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Chairman: Mr. Mochochoko . . . . . (Lesotho)

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The meeting was called to order at 12.15 p.m.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*) (A/54/10 and Corr.1 and 2)

1. **Mr. Lagos Erazo** (Chile) noted with satisfaction the treatment that the International Law Commission had given in recent years to certain topics of enormous interest to the international community, such as nationality in relation to the succession of States and jurisdictional immunities of States and their property. With regard to the Commission's programme of work, his delegation also noted with satisfaction the emphasis placed on consultations with States with a view to putting specific questions to them. That method, and the use of questionnaires, were of greater value for the work of the Commission than the elaboration by States of theoretical reports.

2. Turning to the topic of reservations to treaties (A/54/10, chap. VI), his delegation supported the Commission's proposal that a Guide to practice should be elaborated in the form of draft guidelines which would serve as the basis for the practice of States. The inclusion of model clauses would also be of great use to States and international organizations.

3. Implicit in that proposal was the understanding that no revision of the provisions contained in the Vienna Conventions of 1969, 1978 and 1986 would be undertaken. That was a wise choice, since to undertake such a process could weaken the existing provisions.

4. While the concept of a reservation as defined in the Guide did not correspond fully to the wording of the Vienna Conventions, it contained a new element which had emerged in practice, namely, that a reservation produced legal effects not only on one or more provisions, but also on the treaty as a whole.

5. It was very important to establish a definition of an interpretative declaration. While such declarations were often confused with reservations, they had different purposes; in making a reservation, a State endeavoured to modify or exclude the legal effects of one or more provisions, while in making an interpretative declaration, a State expressed its view that a specific interpretation should be given to a provision or to the treaty as a whole.

6. It was important that the Guide should, in the case of treaties that prohibited reservations, establish the assumption that a unilateral declaration did not constitute a reservation. Nevertheless, the Special Rapporteur's proposal in guideline 1.3.3 appeared to be weakened by the phrase "except when it purports to exclude or modify the legal effect of certain provisions of the treaty". That formulation did not state directly that a declaration made with such intent should be considered improper by States.

7. The only reason for including the concept of a declaration in the Guide was to establish the difference between a declaration and a reservation. The two concepts should not be handled in the same way. Interpretative declarations were linked to the problem of interpretation of treaties, as was clear from the fact that they were included within the scope of the Vienna Convention on the Law of Treaties of 1969.

8. With regard to unilateral acts of States (A/54/10, chap. VIII), one issue raised by the topic was whether so-called unilateral legal acts existed in international law. Consistent and growing State practice and some international legal precedents indicated that the existence of unilateral acts which produced legal effects could be verified.

9. In accordance with the concept of a unilateral act elaborated by the Commission, such an act was understood as a unilateral statement by a State by which such State intended to produce legal effects in its relations to one or more States or international organizations and which was notified or otherwise made known to the State or organization concerned.

10. In earlier studies to determine whether an act should be included within the category of unilateral acts, the Special Rapporteur had concluded that only those acts that were doubly autonomous, in other words, those that did not emanate from other legal acts and that the State was free to carry out, could be called unilateral acts.

11. His delegation concurred with the concept of autonomy proposed by the Special Rapporteur as a first step towards defining the scope of unilateral acts. He therefore questioned its elimination from the definition of unilateral acts proposed by the Commission. The Commission seemed to imply that unilateral acts should be limited to statements and that other types of unilateral acts should be excluded. Such a restriction was self-limiting.

12. His delegation believed that it was correct for the definition to include the element of intent, which would also make it possible to distinguish between legal acts and political acts. Nevertheless, as intent was associated with an expression of will, it might be difficult to establish. His delegation therefore concurred with the view expressed by some members of the Commission that States could carry

out unilateral acts without knowing that they were doing so.

13. **Mr. Rotkirch** (Finland), speaking on behalf of the Nordic countries, said that the proposed declaration on nationality of natural persons in relation to the succession of States would be a useful and timely contribution to the development of uniform solutions to the problems of changes of nationality resulting from the succession of States. That was all the more important as no serious attempt had been made before to elaborate a universal instrument to regulate that notoriously difficult field. The promptness and efficiency with which the Commission had produced the comprehensive set of draft articles was another source of satisfaction.

14. The Nordic countries welcomed the consistent focus throughout the draft articles on human rights, the prevention of statelessness and the prohibition of discrimination on any grounds. With the development of human rights law, it had been recognized increasingly that State discretion in questions relating to nationality must be limited with regard to the fundamental rights of individuals. The Nordic countries also noted with satisfaction the acknowledgement in both the draft articles and the commentaries of the importance of the European Convention on Nationality of 1997, which constituted a significant standard in questions of nationality.

15. The delegations on whose behalf he spoke supported article 1, which not only reinforced the right to a nationality but also gave it a precise scope and applicability. They also welcomed the obligation imposed on States concerned to take all appropriate measures to prevent statelessness, as well as the other articles aimed at enhancing the protection of the human rights of persons concerned. The Nordic countries fully endorsed the general principle that the status of persons concerned as habitual residents should not be affected by the succession of States. Also important were the provisions that expressly prohibited arbitrary decisions on nationality issues. All too often, treaty provisions or national citizenship laws which were generous on paper ended up being considerably restricted in their practical implementation.

16. The Nordic countries welcomed the clarification of the scope of application of the draft declaration, made during the second reading of the draft articles, through the deletion of a part of current article 3 which might have given rise to conflicting interpretations. The decision to delete former article 19 and to put the two sections of the draft articles on the same footing also seemed warranted, since the differences between the two parts related mainly to the degree of generality of the provisions, and not to their normative nature.

17. The Nordic countries fully supported the proposal that the draft articles should be adopted in the form of a declaration. They preferred a non-binding instrument which could be of immediate assistance to States dealing with problems of nationality in relation to the succession of States. A declaration of the General Assembly would provide an early, yet authoritative, response to the need for clear guidelines on the subject. The Nordic countries endorsed the adoption of the draft declaration during the current session of the General Assembly.

18. With regard to the second part of the topic, the Nordic delegations agreed with the Commission's conclusion that in the absence of positive comments from States, the Commission's time and resources could more usefully be devoted to other issues.

19. **Mr. Abraham** (France) said that for a number of reasons a declaration did not seem to be the most appropriate form for the draft articles on nationality of natural persons in relation to the succession of States.

20. First, it was difficult to rule out the form of a convention, since the purpose of the draft articles was to define a number of rules which would be imposed on the States concerned by a succession, and particularly since some of the rules envisaged in the draft articles would modify some rules of customary origin.

21. Second, if the draft articles did not take the form of a convention, the main goal of codification, namely the drafting of new binding instruments, would not be achieved.

22. Third, if the draft articles were adopted as a declaration of the General Assembly the rules enunciated therein might in practice serve merely as a reference, as they would not be treaty rules and some of them might be disputed by certain States. It was important to avoid any ambiguity in the definition of norms.

23. It would be preferable to review some of the provisions of the draft articles on the basis of the written comments addressed to the Commission by States and to consider the drafting of an international convention on the topic which would be a useful complement to the 1978 and 1983 Vienna Conventions on the succession of States. The structure of the draft articles was similar to that of those two conventions, which seemed to imply that the original aim had been to produce a draft convention.

24. **Mr. Malenovsky** (Czech Republic) said he was satisfied with the structure of the draft articles, which was

based on that of the two Vienna Conventions on the succession of States. A set of general provisions pertaining to all categories of the succession was followed by specific rules applicable to individual types of succession.

25. It was appropriate to confine the scope of the study of the topic at the current stage to natural persons, as the important issue of legal persons was a highly specific one which should be dealt with by the Commission separately at a later stage.

26. His delegation supported the concept of the right to a nationality as defined in article 1. All other rules should be in compliance with that primary principle.

27. Article 4, on the prevention of statelessness, was a significant provision and formed a corollary of the right of the persons concerned to a nationality. The elimination of statelessness should be one of the main goals for every State in drafting a nationality law.

28. In that connection, a major step towards the development of international law had been taken with the formulation of article 11, paragraph 2, which provided that each State concerned should grant a right to opt for its nationality to persons concerned who had appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States. Although some States had expressed the view that the provision did not comply with the notion of a "genuine link", and therefore had no justification, his delegation was convinced that the paragraph was very significant and fully reflected the importance attached by the commission to the prevention of statelessness.

29. Articles 8, 10 and 11 assigned a considerable role to the will of persons concerned in connection with the attribution of a nationality. On the other hand, it was appropriate that that role was reduced in favour of the stronger competence of the successor State in a case where statelessness would otherwise be the result.

30. In part II, the Commission did not claim to reflect existing international law, which still lacked discernible and clear rules which would strike a suitable balance between human rights considerations on the one hand and the norms of State succession as a special field of international law on the other. His country, like others, had to some extent become a victim of those uncertainties in international law when the issue of nationality in relation to succession had arisen a few years previously. Articles from part II of the report could provide valuable guidance and a source of inspiration in future similar situations.

31. Given the nature of the issue involved, a draft declaration to be adopted by the General Assembly seemed to be the most appropriate form for the draft articles. If the purpose was to provide States with a set of legal principles and recommendations to be followed by their legislators when drafting nationality laws, the form of a declaration might have some advantages over the rather rigid form of a convention, traditionally used for the finalization of the work of the Commission. His delegation therefore supported the Commission's recommendation to the General Assembly that the draft articles should be adopted in the form of a declaration and that with their adoption the work of the Commission on the topic of nationality in relation to the succession of States should be considered concluded.

The meeting rose at 12.55 p.m.