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SUMMARY RECORD OF THE 52nd MEETING

Chairman: Mr. CALLE y CALLE (Peru)

CONTENTS

AGENDA ITEM 121: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION (continued)

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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 (continued) (A/36/10 and Corr.1 and A/36/428)

1. Mr. BOUONY (Tunisia) welcomed the considerable progress made in the consideration of the topic of State responsibility for wrongful acts. The slow pace at which the work of the Commission had proceeded was not in itself regrettable; it had enabled the question to mature and decisive advances to be made, especially since 1979. The work done thus far on part 2 of the topic, relating to the content, forms and degrees of international responsibility, clarified a number of points and was unquestionably an important step forward in the codification of the rules governing that aspect of international relations.

2. While his delegation endorsed in broad terms the conclusions reached by the Commission in the five articles of part 2, the wording of some provisions was not wholly successful and required further study. The presentation of the provisions in part 2 was generally over-complex and should be simplified by using, as far as possible, succinct wording carrying a precise meaning.

3. Since international responsibility for wrongful acts involved direct or indirect legal consequences for the author State, for the injured State and also, quite frequently, for third States, the three parameters referred to in the report (A/36/10, para. 136) should be considered jointly in order to reflect their inseparable nature.

4. The introduction of the principle of proportionality between the breach of the obligation and the response to that breach seemed reasonable and should make it possible to reconcile the need for a just and necessary response, as authorized in law, with the requirement that that response should be commensurate with the degree of importance of the breach in question. That principle would also apply to third States where appropriate. The deliberations on the rules governing the topic as a whole had to some extent been made easier by the existence of a body of largely customary rules on which State practice was based. The substance of those rules had been clarified by particularly abundant judicial and arbitral precedents. In the especially constructive work it had done since 1979, the Commission had taken as a point of reference certain norms which could not be disregarded because they reflected a general practice accepted by a majority of States.

5. The work on the delicate topic of international liability for injurious consequences arising out of acts not prohibited by international law had encountered certain difficulties. His delegation accorded equal importance to international responsibility for wrongful acts and international liability for non-wrongful acts. It regarded the latter as a separate aspect of international responsibility which deserved particular attention. The Commission had clearly recognized that the topic should not be restricted to its traditional aspects; developments in international relations, and scientific and technological advances, presenting society and international law with an increasing number of new challenges,

together with the observed failure of States to refrain at all times from dangerous activities, rendered adjustments in the rules governing the issue an acknowledged necessity. Real problems underlay the doctrinal disputes as to the basis of liability for such injurious consequences: the contamination of the environment by pollution, and grave threats to the economy and population of a number of countries from industrial activities in the space, nuclear, technological and other sectors. The situation could not be allowed to continue without jeopardizing the peaceful coexistence and interdependence of States.

6. Potentially dangerous activities imposed the duty of care and involved the obligation of reparation for damage caused; even taken in its morally most neutral sense, such reparation was unavoidable. Although a few legal texts regulating certain aspects of the question did exist, they were all, with one exception, concerned with private liability not directly involving the State; that was a major deficiency which had to be remedied in order to remove sources of international tension. His delegation endorsed the Special Rapporteur's analysis of the relevant judicial and arbitral practice. It did not believe that the problems affecting the topic were insurmountable, although they were a severe test of the development of co-operation and interdependence among States. The doubts and anxieties expressed by some members of the Commission were undestandable; however, the arguments advanced against the principle of liability for non-wrongful acts itself carried no great weight and he welcomed the fact that a majority of the members of the Commission agreed that there was a need to elaborate rules to regulate that specific aspect of international responsibility.

7. The most important task at the current stage of the Commission's work on the topic was to strike a balance between the need to pursue certain activities, especially constructive activities essential for development, and the minimization of harmful consequences which might result from those activities. That goal could, in his view, be attained if the Commission continued in its new five-year cycle to pursue its current cautious approach. In order to facilitate the production of new rules on the subject, he proposed that the Commission should, first, formulate in precise terms a general principle of international liability for injurious consequences arising out of non-wrongful acts; secondly, devise a flexible system for the implementation of that principle, retaining the power to select different solutions for the differing situations which might arise; and, lastly, identify, on a pragmatic basis, a set of rules which constituted a threshold generally acceptable to States. It might also be useful at the current stage to avoid placing too much emphasis on the concept of potential loss or injury, which might lead to a deadlock in the discussion. The rules might be formulated by means of study and comparison of the various bilateral and multilateral legal instruments which had emerged over the past two decades.

8. His delegation looked forward to substantial results from the Commission at its next session, particularly in the case of the draft articles on State responsibility for wrongful acts, and reserved the right to submit final observations, written or oral, in due course.

(Mr. Bouony, Tunisia)

9. In conclusion, he stressed the need for the newly-elected members of the Commission to focus on the preparation of a five-year programme of work which would reflect the needs of international society and the new challenges confronting it.

10. Mr. de STOOP (Australia) said that the main achievement of the Commission at its 1981 session had undoubtedly been the second reading of the draft articles on succession of States in respect of State property, archives and debts. That subject raised many sensitive economic and political issues as well as complex legal problems and presented a challenge for the future in terms of reconciling conflicting interests.

11. His delegation had difficulties with some aspects of the draft articles as adopted on second reading. For example, the definition of State debt contained in draft article 31 was too narrow in that it excluded financial obligations to persons other than subjects of international law and appeared to ignore the fact that debts owed by States to a private creditor could be, and had been, regulated by international law. Further, he had reservations about the use of concepts in the draft which were of fundamental importance but which remained undefinied; terms such as "equitable compensation" or "equitable proportion" were unsatisfactory without criteria as to what should be taken into account in determining what was equitable. The concept of "equity" was not sufficiently well developed in international law to serve as an adequate foundation in itself.

12. The codification and development of international law in the field of State responsibility was probably the most ambitious task before the Commission, and despite the wealth of State practice and literature on the subject there were still serious theoreteical difficulties about some of the underlying principles. He commended the Special Rapporteur's exploration of the parameters for a possible new legal relationship arising out of an internationally wrongful act of a State. It was vitally important to clarify basic theoretical issues; however, he questioned the advisability of seeking to do so in substantive articles. He was not entirely convinced that it was appropriate to include general principles in an introductory chapter, as was the case in chapter I of part 2 or, indeed, that such principles served any particularly useful purpose in a legal text. In addition, some of the provisions in draft articles 4 and 5, which imposed certain duties on States, left the impression that the internal law of the State influenced the extent of the State's obligations under international law.

13. Paragraph 140 of the report (A/36/10) recognized that, during the second reading of part I, some revisions, rearrangements and mutual adaptations between part I and part 2 should not be excluded. He agreed that there was a need to re-examine some aspects of part 1 in the context of developments in part 2, to ensure that the draft as a whole was internally consistent and coherent.

14. Parts of the commentary to the draft articles concerning State responsibility were helpful, but it would have been more useful if it had provided more

(Mr. de Stoop, Australia)

background and explored the assumptions and principles underlying some of the draft articles, rather than merely describing the articles in question. For example, paragraph 152 did little more than describe draft article 5, whereas it would have been helpful to have had more information on the reasoning that had led to the adoption of that article.

15. The topic of international liability for injurious consequences arising out of acts not prohibited by international law was becoming increasingly relevant in international life, owing to the development, with modern technology, of a vast array of new activities which could have adverse consequences well beyond the territory of the State in which they were being carried out. It was an area where conflicting interests needed to be reconciled and it might well be necessary to develop new concepts, or at least new principles. International law had never remained static, and it must continue to evolve to meet new circumstances if it was to respond to the expectations of the international community. It would be premature to comment on the substance of chapter V devoted to the topic (A/36/10, chap. V). His delegation had noted with interest the outline of the scope of the topic given in the report and would welcome a systematic study of State practice to assist in the development of that vitally important and interesting project.

16. He welcomed the valuable work done by the Special Rapporteur for the topic of the jurisdictional immunities of States and their property. There was a wealth of State practice on the subject, usually in the form of judicial decisions, and the Special Rapporteur would have the challenging task of accommodating wide divergences in national perceptions of the concept and scope of immunity. His delegation had some difficulties with draft article 8 which, if read in isolation, seemed to be based on the outmoded notion of absolute immunity. However, he would reserve judgement until he had seen the exceptions to the draft article, which he understood would be spelled out in a later provision.

17. He also commended the Special Rapporteur for the question of treaties concluded between States and international organizations or between international organizations for his constructive work on an issue of great importance.

18. However, his delegation had reservations about the desirability of continuing with the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The subject was already covered in treaty law and it would be an unjustified waste of the Commission's time and resources to develop it further.

19. His delegation joined with others in regretting that the Commission had not been able to appoint a new Special Rapporteur to work on the law of the non-navigational uses of international watercourses. That was an important topic, and he hoped that a new Special Rapporteur would be appointed immediately by the newly-elected Commission.

(Mr. de Stoop, Australia)

20. At a time when the Commission was coming to the end of a five-year cycle and when moves were under way to enlarge it to take account of the large increase in the number of newly independent States that had joined the United Nations since 1961, it was appropriate to make a few general remarks concerning its work.

21. His country was indebted to the Commission for the excellence of its work in the past 34 years and had every reason to believe that its high standards would be maintained. Much of its work in the past had focused on the codification and illumination of traditional topics of international law, while at the same time developing that law when State practice was unclear or when the traditional norms required modification to meet a changing situation. It should not be reluctant to embark on projects requiring it to explore largely uncharted legal territory. However, certain subjects might be too technical or of insufficient legal significance to be dealt with by the Commission, and the Committee had a collective responsibility to ensure that the Commission focused on subjects in the greatest need of codification and development. His delegation requested that in view of the overcrowded agenda the Commission should give priority to a small number of topics, in particular State responsibility and the jurisdictional immunities of States and their property, and stressed that the Committee should assist the Commission in that regard by giving it more direction.

22. With time and resources at a premium, there was also a collective responsibility to find more effective, efficient and economical ways of developing the Commission's relationship with Governments, through the General Assembly. In that connexion, the report could still be improved, especially by identifying clearly the decisions on each topic taken at the session under consideration. The task of seeking views from Governments on the substantive issues might also be facilitated by the greater use of questionnaires as an alternative to, but not a substitute for, detailed comments.

23. Various ideas had been mooted to make the task of the Commission easier; some of them, such as turning the Commission into a full-time body, were extreme and would be counter-productive; despite the considerable burdens imposed on it, the Commission had made an outstanding contribution to the development of international law by preparing carefully-thought-out drafts which had served as a basis for the adoption of important international conventions.

24. Mr. HAYASHI (Japan) emphasized the importance of the question of the jurisdictional immunities of States and their property in terms of early codification of rules, and expressed the hope that the Commission would complete the drafting of the entire set of articles on the topic as soon as possible. He appreciated the flexibility generally achieved in the formulation of the draft articles considered in 1981, since the Commission had been expected to encounter divergent opinions on various aspects of the problem. That flexibility was particularly important in the initial draft articles, which would serve as a working basis for future deliberations.

(Mr. Hayashi, Japan)

25. The rules on consent of State provided for in draft articles 8 to 11 constituted a third basic element in the topic, following the principle of State immunity embodied in draft article 6, and the obligation to refrain from the exercise of jurisdiction, set forth in draft article 7. Although the detailed provisions regarding that third element were useful from the standpoint of the progressive development of international law, there was considerable overlap among them, and he hoped that the Commission would try to condense the provisions further.

26. It was important that the Special Rapporteur should submit as soon as possible draft articles providing for exceptions to or limitations on the general principles of State immunity, since it was precisely in that area that the division of opinion was greatest.

27. While he appreciated the efforts of the Special Rapporteur for the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the basic position of his delegation remained unchanged: since the existing legal framework dealt adequately with the question, there was no urgent need to prepare a separate convention for that purpose. Regarding the three draft articles setting out general principles presented at the 1981 session, his delegation considered that the duties of sending States, as opposed to those of receiving States, were not sufficiently dealt with, thus creating an imbalance between the duties of the two kinds of States. The Commission should examine those issues on the basis of the régime of the Vienna Convention on Diplomatic Relations, which had been widely accepted in the practice of States, with a view to making the provisions more effective.

28. In conclusion, he supported those delegations which had expressed concern over the unfortunate lack of progress on the law of the non-navigational uses of international watercourses. He hoped that the Commission would resume its study of that important topic by appointing a new Special Rapporteur as soon as possible.

29. Mr. GHARBI (Morocco) commended the Commission on what had been a satisfactory five-year term, despite the many pressing, and not always mutually compatible, recommendations emanating from the General Assembly. The Commission was neither an academic club of jurists nor a mere ad hoc committee of the General Assembly. It should be neither an ivory tower nor a forum for political controversy. Its role was to examine in depth the topics before it and to propose, with a view to ultimate adoption by States, technically irreproachable drafts that covered all angles.

30. The jurist engaged in codification followed a scientific approach, judging States by their acts and taking their words into account only when they confirmed or prefaced such acts and emanated from the competent authorities. The Commission's Special Rapporteurs had adopted that approach, while ensuring that every legal norm was founded primarily on practice that was accepted as law. The question was whether the non-existence of such practice denoted a legal vacuum and could justify non-recognition of new legal norms.

(Mr. Gharbi, Morocco)

31. The sources of international law referred to in Article 38 of the Statute of the International Court of Justice, and specifically the "general principles of law recognized by civilized nations", were sufficient to rule out the possibility of any legal vacuum, unless it was felt that two thirds of mankind did not yet meet the criterion of "civilized nations". The "general principles of law" made up for the inadequacy and, in some cases, the non-existence of State practice, a necessary element in the formation of international custom. The pattern of formation of such custom could thus be reversed; instead of ratifying previous practice, international legal instruments or protracted global negotiations were, more and more frequently, developing practice that inevitably led to the formation of international custom. However, the term "instant custom" did not do justice to the sociological basis for new norms. There was little to be said against the accelerated emergence of customary norms in the contemporary era. Foresight had always been a central element in matters of law.

32. The progressive development and codification of international law involved a constant search for balance between the interests involved. That search for balance should not lead to mere verbal and artificial compromises, but should be aimed at substantive compromises with a view to achieving a genuinely stable legal régime. That search must also be part of the all-embracing approach which the Commission should adopt in the light of the interpenetration and complementarity between the topics before it. The balance must be dynamic, since what was involved was the codification of the changing norms of an international society in a state of flux. Without such a balance, the legal stability sought through the patient process of progressive development and codification could not be guaranteed.

33. The 1958 instruments relating to the law of the sea had carried the seeds of instability in that they had not been responsive to the demands of the new era. The Third United Nations Conference on the Law of the Sea had given preference to progressive development on the basis of political negotiation. Members of the Commission had made a valuable contribution to the work of the Conference in the various phases of a process of negotiation that would undoubtedly leave its mark in the annals of the progressive development and codification of international law.

34. The international community and, a fortiori, the International Law Commission should be mindful of the lessons derived from the revision of the law of the sea. The progressive development of that law had been possible because the concept of equity had found its rightful place as a regulative element essential to legal stability. That concept should be taken into account not only in the application of legal norms on the basis of their interpretation by judges or arbitrators, but also when they were being elaborated. During the process of elaboration, there was a need for equitable principles that would establish a close link between legal norms and all the relevant circumstances of the specific case which those norms sought to govern. It was with good reason that in Article 38 of the Statute of the International Court of Justice there was a clear

distinction between the power of the Court to decide a case ex aequo et bono and the application of general legal principles. The components of international norms should not reflect an archaic vision of the world, but should cover the specific realities of the international community.

35. The Commission's draft articles on succession of States in respect of State property, archives and debts afforded, on the whole, a satisfactory basis for the work of a future conference of plenipotentiaries. While using definitions and principles already embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties, the Commission's draft articles accorded preferential treatment to the question of State archives. His delegation, which had stressed the importance of giving exhaustive treatment to that question in a separate part of the draft, welcomed the priority given to it in the title and body of the articles.

36. The Commission was correct in its view that the date of the passing of State archives should be that of the succession of States, that the passing of the State property or archives should occur "by right", entirely free of charge and without compensation, and that there should be due respect for the principle of unity and indivisibility of State archives. States that had recently secured or regained their independence were interested in recovering their national archives not only because of the cultural function or sentimental value of those archives, but also because of their importance for administrative and other purposes and as evidence. The importance of State archives as evidence was reinforced in article 26, paragraph 3. His delegation agreed with the Commission that while it would be unrealistic for the newly independent State to expect the immediate and complete transfer of archives connected with the imperium or dominium of the predecessor State, it would be quite inequitable for the former State to be deprived of access to at least those of such archives which were of interest to it; the need for the evidence referred to in article 26, paragraph 3, was especially crucial when the newly independent State was involved in a dispute or litigation with a third State concerning the title to part of its territory or its boundaries (A/36/10, pp. 138 and 139, paras. (17) and (22)).

37. There was still disagreement among the members of the Commission regarding the definition of the term "State debt" and the extent of the financial obligations that would be incurred by the successor State under the future convention. His delegation had already proposed that the adjective "international" should be inserted before "financial obligation" in article 31. It accepted the wording of the article as it stood because the text limited the term "State debt" to any financial obligation of a State towards another State, an international organization or any other subject of international law. The concept of "subject of international law" had been clearly explained by the International Court of Justice in its advisory opinion of 11 March 1949. As a general rule, neither natural nor juridical persons immediately and fully enjoyed the status of subjects of international law.

(Mr. Gharbi, Morocco)

38. There were several reasons why the régime relating to the international financial obligations of the successor State should be so restrictive. Succession to State debts within the past 25 years had not usually given rise to insoluble disputes, but had taken place on the basis of arrangements that were on the border-line between investment law and the law of succession to public debts. It would be wrong to interpret the restrictive approach to public debts as an attempt on the part of the developing countries to evade the obligations assumed by them or on their behalf. It would be unfair to impugn their motives because of a position of principle that far transcended the controversy. Either the debt in question was covered by a guarantee provided by the State of which the creditor was a national under an agreement with the recipient State in which case the conditions laid down in the 1978 Vienna Convention would apply, or the creditors were private persons and there was no agreement between States, in which case any dispute would be subject to the rule relating to the exhaustion of local remedies.

39. The safeguard clause in article 6 was an implicit suggestion that the rules governing the rights and obligations of natural or juridical persons could be codified in another instrument or even by another organ. Such codification would tend to come within the scope of international trade law.

40. The failure of the draft articles to include provisions relating to the settlement of disputes was understandable. The international conference adopting the draft should, under normal circumstances, deal with that question and establish a link in the preamble between, on the one hand, the convention on succession of States in respect of State property, archives and debts and, on the other hand, the Vienna Convention on the Law of Treaties and the Vienna Convention on Succession of States in Respect of Treaties.

41. With regard to the draft articles on treaties concluded between States and international organizations or between international organizations, his delegation welcomed the Commission's decision to elaborate a self-sufficient text without renvoi to the Vienna Convention on the Law of Treaties. In terms of language, substance and structure, the draft articles were consistent with the Convention, particularly with respect to the principle of non-retroactivity, the principle of pacta sunt servanda and the formulation of reservations.

42. His delegation agreed with the Chairman of the Commission that the assimilation of States and international organizations could not go beyond a certain point without becoming imprecise and possibly dangerous (A/C.6/36/SR.36, para. 7). It was because of the differences between the respective competences of States and international organizations that the draft articles had introduced the new term "act of formal confirmation". There remained the question of the compatibility between the commitments made by an international organization on behalf of its members and the commitments made with regard to the same subject by its individual members. The attributability of any breach of such obligations and the application of the régime of responsibility which the Commission was seeking to develop would depend largely on the answer to that

(Mr. Gharbi, Morocco)

question, which was central to the crucial outstanding issues before the Third United Nations Conference on the Law of the Sea. The Commission should therefore consider the question in depth in the light of the practical results achieved at the forthcoming session of the Conference.

43. Article 6 represented a good compromise between the view that the capacity of an international organization to conclude treaties should be based only on its statute and the view that that capacity should be based on international law in general. However, the article provided only a partial response to the aforementioned question concerning the possible incompatibility of commitments made on the same subject by States as such and by an international organization on behalf of its member States. Nevertheless, it was clear that an international organization could only bind a Member State if its statute so provided or if the State expressly accepted the commitment in question.

44. With regard to State responsibility, his delegation supported the view epxressed in paragraph 156 of the report (A/36/10) that articles 1 and 3 ought to be combined in one article or, at least, should be re-examined and accorded a secondary place to avoid the impression that they tended to protect the State which had breached an international obligation. His delegation welcomed draft article 5, in particular because it was compatible with the status of aliens under the Moroccan legal system.

45. With regard to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, his delegation fully supported the conclusion drawn in paragraph 167 of the report that the old concept of invasion of sovereignty was no longer a sufficient means of regulating the impact of activities within one State's territory or control upon other States and that it was necessary to bring about a just balance in order to avoid both extremes, making as little use as possible of outright prohibitions, while seeking to minimize harmful consequences and, when they occurred, to provide reparation. He also supported the method of applying "in every situation to which the topic might relate the test of the duty of care or due diligence" (A/36/10, para. 172) and of directing attention "not to an examination of treaty practice, but to other aspects of legal development" (A/36/10, para. 166). The use of that method should lead to the establishment of a régime of "strict" liability much more closely linked to reparation for damage caused and the prevention of potential damage than to the establishment of the existence fault or its attendant circumstances. The traditional concept of liability had not kept pace with the enormous progress made in science and technology. The régime of liability should, therefore, tend towards a reasonable socialization of the risk, as in the 1969 International Convention on Civil Liability for Oil Pollution Damage, which provided for an international compensation fund along the lines of mutual insurance. General international law should provide an appropriate legal framework aimed at preventing the negligence which would result from a general feeling of irresponsibility, thus reducing risks and guaranteeing prompt reparation. However, such a development, no matter how d[illegible]le, should not be allowed to weaken the concept of direct liability.

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(Mr. Gharbi, Morocco)

46. With regard to the topic of jurisdictional immunity of States, the concept of such immunity should be defined clearly in view of the development and diversification of international relations and the increase in the number of activities carried out by States with different political and economic systems. With regard to the draft articles on the topic, article 6 seemed to define the orientation and scope of the draft and referred to the applicable law, which was conventional law, not general law. The text of the draft article should therefore be retained in its existing form, because the deletion of the phrase "in accordance with the provisions of the present articles" would defeat the purpose of the conventional approach. He favoured combining articles 8 and 9 because together they expressed the acceptance by a State of the jurisdiction of another State both actively, as indicated by the words "consent of a State", and passively, as reflected in the words "voluntary submission". Nevertheless, it would be preferable, in combining the two articles to use the term "consent of State" rather than the term "submission", which should be avoided, even when qualified by the adjective "voluntary", if only for psychological reasons.

47. The codification of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier was useful because it would facilitate communication between States and their foreign missions and limit abuses in the use of the diplmoatic courier by both the sending State and the receiving State.

48. Lastly, he expressed the hope that the Commission would continue its laudable work in order to contribute, as it had in the past, to the provision of a sounder and hence more durable basis for the rule of international law.

49. Mr. KLEIN (Austria) said that his delegation agreed with the delegations which had suggested that the format of the Commission's reports should be modified in such a way as to make them easier to read. He welcomed the fact that the Commission had completed the second reading of the draft articles on succession of States in respect of State property, archives and debts. That was undoubtedly the most important result of the work of the Commission at its thirty-third session. His Government had already submitted written comments on the articles and in principle found them satisfactory in their current form. However, he wished to draw attention to a question to which his delegation attached great importance, namely the definition of State debt, as contained in article 31, in relation to the title of the draft articles. Paragraph (2) of the commentary to article 31 correctly stated that the concept of "debt" was one which writers did not usually define because they considered the definition self-evident. That also held true for the concept of "State debt". In common parlance that term certainly referred not only to all financial obligations of one State vis-à-vis another State, an international organization or any other subject of international law, but also to any other financial obligations chargeable to a State, namely obligations vis-à-vis natural or juridical persons. It was regrettable that the Commission had decided to change the definition of State debt by omitting subparagraph (b) of former paragraph 16 (now article 31),because the very title of the draft articles had thus been rendered somewhat inappropriate. Although

(Mr. Klein, Austria)

new article 6 contained a safeguard clause, his delegation was not convinced of the cogency of the arguments adduced in favour of the concept of State debt as currently defined in article 31. The assumption that the debts owed by a State to natural or juridical persons were not governed by international law seemed wrong. Paragraph (10) of the commentary to article 34 stated that a succession of States did not, of and by itself, have the effect of giving the creditor an established claim equal to the amount of State debt which might pass to the successor State; in other words, the creditor did not, in consequence only of the succession of States, have a right of recourse or a right to take legal action against the State which succeeded to the debt. That applied to all creditors, regardless of whether they were States, or natural or juridical persons. His delegation had no objection in principle to the recommendation of the Commission that a conference of plenipotentiaries should be convened to study the draft articles on the topic and conclude a convention on the subject.

50. His delegation welcomed the progress made with regard to the question of treaties concluded between States and international organizations or between two or more international organizations and hoped that the Commission would be able to complete the second reading of the draft articles on that topic at its next session.

51. With regard to chapters IV and V of the report (A/36/10), his delegation felt that the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law were so closely connected that it would be difficult, if not impossible, to draw definitive conclusions on the latter before sufficient progress had been made with the former. The question of State responsibility was one of the most important topics discussed by the Commission and would serve as the basis for solutions to the questions set forth in chapters IV and V. The five articles on State responsibility in the Commission's report constituted an excellent basis for discussion. It was surprising that the Special Rapporteur had taken the obligations of the author State, and not the rights of the injured State, as the starting-point for part 2 of the draft articles. His delegation, like others, felt that placing articles 1 and 3 at the beginning of part 2 might give the impression that unjustified attention was accorded to the interests of the author State.

52. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, his delegation felt that the Special Rapporteur had been entirely justified in refraining from drawing definitive conclusions, since neither the scope nor the content of the topic had yet been defined clearly. As his delegation had already observed, the basic problem in dealing with the topic was the difficulty of delimiting it in relation to State responsibility. Although certain conventional régimes provided for "strict" liability for so-called "ultra-hazardous" activities in various fields, it was doubtful whether there was a general rule of international law in that regard. The duty of care incumbent on States which permitted in their territory activities which could have injurious consequences beyond their national frontiers

(Mr. Klein, Austria)

and the duty to minimize any such injurious consequences did correspond to general rules of international law, which had been elaborated progressively with the development of modern technology. However, that led back once again to the field of State responsibility. For that reason, his delegation doubted that it would be possible to dispense with the concept of "strict" liability in considering that question. With certain limitations, that concept could perhaps serve as a basis for work on the topic.

53. His delegation had no comments to make at the current stage on the jurisdictional immunities of States, but would follow the work on that topic with interest.

54. With regard to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation shared the reservations expressed by certain members of the Commission and contained in paragraphs 246 and 247 of the report, because that question was already the subject of several multilateral conventions. In drawing up a single set of rules governing all official communications, it was necessary to find a balanced compromise between the rights and obligations of the sending and receiving States, and between the principle of the inviolability of the diplomatic bag and the justifiable need to prevent abuses. To that end, the Commission should base its work on article 35, paragraph 3, of the Vienna Convention on Consular Relations of 1963, which provided that the bag could be opened under certain circumstances.

55. Lastly, he expressed the hope that at its next session the Commission would appoint a Special Rapporteur for the topic of the law of the non-navigational uses of international watercourses, so that progress could be made on that important topic.

The meeting rose at 12.55 p.m.