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Chairman: Mr. CALLE y CALLE (Peru)

CONTENTS

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The meeting was called to order at 10.50 a.m.

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

1. Mr. BRUNO (Uruguay) said that the report of the International Law Commission (A/36/10) was a full and detailed report which showed the excellent work which the Commission had done. His delegation considered that the activities of the United Nations in the field of codification of international law were extremely important, inasmuch as the Organization elaborated just and equitable norms which ensured the peaceful development of international relations, strengthened peace and security and promoted the peaceful settlement of disputes and co-operation among States. He considered that, from that point of view, the work of the Commission merited unreserved praise.

2. Referring to chapter III of the Commission's report on the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation expressed the view that the Commission had carried out its mandate well by following as far as possible the structure of the Vienna Convention. He considered that the legal capacity of international organizations was a function of their international personality, which derived from their statutes. He suggested, therefore, that the organization's own legal norms which determined the legal relations between member States and the organization, on the one hand, and the norms stipulated in the treaty to which the organization was a party, on the other, should be combined, if the principle pacta sunt servanda was to be applied.

3. Every treaty was based essentially on the equality of the contracting parties, and that basic observation would lead to the assimilation, as far as possible, of international organizations to States. However, total assimilation would be incorrect. While all States were equal in international law, international organizations were the result of an act of will of States, an act which gave them their legal capacity, and an organization was therefore a complex structure endowed with its own personality but remaining closely united with the States which composed it and which had established it. Endowed with a more limited competence than that of a State, an international organization, in the case of the treaties to which it was a party, sometimes made it necessary to adjust some of the rules laid down for treaties between States. The Commission was thus justified in removing for organizations certain powers which the Vienna Convention accorded to States and in making clear certain rules whose flexibility was in order only for States.

4. However, the general principle of consensualism necessarily led to the legal equality of the parties, and it had been given ample scope in the draft articles. Acc[illegible] ad been taken of the essential differences between a State and an [illegible]nal organization, not only with regard with certain basic rules but [illegible] regard to questions of terminology.

[illegible]legation believed that the draft articles were flexible enough to be [illegible]o a great variety of treaties to which an international organization

(Mr. Bruno, Uruguay)

could be a party. It was true that the norms codified in the Vienna Convention on the Law of Treaties, which applied to treaties between States, concerned totally distinct entities. The application of those norms to treaties included between an international organization and another entity, whether a non-member State or an international organization of a totally different nature, called for technical changes, which had been very well conceived in the draft articles prepared by the Commission. Unquestionably, new changes could still be introduced in the future.

6. However, the draft articles did not contain any provision on the invalidity of treaties. The Vienna Convention applied, of course, only to treaties concluded in writing between States. With regard to treaties between international organizations and States, there was no reason to apply a different regime with regard to invalidity, in the case, for example, where such treaties conflicted with peremptory norm of general international law. Firstly, it should be pointed out that the Vienna Convention did not necessarily rule out the application to other treaties of the criteria set forth in its articles 53 and 64, in addition to those already expressly provided for in article 2, paragraph 1 (a) and article 3 (b). The invalidity of international agreements conflicting with jus cogens had derived from international law, and it was thus possible to apply that norm to treaties that there were not expressly mentioned in the Vienna Convention. Consequently, nothing prevented the consideration of treaties between States and international organizations and treaties between two or more international organizations which conflicted with certain principles of jus cogens as invalid. With regard to treaties to which international organizations were parties, the consequences, characteristics and regime of that absolute invalidity should be the same as those provided for by the Vienna Convention in respect of treaties between States.

7. His delegation believed that the invalidity of a treaty to which an international organization was a party because of the violation of peremptory norm of international law might be invoked by States and by all international organizations. Relative invalidity could be invoked only by the injured State or international organization.

8. With regard to the termination of a treaty owing to the supervention of a new peremptory norm of international law, the regime to be applied to treaties between States and international organizations and between two or more international organizations might be the same as that provided for by the Vienna Convention for treaties concluded in writing between States.

9. With regard to article 6, concerning the capacity of international organizations to conclude treaties, he considered that a broad interpretation should be given to the words "relevant rules". Otherwise, there might be a risk of disregarding the implicit powers enjoyed by an international organization, and a large number of treaties to which international organizations whose statutes did not confer on them specific powers with regard to the conclusion of treaties were parties would be invalid, because those organizations would have exceeded their contractual capacity. The implicit powers of an international organization were determined, unquestionably, by the criterion of necessity.

(Mr. Bruno, Uruguay)

10. Turning to chapter III, part II, section 2, concerning reservations, he considered that the wording of article 19 was extremely satisfactory. The solution which had been found was simple and legally viable. Thus, the freedom to formulate reservations which was accorded to States was extended to international organizations, subject, of course, to the provisions laid down in the matter for States in the Vienna Convention.

11. His delegation believed that the draft articles should be sent to Governments for comments once the Commission had completed the second reading and delegations had made known their views on the matter. At a later stage, an international conference should be convened in which international organizations participated as full members and not only as observers, which could only facilitate the development of the work and ensure the success of the conference.

12. Mr. ROBINSON (Jamaica) said that he supported the change of title of the draft articles from "Succession of States in Respect of Matters other than Treaties" to "Succession of States in Respect of State Property, Archives and Debts".

13. In the commentary on article 8, it was stated that it was the internal law of the predecessor State which determined the status of property as State property; but the Commission also mentioned several cases in which State practice was at variance with the rule as formulated in article 8. However, after citing examples, the Commission stated in paragraph 8 of the commentary that it "nevertheless considers that the most appropriate way of defining 'State property' ... is to refer the matter to the internal law of the predecessor State"; but no reasons were given for that choice. His delegation felt that, in the light of the State practice to which the Commission referred in its commentary, article 8 was formulated in too inflexible a manner and did not take into account the fact that the parties might agree not to utilize the internal law of the predecessor State as the determinant of what property was owned by that State. He therefore suggested that the phrase "unless otherwise agreed or decided" should be added to that article. That suggestion took into account the fact that the successor State had the right to change the status of property it received from a predecessor State, but the successor State which acted in that manner would be acting in its sovereign right as a State and that decision was not therefore within the scope of State succession.

14. The Commission, having considered and found unsatisfactory various formulations to express the principle of the linkage of moveable property to territory, had adopted the phrase "property... connected with the activity of the predecessor State in respect of the territory to which the succession of State relates". Unfortunately, that phrase was no clearer than the rejected formulations such as "direct and necessary link", "property appertaining to sovereignty over the territory" and "property necessary for the exercise of sovereignty over the territory", since it did not specify with what kind of activity of the State the property must be connected. Presumably it was the kind of activity which demonstrated the State's sovereignty.

(Mr. Robinson, Jamaica)

15. The provision of article 13 to the effect of the passing of State property of the predecessor State to the successor State "is to be settled by agreement between them" appeared to be exhortatory rather than mandatory. If it were mandatory, the chapeau of paragraph 2, "in the absence of such an agreement", would contradict its intent. Paragraph 6 of the commentary on article 13 seemed, in fact, to bear out that interpretation. He wondered whether the formulation used was the best one for an international instrument such as a convention; and he proposed that in article 13, paragraph 1, the formulation "is to be settled by agreement between them," should be replaced by "may be settled by agreement among them". Sometimes the passing of State property was not settled by agreement, and the formulation he had suggested would set up a two-tiered system in which settlement by agreement would be optional but, failing such agreement, certain mandatory provisions applied. That would make the scope and meaning of article 13 clearer.

16. His delegation supported the inclusion of provisions on newly independent States, for the reasons given by the Commission. It would be strange if the article ignored the significance of the phenomenon of decolonization. The phrase "other than that mentioned in subparagraph (b)" in article 14, paragraph 1, subparagraph (c), should be amended to include a specific mention of the features of the property, since the reference back to "property" in subparagraph (b) showed that more than one feature was attached to "property".

17. He felt that the articles and commentaries which dealt with the rule of the permanent sovereignty of peoples and States over their natural resources offered what was perhaps the best legal exposition of the subject to date because they argued with force and even passion but always with reason and clarity. The Commission's work had developed the idea that the rule of permanent sovereignty over natural resources belonged to the corpus of rules which were entitled to be called customary international law. The relevant articles and the Commission's commentaries could serve as a reference not only for developing countries but also for the international community as a whole, which would benefit from the affirmation of that rule. Article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties had already affirmed the permanent sovereignty of every people and every State over its natural wealth and resources; but in the present draft article the Commission had adopted a different approach. Instead of a single, general provision, it had included references in different parts of the draft - particularly in article 14, paragraph 4, and article 36, paragraph 2, dealing with newly-independent States - to the rule of permanent sovereignty over natural resources. The Commission had done well to insist on that rule in the specific case of newly-independent States, because those States were in an unfavourable position in negotiating so-called "devolution" agreements; and an international rule was needed to protect them. He was sorry, however, that the rule of permanent sovereignty over natural resources was mentioned only in connexion with newly-independent States. In his view, the draft articles should contain a provision of general application, similar to that in article 13 of the 1978 Convention, since the rule was applicable also to other kinds of State succession. He noted with interest the position of certain members of the Commission as reflected in paragraph 30 of the commentary on article 14. They

(Mr. Robinson, Jamaica)

had expressed the view that an agreement violating the principle of permanent sovereignty over natural resources should be void ab initio, which was tantamount to saying that that principle of rule was a peremptory rule of international law and accordingly, under article 53 of the Vienna Convention on the law of treaties, rendered void any treaty conflicting with it.

18. He was also pleased that in article 26, paragraph 7, in article 28, paragraph 3, and in article 29, paragraph 4, the Commission had developed the rule that agreements bearing on archives should not infringe the right of peoples to development, to information about their territory and to their cultural heritage; but his use of the word "developed" did not necessarily mean that the Commission was in that case engaged in the progressive development of international law, because the rule embodied in those articles already existed in embryo in the rule of permanent sovereignty of States over their natural resources, which was firmly established in customary international law.

19. The definition of State debts in article 31 implicitly excluded the financial obligations of a State toward a person or an institution that was not a subject of international law. A proposal to extend the definition of State debt to cover "any other financial obligation chargeable, to a State" had been rejected in the Commission by a tied vote. His delegation supported that proposal primarily from the standpoint of principle because the succession of States must relate to the totality of the effect of the change in responsibility for the foreign relations of the territory, and also because it had not been proven that that proposal would have any serious adverse effect. On the other hand, the exclusion of private creditors might make some of them reluctant to provide credit to developing States, notwithstanding the fact that such loans would be otherwise legally protected.

20. It was difficult to understand the relevance of article 34, paragraph 2 (a). The only situation in which such an agreement could be invoked would be that envisaged in article 34, paragraph 2 (b), and the commentary did not clarify the matter.

21. The International Law Commission had acknowledged that it had introduced the concept of equity in connexion with the transfer of part of the territory of a State. Lack of uniformity in State practice had induced the Commission to engage in that instance in the progressive development of international law. Generally speaking, the draft articles reflected to a greater degree than had the 1978 Convention on Succession of States in respect of Treaties the progressive development of international law, largely because there was a greater and more stable body of State practice in regard to the subject-matter of the 1978 Convention than existed on the question covered by the draft articles before the Commission. The acceptability of the draft articles was thereby rendered more difficult inasmuch as the progressive development of international law always involved the exercise of political will. In any event, the Commission deserved praise for its efforts.

(Mr. Robinson, Jamaica)

22. On the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation supported the ILC's decision to use the 1969 Vienna Convention on the Law of Treaties to guide its work and to consider what changes of style and substance needed to be made to each article of that Convention before drafting a similar article. The drafting style made the articles completely independent in form of the Vienna Convention and accordingly their legal effects would arise independently of that Convention.

23. In article 2, paragraph 1 (b) bis, ILC might have refrained from introducing the expression "act of formal confirmation" as a substitute for the term "Ratification". It was true that the term "ratification" was traditionally reserved for States but that was not a compelling reason for departing from it. In any event the word "formal" was unnecessary and might create the impression that some special form was required for the act of consent of an international organization.

24. His delegation did not believe that the wording of article 6 totally precluded the application of international law to the question of the capacity of an international organization to conclude treaties. In fact customary international law would apply to that question even if it had not been incorporated into "the relevant rules of the Organization".

25. With regard to article 20, paragraph 4, which provided for the tacit acceptance by States of reservations, his delegation shared the view that that rule should be extended to international organizations. In its 1966 report the Commission had also referred to that principle in its comments on article 17, paragraph 5, of the draft articles on the law of treaties but had not discussed the rationale for the rule. His delegation considered that the justification for the rule related to the level of organization expected to exist in a State. As many intergovernmental organizations were highly organized, his delegation believed that further consideration should be given to the extension to international organizations of the rule of tacit acceptance of reservations.

26. On the question of international liability for injurious consequences arising out of acts not prohibited by international law, he said that it would be dangerous for the ILC to be too theoretical in its approach to the subject, but the Commission had succeeded in avoiding that trap; its work was well directed and should meet with success.

27. The rules must be so formulated as to be capable of general application. While it was true that the primary source of State practice was in the area of the use and management of the physical environment, his delegation agreed with the Commission that the rules to be formulated should apply equally to other areas, such as economic and monetary activities.

28. He was concerned about the stress on the "auxiliary" nature of the proposed rules in paragraph 192 of the report, which stated that the "auxiliary rules would apply only when there was already an existing norm to which they could attach".

(Mr. Robinson, Jamaica)

He wondered whether the Commission's approach implied saddling itself with the additional task of progressively developing rules to meet felt needs or when the absence of so-called primary rules derived from unjust circumstances which called for rectification through the progressive development of international law. The latter question seemed to lie outside the competence of the work on international liability for injurious consequences arising out of acts not prohibited by international law.

29. On the question of the jurisdictional immunities of States and their property, he had noted the view of a member of the Commission that the phrase "in accordance with the provisions of the present articles" made article 6 dependent upon other provisions of the draft articles and so disqualified it from being an independent legal proposition or statement of a basic rule of international law. He had some sympathy for that view, which, however, slightly overstated the case. He read out the text of article 6, and said that the approach in the European Convention, of stating the principle that a State is entitled to immunity from the jurisdiction of another State except in a number of cases, was to be preferred. An alternative approach would be to state, first, that the immunity of a State from the jurisdiction of another State was governed by the articles; secondly, that a State was immune from the jurisdiction of another State; and thirdly, that a State should give effect to State immunity. The articles might then, in a manner consistent with the first two statements, deal with the exceptions to State immunity.

30. On the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the ILC had relied heavily on four conventions: the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

31. He found it surprising that article 1, dealing with the scope of the articles, should provide that the articles should "apply to communications of States for all official purposes... employing diplomatic couriers and diplomatic bags." It seemed strange that the scope of the draft articles should be defined in terms of communication of States, which was not the matter to which the draft articles applied, namely, the diplomatic courier and bag. Article 2 likewise defined couriers and bags not within the scope of the articles.

32. The primary determinant of the scope of the articles should be the "official purposes" of the communications, and he therefore approved the wording of article 1, which referred to "communications... with other States or international organizations" and not only to those between States and their missions and posts abroad.

33. Article 5, paragraph 1, imposed a duty on the courier to respect international law and the laws and regulations of the receiving and the transit States while article 5 (3) provided that the temporary accommodation of the diplomatic courier must not be used in any manner incompatible with his functions, the term

(Mr. Robinson, Jamaica)

"temporary accommodation" was an unfortunate description of the position and status of the courier under the articles.

34. He supported the view of a member of the Commission who had suggested that the article should include a provision on the duties of the sending State so as to balance the rights and obligations of sending and receiving States. Such a provision would be particularly necessary if the articles laid down the principle of the unconditional inviolability of diplomatic bags.

35. It had been pointed out in the commentary that article 35, paragraph 3, of the 1963 Vienna Convention on Consular Relations provided that bags might be opened in certain circumstances. The question therefore arose as to the extent to which the draft articles were consistent with the provisions of that Convention. Article 30 of the Vienna Convention on the Law of Treaties, concerning the application of successive treaties relating to the same subject matter would apply. The problem posed by article 35, paragraph 3, of the 1963 Vienna Convention also raised the more important issue of the use which was to be made of the four conventions in drafting the articles on the issue. The report did not disclose a clear ILC concept of the relationship between those conventions and the draft articles. That aspect of the Commission's work required further consideration.

36. The Commission had held no substantive discussion on the law of the non-navigational uses of international watercourses. He appreciated the reasons for that situation, but expressed the hope that the Commission would appoint a Special Rapporteur on the topic at the following session with a view to pursuing its consideration of the issue.

37. Mr. HÅKKÅNEN (Finland) said that there was a special reason at the current session for expressing appreciation of the work of the Commission: it had adopted in second reading two new sets of draft articles, one on the succession of States in matters other than treaties and the other on treaties concluded between States and international organizations or between two or more international organizations. He noted, nevertheless, that the other items being considered by the Commission were equally important, particularly the question of the law of the non-navigational uses of international watercourses. Pointing out that the post of Special Rapporteur on that item was still vacant, he hoped that it could be filled as soon as possible and that the Commission would be able to move on with its work on that increasingly important topic.

38. Regarding the draft articles on the succession of States in respect of State property, archives and debts, he noted that the articles, which were based on careful examination of State practice and case law as well as doctrinal positions, also contributed to the progressive development of international law. He noted at the same time that divergent views among international law scholars and differences in State practice had obliged the Commission to formulate some of them in notably cautious terms. In several cases, the parties were recommended to settle those issues through mutual agreement. Other provisions confined themselves to referring to such general principles as equity.

(Mr. Hakkanen, Finland)

39. He considered that, on the whole, the draft articles were balanced and took into account both the interests of the predecessor State, the successor State and third States, and he agreed with the Commission that the matter was now ready for consideration by a diplomatic conference.

40. The Government of Finland had had an opportunity to present its views on the earlier versions of the draft articles and he noted that the final text, although not very different from earlier versions, had been amended, with some new provisions added and others deleted, the order of the articles changed and the formulations used harmonized and in some cases improved. He applauded the Commission's decision to replace the draft's previous heading by a new and more specific title corresponding more closely to the content.

41. The first part of the text, "General provisions", contained three new articles, the most important of which, article 6, stipulated that "Nothing in the present articles shall be considered as prejudging in any respect any questions relating to the rights and obligations of natural or juridical persons". The addition of that new article was particularly significant because the Commission had deleted the earlier paragraph 2 of article 16 affording certain protection to private creditors. However, the formulation of the new article 6 was very general, as it did not in any way specify the rights and obligations referred to. In Part II, concerning State property, two new subparagraphs (b) and (c) had been added to article 14, "Newly independent State", dealing with immovable property situated outside the territory of the successor State while yet having a certain link thereto. On the other hand, paragraph 2 of article 15, "Uniting of States", could be deleted, following on the deletion of the corresponding paragraph of the present article 31 on State debt. Allocation of property, like allocation of debts, within the successor State, was by its very nature a matter of internal law. The same comment applied paragraph 2 of article 27 on State archives.

42. The new subparagraph (b) of article 17 (1), "Dissolution of a State", provided that the immovable property of the predecessor State situated outside its territory should pass to the successor States in equitable proportions. The earlier text had provided that such property should pass to one successor State, with the others being entitled to reasonable compensation. Although the present solution might be found to be more just and flexible, he was afraid that it might cause difficulties in practical application.

43. Noting that articles 20 and 23 of part III, "State archives", were identical to the corresponding articles in part II, "State property", he suggested that, to avoid repetition, there should be a single provision stating that the articles on State property would, mutatis mutandis, also apply to State archives.

44. A significant change had been made in part IV, "State debts", in that the paragraph including in the definition of State debts not only the financial obligations of a State towards another State, an international organization or other subjects of international law, but also any other financial obligations, including those towards private persons, chargeable to a State, had been deleted from the present article 31; thus, private debts were excluded from the present draft articles. It was a complicated matter and the inclusion of private debts

(Mr. Hakkanen, Finland)

in the scope of the draft articles would by extending it involve amending other provisions of the draft. Among the questions that might be asked was whether the successor State would have to assume a financial obligation not only towards nationals of third States but also towards its own nationals or those of debtor States. Further, what would be the effect of a possible change of nationality in the case of transfer of territory, and would it be adequate for foreign debtors to be protected by the general principles of alien treatment in international law. All those questions remained subject to controversy and should be given further examination, perhaps at the forthcoming diplomatic conference.

45. Lastly, he noted that the Special Rapporteur on the item would have preferred to include in the draft articles provisions to the effect that war debts as well as so-called odious debts would not pass to the successor State. The Commission had taken the view that such provisions were not necessary, and the same result had been achieved by a formulation in the present text that excluded such debts from their scope and provided that, in the passing of debts, account must be taken of the principle of equity and that succession would often require agreement between the parties involved. Obviously, the passing of odious debts could hardly be considered equitable, nor would it seem probable that the parties would agree on such a succession.

46. He hoped that the draft articles, which represented an important achievement on the part of the Commission, could be submitted to a diplomatic conference in the near future with a view to the adoption of an international convention.

47. Mr. EL-BANHAWY (Egypt), commenting on the study by UNITAR on the International Law Commission entitled "The Need for a New Direction" (E/81.XV.P.E/1), said that, although the Commission had first been conceived as the principal organ of the United Nations for the codification and progressive development of international law, many areas, in particular areas of concern to third-world countries, had remained outside its field of activity, thus necessitating the establishment of various ad hoc bodies whose activities had supplemented those of the Commission, for example, in connexion with outer space, the protection of the environment, the law of the sea and action against international terrorism and the taking of hostages. It was important, therefore, for the Commission to depart from the traditionalism which had characterized it hitherto and to tackle the problems of the modern world and be more audacious. It had taken steps in that direction by taking up such topics as the law of the non-navigational use of international watercourses. Unfortunately, it had not so far given that topic the importance it deserved, and his delegation earnestly hoped that after the new elections it would appoint a special rapporteur to study the topic.

48. Turning to the role of the countries of the third world in the field of international law, he stressed that although the part they played was still small, their situation was evolving and they were acquiring the skills necessary for making an effective contribution. In that connexion, the increase in the membership of the Commission would ensure wider and more equitable representation of the third world.

49. He then turned to the possible solutions set forth and the recommendations formulated in the UNITAR document. The first solution would be for the Commission

(Mr. El-Banhawy, Egypt)

to become a full-time body. The obvious advantage would be that its output would be increased thereby and it would be able to speed up its work. Nevertheless, it would be difficult to implement the proposal because of its financial implications. Furthermore, the Commission's very nature ran counter to such a solution for it was composed of persons who occupied important posts in their own countries, either in universities or in government, and who would therefore be unable to devote their full time to the work of the Commission. Nevertheless, it would be possible to find a compromise solution whereby the Commission continued to meet only part of the year, while the special rapporteurs worked full-time.

50. The second suggestion was that the Commission, whose members at present acted in their personal capacity, should be made an intergovernmental body like the United Nations Commission on International Trade Law (UNCITRAL). Those in favour of such a change argued that the Commission would then be able to tackle difficult and pressing contemporary world political questions and thus make faster progress in the development of the law. However, experience had shown that negotiations between States were less arduous when based on a draft prepared by an independent body, such as the Commission. In the case of the Third United Nations Conference on the Law of the Sea, for example, there was a widespread feeling that many of the difficulties could have been avoided if there had been an initial draft prepared by independent experts. His delegation therefore shared UNITAR's doubts on that suggestion, and also felt that it would go against the very nature of the Commission and that Governments already had enough ways of making their reactions known and giving guidelines, either through the Sixth Committee or in written comments.

51. His delegation supported the proposal that the Commission should abandon its practice of drawing up a long-term agenda and should plan its work on the basis of the five years' term of office of its members. It could meet immediately following the election of new members to consider its agenda and appoint special rapporteurs for each topic, and would then be able to go straight into substantive discussion at the session.

52. The Commission might consider the possibility of not confining itself to the preparation of draft articles as a basis for concluding conventions. As for topics which obviously did not lend themselves to formulation in international conventions, it would be useful if the Commission were to prepare a compilation of international practice and reaffirm the principles of customary law. The Commission had abandoned the draft convention method at least once since its establishment, in the case of the Model Rules on Arbitral Procedure which had been published when the General Assembly had refused to convene a plenipotentiary conference on the topic. Those rules had proved useful and were often referred to by States in connexion with the conclusion of bilateral or multilateral conventions on arbitration. The adoption of methods other than the preparation of draft conventions would also help to speed up its work, which was no small advantage given that the average duration of the Commission's work on any topic was 7 to 10 years and that a topic such as State responsibility had been on its

(Mr. El-Banhawy, Egypt)

agenda for more than 25 years. It would also be desirable, in order to speed up work, for the Commission to have a larger and full-time secretariat.

53. His delegation wholeheartedly supported the proposal to establish an international legal research centre which would call on experts in economic, technical or scientific fields closely linked with legal questions, as well as in law. The services of the experts would also be available to the special rapporteurs and the members of the Commission and the Commission would thus be able to venture into areas which it had hitherto regarded as outside its scope and to adapt its work more effectively to the needs of the contemporary world.

54. His delegation commended the UNITAR study and called on the Commission to keep abreast of new international trends with a view to establishing an up-to-date legal order. It should abandon traditionalism and face up to the challenges of a changing world, respond to the new needs of codification and even go beyond codification.

55. Mr. LACLETA (Spain) welcomed the Commission's decision to change the title of the draft articles on succession of States in respect of matters other than treaties which might have given the impression that, with the two Conventions - one on the succession of States in respect of treaties and the other based on the draft articles prepared by the Commission - all matters concerning succession of States had been covered. The new title "Draft articles on succession of States in respect of State property, archives and debts" would avoid that drawback. His delegation had proposed a simpler title, which referred only to State property and debts, but in view of the importance of State archives, it had no objection to the title adopted by the Commission.

56. The draft articles as a whole were commendable and consistent with the aims of the Commission, whose mandate was the codification and progressive development of international law. In his 13 reports, the Special Rapporteur had produced a masterly body of work on the substantive law on the subject and State practice - which was essential for codification - and had paid due regard to the progressive development of law, in particular concerning new situations in the present era of decolonization and the emergence of a large number of new topics of international law. In that context, the succession of States posed a special problem. While a new State was not bound by the rules of any convention, it was bound by the customary law generally accepted by the international community. In his delegation's view, the problem was settled satisfactorily by draft article 4, However, the particular importance of customary law in the succession of States in the case of a new State in no way diminished the value of a universally applicable convention.

57. The foregoing remarks did not imply that his Government approved all the articles as drafted. However, while some of them could be improved, in particular those that introduced the idea of equity which needed defining, such as article 31, the debate would have to be reopened in another forum since the Commission had completed its work on the subject. His Government had no preconceived ideas as to how or where it should be discussed, but would not be at all opposed to the convening of a diplomatic conference.

(Mr. Lacleta, Spain)

58. Regarding the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation supported draft articles 1 to 26 as submitted by the Commission following its second reading, since it noted that efforts had been made to simplify certain articles, even though further and desirable simplification had been inhibited by the decision to draft certain articles without reference to the Vienna Convention on the Law of Treaties. The Commission's explanations on that point were not convincing. As for the difficult problem of reservations, his delegation welcomed the Commission's decision to reproduce article 19 of the Vienna Convention.

59. He noted that the problem of treaties concluded with or between international organizations arose mainly because international organizations were subject to particular laws, and the problem was compounded by the existence of "interagency" agreements. However, in general his Government considered that international organizations should be equated as far as possible with States since they were, after all, equally subjects of international law. His Government had submitted written comments on articles 61 to 80 and trusted that the Commission would soon complete its work on those articles.

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

60. The CHAIRMAN suggested that draft resolution A/C.6/36/L.5 should be adopted without a vote.

61. It was so decided.

The meeting rose at 1.05 p.m.