United Nations
GENERAL ASSEMBLY
FORTIETH SESSION
Official Records*

SIXTH COMMITTEE
35th meeting
held on
Tuesday, 12 November 1985
at 3 p.m.
New York

SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

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85-57553 4768S (E)

Distr. GENERAL
A/C.6/40/SR.35
18 November 1985

ORIGINAL: ENGLISH

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

AGENDA ITEM 138: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SEVENTH SESSION (continued) (A/40/10, A/40/447)

AGENDA ITEM 133: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (continued) (A/40/451 and Add.1-3, A/40/331-S/17209, A/40/786-S/17584)

1. Mr. CALERO RODRIGUES (Brazil) reaffirmed his delegation's doubts about the practicability of elaborating a code of offences against the peace and security of mankind. Although it might be possible to prepare and approve a list of offences, it would be very difficult for the international community to agree upon corresponding penalties, not to mention the question of jurisdiction over offenders, which would involve the creation of an international criminal court - a task that was hardly conceivable in view of the differences between the various legal systems. At best, the final instrument, like the 1954 draft, would be very incomplete and would never be finalized. By way of illustration, he pointed out that the Commission, after two years, was still waiting for a reply as to whether its mandate included the preparation of the statute of a competent international jurisdiction for individuals and whether that jurisdiction should be extended to States. However, given the uncertainty surrounding its work on the subject, the Commission could only be commended for what it had already accomplished.

2. Turning to the Commission's report (A/40/10), he said that the layout of the four draft articles that had been prepared on the subject was somewhat misleading. because article 4 comprised six subparagraphs which might be presented as separate articles, some of them with subdivisions. Regarding the enunciation of the general principles, his delegation was prepared to agree with the approach proposed in paragraph 51 of the report. However, the use of the word "part" in the outline proposed by the Special Rapporteur was likely to cause confusion because the same word was already used with a different meaning in the articles. The Code could therefore be divided into two parts, namely a general part and a special part listing crimes and corresponding penalties. Each part could then be divided into chapters or sections. At any rate, the number of chapters - so-called "parts" - proposed by the Special Rapporteur could be reduced to three, dealing respectively with "scope ratione materiae", including a general definition of offences and articles 1 and 3, "scope ratione personae" (art. 2), and general principles.

3. The existing wording of article 1 made it necessary to provide a general definition of an offence against the peace and security of mankind, as had tentatively been done in article 3. However, his delegation was not convinced that either alternative of article 3 was necessary. Indeed, if part II was properly drafted, there would be no need for a general definition, and the scope of the Code ratione materiae could be defined simply by stating that the articles applied only to the offences set forth in part II.

(Mr. Calero Rodrigues, Brazil)

4. His delegation supported the approach adopted by the Commission regarding the delimitation of the scope ratione personae. Indeed, the draft Code must cover individual responsibility for offences, whereas State responsibility and the legal consequences of State crimes should be covered exclusively by the draft articles on State responsibility. In that connection, he expressed his delegation's support for the first alternative of article 2.

5. Commending the way in which the list of offences was being prepared, he said that the Code should mention only those acts which were clearly connected with the peace and security of mankind and which, by reason of their seriousness, justified the application of international punishment to those who committed them. Moreover, such acts should be described with the precision that was essential in criminal legislation. His delegation agreed with the first alternative of article 4, section A and believed that the definition of aggression must rely to a great extent on General Assembly resolution 3314 (XXIX). The provisions concerning acts of aggression should not deviate in substance from that resolution. Yet, elements to be included must be carefully selected; parts of the resolution were irrelevant since it had originally been intended for a political organ (the Security Council) rather than a judicial one.

6. Although the threat of aggression had been included in the 1954 draft and was indeed prohibited under Article 2, paragraph 4, of the Charter, his delegation was not convinced that the concept should be retained. It was unnecessary to contemplate the application of penalties in respect of threats of aggression if the aggression itself failed to materialize. For the reasons indicated in paragraph 87 of the report, Brazil was also against the inclusion of "the preparation of aggression" as a separate offence. However, intervention by the authorities of a State in the internal or external affairs of another State should constitute an offence under the Code, provided that specific, serious acts of intervention were listed instead of a general reference to intervention. The addition of a general definition of terrorist acts was useful, and the definition contained in the 1937 Geneva Convention which had been used by the Special Rapporteur, was satisfactory in that respect. However, the need for an enumerative list of terrorist acts was questionable in view of the constantly changing nature of such acts. Regarding the provision on the violation of treaty obligations, he said that the reasons for which it had been incorporated in the original draft were no longer as valid as they had been in 1954. However, his delegation reserved its position on the matter pending further clarification of the scope and implications of the provision. Although the forcible establishment or maintenance of colonial domination should undoubtedly constitute an offence under the Code, the proposed provision on the subject called for more careful consideration, particularly with regard to the determination of responsibility and the identification of the acts to be punished and the individuals involved. It was hoped that the Commission and the Special Rapporteur would clarify those questions.

7. It was also hoped that the concepts of crimes against peace, crimes against humanity and war crimes would be taken into account in the preparation of the Code. Lastly, regarding the possibility of including mercenarism and economic aggression, he said that the concept of economic aggression was too vague to be

(Mr. Calero Rodrigues, Brazil)

included in the Code as an offence, and that his delegation was not convinced of the need to include mercenarism as a separate offence. If, as had been stated by the Special Rapporteur, the individual criminal responsibility of the mercenary himself was not to be covered by the Code, the question of mercenaries being organized, equipped, trained and used by a State and its authorities should be dealt with in the context of offences such as aggression or intervention, perhaps as an element that would aggravate the offence and entail a heavier penalty.

8. Mr. GOERNER (German Democratic Republic), reaffirming his country's commitment to the principle of individual criminal responsibility for crimes against peace, crimes against humanity and war crimes, said that the Code of Offences would make a major contribution to the maintenance of international peace and security. It must therefore be elaborated as a matter of priority, particularly in view of the deterioration of the international situation, the threat of nuclear war and the succession of serious crimes being committed, notably by the South African régime. His delegation supported the Special Rapporteur's proposed outline for the draft Code. However, it might be advisable to enunciate the general principles in the final part of the Code in view of their direct link with the question of enforcement in general, and domestic measures giving effect to the principle of individual criminal responsibility in particular.

9. The German Democratic Republic had already commented on the issue of the generally recognized principles to be included in the draft Code (A/40/451, p. 9). It welcomed the Commission's decision that the Special Rapporteur should address that issue as early as possible. As a rule, the offences in question were planned or organized by States and committed as a result of activities involving State organs. That did not, however, preclude the possibility of certain kinds of international crimes also being perpetrated by persons or groups of persons not acting on behalf of a State organ. The purpose of the draft Code was to determine the criminal responsibility of individuals on the basis of agreed characteristics of international crimes, so that potential offenders would be deterred and actual offenders brought to justice. The establishment of individual criminal responsibility did not pre-empt State responsibility. His delegation wished to draw attention to the distinction drawn in that connection by Sir Ian Sinclair. The first alternative of article 2 should be referred to the Drafting Committee. Moreover, consideration should be given to the suggestion put forward by Mr. Ushakov that the term "persons" should be used regardless of whether the offenders in question acted as the authorities of a State or as private individuals.

10. With regard to the definition of offences against the peace and security of mankind and the criteria for establishing their characteristics, account must be taken of the difference between the codification projects on State responsibility and the draft Code. Any international crime that was not covered by the criteria set forth in article 19 of Part One of the draft on State responsibility could hardly be classified as an offence against the peace and security of mankind. Neither of the proposed alternatives of article 3 met the relevant requirements, and the Commission should therefore reconsider to what extent the criteria listed in article 19 of the draft on State responsibility should be applicable to the draft Code.

(Mr. Goerner, German Democratic Republic)

11. His delegation endorsed the Special Rapporteur's proposal that aggression should be singled out in the draft Code as the most serious international crime. Reference should therefore be made in the draft to General Assembly resolution 3314 (XXIX), which contained the Definition of Aggression. His delegation shared the view expressed by a number of members of the Commission that the draft Code should cover the concepts of the threat of aggression and the preparation of aggression. The text should also cover the elements of a war of aggression and the first use of nuclear weapons, and in both cases a definition of individual criminal responsibility should be given. Acts constituting intervention in the internal or external affairs of State should be covered, on the basis of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Acts constituting State-sponsored terrorism should also be covered by the draft Code. His delegation supported the view that the question of mercenarism should be the subject of a separate provision in the text (para. 97 of the report). Furthermore, the crimes of colonialism and apartheid should be defined in the draft Code.

12. The Commission should continue to accord high priority to elaborating the draft, and the question should continue to be considered in the Sixth Committee as a separate item.

13. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) emphasized the importance of the rapid elaboration of a Code of Offences against the Peace and Security of Mankind. That was by no means a simple task, if only because the draft had to deal with unlawful acts committed both by States as such and by individuals. Liability for unlawful conduct would be borne in the former case by the State as a whole and in the latter by the individual concerned, the possibility of a combination of both forms of liability not being excluded. The substantial differences between the liabilities of those two categories of offenders had to be taken into account; according to existing concepts of international law, States bore political and material responsibility while criminal responsibility devolved upon individuals who committed crimes. The concept of criminal liability of States was neither fruitful nor realistic, since under the principle par in parem non habet imperium a State was not subject to foreign jurisdiction. To adopt any other approach would be to undermine the universally recognized principle of sovereign equality of States. A limitative approach whereby the draft Code would be concerned only with problems of criminal liability of individuals could lead to States being relieved of all responsibility for crimes against the peace and security of mankind and thus encouraged to neglect adopting the national legislation necessary for the prevention of such crimes.

14. The list of crimes to be included in the draft Code should reflect present-day political realities as well as achievements in the progressive development and codification of international law. The fact that such acts as aggression, apartheid, genocide, acts of State terrorism, and the establishment or maintenance by force of colonial domination represented crimes against the peace and security of mankind was today universally recognized. First use of nuclear weapons should obviously be added to the list, since the unleashing of nuclear war could lead to the destruction of civilization, i.e. to omnicide. In that connection, he referred

(Mr. Ordzhonikidze, USSR)

to the Declaration on the Prevention of Nuclear Catastrophe and various General Assembly resolutions and other United Nations documents and international treaties condemning nuclear war and State terrorism. On the other hand, he did not think that crimes of a general criminal nature, such as aircraft hijacking and piracy, should be included in the draft Code.

15. While taking, on the whole, a positive view of the International Law Commission's work on the topic at its thirty-seventh session and of the Special Rapporteur's efforts as embodied in his third report, his delegation considered draft article 4 submitted by the Special Rapporteur too abstract to be satisfactory. The alternative draft submitted during the discussion in the Commission listing some specific crimes against the peace and security of mankind should be taken into consideration.

16. The draft Code should include provisions to guarantee that individuals guilty of crimes against the peace and security of mankind would not enjoy impunity. The draft should also make it obligatory for States to co-operate in the prevention of such crimes and the punishment of persons responsible for their perpetration; in particular, States should be obliged to enact national legislation providing for the severe punishment of individuals guilty of such crimes.

17. The elaboration of the draft Code should remain a major independent item on the agenda of the Sixth Committee. He expressed the hope that the International Law Commission would proceed in accordance with the recommendation of the thirty-ninth session of the General Assembly, so that the international community might shortly have at its disposal a new instrument of international law for the prevention of crimes against the peace and security of mankind.

18. Miss CHOKRON (Israel) said that her delegation had already repeatedly expressed its views on the draft Code of Offences against the Peace and Security of Mankind. Those remarks were equally applicable to chapter II of the current report of the Commission. The Commission had recognized the need for precision in drawing up the draft Code in referring, in connection with the question of general principles, to the need to avoid excessive abstraction and assertions not based on proven facts. Her delegation shared that concern and believed that that approach should be taken to all parts of the draft Code. All the components of the offences in question must be carefully defined. The draft Code should cover all individuals and take into account international law in its entirety. There must be no arbitrary selection from among the existing rules of international law and the existing international instruments. The rules and instruments on which the draft Code was to be based must contain clear definitions of the criminal acts in question, and the United Nations resolutions referred to must be of a juridical rather than a political nature. Her delegation believed that some of the concepts relating to international crimes and offences that were dealt with in article 19 of Part One of the draft on State responsibility should, rather, be included in the draft Code. Moreover, it was important that the drafters of the future Code should emphasize effective implementation of an international criminal jurisdiction, even if a decision on that issue was deferred.

(Miss Chokron, Israel)

19. Her delegation noted that, where the topic of State responsibility was concerned, a number of major decisions concerning the nature of the draft were yet to be adopted. It was not yet clear whether the draft was to contain a body of general rules covering all the activities of States or whether it should cover rules and principles already dealt with in such basic texts as the Charter of the United Nations or the Vienna Convention on the Law of Treaties. If the latter alternative was chosen, account must be taken of all the relevant rules. Another possibility would be to limit the scope of the draft to rules on State responsibility stricto sensu. A pragmatic approach must be taken towards Part Two of the draft articles. Draft article 5, particularly paragraph 2, subparagraph (f), and paragraph 3, gave the impression that even a State that had not been affected by an internationally wrongful act and whose interests had not been harmed could be regarded as an "injured State". Her delegation believed that that problem could be solved through judicious drafting and abandonment of the policy of referring to bilateral and multilateral treaties. Moreover, it would be preferable to deal with the content of draft article 5, paragraph 3, and articles 14 and 15 in the draft Code of Offences Against the Peace and Security of Mankind.

20. There was a great temptation for a basically political organization such as the United Nations to develop an international legal system dominated by abstract and imprecise concepts and lacking adequate enforcement and sanctions machinery. In that connection, she wished to refer to an article by the Legal Counsel, entitled "The United Nations and the rule of law", which had appeared in the English version of a recent edition of Aussenpolitik. In that article, written in his personal capacity, the Legal Counsel had spoken of attempts to influence the further development of the legal conceptions and principles governing the international community by way of United Nations resolutions. He had indicated that much depended on the content of the principles incorporated into such proclamations and that experience showed that the more political and ideological a text was, the less its legal weight. Those remarks became all the more significant when applied to the activities relating to the codification and progressive development of international law carried out by the Commission. The Commission should place less emphasis on political considerations in dealing with such issues as the draft Code of Offences against the Peace and Security of Mankind and State responsibility. Moreover, implementation problems should be borne in mind.

21. With regard to the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, her delegation wished first of all to refer to draft article 21. It was difficult to see why the diplomatic courier ad hoc and the permanent courier should be treated differently. The same régime should apply to both types of courier, and the privileges and immunities in question should cease at the moment when the courier left the territory of the receiving State or the transit State. On the whole, the wording of draft article 36, paragraph 1, was acceptable. Her delegation noted that the approach taken in paragraph 2 of that draft article differed from the approach taken in the Vienna Convention on Diplomatic Relations. There was no reason, in connection with draft article 36, for not maintaining different régimes for diplomatic and consular bags, which did not necessarily mean that new ground must be broken.

(Miss Chokron, Israel)

22. Her delegation noted that progress had been made on the topic of jurisdictional immunities of States and their property. It had no particular objection to the new wording of draft article 19. With regard to paragraph 7 of that draft article, it would appear to be appropriate for the court of the forum to determine the non-commercial nature of the ship or its cargo, taking account of individual circumstances and in accordance with the law of the forum, without prejudice to the immunity of warships and State ships in government non-commercial service.

23. With regard to enforcement measures, her delegation believed that a certain amount of consistency should be maintained in drafting rules on immunity and on enforcement measures. Moreover, jurisdictional immunities and, more particularly enforcement measures, should be made subject to the principle of reciprocity.

24. Mr. McKENZIE (Trinidad and Tobago) said that the international situation was such that it was urgent for the Commission to continue its work on the draft Code of Offences against the Peace and Security of Mankind. The need for a code as an additional guarantee for the strengthening of international peace and security was emphasized, for example, by the situation in southern Africa.

25. His delegation considered the outline for the draft Code submitted by the Special Rapporteur an acceptable framework. The principles formulated by the Commission in 1950 formed a good basis for further work and should, as the Special Rapporteur suggested, be supplemented, as appropriate, in the light of developments in international law. Moreover, the Committee should give priority to consideration of the non-applicability of the statutory limitations to offences against the peace and security of mankind and to the scope of the principle of retroactivity.

26. The first alternative of draft article 2 reflected the Commission's decision to devote its efforts at the current stage to the question of the criminal responsibility of individuals. However, it did not state that offences against the peace and security of mankind were crimes under international law, for which the responsible individuals should be punished; it should be amended accordingly. In that connection, he referred back to article 1 of the Commission's 1954 draft. The question whether the draft Code should eventually provide for the criminal responsibility of States should not be allowed to delay the work of the Commission on the topic.

27. With regard to the definition of an offence against the peace and security of mankind, he said that such crimes against humanity or against the peace and security of mankind as genocide and apartheid had been recognized as violations of common international law. The major advantage of the second alternative of draft article 3 submitted by the Special Rapporteur was that it minimized arguments relating to the necessity for general criteria in defining offences.

28. The definition of aggression given by the General Assembly in 1974 should be incorporated in its entirety. His delegation was flexible as to whether threats of and preparation for aggression should be included. The notion that under the Code

(Mr. McKenzie, Trinidad and Tobago)

an individual could be prosecuted for threatening to use force against a State should be closely examined in view of the practical difficulties involved. The question as to what constituted presumptive evidence of the preparation of military aggression as distinct from defence continued to bedevil attempts to decide whether the preparation of aggression referred to in article 2, paragraph (3), of the 1954 draft Code should be retained. The Commission would have to re-examine the matter in more detail.

29. His delegation supported the idea behind draft article 4, section C, submitted by the Special Rapporteur in his third report, since there had long been wide consensus that intervention in the strict sense in the internal or external affairs of another State was a violation of that State's sovereignty and was generally contrary to international law. With respect to the unlawfulness of the "subversive" intervention that was the subject of that draft article, he recalled that the United Nations had condemned "indirect aggression" on many occasions and his delegation had no hesitation in supporting the inclusion of intervention among the acts to be considered offences against the peace and security of mankind.

30. His delegation found some merit in the proposal to proscribe State-sponsored terrorism in the draft Code. However, the criteria used to define it in the present formulation were too narrow since, in order to constitute an offence, it would have to be directed against another State. Draft article 4, section D, paragraph (a), should be amended by modifying the provision whereby acts of State-sponsored terrorism constituted an offence under the Code only where the victims came from another State. Paragraph (a) of draft article 4, section D, should be reformulated to proscribe State-sponsored terrorism directed against peoples to deny them their right to self-determination and also to proscribe the State-sponsored terrorism of apartheid.

31. With regard to the forcible establishment or maintenance of colonial domination, although the idea behind draft article 4, section F, was laudable, his delegation considered its formulation too restrictive providing as it did only for domination of peoples through colonialism. The draft article should be reformulated to provide that the subjection of a people to alien domination and the denial of their right to self-determination were offences against the peace and security of mankind.

32. Lastly, his delegation considered that the Code could be effective only if the necessary mechanisms for implementing its provisions were established. The main difficulty was that of the establishment of an international criminal tribunal with the competence to conduct trials and enforce sentences. It was argued that such a tribunal would conflict with the principle of the sovereign equality of States. But the criminal responsibility of individuals meant that individuals committing offences against the peace and security of mankind could be subject not only to national courts but also to norms of international law and the jurisdiction of special international tribunals. It might be appropriate for the Code to provide that jurisdiction over offences under the Code should, in principle, be entrusted to national courts, but the possibility of establishing an ad hoc international court should not be excluded.

33. Mr. ABDEL-RAHMAN (Sudan) agreed with the Special Rapporteur's submission that the draft Code of Offences against the Peace and Security of Mankind should be limited at the current stage to offences committed by individuals, but he hoped that the Commission would subsequently consider the possible application to States of the notion of international criminal responsibility, including the offences covered by the 1954 draft, with appropriate modifications of form and substance. In that context, a further study of the civil responsibility of States would assist the Commission in its future work.

34. With regard to the definition of offences against the peace and security of mankind, his delegation preferred the first alternative of draft article 3. It was realistic, precise and embraced the four fundamental criteria. With regard to acts constituting offences, he concurred with the view that the two notions of international peace and security of mankind did not coincide. However, he did not think it advisable to restrict the acts constituting an offence to those crimes mentioned in article 2 of the 1954 draft. There had been many developments since 1954, moreover, the question of aggression in all its manifestations should be included. In that regard his delegation preferred the first alternative of draft article 4, section A: the 1974 General Assembly resolution did not provide a strictly juridical definition of aggression.

35. Emotion should not distort judgement in addressing the phenomenon of terrorism. The various forms and motives of terrorism must be closely examined. Article 4, section D, was problematic. The inclusion of the policy of apartheid in the list of offences would be valuable in a code that intended to include specific crimes as crimes against humanity. On the question of mercenarism, his delegation agreed with the view expressed in paragraph 97 of the Commission's report.

36. In considering the topic of jurisdictional immunities of States and their property, the question of enforcement had to be taken into account. In a number of instances, the question was not whether a State submitted to adjudication, but the possibility of execution. He reiterated his delegation's view that the interests of developing countries must be recognized in Part Four of the draft. Commercial activities undertaken by Governments as part of the socio-economic development process should not be considered on the same basis as activities of private entities, or as government activities that were clearly profit-oriented. Exceptions should reflect not absolute immunity but an adequate level of immunity. His delegation was dismayed that the developing countries had been overlooked in Part Four and it hoped that an equilibrium could be struck. While the overall approach taken by the Special Rapporteur was partially successful, it showed a bias that favoured maritime laws, in particular. Draft article 19 made distinctions which did not exist in some legal systems.

37. The sensitive topic of the law of the non-navigational uses of international watercourses was of great importance to his delegation and he hoped that the Commission would assign it top priority in future. The general approach adopted by the Special Rapporteurs had been satisfactory, but his delegation had serious misgivings, which had been shared by a number of delegations, with regard to draft articles 1 to 9 because of their ambiguity and lack of clarity due to conceptual differences of approach. Those draft articles should therefore once again be the subject of a general debate.

(Mr. Abdel-Rahman, Sudan)

38. The draft articles went into too much detail, thus defeating the purpose of drawing up a framework agreement. The vagueness of article 4 had to be addressed and its main thrust rectified: its substance needed to be discussed. Article 5 posed a special problem to his delegation: it was very novel in character, particulary paragraph 2, and questions of substance therefore had to be addressed. Article 6 represented a problem of equity: it did not take into account many factors of paramount importance in the sharing of the waters of an international watercourse. The demographic factor was not a major one for his delegation, which had already enumerated other factors which should be taken into account. Consideration of article 9 should be deferred, since it touched on the topic of international liability for injurious consequences arising out of acts not prohibited by international law. It was imperative that draft articles 1 to 9 should be discussed once again and he hoped that the new Special Rapporteur would take into account the views expressed at the previous and current session with regard to those draft articles, since they would have to be acceptable to the States concerned. His delegation continued to maintain that it would be useful to establish an ad hoc group for that topic.

39. In conclusion, he stressed the importance of the International Law Seminars, especially for the developing countries, and joined the Commission in appealing to all States to contribute generously for that purpose.

40. Mr. MUSSA (Somalia), referring to the draft Code of Offences against the Peace and Security of Mankind, said that the formulation of general principles for identifying such offences required thorough study to identify the characteristics of each offence. The reference in the Commission's report to the general principles formulated at its second session in 1950 was a starting point but there was a need for concretization of the general principles and for reappraisal of the seven principles contained in the report in the light of international developments. The linkage in the report between war crimes and crimes against humanity should be re-examined. War crimes might be crimes against humanity, but the reverse might not be true, as in the case of apartheid. His delegation supported the view that criminal acts constituting offences against the peace and security of mankind should be studied in depth and a list drawn up before general principles were formulated.

41. The Commission should begin by studying the responsibility of private individuals, without prejudice to the future study of State responsibility. In that context, his delegation preferred the first alternative of draft article 2 proposed by the Special Rapporteur, which encompassed both private individuals and the authorities of a State.

42. Regarding the definition of an offence against the peace and security of mankind, his delegation believed that the concept was single and unified. In that respect, the first alternative of article 3 was preferable. The link between that alternative and the draft on State responsibility, as referred to in paragraph 72 of the report, augured well for the comprehensive future work on the topic.

(Mr. Mussa, Somalia)

43. His delegation reiterated its view that apartheid, the forcible establishment and maintenance of colonial domination, terrorism, mercenarism, economic aggression and denial of the right of peoples to self-determination should be included in the list of offences. The draft articles already prepared by the Commission should be updated and, if necessary, amended, in view of international developments since 1954.

44. His delegation would have expected the Commission to have accomplished more than the adoption of one article on the topic of State responsibility. The commentaries on the 12 draft articles were a good basis for future work on the implementation of international responsibility and the settlement of disputes. The definition of the "injured State" in article 5 was crucial to the determination of the legal consequences of a wrongful act on the part of the "author State" that consisted in the breaching of an obligation contained in Part One of the draft articles.

45. The Commission had rightly brought out the relationship that could exist between Part Three of the draft and the situation envisaged in the Vienna Convention on the Law of Treaties with respect to invalidity, termination and suspension of operation of treaties and the new legal relationship which came into existence as a result of an internationally wrongful act. In that connection, he welcomed the proposed compulsory conciliation procedure that was similar to the one provided for in that Convention and in the United Nations Convention on the Law of the Sea. He also supported the procedure proposed for inclusion in Part Three whereby any dispute concerning the interpretation or the application of article 19 of Part One and article 14 of Part Two should be settled along the lines of article 66 (a) of the Vienna Convention on the Law of Treaties by submitting the dispute to the International Court of Justice. Such a line of action was supported by the fact that Part Two referred to the rules of jus cogens and the special legal consequences of international crime.

46. Turning to the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he said that the International Law Commission's task in the matter was to complement the provisions of the Vienna Conventions of 1961 and 1963 and to provide detailed rules governing the day-to-day movements of diplomatic couriers and diplomatic bags from one country to another in such a way as to eliminate any loopholes in the application of those Conventions. His delegation was particularly interested in the draft articles concerning the diplomatic bag not accompanied by courier: many developing countries, including his own, could ill afford to send couriers to all their diplomatic and consular missions and the routes covered by their flag airlines were too limited to enable them to deliver their diplomatic bags in the manner envisaged in draft article 23.

47. His delegation was in agreement with the privileges and immunities to be granted to diplomatic couriers under draft articles 15, 16, 17, 19 and 20 on the understanding that the enjoyment of those privileges and immunities was strictly subject to the provisions of draft article 5. The diplomatic courier should respect the laws and regulations of the receiving and transit States and should not

(Mr. Mussa, Somalia)

interfere in the internal - or, indeed, external - affairs of those States but should confine himself to the performance of the functions listed in draft article 10. His delegation also welcomed the adoption of the principles of reciprocity and non-discrimination as a basis for granting privileges and immunities to the diplomatic courier. It endorsed draft article 18 setting forth the courier's immunity from criminal jurisdiction, on the understanding that such immunity did not extend to offences such as larceny, murder or assassination, or to carrying prohibited materials such as drugs or weapons for terrorist purposes. Lastly, it shared the view expressed both in the International Law Commission and in the Sixth Committee that the use of electronic and other sophisticated mechanical devices to examine the person of a diplomatic courier and the contents of the diplomatic bag, whether accompanied or not, constituted a flagrant violation of the immunities and privileges of the courier and the bag.

48. In conclusion, he said that his delegation took note of the Commission's progress on the topics of relations between States and international organizations, the law of the non-navigational uses of international watercourses, and international liability for injurious consequences arising out of acts not prohibited by international law and looked forward to the results of work to be accomplished on these topics in the future.

49. Mr. MAUNA (Indonesia), referring to the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, endorsed the Special Rapporteur's conclusion that it would be wisest to abide by the well-established rule of absolute inviolability while possibly providing for some flexibility in its application. Accordingly, his delegation welcomed the revised text of draft article 36, which provided a good basis for further efforts to find an acceptable formula. Since the principle of inviolability should apply to the bag itself and its entire contents, whether correspondence or other articles, there should be an explicit prohibition of close examination through electronic or other mechanical devices. However, the phrase "exempt from any kind of examination" had been criticized for being too broad in the sense that it would exclude the use of sniffing dogs for the detection of drugs. Privileges and immunities should be accorded to the diplomatic courier only in respect of acts performed in the exercise of the courier's functions. The relevant draft articles should be formulated in such a way as to guarantee the receiving and transit States' protection and public order interests while granting functional immunities to the courier.

50. The topic of jurisdictional immunity of States and their property raised problems of policy affecting the relationship between developed and developing countries. The principle of State sovereignty should not be infringed and exceptions to State jurisdiction should not be too numerous. The application of the concept of restricted immunity to government activities for commercial purposes should take account of the reality that the economic activities of countries, particularly developing ones, were not performed entirely by the private sector. A strict distinction between acts jure imperii and acts jure gestionis could not always be drawn in that context. His delegation was pleased to note that under paragraph 3 of draft article 15, State property was made immune from attachment and execution.

(Mr. Mauna, Indonesia)

51. With regard to the law of the non-navigational uses of international watercourses, he said that, in view of the diversity of international watercourses in terms of their physical characteristics and of the human needs they served, only general principles should be dealt with at the international level and States should be permitted to enter into specific agreements with respect to individual rivers. He noted with satisfaction the general agreement in the Commission with the Special Rapporteur's proposals concerning the manner in which work on the topic should proceed.

52. In conclusion, he welcomed the holding of the International Law Seminar referred to in paragraph 326 of the report and congratulated the Commission's four new members on their election.

53. Mr. RAVIX (Haiti), referring first to the question of the draft Code of Offences against the Peace and Security of Mankind, said that his delegation endorsed the methodology adopted by the Special Rapporteur and, generally speaking, took a favourable view of the draft contained in the report of the International Law Commission. It was essential, however, that the concept of offences against the peace and security of mankind should be expressed in the clearest and most precise manner possible, leaving no scope for divergent interpretations in the future. The good faith of States, both large and small, and their will to abide by the decisions of high international legal authorities were, of course, the condition sine qua non of the future Code's efficacy. With regard to the draft Code's scope ratione personae, his delegation agreed with the Commission's decision to confine itself, for the present at least, to the criminal liability of individuals, leaving the consideration of the delicate question of the criminal liability of States to a later date. As for the question of the scope ratione materiae, he accepted the distinction drawn by the Commission between international crimes, i.e. crimes which were international in nature, and offences which by their nature threatened the very foundations of contemporary civilization. The list of offences drawn up by the Commission in 1954 could provide the basis for the elaboration of the draft Code. The list would, of course, not be limitative and should be supplemented with new types of offence in the light of developments in international law. His Government would associate itself with any decision to include apartheid and colonialism in the list. The use of nuclear weapons undeniably constituted the crime par excellence against the peace and security of mankind. Armed aggression, too, was without doubt a crime in the fullest sense of the word. He had some reservations, however, with regard to inclusion of the threat and preparation of acts of aggression, since an action interpreted as a hostile gesture by some might be regarded by others as an act of self-defence.

54. Turning to the question of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he welcomed the International Law Commission's decision to accord the diplomatic courier immunity from the criminal jurisdiction of the receiving or transit State in respect of all acts performed in the exercise of his functions. The diplomatic courier was, however, duty bound to respect the laws and regulations of those States. With regard to draft article 21, while

(Mr. Ravix, Haiti)

taking account of the very widespread view that the courier's privileges and immunities ceased once the diplomatic bag had been delivered to the consignee, he agreed that the courier should be given a reasonable period of time in which to go about his business in full safety. In conclusion, he expressed his delegation's full agreement with the revised text of draft article 36.

55. Mr. ZHULATI (Albania), referring to a statement made at the 33rd meeting by the Austrian representative in which mention had been made of the Corfu Channel Case, said that he wished to place on record that his Government had never accepted and did not accept any responsibility for the incident in question.

The meeting rose at 5.50 p.m.