United Nations A/C.6/58/SR.21

General Assembly

Fifty-eighth session

Official Records

Distr.: General
15 January 2004
English
Original: Spanish

Sixth Committee

Summary record of the 21st meeting
Held at Headquarters, New York, on Tuesday, 4 November 2003, at 10 a.m.

Chairman: Mr. Baja . . . . . (Philippines)

Contents

03-59494 (E)

0359494

The meeting was called to order at 10.05 a.m.

Agenda item 152: Report of the International Law Commission on the work of its fifty-fifth session (*continued*) (A/58/10)

1. **Mr. Onisii** (Romania), speaking on the topic of the fragmentation of international law, said that the multiplication of different sets of rules and bodies controlling their application which was characteristic of the present international society had the positive effect of enforcing the rule of law in international relations; however, it could also generate conflicts in areas such as trade law, environmental law, human rights and the law of the sea. It was therefore of great interest to assess the implications of that phenomenon for the coherence of international law and to strengthen its status in relations between States. The Romanian branch of the International Law Association was undertaking research on the State practice in the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties) and intended to organize a seminar in Bucharest on the problems raised by the fragmentation of international law, which would help publicize the Commission's work among the legal experts of South-Eastern Europe.

2. With regard to the topic of shared natural resources and, more specifically, groundwaters, Romania had negotiated a draft agreement on cooperation in the field of the protection and sustainable use of transboundary waters, in which the term "groundwater" was defined as groundwater in connection with surface transboundary waters and underground waters that could cause or transmit transboundary effect. Among the draft agreement's most important objectives were to prevent the deterioration of water status; control pollution; prevent, combat, reduce and control transboundary harmful effects; develop systems to monitor and analyse water status; and ensure the sustainable use of water resources. Among the principles to be followed by the parties were caution, mutuality, good faith and "polluter pays"; the draft agreement's main provisions on groundwaters concerned the obligations of the parties to prevent the deterioration of groundwater, upgrade its quality and ensure that the protection of surface waters was not detrimental to groundwater and vice versa.

3. **Mr. Rosand** (United States of America), speaking on the topic of shared natural resources, said that he looked forward to providing the Commission with information on groundwaters and their domestic and transboundary management and that the Commission should limit its work in that area to the subject of groundwaters. Furthermore, the fragmentation of international law was a particularly broad and theoretical topic which did not lend itself to the development of draft articles or guidelines.

4. **Mr. Prandler** (Hungary), speaking on the topic of the responsibility of international organizations, said that as an acceding State, Hungary associated itself with the position of the European Union and was confident that the Commission would take fully into account the institutional and legal diversity of the structures which had already been established within that community of States. Because the European Community was different from the classical model of an international organization in a number of ways, his delegation supported the proposal that the notion of "economic integration organizations" should be addressed in the subsequent draft articles and hoped that the issues related to the international legal personality of the European Union would be properly taken into account by the Commission.

5. Turning to the text of the draft articles, he said that draft article 1 suggested that the Commission intended to cover the responsibility of States for the conduct of international organizations in addition to the responsibility of the international organizations themselves; in certain cases, the member States of an organization should bear responsibility for acts performed by that organization or its organs, provided that those acts had been properly authorized.

6. Draft article 2, which concerned the definition of an international organization, struck a good balance between traditional definitions of intergovernmental organizations and a broader approach that would include non-governmental actors. His delegation agreed with the Special Rapporteur that some international organizations, such as the Organization for Security and Cooperation in Europe (OSCE), were not established by treaty.

7. Turning to the topic of reservations to treaties, he emphasized the importance of safeguarding the integrity of international legal instruments against unfounded interpretations disguised as reservations and

the key role of international organizations and institutions in monitoring reservations to treaties, especially human rights treaties involving protection of the rights of women and children. He hoped that the Commission's work would conclude within a reasonable period of time and, in any case, not later than the end of the current quinquennium of its mandate.

8. On the topic of shared natural resources, his delegation agreed with the Special Rapporteur that the question of groundwaters should be addressed first before moving on to other transboundary resources such as oil and gas. The topic should be further studied for two reasons: first, confined transboundary groundwaters would play an increasing role in human consumption in decades to come and, second, there was a need for a legal framework with which to address that problem, especially through subregional and regional cooperation. it was also necessary to formulate rules on stricter thresholds in relation to transboundary harm.

9. Lastly, with respect to the future work of the Commission, he supported the suggestion made by the representative of Finland on behalf of the Nordic countries and believed that one of the topics which could be added to the agenda was that of the elaboration of legal rules on the protection of vulnerable populations in situations of internal conflict and other man-made, or even natural, disasters. He therefore endorsed the International Committee of the Red Cross (ICRC) initiative to identify the existing legal instruments specific to disaster response situations.

10. **Mr. Tavares** (Portugal) said that the topic of the fragmentation of international law, which should be viewed from a general perspective, caused problems greater than that of the question of *lex generalis* and *lex specialis*; it must be borne in mind that in the context of reservations to treaties, enlargement of the scope of reservations could lead to problems of fragmentation, especially in the case of treaties with many States parties. Furthermore, in the case of *ius cogens*, there was a need to determine and specify the norms recognized by all States.

11. **Ms. Buang** (Malaysia), speaking on the topic of shared natural resources, said that she supported the Commission's approach in collecting all pertinent information before embarking on the formulation of rules and noted that the Commission had yet to determine whether its study would cover all groundwaters, including surface waters and transboundary waters. It was essential to protect groundwaters from pollution and other disruptive activities of mankind; they constituted a large proportion of Malaysia's freshwater and were an important national resource for consumption, agriculture, industry and recreation. However, only a small percentage of the water it currently used was derived from groundwater resources; thus, her Government's goal was to ensure adequate protection of the quality and quantity of its groundwaters and to ensure sustainable development. Under the Federal Constitution, water management was a matter for the respective constituent States of the Federation and had been fragmented among various federal and state agencies. In 1998, the National Water Resources Council had been established; it provided a more coordinated and effective water management strategy. In addition, the Federal Government was embarked on a water management project which would allow the federal authorities to monitor and regulate that area more effectively and to formulate a comprehensive policy on the issue.

12. Malaysia viewed very seriously the issue of contamination of groundwater resources through urbanization, uncontrolled development and irresponsible acts. Urgent preventive measures needed to be taken, including the creation of source protection zones, vulnerability mapping, awareness-raising regarding the importance of groundwaters and the need to protect them, and research and development. In Malaysia, the exploitation and use of groundwaters was regulated primarily through the 1974 Environmental Quality Act and a 1989 set of regulations. Enforcement was carried out by the Department of the Environment with the assistance of other agencies, such as the Royal Malaysia Police, the Department of Irrigation and Drainage, the Department of Minerals and Geoscience and the local authorities. There were no specific laws or quality standards on soil and groundwater contamination, nor had any bilateral or multilateral international agreements on the quantity and quality of groundwaters been signed.

13. **Mr. Mackay** (New Zealand), speaking on behalf of the members of the Pacific Islands Forum Group, said that that Forum, which was made up principally of small island States, welcomed the debate on the relevance and effectiveness of international law since

the rules governing relations between States gave small States reason to hope that their rights and interests would not be ignored.

14. As the body specifically charged with the codification and progressive development of international law, the Commission had made a particular contribution to the growth of international law and institutions, one of the major achievements of the past century, and, in fact, had completed its work on most of the more fundamental elements of the international legal order. That did not mean that its ability to contribute to the international legal order was diminishing, although some flexibility in its working methods and the product of its work might be necessary.

15. With respect to the topic of the fragmentation of international law, the Commission had adopted an essentially exploratory methodology whereby it was undertaking a series of studies on relevant aspects of the law of treaties without deciding in advance what form its work might eventually take or even whether it would prove possible to develop useful recommendations or guidelines. There was no doubt as to the timeliness and importance of that topic or the Commission's ability to make an important contribution to it, even though that contribution should not take the traditional form of draft articles. Its work might prove useful, at least indirectly, in relation to the institutional aspects of the topic and might, for example, heighten the international judicial institutions' awareness of each other's jurisprudence and facilitate communication between them.

16. On the topic of shared natural resources, it was clear that the Special Rapporteur had taken great pains to ensure that the Commission's work was fully informed by the best possible scientific and technical advice and had established a process of close consultation with experts from other relevant United Nations agencies. Legal norms were only one element, together with political, social, economic and environmental factors, of international work on that complex and important subject, and it was essential that the legal norms developed could be readily understood and implemented by technical experts and managers. Increased cooperation with other international organizations would also be very useful; in that regard, he noted with approval the increased level of informal exchanges between the Commission and other bodies, including those with responsibilities under the various human rights conventions and ICRC. That was a natural and useful development since, with the expanding reach of international law, few aspects thereof were of interest solely to the Commission or fell exclusively within its mandate; a wide range of international organizations and bodies had an interest or were involved in some aspects of public international law. The Commission's expertise in general public international law meant that, in some circumstances, it could provide useful assistance; at the same time, active contact with selected organizations would help to inform its own work.

17. Those adjustments to the Commission's working methods should ensure the ongoing relevance of its work to the international community, which was important to small States since the proliferation of international and regional bodies made it physically impossible for them to be represented at or to follow the work of all of them. They therefore needed the existence and the vitality of a body like the Commission, which could take a broad overview of the corpus of international law and actively seek to ensure the coherence and effectiveness of the international legal system.

18. **Ms. Pérez de Planchart** (Venezuela) stressed that there was a need for full and effective dialogue between the Sixth Committee and the International Law Commission. The Commission was making specific proposals, and its work could not be considered purely academic. It should take into account the opinions of Governments so that the texts it prepared were sufficiently realistic.

19. On the topic of responsibility of international organizations, her delegation shared the view that the draft articles should draw heavily on the articles adopted in 2001 on responsibility of States for internationally wrongful acts, which embodied rules of customary law accepted by all States, without losing sight of the special characteristics of international organizations and the rules applicable to them. Draft article 1, which applied only to the international responsibility of an international organization for an act wrongful under international law, should reflect article 2 on State responsibility and stipulate that there would be an internationally wrongful act of an international organization when an action or omission was attributable to it and the conduct constituted an international breach. The draft articles did not cover the responsibility of the organization under internal law

or its liability for injurious consequences arising out of acts not prohibited by international law.

20. The text of draft article 2 was generally acceptable, since it contained the basic elements of the definition of an international organization, namely, that it was established by an agreement governed by international law, possessed its own legal personality and had primarily States as members, although other entities might be included under certain conditions. The international organization must be established by international agreement. Although practice showed that for the most part such organizations were established by treaty or other formal agreement, it would be too restrictive to refer to a treaty as the only possible form of agreement. The second element was that the organization must be endowed with its own international legal personality, along with the legal capacity to act under the internal law of the States parties. It must be a subject of international law capable of bringing an international claim or of being held to have international responsibility. The last element was that international organizations were primarily made up of States, although under some circumstances other entities might be members. The latter possibility should be limited, and it must be borne in mind that States were the ones who established and financed international organizations. The draft should therefore refer to the responsibility of the State and of the organization and not to that of other entities.

21. With regard to the question of a general rule on attributing conduct to an international organization, reference should be made to the "rules of the organization", specifically, its constituent instrument, internal regulations and other rules and the decisions adopted by its organs. The definition of the term in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was appropriate.

22. The topic of unilateral acts of States, although difficult and controversial, was a suitable one for codification and progressive development. Unfortunately, the Commission's work on the topic had not progressed at the desired pace, and conceptual differences persisted. The topic should continue to be examined from the standpoint of unilateral acts *stricto sensu*, that is, as expressions of will formulated by States with the intention of producing certain legal effects. However, since not all were in agreement on that approach, more emphasis was being given to the conduct of States that, while not unilateral acts *stricto sensu*, might produce legal effects similar to those of unilateral acts. The proposed definition of a unilateral act submitted by the Commission was useful and could serve as a basis for future work. However, her delegation had some doubts about the reference to consent in that definition, which seemed to suggest a reaction and hence was more appropriate to a treaty relationship and inconsistent with the unilateral nature of the acts and conduct the Commission was examining. The definition should therefore refer only to "statements expressing the will".

23. Venezuela was pleased that the Commission had instituted a systematic study of the practice of States on the various types of unilateral acts, including in particular the context in which they were formulated, the persons formulating them, whether the acts were expressed orally or in writing, the reaction of the recipient or recipients and the reaction of other States, in order to be able to determine their legal effects.

24. On the topic of shared natural resources, the Commission would need to make use of technical studies of a purely informative and objective nature and to bear in mind the conclusions adopted previously in connection with liability for damage in the context of the law on non-navigational uses of international watercourses, the debate on which had excluded consideration of confined groundwaters unrelated to surface waters. The Commission should focus its work on confined groundwaters, and in particular on the pollution of confined groundwaters unrelated to surface waters, and exclude definitively from the topic consideration of other shared resources, such as migratory birds; it should exclude temporarily consideration of such resources as oil and gas until the first part was developed and concluded. It should also bear in mind the relevant resolutions of the General Assembly, including its resolution of 1962 concerning permanent sovereignty over natural resources.

25. **Mr. Kanu** (Sierra Leone) said with reference to responsibility of international organizations that his delegation agreed that the topic should be examined in the basis of the discussions held on the responsibility of States, while recognizing that international organizations differed from States and did not have analogous structures. With regard to draft article 2, his delegation supported the enlargement of the definition of international organization to include international

organizations made up not only of States but of other entities as well. That said, in examining the issue of the responsibility of the members of the international organization who were not States for the wrongful acts of the organization, it must be borne in mind that the status of a State member of an international organization was different from that of the members who were not States. However, the notion of "other entities" was obscure and might require further clarification. His delegation believed that the provision attributing responsibility to an international organization for an internationally wrongful act should contain a reference to the rules of the organization. The definition given in article 2, paragraph 1 (j), of the 1986 Vienna Convention on the Law of Treaties could serve as a basis, although the complexity of the varying structures of international organizations necessitated a very careful approach, particularly in evaluating the decision-making capacity or authority and control exercised by members of such organizations. The responsibility of the United Nations or contributing States for the conduct of peacekeeping forces was an important issue that required study at a later stage, after the general principle had been established.

26. On the topic of diplomatic protection, Sierra Leone was pleased with the progress made by the Commission in drafting the articles. With reference to article 17, paragraph 2, his delegation felt that the State of nationality of a corporation should be the State in which it was incorporated, and that the matter in brackets at the end of the sentence would lead to uncertainty. It also agreed with those who thought that there should be other criteria in addition to the place of incorporation in cases in which the corporation did not have a genuine link with the State of incorporation. His delegation would not rule out a reference, perhaps in a new paragraph, to an economic link or a closer connection to the activities of the corporation as a criterion for determining nationality. With regard to draft article 18, the criteria for applying the nationality of the shareholders as an exception to article 17 took the correct approach but could create confusion when there were multiple shareholders of different nationality, especially since in some corporations shareholders changed frequently.

27. His delegation welcomed the extension of protection mutatis mutandis to other legal persons in draft article 22 and was pleased by the Commission's decision to examine the question of the protection of members of a ship's crew. Sierra Leone was very concerned about the treatment often meted out to its nationals working as crew members on ships with a flag and registry of convenience. Although the United Nations Convention on the Law of the Sea provided for diplomatic protection through the flag State or the State of registry, the problem was that in most cases the State in question was one of convenience and could not offer protection. His delegation agreed with those who argued that the State of nationality of the shipowner should be entitled to exercise diplomatic protection in all cases, and in fact was of the view that the States of nationality of the ship's crew should be entitled to exercise diplomatic protection in respect of their nationals. Lastly, his delegation wondered whether it was wise to continue to use the adjective "diplomatic", which could lead to confusion with the traditional understanding of the concept, and thought that it might be better simply to speak of protection.

28. The topic of the unilateral acts of States was admittedly complex, but it should be noted that what had been achieved in seven years went no further than the methodology to be followed. Sierra Leone welcomed the Commission's decision to broaden the scope of the topic, hitherto limited to statements expressing will or consent by which a State purported to create obligations or other legal effects under international law, to include the conduct of the State as well, and it agreed with the decision to treat the issue of recognition separately. It would be pleased if the Commission included the concept of an international act of aggression within the scope of the topic.

29. With regard to reservations to treaties, Sierra Leone was in general agreement with the definitions prepared by the Commission. It was inclined to prefer the definition of objection formulated in draft guideline 2.6.1, while recognizing that the topic required more consideration in relation to articles 2.6.1 bis and ter. With respect to 2.6.1 ter, his delegation would prefer a positive formulation in place of the current negative wording.

30. On the topic of shared natural resources, Sierra Leone supported the decision to consider groundwaters, oil and gas separately and would endeavour to provide the Commission with the information requested in its report.

31. Sierra Leone welcomed the Commission's decision to establish a study group on fragmentation of

international law and looked forward with interest to the results of its work on the function and scope of the *lex specialis* rule and the question of "self-contained regimes".

32. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, his delegation commended the Special Rapporteur for his treatment of the allocation of loss in case of transboundary harm arising out of hazardous activities, in particular the principles that the innocent victim should not bear the loss or injury and that the polluter should pay. Sierra Leone believed that the operator should bear the responsibility, although at the current stage it was not convinced that a strict liability standard should apply and thought that a test of reasonableness should be applied.

33. **Mr. Winkler** (Austria), referring to the topic of shared natural resources, agreed that the International Law Commission should first consider the question of transboundary groundwater and defer the question of other resources, such as oil and gas to a later stage. His delegation agreed with the decision not to broaden the scope of the topic too much and to leave out other resources, such as minerals and migratory animals, which were already covered in existing international treaties. With regard to groundwater, it was first of all necessary to establish clearly which types ought to be covered and to further clarify the term "shared". The Commission should concentrate on "transboundary groundwater", i.e., groundwater resources which crossed, or were located beneath, boundaries between two or more States, rather than "shared groundwater". In addition, the concept of "groundwater" should be clarified in order to delimit the scope of any rules formulated on transboundary groundwaters. In his delegation's view, the term "groundwater" should encompass only confined groundwater resources, and the vulnerability and renewability of such resources, as well as their significance for the freshwater supply, should be taken into account in elaborating a regime to govern them. It also seemed necessary to address the issue of their use and pollution. The Special Rapporteur should elaborate general substantive rules on confined transboundary groundwater, taking into account work accomplished at the regional level, and postpone other aspects, such as dispute settlement, to a later stage.

34. His delegation was of the view that the problems caused by the fragmentation of international law seemed to have increased in recent years. On the one hand, the increasing number and diversity of international law instruments reflected the growing willingness of States to subject their activities to explicit rules of international law, which contributed to stability and predictability in international relations. On the other hand, such diversity entailed certain risks, since the application of conflicting rules to one and the same fact could jeopardize stability and predictability. Austria concurred with the Study Group's intention to focus on the function and scope of the *lex specialis* rule and the issue of "self-contained regimes". It also agreed to the other topics selected by the Study Group for further analysis and shared the view that the outcome of the Commission's work should take the form of a report. The original objective of the topic, namely, to draw States' attention to the risks and dangers entailed by fragmentation, would be fully realized by submitting a study and respective guidelines to the General Assembly.

35. **Ms. Amadi** (Kenya) expressed support for the initiatives of Austria and Sweden to revitalize the debate on the report of the International Law Commission. Kenya was concerned that, although the topic of unilateral acts of States had been included in the Commission's programme of work since 1997 and the Special Rapporteur had submitted six reports on it, only modest progress had been made. In that connection, her delegation agreed with the views expressed in paragraph 283 of the report. The scope of the study should be in line with the draft definition of unilateral acts, *strictu sensu*, since encompassing State conduct would require reconsideration of prior reports.

36. Turning to reservations to treaties, she said that Kenya agreed with the majority of the Commission members that modification of a reservation with the aim of enlarging its scope was similar to the formulation of a late reservation, and that the restrictions with respect to the formulation of late reservations, set out in draft guidelines 2.3.1 to 2.3.3, should apply. The Special Rapporteur's definition of objections to reservations was acceptable; the legal effects of an objection to a reservation should be determinable from the intention of the objecting State, and that intention should thus be clearly and unequivocally formulated.

37. Turning to the fragmentation of international law, she said that Kenya, as a party to various international legal regimes, was constantly grappling with the

difficulties arising from the diversification and expansion of international law, which were positive developments but entailed certain risks that had to be overcome. Kenya supported the approach adopted by the Study Group; given the sensitive nature of institutional issues, it was important to draw a distinction between institutional and substantive law. Indeed, institutions not only interpreted rules but also provided an important jurisprudential source; the dividing line between the two types of law was not clearly demarcated and conflicts did arise. In paragraph 419 of the report, the Study Group had identified a few instances of interpretative conflicts which emanated from different international institutions, highlighting the need for a comprehensive international framework to provide a basis and direction in that area.

38. Turning to the question of shared natural resources, she said that the management and sustainable use of water was of fundamental importance to humankind. Kenya hoped that the Commission would now establish a legal regime for confined transboundary groundwater, which it had excluded from its work on the codification of the law on non-navigational uses of watercourses. The Commission should ensure that all aspects of water management were taken into account, including pollution, sustainable utilization and the need to conserve and enhance the natural environment. The Commission should also consider the nexus between activities on the surface and confined groundwaters with a view to harmonizing the two regimes.

39. In view of the important role played by the Commission and its contribution to the progressive development of international law, Kenya endorsed the recommendations contained in paragraphs 441 to 443 of the report on the length of its documents. Her delegation also commended the Commission for its continued cooperation and interaction with other international and regional bodies, and for its unfailing support to the International Law Seminar programme, which enabled young international lawyers to work with Commission members. Lastly, she commended the States that made voluntary contributions to the United Nations Trust Fund for the International Law Seminar, enabling participants from developing countries to attend the training programme.

40. **Mr. Ranjan Singh** (India), speaking on the topic of unilateral acts, said that recognition was an important unilateral act, though not a homogeneous one, which could involve recognition of governments, States and other entities. Recognition was not regulated by agreed legal rules or criteria and, once it was extended, legal effects would follow. He therefore disagreed with the view that the principle of *acta sunt servanda* was the basis for the binding nature of a unilateral act and with the logic that that principle was a derivative of the customary rule, *pacta sunt servanda*. The discussions in the Commission on many of the aforementioned points had been inconclusive and questions continued to be raised regarding both the feasibility of proceeding with the study and the basic demarcation of the subject which would limit it to autonomous or non-dependent acts. The lack of sufficient State practice, the absence of comments from most States and the difficulty of locating new sources of international law had been suggested as reasons for dispensing with the topic. However, he believed that further discussion would be beneficial if the focus was on specific aspects of unilateral acts such as recognition, promise, waiver, notification, protest, renunciation, acquiescence and estoppel.

41. With respect to reservations to treaties, some of the draft guidelines adopted by the Drafting Committee were accompanied by model clauses which might help States invoke the applicable rules of procedure to suit the circumstances at hand. With respect to the making and withdrawing of reservations, he reiterated that reservations, and any communication relating to their withdrawal, should be made in writing. Communications relating to the withdrawal of a reservation which were made by electronic mail or facsimile must be confirmed by a diplomatic note or depositary notification. The guidelines adopted by the Drafting Committee more or less reflected existing State practice and, in principle, his delegation agreed with them.

42. With respect to the topic of shared natural resources, it must be borne in mind that none of the earlier studies of the legal regime relating to groundwaters dealt with that topic with sufficient rigour. The report of the Special Rapporteur mentioned the need for formulation of a precise definition on the basis of a correct understanding of the hydrogeological characteristics of groundwaters; in his delegation's view, the mere assumption that almost all the principles embodied in the Convention on the Law of the Non-navigational Uses of International Watercourses were also applicable to confined transboundary

groundwaters was not sufficient. He did not believe that the legal regime on the non-navigational uses of watercourses was similar to the legal regime on groundwaters; while the former was based on established principles for the sharing of water, including riparian rights, the latter either lacked State practice or was not amenable to generalization.

43. The fragmentation of international law was a reality of present-day international relations. The phenomenon had been clearly seen in the *Tadic* case, where the International Criminal Tribunal for the Former Yugoslavia had given a wide interpretation to the test of "effective control" of insurgent action, employed by the International Court of Justice in the *Nicaragua* case, opting instead for an "overall control" test. His delegation felt that fragmentation could lead to overlapping jurisdiction and "forum shopping", which could pose an obstacle to fairness and impartial justice. It could also lead to conflicting jurisprudence since international law lacked the pyramidal hierarchy of courts which was normally found under domestic legal systems that resolved conflicting interpretations. The topic was still at a formative stage and identification of a non-exhaustive list of four broad areas in which fragmentation occurred could be very useful. Further study of those matters would pave the way for the reconciliation of conflicting rules.

44. **Mr. Balarezo** (Peru) said he agreed with the representative of Uruguay that the title "Shared natural resources" was not sufficiently specific to define the focus of work on that topic; the Commission should examine only legal issues relating to resources which extended across or through the territories of more than one State. The expression "shared" did not fit that criteria and it would be preferable for the topic to be entitled "Transboundary natural resources" in order to preserve and adequately express States' sovereignty and, permanent rights over their natural resources (which, in the case of Peru, were enshrined in articles 53 and 56 of the Constitution) and were recognized in various international resolutions, such as General Assembly resolution 1803 (XVII).

45. With respect to confined transboundary groundwaters, he drew attention to the sovereignty of the States in which those resources were located. Under Peruvian legislation, in addition to the provisions of the Constitution, groundwaters were regulated by Act No. 26821 (Organization Act for the Sustainable Use of Natural Resources) and Decree Law No. 17752 (the Water Act), especially Title IV thereof.

46. **Mr. Ascencio** (Mexico) said that the topic of the responsibility of international organizations was largely a reflection of the development of international law. Cooperation between States had become one of the most important, and sometimes an essential, factor in international relations and the role of international organizations had taken on increasing importance. Naturally, their legal capacity and real capacity for action had increased, as had the likelihood that their conduct (both actions and omissions) could generate international responsibility. There was no doubt that the work undertaken by the Commission was an absolute necessity for the development of international law.

47. International organizations had the capacity to exercise rights and incur obligations as subjects of international law; a broad criterion for the acquisition of legal personality was therefore far more adequate for the purposes of the draft articles than a strict definition of legal personality based only on a specific provision of a constituent instrument. The definition of "international organization" given in article 2 was appropriate for the purposes of the draft articles. While "traditional" international organizations were composed only of States, the intergovernmental element had already ceased to be a requirement and an instrument designed to codify existing practice could not ignore that reality. His delegation fully agreed with the Commission that there was no reason to exclude "non-traditional" international organizations from the scope of an instrument intended to establish responsibility for internationally wrongful acts committed by one of the primary non-State subjects of international law. The question of when an act or omission was "attributable to the international organization under international law" (draft article 3) should therefore be governed by the internal regulations of the international organization itself, including, first, the treaty establishing it, its statute, or any "other instruments governed by international law" by which it had been established, such as a General Assembly resolution; and, second, the regulations based on those constituent instruments, including the organization's own practice — in other words, the "rules of the organization" as defined in article 2, paragraph 1 (j), of the Vienna Convention on the Law

of Treaties between States and International Organizations or between International Organizations.

48. The question of whether the conduct of peacekeeping forces should be attributable to the contributing State or to the United Nations deserved further study. In principle, the attribution of such conduct to the United Nations would be the general rule, providing that the forces in question were under United Nations control, that the acts or omissions had taken place within the strict framework of a United Nations mandate, and that the conduct was based on a status-of-forces or status-of-mission agreement.

49. **Mr. Nascentes** (Brazil) said that the topic of shared natural resources was crucial and should not be neglected. In any case, more debate was needed on the Special Rapporteur's recommendation that the Commission should deal with confined transboundary groundwaters, oil and natural gas. He also agreed with the delegation of Uruguay that the title of the topic was inaccurate and should be "Transboundary natural resources".

50. Given the importance of the issues which the Commission proposed to examine, a step-by-step approach must be pursued. The study of the topic was still at a very preliminary stage; therefore the timetable suggested by the Special Rapporteur should be revised. In that respect, his delegation maintained that it would be unproductive to extrapolate customary international law or to try to advance too quickly in the absence of firm consensus.

51. Further debate was needed in order to determine whether the principles embodied in the Convention on the Law of the Non-navigational Uses of International Watercourses were also applicable to confined transboundary groundwaters. There were significant differences between those two types of water and the aforementioned Convention had not achieved the desired universality. The concepts of "confined transboundary groundwaters" and "unrelated confined groundwaters" were not clearly defined and should be carefully studied before they were employed.

52. The current work of the Commission on the topic of international liability for injurious consequences arising out of acts not prohibited by international law was also relevant to the work on shared natural resources. Lastly, it was important to reiterate the principle of sovereignty regarding the use of shared resources, contained in General Assembly resolution 1803 (XVII).

Agenda item 150: Convention on jurisdictional immunities of States and their property (*continued*) (A/C.6/58/L.20)

53. The Chairman announced that Australia, Cyprus, the Czech Republic, Denmark, Finland, France, India, Ireland, the Islamic Republic of Iran, Norway, Poland, Portugal, Slovakia, South Africa, Spain, Sweden, Ukraine, the United Kingdom and Viet Nam had become sponsors of draft resolution A/C.6/58/L.20.

54. **Mr. Mikulka** (Secretary of the Committee), describing the programme budget implications of draft resolution A/C.6/58/L.20, said that under paragraph 2 thereof, the Ad Hoc Committee would be reconvened from 1 to 5 March 2004 with a view to completing a convention on jurisdictional immunities of States and their property. Two meetings per day (a total of 10) would be held with interpretation into the six official languages. The necessary documentation would be 35, 20 and 25 pages during, before and after those meetings, respectively, in the six official languages. The total cost of conference services was estimated at $186,100 (at the 2004-2005 rate of exchange) and, since the session was already included in the draft biennial calendar of conferences and meetings for 2004-2005, no additional resources would be required.

55. **The Chairman** said that if there was no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/58/L.20 without a vote.

56. *It was so decided.*

Agenda item 157: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/C.6/58/L.22)

57. **The Chairman** announced that Cyprus, Honduras, Mali, New Zealand, Samoa, Thailand and Timor-Leste had become sponsors of draft resolution A/C.6/58/L.22.

58. **Mr. Mikulka** (Secretary of the Committee), explaining the programme budget implications of the draft resolution, said that under paragraph 11 the Ad Hoc Committee established under resolution 56/89 was to reconvene for one week from 12 to 16 April 2004 with a mandate to expand the scope of legal protection of United Nations and associated personnel and that the

work was to continue during the fifty-ninth session of the General Assembly. Two meetings would be held per day (for a total of 10 meetings) with interpretation in the six official languages. The required documentation would consist of 25 pages during the session, 20 pages before and 30 pages afterwards in six languages. The total cost of conference services was estimated at $179,400 (in 2004-2005 values); since the session was already included in the draft calendar of conferences and meetings for the biennium 2004-2005, no additional appropriation would be necessary.

59. **The Chairman** said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/58/L.22 without a vote.

60. *It was so decided.*

Agenda item 148: Progressive development of the principles and norms of international law relating to the new international economic order (*continued*) (A/C.6/58/L.24)

61. **The Chairman** said that if he heard no objections he would take it that the Committee wished to adopt draft decision A/C.6/58/L.24 without a vote.

62. *It was so decided.*

Agenda item 149: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*) (A/58/446; A/C.6/L.13)

63. **Mr. Quartey** (Ghana), in his capacity as Chairman of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, reminded the Committee that a variety of activities were carried out under the Programme benefiting both individuals and institutions in the developing and developed world, among them the awarding of fellowships for the study of all aspects of international law, including the law of the sea; the organization of regional courses on international law, such as the one to be held in Quito, Ecuador, in February 2004; and the holding of international trade law seminars and symposiums in developing countries. The Advisory Panel would be meeting in early December rather than November 2003 to choose a candidate for the eighteenth annual Hamilton Shirley Amerasinghe Memorial Fellowship.

64. All recognized the necessity of the rule of law and the ever-growing importance of international law in the modern world and hence the need for concerted efforts to encourage the teaching and dissemination of international law, particularly in the developing world, where there was a lack of resources but not of talent. Although a great deal was being done with a zero-growth budget, much more could be accomplished with greater contributions to the Programme from Member States and their institutions.

65. Introducing the draft resolution on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/C.6/58/L.13), he said that it was based on previous resolutions on the agenda item. In the resolution, the General Assembly would approve the guidelines and recommendations contained in section III of the report of the Secretary-General (A/58/446); authorize the Secretary-General to carry out in 2004 and 2005 the activities specified in the report and to continue to finance those activities from the programme budget; and reiterate its request for voluntary contributions for the various seminars, fellowships and regional courses included in the Programme. He hoped that the draft resolution should be adopted by consensus.

66. **Mr. Fuzaia** (Bahrain) said that the Programme of Assistance fostered a policy of peace and contributed towards strengthening the rule of law in international relations. The Programme was useful for academics, students and government officials. His delegation trusted that the assistance so necessary to enable developing countries to participate and benefit from the Programme's activities would continue to be forthcoming.

67. The Geneva International Law Seminar, the International Law Fellowship Programme, which enabled developing countries to participate in courses on international law, and the United Nations Audio-Visual Library in International Law all contributed to the dissemination of international law, and he hoped that the guidelines and recommendations contained in section III of the Secretary-General's report would meet with the support they deserved.

68. **Mr. Traisorat** (Thailand) said that globalization, the search for sustainable development and the suffering caused by terrorist attacks had prompted a reconsideration of the appreciation, application and

effectiveness of current international law and had engendered a new realization that the norms and principles of international law could be expanded, developed and revived as the situation called for and the need arose. For example, the areas of international economic law, international environmental law and international intellectual property law had been developed and had assumed greater importance in the formulation of government policies, regional priorities and global cooperation. The teaching and dissemination of international law and training in it were indispensable in order to keep abreast of what was happening in the world and respond appropriately. In that regard, his delegation commended the contribution made by the lectures of the Hague Academy of International Law and the work of the Office of Legal Affairs of the United Nations Secretariat, in particular the United Nations Audio-Visual Library, the information made available in electronic form and the publications on international legal case law.

69. Thailand had made efforts to promote the study of international law by sending its scholars to participate in training courses on international law on a regular basis. At the domestic level, the Department of Treaties and Legal Affairs of the Ministry of Foreign Affairs had set up a web site to serve as a forum where scholars, government officials and students could exchange ideas and pose questions about issues of international law. It had also organized a seminar on the law of treaties in Hua-Hin attended by officials from various government agencies.

70. At a broader level, Thailand was also engaged in the exchange of training and information on international law with neighbouring countries, such as Myanmar. Through the collaboration of the United Nations Treaty Section and the United Nations Institute for Training and Research (UNITAR), a regional training programme on treaty law and practice had been organized in 2003 in the Lao People's Democratic Republic.

71. **Mr. Mwandembwa** (United Republic of Tanzania) said that, since its inception in 1965, the Programme of Assistance had been of great help to developing countries like his own, especially to academic and professional institutions engaged in research and education in international law. During the United Nations Decade of International Law many of the goals of the Programme had been realized, such as the introduction of topics of international law into the school curriculum at the primary and secondary levels and cooperation between universities, which should be further encouraged.

72. Other areas of great importance included the convening of conferences of experts at the national and regional levels to prepare model curricula and material for courses in international law and the organization of special courses on various aspects of international law for legal professionals, including judges, prison officers, police officers, military personnel and officials from ministries of foreign affairs and the interior.

73. Since the start of the Programme, the United Republic of Tanzania, one of the least developed countries, had benefited tremendously from participation of its nationals in the Geneva International Law Seminar, the International Law Fellowship Programme, regional courses and the Hamilton Shirley Amerasinghe Memorial Fellowship. His delegation was grateful to the Office of Legal Affairs for its work, particularly in preparing and distributing United Nations legal publications, and would also like to commend the United Nations Institute for Training and Research (UNITAR) and to thank the States that had contributed to the success of the Programme of Assistance with their contributions over the years. Bearing in mind that the Programme of Assistance promoted the rule of law, his delegation appealed for an increase in the funds allocated to the Office of Legal Affairs in the regular budget.

74. **Ms. Devadason** (Malaysia) said that international law played a vital role in preserving international peace and security and promoting development in the world, and the United Nations Programme of Assistance enhanced the rule of law among nations. The publications and web sites provided under the Programme had facilitated access to material on international law. Other initiatives within the Programme, including a variety of courses, fellowships and seminars, had given participants the opportunity to deepen and update their knowledge and insight into the legal work undertaken by the United Nations and its associated bodies in the legal sphere. Malaysia also valued the technical assistance efforts on treaty law and the many publications mentioned in the report. Her delegation would like to express appreciation to the Dag Hammarskjöld Library for its cooperation, to the Secretariat for its commitment to the Programme and to

the Member States that had made voluntary contributions to finance it. The voluntary contributions to the 2003 United Nations Trust Fund for the International Law Seminar had allowed for the award of a sufficient number of fellowships to candidates from developing countries to achieve adequate geographical distribution.

75. Her delegation was pleased that electronic means were being used to disseminate international law and advance the goals of the Programme. It found the United Nations web sites very helpful in locating important international law materials and urged that the possibility should be considered of allowing public universities free access to the United Nations Treaty Section database.

76. **Mr. Fruchtbaum** (Grenada) said that his delegation commended the report of the Secretary-General on the United Nations Programme of Assistance and supported the draft resolution contained in document A/C.6/58/L.13, although it had some concerns about a few points in both documents. There was a need to increase the number of individuals benefiting from the Programme, for which resources might be found by recourse to private foundations. The Office of Legal Affairs might collaborate with the Department of Public Information in the work of dissemination. In the text of the draft resolution, his delegation would prefer that the fourth preambular paragraph should be expanded to read "… States, international organizations and institutions, *foundations and other non-governmental organizations* should be encouraged …", in order to offer as many individuals as possible a broader vision of international law.

77. **Mr. Jacovides** (Cyprus) recalled that Cyprus had been one of the countries that had taken the initiative some three and a half decades ago to establish the Programme of Assistance through General Assembly resolution 2099 (XX), had served on the Advisory Committee for most of that time and had endeavoured insofar as it was able to make a contribution to the Programme.

78. Having first-hand knowledge about how some parts of the Programme functioned, he was convinced of its great value for advanced students, law professors and government officials, especially those from developing countries, in updating and deepening their knowledge of new developments in international law, exchanging and sharing information and familiarizing themselves with the legal work of the United Nations and its associated bodies.

79. All the activities under the Programme deserved the support of Member States. His delegation endorsed the recommendations regarding the continuation of the Programme in the biennium 2004-2005 and urged its full financial backing, both through the regular United Nations budget and through voluntary contributions of States. The possibility should also be considered of soliciting voluntary contributions from foundations, institutions and individuals convinced of the utility and importance of the Programme, so that its activities could be greatly expanded in the future.

80. **Mr. Ascencio** (Mexico) said that his delegation welcomed the guidelines and recommendations endorsed by the Advisory Committee on the Programme and commended the important work accomplished by the Programme and by UNITAR. With regard to the dissemination of international law at the national level, the Ministry of Foreign Affairs of Mexico organized every year a continuing-education seminar for professors of international law from public and private universities all over the country.

81. **Mr. Gospodinov** (Observer for the International Federation of Red Cross and Red Crescent Societies) said that in the past year the Federation had held many consultations with Governments, international organizations, national Red Cross and Red Crescent societies, academics and professionals on how to promote better understanding of the law relating to international disaster response. It had also carried out an intense work programme to bring together the results of legal and field research examining the way existing international laws and other instruments might facilitate response to disasters, and as a result had decided to include international disaster response law among the high-priority items for consideration at the 2003 International Conference of the Red Cross and Red Crescent, at which an agenda for humanitarian action covering the period 2004-2007 was to be adopted. The concept of international disaster response law was relevant to the important United Nations Programme of Assistance, which promoted wider appreciation of international law.

82. One of the main findings of the work done so far was that there was an extensive body of international law on the subject, numbering more than 300 treaties

and many other instruments and rules. Another finding was that those rules were not interpreted consistently, giving rise to ambiguities and even contradictions between the laws and rules adopted at the international, regional and national levels, which could create significant, even if unintended, obstacles to effective disaster response. The Federation had experienced difficulties of that kind in the Balkans and in Central Europe, among other places, in the form, for example, of unnecessary hold-up of rescue teams and search dogs at border crossings.

83. Such obstacles necessitated more research into the nature of the existing laws and rules at all levels and their relationship to practice. Findings to date indicated that research could most usefully focus on better implementation of existing instruments rather than on the drafting of new ones. Greater coherence in the work of international organizations and the inclusion of issues related to international disaster response law on the agendas of other conferences would also be important. The Federation and its 178 Red Cross and Red Crescent societies would continue to work hard in the next few years to address those issues and offer practical solutions.

84 **The Chairman** said that, if he heard no objections, he would take it that the Committee wished to adopt draft resolution A/C.6/58/L.13 without a vote.

85. *It was so decided.*

The meeting rose at 1.05 p.m.