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Chairman: Mr. LEHMANN (Denmark)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 141: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION (continued) (A/50/10 and A/50/402)

1. Mr. AL-BAHARNA (Bahrain), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that, for the practical reasons cited in the thirteenth report of the Special Rapporteur, his delegation was inclined to support the reduced list of crimes contained in the latest version of the draft Code. He shared the view that it would be necessary to harmonize the provisions of the draft Code with the draft statute for an international criminal court; that each crime characterized in the Code should be defined separately; and that the Code would only be effective if it included crimes, penalties and jurisdiction. He therefore did not support the suggestion made in paragraph 124 of the Commission's report that "it would be sufficient to prescribe an upper limit for all the crimes, leaving it to the courts to determine the penalty in each particular case".

2. He also supported the Special Rapporteur's view that the Code should not rely unduly on existing treaties because it dealt with crimes which constituted violations of jus cogens; that a consensus had clearly developed in the Commission in favour of including at least four crimes in the draft Code (aggression, genocide, crimes against humanity and war crimes); and that there was ample justification for deleting the draft articles on intervention, threat of aggression and recruitment of mercenaries. He endorsed the Special Rapporteur's proposal that the crime of apartheid should be included in draft article 20 ("institutionalized racial discrimination") and that colonial domination should be included as an international crime under article 19 of part one of the draft articles on State responsibility. He trusted that the question of deleting the draft articles on "international terrorism" and "illicit traffic in narcotic drugs" would not arise in the future.

3. Regarding draft article 15, his delegation believed that the text adopted on first reading contained elements that could be included in a definition of the crime of aggression. However, subparagraphs (a) to (g) of paragraph 4 were unnecessary. A comprehensive definition should not include exhaustive lists of examples but confine itself to indicating the constituent elements of the crime, thereafter leaving it to the court to determine whether the definition applied or not in a particular case. Subparagraph (h) had the disadvantage of appearing to impose in advance upon a judicial organ, namely the court, a decision taken by a political organ, namely the Security Council, especially if read in conjunction with paragraph 5.

4. The new definition of "aggression" was precise and satisfactory. His delegation therefore disagreed with those who had stated that it was too general for the purposes of criminal law. He welcomed the stylistic improvement in paragraph 1 of the definition and said that the same amendment should be made in paragraph 1 of articles 21, 22, 24 and 25 in order to ensure consistency. In any case, paragraph 2 had expressed with the necessary clarity what constituted aggression - namely material use of armed force by a State against another State - and therefore he objected to the wording "an act of aggression under

international law" which, apart from being redundant since the paragraph had already defined aggression as "the use of armed force ... in a manner inconsistent with the Charter", would also introduce an element of confusion.

5. With regard to article 19, his delegation believed that the crime of genocide should be included in the draft Code of Crimes and should be defined on the basis of the widely accepted definition contained in the Convention on the Prevention and Punishment of the Crime of Genocide. He endorsed the inclusion of the additional paragraph 3 on incitement to commit genocide and paragraph 4 on attempts to commit genocide. Given the seriousness of the crime, he believed that the draft Code should contain a provision similar to article IX of the genocide Convention which conferred compulsory jurisdiction upon the future International Criminal Court in respect of genocide.

6. The phrase "in a systematic manner or on a mass scale", which had appeared in the text of draft article 21 adopted on first reading, had been deleted from the revised text of the draft article, although the second paragraph stated that "a crime against humanity means the systematic commission of any of the following acts". He believed that further emphasis should be given to the seriousness and mass character of such crimes in the commentary on the draft article. Otherwise the new wording was an improvement on the previous draft and his delegation found it broadly acceptable.

7. Regarding draft article 22, his delegation endorsed the proposal to revert to the traditional wording "war crimes" in place of the formula "exceptionally serious war crimes" which had appeared in the previous version, and to delete the words "exceptionally serious" which had appeared in paragraph 1 of that version. The reference to the Geneva Conventions which had been included in the new version in preference to the expression "international humanitarian law", which had been vague and too generalized, had tightened up the definition. The Commission should reconsider its decision to delete paragraph 2, subparagraph (b) of the previous draft referring to "establishment of settlers in an occupied territory and changes to the demographic composition of an occupied territory". He supported the inclusion of the word "serious" in the introductory sentence of paragraph 2 and a non-exhaustive list in paragraph 2.

8. Bahrain supported the Special Rapporteur's view that the inclusion of international terrorism in the draft Code would not affect the ability of the Security Council to take measures in response to situations constituting a threat to international peace and security. The Bahraini delegation shared the view that international terrorism could constitute a crime against the peace and security of mankind when the terrorist acts were particularly grave and massive in character. He therefore suggested that consideration should be given to the inclusion of international terrorism as a crime under the draft Code. The word "terror" in paragraph 2 was preferable to the words between square brackets and he proposed their deletion.

9. Finally, with regard to the much discussed draft article 25, his delegation shared the view expressed in paragraph 113 of the Commission's report that, in view of the existence of the 1988 United Nations Convention on the subject of drug trafficking, before deciding whether or not to include that draft article in the Code, consideration should be given to the relationship between the

jurisdiction of national legal systems under that Convention and the proposed international jurisdiction under the Code. He welcomed the inclusion of the words "on a large scale" and "or in a transboundary context" in paragraph 1, but felt that the reason for the deletion of the words "within the confines of a State" should be given in the commentary. The reason for the omission of any reference to individuals who were involved in illicit drug trafficking in their capacity as agents or representatives of a State should also be explained.

10. Mr. ROBINSON (Jamaica) said that the list of crimes against the peace and security of mankind had been too drastically reduced, reflecting the Commission's tendency to concentrate more on codification than on the progressive development of international law. To omit such crimes as apartheid and colonial domination, on the basis that they were now only of historical interest, would be to take a great risk. Moreover, there were sufficient grounds for including in the Code the concept of intervention and that of wilful and severe damage to the environment. A compromise formula might be to include a provision for formulating amendments whereby a crime might be added to or taken out of the list of crimes; that would make it possible to take account of developments in the world community.

11. There was an inextricable linkage between the conclusion of the Code and the establishment of an international criminal jurisdiction. He had no doubt that the Code would be better implemented by an international criminal court than by national courts.

12. He supported draft article 1 and suggested that it should read as follows: "The Code defines crimes which by reason of their exceptional gravity and the international concern they engender, constitute crimes against the peace and security of mankind", or "The Code applies to crimes of exceptional gravity and international concern which, as defined herein, constitute crimes against the peace and security of mankind".

13. The twin elements of exceptional gravity and international concern were useful in defining particular crimes; the definition of a particular crime might still require express reference to one or both of those elements.

14. Article 2 should reflect the principle that the characterization of an act as a crime against the peace and security of mankind resulted from the application of international law and was independent of internal law.

15. His delegation favoured the inclusion in article 3 of a reference to intent since it was necessary to reflect the requirement of mens rea as a general principle. The formulation of that principle should, however, make allowance for exceptional cases of strict liability when intent was not required.

16. Article 5 made the important point that individual criminal responsibility was without prejudice to any responsibility under international law which a State might have for an act attributable to it. Developments in international law over the past 50 years would seem to point to various levels of responsibility for States and individuals: State responsibility for internationally wrongful acts; State responsibility for internationally wrongful acts which would constitute international crimes under article 19; individual

responsibility for international crimes under treaty law or general international law; and individual responsibility for international crimes which, under future treaty law or general international law, would constitute crimes against the peace and security of mankind. The interplay between State responsibility and individual responsibility was not necessarily clear. Where the individual was a government functionary acting on behalf of the State, it was quite likely that State responsibility would arise in addition to individual responsibility in respect of acts by the individual which constituted crimes against the peace and security of mankind.

17. General Assembly resolution 3314 (XIX) offered the best practicable approach to the definition of aggression in the Code. A national parliament or the Security Council would decide whether an act constituted aggression based on political considerations, whereas a judicial tribunal would arrive at a decision on a juridical basis. It was essential to bear that distinction in mind; in that regard his delegation reiterated its view that the establishment of an international criminal court was a necessary concomitant to the Code.

18. The words "as leader or organizer" in article 15, para (i) and in other parts of the Code should be deleted since the twin criteria of exceptional gravity and international concern would be sufficient to identify the kind of individuals capable of committing aggression. It favoured retention of paragraph 7. With regard to paragraph 6, his delegation considered that that safeguard clause would go a long way towards defining the scope of the crime and would allow due account to be taken of the two situations mentioned in paragraph 75 of the report concerning "the decline in the number of situations qualifying as internal affairs" and "the emergence of situations, affecting human rights in particular, in which the internal jurisdiction exception was unwarranted".

19. With regard to article 20, he urged the Committee not to accept the compromise suggested in the report of excluding apartheid from the Code and, instead, addressing situations of institutionalized racial discrimination as systematic violations of human rights. He supported the change in the title of article 21 and also agreed that the crimes should not be confined to an agent or representative of the State and that the provision should be reformulated so as to include acts committed by any individual, in which case the phrase "as an agent or a representative of the State or as an individual" could be deleted. The proposal to incorporate the twin concepts of exceptional gravity and international concern in article 1 would facilitate removal of the concept of "massive" violations. Furthermore, the article should also cover the practice of forced disappearance. It would be inappropriate to refer simply to "persecution" as a crime without setting the context in which an act of persecution became a crime against humanity. For that reason he would prefer a reference to "persecution on social, political, racial, religious or cultural grounds".

20. With regard to article 22, his delegation supported the use of the traditional terminology "war crimes". The idea of exceptional gravity and international concern would render unnecessary the use of the term "exceptionally serious war crimes", but his delegation would not object to its use. The reference to grave breaches of the Geneva Conventions of 1949 was not

sufficiently comprehensive because it did not cover Additional Protocol I and, more importantly, because it would not apply to States which were not parties to the Geneva Conventions of 1949 but which were none the less bound by the rules of customary international law applicable to armed conflict. For that reason, he was attracted to the suggestion made in the report that the term "international humanitarian law" should be used instead. The text could be formulated as follows: "grave breaches of [the Geneva Conventions of 1949 and Additional Protocol I] [the rules applicable in armed conflict set forth in international agreements] and the generally recognized principles and rules of international law which are applicable to armed conflict". In view of the principle nullum crimen sine lege, every effort should be made to ensure that the list of war crimes was exhaustive.

21. Jamaica supported the inclusion of the crime of international terrorism in article 24 of the Code, subject to the following comments. Firstly, the crime should be applicable to any individual, not merely to an agent or a representative of a State; accordingly, the words "as an agent or a representative of a State, or as an individual" should be deleted. Secondly, requiring the acts of violence to be "against another State" was an unnecessary restriction; it was enough that the acts should be directed at persons or property. Thirdly, it was unduly restrictive to require that the purpose of the act of terrorism was "to compel the aforesaid State to grant advantages or to act in a specific way"; accordingly, those words should be deleted. Fourthly, consideration should be given to the possibility of including in the article the saving provision in paragraph 7 of article 15 (on aggression) which preserved the right of peoples to struggle for self-determination and independence.

22. The inclusion in article 25 of illicit traffic in narcotic drugs was commendable. The criteria which his delegation had proposed for article 1 rendered it unnecessary to provide in article 25 that the traffic in drugs must be on a large scale or in a transboundary context. Paragraphs 2 and 3 were inspired by the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the article should therefore expressly provide for the requirement of intent in the commission of the crime. His delegation agreed with the view that illicit traffic in drugs, when massive in character, constituted a crime against humanity; it was nevertheless in favour of defining it as a separate crime. The words "contrary to internal or international law" in paragraph 2 of article 25 should be deleted because the basis for criminalizing the acts referred to in paragraphs 2 and 3 was the Code itself, and not necessarily internal or international law. If the Code was implemented by a treaty, then States parties would probably have an obligation to take the legislative measures necessary to criminalize the various crimes under domestic law. In such a situation, however, the criminalization of illicit traffic in drugs under domestic law would result from the Code itself and the treaty or other instrument in which it was embodied. The danger of the phrase "contrary to internal or international law" was that the provision would have no application if a State's domestic law failed to criminalize such traffic or if international conventional law or international customary law failed to proscribe it. It was therefore appropriate to omit the phrase, thereby making the Code itself the basis for the criminalization of the acts referred to in paragraph 2.

23. Lastly, his delegation supported the inclusion in article 24 of wilful and severe damage to the environment. The required scale of the damage in order to determine the existence of criminality would be guaranteed by the proposed requirement of exceptional gravity and international concern.

24. Mr. CHEN Shiqui (China), referring to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, said that the International Law Commission had broken a long stalemate by adopting general provisions and draft articles A to D. Draft article D, which set forth the principle that liability for significant transboundary harm caused by lawful activities gave rise to reparation, was a very important provision. There was already sufficient international practice and jurisprudence in that respect.

25. Two important issues remained to be resolved. The first was the scope of the draft articles, for which reference should be make to relevant provisions in recent conventions on transboundary harm. In addition to elaborating a general definition, it would be necessary to draw up a list of activities and materials capable of causing significant transboundary harm. His delegation agreed that consideration of the question should be entrusted to a working group and that a more detailed provision should be drafted once the formulation of the articles on liability and reparation had been completed.

26. The other question which needed to be resolved was the definition of harm. His delegation shared the Special Rapporteur's opinion that the term encompassed not only damage done to persons or property but also damage done to the environment.

27. With regard to treaty law and practice, he said that the Vienna Convention on the Law of Treaties contained relatively detailed provisions in that regard but that many gaps remained to be filled because of differing State practice with respect to that Convention and other instruments. The main problem was that a number of conventions prohibited reservations to all or some articles. Accordingly, some States made interpretative declarations regarding certain articles or treaties at the time of accession or ratification. In effect, such declarations amounted to reservations. The relationship between States expressing reservations and other States parties, including States parties expressing opposition to those reservations, and the legal effects of the convention as a whole on States expressing reservations needed to be clarified.

28. With regard to State succession and its impact on the nationality of natural and legal persons, he said that the question of nationality was primarily a domestic-law matter. However, other factors, pertaining to international law, must also be taken into account. In the event of a succession of States, the acquiring or loss of nationality should be properly resolved to avoid dual or multiple nationality and to alleviate or solve the problem of statelessness. With respect to methodology, China shared the view that the nationality of natural persons should be dealt with first and that of legal persons later.

29. Lastly, his delegation believed that, in considering the topics of reservations to treaties and State succession and its impact on the nationality

of natural and legal persons, the Commission should henceforward turn its full attention to substantive matters, which thus far had received only superficial treatment.

30. Mr. YENGEJEH (Islamic Republic of Iran), referring to the law and practice with respect to treaties, said that the question of reservations to treaties was an integral element of the contemporary international legal order. The right to make reservations and to become a party to multilateral treaties subject to such reservations derived from the right of sovereignty enjoyed by every State under international law. The main elements of the applicable regime were provided for in article 19, paragraphs (a) and (b), of the Vienna Convention on the Law of Treaties. That regime reconciled two fundamental requirements: the need to facilitate the ratification of or accession to multilateral treaties of general interest and the need to recognize the right of States to preserve their positions at the time of signing, ratifying or acceding to such treaties.

31. His delegation was in agreement with the conclusions of the Special Rapporteur and the Commission to the effect that the achievements of the Commission with respect to reservations should not be called into question, since the rules set forth in the Vienna Conventions on the Law of Treaties operated relatively well, irrespective of their possible ambiguities. The Commission's task should therefore be to fill the gaps and to clarify any ambiguities. With regard to the question of reservations to human rights treaties, he said that the Commission had rightly decided in 1966 to refuse to grant exceptional treatment (lex specialis) for reservations to certain kinds of treaties.

32. Mr. YAMADA (Japan), referring to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, said that the Commission had not yet determined the precise scope or the nature of the articles to be drafted or the eventual form of the outcome of its work. However, in 1992, the Commission had decided to approach the topic in stages and to proceed with the drafting of articles solely in respect of activities having a risk of causing transboundary harm. It had therefore assigned priority to preventive measures, although the core of the topic could not be anything other than liability.

33. With regard to the new draft articles, he pointed out that article A on freedom of action and the limits thereto was the basis for the entire topic. Article B established the obligation of States to act with due diligence by adopting appropriate measures to prevent or minimize the risk of significant transboundary harm. Application of these norms could be expected to run into difficulties. Consequently, and in order to make the clause more effective, the contents and degree of due diligence should be considered in conjunction with article 14. Article C on liability and reparation made no reference to the responsibility of States. Since it dealt with exceptionally hazardous activities such as nuclear energy activities, there were treaties that imposed strict liability on operators and States. However, the variety of categories of responsibility provided in the legal instruments on the question made it doubtful that State responsibility for hazardous activities was established as a general principle under international law. He hoped that the Commission would make progress on that aspect.

34. He agreed with the proposals of the Special Rapporteur and the Working Group that the issue of nationality of natural persons and that of legal persons should be separated and that the impact of State succession on natural persons should be studied first and on legal persons later. Moreover, his delegation found it a reasonable working hypothesis that, particularly in order to prevent statelessness, predecessor and successor States had an obligation to negotiate and to resolve through agreement problems of nationality arising from State succession. The Working Group classified the various types of State succession into three groups: cases of secession and transfer of part of a State's own territory where the predecessor State continued to exist; cases of unification, including absorption, where the predecessor State ceased to exist; and cases of dissolution where the predecessor State ceased to exist but more than one successor State had emerged. That classification could be used as a practical analytical tool for consideration of each category of the rights and obligations of predecessor and successor States regarding persons whose nationality would be influenced. However, for the success of the analysis, much depended on how precisely the persons to be influenced in each category could be identified.

35. With regard to the final outcome of the work on the question, he agreed with the Special Rapporteur's suggestion that the matter should be studied when the Commission's deliberations had reached a more advanced stage. Nevertheless, in view of the fact that treaty-making took considerable time and that neither the Vienna Convention on Succession of States in respect of Treaties nor the Vienna Convention on Succession of States in respect of State Property, Archives and Debts had come into force, he believed that a declaration setting forth general principles might be the most realistic course.

36. In connection with the future work of the Commission, the first question to arise was the application of the concept of a "genuine connection or link" which had hitherto been discussed in the general context of naturalization and had been applied taking into account various criteria such as national residence or habitual residence and place of birth. In the case of State succession, however, it was necessary to determine whether there should be some special feature in the application of that concept compared with its application in individual cases of naturalization. On the other hand nationality conferred on the holder certain fundamental political and civil rights. However, the question arose whether the holder had the right to refuse or renounce nationality, that is, whether the successor State had the obligation to recognize the existence of a group of people living in its territory who refused to accept the nationality of that State. He hoped that the Commission would look into those problems as well.

37. Turning to the law and practice relating to reservations to treaties, he noted that the rules set forth in the Vienna Convention on the Law of Treaties were being applied and innumerable State practices had already developed on the basis of those rules. Accordingly, in order not to create unnecessary confusion, those rules should not be revised. The Commission had decided not to change the rules but at the same time to compile detailed guidelines for practice in respect of reservations, thus adopting a balanced approach which would not only safeguard the present legal framework but also seek a solution of existing problems. His Government supported the questionnaire method of studying the problems arising in the practice and operation of reservations by

national Governments and international organizations. It also supported the proposal that the title of the topic should be changed to "Reservations to treaties".

38. Commenting on the other decisions and recommendations of the Commission, he said that the draft code on crimes against the peace and security of mankind and the draft convention on State responsibility would be reported out to the General Assembly in 1996, thus considerably lightening the Commission's agenda. Accordingly, the Japanese delegation proposed that it seek authorization to begin work on diplomatic protection and to initiate a feasibility study on the law of the environment that would clear up many aspects of environmental law and provide guidance for future work on the question of international liability.

39. Mr. PASTOR RIDRUEJO (Spain), commenting on the effect of State succession on legal persons, said that he supported the Special Rapporteur's suggestion that the Commission deal with the question separately from the question of the nationality of natural persons. There was no question that priority should be given to the problems of the nationality of natural persons who represented the essential component of the State, namely, its population and who consequently ran greater risks and raised more problems when State succession occurred. The problems created for legal persons were of another order and less important.

40. An important requirement for diplomatic protection warranting particular attention was continuity of the nationality of the person being protected. The problems that might arise from State succession in that respect had already been resolved. Diplomatic protection would not be admissible unless there was continuity of nationality to prevent abuse and a change of nationality resulting from State succession should not affect the exercise of diplomatic protection.

41. He agreed with the Special Rapporteur that it was important for the Commission to determine the specific limitations to which the predecessor State would be subject in depriving of their nationality the inhabitants of the territory it had lost. It should also determine what limitations were placed on the obligation of the successor State to grant its nationality to the inhabitants of the territory of which it had become sovereign as a result of the succession. The Commission should clarify those two basic problems. The item on State succession should not generate a convention; it should merely produce guidelines or some model clauses that could prove useful to States confronting nationality problems created by State succession.

42. With regard to the law and practice of treaties, he said that the issue of reservations hovered between two poles of attraction, namely, the integrity and the universality of treaties. The requirement of integrity (i.e. that the treaty should be the same for all parties) entailed a highly restrictive regime governing reservations. On the other hand, the requirement of universality (i.e. that the treaty should be acceptable to the greatest possible number of States) required a liberal and flexible regime governing reservations. Guided by the requirement of universality, the 1969 Vienna Convention adopted a generous and liberal regime for reservations.

43. Consequently, as the Special Rapporteur had proposed and the Commission had agreed, as a general rule, the Commission should retain the regime described in

articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties, as confirmed by the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1986 Convention on the Law of Treaties between States and International Organizations or between International Organizations.

44. Spain firmly supported that regime since the necessary legal security that the matter demanded would otherwise be seriously threatened. The Commission should fill the gaps in the existing regime and clarify the following points: the effects of non-permissible reservations; the regime of objections to reservations; and both the precise difference between reservations and interpretative declarations and the exact definition of the legal effect of the latter. The Commission should not, however, concern itself with reservations to human rights treaties, which were no different from any other and should therefore be governed by the general principles of the law of treaties. It would be preferable if reservations were not made to such treaties, which should be binding on the greatest possible number of States. Such universality called for scrupulous respect for the norms accepted by States with regard to reservations to treaties. If international bodies and institutions specializing in the matter failed to respect either those norms or the effects of reservations, they would be altering the consensual basis of the law of treaties as a whole, thus doing no favours to the cause of human rights. The result would be that States would be unwilling to participate in treaties applied in a way that ran counter to their wishes.

45. As for the final form of the work on the topic, given that the regime of the 1969 Vienna Convention had to be respected, his delegation was in favour of adopting model clauses, in the knowledge that various sets of clauses would have to be drawn up to correspond to different types of treaties.

46. The title of the topic should be changed to "Reservations to treaties", as the Special Rapporteur suggested. As for its long-term programme of work, the Commission should deal with the topic of diplomatic protection, but it would not be desirable to start work on the legal protection of the environment, not even by means of a feasibility study. It was important that the work on international liability for injurious consequences arising out of acts not prohibited by international law should first be brought to a conclusion, since that work was bound up with the question of environmental protection.

47. Mr. SOULAMA (Burkina Faso) said he was concerned by the fact that over the previous decade the Commission's work had not resulted in legal instruments that were ready for signature despite the rapid changes and transformations world-wide that required certain minimum standards of behaviour.

48. Burkina Faso, which was fighting a constant battle against desertification, had an interest in the question of wilful and severe damage to the environment. He therefore considered that such damage should not have been excluded from the draft Code of Crimes against the Peace and Security of Mankind, since it had all the characteristics of such crimes, such as "seriousness", "massiveness" and "effects on the foundations of the international legal order". Its exclusion had been defended on the grounds that environmental law was not sufficiently developed. Those holding that view were keen to approve the draft statute for an international criminal court, while maintaining that there was no link

between the court and the draft Code of Crimes against the Peace and Security of Mankind. He believed, however, that certain kinds of environmental damage constituted a threat to the peace and security of mankind and that they should therefore be included in the Code. As a result, the Commission's move to set up a working group to examine damage to the environment in the context of the draft Code was to be welcomed. He hoped that the group's work would lead to the retention of article 26 of the draft.

49. He considered that in characterizing certain crimes included in the draft Code no reference should be made to provisions of the Charter of the United Nations that were also relevant. It could give rise to a conflict of competence between two United Nations organs.

50. Mr. LEGAL (France) said he regretted the tendency in the Sixth Committee to examine the report of the Commission without taking due account of the fact that its function was not to tackle technical questions, but to indicate policy directions. He suggested that the problem should be addressed later, for example, along the lines suggested by the representative of Austria.

51. Turning to the question of State succession and its impact on nationality, he said that, as the Special Rapporteur had pointed out, the identification of a State's nationals fell within the internal law of that State, including in the case of State succession, and the freedom of action of the State with regard to nationality was subject to very few restrictions. Although the report generally adhered closely to the tradition of international law, it was at times ambiguous when it differentiated between the reality of the law (lex lata) and what it should be (lex ferenda).

52. France was not opposed to the evolution of international law, but, like other States, it believed that the Commission should make as clear as possible a distinction between the codification of law and its progressive development. The limitations on the freedom of States to determine nationality were based essentially on conventions of great moderation and neither current positive law nor any universal multilateral convention established a general right to nationality. On the other hand, Article 24 of the International Covenant on Civil and Political Rights stated that "Every child has the right to acquire a nationality", while Article 15, paragraph 2, of the Universal Declaration of Human Rights stated that "No one shall be arbitrarily deprived of his nationality". In other words, there were no obvious solutions in that regard. One of the basic aims of the Commission should therefore be to examine the practice of States.

53. His delegation was aware that the question of reservations to treaties was a difficult one, since it involved preserving the basis of the traditional approach, namely the free consent of States, and its corollary, the right to make reservations, so that States would feel able to accede while simultaneously ensuring the unity of the relevant legal norms. At the same time, it was a matter of topical importance, since several international human rights bodies had recently adopted positions that made it essential to undertake an in-depth study of the specific question of reservations to human rights treaties. Moreover, as the Special Rapporteur indicated in his report, the issue raised important questions, such as whether the validity of a reservation depended on

its content or on the reaction of the other contracting States, whether the State had discretionary powers with regard to reservations and whether there was a difference between reservations and interpretative declarations.

54. The most important issue in that connection, however, was whether the system established under the Vienna Convention on the Law of Treaties was or was not satisfactory. Like the 1978 and 1986 Vienna Conventions, the Convention contained some gaps and differed from customary international law in several ways. It was for that reason that France had not signed or ratified those Conventions. In any case, their provisions on reservations worked well. His delegation therefore believed that the system established in 1969 should not be abandoned in order to accommodate the recent positions adopted by some international human rights bodies with regard to human rights treaties. Those positions moved too far from the generally accepted norms of international law and could make it difficult for some States to accede to those instruments. Moreover, it should be noted that treaties were governed by the law of treaties, and were based on the consent of States, and that States sometimes gave their consent only subject to reservations. The only possible effect of reservations was thus a declaration that their consent was not valid and that States which had formulated reservations could not be considered parties to the instruments concerned. There was nothing unlawful about reservations as such and any distinction between reservations to human rights treaties and those to other treaties lacked a legal basis. It was therefore unnecessary to establish special rules on reservations applying solely to human rights treaties.

55. Ms. ŠKRK (Slovenia) said that she fully agreed with the Special Rapporteur that the legal issues relating to nationality that might arise as a consequence of State succession belonged to internal law, private international law and comparative law on the one hand and to public international law on the other hand. The discretionary powers of States with respect to nationality derived from their sovereignty over territory and persons. The limitations imposed on those powers by international law should be used as a basis by the International Law Commission in the preparation of the preliminary study on State succession and its impact on the nationality of natural and legal persons. She further supported the Special Rapporteur’s view that the Commission, in order to ensure uniformity of terminology, should abide by the common definitions and basic principles formulated in the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. It would be useful, however, if the Commission could clarify any differences that might exist between the terms "nationality" and "citizenship".

56. Her delegation was aware that the legal consequences of the recent dissolution of federal States of Eastern Europe had led the General Assembly to endorse the Commission’s intention to work on State succession and its impact on nationality. Should the Commission decide to devote its future work to the most obvious legal and practical problems related to the nationality of persons, in particular statelessness, the most suitable instrument for that purpose would be the 1961 Convention on the Reduction of Statelessness. Her delegation did not contest the Commission’s conclusion that State succession and its impact on the nationality of natural persons might affect certain basic human rights of individuals, especially those relating to nationality. At the same time, one

must not forget that the nationality of legal persons, which was subject to domestic law, might, in cases of State succession, entail legal consequences that affected not only the legal status of persons but also the property rights of natural persons. In that regard, the Commission should be guided by the general principle that succession must not prejudge any question relating to the rights and obligations of natural or legal persons in accordance with article 6 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts.

57. Should it decide to elaborate a non-binding instrument to govern State succession and its impact on nationality, the Commission ought to follow the United Nations Commission on International Trade Law (UNCITRAL) approach of establishing model rules or guidelines. It did not favour a draft declaration on State succession and its impact on nationality that contained standards stricter than the provisions already in force and confirmed by State practice or exceeded the scope of the related basic human rights norms and treaty obligations. Such a declaration would give the false impression that it concerned only those States that were directly affected by State succession and would be incompatible with the principle of the sovereign equality of States.

58. A study should be made of the concept of the genuine link, taking into account State practice and the relationship between the application of that concept and respect for the principle of non-discrimination. The Commission should also examine thoroughly the problem of dual nationality in cases of State succession and study means for preventing the side effects of dual nationality. In case of doubt, the genuine link principle should prevail. One means whereby individuals could change nationality under special circumstances was the right of option. That right was not an attribute of self-determination, which was in principle a collective human right. Consequently, in cases of State succession, States did not have an obligation to grant the right of option to individuals. As the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons had pointed out, the right of option did not give an individual legal ground for acquiring dual nationality, but rather allowed him to opt between two nationalities.

59. Finally, she considered that the question of the continuity of nationality was closely related to the regime of diplomatic protection and supported the proposal by the United States of America to treat the question in the context of the Commission’s work on diplomatic protection.

60. Mr. ECONOMIDES (Greece) said that the question of State succession and the nationality of natural and legal persons was difficult, important and topical. The first objective to be achieved in State succession was to ensure that every person had a nationality. To that end a successor State should have the ability to grant its nationality to all citizens of the predecessor State who lived or had their permanent residence in the territory to which the succession related. That obligation should be adapted to State practice, which constituted a fundamental element for the study of the topic, and to the norms of international law.

61. The change in nationality was automatic and ordinarily took place through the transfer of sovereignty to the successor State. Furthermore, it would be

advisable for the successor State to grant its nationality, on an individual basis, to persons requesting it who fell into the following categories: (a) persons born in the territory to which the succession related who had the nationality of the successor State and who, at the time of succession, lived or were resident outside that territory and (b) permanent residents or inhabitants of the territory to which the succession related who, at the time of succession, were nationals of a third State. The second major objective to be achieved was to prevent State succession, in so far as possible, from giving rise to cases of statelessness. For that purpose, a successor State should grant its nationality to the following persons: (a) permanent residents or inhabitants of the territory to which the succession related who, at the time of succession, were or became stateless, and (b) persons born in the territory to which the succession related who lived or were resident outside that territory and, at the time of succession, were or became stateless.

62. Another question that must be solved related to the right of option and consisted in determining whether and to what extent, in the case of State succession, the individual will of the inhabitants of the territory concerned should be taken into account. According to Greek practice, the successor State must in such cases grant the right to choose the nationality of the predecessor State, but solely to persons having ethnic, linguistic or religious ties to that State.

63. Also to be resolved was the question of the nationality of legal persons. Inasmuch as State practice in that regard was fairly limited, the best approach would be to take the norms applicable to natural persons as a basis and, accordingly, to provide that legal persons domiciled in the territory to which the succession related should automatically acquire the nationality of the successor State as from the time of succession. It went without saying that all such norms and suggestions would apply solely to cases of succession considered lawful under international law. That was also what had been established by the 1978 and 1983 Vienna Conventions on succession of States.

64. Regarding reservations to treaties, his delegation shared the view that the issue must be handled with the utmost care and believed that the existing gaps in the law of treaties, especially with regard to so-called "delayed reservations", should first be filled.

The meeting rose at 1 p.m.