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Summary record of the 24th meeting
Held at Headquarters, New York, on Friday, 9 November 2001, at 10 a.m.

Chairman: Mr. Lelong . . . . . (Haiti)

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

Agenda item 162: Report of the International Law Commission on the work of its fifty-third session (*continued*) (A/56/10 and Corr.1)

1. **Mr. Galicki** (Poland) said that although the Commission had been unable, owing to the lack of time, to continue working on the draft articles on diplomatic protection, articles 9, 10 and 11 were a valuable contribution. With regard to article 9, on continuous nationality, his delegation took the view that the proposals by the Special Rapporteur were very interesting and contributed to the progressive development of international law, although they required more explanation. Consideration should be given to the extent to which the Vattelian fiction that an injury to the individual was an injury to the State had become a reality in State practice. It should be remembered that, in diplomatic protection, States were exercising their own rights, whereas in the field of human rights priority was given to the rights of individuals. A clear answer would be needed to the question of the extent to which the development of human rights protection could be taken as a justification for departing from the traditional rule of continuous nationality. Diplomatic protection also encompassed other rights, and more State practice should be adduced to support the new rule proposed in article 9. The requirement of a bona fide change of nationality following an injury attributable to the State did not seem sufficient, especially in the light of the modern trend to give individuals more freedom to change their nationality, resulting from the growing recognition of the human right to a nationality. The retention in paragraph 3 of article 9 of the right of the State of the original nationality to bring a claim on its own behalf might open the door to the parallel competence of two States and the mingling of two different concepts: the responsibility of States and diplomatic protection. Finally, it seemed to be useful for article 9, in dealing with the question of continuous nationality, to distinguish more clearly between natural and legal persons.

2. With regard to the topic of unilateral acts, the conclusion that for the time being it was not feasible or convenient to elaborate draft articles on special categories of unilateral acts did not seem promising for the development of the topic. His delegation took the view that the study should be continued, and it supported the Commission's decision to collect more information on State practice on unilateral acts by circulating a questionnaire to Governments. Concerning the interpretation of unilateral acts, it shared the view that the draft articles should not omit the reference to the object and purpose of a unilateral declaration but should instead contain an additional clause referring to the need to pay due regard to the intention of the State making the declaration and to the restrictive interpretation of unilateral acts. As for the proposed article (b), reflecting the formula adopted in article 32 of the 1969 Vienna Convention, he saw no difficulty in applying it to the interpretation of unilateral acts.

3. **Ms. Yasti** (Turkey) said that Turkey had already expressed its opinion on the Vienna Convention on the Law of Treaties as a reference point, taking account of certain inherent characteristics which distinguished treaties from unilateral acts and therefore the rules governing the two. The draft provisions prepared by the Special Rapporteur might serve as a starting point for developing the topic. As a general rule of interpretation, account should be taken of "any relevant rules of international law applicable in the relations between the author State or States and the addressee State or States", and that phrase should be maintained in the provision. Concerning the determination of the moment when the unilateral act came into being, and thus became opposable or enforceable, her delegation believed that there should be a link between the moment when the act began to produce legal effects and the unequivocal manifestation of the will of the author State or States, a significant point for avoiding any ambiguity about the existence of a unilateral act. As for interpretative declarations which were linked to a prior text but went beyond the obligations contained in a treaty, the Special Rapporteur regarded them as independent acts whereby a State could assume international commitments. However, even if such interpretative declarations were deemed to be independent acts, the treaty to which the acts were related should be taken as the context within which they were construed. In that respect, a system established by treaty provisions binding upon its parties should not be amended by unilateral acts on the part of one of them. With regard to the scope of the topic and its possible expansion to include non-autonomous unilateral acts, other forms of unilateral acts or estoppel, her delegation took the view that the Commission should focus its attention at the present stage on the topic before it, and pursue a step-by-step approach.

4. Referring to the draft guidelines on reservations to treaties, she said that in her delegation's opinion the language used in draft guideline 1.4.5 could create practical problems, because of the difficulty of determining whether the statement in question purported to affect rights and obligations towards the other contracting parties. It therefore believed that the language proposed by the Special Rapporteur in 1998 should be used. Consequently, the criterion for determining that a statement was informative should be that it would not have any impact on the rights and obligations of other States.

5. **Mr. Narinder Singh** (India), referring to the topic of reservations to treaties, and specifically to interpretative declarations, said that the latter should not be confused with reservations. Interpretative declarations differed from reservations both in form and in the time of their submission. They could even be made orally and could be expressed in any framework. They did not amount to a reservation; they merely stated the understanding of the party concerned of the manner and method by which the particular obligations of the treaty would be implemented or the relationship between those obligations and obligations undertaken by the party under a different treaty or treaties. However, it was doubtful whether the Guide to Practice could usefully deal with conditional interpretative declarations separately, because they were only reservations in a different form. The same could be said of late reservations, since the present proposal would not add anything to the position which existed under the Vienna Convention on the Law of Treaties if it suggested that such reservations could be allowed if the contracting parties made express provision for them in the treaty, perhaps within certain time limits. Where time limits were fixed by the treaty, any reservation submitted within them would not, by definition, be a late reservation; and any reservation made out of time would amount to a revision of a treaty obligation and should be subject to the procedures for amendment or withdrawal contained in the treaty itself or in the general rules of the law of treaties. As for the functions of the depositary, in the view of his delegation they should not include rejecting a reservation since, according to the law of treaties, that was the function of the States parties. The role of the depositary was confined to bringing its views to the attention of the party making the reservation and requesting it to reconsider its submission, or suggesting an alternative formulation which might not amount to a prohibited or unacceptable reservation according to the terms of the convention. However, the final decision should always rest with the State party wishing to submit the reservation. Moreover, according to the law of treaties it was for the other States parties to the treaty to decide whether the reservation was acceptable, in order to leave room for reciprocal undertakings provided that they were consistent with the object and purpose of the treaty. Accordingly, where a treaty prohibited reservations altogether, a State submitting a reservation automatically ceased to be a party to the convention, and in such a case the depositary could reject the reservations, since the treaty itself prohibited them. The role of the depositary in that regard was akin to that of an umpire and should be distinguished from the role of a facilitator with respect to reservations permitted by the treaty.

6. On the topic of unilateral acts of States, he had praise for what had been achieved by the Special Rapporteur in spite of the difficulties encountered. The Commission could now consider the possibility of framing a set of conclusions on the topic, instead of proceeding with the preparation of draft articles.

7. Turning to the topic of diplomatic protection, he said that that institution would be better served if it was not confused or modulated to become an instrument for the promotion and implementation of human rights. Diplomatic protection must continue to be a vehicle for presenting claims between States in respect of their rights and obligations. Concerning article 9, on continuous nationality, India believed that a State should be able to espouse a person's claim only if the person was a national of the State in question at the time when the injury occurred. As for the flexible character of continuous nationality, a distinction should be drawn between an involuntary change of nationality due to marriage or death of the person concerned, or due to a succession of States, and cases in which the transfer of the claim occurred as a consequence of subrogation, assignment, adoption or naturalization. Such cases called for more careful examination and should not be treated as cases of continuous nationality even if, in certain specified circumstances, they might also be covered by diplomatic protection.

8. Article 10 was largely acceptable. However, it was agreed that the individual must have exhausted the entire range of available legal remedies. As to whether a remedy was effective, in his delegation's opinion the effectiveness of the standards of justice employed in the State should not be questioned, as long as those standards were in conformity with natural justice. The Commission should not enter into matters relating to the concept of denial of justice, which might amount to

proposing a new rule or amending the existing understanding of the law, an exercise which was outside the scope of any statement on the principle of exhaustion of local remedies. He hoped that the Commission would continue working on article 10, as well as on article 11 dealing with indirect injury, and thought it might perhaps consider merging the two articles.

9. As for the Commission's long-term programme of work, he hoped that the five topics identified would be reduced to two regarded as generally acceptable for the purpose of studies to examine their suitability.

10. **Mr. Hafner** (Vice-Chairman of the International Law Commission) emphasized the importance of the annual debate on the report of the Commission and encouraged all interested Governments to submit written comments on the issues identified in chapter III of the report and to provide responses to the questionnaire on unilateral acts of States which had been circulated to member Governments. The Commission attributed the highest importance to the input of Governments, whether in the form of reasoned legal arguments, drafting suggestions or evidence of State practice. The comments of Governments on the draft articles on State responsibility for internationally wrongful acts were a good example; they had helped the Commission to adopt a final version well-rooted in international law and enjoying broad acceptance.

11. As for the results of the Commission's work, in the quinquennium beginning in 1997 the Commission had completed its work on texts covering some of the most complex and controversial issues of international law. It had rationalized its methods of work, established a practice of interaction with the Sixth Committee, simplified the structure of the report, organized its work schedule in a more efficient manner, and established its presence on the Internet. The result was a revitalized Commission, which also now included among its members the first two women to be elected in its history, a development which should be welcomed and which augured well for the future of the Commission.

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (A/C.6/56/L.8, A/C.6/56/L.10, A/C.6/56/L.11 and A/C.6/56/L.12)

12. **Mr. Marschik** (Austria), introducing draft resolution A/C.6/56/L.8 on behalf of the sponsors, drew attention to paragraph 9 (a), which included a list of countries in which the Commission had organized seminars and briefing missions. The list was longer than in previous years because some States had requested that the May deadline, normally set by the Commission, should be extended to October in order to include seminars organized until that date. With effect from the current year, the list would include seminars organized from October to November of the following year.

Agenda item 159: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/56/484; A/C.6/56/L.13)

13. **Mr. Kwesi Quartey** (Ghana), speaking as Chairman of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and in reference to the report of the Secretary-General on the activities of the Programme during the biennium 2000-2001 (A/56/484), said that, under the Programme, fellowships were awarded for the study of all aspects of international law, including the law of the sea; regional courses on international law were encouraged and organized; and the United Nations Audio-Visual Library in International Law had been created, all with a zero-growth budget. It was urgent to make concerted efforts to encourage the teaching and dissemination of international law, particularly in the developing countries, where there was a lack of resources but not of talent. Much more could be accomplished if the Programme received larger contributions from Member States and from institutions within those States. Greater efforts should be made to achieve the ideal goal of a non-violent world based on the rule of law; one way to attain that goal was to bring the principles of international law to every corner of the world by providing fellowships for its study and enhancing its dissemination.

14. Free access to the United Nations Treaty Collection was provided to national Governments, permanent missions to the United Nations, non-governmental organizations, United Nations agencies and staff, and individuals and institutions (including universities) from developing countries. Furthermore, local and regional governments and non-profit organizations (including universities other than those located in developing countries) were given access to the Collection for $50 per month or $500 per year, half

the cost paid by commercial entities. Documents relating to 67 important treaties, including all 19 treaties on terrorism, 23 treaties on women and children and 23 core treaties, were accessible to all users free of charge.

15. He also noted that the 1995 *United Nations Juridical Yearbook* had been published. Lastly, he introduced draft resolution A/C.6/56/L.13 and suggested that it should be adopted by consensus.

16. **Mr. Jacovides** (Cyprus) said that he was convinced of the Programme's great value for advanced students, young law professors and government officials, primarily from developing countries, as a means of updating and deepening their knowledge of international law and developments therein and of exchanging information and familiarizing themselves with the legal work of the United Nations and its associated bodies.

17. Of particular interest were the activities relating to the law of sea and ocean affairs and those concerning trade law and the work of the United Nations Commission on International Trade Law (UNCITRAL). All the activities of the Programme deserved the support of Member States.

18. He endorsed the recommendations regarding the continuation of the Programme in the biennium 2002-2003 and urged that it should be given full funding both through the regular budget of the Organization and through voluntary contributions from States. Serious consideration should also be given to the possibility of obtaining voluntary contributions from foundations, other institutions and individuals who could be convinced of the Programme's importance. Lastly, he supported the Chairman of the Advisory Committee's suggestion that the resolution should be adopted by consensus.

Agenda item 163: Report of the Committee on Relations with the Host Country (A/56/26; A/C.6/56/L.15)

19. **Mr. Zackheos** (Cyprus) introduced the report of the Committee on Relations with the Host Country (A/56/26). That Committee was an important forum in which representatives of Member States sought to resolve different problems faced by the diplomatic community through a frank and constructive exchange of views and the cooperation of all concerned. The Committee was an open, transparent and flexible body in which no member had the right of veto and in which any delegation could participate as an observer; moreover, it was the only body in the United Nations system which was mandated to consider matters relating to the host country and to report thereon to the General Assembly.

20. **Ms. Álvarez Núñez** (Cuba) conveyed her Government's condolences to the people of the United States of America and to the families of the victims of the 11 September attacks. She stressed her delegation's interest in helping to improve the work of the Committee on Relations with the Host Country and said that she would refrain from making any substantive comments on the issues covered in the Committee's report because of the inauspicious conditions under which the fifty-sixth session of the General Assembly was being held. She hoped that the Committee would assume its role as a standing advisory body on matters arising from the implementation and interpretation of the Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations in accordance with General Assembly resolution 2819 (XXVI) of 15 December 1971.

21. **Mr. Tarabrin** (Russian Federation) commended the work of the Committee in finding solutions to the problems faced by permanent missions accredited to the United Nations and expressed his willingness to cooperate with the other members of the Committee and the host country in that regard.

Draft resolution A/C.6/56/L.15: Report of the Committee on Relations with the Host Country

22. **Mr. Moushoutas** (Cyprus) introduced the draft resolution on behalf of the sponsors. He drew attention to a typographical error in paragraph 1: "paragraph 38" should read "paragraph 37".

Agenda item 165: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/C.6/56/L.14 and A/C.6/56/L.6/Rev.1)

Draft resolution A/C.6/56/L.14: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

23. **Ms. Burnett** (United Kingdom) recalled her delegation's firm support for the draft resolution

introduced by Sierra Leone on the peaceful settlement of disputes between States. With regard to draft resolution A/C.6/56/L.14, she proposed that the words "with a view to completing its consideration of these proposals" should be added at the end of paragraph 3, subparagraph (c).

24. **Mr. Goma** (Egypt) asked whether a new document would be submitted or whether an oral amendment to be included in the final text would suffice.

25. **Mr. Al-Kadhe** (Iraq) said that he did not object to the amendment, but he wished to know what would transpire if the Special Committee did not reach consensus on those proposals. A more flexible way should be found, by stating that the Special Committee should settle those issues; if it could not reach a consensus, it would be at an impasse.

26. **Ms. Álvarez Núñez** (Cuba) said she did not have any substantive objections to the oral amendment proposed by the representative of the United Kingdom. There had, however, to be a certain margin of flexibility in the wording, since the Special Committee's agenda was quite full and time was limited. The amendment proposed by the United Kingdom involved the setting of priorities in the Committee's programme of work. In that case, her delegation believed that the subject of assistance to third States affected by the application of sanctions under the Charter of the United Nations was a matter of the highest priority for the Special Committee.

27. **Ms. Burnett** (United Kingdom) said that she was willing to discuss other wording if time permitted, although she believed that her proposal was sufficiently flexible. With reference to the comment made by the representative of Cuba regarding the setting of priorities, she said that subparagraphs (b) and (e) of paragraph 3 referred to the consideration of some issues on a priority basis. She had not used that wording because the proposal relating to the peaceful settlement of disputes had already been extensively studied and there had been general support for the text as it had been drafted the previous year.

28. **Mr. Pitta e Cunha** (Portugal) expressed his support for the amendment proposed by the United Kingdom. He understood the concern expressed by the representative of Iraq if consensus was not reached at the next meeting of the Special Committee, but he was confident that a suitable wording would be found that would take that problem into account. For example, his delegation proposed that the phrase "if possible" should be inserted after the word "completing".

29. **Mr. Al-Kadhe** (Iraq) reaffirmed his flexibility with respect to the proposal of the United Kingdom and supported the proposal of the representative of Portugal.

30. **Ms. Álvarez Núñez** (Cuba) welcomed the proposal made by Portugal and asked whether the United Kingdom would add the phrase "if possible" to its initial proposal. With that addition, her delegation believed that the proposal would be totally acceptable.

31. **Ms. Burnett** (United Kingdom) welcomed the proposal made by Portugal. The amendment would thus read: "with a view to completing, if possible, its consideration of these proposals".

32. **Mr. Elmessalati** (Libyan Arab Jamahiriya) said that the reference in paragraph 3 (b) of the draft resolution to consideration on a priority basis of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions and, in particular, the expression "the proposals submitted on this subject" represented an implicit reference to the proposal submitted by his delegation which had been taken up in General Assembly resolution 55/56. If that was the intention of the Sixth Committee, his delegation would accept the wording of the paragraph, but if that was not the case, he asked that the subparagraph should be amended to include a clear reference to his proposal.

33. *Draft resolution A/C.6/56/L.14 was adopted.*

Draft resolution A/C.6/56/L.6/Rev.1: Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.

34. **The Chairman** announced that Egypt, the former Yugoslav Republic of Macedonia and Turkey had joined the sponsors of the draft resolution.

35. *Draft resolution A/C.6/56/L.6/Rev.1 was adopted.*

The meeting rose at 11.45 a.m.