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SUMMARY RECORD OF THE 42nd MEETING

Chairman: Mr. CALLE Y CALLE (Peru)

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The meeting was called to order at 3.15 p.m.

CONGRATULATIONS TO THE NEWLY-ELECTED MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

1. The CHAIRMAN extended the Committee's congratulations to Mr. Guy Ladreit de Lacharrière (France), Mr. Robert Y. Jennings (United Kingdom), Mr. Keba Mbaye (Senegal), Mr. Nagendra Singh (India) and Mr. Jose Maria Ruda (Argentina) on their election by the Security Council as members of the International Court of Justice. He requested the delegations of the countries concerned to transmit the Committee's best wishes to the new members.

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

2. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that his delegation was presenting its views on the report of the International Law Commission (A/36/10) in the form of one comprehensive statement in the belief that valuable time could thereby be saved. Each delegation was, however, entitled to submit its observations on the item in the manner it considered most appropriate.

3. At its thirty-third session the Commission had paid particular attention to the second reading of the draft articles on succession of States in respect of State property, archives and debts (chapter II, section D of the report) in the light of the observations made by States and the Commission's further work on the topic.

4. In connexion with article 1, his delegation welcomed the Commission's decision to restrict the scope of the draft articles to those aspects of succession of States which were most important and most in need of regulation under international law, namely property, archives and debts.

5. A valuable addition to the draft was the inclusion of two new articles (articles 5 and 6) in the form of "safeguard clauses". Article 5 emphasized that the draft articles could not be applied to other matters relating to succession, such as succession to membership in international organizations. Article 6 was intended to protect the rights of natural and juridical persons possessing property or archives in territory affected by the succession of States which were creditors or debtors of individuals situated in the territory affected by the succession.

6. The original draft of the articles in part II, which contained provisions regulating succession in respect of State property, had not been significantly changed in second reading, and the only amendments were of an editorial nature. However, in the case of article 14, the Commission had decided to incorporate two new subparagraphs.

7. The first, subparagraph (b), concerned immovable property which, having belonged to a dependent territory prior to its colonization and having been

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situated outside that territory, had during the period of dependence, become State property of the metropolitan State. His delegation considered that the inclusion of the subparagraph was quite justified, but that the time-limit involved was difficult to determine. Moreover, it should be remembered that there had often been a series of colonists and that the final metropolitan Power might not have acquired the immovable property through outright seizure at the moment of colonization. Subparagraph (b) should therefore be made more specific in the subsequent consideration of the draft articles.

8. Subparagraph (c) envisaged a much clearer situation in which the dependent territory had helped to create the immovable property situated outside the territory to which the succession of States related. The intention of the provision was to establish criteria for determining ownership, particularly in situations involving a third State on whose territory the property was situated, and also for any arbitral decision in the event of a dispute.

9. A comparable clarification had been introduced in respect of paragraph 1, subparagraph (b), of article 17. The original text had provided that, where a predecessor State had dissolved and its territory had been divided into several States, the immovable property of the predecessor State situated outside its territory should pass to one of the successor States on condition that the other successor States were equitably compensated. What had remained unclear in the original draft, however, was the question of which successor State was so entitled, and the new version was a significant improvement in that regard. It was, admittedly, difficult to solve problems in respect of succession in the absence of appropriate and specific treaty provisions between the predecessor and the successor or between the successors. The draft articles did, however, establish general rules and criteria for settlement or for possible third-party arbitration in the event of disputes.

10. The original text of the articles forming part III of chapter II of the draft, which dealt with State archives, had left open the question of whether such articles should form an integral part of the section covering succession to State property. The Commission had finally decided that, although State archives undoubtedly formed part of the State property of any State, they had their own intrinsic characteristics and therefore called for a special approach and specific rules to regulate their succession.

11. The independent nature of part III was highlighted by the fact that it contained a separate introductory section, although most of the articles in that section reaffirmed, mutatis mutandis, the substance of the articles in subsequent sections of part III. The greatest difficulties arose in connexion with the definition of "State archives" in article 19. He was pleased to note that the wording of that article had been improved by eliminating unnecessarily specific references to "State" documents and archives.

12. The safeguard clause included as article 24 was relevant to part III as a whole. It indicated that questions relating to the preservation of the unity of State archives, which were often of great importance in the practice of

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archive-maintenance, had not been taken into account in the draft articles and should be solved by other means, particularly through agreement between the States concerned.

13. Having redrafted most of the articles in section 1 of part III, the Commission had gone on to introduce some additions and clarifications in the articles comprising section 2. For example, in article 25 a new paragraph had been added concerning co-operation between the predecessor State and the newly-independent State in the search for, and return of, archives dispersed during the period of dependence.

14. In articles 25, 26, 29 (paragraph 3) and 28 (paragraph 2), major improvements had been made to the wording of the clauses on the provision of best available evidence bearing upon title to the territory of the successor State or its boundaries. A significant amendment had also been made to article 29, paragraph 2, which in its new version affirmed a rule: its previous wording had merely referred to agreement.

15. The Commission's deliberations on part IV of the draft articles, on State debts, had consistently revealed differences as to the way in which both members of the Commission and delegations in the Sixth Committee chose to define the term "State debt".

16. Article 16, paragraph (b), of the original draft (A/35/10, chap. II) had provided for regulation under international law of the consequences of State succession in respect of debts owed by a predecessor State to individual natural and juridical persons, including its own citizens and juridical persons. At the same time, such obligations were not binding under international law: they were obligations solely under the domestic law of the predecessor State or of a third State. Naturally questions of succession in the case of such debts could be resolved only on the basis of the relevant provisions of domestic law.

17. His delegation had opposed the provision in article 16, paragraph (b), but a number of members of the Commission and delegations in the Sixth Committee had persistently advocated its inclusion; obviously in the conviction that the interests of individual creditors should be protected at all costs, even at the risk of undermining the basic principles of international law.

18. His delegation was gratified that the Commission had rejected both article 16, paragraph (b) (which in the new version had become article 31), and article 37, paragraph 2, of the previous version of the draft. Rejection of the latter provision was fully justified in that its presence in the draft could significantly affect the interests of creditors. Furthermore, in the cases concerned no analogy should be drawn with State property which the successor State might, without affecting interests of third parties, use as it saw fit.

19. His delegation considered that the Commission had succeeded in arriving at a satisfactory and consistent set of general rules on succession of States in respect of State property, archives and debts, and that the rules would provide

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an acceptable basis for the conclusion of an appropriate international convention. While bearing in mind the Commission's recommendation that a conference of plenipotentiaries should be convened to study the draft articles, his delegation believed that it would be advantageous if the Sixth Committee itself were to examine them during the thirty-seventh session of the General Assembly.

20. At its 1981 session the Commission had also completed its second reading of the first 26 draft articles on treaties concluded between States and international organizations or between two or more international organizations. Apart from incorporating a new article 5, which paralleled the corresponding provision of the 1969 Vienna Convention on the Law of Treaties, and a number of editorial changes, the Commission had concentrated its efforts on a complete revision of the draft articles concerning reservations. The aim of the original draft had been to harmonize the procedure regarding reservations for international organizations and States; in particular, it had provided for the tacit acceptance of a reservation by an international organization if the organization had raised no objection to it within a period of 12 months. A number of delegations, including his own, had found that provision unacceptable. At its thirty-third session the Commission had adopted, on the basis of consensus, new versions of articles 19 to 23 on reservations. Like the corresponding articles of the 1969 Vienna Convention, those articles left open the question of the admissibility of reservations to bilateral treaties: however, a strict interpretation of the Convention would seem to indicate that such reservations were acceptable.

21. His delegation took the view that an international organization could enter reservations on the same footing as a State. That in itself would not have any undesirable consequences in that the issue was not the reservation itself but the circumstances and juridical consequences of its adoption or of an objection to it.

22. It was not permissible to establish a rule that a reservation should be considered as having been tacitly accepted by an international organization if it had raised no objections within a given period, since the competent body of the international organization must be apprised of the reservation and must take a decision on it. Once the decision had been taken by the required number of votes, it must be brought to the attention of the party which had entered the reservation. Moreover, since the competent bodies of international organizations did not all hold their sessions at equivalent intervals, it would be difficult to establish a uniform time-limit for their acceptance of reservations. His delegation's views had been reflected in the new formulations of articles 19 to 23.

23. In general, articles 1 to 26 as adopted on second reading were satisfactory, and he hoped that the Commission would speed up its work on the draft as a whole.

24. The Special Rapporteur on the topic of State responsibility (chap. IV of the report) had submitted five draft articles on content, forms and degrees of

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State responsibility to the Commission at its most recent session. In his delegation's view, articles 1 to 3, which were intended to establish guidelines for part 2 of the draft, were irrelevant to the question of international responsibility, while the remaining two articles were also unsatisfactory.

25. The correct standpoint from which to approach the problem was not to establish new forms of responsibility of the State committing a breach of an international obligation, but rather to affirm the rights of the directly injured State and, possibly, those of all other States in the event of a breach of obligations erga omnes. He hoped that the Special Rapporteur would modify his position in the light of the discussions in the Commission and in the Sixth Committee.

26. The Commission should focus its attention on the formulation of draft articles on international responsibility for the international crimes of States, since that aspect was crucial to the question of the responsibility of States for internationally wrongful acts. It should also take into account the results of the deliberations of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The vast majority of members in both the Ad Hoc Committee and the Sixth Committee believed that States which failed to take effective measures against mercenaries or which furnished them with assistance should bear international responsibility for their actions, and that the Commission should accordingly press forward in its work on State responsibility.

27. The Special Rapporteur for the topic entitled "International liability for injurious consequences arising out of acts not prohibited by international law", had submitted his second report at the thirty-third session of the Commission. The report contained a draft article on the scope of the articles which was aimed at establishing a fundamental principle underlying the rules on State liability for activities which were not prohibited. However, the principle of "duty of care" which he had proposed in connexion with the activities of States within their own jurisdiction seemed incorrect. No such "duty of care" existed in international law: if it did, it would be a "primary" rule whose infringement would imply the usual international responsibility for an internationally wrongful act. Liability for an act which was not prohibited, however, arose only in a case where such responsibility had been specifically affirmed by a treaty in force. It was modern practice to concentrate on elucidating the sources of an over-riding risk to the international community as a whole and on concluding appropriate treaties in that regard.

28. Turning to the topic of the jurisdictional immunities of States and their property, he said that the draft articles submitted by the Special Rapporteur concerning the obligation to safeguard the immunity of a foreign State and exceptions to that obligation arising from stated or tacit agreement of a State to foreign jurisdiction, were in general satisfactory, but in need of thoroughgoing editorial revision.

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29. The special merit of the draft articles submitted by the Special Rapporteur for the topic entitled "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", was that they established the principle that the status of the diplomatic courier and that of the diplomatic bag, as established in the relevant multilateral, regional and bilateral conventions, were identical. That assumption provided a firm basis for the elaboration of a general set of draft articles containing provisions which were not specifically affirmed in existing rules. His delegation therefore suggested that the General Assembly's draft resolution on the topic should specifically provide a mandate for the Commission to expedite its work on the draft articles.

30. Referring in conclusion to the Commission's programme of work for 1982 and in the longer term, he said that he agreed with the views set forth in paragraphs 253 to 258 of the Commission's report. At the same time, he emphasized the need to give priority to work on the draft articles on State responsibility for internationally wrongful acts, and to the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, since both topics were of great practical concern to States Members of the United Nations. In the longer term, it was essential that the Commission's programme of work should be sufficiently flexible to include new topics of importance to the international community.

31. Mrs. BHUIYAN (Bangladesh) said it was unfortunate that the Commission had been unable to hold substantive discussions on the topic of the law of the non-navigational uses of international watercourses. Despite the seriousness and urgency of that topic, and the fact that the codification of the draft articles relating to it had been under consideration for quite a few years, the Commission had not yet been able to give it the attention it deserved and the failure to appoint a new Special Rapporteur at the 1981 session was disappointing. She would for the time being confine her remarks to that topic of vital interest to her delegation and having a direct bearing on the future of her country, while reserving her delegations right to comment on other matters at a later stage.

32. The tentative interpretation of the term "international watercourse system" given by the Commission in its report on its thirty-second session (A/35/10 para. 90) was legally unsound and self-contradictory and would, if not given due consideration, create enormous difficulties in many respects in the future. An "international watercourse system" was geographically situated in two or more States, irrespective of whether it was used by the States or not. However, the Commission's treatment made it a relative concept; the watercourse system became international or not international according to whether the waters in one State were affected by or affected uses of waters in another State. That view was totally unsatisfactory, would be prejudicial to the interests of many countries and ran counter to the concept of an international river and drainage basin developed in international law over the years. The overwhelming body of legal authorities spoke not of an "international watercourse system" but of an "international river basin", as an indivisible unit regardless of the fact that

(Mrs. Bhuiyan, Bangladesh)

it embraced two or more States and as a basic norm governing international rivers generally; an international river basin could not be international in part or in relative terms but only in an absolute sense. The United Nations Water Conference held in 1977 had adopted a resolution, unanimously endorsed by the United Nations Conference on Desertification in the same year, that in the absence of treaties on the question States should apply generally accepted principles of international law in the use and management of shared water resources. Moreover, in his first report on the law of the non-navigational uses of international watercourses, the former Special Rapporteur had proposed that for the purpose of drafting articles the Commission should accept "international river basin" as the appropriate meaning of the term "international watercourse" (A/CN.4/295, para. 493).

33. Water was vitally important for the prosperity and development of her country, as for other riverine countries. It went against all principles of justice if an upstream State interfered with the flow of a watercourse to the detriment of a downstream State. Problems concerning the sharing of water resources had reached conflagration point between some countries while between others it remained a continuing source of misunderstanding and conflict. Of the 200 river basins in the world, only a third were governed by bilateral agreements. The utilization of shared water resources was vital in achieving a new international economic order. For all those reasons, it was essential for the Commission to make progress in its work by appointing a new Special Rapporteur immediately so that the ambiguities of the legal provisions relating to international watercourses might be sorted out and a rational solution of the problem found.

24. Mr. NISIBORI (Japan) expressed regret that the Commission had had to conclude its consideration of certain questions at its 1981 session without resolving the divergence of views among its members. It was important for the Commission to strive to reach a consensus on any substantive question and to ensure that the draft articles it prepared adequately reflected the actual world situation so that they would be acceptable to as many States as possible.

35. Despite the admirable progress the Commission had made in its work in 1981, it was regrettable that the number of draft articles considered on some of the topics had been extremely small. There was a definite need to advance work on some priority topics and it would be desirable to concentrate on certain areas particularly those of State responsibility and the jurisdictional immunities of States and their property, where the need for codification was rapidly increasing in an international environment of ever-growing interdependence.

36. Differing views had been expressed on how to deal with the draft articles thus far adopted on the topic of succession of States in respect of matters other than treaties. There were still several issues, relating to draft article 31, for example, on which the debate had not been concluded. Hence the lack of agreement in the Commission as to whether it should recommend the General Assembly to convene a plenipotentiary conference for the adoption of a convention on the subject. The future handling of the draft articles must be considered carefully, with full deliberation of all the issues involved.

(Mr. Nisibori, Japan)

37. While appreciating the results so far achieved with respect to the question of treaties concluded between States and international organizations or between two or more international organizations, he hoped that the Commission would resume and complete its second reading of the draft articles as soon as possible In connexion with the question of reservations dealt with in part II, section 2, of the draft, his delegation welcomed the adoption by the Commission of the so-called "liberal system" for reservations by international organizations as well as States, based on the model of article 19 of the Vienna Convention on the Law of Treaties. That decision would facilitate the participation of international organizations in treaties and thus contribute to the further institutionalization of the international community. Regarding article 27 and article 36, the essential issue was how to deal with the structural difference between a State and an international organization as subjects of international law. Although the Commission should as a general rule follow the basic approach of treating the two kinds of subjects equally, it should also, in elaborating certain specific programmes, take into account the structural and functional differences between the two subjects and introduce necessary minimum modifications to the corresponding divisions in the Vienna Convention on the Law of Treaties in order to ensure their effective implementation by international organizations. He hoped that early agreement would be reached on the basis of that approach.

38. Lastly, the Commission should give further consideration to the definition of the term "international organization" and specify clearly all the kinds of organizations which were covered by that term in the draft articles, since that question would affect the drafting and interpretation of substantive provisions.

39. Mr. ANDERSON (United Kingdom), speaking on behalf of the member States of the European Community, emphasized the importance, as already reflected in the Community's written observations, of keeping the articles on the question of treaties concluded between States and international organizations or between two or more international organizations as close as possible to the text of the Vienna Convention on the Law of Treaties. Even when it was not possible to transpose provisions directly, it must be made clear that the new international instrument being prepared could not have the effect of undermining the principles codified in the Vienna Convention or of excluding application of those principles to international organizations. Such an effect would hinder the evolution which had taken place over a number of years towards accepting competent international organizations, such as the one which he was representing, as parties to treaties with States and other entities. That basic principle was well reflected in the Special Rapporteur's tenth report (A/CN.4/341 and Add.1), which had formed the basis for the second reading of the draft articles, and he welcomed the fact that the 26 articles had been reformulated on important points during the second reading so as to bring them into closer harmony with the provisions of the Vienna Convention.

40. In connexion with article 2, paragraph 1(j), a new provision by comparison with the Vienna Convention of 1969, it appeared prudent to maintain continuity by using a definition of the term "rules of the organization" which was identical

(Mr. Anderson, United Kingdom)

with existing definitions. Since the deliberations of the Commission had shown that qualifying the words "decisions and resolutions" with the adjective "relevant" and adding "established" to the words "practice of the organization" could be interpreted in a restrictive manner, the commentary was right to make clear that the use of those terms was not in any way intended to freeze the practice of an international organization at a particular moment in its history and that the descriptive terminology chosen by the Commission, by including the words "in particular", was intended to denote that the set of rules varied from organization to organization. Article 6, which must obviously be read in close relation to the definition contained in article 2, paragraph 1(j), was also acceptable, since it also contained the adjective "relevant" in relation to the rules of an organization.

41. The decision to include, in article 5, provisions identical with article 5 of the Vienna Convention, thus bringing the constituent instruments of organizations of which at least one member was another international organization within the scope of the draft articles, made it logical to cover also the situation dealt with in article 20, paragraph 3, of the Vienna Convention concerning acceptance by the competent organ of an international organization in circumstances where another international organization made a reservation to the constituent instrument establishing the first-mentioned international organization.

42. It was, in the Community's view, inadequate, as indicated in the commentary to article 9, paragraph 2, as adopted in the first reading, that it should be left to States in each case to decide whether an international organization could participate in an international conference convened for the purpose of adopting a treaty. The Community's relationship with its member States was one of "mixed competence", a legal situation calling for participation by the Community as a full participating partner in an international conference convened for the purpose of establishing a treaty on matters within its competence: in some cases the community had competences which excluded those of its member States, while in others it shared competences with those States. That situation should be kept in mind when the provisions contained in article 9, paragraph 2, providing organizations with the possibility of participating in an international conference in the same capacity and under the same rules as a participating State, were finalized.

43. The substantive changes made in articles 19 to 23 were adequate and brought the draft into close conformity with the 1969 Vienna Convention, apart from the advisability of including provisions corresponding to article 20, paragraph 3, of that Convention, as a consequential amendment following from the inclusion of draft article 5. His only remaining comment was on article 20, paragraph 4 which would apply to reservations whether they were formulated by international organizations or by States. He welcomed the fact that the Commission had maintained the exact wording of the Vienna Convention on that point, retaining a specified period for reaction of 12 months. The draft article did not specify the consequences for an international organization which was a contracting party to a treaty and did not react within the specified period; no doubt the question of whether it was necessary to grant international organizations a longer time period than States could be left to be solved by the practice which would evolve, as suggested in the Commission's commentary.

(Mr. Anderson, United Kingdom)

44. Many of the concerns which the Community had expressed about the previous draft articles 1 to 26, as adopted on first reading, had been alleviated by the changes made during the second reading. The achievements of the thirty-third session of the Commission had laid a good foundation for the solution of other problems relating to the draft articles, in particular in respect of the present article 36 bis.

45. Mr. SPERDUTI (Italy) said that he would confine his remarks to chapters II and III of the Commission's report (A/36/10), but reserved the right to speak on other aspects of the report at a later stage.

46. His delegation felt that the draft articles on succession of States in respect of State property, archives and debts were, in principle, satisfactory, and favoured the convening of a conference of plenipotentiaries to conclude a convention on the subject. It agreed with other delegations that the codification of the rules of international law relating to State succession would not be completed with the Vienna Convention on Succession of States in Respect of Treaties and the adoption of a new convention based on the draft articles under consideration.

47. The commentary to article 6 which stated 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, said nothing of the reasons why such questions had been left open. The fact that such questions raised many difficult problems only increased the need for their codification. The safeguarding of legal relationships involving individuals was connected with one of the basic trends which had prevailed in the international community since the adoption of the Universal Declaration of Human Rights, and his delegation would give serious consideration to any initiative aimed at closing that gap in international law within a reasonable time.

48. The provisions of article 4, concerning the temporal application of the proposed convention, were linked to a strictly contractual conception of international commitments and reproduced, mutatis mutandis, the corresponding provisions of the 1978 Vienna Convention on Succession of States in Respect of Treaties. A multilateral convention embodied rules whose observance by each State party responded to a need felt in common by all States parties and such rules were rules of public policy (ordre public) and created joint obligations. The decolonization process, while nearing completion, still gave rise to serious problems. While it was equitable to demand of a successor State that, in order to benefit from the proposed Convention as of the date of succession, it should declare itself to be bound by it with retroactive effect to that date, it was at least doubtful, from the standpoint of equity, whether strictly contractual schema should be adhered to, as required in article 4, paragraph 2.

49. It would be advisable to adopt a final clause making it possible for States to accede either to the proposed convention on succession of States in respect of matters other than treaties as a whole, subject to reservation, or to one or two of its three parts only. While acceptance of the convention as a whole would be desirable, such a clause would encourage broader participation by States.

(Mr. Sperduti, Italy)

50. Since the draft articles on treaties concluded between States and international organizations or between two or more international organizations had already been adopted by the Commission on second reading, his delegation would confine itself to remarks which could be taken into account in future work. Perhaps the most important problem with regard to that topic concerned the capacity of the organs of an international organization to act on its behalf, inter alia in connexion with participation in treaties. Article 7 was not entirely satisfactory because it dealt with a sphere in which the method of seeking symmetry with the 1969 Vienna Convention on the Law of Treaties was inappropriate. That view could be explained by referring to the problem of the consent of a State to be bound by a treaty. During the debate in the Sixth Committee which had preceded the adoption of the 1969 Vienna Convention, his delegation had stressed the principle that the will of a State, conceived of as its real will, was regulated solely by constitutional law. For that reason, he had firmly opposed the wording of what was to become article 7 of the Vienna Convention because it made no reference to internal constitutional law. Subsequently, the situation had been clarified and regularized by the inclusion of article 46, and the interpretation of the two articles read in conjunction with each other had allayed his concern. That interpretation showed that article 7 did not affect the logical and practical bases upon which States rested, although the wording used was somewhat open to criticism. The will of States was their constitutional will and the Constitution of each State should therefore be duly observed. The principle of good faith, however, was fundamental to international relations and in certain conditions, as was clear from article 46 of the 1969 Vienna Convention, a State remained bound by a treaty even when its organs, in expressing consent to be bound by it, had violated its Constitution and exceed their competence. On the other hand, the same logic could not be applied to international organizations which, while subjects of international law, were fundamentally different from States in that all aspects of their operation were regulated by international law. Consequently, paragraphs 3 (b) and 4 (b) of draft article 7, should be reworded; they were based on article 7, paragraph 1 (b) of the 1969 Vienna Convention but lacked the precision of the original, were not fully understandable and might be incompatible with the concept of "rules of the organization" as embodied in article 2, paragraph 1 (j) of the draft. One possible solution would be to reword the beginning of the two paragraphs to read "it appears from the practice of the organization or from other relevant circumstances...".

51. Article 26 of the draft, reproducing the corresponding provision of the Vienna Convention and embodying a principle on which the very foundations of international life were based, could not be mentioned without stressing its importance. However, it would be advisable to envisage a time when greater emphasis could be placed on such a principle. Times were changing rapidly and the need for peace, progress, justice, fraternity and solidarity was becoming more pressing. If international law was duly respected, there would be a greater hope of attaining those goals. One obstacle which arose in that connexion was the widespread idea that ratification of a treaty by a legislature was not enough

(Mr. Sperduti, Italy)

to ensure its application within the State concerned. Clearly, a treaty which had not been implemented internally was simply a treaty which had not entered into force. It would therefore be an extraordinary event were the international community one day to accept the corollary of the pacta sunt servanda principle, namely that every treaty in force must be observed by the organs of the State, whether judicial, administrative or even legislative.

52. Mr. AU (Papua New Guinea) said that his delegation wished to comment on articles 8 and 14 of the articles on succession of States in respect of State property, archives and debts. Papua New Guinea, as a newly independent country, was concerned that the Commission had concluded, in paragraph (8) of the commentary to article 8, that the most appropriate way of defining State property was to refer the matter to the internal law of the predecessor State. In the experience of his country, the application of the internal law of the predecessor State to the circumstances of the newly independent successor State had, in most cases, been inappropriate and especially so with respect to questions relating to land. Prior to independence, there had existed in his country two main types of law; customary or traditional law and modified common law. Although it was accepted that common law principles were applicable to the country, their applicability was subject to their relevance and appropriateness to the circumstances prevailing there. On independence, those laws had been validated and adopted as the underlying laws of the country. The Commission seemed to consider that if a case dealing with State property came before the courts either on the date of independence or immediately thereafter, the appropriate law to apply was the internal law of the predecessor State. His delegation did not entirely agree with that view, since an appropriate set of laws for the successor State had been developed to suit the circumstances prevailing there. All land in Australia, the predecessor State, was Crown land, but that did not mean that all land in his country was also Crown land. Ninety per cent of the land there was customary land governed by customary laws, and 10 per cent alienated land consisting of common leasehold and freehold land. To determine whether or not land was State property, reference would have to be made to the internal law of the successor State because it was more appropriate than that of the predecessor State. He was sure that, subject to the views of the representative of Australia, the internal law of Australia would not recognize the customary law of his country. The situation was aggravated if the successor State had been colonized by more than one metropolitan Power. Paragraph (7) of the commentary to article 8 stated that in several cases international courts had taken the view that there was no need to rely upon the interpretation of the internal law of the predecessor State because their freedom of judgement was limited by various provisions of treaties and other written laws. However, customary law was unwritten and could only be ascertained by strenuous cross-examination of witnesses.

53. Similar concerns as to what law was appropriate was created by article 14, dealing with newly independent States and movable and immovable property.

54. His country had not developed a perfect legal system, but it was concerned that careless application of the internal law of the predecessor State due to

(Mr. Au, Papua New Guinea)

lack of knowledge and appreciation of the customary laws and modified common law of the successor State might lead to decisions which were inequitable, especially from the point of view of the indigenous population of the country. His delegation therefore requested the Commission to direct its attention to that problem with a view to the inclusion of an express provision recognizing the internal laws of the successor State where appropriate.

54. The CHAIRMAN suggested that the list of speakers on agenda item 121 should be closed on 9 November 1981 at 1 p.m.

55. It was so decided.

AGENDA ITEM 117: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FOURTEENTH SESSION (continued) (A/36/17, A/C.6/36/L.6 and L.7)

56. Mr. HERNDL (Austria), introducing draft resolution A/C.6/36/L.7 on behalf of the sponsors, said that it was the result of extensive consultations. Six delegations, namely those of Bolivia, Senegal, Singapore, Thailand, Trinidad and Tobago and Zaire, had joined the list of sponsors, bring the total number to 35. His Government, together with those of the other sponsors, wished to stress the importance it attached to the work of UNCITRAL and hoped that that work would continue fruitfully as it had in the past. He trusted that the draft resolution would be adopted swiftly by consensus.

57. Mr. ROSENNE (Israel) said that since he had been unable to receive a directive from his Government in time for the debate on agenda item 117, he appreciated the opportunity to make a brief statement at the current stage. He would be grateful if it could be transmitted to UNCITRAL in accordance with paragraph 12 of draft resolution A/C.6/36/L.7.

58. His delegation wished to congratulate UNCITRAL on the work accomplished in 1981. It was providing extremely valuable professional services for all concerned with international trade. His delegation hoped that UNCITRAL would be able to remain true to its professional and technical vocation and that it would not fall victim to external political pressures.

59. His Government supported the Commission's proposals regarding bills of exchange and international cheques.

60. In Israel there was a quantity of legislation and case law on the question of protecting parties against the effects of currency fluctuation and his Government would be glad to make that information available to UNCITRAL in an appropriate form, subject to the conditions mentioned by his delegation at the 41st meeting of the Sixth Committee at the thirty-fifth session of the General Assembly.

61. On the question of the administrative guidelines for arbitral procedure and, more particularly, the model arbitration law, his delegation would be happy if

(Mr. Rosenne, Israel)

UNCITRAL would continue along the lines it had marked out. It would be noted that the UNCITRAL Arbitration Rules had found their way into article 188 of the draft Convention on the Law of the Sea (A/CONF.62/L.78).

62. UNCITRAL should be encouraged to maintain and strengthen its formal contacts with other international organs operating in the same field or parallel fields in order to avoid all unnecessary duplication of effort.

63. The draft resolution before the Committee had been carefully prepared and his delegation thanked the sponsors for producing a text which fairly reflected the debate.

64. The CHAIRMAN said that the statement of the representative of Israel would appear in the summary records of the meeting, which would be forwarded to UNCITRAL in accordance with paragraph 12 of the draft resolution.

65. If he heard no objection he would take it that the Committee wished to adopt draft resolution A/C.6/36/L.7 by consensus.

66. It was so decided.

The meeting rose at 5.35 p.m.