be adversely affected in their dealings with predecessor States. Her delegation reserved its Government's right to propose appropriate amendments to the draft articles at such a conference.

25. The definition of State property in article 8 was not entirely satisfactory. As the commentary on that article pointed out, there was no customary international law that had established an autonomous criterion for determining what constituted State property. In treaties between States and in resolutions of the General Assembly different criteria had been applied, and her delegation accordingly believed that the Commission had been wrong in deciding that the most appropriate method of defining "State property" was to refer to the internal law of the predecessor State. It might be pertinent to ask what happened if the internal law of the predecessor State was silent on the issue. The Commission's opinion, expressed in the commentary, that "the internal law of the predecessor State" referred to rules of the legal order of the predecessor State which were applicable to State property, was also dubious and might lead to an unjustifiable determination of the interests involved.

26. Her delegation noted with satisfaction that State archives had been recognized as an essential part of the heritage of any national community and approved of the wording of articles 18 - 29 in Part III.

27. Her delegation was also gratified to see that article 36, paragraph 2, on State debts, embodied the principle of the permanent sovereignty of every people over its wealth and natural resources. The draft articles on State debts seemed practicable, subject to any amendments which her delegation might submit at a later stage.

(Mrs. Oyekunle, Nigeria)

28. Her delegation considered that an additional paragraph should be added to article 37 in order to make it clear that the State debt of the predecessor State which passed to the successor State was governed by the internal law of the successor State; such an addition would bring the position into line with the corresponding provisions in articles 15 and 27. As it stood, article 37 might be subject to a broader interpretation than envisaged by the drafters in paragraph 1 of the relevant commentary.

29. The Commission had not completed its work on the question of treaties concluded between States and international organizations or between two or more international organizations, and the text of articles 1 to 26 had been referred to the General Assembly for information only. Her delegation therefore reserved the right to examine the draft articles in detail at a later stage. In its view, the method of preparing a set of draft articles capable of constituting the substance of the convention was the best approach. The structure of the draft articles had, of course, been modelled on those of the Vienna Convention on the Law of Treaties, but the Commission should try to differentiate among international organizations - which, unlike States, were not all equal under international law. Failure to draw such distinctions might have the effect of vitiating the provisions of any draft treaty.

30. On the subject of State responsibility, her delegation noted with interest the three parameters selected by the Commission and trusted that the topic would form part of the priority matters on the schedule of work of the new Commission as it might be composed by the General Assembly during its current session. The provisions of articles 4 and 5 required further review. The provisions of article 5, paragraph 1, which was limited to breach of an international obligation concerning the treatment to be accorded by a State to aliens, were too restrictive and should also extend to breach of other international obligations. Efforts should also be made to review the abstract nature of part 1 of the draft articles.

31. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, her delegation noted with interest that there was some measure of agreement about policy aims and that the old concept of invasion of sovereignty was no longer a sufficient means of regulating the impact of activities within one State's territory or control upon other States, since many kinds of legitimate activity, carried on within the borders of a State or by its nationals in areas beyond the limits of national sovereignty, were capable of causing loss or injury to other States and their nationals. The two guidelines used by the Special Rapporteur - the distinction between "primary" and "secondary" rules, and the application of the test of duty of care or due diligence - ensured that the development of the topic did not cut across the classical principles of international law. Chapter V of the Commission's report indicated the complexities of principles of State responsibility in that field and the need to strike a delicate balance in the scope and content of the draft articles. It would also be useful to test the general principles of State responsibility by a systematic survey of State practice, as suggested by the Special Rapporteur.

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32. The work on jurisdictional immunities of States and their property was still in the infant stage. Since many developed countries had opted for the restrictive theory rather than that based on the sovereign equality of States and wanted to ensure the protection and promotion of friendly relations and co-operation among States, many developing countries would have to review their State practice in the matter. Developing countries must decide whether or not to amend their laws and practice to reflect only the restrictive theory or to allow room for reciprocal treatment between States.

33. With respect to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, her delegation was of the view that an examination of the existing treaties and State practice in the matter would enable the Commission to decide whether or not further codification was necessary in order to protect the interests of States. As was rightly indicated in the Commission's report, the 1963 Vienna Convention on Consular Relations contained a number of relevant provisions. It remained to be seen whether the Special Rapporteur would be able to submit draft articles providing comprehensive and uniform treatment of the subject-matter. Her delegation supported the principle of inviolability of the diplomatic bag, whatever terminology might be used in the draft articles to prevent abuse.

34. Her delegation felt that the Commission should be urged to expand its co-operation with other international and intergovernmental organizations. It welcomed the successful International Law Seminar and was grateful to all who had helped to finance it.

35. Lastly, she wished to congratulate the outgoing members of the Commission for their indefatigable efforts over the past five years and trusted that the members soon to be appointed to carry on the work of the Commission would further advance the progressive development of international law. Her delegation urged the Commission to give priority to the completion of its work on the law of the non-navigational uses of international watercourses (for which a special rapporteur would have to be appointed), on State responsibility and on treaties concluded between States and international organizations or between two or more international organizations.

36. Mr. ŠILOVIĆ (Yugoslavia) observed that the Commission, through its important work in the sphere of codification and progressive development of international law, which had led to the adoption of a number of international conventions, had contributed to the strengthening of the international legal order, to the better protection of the interests of smaller and developing countries and to the promotion of the application of the principles of the United Nations Charter as the basis of legality in international relations.

37. His delegation approved of the report of the Commission in principle and considered that the Commission had achieved significant progress on all items on its exhaustive agenda. However, the most significant result of the past session

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was without any doubt the completion of the second reading of the draft articles on succession of States in respect of State property, archives and debts, as recommended by the General Assembly in its resolution 35/163. Although the process of decolonization was nearing its close from the political point of view, the elaboration of such draft articles was not belated, since the succession of States could have implications of great significance for the full attainment of political independence and could give rise to protracted disputes. In addition, the draft articles also applied to other forms of succession, namely, transfer of part of the territory of a State, uniting of States, separation of part or parts of the territory of a State or dissolution of a State. The draft articles, once adopted as an international convention, would therefore be useful in settling all such disputes and would contribute to the promotion of friendly relations and co-operation among States.

38. The Government of Yugoslavia would submit its observations on the draft articles after a thorough analysis of the text as a whole. His delegation wished, however, to point out that it favoured a broader definition of State debts and therefore considered that subparagraph (b), reading "any other financial obligation chargeable to a State", should have been retained in article 31, even though the vote on that formulation had resulted in a tie. His delegation also fully supported the recommendation made by the Commission in paragraph 86 of its report and considered that the General Assembly should decide at its current session to convene an international conference to study the draft articles and conclude a convention on the subject.

39. With regard to the draft articles on treaties concluded between States and international organizations or between two or more international organizations, Yugoslavia had submitted concrete observations on some articles, which were reproduced in annex II to the report. Yugoslavia considered that at its next session the Commission should give priority to that issue with a view to completing the second reading and submitting the draft articles for adoption in the form of an international convention.

40. Concerning the second part of the draft articles on State responsibility for internationally wrongful acts, it seemed to his delegation that the Commission had yet to establish the appropriate legal framework and basic principles for the further elaboration of that extremely important subject. That was an indispensable pre-condition if the final results were to be acceptable to all countries, and particularly the developing and non-aligned ones.

41. In his delegation's view, the topic of jurisdictional immunities of States and their property was, like the topic of State responsibility, of very great importance. The two topics should be considered as priority issues, bearing in mind that the grave contemporary international situation necessitated the codification of norms of responsibility of States and of their conduct in international relations.

42. As to the elaboration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his

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delegation was satisfied with the progress achieved. It did feel, however, that the Commission should not spend too much time on the subject, since the principles governing the status of diplomatic couriers had already been established in the relevant conventions. It would therefore be worth while for the Commission to concentrate mainly on the recent practice of States in that field.

43. With respect to international liability for injurious consequences arising out of acts not prohibited by international law, he hoped that the Commission would soon be able to submit to the Committee the first formulation of the draft articles.

44. While his delegation understood the reasons why the Commission did not wish to appoint a new rapporteur for the topic of the law of the non-navigational uses of international watercourses, it considered that appointment to be of particular importance, since the question was a crucial one, and that the Commission should appoint a special rapporteur at the very beginning of its next session, as other delegations had already suggested.

45. His delegation supported the programme of work established by the Commission for 1982. The proposal that the General Assembly should encourage the Commission to elaborate a five-year programme of work also seemed to it to be fully justified.

46. Mr. JACOVIDES (Cyprus) said that the harmonious interaction between the International Law Commission and the Sixth Committee had produced extremely satisfactory results, as attested to by the many conventions which had been the outcome. The Committee had the duty of studying the various aspects of the Commission's work and providing guidance in keeping with political realities. The fact that, as a rule, the comments made on the work of the Commission were favourable showed that the Commission was sensitive to the directives given to it. It was thus possible to combine political considerations with practical experience and technical expertise.

47. However, it was still possible to improve the co-operation between the Committee and the Commission, and the Secretariat, in preparing future reports of the Commission might usefully take into account the suggestion made during the debate for a synopsis at the beginning of each chapter of decisions taken by the Commission at the session in question.

48. With regard to the draft articles on succession of States in respect of State property, archives and debts, which was of particular importance for the newly independent States, his delegation considered the text full and balanced. The Commission had rightly put the emphasis on existing State practice in order to produce equitable solutions and promote arrangements between the States concerned. It should, however, be stressed that such agreements must be freely arrived at and be free of any element of coercion or duress, bearing in mind that, in the case of newly independent States, the previously existing relationship of dependence put the parties in an unequal bargaining position. Secondly, in finding

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equitable solutions, objective third party determination was desirable, since otherwise the subjective element involved was found to be to the disadvantage of small and weak States.

49. Where the draft articles on treaties concluded between States and international organizations or between two or more international organizations, the Commission had rightly taken into account the difference in nature between international organizations and States and the fact that international organizations had limited international capacity. The Commission had also noted that treaties concluded between States and international organizations or between two or more international organizations had increased in numbers and significance in recent years. The elaboration of clear rules would therefore undoubtedly prove useful, especially for legal advisers of smaller and newly independent States.

50. His delegation noted the work done by the Commission on the topics of State responsibility and jurisdictional immunities of States and their property and looked forward to continuing progress on them. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, his delegation had noted the exchange of views in the Commission during its last session on the basis of the report of the Special Rapporteur; while supporting the principle sic utere tuo ut alienum non laedas, it reserved its position pending further consideration of the question.

51. With respect to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation noted that many issues coming under that heading were not sufficiently covered under existing conventions or required further elaboration. It therefore welcomed the new report of the Special Rapporteur and looked forward to early completion of the Commission's work on the topic.

52. Regarding chapter VIII (Other decisions and conclusions), his delegation welcomed the Commission's co-operation with the International Court of Justice and such important regional bodies as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation, the Inter-American Juridical Committee and the Arab Commission for International Law. Such contacts were mutually beneficial and should certainly be encouraged. His delegation was also glad to note the success of the International Law Seminars, the value of which to the participants was indisputable.

53. The International Law Commission had undoubtedly fulfilled the expectations of those who had created it and had played to the full the role of promoting the progressive development and codification of international law, as attested to by the noteworthy conventions which had resulted from its work. Although the Commission had been the target of a certain amount of criticism, it must be acknowledged that it had introduced and elaborated upon some very substantial elements, such as the jus cogens concept in the law of treaties and several new elements in the field of international responsibility. However, since its

(Mr. Jacovides, Cyprus)

membership was about to be renewed and enlarged, it would be appropriate for the Commission to consider setting new but realistic targets, carefully programming the work to be achieved in each five-year cycle, re-examining its working methods and possibly adopting new techniques, so as to be more responsive to the needs of the international community.

54. Mr. MATHANJUKI (Kenya) noted that the Commission had not been able at its thirty-third session to consider the question of the law of the non-navigational uses of international watercourses. He hoped that it would appoint a Special Rapporteur at its next session so that its work on a question to which his delegation attached great importance could continue.

55. It was gratifying that the Commission had completed its work on the question of succession of States in respect of matters other than treaties. His delegation agreed with the Commission that the question should now be submitted to a plenipotentiary conference. He approved of the new title of the draft, namely "draft articles on succession of States in respect of State property, archives and debts", which reflected the content of the draft articles better than the earlier title. However, he believed that there was still room for improvement in the text, and that the conference of plenipotentiaries recommended by the Commission would provide the best framework for the drafting of the final text.

56. He noted that under the terms of draft article 8, which defined State property, it was the internal law of the predecessor State which determined its status as State property, but he thought that in some cases the application of the internal law of the predecessor State might not be appropriate. He accordingly proposed that the parties should be left more freedom not to apply that rule.

57. Relating the provisions of article 11, governing the passing of movable and immovable State property, with those of article 26, governing the passing of State archives to a newly independent State, he said that in 1980 his delegation had proposed, with respect to the passing of State property, and of archives in particular, that there should be an obligation on the predecessor State to disclose to the successor State full information as to the nature of the property or archives and to provide a list thereof, in order to take account of the fact that in most cases the successor State, particularly when it was a newly independent State, did not know what property should revert to it. The draft articles should contain a provision to that effect and should provide for sanctions against the predecessor State that failed to meet that obligation. Furthermore, the successor State, particularly when it was a newly independent State, should have some remedy in a case where it was unable to obtain possession of all the archives of concern to it.

58. He noted with satisfaction that the principle of the permanent sovereignty of every people over its wealth and natural resources had been reaffirmed in draft article 14. He agreed with some members of the Commission that the draft article should stipulate that agreements violating that principle should be void ab initio

(Mr. Mathanjuki, Kenya)

and that the same should apply to agreements violating the right of peoples to development, to information about their history and to their cultural heritage, reaffirmed in paragraph 3 of draft article 28 on State archives.

59. He noted that there were no provisions relating to the settlement of disputes arising out of the application of the future convention and said that in view of the lengthy nature of procedures before the International Court of Justice, consideration should be given to the idea of establishing more flexible machinery for the purpose of settling disputes arising from the succession of States in respect of property and archives.

60. Subject to those reservations, his delegation considered that the draft articles were acceptable.

61. He approved of the Commission's programme of work and welcomed the co-operation between it and other regional and international bodies concerned with the codification and progressive development of international law, in particular the Asian-African Legal Consultative Committee.

62. His delegation also noted with satisfaction that a session of the International Law Seminar had been held at the same time as the thirty-third session of the Commission, and hoped that that practice, which enabled lawyers from developing countries to familiarize themselves with the work of the Commission, would be continued on a regular basis.

63. His delegation did not consider that the distribution of seats on the Commission as established at the sixteenth session of the General Assembly was in line with current needs, and supported an increase in the membership of the Commission, an increase made inevitable by the scope of the work entrusted to that body and the complexity of the subjects dealt with. He hoped that it would be possible to arrive at distribution of seats that was equitable and acceptable to all.

64. Mr. NASIER (Indonesia) observed that the Commission had had a very full agenda at its thirty-third session, and therefore had not been able to give proper consideration to all the items. The growing number of topics referred to the Commission reflected the confidence of all Member States in that body. Since the Commission was guided by the Sixth Committee in its choice of the topics which should be given priority, his delegation was prepared to support a proposal that the Sixth Committee should recommend which topics should be given priority by the Commission during the following five-year period. Such a recommendation would facilitate the Commission's work in the long term.

65. He noted with satisfaction that the second reading of the draft articles on succession of States in respect of State property, archives and debts had now been completed, and he supported the Commission's recommendation that an international conference of plenipotentiaries should be convened to consider the draft articles. He believed that all Member States should be invited to express

(Mr. Nasier, Indonesia)

their views as to whether the draft articles should be adopted in the form of a convention or embodied in an instrument relating to the succession of States. His delegation thought that the draft articles could take the form of an additional protocol to the Convention on Succession of States in Respect of Treaties.

66. With regard to the question of State responsibility, he recalled that at the preceding session, the Commission had completed its first reading of part 1 of the draft articles, relating to the origin of international responsibility, and had begun its study of part 2 dealing with the content, forms and degrees of international responsibility. He noted that at its thirty-third session the Commission had not been able to consider the draft articles in detail, and he hoped that at its next session the Commission would be able to proceed with its work on that topic so as to complete its first reading of all the draft articles in part 2 as soon as possible.

67. With respect to the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation noted with satisfaction that the Commission had adopted 26 articles on second reading, and was pleased that the Commission had taken the Vienna Convention on the Law of Treaties into account in its work.

68. Lastly, he noted that although the Commission had had before it for five years the question of the non-navigational uses of international watercourses, it had not yet been able to give that topic the attention that it deserved. He hoped that once its new members had been elected the Commission would appoint a Special Rapporteur for that topic so that it would be able to make progress with its work on the subject.

69. Mr. MENDOZA (Philippines) commended the work of the members of the International Law Commission, whose current five-year term of office was expiring in 1981, and said that it was essential for the Commission to complete its work on certain topics, and particularly its work on State responsibility, which was already far advanced, and whose completion was awaited by the international community.

70. Unless the basis and consequences of international responsibility were identified and accepted, there could be no inter-State relationship founded on law that was equally applicable to all nations. It was in that area that the problem of reconciling the sovereignty of States with their responsibility to the international community was most striking, and it was on the solution to that problem that the answer as to whether the responsibility of States arose from international law or from the unilateral will of States would depend. If State responsibility was to be governed by law, all nations, their size, power or wealth, would be placed on an equal footing, and any author of an internationally wrongful act would incur international responsibility. On the other hand, State responsibility would be an illusion if it was based only on the unilateral will of each State, or on its self-perceived strength.

(Mr. Mendoza, Philippines)

71. The United Nations itself was premised on the existence of a world order governed by international law; furthermore, it was the Commission's main task to bring about the progressive development and codification of international law, and that mandate assumed the existence of international law. He drew attention in that connexion to paragraph 263 of the report under consideration, in which there was a summary of a statement made before the International Law Commission by Mr. Roberto Ago, a member of the International Court of Justice, defining the relationship between codification and progressive development.

72. In his view, the International Law Commission had demonstrated its firm commitment to sustaining international law as it had developed through the centuries, and he shared the Commission's view that it was essential to build on existing law and not to replace it by new norms, since the effectiveness of law, and particularly of international law, depended on habitual and traditional State recognition of the binding force of the law.

73. Law must nevertheless not be static. It could not ignore the present and rely for its sustenance only on the richness of its history, the force of its precedents or the nobility of its origins. It was appropriate, every fifth year, to reassess the role the Commission should play in reconciling established law with current needs.

74. It had been asked why the formulation of a comprehensive convention on the law of the sea, which was perhaps the most significant development in contemporary history in the field of international law, had not been entrusted to the International Law Commission, as the existing conventions on the subject had been. Some States had deplored the fact, and had viewed it as the reason for the protracted nature of the current negotiations. Others, however, had considered that the Commission would have been incapable of responding promptly or adequately to the difficult and formidable problems arising from the various situations of States and the new uses of the sea and the sea-bed. Without giving an opinion on the effectiveness of the procedures adopted, or assessing the impact of the current negotiations on the law of the sea, it must, in his view, be recognized that, whatever came out of the negotiations, the law of the sea had changed: when the preparatory work on the Conference had begun, a number of States had regarded national jurisdiction over extensive economic zones as a legal heresy, but such zones now existed and were recognized in law and in fact. Archipelagoes had also acquired a distinct legal status.

75. It should therefore be considered to what extent, and in what ways, the International Law Commission should help to bring about an evolution of international law so as to enable that law to reflect the changed circumstances and to meet the needs of peoples in the light of the current world situation. While, in preserving the past and maintaining the status quo, the law ensured stability of relationships in society, a time came when law must not only adjust to circumstances and changes but must itself be an instrument of change in order to rectify what had become unacceptable and intolerable situations, since otherwise the necessary changes would be brought about by violence.

(Mr. Mendoza, Philippines)

76. With respect to the Commission's capacities, which were derived from its structure and organization, he observed that the Commission was not in session throughout the year, that its members did not serve on a full-time basis and that it generally had several questions before it simultaneously. In those circumstances, its achievements exceeded all expectations.

77. It was the General Assembly that was responsible for providing the Commission with guidance for its future work, and it should be considered whether the Commission should continue to examine questions in various areas or whether it should concentrate its efforts and bring its work on certain priority questions to a speedy conclusion, whether it should actively participate in the evolution of international law or be concerned principally with taking account of existing law, and whether it should give priority to progressive development of law over codification.

78. His delegation would comment at an appropriate time on certain draft articles on which it had been unable to comment at the current session owing to lack of time.

ORGANIZATION OF WORK

79. Mr. CALERO RODRIGUES (Brazil) drew attention to the fact that the Committee had only 17 more meetings in which to consider the 9 remaining items on its agenda, whereas the approved time-table allowed for 27 such meetings. It would therefore be necessary to review the Committee's programme of work and establish the time-limits for the submission of draft resolutions. For example, in view of the limited number of meetings available, the Committee might defer consideration of certain items, change the number of meetings allocated to each agenda item or consider a group of items at meetings originally allocated for consideration of a single item. In any event, the Committee could not continue its work without taking account of how far it was behind schedule, for otherwise it would be unable to consider the last items on its agenda. In order to avoid procedural discussion, the Chairman might submit a revised programme of work, after consultations with delegations. His delegation would be prepared to accept any revised programme of work proposed by the Bureau.

80. The CHAIRMAN said that he shared the Brazilian representative's concern, and was prepared to submit a revised programme of work after consultations with delegations. He reminded the Committee that the time-limit for submission of draft resolutions having possible financial implications had already been fixed for 1 December and that time-limits would be established for inclusion in the list of speakers for the remaining agenda items and for the submission of draft resolutions on those items.

The meeting rose at 6.10 p.m.