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Chairman: Mr. TUERK (Austria)

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

AGENDA ITEM 145: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FIRST SESSION (continued) (A/44/10, A/44/475, A/44/409-S/20743 and Corr.1 and 2)

AGENDA ITEM 142: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/44/465, A/44/73-S/20381, A/44/75-S/20388, A/44/77-S/20389, A/44/123-S/20460)

1. Mr. PUISSOCHET (France), referring to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, noted that the Commission had, in two instances, amended the draft adopted on first reading in a manner which met the concerns previously expressed by his delegation. The first of the changes made was in article 28, where the distinction between the status of the diplomatic bag stricto sensu and that of the consular bag was maintained in conformity with the terms of the 1961 and 1963 Vienna Conventions. The second consisted in removing the courier and bag of special missions and of international organizations of a universal character from the scope of the draft, and making them the subject of optional protocols. However, despite those welcome improvements, the draft in its present form was still not entirely acceptable to his delegation, which did not consider that the object of preparing the draft was to elaborate a uniform régime governing the status of all kinds of couriers and bags, but rather to establish, using a pragmatic approach, supplementary rules to fill the gaps that had arisen in practice. The only practical problem which the present draft seemed to resolve was that of unimpeded access to a ship or aircraft in order to take possession of the bag (art. 23, para. 3).

2. So far as the scope of the draft was concerned, the Commission continued to define as "diplomatic courier" and "diplomatic bag" (art. 3, paras. 1 (1) and 1 (2)) not only the couriers and bags of diplomatic missions, but also those of consular missions, permanent missions, permanent observer missions and observer delegations within the meaning of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. The distinction between the status of the diplomatic bag and that of the consular bag having been maintained in article 28, there would not seem to be any major objection to the diplomatic courier and bag and the consular courier and bag being equated in other respects. However, his delegation was definitely against equating with diplomatic couriers and bags the couriers and bags of various missions and delegations covered by the 1975 Vienna Convention. As the Committee was aware, France was not a party to that Convention and had no intention of becoming one; furthermore, the Convention had not yet entered into force, for lack of a sufficient number of ratifications.

3. A final criticism was that, like the earlier text, the draft adopted by the Commission on second reading endorsed a system of privileges and immunities for the diplomatic courier which his delegation considered to be unwarranted. In those circumstances, it would be preferable if the future convention were negotiated within the framework of the Sixth Committee rather than at a diplomatic

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conference. In any event, the text would have to be discussed extensively in the Committee before any decision was taken, the practical concerns of Governments being taken more fully into account.

4. Turning to the draft Code of Crimes against the Peace and Security of Mankind, he said that while his delegation was not opposed in principle to the Commission's method of proceeding on the basis of a list of crimes rather than attempting to arrive at a conceptual definition, it continued to believe that a clear definition of what constituted a crime against the peace and security of mankind would have to be provided sooner or later. Not all grave breaches of international law or morally reprehensible acts, however widely or even universally condemned, necessarily fell within the category of such crimes. The Commission should ascertain whether the acts which it intended to include in the list constituted breaches of rules of law accepted by States, and whether those breaches were considered by States as being serious enough to constitute crimes against the peace and security of mankind. His delegation did not believe that, barring exceptional cases, a threat of aggression which was not carried out should be regarded as a criminal act within the meaning of the draft Code. It also thought that intervention was too vague and general a notion to be considered as constituting in itself a crime against peace. Likewise, colonial domination and other forms of alien domination, as defined in article 15, did not seem to constitute grounds for penal action in view of the imprecise nature of the concepts involved.

5. His delegation continued to entertain serious doubts as to whether all war crimes, whatever their nature and gravity, constituted crimes against the peace and security of mankind. It entirely agreed with the Commission's decision to include genocide and slavery in the list of crimes against humanity; as for expulsion of populations and their forcible transfer, the Commission should consider the question of the inclusion of those acts in the draft Code in the light of their scale and purpose.

6. It would be recalled that, while resolutely condemning all forms of racial discrimination, in particular apartheid, and while being in sympathy with the ideas underlying the International Convention on the Suppression and Punishment of the Crime of Apartheid, France had been unable to become a party to that Convention for legal reasons connected with the imprecision of the charge and the difficulty of bringing it against an individual. There was some risk of a similar situation arising in connection with the draft Code. His delegation also had very serious doubts as to the possibility, except in some exceptional cases, of considering destruction of property as a crime against humanity. Further extensive consideration of that question by the Commission was called for. Lastly, his delegation felt strongly that the Commission should not discuss the question of nuclear weapons, disarmament matters being considered in other specialized forums. In view of the highly controversial nature of many of the issues, the Commission should give ample time to their consideration and should come forward with proposals only when it had grounds to believe that they might be generally acceptable.

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7. Commenting on the topic of State responsibility, he said that the difficulty of the Special Rapporteur's task was due not only to the great complexity of the subject, but also to the fact that the Commission had, at an earlier stage, adopted on first reading certain provisions which, to some extent, prejudged its subsequent work in that field. As was known, his delegation had disagreed with some of those provisions, and in particular with the introduction of the concept of international crimes of States in article 19 of part one of the draft. In that connection, his delegation shared the view of some members of the Commission, reflected in paragraph 234 of the report (A/44/10), that the concept was not supported by existing international law, and that it would be inappropriate to attribute any criminal responsibility to a State. France could not, therefore, endorse the Special Rapporteur's intention to deal separately with the legal consequences of international delicts and of alleged international crimes, and hoped that the Commission would review its position in that respect on the occasion of the second reading of the draft.

8. The discussion which had taken place on draft article 6 seemed to reveal some confusion between the concepts of cessation and of restitution in kind. Referring to the Special Rapporteur's comments on article 7 (para. 230 of the report), he remarked that to confine the concept of legal impossibility to cases where restitution was incompatible with a superior international legal rule such as the Charter of the United Nations or a peremptory norm would appear to be too restrictive. As for the concept of excessive onerousness, it should be made clear that the two cases envisaged in subparagraphs (a) and (b) of paragraph 2 of article 7 - which was satisfactory to his delegation in all other respects - were alternative rather than cumulative.

9. The discussion which had taken place in the Commission on the topic of international liability for injurious consequences arising out of acts not prohibited by international law had increased still further his delegation's doubts as to the possibility of codifying international law in that field. Those doubts appeared also to be shared by several members of the Commission. His delegation wished once again to advise the Commission to aim at producing not a draft convention, but rather a text to which States might refer when negotiating agreements in respect of specific activities.

10. The present wording of draft article 1 suggested that States could incur liability, without commiting any fault, simply because transboundary harm had occurred. Such liability and the associated obligation of prevention could be acceptable only in the case of exceptionally dangerous activities. With regard to article 3, he failed to see what practical evidence a State could produce to show that it had not known or had means of knowing that a particular activity was being or was about to be carried out in its territory; the second paragraph added to the article did not seem to resolve that problem. With reference to article 6, he found it difficult to see in what way transboundary harm could constitute a violation of the territorial rights or sovereignty of a State. In article 7, States should be invited to co-operate, rather than be placed under a legal obligation to do so. Lastly, his delegation wished to reserve its position on

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article 9 pending definition of the criteria to be employed in negotiating agreements concerning reparation.

11. Turning to the subject of jurisdictional immunities of States and their property, he drew attention to the comments submitted by his Government both verbally and in writing (A/CN.4/410/Add.3). While continuing to believe in the potential usefulness of the Commission's work on that subject, his delegation wished also to reiterate the view that the Commission should take into account the points of view of all States and should endeavour to identify solutions on which there was likely to be general agreement. In particular, it should not proceed on the basis of only one existing legal system, namely, the common-law system. Furthermore, both for practical reasons and in the light of considerations of principle, his delegation continued to consider that the problem of State immunity from enforcement should not be dealt with in the draft articles.

12. His delegation considered that the logical outcome of the Commission's work on the law of the non-navigational uses of international watercourses should be a framework agreement which States could use and adapt according to their needs and the characteristics of each watercourse. The topic was in fact better suited to regional intergovernmental agreements, which could take into account both those characteristics and the interests of the riparian States, than to a general convention which would try to establish a uniform régime for all international watercourses. The Commission could accomplish useful work by providing a guide which would enable States to identify the problems to be resolved, while refraining from going into detail and from establishing general binding obligations which might be unsuited to specific situations.

13. The draft articles which the Commission had adopted did not always correspond to its stated intentions. His delegation trusted that it would endeavour, on second reading, to amend the draft to suit its function as a framework agreement.

14. Articles 22 and 23, which the Commission seemed to have discussed together, gave rise to a basic problem for his delegation. They sought to establish obligations: an obligation of co-operation in the case of article 22, and an obligation of notification and co-operation in the case of article 23. While co-operation and notification were desirable, his delegation doubted whether they could be made the subject of legally binding obligations in all cases. Similarly, it did not favour the reference in paragraph 1 of article 22 to co-operation "on an equitable basis", which seemed to establish a principle of solidarity between watercourse States when confronting the circumstances mentioned in the article. Such solidarity was not necessarily justifiable or acceptable in all cases. In establishing a general and absolute principle of solidarity, there was a danger of proceeding in the direction of limitations on sovereignty to which States might not be willing to agree: if the riparian States of a watercourse were called upon to contribute materially or financially to protective measures against the damage which the watercourse might cause, they could also claim that they should be consulted before those measures were adopted. In his delegation's view, it was not possible to establish general rules in that regard. Indeed, it felt that the draft

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could not go further than establishing an obligation of vigilance in respecting the rights of downstream States.

15. His delegation wondered, in the case of article 24, whether it was timely to make the principle that no particular use of international watercourses should take precedence over other uses into a rule which could be set aside only by a contrary rule. The concept of an "international watercourse system" should not be taken into consideration in the draft; the bracketed word "system" should therefore be deleted.

16. His delegation did not think that high priority should be given to the second part of the topic of relations between States and international organizations. The Special Rapporteur's report on that part confirmed those misgivings, and should lead the Commission to conclude that it was very difficult, if not indeed impossible, to arrive at solutions in that field which would be applicable to the enormous range of international organizations. The sheer diversity of international organizations was such that it would not be appropriate to establish a régime which would apply to all of them. In draft article 11, the proviso that "the scope of the rights accorded may be limited, in the light of the functional requirements of the organization in question, by mutual agreement of the parties concerned" indicated that the proposed common régime was not based solely on those functional requirements. It was essential to preserve a balance between the interests of the organizations and those of the host States, and the Commission must accordingly proceed with the greatest caution.

17. Referring, in conclusion, to the programme of work of the Commission, he said it seemed appropriate that the Commission should try to complete, in the near future, its work on the second reading of the draft articles on the jurisdictional immunities of States, without losing sight of the need to arrive at a generally acceptable text which took due account of the views of States. His delegation had doubts regarding the priority to be given to the draft Code of Crimes against the Peace and Security of Mankind, in the light of the sensitivity of the subject, which gave rise to widely diverging opinions. It seemed unlikely that the Commission would succeed in arriving at a generally acceptable text in the short term.

18. On the other hand, substantial progress could be made during the current term of office of the members of the Commission on the topic of the non-navigational uses of international watercourses, particularly if the format of a framework agreement were strictly adhered to.

19. His delegation had often stressed that priority should be given to the general topic of State responsibility, rather than to the more specific topic of international liability for injurious consequences arising out of acts not prohibited by international law: the latter topic could be usefully considered only when the Commission had dealt with the former.

20. Mr. GRAEFRATH (Chairman of the International Law Commission) said he wished to thank the Committee for its appreciation of the serious and creative work done by members of the Commission. The wealth of constructive ideas, suggestions and comments presented during the debate and in written comments by Governments would be carefully studied by the Commission. It was by no means an easy task to reconcile the various points of view voiced by representatives, but that was what the Commission had to do. It could endeavour to develop draft proposals which were aimed at gaining the broadest support possible; but there was always a stage where the work had to be concluded. Remaining divergencies could then be ironed out only by a diplomatic conference or by the Sixth Committee itself. It often took years to get the majority of States to ratify or to accede to a general multilateral treaty.

21. While that was normal, the question might be raised whether two factors did not make it necessary to accelerate the drafting process, although not at the price of hasty, untimely or insensitive work. The first factor was the growing need for basic international rules and procedures, given the diversification of international relations and the need to prevent or monitor international conflicts. The second, more technical factor was that a reasonable draft, even if it did not immediately elicit the support of all members, at least offered a new negotiating basis to the States concerned, and thereby might generally facilitate reconsideration of all the positions and eventually lead to a general agreement. He was therefore glad to note that during the debate, delegations had always shown a readiness to keep an open mind and consider carefully all possible options.

22. He had taken note of all the suggestions that had been made regarding the working methods of the Commission. Those methods were deeply influenced by the fact that a growing number of subjects involved progressive development of international law, so that the Commission could rely only to a limited degree on existing customary rules or widely accepted precedents. He was very grateful that that aspect had been taken up in the debate. Very important and stimulating suggestions and comments had been made on the relationship between the work of the Commission as an expert legal body and the process of political decision-making by Governments and the Sixth Committee. Ideas had been developed to supplement the long-term codification projects of the Commission by short-term legal opinions on specific questions and the possibility of involving the Commission in the proposed decade of international law had been raised.

23. He was sure that the Commission, and in particular its Planning Group, would pay great attention to all those suggestions and comments, and that the Commission would - as it always did - report on the conclusions of its Planning Group as soon as, but not before, they had elicited general support in the Commission. He wished to assure the Committee that the Commission, with the support of its Special Rapporteurs, would do whatever it could to improve the situation and give to the Committee the timeliest and most extensive legal expertise possible. The fact that the Commission had concluded its work on the status of the diplomatic courier, and was going to finish the second reading of the draft on jurisdictional immunities of States would undoubtedly make it easier to concentrate on other items.

(Mr. Graefrath)

24. He had been asked to confirm that the Commission, in dealing with the draft Code of Crimes against the Peace and Security of Mankind, would focus on the criminal responsibility of individuals. He was happy to do so. He had thought that that was clear from the report (A/44/10) and from his introduction. He had tried to explain what was meant by footnote 87 of the report. The Commission was well aware that the present wording of articles 13, 14 and 15 of the draft Code, being confined at the current stage to the description of acts, could give rise to misunderstandings. In order to avoid that and to make it clear that the Commission intended to determine the subjective element of the crimes in a special article attributing penal responsibility to those persons who actually were in a position to plan, order or organize the committing of the acts described, footnote 87 had been added during the adoption of the report. Indeed, the Drafting Committee already in 1988 had tried to formulate such a provision, but had not had enough time to agree on a wording that would have been sufficiently precise.

AGENDA ITEM 152: INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS AND ENTITIES ENGAGED IN ILLICIT TRAFFICKING IN NARCOTIC DRUGS ACROSS NATIONAL FRONTIERS AND OTHER TRANSNATIONAL CRIMINAL ACTIVITIES: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT WITH JURISDICTION OVER SUCH CRIMES (A/44/195, A/44/694)

25. Ms. THORPE (Trinidad and Tobago) said that, in a world which was increasingly interdependent and complex, many of the problems faced by the international community would be solved only through international co-operation and action. That had been brought home with particular force in the area of criminal justice. Certain forms of crime had assumed a transnational character which severely limited the effectiveness of countries to combat them within the confines of their domestic jurisdictions. For example, acts of genocide, torture, crimes against diplomats and illicit trafficking in drugs across international frontiers posed grave threats to the integrity of States, and had the potential to undermine their stability, security and development.

26. Her delegation was of the view that the time was now propitious for the formalization of an international criminal jurisdiction to deal with the international criminal activities of both individuals and entities. The functioning of a permanent international criminal court would guarantee a more general interpretation of international law, while expressing, with more authority, world opinion on the criminal nature of specific acts. An international criminal court could make a significant contribution to the maintenance of international peace and security. It should be a judicial institution established with the consent of States. The jurisdiction of such a court should be limited, in the first instance, to those universal crimes already defined by the international community on the basis of identified principles of international law. The range and degree of acceptability accorded such universal crimes would depend upon the extent to which they were accepted in the criminal laws of the various nations.

27. While the desirability and feasibility of establishing an international criminal court had been discussed on several occasions, notably during the Nuremberg and Tokyo war crimes trials after the Second World War, in the Committee on the Progressive Development of International Law and its Codification, and in

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the International Law Commission itself, her delegation was persuaded that the establishment of an international criminal court would present to Governments a third option to trial in domestic courts and extradition. That in itself was valuable, since some countries might be reluctant to try or to extradite international criminals for fear of diplomatic, political and economic consequences. It should be noted that if an international criminal court was established, nations could still retain the option of trying persons in their custody charged with international crimes. Her delegation shared the view that the best and most feasible means of establishing an international criminal court would be by a multilateral convention elaborated under the auspices of the United Nations.

28. Procedural safeguards could be established, adopted and ratified by parties to any United Nations convention on the establishment of such a court, and would guarantee to individuals accused of international crimes the right to a fair trial. Such procedural safeguards should be as comprehensive and precise as possible, and should therefore include requirements based on the provisions of relevant international instruments and national penal codes. States would ensure a defendant all normal due-process rights, including the right to confront his accusers, the right of cross-examination, the right to subpoena witnesses and evidence on his behalf, the presumption of innocence, and the right to have testimony translated into his own language.

29. It had been argued that an international criminal court could not function without an accepted code for it to enforce. Trinidad and Tobago leaned towards the view that, given the protracted history of efforts to establish an international criminal court, it was unlikely that a code containing a wide scope of crimes could be agreed upon in the near future. Accordingly, it appeared that the best strategy to follow would be to limit the code at present to international crimes that could be readily agreed upon by most or all States, and to establish an international criminal court on the basis of that minimum code. Universally acknowledged international crimes, such as genocide, torture, crimes against diplomats, and international trafficking in illicit narcotic drugs, could be considered in that context. A minimum code, however, would not limit the elaboration and adoption of a more comprehensive list of international crimes that could be subject to the jurisdiction of an international criminal court.

30. The court should be competent to try juridical persons, but only where jurisdiction had been conferred upon the court by the State or States of which the accused was a national and by the State or States in which the crime was alleged to have been committed. The provision that no national of a State should be tried by the proposed court unless that State had conferred jurisdiction would serve to protect the sovereignty of States and assure them that no trial which might involve discussion of their national policy would take place without their consent. Further, the provision that jurisdiction also must be conferred by the State or States in which the crime was alleged to have been committed was aimed at preventing conflicts of jurisdiction between the international criminal court and national courts. It was axiomatic that the court, once established, should have no jurisdiction unless States conferred that jurisdiction by means of an appropriate indication of intent. To enforce the principle that no State should be bound

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without its consent, it might be necessary to provide in the statute establishing the court a provision to the effect that jurisdiction must be explicit and could not be presumed.

31. Previous efforts to draft statutes for an international criminal court had been shelved. The General Assembly, in its resolution 3314 (XXIX), had adopted the Definition of Aggression, but had not taken up the question of international criminal jurisdiction. Although various conventions provided for the recognition of an international criminal jurisdiction, there had still been no discernible movement on the part of the international community to construct an operative international criminal code or create an international criminal jurisdiction centred on an international criminal court. Moreover, most proposals for the establishment of an international criminal court had not been independently considered, but had been linked to particular conventions or draft conventions. Those proposals that were linked to particular conventions had serious limitations. For example, the international criminal court proposed under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide would be competent to deal only with crimes related to genocide. An important element that was absent from the various proposals was an acceptable list of international crimes amenable to the jurisdiction of such a court. Only on the basis of such a list could the international criminal responsibility of persons and entities engaged in crimes such as illicit trafficking in narcotic drugs across national frontiers be determined for the purposes of judicial adjudication.

32. It was against that background that Trinidad and Tobago had brought the issue of the establishment of an international criminal court to the current session of the General Assembly. In introducing the item, her delegation was mindful that in accordance with Article 13, paragraph 1 (a), of the United Nations Charter, the General Assembly was required to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. Her delegation was also conscious of the need to keep under review those topics of international law which, given their new or renewed interest for the international community, might be suitable for the progressive development and codification of international law. It considered that the international criminal responsibility of individuals and entities engaged in transnational criminal activities, including but not restricted to illicit trafficking in drugs across national frontiers, could be most suitably addressed with the establishment of an international criminal court.

33. As far back as 1948, the General Assembly, in its resolution 260 B (III), had addressed the issue of international crimes. It had done so again in 1950 and 1952. The General Committee of the General Assembly had decided that the items on international criminal jurisdiction and the draft Code of Offences against the Peace and Security of Mankind should be included in the agenda only after progress had been made in arriving at a generally agreed definition of aggression. However, even though the Definition of Aggression had been adopted by the General Assembly in 1974, no action had been taken to date on the question of international criminal jurisdiction and the establishment of an international criminal court.

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34. The draft resolution that would be submitted on the item would request the Secretary-General to study and report on the issue of the international criminal responsibility of persons engaged in, inter alia, international trafficking in illicit narcotic drugs, and the establishment of an international criminal court in that regard. The proposal already enjoyed the whole-hearted support of the members of the Caribbean Community, and Trinidad and Tobago was now seeking the assistance and support of the entire international community. Only by joint international effort could the scourge of criminal activity, including illicit international drug trafficking, be meaningfully addressed and possibly eradicated. Among options for collaboration in the joint endeavour would be co-sponsorship of the resolution. Her delegation hoped that the support of States in the matter would be reflected by the adoption of the resolution by consensus, both in the Sixth Committee and the General Assembly.

35. Mr. FLEMMING (Saint Lucia) said that the linking of the issue of international drug trafficking and the idea of an international criminal court was a reaction to the crisis confronting the international community as a result of transboundary trafficking in narcotic drugs. Such activities had long been a global criminal problem, and it was therefore surprising that the international community had taken so long to begin thinking about an international approach.

36. International trafficking in narcotic drugs had reached epidemic proportions and become a new force in international relations. The United Nations had taken some major international steps to deal with the problem. Moreover, the Ninth Conference of Heads of State or Government of Non-Aligned Countries had emphasized the need for stricter and more effective juridical measures against individuals and organizations involved in the crime of illicit drug production, trafficking and consumption, and had insisted on the urgent need to achieve international agreements on the seizure of money and property derived from drug trafficking. However, despite such action, the members of the international community were disinclined to take the logical juridical action to internationalize the war on drug trafficking. That was what an international criminal court would do. Unfortunately, the establishment of such a court remained a political question.

37. The issue of whether under certain conditions individuals could have international legal personality was still a matter of debate. But it had long been accepted that individuals could, and did, violate international law, and consequently had obligations under international law as they did under municipal law. There was general agreement that international drug traffickers were violators of international law. Currently, when individuals violated international law, jurisdiction was vested in national courts, which were given competence by national legislation to punish offences against the law of nations. However, everyone had watched in awe and fascination as some domestic courts of middle-sized countries had been subjected to large-scale intimidation by powerful drug cartels. It was becoming increasingly unfair, and unrealistic, for the international community to expect a few municipal legal systems to bear an overwhelmingly disproportionate share of the burden of prosecuting international drug traffickers. By definition, the problem was now international. Yet hardly any of the members of the international community were in a position to strike a blow

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against the major players in drug trafficking. But strike a blow they must. The most logical way to share responsibility in the area in question was to move towards the establishment of an international criminal court. While Saint Lucia had chosen to focus on the topical item of international drug trafficking as one of the crimes over which an international criminal court might have jurisdiction, that did not in any way imply that it would want to narrow the jurisdiction of such a court. In fact, Saint Lucia entirely agreed with Trinidad and Tobago that such a court should have the widest jurisdiction possible.

38. Much of the basic work on international criminal jurisdiction had already been done, and a draft statute for an international criminal court had even been prepared. That work, which could be used as a point of departure for future work with a view to establishing an international criminal court, emanated from General Assembly resolutions 260 B (III) and 489 (V). Also in that connection, he wished to refer members of the Committee to the relevant reports of the Committee on International Criminal Jurisdiction.

39. Mr. VILLAGRAN-KRAMER (Guatemala) said that his delegation shared the concern expressed by other delegations about the problem of drug trafficking, which had taken on such proportions that it had become essential for the international community to give it in-depth consideration. Consideration must be given not only to international judicial co-operation, but also to the role that could be played by an international court. The International Law Commission should take up the subject, focusing both on the offences themselves and on appropriate international judicial machinery, such as a criminal chamber at the International Court of Justice, or a court to deal with offences relating to international traffic in narcotic drugs. Guatemala welcomed the initiative taken by Trinidad and Tobago in view of the scale of the phenomenon of drug trafficking, to which any country could fall victim.

40. Mr. CALERO RODRIGUES (Brazil) said that his delegation also shared the concern voiced by other delegations about the extremely important problem of international traffic in narcotic drugs. However, great caution was called for in considering the idea of establishing an international criminal court with jurisdiction over crimes such as the ones under discussion. Brazil believed that the International Law Commission should also explore a number of other possibilities. In principle, Brazil did not oppose consideration of the question, but it had reservations about the inclusion of another item in the Sixth Committee's agenda, especially as the issue had recently been dealt with elsewhere and was going to be considered by the International Law Commission, as indicated in paragraph 210 of the Commission's report (A/44/10). Furthermore, the question of jurisdiction was still under consideration by the Commission, and there was support among Member States for the idea of the preparation by the Commission of a statute for an international criminal court. He wished to refer to paragraph 216 of the Commission's report in that connection, and to appeal to Trinidad and Tobago not to insist on submitting a draft resolution on the subject. He suggested that the General Assembly might consider deciding to forward to the Commission the records of its relevant debate for consideration by the Commission under the topic of the draft Code of Crimes against the Peace and Security of Mankind.

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SECOND SESSION (continued) (A/C.6/44/L.5, L.8)

41. The CHAIRMAN said that the statement of financial implications of draft resolution A/C.6/44/L.5 had been issued in document A/C.6/44/L.8.

42. Ms. KEHRER (Austria), introducing draft resolution A/C.6/44/L.5, said that the sponsors had been joined by Argentina, the Byelorussian Soviet Socialist Republic, Kenya and Spain.

43. The draft resolution was intended to express the General Assembly's satisfaction with the activities undertaken by UNCITRAL in the field of international trade law. UNCITRAL's achievements in the progressive harmonization and unification of international trade law were a valuable contribution to facilitating international trade. Its role would become even more important as the world became increasingly interdependent, and as trade grew steadily between countries with different legal systems. Accordingly, the preamble to the draft resolution reaffirmed the General Assembly's conviction that the progressive harmonization and unification of international trade law would significantly contribute to economic co-operation among States on a basis of equality, equity and common interest. The preamble also noted the adoption by UNCITRAL at its 1989 session of the draft Convention on the Liability of Operators of Transport Terminals in International Trade, and its recommendation that the General Assembly should convene an international conference of plenipotentiaries to conclude such a Convention. It would be noted that the draft resolution did not contain an invitation to Namibia, as represented by the United Nations Council for Namibia, to particiate in the plenipotentiary conference; the sponsors assumed that, by the time the conference was convened, Namibia would be an independent State, and would be invited as such.

44. While the draft resolution contained some new elements, the text largely followed the resolution on the work of UNCITRAL which had been adopted in 1988 without a vote. She hoped that the same procedure would again be followed.

45. Draft resolution A/C.6/44/L.5 was adopted without a vote.

The meeting rose at 11.55 a.m.