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at 10.30 a.m.
New York

SUMMARY RECORD OF THE 53rd MEETING

Chairman: Mr. ENKHSAIKHAN (Mongolia)
later: Mr. CALLE y CALLE (Peru)

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

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

1. Mr. KOROMA (Sierra Leone) said that, despite the International Law Commission's undeniably impressive list of achievements in the codification and progressive development of international law, there was a growing conviction that it had somehow failed to keep pace with developments in international law and advances in science and technology. The Sixth Committee had shown itself reluctant to entrust legal topics to the Commission, not because results might not be forthcoming in the short term, but because the Commission itself had encouraged the impression that certain topics were too "political" to be suitable for its consideration and that it would prefer to concentrate on the precise formulation of rules of international law in fields where extensive State practice already existed. He hoped that that trend could be reversed, and that the Commission would in future resume its central role in the international law-making process by responding to new challenges and expanding the scope of its activities.

2. Turning to the topics considered by the Commission at its thirty-third session, he said that the draft articles on succession of States in respect of State property, archives and debts were a noteworthy achievement, and represented a corpus of law which was relevant, well-balanced and pragmatic. The draft articles appeared to be even-handed and fair to all parties concerned, and his delegation welcomed the fact that the principle of equity, which at an earlier stage had seemed insufficiently well-defined to permit a party to formulate a claim, let alone predict the outcome of a case, had been suitably clarified. The principle had been affirmed that a successor State should succeed not only to rights but also to obligations, subject to the proviso that such obligations should not occasion undue hardship or intolerable injustice to either the successor State or the predecessor State. Secondly, it had been established that newly-independent States should attain independence without the encumbrance of severe burdens which would limit their freedom at a time when they were taking their rightful place in the community of nations.

3. His delegation noted that the Commission had developed no criteria as to what constituted State property, but had referred the matter to the law of the predecessor State. While the intention was to emphasize that the transfer of the rights and interests of the predecessor State could only take place in accordance with contemporary international law and the United Nations Charter, his delegation none the less wondered whether too much latitude was not being accorded to predecessor States. Draft article 8 should be reviewed in the light of the need to ensure that such States were not in a position to render a succession virtually meaningless both for the successor State and for third parties. The Commission itself, in its commentary to the article, had indicated that further clarity might be called for.

4. His delegation commended the Special Rapporteur and the Commission for the special treatment accorded to State archives. Africa, perhaps more than any other continent, had been deprived of that essential component of its cultural heritage,

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and his delegation felt that no consideration could take precedence over a people's right to custody of its cultural and artistic patrimony. He agreed with the Commission that historical archives of the pre-colonial period could not be archives of the predecessor State, but should be considered as property of the territory which had itself created them in the course of its history. They should therefore revert to the newly-independent State even if they had been removed from the territory of that State by a colonial Power.

5. It was equally vital that archives which included documents relating to territories, land and frontiers should be returned. In that connexion, his delegation endorsed the recommendation adopted at the Cartographic Seminar of African Countries and France, held at Paris in 1975, that such archives should be transferred to States on request and that documents relating to frontiers should be handed over simultaneously to the States concerned.

6. The Commission's decision to affirm as a rule that the State debts of a predecessor State should not pass to a successor State, and that any arrangement should be on the basis of agreement, was not only fair but logical. On the other hand, article 36, paragraph 1, added the proviso "unless an agreement between the newly independent State and the predecessor State provides otherwise". His delegation felt that that proviso, together with article 6, should have resolved the disagreements which had arisen in the Commission as to the definition and scope of State debts. It would be inappropriate to extend the scope of article 31 to cover a creditor or claimant other than a State. To do so might even encourage frivolous and vexatious litigation against a State to the embarrassment of the predecessor State. It did not seem to his delegation that the existing version of article 31 would limit the capacity of the developing countries to attract credit.

7. It was appropriate that the Special Rapporteur should have raised the issue of "odious debts" and their non-transferability with particular reference to such régimes as that prevailing in South Africa. Although no one could predict the outcome of the continuing conflict in that country, creditors of the South African régime should be aware that the debts it contracted were contrary to the interests of the peoples of South Africa and Namibia and, in the case of the latter, manifestly incompatible with international law. Such debts were, therefore, non-transferable.

8. On the whole, his delegation found the proposals balanced and equitable both to newly independent States and to all other parties concerned, and it therefore favoured the convening of a conference of plenipotentiaries to consider the draft articles.

9. His delegation noted that the 26 draft articles on treaties concluded between States and international organizations or between two or more international organizations considered by the Commission at its thirty-third session had preserved a close relationship with the relevant provisions of the Vienna Convention on the Law of Treaties, but that they also had distinctive characteristics. His delegation believed that the topic deserved priority consideration, since international organizations were continuing to enter into agreements with States

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which, in some cases, were themselves members of the organizations concerned. Such relationships required regulation, and he looked forward to the completion of the articles.

10. His delegation welcomed the shift of emphasis evident in the new versions of the articles on State responsibility, which dealt with the content, forms and degrees of international responsibility. In determining the new rights of an "injured" State, the draft articles affirmed that the onus would be on that State, when demanding restitution and reparation, to prove that a breach had been committed.

11. Although it was difficult in the case of the topic of international liability for injurious consequences arising out of acts not prohibited by international law to say what form the final outcome of the Commission's work would take, his delegation believed that the emergence of new source-material justified continuation of the study.

12. In conclusion, he said that his delegation's position on the question of the jurisdictional immunities of States and their property was that no State could exercise its sovereignty or jurisdiction against another State without the latter's consent, and that actions in violation of that principle should be viewed with concern. Consent must be explicitly stated; it could not be inferred or implied.

13. Mr. Calle y Calle (Peru) took the Chair.

14. Mr. VALLARTA (Mexico) said that the suggestion to start part 2 of the draft articles on the topic of State responsibility with a statement recognizing that an internationally wrongful act of a State gave rise to obligations of that State and to rights of other States in accordance with the following articles (A/36/10, para. 154) was acceptable, if not essential. However, the Commission should amend the wording in the Spanish version; the expression "los demás Estados" gave the impression that the situation gave rise to rights for the whole of the international community and should be replaced by the words "otros Estados".

15. Since a convention on State responsibility would inevitably be lengthy, he questioned the need for a provision such as article 2, which simply stated the obvious. Further, his delegation agreed with others that other consequences, in addition to those provided for under a rule of international law, might ensue from the breach of an obligation; if the draft article were to be retained, therefore, an appropriate qualification to that effect should be added to it.

16. Although the principle set forth in article 3 was incontrovertible, there nevertheless existed one exception, namely, those rights automatically lost as a consequence of the breach. For example, in the case of an armed attack, the right of self-defence of the victim inevitably deprived the aggressor temporarily of certain rights, such as those relating to the inviolability of its borders.

17. Article 4, paragraph 2, appeared to assume that all breaches of obligations could be assessed in economic terms and that, consequently, reparation could in every case be made in the form of a sum of money. However, there were a number of

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situations, such as an incident involving the violation of the immunity of a diplomatic agent or the contravention by a foreign vessel of the rules relating to a State's territorial waters, where it was hard to imagine a reparation of that kind, unless the breach in question had entailed any damage or injury. The Commission should consider adding a sentence to the article indicating that that particular paragraph applied only when both the obligation and the breach thereof were assessable in monetary terms. Further, since article 5 made reference to article 4, the same amendment should be made to that article respecting the treatment to be accorded to aliens.

18. The reference in article 5 to the question of a State's jurisdiction raised a number of questions. His delegation hoped that the future work on the matter would clarify whether, first, the jurisdiction referred to was territorial in nature and, if so, whether it was limited to national territory under the sovereignty of the State or embraced the areas of special jurisdiction newly created by the Law of the Sea; secondly, whether it included the jurisdiction of a State of registry over its aircraft or a flag State over its vessels or, thirdly, that jurisdiction exercised by States in their consulates, embassies and permanent missions. In that context it might be worth bearing in mind article 1 concerning international liability for injurious consequences arising out of acts not prohibited by international law and the comments on it made by the Commission and by other delegations in the Committee. At the same time, it might be useful to stipulate in draft article 5 that only courts of the State alleged to have breached an international obligation had jurisdiction concerning the treatment of aliens. Experience had shown that many aliens presumed to have suffered injury lodged complaints against the State concerned in the courts of their own countries, a practice which, apart from jeopardizing the jurisdictional immunity of States, ran counter to article 4, paragraph 1 (b), which set forth the obligation to apply such remedies as were provided for in, or admitted under, a State's internal law, subject to the provisions of article 22 of part 1, relating to the exhaustion of local remedies. A rule specifying the exclusive competence of internal courts would help to strengthen that obligation.

19. At a later stage, the Commission would have to decide whether to draft a part 3 on the implementation of international responsibility. At first glance, it would appear necessary to do so, especially in the light of the problem of the loss of the right to adduce the new legal relationship. In view of a recent specific case of a State using armed force unlawfully on the grounds that it was exercising its right of self-defence in a situation involving a latent armed conflict, thereby disregarding the fact that under the United Nations Charter the right to counter-attack could be exercised only in the face of an armed attack and never when the danger was only potential, it would be desirable to study the question of "counter-measures" referred to in the Special Rapporteur's second parameter.

20. His delegation did not agree that the first three articles of part 2 gave the impression of giving protection to the author State. Moreover, it was not surprising that international law should be concerned to protect the author of a breach, when it was the concern of international law to prevent counter-measures from becoming reprisals, expressly proscribed by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

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21. Some members of the Commission had wondered whether the special régime of article 5 should not also apply in cases of breach of international obligations other than those relating to aliens (A/36/10, para. 159). In that case he hoped that his delegation's interpretation of paragraph 1 of that article was mistaken, for he could not conceive of a situation in which, for example, in the case of a breach involving the wrongful occupation of a territory, the author State might be allowed to choose between withdrawing from the territory or paying a sum of money, as would be implied by the option recognized in that paragraph.

22. In connexion with the topic of international liability for injurious consequences arising out of acts not prohibited by international law, his delegation endorsed the view of the Special Rapporteur that the principle that States were free to conduct their own affairs in ways which did not harm others must be tempered by preserving a balance which did not excessively restrict beneficial and necessary activities (A/36/10, para. 167). Since industrial activity was vital for all States and the risks inherent in it could be minimized but not eradicated, ways must be found to prevent harm and to compensate the victims without stifling lawful and beneficial activities. His delegation would like to see the Commission prepare a document collating the general principles on the topic, which might serve as a working basis in other bodies for the elaboration of concrete agreements on civil liability for specific industrial activities. If society could not satisfy the needs of both those who undertook lawful, necessary but potentially dangerous activities on the one hand and their potential victims on the other, than efforts must be directed towards establishing agreed and uniform rules placing limits on the liability of the former when acting in accordance with the law and at the same time providing proportionate and swift reparation for the latter.

23. The application of the doctrine of risk caused without previous agreement might be unjust towards the author of accidental harm, whether a State or a private person, for if the activity which caused the harm was lawful and necessary, not only for the society of a given State but also for the international community, it was only just that the latter should share in the risk as well as in the benefits. The only way to achieve justice in that situation was by means of civil liability conventions and compensation funds established beforehand.

24. His delegation accepted that the breach by Governments of the "duty of care" should entail State responsibility. However, the State which incurred that responsibility should not necessarily bear all the consequences of the harm. It should be considered whether it was possible for the Government of a developing country to ensure that all industries present in its territory, including transnational corporations, complied with minimum safety standards; many Governments lacked the necessary administrative machinery and resources. Any rule elaborated by the Commission on the subject should consequently be grounded in the principle set forth by the Special Rapporteur that "it must be shown that the State in whose territory or control the harm was generated had the possibility of averting that harm" (A/36/10, para. 172); moreover, any future article on the question should stipulate a State's "duty of care" but qualify it with the phrase "to the extent of its possibilities". To disregard that notion would be to introduce injustice and inequity into the law.

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25. Draft article 1 should include an explicit reference to "lawful acts". The failure to mention the concept of lawfulness meant that the article as it stood did not give a precise definition of the scope of the articles to follow.

26. The concept of the jurisdictional immunities of States and their property was, in the view of some Governments, in the process of evolving, like the notion of sovereignty, from an absolute to a relative concept. His delegation accepted that evolution, while recommending that the Commission should view very warily the attempt by national courts of certain countries to extend their jurisdiction, thereby violating the sovereignty of other States. With that in mind, it would be preferable for the general principle that the State was immune from the jurisdiction of another State, embodied in article 6, not to carry the restriction "in accordance with the provisions of the present articles"; rather, it should simply be enunciated and an exhaustive and rigid list of all the exceptions to it given in later articles.

27. Article 2 on "Use of terms" and article 3, "Interpretative provisions", should be merged into one, for as they stood they left areas open to question. For example, the definition of "foreign State" in article 2, paragraph 1 (d), seemed not to include administrative proceedings under the rule of immunity, whereas article 3, paragraph 11 (b) (iv), relating to the concept of "jurisdiction", made it clear that States were immune from all the administrative or judicial powers of another State. In addition, the reference to "administrative and police authorities" was unnecessary, because all police authorities were administrative by definition. Paragraph 2 of article 3 was a crucial provision requiring general agreement in the Sixth Committee if the success of the future convention was to be assured.

28. One consequence of the variety of existing legal systems was that activities which in one State fell under public law, were in others in the realm of private law. Since there was no objective way of classifying a government function as public outside the context of the national legislation which regulated it, if the commercial activities of a State were to be made an exception to the rule of immunity it would be necessary to exclude from such commercial activities those defined by the internal law of the author State as public in character. Such a reference to internal law should be acceptable even to those States interested in reducing immunities to a minimum, for it was inconceivable that a State would place certain activities within the competence of public law with the sole aim of enjoying immunity from foreign jurisdiction. A State which established a government monopoly over an activity did so in the interests of society, and that activity, being thus no longer open to private persons, should be safeguarded by all the rights which protected one State against another, including immunity. Article 3, paragraph 2, should thus be clarified; only by reference to national legislation could the character of an activity, transaction or act be determined, and it would be absurd to permit a judge or official of a third State to decide the question in total disregard of the law of the State against which a claim had been lodged or, worse still, on the basis of criteria emanating from the legal system of the State which was attempting to exercise jurisdiction. Another important aspect in determining the character of the act was the need to separate the different functions of a single agency or organ of the State and assess them in isolation; it could not

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be concluded that simply because an organ carried out commercial acts in the exercise of its functions, all those functions had a commercial character, and it would be quite unacceptable for a State organ to forfeit immunity simply because one of its functions was, in law, commercial. Further, the notion that the purpose of the act was irrelevant in determining its character was doubtful. Certainly, if the purpose was economic speculation pure and simple there was no doubt that the act was commercial, but if the purpose was social then that fact was relevant in confirming the State's right to immunity.

29. The Commission's work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier was proceeding along the right lines. The Commission should for the time-being not exclude the bags of international organizations and should study the question in depth before taking any decision. He shared the doubts of other delegations as to the desirability of including within the scope of the draft articles communications "with other States or international organizations" as proposed in article 1, paragraph 1, and "official oral messages" transmitted by diplomatic courier, is proposed in article 3, paragraph 1 (1).

30. He was worried by the point at which the privileges and immunities accorded to the "diplomatic courier ad hoc" ceased under the terms of article 3. Those privileges should cease on his re-entry of the sending State, unless the return journey had a private character and included countries other than the receiving or the transit State.

31. The elaboration of the draft articles should be an opportunity to establish a definition for the concept "official correspondence", so as to preclude the kind of abuse mentioned in paragraph 243 of the Commission's report.

32. In conclusion, his delegation supported the Commission's recommendation that an international conference of plenipotentiaries should be convened to study the draft articles on succession of States in respect of State property, archives and debts. However, he was concerned with the problem of the representation of developing countries at such a conference, for experience had shown that it tended to be inadequate. All States must work together to prevent such a situation from arising.

33. Mr. AMARE (Ethiopia) said that the International Law Commission's report (A/36/10) showed that commendable progress had been made at the Commission's 1981 session. In particular, the successful conclusion of the second reading of the draft articles on the highly important topic of succession of States in respect of State property, archives and debts had provided further proof of the Commission's commitment to the codification and progressive development of international law.

34. Although in the past his delegation had preferred the broader title "succession of States in respect of matters other than treaties", it was satisfied with the explanation offered for the restrictive scope of the new title adopted by the Commission. Any misgivings that the application of the title might prejudice questions relating to the effects of succession of States in respect of matters

not covered by the draft articles was dispelled by the provision in article 5 on succession in respect of other matters. The parallels in terms of structure and terminology with the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1969 Vienna Convention on the Law of Treaties had properly been retained.

35. Turning to the five categories into which succession of States was divided for the purposes of the draft articles, he said that, in the case of the transfer of part of the territory of a State, his delegation's view was that all archives should pass to the successor State. It therefore subscribed to the conclusion reached by the Commission in paragraph (11) of the commentary to article 25 that the successor State should receive all the archives, historical or other, relating exclusively or principally to the territory to which the succession of States related, even if those archives had been removed or were situated outside the territory concerned. The "archives-territory" link should be construed broadly in order to ensure that a State was not prevented from acquiring what was rightfully its cultural property by too narrow an interpretation of that link.

36. His delegation welcomed the Commission's decision to depart from the precedent of the 1978 Vienna Convention in dealing, in article 14, paragraph 3, with cases in which a dependent territory became part of an existing State. His delegation also agreed with the formulation of article 36, paragraph 2, which affirmed the principle that every people should enjoy permanent sovereignty over its wealth and natural resources, and with the Commission's view, reflected in paragraph (65) of the commentary to that article, that agreements purporting to establish "special" or "preferential" ties between the predecessor State and successor States — agreements which in fact imposed on the newly independent States terms that were ruinous to their economies — could not be considered as the type of agreement envisaged in paragraph 1 of the article. In general, his delegation felt that the approach taken in the draft articles in respect of newly independent States was a major contribution to the development of international law.

37. The importance of the topic of treaties concluded between States and international organizations or between two or more international organizations did not need to be emphasized. As had been the case since work on the topic began, the draft articles had closely followed the corresponding provisions of the Vienna Convention on the Law of Treaties. It was to be hoped that the second reading of the remaining articles in the draft would soon be completed.

38. It was gratifying to note that the Commission had completed the first reading of part 1 of the draft articles on State responsibility and had begun its consideration of part 2. With regard to the five draft articles on the content, forms and degrees of State responsibility which had been proposed by the Special Rapporteur, his delegation felt that it might not be advisable to include articles 1 to 3 in the introductory chapter to part 2 of the draft articles. The impression gained from articles 1 to 3 was that they tended to protect a State which had committed an internationally wrongful act, and his delegation felt that such drafting should be avoided in order to eliminate any possibility that such a State might evade the consequences of its wrongful act.

(Mr. Amare, Ethiopia)

39. Similarly, articles 4 and 5, which dealt with the obligations of the author State, should be reviewed, and he hoped that the Special Rapporteur would duly take into consideration the various views expressed in the Commission and in the Sixth Committee.

40. The Commission's work on the topic of State immunity had been complicated by differences of opinion regarding the concept of State immunity. However, his delegation saw merit in the Special Rapporteur's approach to the problem, and believed that draft articles 7, 8, 9 and 10 as proposed by the Special Rapporteur constituted a positive development vis-à-vis the implementation of the principle of State immunity recognized in article 6. It hoped that the Commission would seek guidance from the extensive, but by no means uniform, State practice on the subject.

41. In connexion with the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he drew attention to the fact that, in paragraph 244 of its report, the Commission had indicated the possibility of stipulating the "unconditional inviolability" of the diplomatic bag. His delegation believed that the draft articles should establish proper procedures, such as the imposition of a special duty on the sending State, to ensure that the envisaged inviolability was not misused. Careful consideration should also be given to ensuring that the proposed article did not contradict the provisions of existing conventions, such as article 35, paragraph 3, of the 1963 Vienna Convention on Consular Relations, which provided that diplomatic bags could be opened under certain circumstances.

42. In conclusion, he said that his delegation agreed with the order of priorities presented by the Commission in chapter VIII of its report on its future programme of work. It wished, however, to stress the need to expedite preparation of the articles on State responsibility.

43. Mr. KHERAD (Afghanistan) said that, on the whole, the results of the Commission's thirty-third session had been satisfactory. His delegation welcomed the completion of the second reading of the draft articles on succession of States in respect of matters other than treaties, in accordance with the recommendation made by the General Assembly in its resolution 34/141, and was particularly grateful for the excellent work done by the Special Rapporteur for the topic, Mr. Bedjaoui. The draft articles would make a major contribution to the progressive development and codification of contemporary international law.

44. The Commission had considered State property, archives and debts as three relatively independent categories of State succession and had dealt with them in terms of the questions of international law which they raised. The current draft represented a significant improvement over the previous draft and constituted a broadly acceptable compromise. It could serve as the basis for an international convention, which would mark a new step in the codification of norms relating to State succession and would supplement the 1978 Vienna Convention on Succession of States in Respect of Treaties.

45. His delegation welcomed the formulations in part I of the draft and believed that the three new articles — articles 4, 5 and 6 — had improved the text. The safeguard clauses contained in articles 5 and 6 were very important.

(Mr. Kherad, Afghanistan)

46. The Commission had left virtually unchanged the content of part II. His delegation welcomed the definition of "State property" in article 8, which was justified from the standpoint of international law. The provisions contained in articles 9 to 12 were of particular importance. As to the provisions in part II, section 2, his delegation welcomed the priority given to agreement between the predecessor State and the successor State, as well as the distinction between movable and immovable State property.

47. Afghanistan commended the Commission on its decision to deal with State archives in a separate part of the draft articles. Although State archives were a form of movable State property, they were distinctive because of their importance for administrative continuity and historical research. In elaborating the draft articles in part III, the Commission had rightly taken treaty practice and State practice into account without, however, excluding more equitable solutions. In general, his delegation approved of the structure and content of those draft articles. It welcomed the improved definition of "State archives" in article 19, as well as the other articles of part III, section 1. It also endorsed the provisions concerning specific categories of succession of States in section 2.

48. Part IV had given rise to disagreement within the Commission. The articles did, however, represent an improvement over the previous text.

49. The draft articles on treaties concluded between States and international organizations or between international organizations constituted a major contribution to the progressive development and codification of international law. His delegation noted with satisfaction that the Commission had adopted 26 articles in second reading; it wished to commend the Special Rapporteur on his contribution to that achievement. The ever-increasing role of international organizations in international relations justified the elaboration of the draft articles. It was only after the First World War that international organizations had begun to conclude treaties. The norms governing such treaties had therefore not yet been sufficiently developed. A number of international organizations which acted as subjects of international law had been invested by their constituent instruments with the authority to conclude agreements with other international organizations and with States. That did not mean, however, that such treaties could be placed on an equal footing with treaties concluded between States.

50. Inasmuch as the 1969 Vienna Convention on the Law of Treaties afforded a useful general framework for the elaboration of the draft articles, the Commission had been right to use the provisions of that Convention as a guide in its work on the topic. It was thus promoting the unification of legal norms, one of the prerequisites for the progressive development and codification of international law. It was essential, however, to take fully into account all the differences between States and international organizations, as well as the dependence of such organizations on their member States. The assimilation of States and international organizations could not go beyond a certain point. The capacity of organizations to conclude treaties differed from that of States; it was limited by the statutes of the organizations and by the decisions of their member States. The norms of international law relating to States could not therefore be extended to international organizations.

(Mr. Kherad, Afghanistan)

51. Although, on the whole, the draft reflected the difference between States and international organizations as contracting parties, some of the articles did not appear to reflect it adequately. Like other delegations, his delegation objected to article 20, paragraph 4, and felt that it should be reworded.

52. Afghanistan regretted that the Commission had not been able to complete all the draft articles. It believed, however, that articles 1 to 26 could serve as the basis for the elaboration of an international convention on the subject. The Commission should therefore expedite its work on the topic.

53. With regard to the jurisdictional immunities of States and their property, his delegation welcomed the measures taken by the Commission in connexion with the codification of the topic, which was highly important to the development of friendly relations between countries with different social systems. The immunity of States and their property from the jurisdiction of other States must be respected. Under international law, States enjoyed such immunity so that they could discharge their functions properly. His delegation saw a need for codification and development of the law in that area, and believed that the four new articles on the topic should serve as the basis for a new convention.

54. As to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation was pleased to note that the Commission's work was off to a good start and was grateful to the Special Rapporteur for the method he had chosen. From the outset, Afghanistan had supported the elaboration of an instrument to supplement the existing conventions and close certain legal loop-holes. Such an instrument would promote co-operation and friendly relations among States, would perhaps put an end to the breaches of provisions relating to the diplomatic courier and the diplomatic bag and would reduce the risk of conflict in that area. There too the Commission's work should be expedited.

55. In recent years, the Commission had been more effective and had scored notable successes. It should, however, be more responsive to the priorities of the international community and expedite its work on, inter alia, State responsibility and the non-navigational uses of international watercourses. The Commission must take into account the interests and practice of States as sovereign entities, as well as the new circumstances of international life. If it failed to do so, it would be hampering the efforts of States to promote friendship, co-operation, peace and détente.

56. Mr. EL-BANHAWY (Egypt) paid a tribute to the Special Rapporteur for the topic and to the Secretariat for the work done on jurisdictional immunities of States and their property. The definitions in draft article 2 required further clarification. The same comment applied to draft article 3. Moreover, he did not see any justification for making the latter a separate article. It might be merged with draft article 2 under the general heading of "Definitions" or "Use of terms".

57. He fully agreed with the content of draft article 4, particularly subparagraph (c). He understood it as limiting the scope of application of the draft articles with regard to States and international organizations not parties

(Mr. El-Banhawy, Egypt)

to the agreements mentioned in the first part of the draft article; such States and organizations were bound only to the extent laid down in current rules of customary international law.

58. His delegation preferred the revised wording of draft article 7 and preferred the wording in alternative B because of its clarity. In particular it approved of paragraph 3 of the draft article, which linked the immunity of a State to the criterion of sovereignty and did not cover a State's civil and commercial dealings, the State being regarded for that purpose as a person under private law.

59. Draft articles 8 and 9 should be merged under the title "Consent of States" and should contain means and provisions for expressing such consent.

60. With regard to the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the scope of the draft articles as set forth in draft article 1 was sound and comprehensive, but diplomatic bags and diplomatic couriers used by international organizations might be given certain privileges and facilities in accordance with the criterion of the needs and official responsibilities of such organizations. The statement in paragraph 237 of the report (A/36/10) concerning the national liberation organizations deserved consideration, and, consequently, there should be an appropriate addition to article 3.

61. He agreed with the view that it was important to treat the topic in appropriate detail and that such an approach did not conflict with current rules, and he supported the continued treatment of the topic as proposed in paragraph 248 of the report.

62. With regard to the programme of work of the Commission, he stressed the importance of taking the opportunity for over-all renewal and, within the framework of the expansion of the Commission's membership which had been decided upon, for establishing a phased and cohesive programme to cover the next five years.

63. Co-operation with international bodies active in the field of international law and with the International Court of Justice was of great importance and had an effective influence on support for and development of international law and on co-ordination of efforts among those bodies. He mentioned in particular the role of the Asian-African Legal Consultative Committee, whose twenty-fifth anniversary was being commemorated that day by the General Assembly. Egypt was one of the founders of that Committee, and he extended to it and to its members and secretariat the congratulations of his delegation, wishing the Committee every success and commending its efforts and the positive and active role which it played in upholding the purposes and principles of international law and of the United Nations, generally and on the continents of Africa and Asia in particular.

64. His delegation, like the majority of delegations, particularly those of the third world States, had high esteem for the International Law Seminar and hoped that it would be possible to increase participation in it, particularly with regard to participants from developing States. The number of Member States in

(Mr. El-Banhawy, Egypt)

the United Nations had steadily increased since the early 1960s, and that called for the expansion of such programmes. Egypt had proposals on the subject in connexion with the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and would describe them in detail during the discussion on the report of the Advisory Committee on the Programme.

AGENDA ITEM 126: REGISTRATION AND PUBLICATION OF TREATIES AND INTERNATIONAL AGREEMENTS PURSUANT TO ARTICLE 102 OF THE CHARTER OF THE UNITED NATIONS: REPORT OF THE SECRETARY-GENERAL (A/36/570)

65. The CHAIRMAN said that under item 126, the Sixth Committee simply had to take note of the Secretary-General's report (A/36/570) and adopt a draft decision to that effect. If he heard no objections, he would take it that the Committee agreed to recommend that the General Assembly should take note of the Secretary-General's report.

66. It was so decided.

ORGANIZATION OF WORK

67. The CHAIRMAN said that if he heard no objections, he would take it that the Committee agreed to close the list of speakers on items 119 ("Consideration of the draft articles on most-favoured-nation clauses: report of the Secretary-General") and 120 ("Review of the multilateral treaty-making process: report of the Secretary-General") at 6 p.m. on Thursday, 19 November.

68. It was so decided.

69. The CHAIRMAN said it was important that any draft resolutions on items 119 and 120 should be submitted at the earliest opportunity, if possible by Monday, 23 November.

70. In view of the limited time available, he suggested that statements on those two items, and the three other items (111, 112 and 114) to be discussed in the week beginning Monday, 23 November, should be limited to 15 minutes. If he heard no objections, he would take it that the Committee agreed to that suggestion.

71. It was so decided.

72. The CHAIRMAN said that since the documents relating to items 113 ("United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General") and 123 ("Report of the Committee on Relations with the Host Country") were not yet available, the items should perhaps be taken up towards the end of the session.

73. With regard to item 118 ("Peaceful settlement of disputes between States"), the Committee would have to take note of the report of the Working Group on the Peaceful Settlement of Disputes. The Committee would also have to await the

report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The fact that draft resolutions had not yet been submitted on certain items whose consideration had already been concluded, such as items 118 and 122 ("Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization"), gave cause for concern. He therefore urged delegations to submit the draft resolutions as soon as possible, especially as one of the drafts had financial implications.

74. The Committee would be invited to take a decision on the draft resolution on item 115 ("Report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries") as soon as the Committee on Conferences had provided certain information relating to the next session of the Ad Hoc Committee.

75. With a view to using the time available to the Sixth Committee as efficiently as possible, he reserved the right, as and when necessary, to request the Committee to consider outstanding items in an order different from that established previously.

The meeting rose at 12.45 p.m.