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Chairman: Mr. Ekedede (Vice-Chairman) . . . . . (Nigeria)

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In the absence of the Chairman, Mr. Ekedede, Vice-Chairman (Nigeria) took the Chair.

The meeting was called to order at 3.10 p.m.

Agenda item 159: Report of the International Law Commission on the work of its fifty-second session (*continued*) (A/55/10 and Corr.1 and 2)

1. **Mr. Marschik** (Austria), referring to chapter VII of the report of the International Law Commission (A/55/10 and Corr.1 and 2) dealing with reservations to treaties, said that the elaborate report of the Special Rapporteur had provided a very useful discussion on alternatives to reservations and interpretative declarations, as well as the formulation, modification and withdrawal of reservations and interpretative declarations. Those issues had not been dealt with in great detail thus far, although they were of great practical importance, given the wide diversity of methods by which States could deviate from the full extent of treaty obligations. Nevertheless, the Commission had not dealt with the most urgent question, namely the legal effects of inadmissible reservations, or the question of whether reservations could be made vis-à-vis only some of the States parties to a convention or for a limited period of time. He hoped the Commission would provide an answer to those questions as soon as possible.

2. Turning to the guidelines themselves, he noted that the Special Rapporteur's commentary to draft guideline 1.1.8, "Reservations formulated under exclusionary clauses", placed great emphasis on the practice of the International Labour Organization (ILO). Referring to the Statute of the International Criminal Court, he observed that article 124 allowed a State to declare that it did not accept the jurisdiction of the Court for a period of seven years with respect to certain crimes, whereas article 120 excluded any reservation to the Statute and did not mention the admissibility of declarations under article 124. According to the Special Rapporteur's approach, such declarations would amount to reservations, which ran counter to the argument that article 124 could constitute a lex specialis in the sense of article 120 even though, during the negotiations on the Statute, a reference to reservations explicitly permitted by the Statute had been dropped on the understanding that article 124 did not amount to a reservation clause. As for article 19 (b) of the Vienna Convention on the Law of Treaties, the Special Rapporteur, in paragraph 10 of his commentary, interpreted it as meaning that other reservations were prohibited solely if the treaty explicitly provided that only specified reservations could be made. However, it was doubtful whether that was the meaning intended by the authors of the Convention.

3. Among the draft guidelines not yet discussed in the Commission which touched on the most sensitive areas of reservations, it was not certain that those reflecting the Vienna Convention on the Law of Treaties, on reservations formulated when signing and formal confirmation, and reservations formulated when negotiating, adopting or authenticating the text of a treaty and formal confirmation, (2.2.1 and 2.2.2), needed separate treatment, since it did not facilitate the understanding of the matter. As to draft guideline 2.2.4, "Reservations formulated when signing for which the treaty makes express provision", it raised the general question whether all the guidelines were subject to a lex specialis rule.

4. Considering draft guideline 2.3.1, "Reservations formulated late", from the point of view of the procedure to make such reservations admissible and their effects if the procedure failed, he leaned towards the Special Rapporteur's view that, based on the principle of pacta sunt servanda, such reservations were generally inadmissible unless the treaty provided otherwise. Late reservations endangered the stability of the international legal order and had a negative impact on international relations based on international treaties.

5. As far as procedure was concerned, the question arose whether a late reservation could be admissible if all parties to a treaty explicitly agreed to it, in which case it would have the same effect as a proposal to amend the treaty in the sense of part IV of the Vienna Convention on the Law of Treaties. States Parties wishing to change their own rights and obligations towards other States Parties should use that more flexible procedure, which would have the same result. The proposal of the Special Rapporteur that unanimous tacit agreement should suffice was acceptable only if it was accompanied by a provision stressing the need for adequate information.

6. As to the effects of such declarations in the case of an objection, if the Special Rapporteur's approach, namely that the reserving State remained bound by the

treaty in its entirety, was that which he intended to propose for all inadmissible reservations, then its feasibility could be in doubt.

7. Lastly, he commended the Special Rapporteur's efforts in a complex field where maintaining the integrity of treaties must be reconciled with meeting the divergent demands of States, given the particular nature of normative treaties, in particular those dealing with human rights. The Commission should play a leading role in the codification of that aspect of international law and elaborate general rules before piecemeal solutions appeared, thus avoiding the increasing fragmentation of international law.

8. **Mr. Koskenniemi** (Finland), speaking on behalf of the Nordic countries, said that he wondered whether the criteria adopted by the Commission in establishing its long-term programme of work were consistent with its decision that topics should reflect the needs of States but should also reflect new developments in international law, when the most significant of those new developments were those having to do with non-State actors. The Commission seemed to have chosen to stay with well-worn subjects; out of the five topics suggested, three were left over from the examination of other questions: responsibility of international organizations was related to State responsibility, the effects of armed conflict on treaties to the law of treaties, and shared natural resources of States to the non-navigational uses of international watercourses. Of the three, the topic of responsibility of international organizations seemed to be of the most practical interest, considering their increasingly autonomous role and the growing amount of jurisprudence from national tribunals. On the other hand, the topic of the effect of armed conflict on treaties seemed outdated in an era when "formal" war had virtually disappeared and had been replaced by other forms of conflict which varied from case to case and resisted international codification. Lastly, the topic of shared natural resources, the only one remaining of the four topics suggested in the area of the environment, seemed too restricted in scope if, as suggested in the feasibility study, it was limited to water and confined groundwater sources. Since it was inadvisable to broaden the topic to cover the law of the human environment as a whole, the Commission might consider the precautionary principle, which was of greater general interest, especially as it had already been applied in several conventions and many national laws, but required clearer definition.

9. The Nordic countries wondered why the Commission, if it truly intended to take a forward-looking approach, had not chosen any topic having to do with human rights, economics or development. Perhaps it had wished to avoid duplicating the work of other law-making bodies, or perhaps certain fields, economic development for instance, did not lend themselves to international codification. Although much of development law derived from multilateral and bilateral treaties of assistance and cooperation, and unified codification was not advisable, it would be interesting to identify and develop new principles, for example non-reciprocity or best practices, which were found in such treaties.

10. The fourth suggested topic, expulsion of aliens, was directly related to the major concerns of the twentieth century and had already been included in the Commission's first work programme in 1948 under the topic of the right of asylum. The right of States to expel aliens had never been in doubt, and thus consideration of the item would necessarily focus on cases of mass expulsion, which was already prohibited by the major human rights instruments. Furthermore, collective expulsion usually occurred in connection with major national crises, and thus should probably be dealt with through programmes of assistance geared to the particular aspects of the situation, rather than through regulation by general rules.

11. The fifth topic proposed, the risks ensuing from the fragmentation of international law, was the most interesting. It would be advisable to give it a title formulated in less negative terms, for while a fragmentation of international law linked to the appearance of a host of new actors and the growing number and diversification of existing rules might be fraught with risks, it might equally well afford new opportunities to deal with ostensible conflicts between new and traditional international law, the needs of various groups, the globalization of the economy, the use of new technologies and scientific advances. In fact, the special regimes which worried some people were, for the pluralist societies which had emerged in recent years, a means of adjusting to change and of reconciling (national) diversity with (international) uniformity. Admittedly, they entailed risks, but they were an attempt to find answers to the latest dilemmas while, at the same time, respecting diversity or

polycentricity. To international law specialists, the new legal order might seem hazardous, or even a source of disorder, but the Nordic countries considered it to be more attuned to an increasingly complex international situation.

12. Lastly, he approved of the choice of "Responsibility of international organizations" as a topic for inclusion in the Commission's long-term programme of work. He proposed that the order of "Shared natural resources of States" and "The precautionary principle" should be switched, and recommended that "risks ensuing from the fragmentation of international law" should be retained but should be given a new title, "The effect of the diversification of international law", so that it could be studied with a view to presenting an analysis and possibly recommendations as to how best to take advantage of that phenomenon and, more specifically, to deal with conflicting jurisdictions or treaty regimes.

13. **Mr. Barthélémy** (France) referring to "Reservations to treaties", the subject of chapter VII, said that at previous sessions his delegation had already observed that the French term "*directive*" used to describe the Commission's draft text was unsatisfactory. The expression "*lignes directrices*" was more apt, for the outcome of the work would be a guide designed to assist States, rather than binding rules.

14. The Special Rapporteur had pursued the task of defining concepts and the French delegation welcomed that approach. Many of the issues raised to date originated in vague definitions which required clarification. The distinction between a "reservation" and an "interpretative declaration" was important, but a useful distinction had also been made between reservations and other types of acts which had previously been scarcely or poorly defined.

15. With regard to the draft guidelines provisionally adopted by the Commission on first reading, unless draft guideline 1.2.1 were more precisely worded, there would seem to be no criterion for drawing a definite distinction between an interpretative declaration and a conditional interpretative declaration. Nothing was said about the procedure by which authors of conditional interpretative declarations could make their consent to be bound subject to a specific interpretation of the treaty or some of its provisions. That will had to be explicitly expressed. The fact that an interpretative declaration made on signature, or at some previous time during negotiations, was confirmed when consent to be bound was expressed was not in itself a criterion.

16. Insofar as the current study was focusing on definitions, France considered it important that legal terms should be used with the utmost rigour. In particular, the word "reservation" should be used only for statements matching the precise criteria of the definition in guideline 1.1.

17. Draft guideline 1.5.1, " 'Reservations' to bilateral treaties", plainly did not relate to reservations, for the statements in question did not lead to the modification or exclusion of the legal effect of certain provisions of the treaty, but to a modification of those treaty provisions. The title of the guideline should be amended accordingly. Similarly, if the draft guidelines concerning "bilateralization" agreements made it clear that they did not apply to reservations, the title "Reservations to bilateral treaties" should be avoided.

18. Draft guideline 2.2.1, "Reservations formulated when signing and formal confirmation" did not pose any difficulties for his delegation, since it was consistent with French practice.

19. Draft guidelines 2.3.1, "Reservations formulated late" and 2.3.3, "Objection to reservations formulated late" purported to lay down two complementary rules. The first was that a State could formulate a reservation to a treaty after its expression of consent, if that did not give rise to any objections from the other contracting parties. The second was that one objection alone was sufficient to make the late reservation inadmissible.

20. His delegation noted with interest those two innovatory proposals, which contributed to the progressive development of law and did not therefore constitute mere codification. It welcomed the fact that neither draft guideline was designed to permit frequent or "normal" recourse to late reservations in the future, because on the one hand, just one objection was enough to render the reservation inapplicable to all the States Parties and, on the other, the State raising an objection to the reservation was not obliged to state the reasons therefor, if it did not wish to do so, other than to note that the reservation had been formulated late.

21. It seemed that the draft guidelines did not set out to establish a general derogation from the basic rule commonly accepted by States, namely that reservations had to be made, at the latest, when consent to be bound by a treaty was expressed, as what was at stake was the

security of legal undertakings voluntarily given by States, a security by which France set great store. Apart from the indisputable case when the formulation of reservations after the expression of consent to be bound was explicitly authorized by a treaty, the aim of the draft guidelines was therefore to cope with particular situations, which were not necessarily hypothetical but might be described as exceptional, when a State, acting in good faith, had no alternative other than to denounce the treaty in question, for want of being able to formulate a late reservation.

22. If that restrictive interpretation was in line with the real purpose of the guidelines, his delegation was prepared to consider them in a constructive spirit. It considered, however, that the question should be examined in greater depth by the Commission, so that States could decide on the merits of both draft guidelines with full knowledge of the facts and bearing in mind their possible consequences for current positive law and for State practice.

23. In conclusion, he observed that the ongoing work of definition was especially important and would determine the field of application of the reservations regime. Nevertheless, it was necessary to stress that any new guidelines adopted must complement articles 19 to 23 of the 1969 Vienna Convention and should not fundamentally alter their spirit.

24. **Mr. Verweij** (Netherlands), focusing on unilateral acts of States (chapter VI), on which the Commission had made progress at its fifty-second session, said he wished to draw attention in particular to the issues already covered by his Government in its reply to the Secretariat's questionnaire, although he realized that that reply, like those of other Governments, had been forwarded too late for the Special Rapporteur to be able to take them into account.

25. The Netherlands attached great importance to the codification and progressive development of the rules of international law governing unilateral acts. The area was more limited in scope than treaty law, but its codification and progressive development might promote the stability of international relations. That was why the Netherlands, having sought the advice of the independent Netherlands Advisory Committee on Public International Law Issues, had tried to provide an adequate answer to the Secretariat's questionnaire.

26. His Government, while recognizing the importance of unilateral acts at the international level, believed that the wide variety of such acts made it difficult to identify common legal effects and provide specific answers to the questions posed without differentiating between the various types of unilateral acts such as promise, notification, recognition, waiver and protest. The Netherlands consequently endorsed the view taken by some Commission members, and reflected in chapter VI of the report, that unilateral acts did not lend themselves to general codification and that a step-by-step approach dealing separately with each category of act might be more appropriate.

27. The Netherlands considered that the approach to the scope of the topic adopted by the Special Rapporteur in his earlier reports was unduly restrictive. It therefore welcomed the more liberal approach adopted by the Working Group of the Commission, established in 1999, and by the Commission itself, which had led to a certain widening of the definition of the concept of "unilateral acts". Even so, the Working Group, and subsequently the Commission, had agreed to exclude from the scope of the topic unilateral acts subject to special legal regimes, such as those based on conventional law. A wide range of acts would therefore be excluded from the envisaged regime. The Netherlands would have liked to see the establishment of a 12-mile territorial sea and an exclusive economic zone included among the examples of State practice, but the criteria laid down by the Special Rapporteur had obliged the Working Group and the Commission to abandon those examples.

28. In the same context, it was encouraging to read that the Special Rapporteur had decided not to reintroduce the term "autonomous" which had been used in an earlier draft to qualify unilateral acts, and that the Commission had followed suit. However, it was apparent that there was still disagreement among Commission members as to the relevance of the concept of "autonomy" in the context of defining a "unilateral act", and compromise should be sought.

29. Another aspect of the scope of the concept of "unilateral act" which concerned the Netherlands was the exclusion from the envisaged regime of unilateral acts of international organizations. As the Netherlands had already stated in its reply to the questionnaire, since unilateral acts of international organizations were gaining in significance, it would be advisable for the Commission to address that issue as well, after it had dealt with the unilateral acts of States. There was a clear analogy with the relationship between the 1969

Vienna Convention on the Law of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Even though unilateral acts of international organizations presented different aspects and problems, there was no reason to delay consideration of them. The Netherlands, which hosted numerous international organizations, attached importance to the topic being placed on the Commission's agenda. As the Commission itself stated, those organizations should be able to enter into unilateral commitments with States and other international organizations, and the issue raised by such acts must therefore be addressed mutatis mutandis in the light of the 1986 Convention.

30. With regard to the definition of unilateral acts, the intention of a State to produce legal effects by means of a unilateral act might not actually suffice to produce the effects sought under international law. In the final analysis, it was international law itself which gave the act its binding force. The Netherlands therefore agreed with those members of the Commission who, on the subject of "autonomy", had noted that a unilateral act could not produce effects unless some form of authorization to do so existed under general international law.

31. The Netherlands noted with satisfaction that the earlier requirement that a unilateral act be formulated "publicly" had been eliminated from the text. In point of fact the public nature of a unilateral statement was not a decisive element vis-à-vis its binding nature. Depending on the circumstances, and in particular whether the statement — or more generally the act — was intended to commit the State erga omnes, as in the *Nuclear Tests* case, or intended exclusively for the addressee State, the statement could be considered as public or confidential respectively. The Netherlands therefore did not share the view expressed in the Commission that there was no justification for eliminating the idea of "public formulation", contrary to what had been said in the Commission, and that what counted, for both practical and theoretical reasons, was publicity of the formulation of the act rather than of its reception.

32. With regard to the question of the analogous application mutatis mutandis of the rules of the Vienna Convention on the Law of Treaties to unilateral acts, it was essential to carry out a full examination of all the ingredients of that Convention (conclusion of treaties, interpretation, application and termination) before it could be determined whether such analogous application was not only possible but also necessary. The Netherlands concurred with the views of some members of the Commission who considered that although the Vienna Convention was a useful frame of reference for an analysis of the rules governing unilateral acts, it should not be reproduced word for word but used very carefully as a source of inspiration. Subject to that caveat, the Netherlands was inclined to believe that at first glance the rules of interpretation and the rules for termination of a unilateral act might be derived from the Vienna Convention and applied by analogy.

33. With regard to persons authorized to formulate unilateral acts — a question which was dealt with in draft article 3 — the Netherlands considered that apart from heads of State, heads of Government and Ministers for Foreign Affairs, all persons who might be deemed authorized by virtue of their tasks and powers to formulate unilateral acts that might be relied upon by third States could be regarded as having the capacity to commit the State. The same concept was conveyed in draft article 3, paragraph 2, although the aspect of reliance by third States upon the unilateral act (in particular a unilateral declaration) was missing.

34. As one member of the Commission had stated, paragraph 2 in its current form was too broad and left the door open for any junior official to formulate a unilateral act that would more than likely be invalidated subsequently. The judgement of the International Court of Justice in the *Gulf of Maine* case seemed to confirm that fear.

35. With regard to article 5, on invalidity of unilateral acts, he approved of the wording of paragraph 6, dealing with the case of a unilateral act in conflict with a peremptory norm of international law. A statement, or a unilateral act in general, could not have the purpose of producing effects incompatible with obligations under general international law, in particular jus cogens. However, a conflict between a unilateral act and a treaty obligation, especially of a contractual nature, need not necessarily lead to invalidity of the unilateral act. His Government considered that it was for the international community to decide whether a treaty obligation must always prevail, or whether one could presume that the legal effects of a unilateral act were not incompatible with

treaty obligations, and that the act would be interpreted accordingly.

36. **Mr. Szénási** (Hungary), referring to the topic of reservations to treaties, noted with satisfaction that the Commission had adopted five important guidelines on the question. Hungary agreed with the approach taken by the Special Rapporteur, according to which international organizations were authorized to make reservations on the same basis as States. That approach reflected the development in international relations whereby international organizations played an increasingly important role in law-making. The five guidelines adopted were acceptable to his delegation in both content and form. It was clear from the commentaries to them that the matter had been the subject of thorough research and analysis. Nevertheless, he wished to make a number of observations regarding the commentary on reservations made under exclusionary clauses.

37. The Commission had devoted almost ten pages to an analysis of the practice of the International Labour Organization (ILO) in that field. According to ILO, the procedural arrangements concerning reservations were entirely inapplicable to it by reason of its tripartite character as an organization in which, according to its Constitution, representatives of employers and workers enjoyed equal status with representatives of Governments. In the opinion of the Special Rapporteur, that reasoning reflected a respectable tradition but was somewhat less than convincing.

38. The system should be flexible enough to be adapted to specific cases, such as that of ILO. There were two other arguments in favour of a degree of flexibility. The first was that there was no shortage of treaties which prohibited reservations, notably the United Nations Convention on the Law of the Sea and the Statute of the International Criminal Court. For the Special Rapporteur, those prohibitions were "more the result of terminological vagueness than of an intentional choice aimed at achieving specific legal effects". Nevertheless, it was a deliberate choice on the part of the authors of the Statute of the International Criminal Court to make a distinction between reservations and certain statements which enabled States to subscribe only to certain parts of the Statute.

39. The second argument was that the very definition of reservations made under exclusionary clauses raised the possibility of "excluding or modifying the legal effect of certain provisions". As far as the opt-in or opt-out clauses were concerned, the second and third guidelines made it clear that restrictions of that type did not fall within the scope of the future guide.

40. His delegation wished to comment on the second part of the Special Rapporteur's report, which, owing to time constraints, the Commission had not considered. It fully agreed with the Special Rapporteur's approach regarding the formal confirmation of a reservation when expressing consent to be bound and therefore approved of the text of draft guideline 2.2.2.

41. Lastly, the issue of late reservations deserved careful consideration, in view of the practice of several depositaries of treaties, including the Secretary-General. His delegation shared the Special Rapporteur's view that the formulation of the relevant draft guidelines would have more to do with the progressive development of international law than with codification.

42. **Ms. Hallum** (New Zealand) stressed the importance that her delegation attached to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, covered in chapter VIII of the Commission's report. A number of considerations underlay that importance. Human activities involving intervention in the natural order would continue to push to the limits of scientific and technical knowledge. While such activities might often produce important benefits, they could also involve harmful consequences, some of which might be unforeseen. The laws of nature made it impossible to confine certain harmful consequences within national boundaries. Lastly, recognized principles of international law, as well as State practice, provided guidance regarding the international framework that should govern such acts.

43. Since the Commission had decided to focus on the prevention articles, her delegation had submitted a comprehensive set of comments on those articles in order to help move the work forward. It remained convinced, however, that prevention and liability were a continuum, ranging from the duty to assess the risk of significant transboundary harm and take preventive action to the obligation to ensure compensation or other relief for harm which had actually occurred. That was why her delegation had continued to advocate the

inclusion of a general article at the beginning explaining the purpose of the articles as a whole.

44. The driving force of the overall topic was the need to reconcile the freedom of States to permit the conduct of useful but risky activities in their territory with their duty not to cause harm in the territory of other States or in areas beyond national jurisdiction. Her delegation considered that the draft articles should take the form of a composite convention, with two objectives: to encourage States to agree, bilaterally and multilaterally, on detailed regimes applicable to the conduct of particular activities; and, in the absence of such a regime, to provide States with a basis for avoiding or settling disputes about the risk or the occurrence of significant transboundary harm caused by their activities.

45. It would be necessary to place some limits on the scope of the topic by providing that it concerned only transboundary harm caused by an activity "through its physical consequences". That term meant those consequences that either directly caused harm — for example, by flooding the territory of a neighbouring State — or indirectly, where the flood resulted in loss of life or damage to property. In some cases, however, the mere risk of harm brought about physical consequences, as where, for example, property values or tourism might be affected in an area at risk of being polluted by emissions from a particular activity, even though no emissions had actually occurred.

46. The draft articles should require the minimization and repair of actual transboundary harm, whether or not it resulted from a foreseeable risk. In relation to prevention, her delegation's view was that, if a State of origin could not prevent altogether a particular kind of significant transboundary harm, its duty was to minimize both the probability and the magnitude of such harm.

47. Lastly, her delegation called on all Member States to continue to support the work on the topic, the importance of which had been emphasized in both the Stockholm Declaration on the Human Environment and the Rio Declaration on Environment and Development.

48. **Mr. El-Shibani** (Libyan Arab Jamahiriya) said that State responsibility was an issue of concern to the international community as a whole. The Commission should focus more on comments by States and the practices evidenced by their replies. It was important to emphasize the need for consensus on certain concepts or definitions appearing in chapter IV, without which the draft articles would lack authority.

49. The Commission's role in the codification of international law was provided for in the Charter of the United Nations, which by no means required that concepts should be introduced for codification prematurely. Thus, for example, his delegation considered that a precise definition was still required for the concepts of State crimes, unilateral coercive acts and countermeasures by the injured State against the responsible State of origin. Such definitions were important, in order to achieve a proper balance of interests between the injured State and the responsible State. Consideration should also be given to incidents of force majeure.

50. His Government was especially worried about the way in which concepts relating to countermeasures had been formulated. The Commission should pay particular attention to that subject and should bear in mind that the case in point involved just one form of the obligation of reparation, a primary obligation under international law. Countermeasures were an exceptional remedy, to be used when faced with absolute necessity and should therefore be ruled out, as long as it was possible to adopt provisional measures protecting the interests of both parties. At all events, any act which entailed the threat or use of force, whether direct or indirect, had to be prohibited, whatever it was called.

51. In that connection, article 49, paragraph 1, deserved close scrutiny because of the consequences it had in international law with regard to bilateral and multilateral relations. As it stood, that article left it to the injured State to decide on the proportionality of the countermeasures it considered necessary in regard to the wrongful act of the other State; it was therefore both judge and judged.

52. In that context, his delegation wished to return to the notion of "collective countermeasures" and to that of "countermeasures by States other than the injured State" which, in its view, still seemed vague and imprecise. It was conceivable that they might give rise to abuses in international practice. That was why the injured State alone ought to be entitled to take countermeasures after it had exhausted all the peaceful remedies offered by international law. Collective countermeasures could be legitimate only in the context of intervention by the competent international

or regional institutions. In that respect, no delegation of power — in other words the handing over of the right to take countermeasures to a group of countries which would exercise that right outside any constitutional framework based on international legitimacy — would be acceptable. Recourse to collective countermeasures must not turn into collective reprisals, in other words action with political aims.

53. The Special Rapporteur had submitted a very interesting report on diplomatic protection, one of the latest topics to be examined by the Commission, in which he had raised several controversial issues. The Commission had rightly concluded that the use of force to protect nationals abroad was a violation of international law, even if the measures adopted came within the purview of article 2.

54. Libya had two objections to make. First, as international practice had shown in fact, several States had interfered in the internal affairs of other countries on many occasions under the cloak of diplomatic protection. Those States had used force to protect their nationals on the pretext of exercising diplomatic protection. Yet their action had violated the sovereignty of the first State, which had been accused of failing to protect foreigners in its territory, and it had often turned into total, downright occupation.

55. Then, on the legal level, the Charter strictly prohibited the use of force when protecting nationals abroad and authorized it only in the event of armed aggression. His delegation therefore saw no justification for linking diplomatic protection and recourse to force. That linkage simply did not exist. That did not mean that his delegation questioned the principle that every State had the duty to use all feasible and advisable peaceful means to protect its nationals abroad.

56. Unilateral acts of States was a topic of particular interest to his delegation which, like the others which had mentioned it, had noted its complexity. State practice and jurisprudence in that area were very poorly developed. Despite the paucity of material, the topic was extremely important and the Commission must pay particular heed to it. But in order to enable the Commission to make more rapid progress, countries should endeavour to explain in greater detail to the Special Rapporteur what their practice was in that respect.

57. His delegation proposed for the Commission's consideration a new category of "expressions of will" reflecting "the intention of producing legal effects" in international relations. They were "unilateral acts attributable to a State", which consisted of the legislation adopted by States whose effect went far beyond their territory or region. It was a well-known fact that the sole purpose of those statutes was to impose political and economic diktats. In recent decades, there had been an increase in domestic legal provisions whose effects extended beyond territorial borders. They were unilateral acts designed to have adverse effects on various levels of international relations by creating additional obstacles to free trade and capital flows. They were indeed violations of international law and internationally recognized principles.

58. The Commission should include that category of unilateral acts in its agenda and consider it very carefully, for it was a subject of great concern to some countries. The resolution which the General Assembly had just adopted on agenda item 31, entitled "Elimination of unilateral extraterritorial coercive economic measures as a means of political and economic compulsion" merely reflected the will of the international community.

59. Lastly, he was quite satisfied with the topics chosen by the Commission for its long-term programme of work, as set forth in chapter IX. He proposed two additional topics: "Nature of sanctions in international law — principles and criteria for the imposition, duration and repercussions thereof" and "Transnational organized crime from the angle of jurisdiction and competence".

The meeting rose at 4.55 p.m.