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at 10.30 a.m.
New York

SUMMARY RECORD OF THE 26th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

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

AGENDA ITEM 138: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SEVENTH SESSION (continued) (A/40/10 and A/40/447)

AGENDA ITEM 133: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (continued) (A/40/51 and Add.1 and 2; A/40/331-S/17209 and A/40/786-S/17584)

1. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that international law played a paramount role in the prevention of nuclear war, the strengthening of international security and the development of co-operation among all States, and was thus a tangible expression of the purposes and principles of the United Nations Charter. As its Preamble clearly stated, one of the most important conditions for the fulfilment of the Charter was respect for the obligations arising from treaties and other sources of international law. In the present context of rising international tension, the progressive development and codification of international law were of the greatest importance, as they were an effective means of formulating and updating norms and applying the norms and principles of international law to the urgent issues of the day.

2. The Commission was an active participant in that complex process and its activities were therefore followed with great attention by Member States. Regarding the Commission's report on the work of its thirty-seventh session (A/40/10), his delegation stressed the need for formulating as soon as possible the draft Code of Offences against the Peace and Security of Mankind, a topic to which it would return later. No less important was the topic of State responsibility. In its thirty-seventh session, the Commission had considered several alternatives of the draft articles in Part Two of the draft Code, namely those which would define the content, scope and responsibility of States for the violation of the norms of international law. Chapter III of the report (A/40/10) clearly showed that the wording of a number of articles proposed by the Special Rapporteur could hardly be considered the most suitable bases for developing the normative framework for State responsibility. The principal defect in that set of draft articles was that there was no clear differentiation between the responsibility of States for internationally wrongful acts and the responsibility of States for international crimes. If the draft were to reflect that distinction, that would enhance the possibilities of its being applied in practice in fulfilment of Chapter VII of the Charter. His delegation joined those others which had urged the Commission to complete its work on that topic as soon as possible, in view of heightened international tensions and the increasing danger of a nuclear war.

3. He welcomed the Commission's proposal to conclude at its next session the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Most of the articles in that draft were satisfactory, although the text of article 23 should provide for the possibility of granting the diplomatic courier full and not just functional immunity within any type of jurisdiction, both in the receiving State and in the State of transit. If that were done, the article would cover the norms of international customary law which were being elaborated in State practice.

(Mr. Kachurenko, Ukrainian SSR)

4. The Commission had made some progress in its work on the topic of jurisdictional immunities of States and their property (chap. V of the report) and had adopted draft articles 19 and 20 on the first reading. He nevertheless felt obliged to reiterate his delegation's opposition to the use by the Commission of the concept of restricted or functional immunity both in its general approach and in specific texts. The use of that concept, as various members of the Committee had maintained on numerous occasions, restricted the possibilities of further development of the topic by calling into question the principle of the sovereign equality of States.

5. The Commission had considered the topic of the law of the non-navigational uses of international watercourses (chap. VII of the report), only in a general way on the basis of the Special Rappoteur's report. Positions previously expounded had been repeated, namely to the effect that the legal régime governing watercourses should be developed principally by the Riparian States in order to determine properly what the specific elements thereof should be. The Commission should therefore confine itself in that matter to making general recommendations that might help the States concerned in their work. The same method might be followed in considering the topic of international liability for injurious consequences arising out of acts not prohibited by international law. The Commission had not been able to consider the preliminary report prepared by the Special Rapporteur owing to differences in the objectives and the methods of codification of that topic. In the view of his delegation, such responsibility could arise only as a consequence of the violation of international treaties.

6. He welcomed the establishment by the Commission of a Planning Group whose activities would enable the Commission to use its time more flexibly and rationally, thus enhancing the effectiveness of its work, and joined other delegations in expressing satisfaction with the report of the Commission on the work of its thirty-seventh session (A/40/10).

7. Mr. MIKULKA (Czechoslovakia), speaking on item 133, said that the Commission's debate on the part of its report dealing with the draft Code of Offences against the Peace and Security of Mankind (A/40/10, chap. II) revealed a wide divergence of views among its members on certain fundamental matters, one of which involved determining the scope ratione materiae of the Code, namely whether it should be limited to the criminal responsibility of individuals or also include the responsibility of States. As a point of departure, it must be accepted that the Code should refer exclusively to the criminal responsibility of individuals because the responsibility of States was a separate topic in the work of the Commission.

8. His delegation did not accept the use of the concept of the criminal responsibility of States, which was misguided and had been abandoned in contemporary international law. The consideration given thus far by the Commission to the topic of State responsibilty by no means proved that the distinction between civil responsibility and criminal responsibility, established in domestic law, could be applied in an identical manner to State responsibility.

(Mr. Mikulka, Czechoslovakia)

9. The concept of the criminal responsibility of individuals for offences which they committed against the peace and security of mankind was not aimed at lessening the responsibility of States in cases in which the offences committed by persons constituted, at the same time, wrongful acts of a State. On the contrary, its purpose was to punish those individuals who had prepared, organized and carried out certain acts, while at the same time responsibility was attributed to States for such acts.

10. Ever since the Nürnberg Tribunal had pronounced its Judgement, "offences against the peace and security of mankind" had been understood to mean a certain category of offences committed by individuals, and it would be wrong to give a different interpretation to that concept, particularly in an attempt to link offences against the peace and security of mankind with article 19 of Part One of the draft articles of the Commission on the topic of State responsibility. For those reasons, both the first and second alternatives of article 3 were unacceptable, because in both cases offences against the peace and security of mankind were equated with offences committed by States.

11. As the Code would include specific norms for all offences against the peace and security of mankind, he wondered what purpose a general definition would serve. Moreover, an act should be classified as an offence against the peace and security of mankind and punished as such only on the basis of the special provisions of the Code and not on the basis of a general definition. The general concept of "offence against the peace and security of mankind" should serve only as a guide for defining the various offences to be included in the Code. It was sufficient to determine offences against the peace and security of mankind by means of an enumeration; there was no need for a general definition.

12. With regard to the categories of persons to whom the Code should apply, the problem arose as to whether they should be exclusively State officials, i.e. persons invested with official authority, or might also be other persons who were not acting on behalf of the State but might also commit barbarous crimes, as history had demonstrated. Offences against the peace and security of mankind had been perpetrated in most cases by persons who for that purpose had used the governmental authority conferred on them, regardless of whether they had abused that authority or had acted in accordance with the policy of the State, in violation of international law.

13. The exercise by an individual of State authority did not derive solely from his functions in the State apparatus; it had occurred, for example, in the case of the Nazi war criminals. Therefore, to limit the application of the draft Code strictly to State officials would be a step back from the principles recognized in the Judgement of the Nürnberg Tribunal and the proposal formulated by the Commission in 1954. In addition, it was necessary to define clearly the scope of the Code, since not to place limits on its applicability ratione personae could lower its prestige and create confusion between offences against the peace and security of mankind and offences under ordinary law. The solution to those problems required a flexible approach, because the categories of persons who might commit offences against the peace and security of mankind varied according to circumstances, as the Commission had pointed out in its 1954 proposal.

(Mr. Mikulka, Czechoslovakia)

14. With regard to the various categories of offences against the peace and security of mankind that should be included in the Code, the definition of aggression in General Assembly resolution 3314 (XXIX) should be brought into line with the context of the Code. The definition of aggression in that resolution referred to the conduct of a State, whereas the Code should refer to the conduct of individuals with regard to aggression, and also to the threat of aggression. The Code should also cover the offences of planning and preparing a war of aggression, which had been condemned by the Nürnberg Tribunal and reflected in the Commission's 1954 proposal. He did not share the opinion of some members of the Commission that the preparation of a war of aggression was punishable only when aggression had effectively taken place and that in such a case preparation amounted to aggression itself. That approach would be a step back from the Judgement of the Nürnberg Tribunal, because persons who had contributed to preparing a war of aggression but had not participated in the decision to carry it out would remain unpunished.

15. Interference in the internal and external affairs of a State should be included among the offences against the peace and security of mankind to be enumerated in the Code. The Commission should specify the acts which constituted such interference. His delegation also supported the inclusion of terrorist acts perpetrated, encouraged or tolerated by the officials of a State and directed against another State with the object of compromising its security and stability, and offences consisting of violations of the provisions of a treaty whose purpose was to guarantee the maintenance of international peace and security.

16. At its next session, the Commission should examine in greater detail the Special Rapporteur's proposal to include as an offence in the Code the forcible establishment or maintenance of colonial domination, which would be fully justified in view of the case of Namibia, and the possibility of including the recruitment, use, training and financing of mercenaries, especially with the support of State officials. He hoped that in his next report the Special Rapporteur would address himself to other offences that should be included in the Code, such as racism, apartheid, and being the first to use nuclear weapons.

17. In addition to the offences against the peace and security of mankind it was also necessary to continue studying the general principles of the Code, namely the principle that no one could disclaim responsibility for an offence against the peace and security of mankind on the grounds that the offence was not prohibited in the domestic legislation of a State; or the principle that the perpetrator of an offence could not disclaim responsibility because he was a head of State or member of the Government, or because he had acted on the orders of his Government or a superior; or again the principle that a person accused of an offence had the right to a just and fair trial. Lastly, the Code should contain a reference to the principle of the imprescriptibility of those offences.

18. With regard to implementing the Code, account must be taken of the experience acquired from the punishment of war criminals, the vast majority of whom, after the Second World War, had been tried by the national courts of the States which had fought against Hitler and in the territory of the States where the crimes had been

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committed. Only the principal Axis war criminals had been tried by international courts established for the purpose. That norm should be retained in the case of the Code of Offences against the Peace and Security of Mankind. On the other hand, the proposal to establish a permanent international tribunal was hardly viable, although to limit implementation of the Code exclusively to national courts might be insufficient in certain cases. Therefore, the possibility of establishing an ad hoc international tribunal should not be totally dismissed.

19. His delegation attached special importance to drawing up the Code of Offences against the Peace and Security of Mankind. He was sure that its provisions would be formulated on the basis of careful scrutiny and calm reflection, but hoped for early completion of the work on the draft Code. If the Code was universally recognized, it could become one of the most effective instruments for the maintenance of international peace and security.

20. Mr. ANDRIAMISEZA (Madagascar) commended the Commission on its excellent report, but regretted that it had had to postpone its study of certain questions for lack of time.

21. His delegation had already commented on the Code of Offences against the Peace and Security of Mankind on other occasions and would refer only to a specific aspects of the second alternative of article 3 relating to the definition of an offence. It was difficult for his delegation to accept that alternative because of its lack of precision and the abstract nature of the phrase "Any internaationally wrongful act recognized as such by the international community as a whole". What was the international community as a whole? Was it all States without exception or only a majority of States? He also wondered what procedure would have to be adopted in order to achieve such recognition in a vote in the United Nations.

22. Concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he said that the phrase "or for a special occasion as a courier ad hoc" in subparagraph (1) of article 3.1 might cause difficulties if it was examined in relation to article 21 on the duration of privileges and immunities. That article proposed that the privileges and immunities of the diplomatic courier ad hoc should cease "at the moment when the courier has delivered to the consignee the diplomatic bag in his charge". The logical course would be for the privileges and immunities to obtain up to the time at which the courier ad hoc left the territory of the receiving State or the transit State. The argument of those who felt that the privileges should cease immediately because the protection was for the diplomatic bag itself was not convincing because another article relating to the same matter, article 18, established an immunity from jurisdiction which had little to do with the diplomatic bag proper.

23. In response to the argument that the draft articles simply recapitulated the provisions of the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963 and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 1975, it should be pointed out that it was necessary to

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establish a distinction between: first, the courier ad hoc entrusted with the custody, transportation and delivery of the diplomatic bag who was solely on mission and returned to the State which had dispatched him; secondly, the person who on the occasion of a journey was exceptionally empowered to transport a bag of that kind and might after delivering it stay for a longer or shorter time in the receiving State; and, thirdly, the courier ad hoc who was a resident of the State to which he was travelling and would stay there after the bag was delivered. The last paragraph of article 21 could be acceptable in the two latter cases. On the other hand, in the first case there was no justification for ending the privileges and immunities as soon as the courier had delivered the bag, save where the courier did not leave the territory of the receiving State within a reasonable time. It was obvious that the courier would require a certain time in order to leave the territory of the State and that time should be regarded as an integral part of his mission.

24. This delegation therefore proposed the following text for the last part of article 21:

> "Notwithstanding the foregoing paragraphs, the privileges and immunities of the diplomatic courier ad hoc shall come to an end, in the case of a courier engaging occasionally in such functions, at the moment when he has delivered to the consignee the diplomatic bag in his charge and, in the case of a courier entrusted with the specific mission of delivering a diplomatic bag as a special instance, at the moment when he leaves the territory of the receiving State."

25. The provision in article 22, paragraph 5, according to which "if the sending State does not waive the immunity of the diplomatic courier in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case" was a useful one and on similar grounds should be included in article 18, paragraph 2, as well. Indeed, under that article, immunity did not extend to actions for damages arising from accidents caused by vehicles. In practice, such accidents were frequent and it was appropriate, in order to protect the victims, that a provision of that kind should be included. However, actions brought in such cases customarily took longer than the courier's normal period of stay. It would therefore be appropriate in that case as well to ask States to make an effort to bring about a just settlement.

26. In the same context it should also be noted that article 22, paragraph 4, required a separate waiver in respect of the execution of the judgement, and the question was whether the procedure for the waiver of immunity provided for in article 18 was consistent with that rule. If it was, might it not constitute an additional obstacle to the compensation to which the victims might be entitled?

27. Turning to the draft articles on the jurisdictional immunities of States and their property, he said that a point of particular importance was that relating to the exceptions to State immunity covered by Part III of the draft. As a general rule, the agreements entered into by States in respect of a convention were intended to widen the scope of the convention or in some cases an international

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norm. However, the phrase used in several articles of Part III, "unless otherwise agreed between the States concerned", seemed to be intended to limit the scope of application provided for in the convention. At all events the matter should be re-examined.

28. However, in the context of the exceptions to State immunity in connection with the diplomatic courier, it should be noted that the relevant exceptions did not include the case of personal injuries and damage to property from an accident caused by a vehicle driven by a diplomatic courier. Should an action be brought under the terms of article 14 against the State which sent the courier if he had an accident while delivering the diplomatic bag?

29. Also in connection with the exceptions to State immunity, he noted that article 13, on contracts of employment, should be revised, since it established a dual requirement in that it stated that immunity could not be invoked if the employee had been recruited in another State and was "covered by the social security provisions which may be in force in that other State". Every country had its own social security system and it might happen that provisions regarding social security had been provided for in the contract, in which case the employee would not be protected by the social security provisions normally in force. His delegation therefore proposed that the text of paragraph 1 of article 13 should be amended to say "and is covered or may be covered by the social security provisions".

30. In conclusion, he said that the International Law Commission should continue its work so that the consideration of certain specific points could be completed at the next session.

31. Mr. SANYAOLU (Nigeria) expressed his delegation's satisfaction at the progress made by the International Law Commission in regard to the draft Code of Offences against the Peace and Security of Mankind, State responsibility, the diplomatic courier and the diplomatic bag and the jurisdictional immunities of States and their property. He noted that work was also continuing on the other items with which the Commission was concerned.

32. Concerning the draft Code of Offences against the Peace and Security of Mankind, he reiterated the position stated by his delegation at the thirty-ninth session of the General Assembly, namely, that the draft was of paramount importance to the peaceful coexistence of States and international relations.

33. With regard to the scope of application ratione personae, his delegation agreed with the Commission that the Code should be limited to the criminal responsibility of individuals as opposed to the criminal responsibility of States, which should be dealt with by other areas of international law. However, the current formulation of the text was broad enough to cover crimes committed by individuals as agents of a State or exercising power on behalf of a State.

34. Regarding the scope of application ratione materiae, his delegation supported the "minimum content" approach in order not to weaken the effectiveness of the draft Code it was however in favour of including a provision dealing with forcible

(Mr. Sanyaolu, Nigeria)

establishment or maintenance of colonial domination by the authorities of a State, on the grounds that recent events demonstrated that the notion was of more than historical interest.

35. In his view, the subject of State responsibility could not be completely divorced from the draft Code of Offences against the Peace and Security of Mankind. The link showed up clearly in article 19 of Part One of the draft articles on State responsibility and in the question of the scope ratione personae of the draft Code of Offences against the Peace and Security of Mankind. He therefore suggested that the International Law Commission should deal specifically with the question of international crimes committed by States under the topic of State responsibility.

36. As far as the implementation of the international responsibility of States was concerned, the definition of an injured State was crucial for determining the legal consequences of internationally wrongful acts. Article 5 of the draft was therefore particularly important and its current formulation was acceptable.

37. His delegation was of the view that there should be a procedure for settling disputes relating to internationally wrongful acts allegedly committed by one State against another and determining the consequential rights of the injured State. The method adopted should be made mandatory.

38. The existence of the rule of jus cogens brought out the need for a reference to the International Court of Justice for its decision concerning the interpretation and applicability of such rules. On the other hand, he did not see the need for the establishment of an international criminal court in connection with the draft Code of Offences against the Peace and Security of Mankind since the efficacy of such a court in that realm would be doubtful.

39. Concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation agreed with the provisions of articles 24 to 29 of the draft articles on that topic and in particular with article 24, paragraph 1. It understood that such immunities should be restricted to protect the diplomatic courier's functional activities. In that regard, the principles contained therein could be accepted on the grounds that in practice such immunity was granted on the basis of reciprocity. The use of electronic and other mechanical devices to detect the contents of the bag amounted to an infringement of the bag's inviolability. He therefore took note with satisfaction that ILC had decided to abide by the rule of absolute inviolability, while providing for some flexibility in its application. He also welcomed the provision requiring the bag to be returned to its place of origin in the event of suspicion as to its contents, which was preferable to opening the bag. With regard to draft article 43 on the declaration of optional exceptions to applicability in regard to designated types of couriers and bags, he was of the view that the inclusion of the new proposed text would make it possible for States to be released from their commitments. The flexibility which the new wording provided would be inconsistent with the underlying objective of the draft articles and would result in uncertainty as to their interpretation and application.

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40. The matter of jurisdictional immunities of States and their property was very important for all States, especially the developing countries. In that connection, in the view of his delegation, draft article 19 on ships engaged in commercial service, by creating exceptions to State immunity, simply embodied a generally accepted exception to that principle. However, the reference to "commercial [non-governmental]" service created some problems of interpretation. If the intent was to cover cases in which States or other public entities, especially in the developing countries, engaged in activities of a commercial nature, it might well serve a better purpose to delete the word in brackets. The rule should not be stated in such a way as to restrict the developing countries in carrying out the trade necessary for their economic survival, in cases where a State might own but not operate a ship.

41. His delegation agreed with the principle behind the formulation of draft article 19, paragraph 2, which indicated that the applicable criterion was the use of the ship.

42. Turning to draft article 20 on the effect of an arbitration agreement concerning differences relating to civil or commercial matter, his delegation was prepared to go along with that formulation with the understanding that in no way did it seek to add to or detract from the existing jurisdiction of the courts of any State or to interfere with the role of judicial control and supervision played by the courts in any given legal system, which were functions designed to ensure the good morals and public order needed to implement the arbitral settlement of differences.

43. Lastly, his delegation noted with interest that the Commission's work was progressing on the topics relating to the law of the non-navigational uses of international watercourses, relations between States and international organizations and international liability for injurious consequences arising out of acts not prohibited by international law.

44. Mr. SZEKELY (Mexico) said that, since its establishment in 1947, the International Law Commission, had contributed significantly to major developments in international law and the drafting of numerous international conventions. The persistence of the many ills that now characterized the world and international relations was basically the result of a lack of political will to overcome them. The present time was not conducive to the rule of law in international relations, and the fortieth anniversary of the United Nations was a timely opportunity to reflect on past achievements and especially on what remained to be done.

45. In its international conduct, his country complied with the principles which were rooted in the revolutionary experience it had gained in the early twentieth century and were closely related to those which were much later enshrined in the Charter of the United Nations. Mexico had thus been able to focus on the struggle for peace, disarmament and denuclearization in a manner that had proved useful for both the country and the international community.

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46. There was a direct relationship between the effectiveness of the United Nations and the level of participation of its Member States in multilateral treaties. His country was concerned about the low level of political will of Member States when they were expected at the international level to make legal commitments concerning their conduct. A study of the 78 international treaties of which the Secretary-General was the depository revealed that, at the end of 1984, 83 per cent had not been accepted by half of the States Members of the United Nations, and that only three had been accepted by three quarters of them. There were new important treaties, some of which had not entered into force, that had been accepted by less than 5 per cent of the Members of the Organization. Moreover, in many cases, numerous reservations had been expressed. The international community in particular must be urged to take steps so that the most extensive and ambitious convention ever negotiated in the United Nations, which was drafted during the longest diplomatic conference ever held: the United Nations Convention on the Law of the Sea might enter into force. The only major topic covered in international instruments that had been accepted by more than one third of the Members of the United Nations was human rights. However, the importance of that fact was relative, since the Member States had generally lacked the political will to give individuals access to effective international procedures to defend their rights. Only four of the nine major multilateral instruments of the United Nations on that topic provided mechanisms to establish some international safeguards, and while there were many States parties to those international instruments, only a few had accepted their optional safeguard provisions. In the case of the International Convention on the Elimination of All Forms of Racial Discrimination, only 9 per cent of the States Members of the United Nations had accepted the competence of the Committee established therein, and 31 States parties had rejected the jurisdiction of the International Court of Justice. Only one third of the Members of the Organization had ratified or acceded to the Convention on the Elimination of All Forms of Discrimination against Women, even though it did not establish procedures for real protection and almost half of the States parties had expressed reservations concerning the competence of the International Court of Justice. The Optional Protocol of the International Covenant on Civil and Political Rights had been accepted by only 31 States, so that the mechanism that it established benefited only 6.5 per cent of mankind.

47. In many cases, States did not ratify or accede to international instruments for reasons other than their content and the States' willingness to make legal commitments. In those situations, the Secretary-General could play an important role of providing technical assistance, and should therefore be asked to set up a programme designed to foster the acceptance of multilateral treaties.

48. His delegation was also concerned about having States demonstrate their political will to strengthen the International Court of Justice. On the occasion of the twenty-fifth anniversary of the Organization, the General Assembly had adopted resolution 2723 (XXV) of 15 December 1970, entitled "Review of the role of the International Court of Justice", which, with a view to finding ways of increasing the Court's effectiveness, had requested the Secretary-General to prepare a report. That resolution was followed by resolution 3232 (XXIX) of

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14 December 1974, in which the General Assembly had invited the States which had not yet done so to accept the Court's jurisdiction, and to make use of it in a greater number of cases. In the 11 years that had elapsed since that last resolution, it could not be said that a significant number of new States had accepted its jurisdiction. Although during that period States from different regions had participated in cases, among them the developing countries, different special agreements had been utilized to submit legal disputes to the Court and special chambers had been established to settle specific cases, it had to be recognized that the Court was being underutilized. He warned that those States which refrained from accepting the jurisdiction of that body, with the expectation that at some time they would be able to impose their positions on opposing parties, were giving up the possibility of obtaining satisfaction for damages suffered at the hands of other States and at the same time of strengthening the international tribunal.

49. Of the 159 States Members of the United Nations, only 44, in addition to two others which were not members, had made the declaration accepting the Court's compulsory jurisdiction, in accordance with Article 36 of its Statute, which represented approximately 27 per cent of the Members of the United Nations. Of the 15 members of the Security Council, only six had made the declaration by which they accepted the Court's compulsory jurisdiction and only two of them were permanent members, one of which would unfortunately soon stop accepting the Court's jurisdiction. On the other hand, his delegation welcomed Senegal's declaration recognizing the Court's jurisdiction. To make matters worse, of the 46 States mentioned, only 19 had accepted the Court's compulsory jurisdiction without any reservation whatsoever. As a result, only 11 per cent of the 159 States Members of the United Nations had unconditionally accepted the compulsory jurisdiction of the International Court of Justice. As expressed by the Mexican Minister for Foreign Atfairs on 23 October before the plenary session of the General Assembly, that acceptance should be permanent and compulsory for all States, without any exceptions or conditions.

50. His delegation was also disturbed by the fact that the publications of the International Court of Justice, one of the main consultative sources of international law, were not available to a wide range of officials, including diplomats, or to students and experts in international law in Latin America. The reason was that, pursuant to Article 39 of the Statute of the Court, the latter's official languages were French and English; therefore, the texts of judgements and advisory opinions handed down by the Court, which were a highly important source of international case-law, appeared exclusively in those languages. After an exhaustive search in various libraries, including the library of the Court itself, only three volumes in Spanish of international law cases could be traced; many important cases and the corresponding judgements, and many advisory opinions handed down by the Court, were missing from them.

51. His delegation, therefore, put it to the Sixth Committee that the fortieth anniversary of the United Nations was a suitable occasion to recommend that the General Assembly should request the Secretary-General to study the feasibility of

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publishing in Spanish at least the texts of the Court's judgements and advisory opinions. The limited scope of the proposal would in no way require an amendment to Article 39 of the Statute of the Court. Mr. Nagendra Singh, the President of the International Court of Justice, had keenly endorsed the proposal and had given an assurance of his firm support, since it would help to broaden considerably the dissemination of the important work carried out by one of the Organization's main bodies.

52. Lastly, his delegation suggested that the Organization's fortieth anniversary might serve to give speedy effect to a project, based on a study carried out by the Secretary-General, under which the Organization would: (1) draw up a fresh programme of work pending in the codification and progressive development of international law, (2) draft measures to promote broader acceptance of multilateral treaties sponsored by the United Nations, (3) determine ways of encouraging States which had not yet done so to accept without reservation the jurisdiction of the International Court of Justice, and (4) decide whether it would be appropriate to publish - in Spanish - the texts of the judgements and advisory opinions of the Court.

53. Mr. OMAR (Libyan Arab Jamahiriya) thanked the Mexican delegation for the proposal concerning the translation of the judgements and advisory opinions of the International Court of Justice. His country, too, had requested the Court and the Secretary-General to carry out a feasibility study on the publication in all the Organization's official languages of the texts of the International Court of Justice, and he hoped that the Sixth Committee would support the proposal.

54. His delegation approved the general plan of the draft Code of Offences against the Peace and Security of Mankind, contained in chapter II of the report of the International Law Commission, particularly the idea that the Commission should closely study the question of the criminal responsibility of States, with a view to removing any legal loopholes which might allow States guilty of certain crimes to escape punishment. In that regard, his delegation endorsed the view expressed in paragraph 55 of the report (A/40/10). It also upheld the distinction, referred to in paragraph 57, between offences committed by individuals against the peace and security of mankind and offences of the same sort committed by States; experience showed that both types of offences were quite possible. He supported the Commission's decision to submit the text of article 2 to the Drafting Committee.

55. His delegation endorsed the criteria used by the Special Rapporteur to define an offence against the peace and security of mankind, namely, the breach of obligations intended to protect the most fundamental interests of mankind: the maintenance of peace, the protection of fundamental human rights, the safeguarding of the right of self-determination of peoples and the safeguarding and preservation of the human environment. In his view, the first alternative of article 3 was more precise than the second.

56. With regard to article 4, subparagraph (b), relating to evidence of the aggression and to the competence of the Security Council, he drew attention to

(Mr. Omar, Libyan Arab Jamahiriya)

certain inherent difficulties which were evident from the practical experience of the Security Council. Some formula should be sought to prevent the aggressor from benefiting from the right of veto.

57. His delegation also approved the inclusion of terrorism among the acts which consituted offences against the peace and security of mankind (sect. (e)) (A/40/10, p. 32). The approach to that subject should be based not only on the 1937 Convention for the Prevention and Punishment of Terrorism but also on the relevant work carried out by the Sixth Committee and the Ad Hoc Committee on International Terrorism, in order that the draft Code might reflect all the current forms of international terrorism.

58. With regard to section (g), on the forcible establishment or maintenance of colonial domination, he did not share the view that the notion of colonial domination was a thing of the past; far too many cases of such domination persisted on several continents and there was no safeguard against a resurgence of colonialism.

59. With regard to chapter IV, on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he considered that the revised text of draft article 36 gave scope for a rapprochement of the various positions and took due account of the inviolability of the diplomatic bag, thus reflecting the spirit observed in practice by States in that sphere of diplomatic relations.

60. The Commission's deliberations on jurisdictional immunities of States and their property (chap. V) had led to considerable improvements in article 23. The reshaping of paragraphs 1 and 2 of that article was a positive step, as was the reference to the provisions of article 8 and the distinction between those provisions and what was to be construed as express consent for the exercise of judicial measures of constraint under Part IV of the draft articles. His delegation also welcomed the new format of article 24, relating to types of property generally immune from enforcement measures.

61. Lastly, he felt that the Commission's report was an important bibliographical source of international law and that one of its merits was that it had provided the opportunity to establish co-operation with other international bodies of a regional scope for the study of international law. His delegation hoped that such co-operation would be maintained and expanded for the benefit of all.

The meeting rose at 12.45 p.m.