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SUMMARY RECORD OF THE 33rd MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

CONTENTS

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 121: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES: REPORT OF THE SECRETARY-GENERAL (continued) (A/39/437)

1. Mr. EBRAHIM (Observer, Pan Africanist Congress of Azania), commenting on two fundamental issues, said that, first of all, the Pan Africanist Congress of Azania believed that the spirit of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character and the agenda item under consideration were both based on the desire to achieve the universality of the United Nations by recognizing the genuine representatives of oppressed, exploited and dispossessed peoples. He therefore appealed to Member States speedily to ratify the Vienna Convention or to accede to it, since that would greatly help the national liberation movements to perform their tasks and their duties.

2. In the second place, he drew the Committee's attention to document A/39/437 and welcomed the fact that Argentina, the Byelorussion SSR, Mexico, the Ukrainian SSR and the Soviet Union supported the Vienna Convention. However, he pointed out that the reply from Hungary was not in keeping with the spirit of that Convention. In accordance with the principles of the United Nations, the people of Azania should be free, to choose their own leaders and system of government and to exercise their right to self-determination. He expressed the hope that Hungary would respect the inalienable right of the people of Azania to determine their own destiny.

3. The CHAIRMAN said that the Committee had thus concluded its consideration of agenda item 121.

AGENDA ITEM 131: UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS: REPORT OF THE SECRETARY-GENERAL (continued) (A/39/491)

4. Mr. ALEXANDROV (Bulgaria) observed that the draft articles on the law of treaties between States and international organizations or between international organizations, which had been prepared by the International Law Commission (ICD), made a valuable contribution to the codification and progressive development of international law in two particularly important areas, namely, the law of treaties and the legal status of international organizations. The draft articles constituted an independent and finalized system of legal norms. They set out in detail the legal status of international organizations, which was different from that of States both in substance and in form, and they could therefore serve as a solid basis for the elaboration and adoption of an international convention on that subject.

5. However, his delegation felt obliged to make some critical remarks about the text. In order to reflect the factual situation more adequately and to avoid future difficulties in the interpretation and implementation of the respective

(Mr. Alexandrov, Bulgaria)

provisions, a distinction should be made between the scope and the content of the competence of States and those of the competence of international organizations as concerned the law of treaties, as well as between the legal grounds for their respective participation in treaty relations, taking duly into account the fact that the international legal capacity of States stemmed from their sovereignty, while that of international organizations was secondary and always derived from the common will of the States parties to the constituent document.

6. Moreover, the draft articles should explicitly stipulate that a treaty which violated the constituent document of the international organization concerned was invalid. Thus, the precedence of constituent documents over any treaty to which a particular international organization was a party would be expressly provided for, and the sovereignty of Member States would be safeguarded.

7. In resolution 38/139, the General Assembly had decided that the appropriate forum for the final consideration of the draft articles would be a conference of plenipotentiaries to be convened not earlier than 1985 and had agreed to decide at its thirty-ninth session upon the question of the date and place for the convening of the Conference as well as upon the question of participation in it. His delegation believed that all interested countries should be invited to participate in the Conference. However, the participation of a large number of international organizations at a diplomatic conference would not only complicate the drafting of a treaty but would also unjustifiably place international organizations on the same footing as States. In order to avoid that situation, his delegation believed that a very limited number of international organizations should be invited to participate in the Conference, without giving them all the rights enjoyed by States.

8. As to the question of the date of convening, his delegation was open to any suggestion and would support any proposal which could receive general approval. However, it did believe that before the convening of the Conference, consideration should be given to some of the important problems related to the substance of the draft articles and ways should be found of solving them by drafting a text that would reflect more adequately the status of international organizations in contemporary international law. Those questions could be discussed at either official or unofficial consultations or in any other appropriate way. However, it would be helpful to set the date for the convening of the Conference, because that would help to organize the preparatory work on the draft articles and would produce tangible results.

9. Mr. RAO (India) observed that, in resolution 38/139, the General Assembly had agreed to decide at its thirty-ninth session upon the question of the date and place for the convening of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, as well as upon the duration of that Conference. The consultations which had been held in 1984 could be profitably continued in 1985 in a climate of understanding, but their main purpose should not go beyond the identification of practical difficulties and the formulation of possible solutions for the benefit of potential participants.

(Mr. Rao, India)

10. The search for possible solutions to the problems identified during the consultations would be greatly facilitated, if the General Assembly set a date and decided at the current session on the place and duration of the Conference. He was open to any suggestion which might be made on those questions. He personally felt that the Conference could be held in 1986 at Vienna for a minimum period of six weeks, as was customary for diplomatic conferences.

11. With regard to the participation of international organizations, he felt that approximately 30 of them should be invited to participate in the Conference as observers, with all the same rights as participants, except the right to vote. They would be able to submit proposals and amendments and, after the adoption of the convention, could express the desire to be bound by it in accordance with the procedure laid down in their own constituent instruments. In that connection, articles 305 and 306 of the United Nations Convention on the Law of the Sea provided acceptable formulations, which had been negotiated on the basis of consensus and which could be used as a guide for that purpose. There was no reason to reopen the debate on those formulations, particularly when there were no new factors to justify it.

12. He reiterated the importance his delegation attached to the convening of the Conference in 1986. His delegation endorsed the continuation of consultations, in either formal or informal forums. In that connection, it would be useful to invite members of the International Law Commission, particularly the Special Rapporteur, to participate in the consultations, since they could make a valuable contribution to the discussion. The convening of the Conference should not be subject to any pre-condition. If "agreements" were reached through a natural, voluntary and non-binding process of joint discussion, his delegation would welcome them. His delegation hoped that such a meeting of minds would be possible, since the issues involved were not so critical as to cloud the common commitment, first, to enhance the value and prestige of the Commission as an institution created by the United Nations to promote the orderly codification and systematic and progressive development of international law and, secondly, to promote that process by means of widely acceptable general agreements.

13. Mr. ROSENSTOCK (United States of America) said that in the contemporary world the importance of international organizations as fully fledged participants in international life, as capable as any other legal person of entering into treaties and assuming responsibility for their conduct must be recognized. However, the suggestion that recognition of the legal capacity of an international organization must be linked to recognition of the legal capacity of various groups which were neither States nor organizations established by States but groups seeking to overthrow Governments was a source of concern. The price to be paid was much too high and no one should insist that it should be paid. Such transparent efforts at transitory political advantage were the enemy of the codification and progressive development of international law.

(Mr. Rosenstock, United States)

14. The topic of treaties between States and international organizations was extremely important and should not be used to plead causes unrelated to the problem, however important they might be. The topic must therefore be handled in such a way as to yield satisfactory results. If a treaty was adopted by only a two-thirds majority and if hardly any States ratified it, there could scarcely be talk of success. Special care must, therefore be taken with the preparatory work. The Sixth Committee could do that work, but he was open to any other suggestion and was prepared to accept the idea of a plenipotentiary conference, if that was the wish of other delegations.

15. A succinct protocol to the Vienna Convention on the Law of Treaties was preferable to a long text which would merely reproduce the provisions of that Convention, but he would not insist on that point provided that there were no inconsistencies between the new draft and the Vienna Convention. He hoped that other delegations would be as open-minded as his. In his opinion, it would be useful to request the International Law Commission to examine the protocol and submit a report on the question to the General Assembly at its fortieth session.

16. He doubted whether it would be wise to set the date for a conference at the current stage, but was open-minded on that question.

17. His delegation appreciated the extremely valuable consultations on which the Legal Counsel had reported. The success of work in that field depended on continuation of the consultations. In that connection, he welcomed the suggestion that the Commission's Special Rapporteur should be invited to participate in the consultations and supported the Algerian representative's proposal that as far as possible consultation should be held in clusters.

18. Mr. SAINT-MARTIN (Canada) said that his Government favoured the adoption, under the auspices of the United Nations, of an instrument on the law of treaties between States and international organizations or between international organizations based on the draft articles adopted by the International Law Commission. It was appropriate to convene a plenipotentiary conference for that purpose.

19. His delegation considered, however, that it would be pointless to convene a conference unless the participants were prepared at the outset to come to an agreement that would actually regulate relations between States and international organizations, in other words, to conclude a treaty which would enter into force and be given practical effect. It therefore attached the greatest importance to the preparation of the conference. It was aware of the efforts made to that end by many delegations and of the steps taken by the Legal Counsel. In introducing agenda item 131, the Legal Counsel had drawn attention to a number of difficulties in that respect. The first was the date to be set for the holding of the conference and in that connection his delegation pointed out that the General Assembly should, at its fortieth session, examine whether the preparations for the conference justified its being held on the date decided upon.

(Mr. Saint-Martin, Canada)

20. On the question of the participation of international organizations, he considered that the fact that such organizations could not be formally associated with the decision-making process and could not, therefore, vote in a plenipotentiary conference convened under the auspices of the United Nations did not mean that they should be denied the possibility of making proposals and submitting amendments. In that respect, their representatives could very well participate on an equal footing with those of States. In view of the subject-matter of the conference that would even be necessary.

21. The Legal Counsel had said that approximately 30 organizations were normally invited to formulate comments on texts of the International Law Commission and that those organizations should therefore be invited to participate in the conference. In the opinion of his delegation, that list should be made available to the Committee for its perusal. It would also be advisable to inform the Committee of the relationship between each of those organizations and the United Nations so that the Committee would know the extent to which each of them already contributed to the codification work being carried out at the United Nations.

22. He emphasized that the work of the plenipotentiary conference would be fruitful only if its goals were defined in advance. The preparatory discussions were therefore essential and his delegation would not fail to lend them its support and co-operation. In order to avoid useless repetition in the future convention of existing provisions, particularly those of the Vienna Convention on the Law of Treaties, his delegation considered that the new instrument should contain only draft articles which added new elements to the international law already in force. He proposed that the Committee should decide to proceed along those lines.

23. Turning to the question of the conference's methods of work and rules of procedure, he said that his delegation hoped that the General Assembly would stress, in the resolution adopted on the item under discussion, that it was important that the conference's decisions should result from the general agreement of the participants. It would also be necessary to provide in that resolution for full consultation machinery which would promote and encourage the holding of the conference in an atmosphere of co-operation.

24. Mr. DE PAIVA (Brazil) noted that the results of the International Law Commission's work on the question of the law of treaties between States and international organizations or between international organizations had been submitted to the Sixth Committee two years earlier and that informal consultations had taken place in 1984 on the draft articles; it seemed, therefore, that the time had come to take a decision on the date of the conference to be convened to draw up a convention on the subject, as requested by the General Assembly in resolution 38/139. In the opinion of his delegation, that conference could be held in 1986 on a date to be agreed upon with the host country. The Sixth Committee was also asked in resolution 38/139 to take a decision on the question of participation in the conference. In that connection, his delegation considered that provision should be made for the participation of those international organizations traditionally invited to submit comments on drafts prepared by the International Law Commission.

(Mr. de Paiva, Brazil)

25. In introducing the Secretary-General's report (A/34/491), the Legal Counsel had drawn attention to other points connected with the holding of the conference which had been discussed either in the Sixth Committee or in informal meetings organized by the Legal Counsel. His delegation recognized the value of such consultations as an effort to bridge gaps between different positions and to pave the way for a constructive dialogue at the conference itself. It would, however, be difficult for it to agree that the decision concerning the date of the conference depended on the outcome of those consultations. If the intention was to continue the consultations, they should be open to all interested delegations and should be able to count on the participation, even if only for a short period, of the Special Rapporteur on the topic, Mr. Paul Reuter. It did not seem that formal meetings would be very useful at the current stage. Informal meetings also had limitations, but they did at least allow a dialogue to be started.

26. Mr. KOLOSOV (Union of Soviet Socialist Republics) said that in the course of the consultations which had been held in accordance with General Assembly resolution 38/139, certain questions concerning the draft articles on the law of treaties between States and international organizations or between international organizations had been looked at from a new angle. In the course of several decades, a well-defined practice had developed in the matter. The codification of norms governing that kind of juridical relations was useful in principle; however, it was not a question of drawing up a carbon copy of the 1969 Vienna Convention on the Law of Treaties which, as was known, applied to relations between States, but of reflecting, in a new convention, the specific character of the treaty relations in which international organizations participated. Very little of the 1969 Vienna Convention was applicable to relations to which international organizations were parties. Account must be taken of the specific character, in law, of international organizations, which were derivative subjects of international law. That was clear from the fact that the capacity of international organizations with respect to the conclusion of treaties was strictly limited by the instruments establishing such organizations and was not, moreover, the same for all organizations. It depended essentially on the purposes and functions of the organization in question.

27. The Soviet delegation had some comments to make on the draft articles adopted by the International Law Commission in 1982. Article 66 (a) provided for compulsory arbitration for disputes concerning the application or the interpretation of treaties. However, practice showed that a much more efficient way of settling disputes was to apply a method of settlement selected by agreement between the parties. If that was valid for inter-State relations, it was even more so in the case of international organizations. The decision of an international organization to select a particular means of settling a dispute with another party might be so fundamental in nature that it could be taken only by the highest authority in the organization. Could a decision to resort to arbitration be taken unanimously? It was well known that many members of international organizations were opposed to compulsory arbitration. On the other hand, the adoption of such a decision within the organization by means of a vote was not admissible, in his delegation's view, because it would be contrary to the free choice of means of settlement, a principle which was reaffirmed in the Manila Declaration on the

(Mr. Kolosov, USSR)

Peaceful Settlement of International Disputes, which the General Assembly had approved in 1982 in its resolution 37/10. The conciliation procedure referred to in article 66 (b) could also be criticized. It might happen that a dispute between an organization and a State was submitted to the conciliation procedure against the wishes of a State which had expressed its disagreement first within the organization of which it was a member, at the time when the latter decided to have recourse to conciliation, and then at the following stage, in dealings between the State and the international organization. The choice of settlement procedure would thus be decided by coercive means. Article 6 also needed to be amended. The capacity of an international organization to conclude treaties certainly depended on its constituent instrument and not on its rules; those rules related to internal law, the administrative aspect of the organization. That was therefore a contradiction between article 6 and article 27, paragraph 2, of the draft articles. The draft made no distinction between treaties concluded on a specific, concrete question and universal treaties concerned with broad issues of international law; the rights of international organizations with respect to those two types of treaty were, however, not identical. Considerable work therefore remained to be done on the Commission's draft.

28. The participation of international organizations in the conference was no reason for submitting imperfect and contradictory draft articles to that conference. Such participation by organizations, in one capacity or another, would only complicate the work of preparing a definitive draft. In his delegation's view it seemed impossible to complete that draft and to adopt a convention in a single session. Among the problems raised during the consultations had been the question of parallelism and the wider question of the status and role of international organizations as subjects of international law. More than one session would certainly be needed to resolve all those problems, and if a second or even a third session was held, that would certainly involve considerable expense.

29. The draft took, no account of a very important practice, namely the drafting of conventions on the peaceful uses of outer space within the competent United Nations Committee. A peculiarity of those conventions was that international organizations were obliged to accept the rights and duties set forth in them without becoming equal parties. That particular aspect of the problem should be examined. His delegation considered that the Sixth Committee could make an important contribution to improving the draft convention.

30. The Working Group on the Review of the Multilateral Treaty-making Process had studied a particular provision according to which all possible means should be used to ensure the success of the process of elaboration of a draft before that draft was transmitted to another body for formal adoption. His delegation considered that in that particular case all possible means which might lead to that result had not been tried.

(Mr. Kolosov, USSR)

31. His delegation also considered that only the United Nations was competent to prepare universal and general rules of international law. Other international organizations had only specialized competence, as could be seen from their constituent instruments. Therefore, in his delegation's view, those international organizations could participate in the conference - it it was convened - only as observers. It was too early to decide on the date of the conference. In the opinion of many delegations, it would be premature to convene it in 1985 and there was not even agreement on 1986 or 1987. There was no hurry, as current practice with respect to the conclusion of treaties between international organizations was not giving rise to problems. As the representative of the EEC had pointed out, that organization had concluded nearly 800 treaties without encountering any difficulties. The Committee's current task was to agree on a draft which really reflected the treaty relations of international organizations and which did not merely duplicate the provisions of the 1979 Vienna Convention; otherwise there was a risk of having a convention formally adopted which did not enjoy the universal recognition essential for such an instrument.

32. Mr. TUERK (Austria) recalled that, at the thirty-seventh session of the General Assembly, the Austrian delegation had said that the draft articles presented by the Commission with respect to the law of treaties between States and international organizations or between international organizations were on the whole satisfactory and that it supported the Commission's recommendation that a conference to conclude a convention on the subject should be convened. It had therefore welcomed General Assembly resolution 38/139 whereby the Sixth Committee should decide at the current session on the date and place of the conference to be convened. That resolution also appealed to potential participants in the Conference to undertake consultations on the draft articles concerned and other related questions. The consultations held through the efforts of the Legal Counsel had helped to clarify the positions of delegations. His delegation wished to express its views on certain points raised during those consultations. At a codification conference on the law of treaties between States and international organizations or between international organizations, no legal problems of a general nature should be raised; the conference should confine itself to its specific task. In particular, any introduction of divergencies between the régime of the 1969 Convention on the Law of Treaties and any future convention should be avoided, because that could have extremely detrimental effects on treaty law as a whole.

33. With regard to the participation of international organizations in the conference, his delegation endorsed the formula mentioned by the Legal Counsel, namely that the approximately 30 organizations habitually asked to comment on draft texts prepared by the Commission should be invited. However, participation need not necessarily be limited to those organizations. His delegation had previously stated that the international organizations participating in such a conference should enjoy full rights, except the right to vote. It would not be wise to restrict the role of international organizations at the conference in a manner which would cause them to lose interest; on the other hand, such a convention would not be a treaty between States and international organizations within the meaning of the draft articles, but a law-making treaty with respect to which

(Mr. Tuerk, Austria)

decision-making should remain the exclusive prerogative of States. In any case, the elaboration of the convention should be guided by the principle of general acceptability because a convention which was not signed and ratified by a substantial number of States or which was disregarded by international organizations would serve little purpose.

34. The Austrian Government was prepared to examine the possibility of inviting to Vienna a conference of plenipotentiaries to prepare a convention on the subject, as it had stated at the thirty-seventh session of the General Assembly. During the informal consultations, different opinions had been voiced regarding the date of the conference, although there seemed to be a widespread feeling that 1985 would be too early. If the Sixth Committee decided that the conference should be convened in early 1986, he would immediately inform the Austrian Government so that it might make the decision to invite the conference officially. With adequate preparation, a duration of five weeks should be sufficient. If the Committee felt that more time would be required to prepare for the conference, it would have to be postponed until 1988, because it would be impossible for technical reasons to hold such a conference in Vienna in 1987. If the Committee decided on the first half of 1986 and the Austrian Government extended an official invitation, the exact date and venue of the conference could be added to the draft resolution before its adoption by the plenary General Assembly.

35. Mr. ABDEL RAHMAN (Sudan) said that his delegation wished to congtratulate the International Law Commission on its excellent draft articles on the law of treaties between States and international organizations or between international organizations. It also considered that if the Sixth Committee decided to convene a conference of plenipotentiaries for the purpose of adopting a convention it should be done in 1986 at the latest.

36. With regard to the participation of international organizations, his delegation considered that those organizations should be given the opportunity to participate in the conference so as to ensure that it succeeded in its task, namely the conclusion of a convention which was truly acceptable and applicable. Lastly, it thought that the informal consultations which had been productive so far should be continued with a view to convening the proposed conference.

AGENDA ITEM 130: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SIXTH SESSION (A/39/10, 412 and 306)

37. Mr. YANKOV (Chairman of the International Law Commission) wished, on his own behalf and on behalf of the other members of the ILC, tp extend his sincere condolences to the Government and people of India as well as to the family of Mrs. Indira Gandhi. Mrs. Gandhi, a jurist by training, had fought to ensure the primacy of law in international relations.

38. He also paid tribute to the memory of Mr. Quentin-Baxter whose passing was an enormous loss to the ILC.

(Mr. Yankov)

39. Turning to the presentation the report of the International Law Commission (A/39/10), he stressed the importance which the Commission attached to the comments of Member States on its work, whether in writing or expressed orally in the Sixth Committee.

40. With regard to chapter II of the report, he recalled that, after the adoption of the definition of aggression in 1974, the General Assembly had renewed its interest in the question of drafting a code of offences against the peace and security of mankind and in 1981 it had invited the ILC to resume its work on the question, suspended since 1954, with a view to elaborating the 1954 draft code, and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law. The Commission's work on that topic had been guided by the Special Rapporteur, Mr. Doudou Thiam.

41. Although not yet at the stage of formulation of draft articles, the ILC had achieved a good measure of progress in its preliminary task of deciding on the content ratione personae of the draft code, on the methodological process and stages of its elaboration as well as in re-examining its earlier work of 1954, from the perspective of the progressive development of international law and in reaching conclusions as to which acts should be included in the draft code.

42. With reference to the content ratione personae of the code, the ILC had opted for a practical solution which limited the scope of the draft code, at least at the current stage, to the criminal responsibility of the individual. The Commission did not deny the possibility that State responsibility, in the traditional meaning of that expression in international law, might be engaged through the acts of the individual. For the time being, however, it declined to apply the concept of criminal responsibility to acts of the State. In deciding to so limit the scope of its work on the topic, the ILC had had in mind the difficulties of the applicability to the State of concepts such as extradition, prescription and penalties.

43. As to the content ratione materiae, for methodological reasons the Commission had decided to begin by preparing a list of international crimes while bearing in mind the drafting of an introduction summarizing the general principles of international criminal law relating to offences against the peace and security of mankind. Paragraphs 34 to 37 of the Commission's report gave a clear idea of the difficulties encountered by the Commission when selecting that approach and the different views which had been expressed in that connection. In the end, it had felt that it was necessary to determine first the offences that would come within the scope of the draft code before taking up the question of the applicability to such offences of general concepts such as extenuating circumstances and justifying facts, and before proceeding to the determination of the general criteria to be contained in a general definition of an offence against the peace and security of mankind. Therefore, the approach adopted by the ILC, at the current stage, was to begin by sifting the acts constituting serious breaches of international law, making an inventory of the international instruments (conventions, declarations, resolutions, etc.) which regarded those acts as international crimes and selecting the most serious of them since not every international crime was necessarily an offence against the peace and security of mankind.

(Mr. Yankov)

44. At its thirty-sixth session, the ILC had begun consideration of the question of what acts should be included in the draft code and had reached certain preliminary conclusions on that question (paras. 42 to 64 of the report). It had done so without prejudice to leaving for a later stage, on the basis of further work by the Special Rapporteur, the undertaking of more appropriate legal designations of those offences.

45. The ILC had discussed the three categories of offences covered by the 1954 draft code: crimes against the sovereignty and territorial integrity of the State; crimes against humanity; and crimes defined by the generic expression "offences violating the laws or customs of war". Without prejudice to some reservations as to form and substance regarding the above-mentioned categories of offences (paras. 43 to 48 of the report), the ILC as a whole had considered that the 1954 draft code provided a good working basis and that the offences it had proposed should be retained. A further step in the Commission's work would be the study of how those offences should be formulated and, if necessary, reclassified.

46. The ILC had gone on to examine the desirability of including in the draft code certain offences not covered by the 1954 draft code but described in other relevant international instruments which had appeared since that year, such as those listed in paragraph 50 of the Commission's report. The ILC had discussed at length and had reached certain preliminary conclusions regarding a number of offences which, in its view, should constitute the draft code's "minimum content", namely colonialism, apartheid, use of atomic weapons, acts against the environment, mercenarism, the taking of hostages, violence against persons enjoying diplomatic privileges and immunities, economic aggression, piracy and hijacking (paras. 52 to 62 of the report). On the other hand, the Commission had clearly pronounced itself against the possibility of establishing what had been described as a "maximum content" which would include, for example, forgery of passports, dissemination of false or distorted news, insulting behaviour towards a foreign State, etc., since it felt that such an initiative would result in a blurring of the distinction between an international crime and an offence against the peace and security of mankind, which was distinguished by its especially horrible, cruel, savage and barbarous nature (para. 63 of the report). The ILC's conclusions on the topic of "minimum content" were contained in para. 65 (c) of its report. While a general trend had emerged within the Commission in favour of the inclusion of colonialism, apartheid and possibly serious damage to the human environment and economic aggression in the draft code, if appropriate legal formulations could be found, the preliminary conclusions of the Commission with regard to other proposed offences had been less affirmative, including the questions of the taking of hostages, violence against persons enjoying diplomatic privileges and immunities and the hijacking of aircraft which, as the Commission had stressed, were related to the phenomenon of international terrorism and should be approached from that perspective. On the question of mercenarism, the Commission had concluded that whenever that practice was used to infringe upon State sovereignty, undermine the stability of Governments or to oppose national liberation movements, it constituted a crime against the peace and security of mankind. The Commission had considered,

however, that account must be taken of the work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The question whether the use of atomic weapons constituted an offence against the peace and security of mankind had given rise to a very interesting discussion (paras. 54-57 of the report). However, division of opinion had prevented the Commission from reaching a conclusion on that problem. Some members had invoked considerations of realism and expediency against the outlawing of atomic weapons. They had also invoked the deterrent character of those weapons and the non-existence of agreements for the prohibition of atomic weapons within the framework of general disarmament. Other members instead had considered that it was inconceivable for a code of offences against the peace and security of mankind to remain silent on that problem and that the ILC could not remain indifferent to the question of the legality or illegality of the use of such weapons of mass destruction - at least in the case of a State which made first use of them. Consequently, the ILC had decided that it should first consider the matter in the light of any views expressed in the General Assembly. In that regard, he stressed that the Commission relied on the guidance which the Assembly might provide for dealing with that important matter in the most appropriate manner.

47. Turning to chapter III, he noted that while it was his duty to speak on the topic covered with the detachment and objectivity inherent in his function as Chairman of the Commission, his capacity as Special Rapporteur placed him in a good position to appreciate the amount of time and energy which the Commission had devoted to it at the 1984 session and the substantial progress it had made. Despite the remaining problems, work on the topic seemed to be on the right course, and to be progressing at a steady and vigorous pace. It would be recalled that at the 1983 session, the Commission had provisionally adopted on first reading eight draft articles dealing with the scope of the articles, use of terms, freedom of official communications, the duty to respect the laws and regulations of the receiving State and the transit State, non-discrimination and reciprocity, documentation of the diplomatic courier and appointment of the diplomatic courier. At the 1984 session, the Commission had provisionally adopted on first reading 11 additional articles dealing with the nationality of the diplomatic courier, the functions of the diplomatic courier, the end of the functions of the diplomatic courier, the declaration of the courier as persona non grata or not acceptable, the facilities to be accorded to the courier, his entry into the territory of the receiving State or the transit State, his freedom of movement, personal protection and inviolability, inviolability of temporary accommodation, exemption from personal examination, customs duties and inspection, and exemption from dues and taxes. However, the Commission had not confined itself to considering the draft articles it had provisionally adopted. It had also completed an in-depth examination of 15 draft articles submitted by the Special Rapporteur, which it had decided to refer to the Drafting Committee; 10 of them (arts. 26-35) still remained to be considered by that Committee. Furthermore, the Commission had begun its consideration of the last seven draft articles (arts. 36-42) contained in the Special Rapporteur's report (A/CN.4/382). Lastly, the Commission had been unable to reach a decision on article 23, which it planned to examine again at its 1985 session. The exchange of ideas on those articles within the Commission was reflected in paragraphs 78 to 186 of its report.

(Mr. Yankov)

48. Regarding to the provisionally adopted articles, the Commission's constant preoccupation had been to base itself, to the extent possible, on provisions applicable to analogous situations contained in the existing conventions on diplomatic and consular law adopted under the auspices of the United Nations.

49. Article 9 extended to the diplomatic courier the generally accepted rule applicable to diplomatic agents that, in principle, they should be nationals of the sending State. Therefore, diplomatic couriers could not be appointed from among persons having the nationality of the receiving State except with the consent of the latter. The receiving State was further given the option to require that its consent should also be requested in case of appointment by the sending State of nationals of the sending State who were permanent residents of the receiving State or nationals of a third State who were not also nationals of the sending State.

50. Article 10 should be read in conjunction with article 3, paragraph 1 (1), which defined the term "diplomatic courier". The Commission had taken special care to use uniform terminology in both articles, defining in article 10 the function of the courier as "taking custody of, transporting and delivering at its destination the diplomatic bag entrusted to him".

51. Article 11, which had a non-exhaustive character, focused on two possible cases in which the functions of the diplomatic courier came to an end: either through an express termination by the sending State or through a notification by the receiving State to the sending State that, in accordance with article 12, it refused to recognize the person concerned as a diplomatic courier.

52. Article 12 extended to the diplomatic courier's legal régime a well-known institution of diplomatic law, the declaration of persona non grata or not acceptable, in cases where the courier did not possess diplomatic rank. The provision was a clear example of the Commission's constant preoccupation to establish a balance between the interests of the sending State and those of the receiving State. It provided the latter with the possibility of terminating the functions of a diplomatic courier at any time without having to explain its decision. It could likewise be invoked to terminate the courier's functions when he was already in the territory of the receiving State and also to prevent a diplomatic courier objectionable to the receiving State from assuming his functions.

53. Article 13 dealt with facilities to be accorded to the diplomatic courier by the receiving or the transit State. Paragraph 1 was of a generic character and was intended to cover different kinds of assistance or co-operation, of either a technical or an administrative nature, that the courier might need in connection with his journey. Paragraph 2 referred to two specific kinds of help: assistance in obtaining temporary accommodation and assistance in establishing contact through the telecommunications network with the sending State and its missions, consular posts or delegations. Some members had reserved their position with regard to paragraph 2 of the article or the article as a whole. The Commission had nevertheless stated clearly in paragraph (3) of its commentary (p. 115 of the report) that the main requirement with respect to the nature and scope of the

(Mr. Yankov)

facilities was their close dependence on the need for the proper performance of the functions of the courier and that the obligation to provide them was confined to what was reasonable, having regard to the given circumstances. The text of paragraph 2 was unequivocal on the point, since it specified that the facilities in question were to be accorded "upon request and to the extent practicable", which meant that the obligation to grant the facilities concerned was an obligation as to the means and not as to the result. The request for assistance must be justified on the grounds of difficulties or obstacles which the courier could not overcome without the direct help or co-operation of the authorities of the receiving or the transit State.

54. Articles 14 and 15, dealing respectively with entry into the territory of the receiving State or the transit State and with freedom of movement, required no commentary because they had not met with any objections.

55. Article 16, the text of which corresponded not only to established practice but also to provisions regarding the diplomatic courier contained in the multilateral conventions on diplomatic and consular law, was undoubtedly one of the essential provisions of the draft. The commentary to article 16 brought out its full scope by elaborating on the twofold nature of the concept of inviolability in so far as the obligations of the receiving and the transit State were concerned: on the one hand, there were negative obligations not to arrest or detain the courier, not to coerce him or otherwise restrict his person and, on the other hand, there was a positive obligation of protection. It was also clear that the principle of the courier's inviolability did not exclude either measures of self-defence or, in exceptional circumstances, measures to prevent him from commiting offences.

56. Article 17 was intended to cover those cases in which the courier was not lodged in accommodation already possessing inviolability on the basis of provisions of diplomatic or consular conventions, but was instead using temporary accommodation such as a hotel or a private apartment. There had been a division of opinion in the Commission on the question of whether temporary accommodation should enjoy inviolability. While it had provisionally adopted article 17, the Commission recorded in paragraph (5) of its commentary (p. 125 of the report) that it had decided on a drafting that did not gather the agreement of all its members on all the paragraphs of the article or on the article as a whole. It should nevertheless be pointed out that each of the three paragraphs comprising article 17 contained elements which counterbalanced elements in the other paragraphs. The Commission had made a real effort to take due account of considerations of public safety and compliance with the internal laws and regulations of the receiving State and the transit State without endangering the inviolability of the courier's person or the safe and speedy delivery of the bag.

57. Article 19 dealt with two matters: the exemption of the courier from personal examination and customs inspection, on the one hand, and, on the other hand, exemption from customs duties, taxes and related charges on articles for the personal use of the courier imported in his personal baggage. Exemption from

(Mr. Yankov)

personal examination was a direct consequence of the courier's inviolability. The other two exemptions extended to the courier privileges and immunities enjoyed by members of diplomatic missions, adapted to the specific situation of the courier, particularly his characteristically short stay in the receiving or the transit State.

58. Lastly, with regard to article 20, the final formulation provisionally adopted by the Commission after careful negotiations corresponded to two of its main concerns regarding the topic. On the one hand, the importance of the functions of the courier made it appropriate to grant him a tax-exempt status at least comparable to that enjoyed by the administrative and technical staff of a diplomatic mission. On the other hand, given the typically short stay of the diplomatic courier in the receiving or the transit State and the specific character of his mission, the article had to reflect the fact that the purpose of the exemption was not to create a tax haven for couriers but to remove any tax-related obstacles that the courier might encounter in the performance of his functions.

59. He drew attention to two aspects of the Commission's work concerning the status of the diplomatic courier on which the Commission would particularly welcome the views of the members of the Committee, given their importance for the future work on the topic. The first aspect concerned the question of immunity from jurisdiction of the diplomatic courier, which was the subject of article 23 proposed by the Special Rapporteur and on which the Commission had not yet taken a decision. Paragraphs 1 and 4 of the text submitted to the Commission by the Drafting Committee (para. 188 of the report) appeared in brackets because the Drafting Committee had not reached a conclusion with regard to them. It had therefore requested the Commission to express its views on those two paragraphs. The lengthy discussion conducted by the Commission (para. 190-193 of the report) had focused mainly on paragraph 1, concerning immunity from criminal jurisdiction, although other paragraphs and the article as a whole had also been discussed. Since it had not been able to reach a decision on article 23, the Commission had decided to resume consideration of it at its 1985 session. The second aspect concerned draft article 36 presented by the Special Rapporteur, on the inviolability of the diplomatic bag (footnote 84 to the report). That article, which had been called the "key provision" of the whole set of draft articles, had given rise to lengthy discussions and numerous proposals for amendment which focused mainly on paragraph 2 (paras. 136-143 of the report). The consideration of article 36 and articles 37 to 42 would continue at the 1985 session.

60. The Commission had made considerable progress in its work on jurisdictional immunities of States and their property, thanks to the competence and well-informed views of the Special Rapporteur, Mr. Sompong Sucharitkul. It had considered the sixth report of the Special Rapporteur (A/CN.4/376 and Add.1 and 2), which contained five articles, as indicated in paragraph 202 of the report. The Commission had been able to complete the consideration of three of those articles, which had been sent to the Drafting Committee and had subsequently been adopted in their current form: those were articles 16, 17 and 18. In 1985, the Commission would have to resume work on the two articles submitted in the sixth report which still had to be considered, namely article 19, entitled "Ships employed in commercial service", and article 20, entitled "Arbitration".

(Mr. Yankov)

61. At its 1984 session, the Commission had provisionally adopted article 16, entitled "Patents, trade marks and intellectual or industrial property", article 17, entitled "Fiscal matters", and article 18, entitled "Participation in companies or other collective bodies", on the basis of the sixth report of the Special Rapporteur. In addition, two articles which had been left pending in the Draft Committee since the 1983 session had been adopted provisionally. Those were article 13, on "Contracts of employment", and article 14, on "Personal injuries and damage to property". The five articles adopted provisionally were for inclusion in part III of the draft, tentatively entitled "Exceptions to State immunity".

62. The topic under consideration, and in particular the question of exceptions to State immunity, involved major doctrinal, practical and methodological issues. The complex nature of the topic meant that the Commission's work would not be without difficulty. As indicated in the commentary to some of the articles adopted at the 1984 session, some Commission members had disagreed with certain articles and were still not convinced that the Commission had adopted the right approach to the topic.

63. Nevertheless, it had been felt that the work should continue on the basis of the traditional sources indicated in the Statute of the Commission, namely State practice, judicial decisions and doctrine. The Commission was most anxious to learn the views of Governments on its work on that topic, particularly with regard to certain issues on which divergent views and reservations had been expressed, as indicated in the report.

64. The five new articles with commentaries were contained in chapter IV, section 2, of the report and the text and commentaries were perfectly clear.

65. Article 13 related to contracts of employment and sought to strike a delicate balance between the interests of a State which employed individuals for services to be performed in the territory of another State and the interests of the other State. Paragraph 1 established a rule of non-immunity for the employer State before the courts of a State in whose territory the employee was working, provided that the employee had been recruited in the State of the forum and was covered by the social security provisions in force in that State; in all other cases immunity was retained. Thus, territorial and social security links must exist between the State of the forum and the employee in order to lift the immunity of the employer State.

66. Even assuming that the conditions of paragraph 1 had been met, the employer State might still be immune by reason of any of the factors listed in paragraph 2 of the article. The overriding factors militating in favour of State immunity related to the nature of the services to be performed, the nature of the remedy sought, the nationality or place of habitual residence of the employee and any written agreement between the employee and his employer State. As noted in paragraph (17) of the commentary, a few members had expressed reservations concerning that article.

(Mr. Yankov)

67. Article 14, on "Personal injuries and damage to property", provided for an exception to the immunity of a State in the courts of another State provided two important territorial criteria were present: the act or ommission which caused the personal injury or damage to property complained of, and which was attributable to the State, must have occurred wholly or partly in the State of the forum and the author of that act or ommission must have been present in the territory of the State of the forum at the time of the act or ommission. Thus, transboundary injuries to persons or property were excluded from the scope of that article. A few members of the Commission had expressed reservations concerning that article, as could be seen in paragraph (10) of the commentary.

68. Article 16 related to "Patents, trade marks and intellectual or industrial property". There again, important territorial links must exist between the activity in question and the State of the forum for the immunity of the State to be lifted.

69. Subparagraph (a) dealt with the relatively uncontroversial case of a State which possessed a right in one of the forms of property covered by the article and which enjoyed a measure of legal protection in the State of the forum. The determination of a foreign State's rights which were protected by the law of the State of the forum would properly come before the courts of the latter State.

70. On the other hand, subparagraph (b) concerned an alleged infringement by a State in the State of the forum of a right which belonged to a third person and was protected in the latter State. There again, territoriality played a key role. It must be stressed that the article only applied (a) when the State of the forum itself accorded legal protection to rights owned by a third person, and (b) when the infringement took place in the territory of the State of the forum. It was not intended to deal in any way with the determination of property rights by a court of a State which had not accorded such protection or by a court of a State in whose territory the alleged infringement had not occurred. That was without prejudice to the rights of States to formulate their own domestic laws and policies regarding the protection or non-protection of any intellectual or industrial property.

71. Lastly, as noted in paragraph (10) of the commentary, the article was also without prejudice to the extraterritorial effect of nationalization by a State of intellectual or industrial property within its territory. The Commission had agreed that a general reservation to that effect should be included in the draft (see the Special Rapporteur's text in footnote 182).

72. Article 17 concerned fiscal matters and was generally considered to express a recognized rule concerning the fiscal obligations of a State which might arise, for example, from the establishment of a business or office in the territory of another State. The commentary defined clearly the scope of the article and noted that some members had expressed reservations.

(Mr. Yankov)

73. Article 18, entitled "Participation in companies or other collective bodies", clearly concerned a State participating with persons who were not subjects of international law in a company or other collective body. The immunity of such a State would, under the article, be lifted in the case of a proceeding relating to relationships between the State and the body or between the participants therein, if the body concerned was constituted under the law of the State of the forum or had its head office or principal place of business in the territory of that State. The article dealt with complicated matters which could be addressed differently in various legal systems. It was necessary in that regard to refer to the commentary and to take particular note of the intention of the Commission, indicated in paragraph (13), that it would look more closely at the precise terminology of that article on second reading.

74. The Commission had then examined the fifth report of the Special Rapporteur (A/CN.4/383 and Add.1), Mr. Quentin-Baxter on "International liability for injurious consequences arising out of acts not prohibited by international law". The report presented the work of the Special Rapporteur in definitive form and contained five draft articles on scope, the use of terms, the relationship between the draft articles and other international agreements, the absence of effect upon other rules of international law and, lastly, cases not within the scope of the draft articles. The text of those draft articles was contained in paragraph 237 of the Commission's report. The Commission had approached the report from many different angles: the nature and novelty of the topic, its scope, as well as the specific aspects of the proposed draft articles. In spite of continuing strong reservations on the part of some members of the Commission, and the novelty of the topic, which posed a challenge to its codification, the Commission had felt that it should continue its work on that subject. The Commission had been aware that the inadequacies of the traditional rules of international responsibility for wrongful acts in responding to the needs of the international community had left no choice but to look at those problems differently and to try to formulate a set of rules which would enable injury to be prevented or reduced without hampering the legitimate and necessary freedom of activity or technological progress essential for the present-day scientific civilization. Measures to that end could, of course, be best achieved through increased international co-operation and solidarity, which could be translated into legal rules. While some members of the Commission had not been entirely sure whether it was possible to accomplish the tasks involved, others had thought it appropriate to continue to study the topic.

75. The report of the Commission explained in detail the important issues discussed and the suggestions made. He only wished to mention three points made in the draft articles which, though they were new, had not escaped legal analysis. The three basic elements comprising article 1 on the scope of the topic could be identified in the following way: first, the transboundary element, meaning that the effects felt within the territory or control of one State must have their origin in something taking place within the territory or control of another State. The second element was the physical consequence; it implied a connection of a specific type which arose or might arise out of the very nature of the activity or situation in question. And finally, that physical consequence must affect the use or enjoyment of resources or areas within the territory of the other State, and that was the third element.

(Mr. Yankov)

76. With regard to the first element, the transboundary element, the Special Rapporteur had made it clear that that element was itself attached to the general law establishing the authority of the State in relation to its territory, or to persons or things beyond the limits of its national jurisdiction. Therefore, the definition of territory or control in article 2 must be seen from that perspective. It had been pointed out in the Commission that if the term "territory or control" was replaced by the word "territory" alone, then a great number of activities which might give rise to physical consequences with effects within the territory of another State would be excluded. It would exclude from the scope of the topic many human activities, including ultra-hazardous activities posing the greatest dangers for mankind. Besides, the lines between territorial jurisdiction and control were not that clear cut. The modern law of the sea, for example, did not merely draw a line between the territory of a coastal State and the high seas. In summary, setting aside drafting difficulties, there had been few differences of opinion within the Commission concerning the general concepts of "territory or control".

77. The second element limiting the scope of the topic was the "physical consequence". It was defined as the product of an activity or of an unstable situation which might be related to the present or past activity. The Commission had, of course, only been able to have incomplete discussions as to exactly what that concept included. References had been made to the decisions of certain domestic courts in which imperceptible particles of matter contaminating the atmosphere could constitute invasion. The concern had also been expressed that if the term "physical consequence" was too narrow it would exclude, for example, economic loss. That was a matter which, of course, should be discussed further.

78. The third element was the effect of the physical consequence upon the use and enjoyment of resources or areas. It had been agreed that in the present-day interdependent world, most activities within the territorial jurisdiction or control of one State had extraterritorial consequences, but that only those physical consequences affecting the use or enjoyment of resources or zones in another State were covered. The question had been raised, however, as to why the effects of the physical consequence upon the use and enjoyment of resources or areas were not qualified, for example, by a term such as "adversely". The Special Rapporteur's view had been that qualifying terms such as "adversely", "seriously", etc. had, in reality, no qualitative value and did not help the parties to establish a scale of priorities. At the beginning, the Special Rapporteur had suggested, the goal of equality between the parties required that there should be no prejudgment as to the extent of the seriousness or the potential import of an activity. In the later sections of the draft articles, a reference should be made to transboundary loss or injury, along with some measures to determine their extensiveness. It was unnecessary and sometimes counterproductive to apply a value judgment at the beginning of a process of conflict resolution.

79. The Commission had not spent much time discussing articles 3, 4 and 5 since the legal problems posed by articles 1 and 2 were of paramount importance.

(Mr. Yankov)

80. He did not wish to conclude his statement on the topic without once more paying tribute to its Special Rapporteur, Mr. Quentin-Baxter who, through his creativity and perseverence, had been able to conceptualize the complicated topic assigned him. His vision and intellectual abilities would be sorely missed in the Commission.

81. Under the wise guidance of the Special Rapporteur, Mr. Evensen, the Commission had made progress in its work on the topic which was the subject of Chapter VI. Whereas in 1983, it had discussed in general terms a complete set of 39 draft articles presented by the Special Rapporteur, at the 1984 session, it had had before it a complete revised set of 41 draft articles, contained in the second report of the Special Rapporteur (A/CN.4/381 and Corr.1). The Special Rapporteur had invited the Commission to proceed to a more detailed examination of the first nine articles of his revised draft comprising the first two chapters, namely, "Introductory articles" and "General principles: rights and duties of watercourse States". (See footnotes to chapter VI, section B2). At the conclusion of the debate, those nine articles had been referred to the Drafting Committee, in spite of divergent views which had not been reconciled by the Commission (see para. 290 of the report). Lack of time had prevented the Drafting Committee from examining those nine articles.

82. Two major issues were raised with regard to the general approach to the topic.

83. The first issue related to the term "international watercourse system" as it appeared in a note of understanding describing the meaning of the term, which the Commission had accepted as a provisional working hypothesis in 1980 (para. 270), as well as in article 1 as originally proposed by the Special Rapporteur in 1983. Although the Special Rapporteur had explained that he believed that the word "system" was merely a descriptive tool from which no legal principles could be distilled, it had nevertheless met with opposition both in the Commission and the Sixth Committee as representing a doctrinal approach similar to the "drainage basin" concept earlier discarded by the Commission (para. 293). The Special Rapporteur had therefore concluded that the use of terminology involving the word "system" might prove to be a serious hurdle in the search for a generally acceptable set of draft articles. In the revised version presented in his second report, the Special Rapporteur had therefore replaced the term "international watercourse system", by the term "international water course", which was defined in article 1 of the draft (see footnote 267). Furthermore, the Special Rapporteur had emphasized that in his view the change was basically one of terminology since the inherent unity of an international watercourse or the interdependence of the various parts and components thereof could not be put in doubt. There had been a divergence of views in the Commission concerning that change of terminology (see paras. 293-301 of the report). Some members had considered that it constituted a positive step towards finding a flexible and politically acceptable definition, while others had expressed reservations, as they believed the draft articles provisionally adopted by the Commission in 1980 and favourably received in the Sixth Committee had been based on the "system" approach. Other Members believed that the significance of that change in terminology required further clarification and would be more clearly ascertainable once each of the articles had been

(Mr. Yankov)

considered in depth. At the end of that debate, the Commission had decided to refer draft article 1 to the Drafting Committee in the modified form suggested by the Special Rapporteur, with the understanding that the Committee could also consult the text of the 1980 note of tentative understanding and the text of article 1 proposed in 1983. The discussions on that issue in the Sixth Committee would no doubt be of great assistance to the Commission in its further work on the topic.

84. The second major issue related to the revised version of article 6, entitled "General principles concerning the sharing of the waters of an international watercourse" (footnote 276 of the report). In his second report, the Special Rapporteur had noted that strong objections had been raised in the Sixth Committee and the Commission to the concept of "shared natural resource", which had been used in article 5 provisionally adopted by the Commission in 1980 and entitled "Use of waters which constitute a shared natural resource". The Special Rapporteur had retained that terminology in the original version of article 6, presented in 1983. In his view, the basic thrust of article 6 could be maintained without the use of the concept of "shared natural resource" the inclusion of which raised serious difficulties for many States. In the revised version of article 6, the Special Rapporteur avoided the use of that expression, which he replaced by "a reasonable and equitable share of the uses of the waters of an international watercourse". However, the revised version had again led to differences of opinion in the Commission, some members viewing it as a major improvement, while others believed that it was impossible to ignore the concept of "shared natural resource" and replace it with vague notions devoid of any meaning (see paras. 315-325 of the report).

85. The seven other revised draft articles which had been sent to the Drafting Committee also dealt with complex matters, which were discussed in paragraphs 302 to 314 and 326 to 341 of the report. At its 1985 session, the Commission intended to take up subsequent chapters of the new version of the draft presented by the Special Rapporteur.

86. Turning to chapter VII, he said that in accordance with the general plan for the overall structure of the set of the draft articles on State responsibility being prepared by the Commission, the draft would comprise a part one dealing with the origin of international responsibility, a part two dealing with the legal consequences of international responsibility, and a possible part three dealing with the question of the settlement of disputes and the "implementation" of international responsibility.

87. Part one, which consisted of 35 articles, had already been provisionally adopted in first reading. In the second reading, the Commission would take account of the views which had already been requested from Governments.

88. The Commission was therefore currently engaged in the preparation of part two. In the light of the reports and recommendations of its Special Rapporteur, Mr. Riphagen, and following examination by the Drafting Committee of

the proposed articles, it had already adopted provisionally, in first reading, four draft articles of part two, which were of a general and introductory nature. Those articles (para. 348 of the report) stated that part two set out the legal consequences that would arise from an internationally wrongful act entailing the international responsibility of a State. There were, however, three qualifications: (a) the provisions of part two would not govern the legal consequences of an internationally wrongful act if those consequences were determined by other rules of international law relating specifically to the act in question (art. 2); (b) the rules of customary international law would continue to govern the legal consequences of an internationally wrongful act not set out in part two (art. 3); (c) the legal consequences set out in part two would be subject, as appropriate, to the provisions and procedures of the Charter of the United Nations relating to the maintenance of international peace and security (art. 5).

89. At its thirty-sixth session, the Commission had had before it 12 new draft articles proposed by the Special Rapporteur (footnote 299 of the report) which followed the four above-mentioned draft articles and concerned various substantive aspects of the question of the legal consequences of an internationally wrongful act. They identified and defined the State injured by the internationally wrongful act ("injured State") in the various relevant circumstances and prescribed what, as a result of the internationally wrongful act, would be the entitlements of the "injured State" and the corresponding obligations of the State which had committed the act. They also addressed certain special cases involving a multilateral treaty; a peremptory norm of international law; an international crime; and an act of aggression. The Commission had considered in a general manner those draft articles, albeit not as fully as it would have wished, as time was limited. It had decided to refer draft articles 5 and 6 to the Drafting Committee. Paragraphs 364 to 378 of the report gave a brief summary of the debate on the 12 draft articles proposed by the Special Rapporteur. He drew the Committee's attention in particular to paragraph 379, which stated that, in the view of several members, the new set of draft articles marked a major breakthrough in the consideration of part two of the draft and should enable the Commission to make progress in the drafting of articles within a measurable time-scale.

90. At its thirty-seventh session, the Commission would continue its examination of the 10 remaining draft articles submitted by the Special Rapporteur at the 1984 session, as well as such other draft articles as the Special Rapporteur might propose.

91. As to the final chapter, the section entitled "Programme and methods of work of the Commission", which was based on the report of the Planning Group of the Enlarged Bureau, related to a number of important matters such as the organization of work of sessions of the Commission, the Drafting Committee, documentation and other matters, such as the suggestion that senior experts should be added to the staff of the Secretariat. He urged the members of the Committee to study carefully paragraphs 385 to 397 of the report, which reflected the discussion that had taken place on a wide variety of questions such as the possibility giving major

(Mr. Yankov)

consideration to only some of the topics at each session, the work which it would be possible to accomplish before the end of the current five-year term of membership of the Commission, the current practice of holding one annual session, the desirability of maintaining the current practice of establishing and convening the Drafting Committee at an early stage to enable it to reduce the backlog of draft articles referred to it, the establishment of working groups, the delays in the publication of the Yearbook of the International Law Commission and the assistance to be requested of the Secretariat. He drew particular attention to paragraph 387, which stated that the Commission might be in a position to complete, before the conclusion of the current term of membership, i.e., by the end of its 1986 session, a first reading of draft articles on two topics: "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier" and "Jurisdictional immunities of States and their property", and, possibly also - and that would be highly desirable - a first reading of part two and part three of the draft articles on State responsibility.

92. He stressed the importance which the Commission attached to its links of co-operation with bodies involved on the regional level with the process of codification of international law, such as the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee, the Arab Commission for International Law and the European Committee on Legal Co-operation. The Commission hoped not only to maintain those ties of co-operation but also to strengthen them in the years ahead. It also attached great importance to the holding of the annual International Law Seminar for advanced students of international law and junior professors or government officials who wished to expand their knowledge of international law. The Commission was very anxious to see nationals of developing countries attend the annual sessions of the Seminar and strongly urged that as many States as possible should make a contribution, if only a token one, so that fellowships could be awarded to candidates from those countries.

93. In conclusion, he said that the Commission expected much from the debates and resolutions of the Sixth Committee, which would surely guide it in its work and research.

TRIBUTE TO THE MEMORY OF MRS. INDIRA GANDHI, PRIME MINISTER OF THE REPUBLIC OF INDIA

94. Mr. RAO (India) said that he was grateful to the Chairman of the International Law Commission for the moving tribute that he had paid to the memory of Mrs. Gandhi.

The meeting rose at 6.15 p.m.