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Chairman: Mr. Bennouna . . . . . (Morocco)

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The meeting was called to order at 9.55 a.m.

Agenda item 144: Report of the International Law Commission on the work of its fifty-sixth session (*continued*) (A/59/10)

1. **Mr. Hasegawa** (Japan), referring to chapter X of the report of the International Law Commission (A/59/10), said that since the number of bilateral and multilateral treaties had increased dramatically in recent years, it was becoming more difficult to maintain coherence among the different legal regimes. To avoid conflicts of law during the treaty-making process and in interpretation, it was essential for practitioners to have a clear understanding of the potential impact of a particular treaty on other related rules of international law. For that reason, his delegation basically supported the direction the Commission was taking on the topic of fragmentation of international law.

2. The reports on the five selected subtopics were still quite general in content, and the suggestion appeared to be that guidelines derived from them could be applied to broad areas of international law. However, the Commission should be careful about extrapolating guiding principles from a few specific cases or areas. The Commission might have to decide at a later stage whether it should narrow the scope of application of the guidelines it would propose or embark on a much more thorough study of each aspect of a potential conflict of law. To be beneficial, the guidelines should be produced in a timely manner. One possible approach would be to limit the scope of the guidelines by adding a saving clause stating that they would not prejudice the possible development of other laws and agreements on related subjects.

3. The topic of unilateral acts of States (A/59/10, chap. VIII) was a difficult one. The definitions of terms and the criteria for classification of unilateral acts were unclear, and the precise legal consequences of unilateral acts had yet to be examined. To clarify those points, detailed analysis of actual practice would be necessary. The Special Rapporteur had therefore been correct to devote most of his seventh report (A/CN.4/542 and Corr.2 and 3) to the examination of State practice. It should be borne in mind, however, that Governments might not clearly define the legal nature of their own acts, so that the Commission should take into account not only the objective elements of the acts themselves but also subjective elements such as the intent of the States in question.

4. If the Commission felt that useful output could not be anticipated from its work on the topic in the near future, Japan would not insist on its continuation. If it decided to continue, however, even more detailed and careful research might be required.

5. While his delegation shared the view of the Special Rapporteur that the draft guidelines on reservations to treaties (A/59/10, chap. IX) should be as detailed and comprehensive as possible, it was also concerned about the slow pace of the work on the topic. The Commission should take steps to hasten the discussion on key issues, such as the legal consequences of reservations to treaties, and set a time frame for the completion of the work.

6. His delegation supported the approach that the Special Rapporteur had taken to objections to reservations in defining the term “objection” prior to any examination of its legal effects or the lawfulness of objections, and it found the newly proposed definition satisfactory. With regard to the validity of a reservation and the debate over the correctness of the term “validity”, his delegation considered that the choice of the term was related to the legal nature of the system of reservations. The system provided for in the Vienna Conventions on the Law of Treaties allowed each State party some discretion to decide for itself on the compatibility of a reservation through acceptance or objection. Where a reservation was not clearly prohibited, a situation could arise in which a reservation was “valid” in relation to one State but “invalid” in relation to another. In such a case, the relationships between the States parties were reciprocal and bilateral, and it might be more appropriate to use the terms “permissible”/“impermissible” than to use the terms “valid”/“invalid”. If, on the other hand, the reservation was clearly prohibited by the treaty, it would be reasonable to consider the reservation null and void by virtue of its nature and therefore “invalid”. Moreover, some multilateral treaty obligations could not be divided into reciprocal and bilateral obligations, since they required States parties to act in accordance with normative rules, such as those relating to human rights, disarmament and the environment. A reserving State could not act in accordance with a normative rule towards one State while acting contrary to it vis-à-vis another. In such cases, the terms “valid”/“invalid” seemed more appropriate.

7. **Mr. Deo** (India), referring to the topic of responsibility of international organizations (A/59/10, chap. V), said that unlike States, international organizations varied considerably in their structure, functions and competences, which made it difficult to devise a standard set of rules. There were limits on the extent to which analogies could appropriately be drawn with regard to attribution of responsibility to States; accordingly, the Commission should avoid developing rules for international organizations that mirrored the rules intended for States in the draft articles on State responsibility.

8. Turning to the Commission's commentary on draft article 5, he said that it was not clear whether the test of "effective control" would be adequate to deal with all situations where the draft article would be applicable.

9. With respect to shared natural resources (A/59/10, chap. VI), India had consistently maintained that context-specific agreements and arrangements were the best way of addressing questions relating to transboundary groundwaters or aquifer systems, as they would enable States to take the relevant factors in a specific negotiation into account. The final form of the output on that topic should give States adequate flexibility to tailor agreements or arrangements to individual circumstances. India would support the adoption of guidelines that could be used for the negotiation of bilateral or regional arrangements.

10. His delegation agreed on the use of the term "transboundary groundwaters" and "transboundary aquifer systems" instead of "confined transboundary waters". It also agreed that it would be inappropriate to apply the principle of "equitable use" for the purpose of building a regime on groundwater; moreover, the principle of "reasonable utilization" might not be helpful. Since both concepts were embodied in the 1997 Convention on the Law of the Non-Navigational Uses of Transboundary Watercourses, to which many Member States were not parties, it might prove difficult to insist on them.

11. The fragmentation of international law was one of the realities of current international relations and the work of the Study Group had highlighted the complexities arising from lex specialis and self-contained regimes. His delegation believed that the study on fragmentation would serve to enhance the effectiveness of international law and looked forward to the Group's future work on regional regimes and regionalism.

12. **Mr. Pecsteen de Buytswerve** (Belgium) said it was clear that a reservation prohibited or excluded by a treaty or incompatible with its object and purpose, in other words, contrary to the provisions of article 19 of the Vienna Convention on the Law of Treaties, could not have the legal effects specified in article 21 of the Convention, regardless of whether or not the reservation had been accepted. It was generally considered that a legal act was devoid of legal effect if it was null and void or unlawful or non-opposable. Article 19 of the Convention appeared to be stating rules having to do with the validity of reservations, so that reservations contrary to them should be qualified as null and void.

13. The provisions of article 2, paragraph 1 (d), and article 23, paragraph 1, of the Convention on the timing and form of a reservation could also be considered conditions of validity. More generally, a reservation should be considered void if it conflicted with a peremptory norm of general international law pursuant to article 53 of the Convention, or if there was a defect in consent pursuant to articles 46 to 52, applied mutatis mutandis. Without elaborating an entire regime on the nullity of reservations, the Commission could mention the problem in its guidelines.

14. It was clear, therefore, that if a contested reservation was contrary to article 19 of the Vienna Convention it should be considered void and without effect, and the author of the reservation would remain bound by the entire treaty, including the provisions to which the void reservation related until such time as the treaty lapsed or was denounced. The mere formulation of a void reservation would not entail international responsibility, since it had no legal effect, but the reserving State might incur responsibility for an internationally wrongful act if it did not observe the provisions of the treaty to which the reservation related.

15. His delegation saw no need to distinguish between cases in which a reservation contrary to article 19 constituted an essential condition of consent for the State that had formulated it and other cases. Belgium considered that a State could not argue that a reservation contrary to article 19, formulated at the time the State had consented to be bound by the treaty, had been an essential condition of consent and that

therefore it did not consider itself bound by the treaty. However, if the Commission thought it useful to make such a distinction, it should, in order to avoid abuses, elaborate very precise guidelines on what constituted an "essential condition of consent" and how it could be attributed to a reservation.

16. **Mr. Onisii** (Romania) welcomed the provisional adoption of draft articles 4 to 7 on responsibility of international organizations. With regard to draft article 4, his delegation noted with satisfaction the replacement in paragraph 1 of the words "one of its officials or another person entrusted with part of the organization's functions" with the word "agent", as subsequently defined. The definition of "rules of the organization" in paragraph 4 had been improved, as compared with the definition of the term in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, by adding the words "other acts taken by the organization" and by giving considerable weight to practice. However, the definitions would be better placed in draft article 2, "Use of terms", since the terms also appeared in other draft articles. His delegation supported the inclusion and current wording of draft articles 5 to 7.

17. On the topic of shared natural resources, his delegation considered that the Special Rapporteur's second report represented an excellent basis for further work. Whatever the final form of the instrument on the topic, it should clearly set out its applicability to transboundary aquifer systems and to the uses of, activities which had or were likely to have an impact upon and measures of protection, preservation and management of transboundary aquifer systems. Cooperation between States was essential for the equitable and reasonable utilization of transboundary aquifer systems and should be properly reflected in the draft articles.

18. His delegation welcomed the large compilation of State practice in the Special Rapporteur's seventh report on unilateral acts of States, while realizing that the report represented only an initial overview, to be followed by in-depth analysis of such acts aimed at identifying the relevant rules for codification and progressive development. It was to be hoped that the difficulties encountered in identifying appropriate working methods on the topic would be overcome once the studies undertaken in accordance with the grid established by the open-ended Working Group were completed and transmitted to the Special Rapporteur. Romania wished to reiterate the importance it attached to the elaboration of a set of principles applicable to unilateral acts, since they represented a source of legal norms.

19. **Ms. Ng** (Singapore) noted with satisfaction the provisional adoption by the Commission of the draft guidelines on reservations to treaties at its fifty-sixth session. Her delegation appreciated the careful and considered treatment of the issues dealt with therein and the pragmatic approach taken on the question of widening the scope of reservations. Singapore shared the Commission's view that the late formulation of limitations on the application of the treaty should not be encouraged, and that there might be legitimate reasons why a State might wish to modify an earlier reservation. In the final analysis, prevailing practice should be taken into account.

20. Welcoming the intention of the Special Rapporteur to deal with the "validity" of reservations in a future report, she referred to the effect of reservations, as covered by article 19 of the Vienna Convention on the Law of Treaties, and suggested that a distinction could be drawn between reservations within the scope of article 19, subparagraphs (a) and (b), and those falling under article 19, paragraph (c). Singapore would not argue that a State could accept a reservation prohibited by the treaty within the scope of subparagraphs (a) and (b). On the other hand, it did not understand why, in principle, the regime described in articles 20 and 21 of the Vienna Convention could not apply to reservations under article 19, paragraph (c).

21. Her delegation shared the sentiment expressed by the Special Rapporteur in paragraph 20 of his ninth report, in which he stated his particular attachment to the "contractual character" of treaties and to the voluntary nature of treaty commitments. Singapore regarded those sentiments as a fundamental basis for treaty relations as it was, like the Special Rapporteur, reluctant to recognize any rule which would result in allowing a State to be bound against its will by any treaty provision. Furthermore, Singapore shared the doubts raised regarding the possibility for an objecting State to maintain that the treaty as a whole was binding upon a reserving State despite its reservation. In that connection, she referred to an advisory opinion handed down by the International Court of Justice on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide concerning the

status of a reserving State as a party to the Convention. In that opinion the Court contended that a reserving State whose reservation had been objected to by one or more parties might be regarded as a party to the Convention if the reservation was compatible with the object and purpose of the Convention, and would not be regarded as a party to the Convention if the reservation was incompatible with the Convention.

22. The decisions of the European Court of Human Rights in the *Belilos* case and the *Loizidou v. Turkey* case were not of general application and should be seen in the light of particular circumstances. In terms of legal obligations, Singapore believed that the position advocated in the advisory opinion contributed to greater participation and universality of treaties, as well as to the stability of the international treaty regime. The possibility that a State could be bound by a treaty provision would operate as a deterrent to the participation of States in a treaty and would create tremendous uncertainty in legal relations between States, particularly in cases where parliamentary approval to ratify the treaty was given on condition that a particular reservation was made. In the event that a reservation had been objected to by a State for failing the test of compatibility with the object and purpose of the treaty, it would be preferable for the reserving State to reconsider the objection in good faith and decide thereafter on the appropriate course of action.

23. **Ms. Zabolotskaya** (Russian Federation) said, with regard to reservations to treaties, that her delegation supported the current formulations of draft guidelines 2.3.5 (“Widening of the scope of a reservation”), 2.4.9 (“Modification of an interpretative declaration”) and 2.5.13 (“Withdrawal of a conditional interpretative declaration”). As for draft guideline 2.6.2 (“Objection to the late formulation of widening of the scope of a reservation”), the text of which was also acceptable, it could be included in the definition contained in draft guideline 2.6.1 (“Definition of objections to reservations”). With regard to draft guideline 2.4.10 (“Limitation and widening of the scope of a conditional interpretative declaration”), her delegation saw no difficulty as far as the limitation aspect was concerned, since the scope of such a declaration could obviously be modified only after agreement had been reached on the binding nature of the treaty. The same did not apply in the case of the widening of an interpretative declaration. It was not clear what would happen to a treaty if the other parties did not all accept the proposed widening. Moreover, a declaration might contain both widening and limiting elements. Widening the scope of such a declaration might therefore be detrimental to the stability of legal relations within the framework of the treaty. Moreover, the formulation whereby the rules on the widening or limitation of a conditional interpretative declaration were explained by reference to draft guideline 2.3.5, which in turn referred the reader to draft guideline 2.3.1 (“Late formulation of a reservation”), was not entirely successful. The definition of an objection to a reservation should be structured, together with the commentary, in such a way that a clear distinction was made between legal objections, on the one hand, and political declarations expressing a negative attitude to a reservation but having no legal repercussions, on the other. Moreover, the definition of an objection to a reservation should not rely exclusively on the consequences of an objection as provided for in the 1969 Vienna Convention.

24. With regard to unilateral acts of States, the heterogeneity of the acts compiled in the report of the Special Rapporteur (A/CN.4/542 and Corr.1-3) went a long way towards explaining why the Commission had not made more headway in its work. Her delegation supported the suggestion that the Commission should prepare a detailed thematic study analysing a specific range of unilateral acts. Codification would, however, prove extremely complex or even impossible. The main problem would be to produce a definition of unilateral acts that could, in every case, distinguish a unilateral legal act from an act of a purely political nature giving rise to no legal consequences. To base a definition on a State’s intention alone seemed unsafe, since it was extremely subjective. The decision by the International Court of Justice in the *Nuclear Tests* case should not automatically be adopted as a basis for the Commission’s work. Much depended on the subject of the unilateral act, for example. If that subject could be clearly defined and was of an explicitly legal nature, such as a unilateral and explicit waiver by a State of a right belonging to it, the act concerned could be considered to be of a legal nature.

25. With regard to the criteria for the validity of unilateral acts, the question to be asked was whether such acts could, as in the case of international treaties, deviate from the residual rules of international law. As for the necessary conditions for the modification or withdrawal of a unilateral obligation assumed by a

State, it was doubtful whether a direct analogy with treaties — in relation, for example, to the "threshold" for the implementation of a rule on a fundamental change of circumstances as grounds for terminating an obligation — could be justified.

26. The fragmentation of international law was an important topic that was rightly under consideration by the Commission, even if the "threat" of such fragmentation was no more than theoretical. Her delegation agreed with a number of conclusions drawn by the Study Group, such as that regarding the importance of international law as a backdrop to special regimes. The fact that, in some cases, lex specialis prevailed over lex generalis did not mean that a special regime could be considered apart from general international law. Indeed, the whole point of special rules within the framework of international law was to change or modify the operation of general rules within a specific legal relationship and in response to specific regulatory requirements. On the other hand, the abrogation of a special rule did not automatically give rise to a lacuna in legal regulations, since the corresponding general rule automatically applied. In that connection, she emphasized that not a single one of the existing treaty regimes, including the international human rights treaties and the rules of the World Trade Organization, could be termed autonomous in the sense of excluding the application of general international law. The same applied to the practice of the European Court of Human Rights, in the *Belilos* and *Loizidou* cases, for example. Nor did the human rights treaty bodies show any evidence of being autonomous or self-sufficient.

27. Her delegation shared the Study Group's view that the hierarchy of rules in international law did not, on the whole, result in its fragmentation but, on the contrary, constituted an integral part of its strength and unity. Clearly there was no formal hierarchy, as in the case of national laws, but there were undoubtedly generally recognized peremptory principles and rules that constituted the basic structure of international law and were endowed with particular authority and legal force. Along with such jus cogens principles and rules, there existed "sectoral" principles of international law whose scope was essentially restricted to specific areas of regulation. As for the interpretation of article 31, paragraph 3 (c), of the 1969 Vienna Convention, her delegation shared the view that it referred both to treaty rules and to general rules.

28. **Ms. Huh** Jung-ae (Republic of Korea) said, with regard to unilateral acts of States, that before States could submit comments on their practices in that regard, they required further guidance from the Commission concerning the scope and definition of such acts. It was currently unclear whether a State's statements, conduct or national legislation constituted unilateral acts, whether such acts had to be in written form or could be oral and whether they had to be formally communicated at all. There was also uncertainty with regard to the normative status of the concept in international law. It was not clear whether unilateral acts could be regarded as a new source of international law beyond the scope of Article 38, paragraph 1, of the Statute of the International Court of Justice or whether they contributed to the formation of existing sources of international law, including treaties and customs, as demonstrated by the effects of the Truman Proclamation on the Continental Shelf or Norwegian claims for straight baselines on the evolution of the law of the sea. There were other questions, such as whether unilateral acts involved obligations only vis-à-vis the addressee, without actually creating a norm, or whether they were analogous to the law of treaties. Currently, international law did not provide definitive answers. While extremely complex, unilateral acts of States were also important in international relations.

29. Case law, as demonstrated in the *Eastern Greenland* case and the *Nuclear Tests* case, attested to the significance of the legal consequences of unilateral acts and the relationship between the author and the addressee. Her delegation endorsed the Special Rapporteur's approach of conducting an in-depth study on State practice and case law in order to establish any general rules that might apply.

30. With regard to reservations to treaties, her delegation noted that article 19 (c) of the 1969 Vienna Convention was intended to prevent States from formulating reservations incompatible with the object and purpose of a treaty. The International Court of Justice, in the case concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, had given clear guidance in that regard, stating that other parties to a treaty were entitled to decide the question of incompatibility. If they objected to a reservation, they could consider the reserving State not to be a party to the Convention. By contrast, the Human Rights Committee, in its General

Comment No. 24, had claimed for itself the right to decide on the incompatibility of a reservation with the object and purpose of the International Covenant on Civil and Political Rights and to refuse to accept the reservation. That approach, however, had failed to attain general agreement from the States Parties to the Covenant, diverging as it did from the rules established by the International Court of Justice and the Vienna Convention. In her delegation's view, the Commission should base its work on the Court's case law, while State practice should be based on the relevant provisions of the Vienna Convention.

31. With regard to the question of the terminology for qualifying reservations made in breach of article 19 of the Vienna Convention, her delegation believed that the wording should, again, reflect the jurisprudence of the International Court of Justice. Since other parties to a treaty were entitled to judge whether a reservation was in conformity with the object and purpose of the treaty in question, the word "admissibility" would correctly reflect the situation of supervision or monitoring between equal sovereign States, whereas the word "permissibility" implied that an organ superior to States decided what was or was not compatible. Meanwhile, the word "validity" might lead to the prejudging of the legal consequences of a reservation that allegedly violated the provisions of article 19 of the Vienna Convention, although the reservation would in fact be effective unless other States lodged an objection.

32. Lastly, with regard to the topic of fragmentation of international law, her delegation trusted that, while the Study Group's work had so far been of a highly theoretical nature, the outcome would be of practical use to States.

33. **Mr. Peh** (Malaysia) reiterated his delegation's support for the efforts of the Commission to elaborate clear guidelines for determining when unilateral acts of States created legal obligations in furthering legal security.

34. Noting the Commission's general view that the seventh report of the Special Rapporteur lacked an in-depth analysis of the examples of State practice in relation to unilateral acts that had been cited, he said that the report had also failed to address the issues raised in recommendation 6 of the Working Group's set of recommendations.

35. With reference to the request by the Commission for comments on the elements outlined in paragraph 31 of its report with respect to various related aspects of State practice, he asked the Commission to further clarify and elaborate on the comments expected from States.

36. Malaysia shared the views expressed by the Commission on criteria for the classification of acts and declarations. It agreed that an act might belong to more than one of the three generally established categories proposed by the Special Rapporteur, and that therefore such categorization of acts might not be the most appropriate in the current instance.

37. His delegation also maintained the view that it was pertinent for States to know when a unilateral expression of their will or intentions would be taken as a legally binding commitment as opposed to being a mere political statement. The determination of the purpose of a particular unilateral act was therefore essential in identifying the nature of the act and whether it was in fact legal or political. Other factors, such as context, circumstances, content and form, could also be considered in determining the nature of a unilateral act.

38. On the issue of revocability, Malaysia supported the proposal in paragraph 228 of the Commission's report for a detailed examination of the revocability of unilateral acts, which would assist States in better understanding the matter.

39. Malaysia recognized the difficulty and complexity of the task of determining the general rules and principles that might apply to the operation of unilateral acts of States. However, until and unless a comprehensive analysis of State practice could be carried out, the formulation of legal rules, if any, should be deferred.

40. Turning to the topic of reservations to treaties and to the effect of reservations covered by the provisions of article 19 of the Vienna Convention on the Law of Treaties, reservations contrary to the provisions of a treaty to which they related, or reservations contrary to the object and purpose of a treaty, he expressed the view that such reservations were ineffective, that is, null and void. Such a reservation would therefore not produce the result intended by the reserving State, and the treaty as a whole would continue to govern that State. Furthermore, the existing treaty relationship between the reserving State and other States parties

would not be affected in any manner whatsoever, and the reserving State should not be able to invoke the reservation in its treaty relationship with the other States parties. In that regard, Malaysia supported the view that State parties should be encouraged to make objections to "impermissible" reservations in order to indicate to the reserving State their positions with regard to the legal status of the reservation in question. However, rather than placing the burden on States to make their objections known, the Sixth Committee should introduce some formulation to the effect that even though no objections had been made, impermissible reservations had no force or effect.

41. His delegation supported the current formulation of draft guideline 2.1.8 [2.1.7] (Procedure in case of manifestly [impermissible] reservations), and saw the proposal therein as a step forward in addressing the issue of "impermissible" reservations. Nevertheless, Malaysia believed that it was necessary to obtain comments from Member States, in particular, on the suitability of the depositary undertaking the role of analysing and drawing conclusions on particular reservations upon which States would be required to act.

42. **Mr. Gumbley** (Australia) said that the definition of a unilateral act entailing a legal obligation required close study. In order to decide whether an act was a unilateral act creating obligations under international law, it was necessary to consider unilateral acts stricto sensu and to submit States' intention to create such an obligation to an objective examination. For the purpose of determining what legal obligations stemmed from unilateral acts, the latter had to be defined as acts distinct from any act undertaken within the framework of existing conventions or of customary or institutional law. It would be advisable to formulate guidelines regarding the legal consequences of unilateral acts. Since such acts did not constitute a legal regime, they did not lend themselves to legal codification.

43. As for the topic of reservations to treaties, his Government was pleased that the concept of a State's "intention" had been introduced into the new definition of an objection in draft guideline 2.6.1, because intention was key to determining whether a State's reaction to a reservation amounted to an objection, and the incorporation of that notion was consistent with articles 20 to 23 of the Vienna Convention on the Law of Treaties.

44. Both the treaty-based and the voluntary nature of the regime of objections should be preserved. When reservations under a treaty were allowed and a State had voluntarily made a reservation, objecting States could not deem a treaty to be binding in its entirety on a reserving State.

45. Draft guideline 2.1.8 prompted some concern, since the depositary should not be expected to judge or express a view on the impermissibility of a reservation, but should be neutral and impartial in the exercise of its functions in keeping with the provisions of article 77 of the 1969 Vienna Convention. Its role should thus be limited to transmitting reservations to the States parties to a treaty.

46. **Mr. Ascencio** (Mexico) said that the Commission's work on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (A/59/10, Chap. VII) would greatly help States to achieve the aims of the 1992 Rio Declaration on Environment and Development. The scope of the legal regime resulting from the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities should be general and residual in character and should allow States a sufficient degree of flexibility in its application.

47. Although the question of the global commons was complex and called for separate treatment, damage to the commons should be considered at a later stage, in order to provide a comprehensive overview of the topic, which acknowledged the planet's ecological unity and the needs of current and future generations.

48. The instrument should take the form of draft articles, so that the allocation of loss received the same treatment as the prevention of transboundary harm, because the two regimes were closely bound up with each other. In order for that to be done, however, the draft principles would have to be formulated in more detailed, practical terms. His delegation concurred with the key notion that innocent victims should not suffer loss from transboundary harm and that they should receive prompt and adequate compensation. Liability must be attached primarily to the operator and should not require proof of fault. The operator should bear strict liability in keeping with international instruments on civil liability. Nevertheless, provision must be made for supplementary funding mechanisms ensuring that additional compensation could be paid by

compensation funds and, in some cases, by the State itself. The Commission's decision to include the concept of damage to the environment per se was welcome; future commentaries should therefore explore methods of assessing environmental damage, including impairment of its non-use value.

49. **Mr. Kanu** (Sierra Leone) said that his statement would cover Chapters IV, V, VII, VIII, X and XII of the report. The draft articles on diplomatic protection had contributed significantly to the codification and progressive development of international law. Draft article 16 (a) concerning the exhaustion of local remedies was flexible and clear. Although the basic rule set forth in article 9 was acceptable, further clarification was required when determining the State of nationality of a corporation, because the seat of management might sometimes be located in different jurisdictions. While article 5 laid down precise conditions for the protection of natural and legal persons, the same could not be said of the protection of shareholders; a reference to their nationality at the time of the injury, or a cross reference to the articles on natural persons, might prevent the sale of shares or a change of nationality for reasons of convenience. Article 14 should be read in conjunction with the exceptions listed in article 16. As for article 19, it was doubtful whether the State of nationality of the ship would be able to afford the crew diplomatic protection, especially when the ship's nationality was one of convenience. Moreover, the text did not make it plain whether the crew's nationality or the ship's nationality took precedence.

50. The general approach adopted by the Commission in proposing four draft articles on the responsibility of international organizations was commendable. The topics the Special Rapporteur intended to address in his third report warranted consideration, as did the responsibility of member States of an international organization for the acts of their organization as a result of their membership or of their normal conduct associated with their membership. That topic was susceptible of being regulated by the general rules of international law and there was a certain amount of existing law and practice on the subject, which would suggest that it was ripe for codification.

51. As his country shared some of its natural resources with its neighbours, it particularly welcomed the general framework provided by the Special Rapporteur on that topic. The principles of the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses offered a sound basis for a groundwaters regime.

52. Turning to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, he expressed agreement with the general thrust of the eight draft principles on the allocation of loss, especially the concept that the main liability was incurred by the operator and that the State could adopt measures to secure adequate compensation. His delegation was also in favour of the principle of prompt and adequate compensation for victims and the inclusion of damage to the environment in the principles.

53. His Government supported the establishment of a working group on unilateral acts of States, but was sceptical about the feasibility of differentiating unilateral acts of a political nature from those of a legal nature. It further believed that the subtopic "Principles of the rule of law in the international legal system" should be included within the topic of the fragmentation of international law, because such fragmentation might have significant repercussions on the rule of law. A guide to future law-making activities, in the shape of a set of principles, would be of great value to the international community.

54. The Commission's decision to cover the topics of the obligation to extradite or prosecute, the expulsion of aliens and the effects of armed conflicts on treaties was welcome. It might likewise be advisable for the Commission to consider a model code of professional conduct for advocates and counsels before the International Court of Justice, as not only did the subject meet the criteria for inclusion, but recent incidents had also revealed the urgency of ensuring the quality of States' representation before the Court. That state of affairs harmed the interests of the States concerned and might affect international relations.

55. **Mr. Khan** (Pakistan), referring to the topic of reservations to treaties, said that the Vienna Conventions of 1969, 1976 and 1986 relating to the law of treaties had served the international community well and were virtually universally accepted and observed; article 19 of the 1969 Vienna Convention had, in particular, proved itself to be flexible and posed few problems. The existing regime struck a balance between limitations on a State's ability to formulate a

reservation incompatible with the object and purpose of a treaty and the goal of universal ratification.

56. All treaties implied contractual obligations and his delegation did not believe a distinction should be made between human rights and other treaties. If States were not allowed to formulate reservations to human rights treaties, that might prove an obstacle to the goal of achieving universal ratification. His delegation likewise was not in favour of the establishment of a monitoring body to review the validity of a State's reservation to a treaty, which could also prove an obstacle to the goal of universality; it should be left to the State concerned to determine whether a reservation would be consistent with the object and purpose of a treaty.

57. Although his delegation was of the opinion that the existing regime regarding the law of treaties should not be altered, that did not mean that it opposed efforts to consider and clarify specific provisions and concepts. The final product arising out of any such review should, however, be formulated only in the form of guidelines.

58. **Mr. Melescanu** (Chairman of the International Law Commission) expressed appreciation for the views expressed by the Committee. The members of the Committee provided valuable policy guidance to the Commission in its work, and he stressed the importance of delegations submitting written statements of their positions with regard to the draft articles on diplomatic protection and on the allocation of loss in the case of transboundary harm arising out of hazardous activities, adopted by the Commission on first reading. Such statements would be very valuable to the Commission during its discussion of those articles on second reading and would, of course, be provided to the Special Rapporteur and fully taken into account. He also expressed appreciation for the free and open nature of the dialogue with the Committee during informal consultations with legal advisers present.

Agenda item 139: Responsibility of States for internationally wrongful acts (*continued*)
(A/C.6/59/L.22)

Draft resolution A/C.6/59/L.22

59. **Ms. Ramoutar** (Trinidad and Tobago) introduced the draft article on behalf of the Bureau. She noted, with regard to paragraph 3, that the Secretary-General was requested to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles on responsibility of States for internationally wrongful acts contained in the annex to General Assembly resolution 56/83 and to invite Governments to submit information on their practice in that regard; it was not, however, intended that the Secretary-General should make any attempt to interpret the articles or any decision relating to them. She recommended that the draft resolution be adopted without a vote.

Agenda item 142: Convention on jurisdictional immunities of States and their property (*continued*)
(A/C.6/59/L.16)

Draft resolution A/C.6/59/L.16

60. **The Chairman** said that the United Nations Convention on jurisdictional immunities of States and their property would be opened for signature at Headquarters on 17 January 2005 for a period of two years, until 17 January 2007; those dates would be added to article 28 and to the final clause of the Convention.

61. *Draft resolution A/C.6/59/L.16 was adopted.*

The meeting rose at 12.05 p.m.