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SUMMARY RECORD OF THE 36th MEETING

Chairman: Mr. CALLE y CALLE (Peru)

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The meeting was called to order at 10.55 a.m.

AGENDA ITEM 121: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION (A/36/10 and Corr. 1; A/36/428)

1. Mr. THIAM (Chairman of the International Law Commission) said that the main activities and decisions of the Commission at its thirty-third session were set out in detail in its report (A/36/10).

2. One of the Commission's first acts had been to elect a new member, Mr. Aldrich, to replace Mr. Schwebel, who had been elected to the International Court of Justice. It had also accepted the resignation of another member in the course of the session. Since its mandate was about to expire, the Commission had not appointed a replacement, especially since there had not been time before the closure of the session to put into effect the procedure laid down in its Statute. The Commission had held its customary seminar on international law, in which most of its members had participated, giving courses and providing advice to trainees from all over the world. He noted that the Commission would have been unable to hold the seminar without the valuable financial assistance of a number of States, which he hoped would continue on an even more generous scale. Lastly, the Commission had maintained its fruitful relationship with the International Court of Justice, in the form of visits from Mr. Roberto Ago and Mr. Abdullah El-Erian, former members of the Commission and both now Judges of the Court. Similarly, the Commission had continued its co-operation with the European Committee on Legal Co-operation, the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the Arab Commission for International Law. The Secretary of the United Nations Commission for International Trade Law had asked the Secretary of the International Law Commission for information on its recent or current activities in the field of international trade law, and that information had been supplied.

3. The Commission had considered a number of substantive topics, and had divided its time among them in the light of the priorities established by the General Assembly. Thus, it had spent the major part of the session examining the two priority topics: the succession of States in matters other than treaties, and treaties concluded between States and international organizations or between two or more international organizations. It had not, however, neglected the others and all the reports submitted had been considered and decisions taken on them.

4. Chapter II of the report was devoted to the topic of the succession of States in respect of matters other than treaties. The General Assembly had recommended in its resolution 34/141 that the Commission should aim to complete the second reading of all the draft articles on that topic at its thirty-third session, taking into account the written comments of Governments and the views expressed in debates in the General Assembly. The Commission had accordingly completed its second reading after examining the thirteenth report of the Special Rapporteur,

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Mr. Bedjaoui. The title of the draft articles had evolved over the years. After first being considered under the general title "Succession of States and Governments", the topic had been divided into three parts, entitled respectively "succession of States in respect of treaties", "succession in respect of rights and duties resulting from sources other than treaties", and "succession in respect of membership of international organizations". Of the three headings, two had been retained: "succession in respect of treaties", which had been completely codified, and "succession in respect of rights and duties resulting from sources other than treaties". In the course of the Commission's work, the latter had become "succession of States in respect of matters other than treaties", before acquiring its final title "Succession of States in respect of State property, archives and debts".

5. The Commission was well aware that, defined in that way, the subject left problems posed by other cases of succession, apart from treaties, untouched. It had therefore inserted a safeguard clause in the shape of article 5 on succession in respect of other matters. It had also introduced an article 6, specifying that nothing in the articles should be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons. In a matter so delicate, where problems of law were closely linked with political considerations, the Commission and the Special Rapporteur had striven to find solutions that would as far as possible be realistic and balanced, in other words, take into account the interests involved and the type of succession considered. As the report emphasized, the Commission had been inspired throughout by the need to rely on the principle of equity as a balancing element and a corrective factor, bearing in mind always the maxim "summum jus summa injuria".

6. That was especially true in the field of decolonization, where there was a risk that subjective factors might mask the rights and interests of the parties concerned, particularly in respect of property and more particularly still in respect of archives. In that connexion the Commission had followed the wise counsel of its Special Rapporteur. After adopting the draft articles in second reading, the Commission had decided, in conformity with article 23 of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles on succession of States in respect of State property, archives and debts and to conclude a convention on the subject.

7. Chapter III of the report was devoted to the question of treaties concluded between States and international organizations or between two or more international organizations. There too the Commission's work was well advanced. It had embarked upon a second reading and twenty-six articles had been adopted during the session, subject to such minor modifications as might prove necessary. Those draft articles formed a necessary complement to the Vienna Convention on the Law of Treaties. At the outset, there had been some question whether the Commission should prepare draft articles applying not only to treaties between

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States but also to treaties concluded by other entities and in particular by international organizations. It had been thought best to divide the two questions because, although both concerned treaties, the subjects to which the law was addressed differed in certain respects. That was true, in particular, of international organizations and of States. The assimilation of States and international organizations could not go beyond a certain point without becoming imprecise and possibly dangerous. The sovereignty of States resulted from their equality before international law, and had no limit save that imposed by reciprocal respect for that sovereignty. International organizations, on the other hand, owed their existence to the will of States, which limited their spheres of action, their competence and their organs. They consisted of States, which acted through them, and although the interests of those States were often in agreement when they sought a common objective, they were sometimes in disagreement or even antagonistic at other levels. Thus, international organizations had no single form and shape. There was a whole variety of international organizations, some grouped by geographical region and others according to purpose. In the matter of treaties, they had a greater or lesser capacity to conclude treaties. The Commission, aware of all those problems, had sought to avoid the difficulty as far as possible. As was natural, there had been two trends of thought in the Commission in regard to international organizations, one more liberal and the other more restrictive. The Commission's work was often the fruit of a dynamic compromise between those two trends. The principle set out in draft article 6, whereby the capacity of an international organization to conclude treaties was governed by the relevant rules of that organization, was the outcome of such a dynamic compromise, and that spirit governed the entire draft.

8. The Commission had also been faced with a choice in the method of drafting. Given the many points of similarity with the Vienna Convention, it would have been possible to draft a much shorter and less substantial legal instrument, simply referring back to the Vienna Convention whenever the text could be identical. However, that might have risked constructing an instrument of doubtful autonomy. Moreover, the Vienna Convention and the convention on the matter under consideration would not necessarily apply to the same parties. The Commission had accordingly preferred to draft an independent instrument. It had not, however, lost sight of the links between the two subject-matters and their similarity, and it had made very few changes in terminology, even where it had felt that the wording of the Vienna Convention could be improved.

9. The Commission had examined and adopted in second reading 26 articles divided among three parts. Part I, the introduction, consisted of five articles defining the scope of the articles, the use of terms, non-retroactivity, and the distinction between treaties constituting international organizations and treaties adopted within an international organization. Part II dealt with the conclusion and entry into force of treaties, and part III, the second reading of which had not yet been completed, dealt with the observance, application and interpretation of treaties.

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10. In addition to the two priority topics, the Commission had begun a study of part 2 of the topic "State responsibility". Part 1 had already been dealt with and the Commission had adopted the draft articles on it in first reading. Part 1 concerned the origin of international responsibility of States. The Commission, after indicating that the foundation of international responsibility was the wrongful act, had sought to define the concept of a wrongful act and to determine the circumstances that might aggravate, attenuate or preclude wrongfulness, and the imputability of the wrongful act to its author. The draft articles in part 1 had been submitted to the Commission in due course and had been communicated to the Governments of Member States for observations and comments. The Commission would take up the second reading as soon as it was able, and Governments had been asked to send their observations and comments before 1 March 1982. In the meantime, the Commission had started its consideration of part 2, on the consequences under international law, entitled "Content, forms and degrees of international responsibility".

11. After the election of Mr. Ago to the International Court of Justice, Mr. Riphagen had been appointed Special Rapporteur for the topic. His task had been to determine the consequences that an internationally wrongful act might have, whether reparation or sanction. The Special Rapporteur's point of departure had been that immediately upon its commission an internationally wrongful act generated new rights and corresponding obligations: new obligations on the part of the injured State and possibly of third States in respect of the situation created by the internationally wrongful act. A number of questions had been taken up in connexion with the Special Rapporteur's first report, regarding reparation, counter-measures, the proportionality between the wrongful act and the corresponding "response", and the limits to that response. Although the debate had not clarified the subject entirely, there had been a fruitful exchange of views and some principles had emerged, of which the most generally accepted was proportionality between the wrongful act and the "response".

12. The first three draft articles were devoted to general principles and the other two to the obligations of the State which was the author of an internationally wrongful act. In that connexion, the inevitable debate had arisen on the doctrinal distinction between so-called "primary" and "secondary" rules, the first relating to the origin of responsibility and the second being more directly linked to its consequences. The Commission had generally agreed, however, that codification was a practical procedure purporting to settle concrete matters and that distinctions that were too precise, though they might be intellectually satisfying, did not necessarily correspond to reality. In any work of codification, while general principles must of course be borne in mind, the main purpose must be to offer specific solutions to specific situations. In the case in point, the matter had only just been broached and many questions of methodology and of substance were still pending. The first five draft articles had been sent to the Drafting Committee.

13. The topic of chapter V, the question of international liability for injurious consequences arising out of acts not prohibited by international law, had likewise

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only been touched upon. The fundamental question, which the Commission had not yet finally settled, was the relationship of that question to the previous one. Could there be liability for an act that was not wrongful? That was the eternal question which arose in internal law of liability through fault and liability without fault. One argument was the liability for an act that was not wrongful would hardly be acceptable because the concepts of fault and injury were closely connected. As a result, the topic could not be independent of that of responsibility for wrongful acts. Another argument was that there could be a wrongful act without harm and there could also be harm without a wrongful act. The concepts of harm and wrongful act were separate and independent, although there was often a relationship between the two.

14. Both arguments had some validity. In the first case, it seemed difficult to draw a line between rightfulness and wrongfulness. Acts which were not prohibited could nevertheless be, and indeed frequently were, dangerous acts requiring vigilance on the part of those engaging in them. The harm often arose from failure to be vigilant, which thus became a wrongful act. In the same way, an act that was in itself wrongful could lose its wrongfulness through the consent of the injured State or through the intervention of a cause external to its direct author. Since the distinction was so difficult, it was argued in some quarters that the topic was perhaps superfluous, if not nonexistent, insofar as the solutions needed to solve all the problems that arose could be found in the general principles of responsibility.

15. According to the proponents of the other argument, there were undoubtedly cases in which a simple finding of wrongfulness would not suffice. In the field of research and technology, some activities, however closely regulated, always had an area of uncertainty because of the incomplete state of the art at the time concerned. Respect for regulations and preventive measures still left room for injury, for which there must be reparation. The origin of liability thus lay in the need for reparation. The difficulty of resolving that question was reflected in the first draft article proposed by the Special Rapporteur, which stated in subparagraph (b) "...the State within whose territory or jurisdiction the activities are undertaken, has, in relation to those activities, obligations which correspond to legally protected interests of that other State". It was thus admitted that violation of an obligation was the origin of liability. Hence, violation of an obligation became a wrongful act. The text thus referred back to responsibility for a wrongful act. For all those reasons, the Commission had decided it must study the problem further before drafting a new text. It had, however, given the Special Rapporteur some indications as to method. It had been agreed that the approach should be more pragmatic, bearing in mind that any problem of liability posed a problem of reparation regardless of the origin of the liability. The passage from an act that was not wrongful to a wrongful act was often imperceptible, and trying to define the distinction in every case would mean paralysis.

16. The topic of the jurisdictional immunities of States and their properties, dealt with in chapter VI of the report, was of great practical importance,

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particularly in view of developments in international relations, the interdependent nature of the activities of States (due among other things to the development of international co-operation) and the enlargement of the international community with the emergence of new States. Although there were existing practices of great antiquity in that area, they were not uniform, ranging from simple courtesy to the application of conventional régimes of varying degrees of complexity.

17. The debate had shown that the topic lay at the point of intersection of two equally inflexible and apparently equally exclusive sovereignties: the sovereignty of the State invoking jurisdictional immunity and that of the second State which sought to impose its jurisdiction on the first. Unless the peaceful development of international relations was to be halted, an area had to be found where those two sovereignties could interrelate. However, the difficulty lay in that each of them had its defenders: some believed that immunity could not be imposed as a general principle but could only be established by consent and was thus an exception to sovereignty regarded as sacrosant in principle. Others regarded immunity as a principle which tolerated only exceptions derived from a treaty obligation, when two or more States agreed to submit to one another's respective jurisdictions, or voluntary in nature, based on a State's unilateral decision. Those two approaches were only apparently contradictory, for they had a common underlying philosophy which in its simplest form defined the State as intangible and, when carried to its extreme, elevated the concept of the State to the realms of metaphysics.

18. Codifiers, however, had to bear in mind the specific needs of the international community and to identify those rules without which relations could not continue and the international community would be paralysed. For that reason, the Commission had chosen to use the inductive method which consisted in identifying, in the practice of States, common rules on the same subject, rather than formulating an abstract principle from which to derive those rules, and which had borne fruit in the shape of the rule set forth in draft article 6, according to which a State was immune from the jurisdiction of another State in accordance with the provision of the articles. One member of the Commission had expressed reservations on the formulation of that rule, maintaining that the expression "in accordance with the provisions of the present articles" amounted to a restriction to the immunity rule if, indeed, it did not invalidate it completely, since the rule was stripped of all its force by the fact that the provisions which followed were not yet known. It was for the Commission to rule on that question, which arose also in connextion with paragraph 2 of article 6.

19. On the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, covered in chapter VII of the report, the Special Rapporteur, in his second report (A/CN.4/347 and Corrs.1 and 2 and Add.1 and 2) had proposed six draft articles under the title "General provisions". Draft articles 1 and 2 made it clear that the scope of the articles had been enlarged to encompass not only diplomatic couriers in the strict sense of the term but also consular couriers and the couriers of other diplomatic missions,

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and also the communications of a State not only with its missions and offices abroad but also with other States or international organizations. Some members of the Commission were of the opinion that the scope of the articles thus defined was too broad, in that it applied to all types of State communication, and at the same time too restricted, in that it excluded couriers and bags used by the international organizations, and considered that the scope of the articles should be extended to cover international organizations. That question had remained unresolved.

20. In connexion with terminology, the Commission had opted for the time being to follow established usage in referring to "diplomatic courier" and "diplomatic bag", as terms having a recognized meaning, rather than introduce innovations. Those terms thus had a generic meaning covering all types of courier and bag used by States to communicate with their missions abroad, whether those missions were diplomatic or consular.

21. The general guiding principles of the draft articles were essentially freedom of communication, the duty to respect international law and the laws and regulations of the receiving and the transit State, and non-discrimination and reciprocity. However, many speakers had expressed regret that no mention was made in the articles of the duties of the sending State, and cited the abuses to which couriers and bags were sometimes subject. However, the Special Rapporteur had pointed out that of 110 bilateral treaties in force only 18 contained specific provisions which, in any case, did not diminish the principle of the inviolability of couriers and bags.

22. To enable the Commission's study of the problem to be taken a stage further, the Secretariat had been requested to update documentation relating to treaties on diplomatic law and had urged States to provide information on their domestic legislation, as well as on judicial decisions and arbitral awards relating to the subject.

23. The Special Rapporteur for the second part of the topic of relations between States and international organizations had continued his examination of the question; the Secretariat had provided him with a certain amount of information and was continuing its research so as to enable him to investigate the question in greater depth.

24. The Special Rapporteur on the topic of the non-navigational uses of international watercourses having been elected to the International Court of Justice, the Commission had decided to wait until its new membership had been established before appointed a new Special Rapporteur.

25. As it approached the end of its mandate, the Commission had achieved all the priority objectives which it had set itself in 1975. In its work it had taken General Assembly resolution 35/136 fully into account and was constantly seeking to improve its working methods. The fruitful relationship built up over the years

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with the Sixth Committee, and that Committee's support, criticisms and suggestions, were of the greatest possible assistance to the Commission in its delicate and difficult work.

26. Mr. ROSENNE (Israel) said that since the 1981 report of the International Law Commission, except for chapter II, was an interim report describing the progress made on the various topics on the Commission's current work programme it did not call for much in the way of substantive decisions by the General Assembly. He therefore wished to focus on some more fundamental issues. The time was appropriate, since the term of office of the present members of the Commission came to an end during the current year, and elections were to be held within a few weeks. It was common knowledge that negotiations were under way for a further increase in the size of the Commission so that it could better reflect the different points of view and legal systems currently represented in the United Nations, which had changed greatly since the original Statute was adopted in 1947.

27. A certain malaise existed about the Commission, its work, its methods of work, itsprogramme, its relations with the General Assembly through the Sixth Committee, its role with regard to the implementation of Article 13 of the Charter and many other matters. There was no widely accepted view on the causes or extent of that malaise; in his opinion, it was not a matter which directly concerned the Committee or any other United Nations body or agency at the current stage or on which any agreement could be reached in a political or even an academic body. However, the General Assembly, through the Sixth Committee, could not escape its share of responsibility for that malaise, and the current debate provided a convenient opportunity for a re-examination of the Committee's role in that part of the codification and progressive development of international law which, according to both the Commission's Statute and a widely-accepted division of labor, had become the special province of the Commission.

28. The reasons were many and complicated. The General Assembly had been at fault in not giving the Commission adequate guidance with regard to choice of topics and the orientation of its work. The Committee had piled too many tasks on the Commission without fully weighing the political pros and cons, for the codification of any branch of law was not a technical plaything of lawyers but a political operation, sometimes of major implications. The Committee had been too liberal in establishing priority requirements for specific items without adequate examination of the intellectual burden thereby imposed on the members of the Commission and especially on its special rapporteurs, as well as on the highly qualified specialized services of the Codification Division of the Secretariat called upon to assist them, without even considering the capacity of the over-worked legal departments of most foreign ministries to cope with the burden. If several delegations, including his own, had complained at the length and structure of some of the recent reports, it should not be forgotten that the multiplicity of topics placed on the Commission's work programme and the degrees of priority accorded to them had all combined to compel the Commission to report on each one each year; at least, that was how the Commission had interpreted its duties.

(Mr. Rosenne, Israel)

29. A comparison of operative paragraph 4 of resolution 35/163 and the debate at the thirty-fifth session with earlier resolutions and debates during the past five years, seemed to indicate a slight change of position on the part of the General Assembly. There were signs of a move away from too formal a decision about the priorities to be accorded to the various topics and towards restoring to the Commission some of the freedom so to organize its affairs that in any given five-year period it could undertake and complete a coherent plan of work commensurate with the intellectual and material resources available, and meeting international requirements.

30. The broad reconstruction of the Commission that was imminent afforded a convenient opportunity for the Commission and the General Assembly jointly to undertake a complete review of what needed to be done during the coming five years. It was stated in paragraph 255 of the report (A/36/10) that the Commission had decided that in 1982 it would devote primary attention to the topic of treaties concluded between States and international organizations. Leaving aside the question of the substance of that topic, his delegation was prepared to take that decision as the point of departure for the work to be done in 1982 and in the coming five years. That topic should occupy the greater part of the 1982 session and would leave little time for any other in-depth substantive discussion. He therefore suggested that the Commission should be encouraged to proceed as it had done after its last enlargement at its 1962 session. On that occasion, assisted by a succinct but pointed working paper prepared by the Secretariat (A/CN.4/145) and on the basis of paragraph 3(b) of General Assembly resolution 1686 (XVI), the Commission had adopted a comprehensive programme of work for the remainder of the term of office of its members elected in 1961. That had been based on the presence of one major topic, two smaller topics in reserve and preliminary action on other topics still on the original work programme of the Commission as adopted in 1949. That assumed a non-competitive co-existence between about five topics and their special rapporteurs. That programme of work, backed by the General Assembly and by the Governments represented on the Commission, had carried the latter for ten years and had produced the 1969 Vienna Convention on the Law of Treaties, the 1969 New York Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. It had laid the basis for the work on State succession, now partly completed with the 1978 Vienna Convention on Succession of States in Respect of Treaties and the draft articles on State succession in respect of matters other than treaties contained in the 1981 report (A/36/10). General discussions held during the first two weeks of the Commission's 1962 session, and the conclusions reached thereon a year later, had laid the foundations for the complete change of direction in the treatment of State responsibility. There had been a certain degree of single-mindedness about those decisions which had made it possible for the members of the Commission, and scholars generally, to concentrate intensively on the topics under consideration, instead of having great intellectual capacities and talents dispersed, often willy-nilly, over wide and disconnected spheres of the law.

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31. Consequently, his delegation suggested that the resolution to be adopted at the end of the current debate should not merely repeat directives already repeated through the past five years, with various nuances in the priorities. As had been done in 1961, it should simply request the Commission, keeping in mind all the relevant resolutions not exhausted, to adopt a programme of work for the next five years, in the expectation that it would adhere to it, that the General Assembly would not, save in the most exceptional circumstances, interfere with its implementation, and that two completed projects would be presented to the Committee before the next elections in 1986.

32. Obviously the first topic to be completed was that which would be discussed in 1982 with priority, and he hoped that the Commission could complete it in 1982 or at the latest in 1983. The Commission would also have to indicate one other major topic, in the sense described, which it would hope to be able to complete before the end of the term of office of the members to be elected shortly. With regard to the quantitatively small topics, the Commission should take a look at what was already on its agenda or had been mentioned in the General Assembly, the state of work and the known political reactions and submit to the Committee in 1982 its considered conclusions and recommendations. He recalled in that connexion that in the period 1962-1966, when the Commission had found there was a risk that it might not be able to complete its adopted programme within the limited time normally allocated to its session, its members had voluntarily agreed to hold several extra-sessional meetings and had extended its 1966 session. During that period, the Commisson had added the equivalent of one whole session in extra work in order to complete a programme which it had freely adopted and recommended to the General Assembly. The substantive secretariat and the administrative and budgetary organs had co-operated in that unusual augmentation in the number of meetings of the Commission.

33. An operative resolution along the lines which he had described and a working paper by the Secretariat similar to that prepared for the Commissionin 1962 could constitute a signal contribution to the removal of that malaise so often mentioned in connexion with that valuable organ, the International Law Commission.

34. Mr. LACHARRIERE (France) said that the draft articles presented by the International Law Commission raised the question of the final form in which those articles would appear. While the most obvious form would seem to be that of a convention, the Commission's report had shown that the issue was more complex.

35. The section of the report (A/36/10) dealing with succession of States in respect of matters other than treaties would appear to justify the choice of a convention, in that such a document would, as a corollary, encourage the emergence of customary law. As paragraph 63 of the report indicated, ". . . such a convention has important effects in achieving general agreement as to the content of the law which it codifies and thereby establishing it as the accepted customary law on the matter". The paragraph went on to affirm that the contribution to the development of customary international law appeared to be a good reason for adopting the form of a convention. Thus, even if the idea of concluding a

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convention proved too ambitious, there remained the reassurance that the very process of negotiating such an instrument would lead to developments in customary law. Those participating in the United Nations Conference on the Law of the Sea could confirm that progress towards a universally acceptable convention was of necessity slow, and that periods of 10 or 15 years were not infrequently required.

36. It was the fact that such a lengthy process was, quite naturally, regarded as excessive by Governments called upon to take practical steps as a matter of urgency that led States to concern themselves with the development of customary law as an alternative. Such a trend was a reversal of the traditional pattern in that the evolution of customary law had formerly been relatively slow, based as it was on the accumulation of accepted practice, while treaty-making had seemed a fairly brisk method of introducing new law. More recent practice showed that the time needed to introduce customary law was significantly less than that required for treaty-making. Customary law on a given issue could progress prior to the entry into force of a convention, provided that States had the opportunity to state their views, their opinio juris, on that issue. It was sufficient for States to indicate their acceptance when voting on the text as a whole. Indeed, a favourable opinio juris could be regarded as sufficient even before the entire text was adopted. That had been the case with the negotiations on the draft Convention on the Law of the Sea. The decidedly revolutionary concept of the 200-mile exclusive economic zone had been accepted by the States participating in the Conference on the Law of the Sea before any final text of the proposed convention had been arrived at and even before any preliminary draft had been accepted by Governments.

37. It must therefore be recognized that the positions taken by Governments in the process of negotiating or adopting a convention formed part of the opinio juris required for establishing the customary law traditionally expressed in other ways. A difficulty frequently encountered in the attempt to establish a norm as part of a convention was the fact that such a norm formed part of a "package deal" of greater or lesser scope. The concept of the "package deal" meant that opinio juris could not be applied to separate issues.

38. The concept was, however, affected in a different way by the treaty-making process and by the process of establishing customary law. When a convention entered into force it comprehended, by definition, the concept of a "package deal". In contrast, customary law was selective and proceeded by stages. It incorporated only certain elements of the "package deal", as circumstances dictated. In general, it was possible that establishing customary law through the formal treaty-making process could undermine the convention itself. If the rules concerned had already become customary law, there was little inducement for States to adopt or ratify a convention.

39. Thus, Governments which showed little inclination to accept binding clauses on settlement of disputes could rely on customary law to make it unnecessary for them to accept such clauses, which frequently appeared in conventions.

(Mr. Lacharriere, France)

40. His delegation would welcome any attempt to negotiate a convention which might lead both to the development of customary law and to the introduction of a new, more effective and more equitable legal order.

41. The drafting of the proposed convention on treaties between States and international organizations or between international organizations was an illustration of the length of time involved in the treaty-making process. The topic had first been broached in 1969 and had been accorded priority by the General Assembly in a number of resolutions, yet hitherto little progress had been made. The draft articles had not so far been approved by the Commission, and there was no certainty that a diplomatic conference would be convened with a view to embodying them in the form of a convention. Nonetheless, those articles had been taken into account by the International Court of Justice, and it was noteworthy that such texts could provide useful reference material for decision-makers at both the national and international levels.

42. The value of the draft articles on treaties between States and international organizations or between two or more international organizations derived from the care with which the Commission had discussed those articles and the penetrating analysis provided by the Special Rapporteur in his reports. In that instance, as in others, the Commission had shown that both customary law and the law of treaties could emerge only from a combination of legal rigour and political realism.

AGENDA ITEM 124: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (A/36/445 and Corr.1 and Add.1-3; A/C.6/36/L.5) (continued)

43. Mr. GRONWALL (Sweden) introduced draft resolution A/C.6/36/L.5 on behalf of the sponsors, who had been joined by Australia. He pointed out that in the English version the text of operative paragraph 10, second line, should read "to draw the attention, when appropriate, of . . .".

44. The elaboration of the draft resolution had taken as its starting-point General Assembly resolution 35/168, and had benefited from the continued, widespread and firm support given to the measures adopted the previous year with the same end in view. He commended all those delegations which had put forward proposals and suggestions designed to develop or strengthen those measures. The draft resolution had been prepared in close co-operation with delegations from all regions of the world, against a background of recurrent and serious violations of the security of diplomatic and consular missions and representatives. It contained a number of paragraphs which were virtually identical with those adopted in resolution 35/168. At the same time it had been considered unnecessary to reproduce those parts of that resolution which did not directly affect the reporting system. Consequently, the preambular part was somewhat shorter than that of resolution 35/168, while the operative part was longer. All the general principles and ideas embodied in resolution 35/168 were strongly reaffirmed in the present draft.

(Mr. Gronwall, Sweden)

45. The preambular part of the draft resolution, after reaffirming resolution 35/168, dealt mainly with events and developments that had taken place since the adoption of that resolution, expressing concern at the continued large number of violations and attacks and noting the results of the call to States to become parties to the relevant conventions.

46. Operative paragraphs 3, 5, 6, 8, 9 and 11 were essentially restatements of the corresponding sections of resolution 35/168. Paragraph 4 was an elaboration of the important aspect, stressed by many Governments in their replies to the Secretary-General and in debate in the Committee, of practical co-operation on a local level regarding measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. Paragraph 7 embodied the same elements of the reporting system introduced the previous year and extended it to cover the specific situation in which an alleged offender, having committed a violation in one country, took refuge in a second, Paragraph 10 was designed to offer States an additional incentive to follow the reporting procedures in every case.

47. The sponsors believed that the item should be included in the provisional agenda of the thirty-seventh session of the General Assembly and hoped that the Committee would adopt the draft resolution by consensus.

48. Mr. EL-BANHAWY (Egypt) drew attention to certain discrepancies between the text of operative paragraph 5 of draft resolution A/C.6/36/L.5 as it appeared in the Arabic translation and in the original English draft.

49. Mr. GÜNEY (Turkey) pointed out a number of translation errors in the French version of operative paragraph 10 and stressed that his delegation could not express any view on the substance of the resolution until the French version was accurately aligned with the English original.

50. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) suggested a number of changes that would improve the Russian translation of operative paragraphs 3, 5, 9 and 10.

The meeting rose at 1 p.m.