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SUMMARY RECORD OF THE 36th MEETING

Chairman:	Mr. VAN DE VELDE (Vice-Chairman)	(Netherlands)
later:	Mr. MIKULKA (Chairman)	(Czechoslovakia)

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In the absence of the Chairman, Mr. Van De Velde (Netherlands), Vice-Chairman, took the Chair.

The meeting was called to order at 10.20 a.m.

AGENDA ITEM 142: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SECOND SESSION (continued) (A/45/10, A/45/469)

AGENDA ITEM 140: DRAFT CODE OF CRIMES AQAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/45/437)

1. Mr. KUFUOR (Qhana), referring to the draft Code of Crimes against the Peace and Security of Mankind, expressed his delegation's agreement with the view reflected in paragraph 37 of the International Law Commission's report (A/45/10) that oomplioity, oonsgiraoy and attempt should be brought within the ambit of the draft Code as separate offences, and placed in the part dealing with speoifio offences. It would be up to the judges to decide whether those oonoepts were applicable in specific cases brought before them. Suoh an approach would ensure that participants in a orime who otherwise might escape criminal responsibility on the ground that they had not aotually partioigated in the commission of the orime, but whose oonduot was in faot as reprehensible as that of the prinoipal Perpetrators, were duly covered by the Code, His delegation tended to favour the original version of draft artiole 15, on oomplioity, on aooount of its olarity. The new version of draft artiole 16, on oonspiraoy, in simply referring to a "common plan", avoided difficulties in determining the point at which agreement could be said to have been reached between the parties. The word "jointly" in the second paragraph of draft artiole 16 was oonfusing and should be deleted.

2. His delegation agreed with the Jamaican delegation that to describe the Provisions on oomplioity as the weak point of the International Convention on the Suppression and Punishment of the Crime of Apartheid was gratuitous and unwarranted. The Convention did not, as was asserted in paragraph 47 of the report, unduly widen the oirole of offenders. The Nürnberg Tribunal had treated as accomplices those who had directed, planned and organised the crimes being prosecuted, and there was no reason why the same definition oould not be refined and applied to oases under the draft Code or the International Convention on the Suppression and Punishment of the Crime of Apartheid.

3. With regard to draft articles X and Y as submitted by the Special Rapporteur, his delegation wished to make the general comment that the tendency to concentrate on measures to ourb the supply of drugs while disregarding the growth in demand was again evident in the formulations proposed by the Special Rapporteur. The problem of consumption was addressed in the 1966 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. While it might well be appropriate to leave the issue of consumption to be regulated by national laws, the Commission should at least consider the issue so as to determine to what extent it should also be addressed in the draft Code.

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(Mr. Kufuor, Ghana)

4. Although the article relating to international terrorism seemed to confine the commission of the crime of terrorism to agents or representatives of a State, his delegation thought it important, especially in the light of the call by some delegations to expand the scope of the article to include individuals acting on their own account, that a clear distinction should be drawn between freedom fighters and terrorists. One man's terrorist might well be another's freedom fighter. The struggle of all peoples under colonial and racist régimes and other forms of alien domination was a legitimate one, recognized to be such under the Charter of the United Nations, General Assembly resolution 1514 (XV) and the Declaration of Human Rights. While freedom fighters and liberation movements sought to uphold international law, terrorists sought to undermine it. That distinction was fundamental in the eyes of his delegation,

5. The difficulties still arising in connection with the question of the establishment of an international criminal jurisdiction suggested that time was not yet ripe for an international court of the kind outlined in the report. The Commission's present approach was possibly rather too ambitious, and a more gradualist one might be advisable. He wondered whether, at the present stage, an international court having only a review competence might not be considered a good starting-point.

6. Mr. VIO GROSSI (Chile), referring to chapter II of the report of the International Law Commission (A/45/10), said that the concepts of complicity, conspiracy and attempt should be dealt with in relation to each of the crimes listed in the draft Code of Crimes against the Peace and Security of Mankind, so as to facilitate their application by the courts. Although he was inclined towards the view that they should be included in the part of the draft Code dealing with general principles, he was primarily interested in a precise and clear legal definition of those concepts.

7. He had some doubts concerning the concept of complicity reflected in the draft Code in so far as the concept of perpetrator of a crime against the peace and security of mankind was not defined. Another problem concerned the characterization of acts committed after the perpetration of a crime as acts of complicity. The concept of accessory after the fact appeared to be included, although under the legislation of some countries, it was distinct from that of accomplice.

8. With regard to conspiracy, he emphasized that the offence involved was one in which all participants were perpetrators. Accordingly, it would not be appropriate to include in the definition of conspiracy acts which were committed jointly by several persons, since that would limit participation, or the concept of perpetrator, to those who physically carried out the crime.

9. With regard to attempt, he agreed that while it was difficult, but not impossible, to include it among the crimes against peace, the same was not true in respect of crimes against humanity. He also felt that attempt as envisaged in the draft Code was not clearly differentiated from an abortive crime. He therefore

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(Mr. Vio Grossi, Chile)

suggested, first, that the concept of perpetrator of a crime against the peace and security of mankind should be defined so that a distinction could be drawn between accomplice and accessory after the fact, and secondly, that the concept of an abortive crime should be added to that of attempt. An abortive crime would be one in which the perpetrator had done everything in his power to execute the crime but it hsd failed because of circumstances independent of his intention] attempt would refer to cases in which the perpetrator commenced execution of a crime through direct acts but failed to carry it through.

10. The legal definition of international terrorism in article 16 as provisionally adopted also raised some questions. First, the terms "agents" and "representatives" of a State were used without an indication of their specific content or of whether they were synonyms. Secondly, the tolerating of acts constituting terrorism was characterised as a crime. Not only did the draft article not make clear what was meant by tolerating, but it also included an element which more properly belonged to the concept of perpetrator. Thirdly, the wording of the article did not provide a legal definition of a crime, but rather a description of a type of conduct. Lastly, he was not clear as to the distinction between terrorism carried out by agents or representatives of a State and the act of aggression referred to in paragraph 4(g) of draft article 12 as provisionally adopted.

11. Turning to draft article 18, on the recruitment, use, financing and training of mercenaries, he suggested that, in the interest of brevity, a formula could be found which would make reference to the concepts laid down in the international instruments in that area.

12. With regard to illicit drug trafficking, it would be more logical to delete the phrase "by the agents or representatives of a State or by other individuals," from draft article X, as it was irrelevant from the point of view of the legal definition of the perpetrators. Likewise, the notion that such traffic constituted a crime only if it was engaged in "on a large scale" should be broadened to include the notion of its constituting a practice, in other words, a series of consecutive acts, even if each act in itself was not an operation on a large scale. The provision concerning money-laundering would be more applicable to the definition of accessory after the fact.

13. The question of establishing an international criminal jurisdiction was undoubtedly the most far-reaching and controversial of those submitted to the Committee. In view of the complexity of the issue and the lack of precedents, it would be preferable for the Commission, rather than presenting various options to Member States, to indicate which option it regarded as most in keeping with the current needs and possibilities. That was all the more necessary as the establishment of an international criminal court to try individuals could profoundly alter internal legal systems and even the very structure of the State.

14. Currently, it was difficult for individual States to decide among the various alternatives presented by the Commission, since the alternatives chosen by one

(Mr. Vio Grossi, Chile)

State would depend upon the decisions adopted by others. That consideration notwithstanding, if such an international jurisdiction was established, it should be set up on the broadest and most effective basis possible. Efforts should be made to explore the concept of a permanent court which would exercise exclusive jurisdiction over all crimes against the peace and security of mankind, and to which cases could be submitted by any State with an interest in the matter. Such efforts might not lead to consensus, but consensus achieved on a different basis might not meet the desired objective.

15. Mr. BAKER (Israel) said that, in the past, his delegation had voiced concern at the manner in which the Commission had been compiling a list of international crimes for the proposed Code. While the terms of reference made it clear that the offences involved were crimes against the peace and security of mankind, his country had Prom the beginning considered that the concept referred to the most reprehensible of the crimes committed during the Second World War, Without wishing to cast doubt on the serious nature of the crimes currently constituting the draft Code, his delegation continued to have difficulty envisioning how the existing series of legal and political instruments, including declarations, resolutions and conventions, could be merged into a single code of crimes against the peace and security of mankind. Crimes must be included in the draft on the basis of their being universally accepted as crimes against mankind. Characterisations made in general terms or by reference to documents of a political character intended to serve political organs did not necessarily accord with such a concept, and their transposal to a jurisdictional body might lead either to their non-applicability or to selective applicability through politically oriented considerations.

16. As an illustration, he drew attention to the loopholes contained in two of the draft articles provisionally adopted by the Commission, article 12, on aggression, and article 14, on intervention, which might well have responded to the political demands of some Member States. As a basis for implementation in the context of an international criminal jurisdiction, however, they could raise very serious questions of applicability, as well as of compatibility with article 3, which dealt with responsibility for crimes irrespective of motive. Until such time as a code was produced which could be universally accepted as a legally substantive basis for an international criminal jurisdiction, it would be difficult, if not impossible, to consider the establishment of an international criminal court which could adjudicate on the basis of such a code.

17. With regard to draft article 16, on international terrorism as a crime against peace, he said that the description of the elements of terrorism appeared to be unduly restrictive. The problems of the draft article began with its coverage only of acts of individuals representing States, and not acts of individual terrorism committed by persons, terrorist organizations and other elements having no links with agents or representatives of a State. Such acts were certainly crimes against peace and should be included in the draft article, However, the dividing line between crimes against peace and crimes against humanity appeared to be somewhat artificial, and he feared that it might give rise to misleading interpretations as to the relative seriousness of a particular act of terrorism committed by an individual or a group.

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(Mr. Baker, Israel)

18. He also questioned the provision In paragraph 1 of draft article 16 stating that acts of terrorism, in order to be considered as crimes against peace, must be of such a nature as to create a state of terror in the minds of public figures or the general public. Reflection was needed as to how that provision would be interpreted by a judge in weighing the seriousness of a particular act of terror, and whether it would not impose too restrictive an interpretation.

19. The Commission had been unable to reach agreement on draft article 17, concerning breach of a treaty designed to ensure international peace and security. The principle involved was not limited to the narrow sphere of treaties to which some States might be parties and othorw not, but was equally relevant to any international obligation to which some States might not be, or might not consider themselves to be, parties. The detailed analysis of the nature of an international obligation and its breach, as set out in the commentary to part one of the draft articles on State responsibility (Yearbook of the International Law Commission 1976, vol. II (Part Two)) might guide the Commission in its current consideration of the subject, especially in determining when any action or inaction, whether in respect of a treaty or another form of international obligation, might constitute a crime justiciable within the framework of the draft Code.

20. Drawing attention to paragraphs 77 to 88 of the Commission's report (A/45/10), he said that the debate on whether drug trafficking should be treated as a crime again6 t peace, a crime against humanity or a crime against the peace and security of mankind once again indicated the ambiguities involved in three distinctions.

21. With regard to the question of establishing an international criminal jurisdiction, he had found the summary of previous efforts in that direction to be instructive. His country had, from the earliest discussions of the topic, been active in advocating such a jurisdiction. The Special Rapporteur might consider extending his summary to include a more detailed analysis of the draft statutes already proposed.

22. While his country's observations and suggestions during the period 1950 to 1953 had been based on the situation existing at the time and were outdated in some respects, their general theme remained valid, as did the material linkage which they had demonstrated between drawing up a list of the gravest of crimes against the peace and security of mankind and the establishment of an international criminal jurisdiction.

23. It was necessary to guarantee that any international criminal jurisdiction would not be linked to political currents, and that its judges would retain their independence and integrity. Before any State chose to concede its own criminal jurisdiction in respect of any individual or group which had committed grave crimes against its people or territory, it would have to be confident that the international court exercising jurisdiction was entirely capable of doing so impartially. That again underscored the necessity for the instrument which would serve as the basis for such jurisdiction to be so clear and unambiguous as not to be open to any form of interpretation other than on questions of fact and law

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(Mr. Baker, Israel)

directly related to the crime itself. Any ambiguity stemming from a partisan interpretation of the text, and any political loophole, could prejudice the status and authority of the court and reduce its effectiveness.

24. The nature of the relationship between an international criminal jurisdiction and the United Nations required detailed analysis, not only with regard to the option reflected to in paragraph 136 of the report, which referred to General Assembly or Security Council authorisation for the submission of cases, but also with regard to such questions as the election of judges and the composition of the court. Clearly, elections on the basis of the current geographical representation of the United Nations would not guarantee a truly universal choice of judges.

25. Concerning the question of penalties, including the reference to capital punishment in paragraph 149 of the report, the Commission might consider that the matter should be viewed in the light of the penal policy of the submitting State. There might be systems in which capital punishment was applicable for crimes against humanity of a particularly grave and serious nature, The question might be analysed by the Commission in considering the question of penal provisions and in the light of the draft statutes prepared in 1950 and 1953.

26. Mr. MAYCOCK (Barbados) said that his delegation was encouraged to note the progress made by the Commission at its forty-second session on a number of issues, particularly the topics of the jurisdictional immunities of States and their property, and the law of the non-navigational uses of international watercourses.

27. Barbados had noted with interest the Special Rapporteur's eighth report on the draft Code of Crimes against the Peace and Security of Mankind (A/CN.4/430 and Add.l). It was pleased to note the Commission's determination to give priority to thst topic with a view to completing the first reading of the draft articles at its next session.

26. The security of small developing States, particularly island developing States, was constantly challenged by external threats. Barbados was therefore pleased to note that the three new draft articles provisionally adopted by the Commission at its 1990 session dealt with three of the most insidious threats to the sovereignty and security of small States, namely, mercenarism, drug trafficking, and international terrorism.

29. His delegation had been among those instrumental in having the question of the activities of mercenaries placed on the United Nations agenda, and had been an active participant in the negotiating process that had paved the way for the finalisation of the 1989 International Convention on mercenaries. Barbados therefore supported the specific inclusion of that illicit activity in the draft Code. It noted, however, that the current draft provided for the attribution of the crime only to agents or representatives of a State. It would hope that the acts of individuals could also be included in the scope of the draft, as was the case in articles 2 and 3 of the Convention.

(Mr. Maycock, Barbados)

30. The modern phenomenon of drug trafficking had frightening implications for all States, but especially for small States. Drug trafficking constituted both a crime against peace and security and a crime against humanity, in his delegation's view. Barbados was generally satisfied with the treatment of the issue in the most recent text, and was pleased to note that the proposed draft also dealt comprehensively with the question of money-laundering.

31. Barbados commended Trinidad and Tobago for its proposals concerning the establishment of an international criminal court, and reaffirmed the support that, together with other members of the Caribbean Community (CARICOM), it had given to those proposals. The matter had been referred to the CARICOM Standing Committee of Ministers of Legal Affairs for detailed study, and Barbados would, after having had the benefit of that study, state its definitive poeitiun on the various options explored by the Commission in chapter II, section C, of its report (A/45/10).

32. Barbados did not believe that finalisation of the draft Code was necessarily a prerequisite for the elaboration of a statute for an international criminal court. The comprehensive proposals prepared by the Commission at its forty-second session, in response to General Assembly resolution 44/39, had done much to present the concept in sharper focus. Barbados supported the view that if the Commission was mandated to advance its work in that regard on the basis of comments received from States, it would be in a position to make early recommendations on an appropriate enforcement mechanism, should the draft Code be finalised in the near future. Alternatively, if substantial delays were envisaged in the establishment of the Code, consideration could be given to the possibility of activating the mechanism initially in respect of a reduced number of international crimes.

33. Indeed, Barbados believed that both activities - the finalisation of the draft Code and consideration of the question of establishing an international criminal jurisdiction - should be pursued as priorities during the Decade of International Law.

34. Mr. UHOMOIBHI (Nigeria), referring to the topic of the draft Code of Crimes against the Peace and Security of Mankind, noted that part one of the Special Rapporteur's eighth report dealt with complicity, conspiracy and attempt. In some cases, it was difficult to distinguish between what constituted specific offences and what constituted general principles. Nigeria was inclined to regard complicity, conspiracy and attempt as actions constituting important ingredients of specific offences. The actions in question were forms of accessory participation.

35. International terrorism with State involvement, and the recruitment, use, financing and training of mercenaries, which were dealt with in articles 16 and 18, respectively, as provisionally adopted by the Commission, clearly constituted crimes against peace. However, the non-inclusion of the activities of mercenaries themselves in draft article 18 created a very serious lacuna. Even though draft article 12 referred to mercenaries, the criminality of such activities should be emphasised in draft article 18. The classification of draft article X, on illicit traffic in narcotic drugs, was somewhat problematic. On its own, drug trafficking

(Mr. Uhomoibhi, Nigeria)

was a crime against humanity. When viewed in the wider context of possible linkages between drug barons and drug cartels, on the one hand, and both terrorists and mercenaries, on the other, it posed a threat to international peace and security, and as such could qualify as a crime against peace. Article X clearly established that heinous crime as an international crime.

36. Nigeria strongly believed, in that connection, that efforts must continue to be intensified at the bilateral and regional levels to put in place more effective mechanisms for co-operation and mutual assistance in the suppression of illicit drug production, trafficking and abuse. Nigeria had entered into agreements on mutual assistance in law enforcement matters with some countries, while negotiating similar bilateral arrangements with others. Moreover, it had enacted laws imposing stiff penalties for drug offences and had established a national drug law enforcement agency in 1990.

37. On the question of an international criminal jurisdiction, Nigeria was happy to note that the Commission had examined possible options concerning the legal force of judgements rendered by the proposed court, penalties, implementation of judgements, and financing . Nigeria was in favour of an international criminal court with exclusive jurisdiction, without prejudice to the principles of the sovereignty of States and the self-determination of peoples, and provided that the decision to take cases to the court lay with States themselves. Nigeria recognised that an international court offered the advantage of uniform application of all the provisions of the Code, which should remain indicative. It also realized that an international crime might lead to a dispute between States, and that the international court would provide a third-party dispute-settlement mechanism. In so doing, it would contribute to the maintenance of international peace and security.

38. Nigeria wished to make a formal proposal that the dumping of nuclear and hasardous waste in the territories of other States should be included in the Code. Nigeria still had difficulty in identifying the practical means of enforcing the decisions of an international criminal court. It would not make sense to resort to national facilities of States for the implementation of such judgemente. On the question of the financing of the court, Nigeria would prefer the United Nations to assume that responsibility, which might however prove difficult, if not impossible, without a commensurate increase in Member States' contributions. In conclusion, Nigeria wished to emphasise that the idea of establishing an international trial mechanism or an international criminal court deserved further study.

39. Mr. ABAD (Panama) said that his delegation noted that the right of asylum was included in the list of topics drawn up by the Chairman of the Working Croup on the United Nations Decade of International Law. For over 20 years, more specifically since the coup d'état of 11 October 1968, Panamanians associated with the opposition to the military dictatorship had, year after year, unsuccessfully denounced in all international forums, particularly the Organization of American States, the defencelessness of the Panamanian people. Some of the principal perpetrators of the crimes committed against the Panamanian people during those

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(Mr. Abad, Panama)

years had now taken refuge at various embassies of Latin American States in Panama. All the individuals In question, who were former collaborators with Noriega, were laying claim to the right cf asylum.

40. In that connection, the Panamanian Government wished to stress that it was acting in accordance with article 14 of the Universal Declaration of Human Rights, which - while stipulating that everyone had the right to seek and to enjoy in other countries asylum from persecution - specified that that right could not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

41. Furthermore, Panama wished to draw attention to article 1 of the Declaration on Territorial Asylum (General Assembly resolution 2312 (XXII)), which - while referring in paragraph 1 to "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" - specified in paragraph 2 that the right to seek and to enjoy asylum could not be invoked by any person with respect to whom there were serious reasons for considering that he had committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

42. Panama wished to refer to article 6 of the Charter of the Nürnberg Tribunal, which stipulated that the Tribunal should have the power to try and punish persons who, whether as individuals or as members of organisations, committed, inter alia, crimes against humanity, namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, or persecutions OA political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. The last paragraph of article 6 specified that leaders, organise s, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes were responsible for all acts performed by any persons in execution of such plans (United Nations, Treaty Series, vol. 82, No. 251).

43. The relevant principles laid down in the legal instruments in question should be consolidated as part of the process of the codification of international law. Likewise, the principle that persons accused of perpetrating crimes against humanity should be denied the right of asylum must be maintained.

44. Mr. VUKAS (Yugoslavia) said that, in his delegation's view, the concepts of complicity, conspiracy and attempt formed part of the general principles of law referred to in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. The new versions of the draft articles dealing with those concepts submitted by the Special Rapporteur (section B.1 of chapter II of the Commission's report (A/45/10)) represented generally satisfactory definitions of those principles. His delegetion took the view that the activities concerned were forms of participation in the commission of a certain crime; considered that complicity, conspiracy and attempt should not be treated as separate offences in the draft Code, but should be placed in the part of the draft dealing with general

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(Mr. Vukas, Yugoslavia)

principles. Some crimes, however, might require that complicity, conspiracy or attempt should be specifically taken into account in their regard; such requirements, if any, should be determined in connection with the definition of each particular crime.

45. Turning to the question of illicit traffic in narcotic drugs (section B.2 of chapter II), he said that notwithstanding his Government's strongest condemnation of that crime and profound disdain in regard to its perpetrators, the crime per se could not be characterized as a crime against peace. The fact that illicit traffic in narcotic drugs was often linked with terrorism and was a potential source Of conflict between States did not provide sufficient grounds in that respect, and his delegation would therefore prefer it to be characterised as a crime against humanity.

46. His delegation shared the view of those who opposed the inclusion of an article concerning breach of a treaty designed to ensure international peace and security in thr draft Code. IA addition to the arguments referred to in paragraph 91 of the report, it considered that the very notion of "treaties designed to ensure international peace and security" was so vague that to attempt to legislate against breaches of such treaties meant dealing with a body of international law which was completely lacking in definition.

47, With regard to section C of chapter II, he recalled that his delegation had accepted the idea of the establishment of an international criminal jurisdiction as far back as the forty-second session of the General Assembly. It welcomed paragraphs 117 to 122 of the report, which realistically reflected the many difficulties which would have to be overcome before such a mechanism was established. On the question of the jurisdiction of an international criminal court, his delegation favoured the first of the options referred to in paragraph 123, but considered that States parties to international conventions other than the Code should not be prevented from conferring jurisdiction upon the court. With regard to the nature of the court's jurisdiction, Yugoslavia Bid not think that more than a review competence was plausible at the present stage of development of international law. All States, organisations and individuals having an interest in a case should be entitled to submit the case to the court, On the question of institutional structure, his delegation favoured the second solution proposed in paragraph 139, and on that of election of judges, the third option proposed in paragraph 142; the judges should, as far as possible, represent the main legal systems of the world. The court's decisions should take precedence over the judgements of national courts.

48. Referring to the relationship between the Commission and the General Assembly (section A of chapter VIII), he said that his delegation would prefer the consideration of the report of the Commission to be structured as a direct dialogue between the Sixth Committee and the Commission. Under the present system, representatives in the Sixth Committee, including members of the Commission, delivered lengthy statements the Commission's reaction to which would not be known until the publication of the next report, or even later. His delegation would

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(Mr. Vukas, Yugoslavia)

prefer shorter statements on selected topics, and a dialogue between representatives and the Commission's members, more particularly the Special Rapporteurs,

49. Mr. KNOX (United States of America) said that in discussing the topic of the draft Code, all delegations started from a common position: all were profoundly concerned at the spread of international crime, all shared the goal of eradicating it, and all were extremely interested in any proposals to that end. It was with regret, therefore, that his delegation felt unable to join those delegations which had expressed approval of the Commission's work on the draft Code. Like the delegation of Italy, it thought that the exercise should be considered in the light of its costs and anticipated benefits. The costs were made up of the time spent by the Commission and the Sixth Committee on the topic, causing the completion of other topics to be delayed, and of the much greater financial and economic costs which would arise in the event of the Code's implementation and, more particularly, of the establishment of an international criminal court. They might, however, be considered manageable if it seemed that the Code might indeed serve as a weapon in the struggle against crimes such as terrorism and drug trafficking. But if it was a chimera which merely diverted attention from more fruitful ways of combating international crime, then they were prohibitively high.

50. The key to determining the Code's potential usefulness was its acceptance by the international community. The Commission's work on the topic at its forty-second session merely confirmed his delegation's conviction that, as it was now being shaped, the Code would not command the acceptance required. Noting the absence of an international consensus on what acts by individuals should be considered crimes against the peace and security of mankind, he said that his delegation continued to assume that the Code was intended to apply to acts of individuals and not to those of States.

51. International agreement existed on many of the acts covered by the draft, for example, aggression by States in violation of the Charter of the United Nations. The difficulty consisted in transforming general agreement about how States should behave into specific criminal provisions designed to regulate the actions of individuals. The international community would doubtless agree that certain acts of individuals in connection with State aggression were violations of international lawr recent events in the Persian Gulf brought that out very clearly. But article 12 of the draft Code went beyond defining such acts and, as a result, was too vague to command international agreement. A similar problem arose in connection with other provisions, such as those on drug trafficking and international terrorism. There was a large gap between the general abhorrence at those acts and the specific and detailed provisions needed in the criminal code, and the Commission bad so far failed to 'bridge it. More fundamentally, States did not seem to agree as to which acts should be dealt with in a universal code rather than through specific international conventions, national laws and agreements on enforcement. Existing international conventions on specific crimes were useful, but their relatively small number suggested that time was not ripe to codify the entire field of international criminal law; it also emphasised the extent to which

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(Mr. Knox, United States)

the Commission was, in effect, making new law, By drawing upon specific provisions from existing instruments, the Commission might avoid certain difficulties, but would probably give rise to others; in fact, the procedure might run the risk of disturbing the consensus already achieved and thus prove actually dangerous.

52. While it did not mean to imply that a code of international crimes could never be drafted, or that specific international crimes on which international consensus might be achieved could not be identified, his delegation felt that the attempt to codify the whole field of international criminal law was over-ambitious and premature, and therefore urged the Commission once again to spend its time on more useful endeavours. His Government's specific comments on the draft articles provisionally adopted at the Commission's forty-second session were supplied eeparately in writing,

53. The Commission's outline of issues and options in connection with the establishment of an international criminal court provided a useful basis for more detailed analysis of the problem as a whole. The suggestion that the court might operate, at least at first, independently of the Code, and exercise jurisdiction over a narrower range of crimes, such as those defined in existing international conventions, would resolve the main difficulty he had mentioned in connection with the Code. A Code without a court would seem unhelpful, but a court might be of some use without a Code. However, effective national and international system6 for dealing with international crimes were already in place and, as pointed out in paragraph 118 of the report (A/45/10), there was a danger of their being disrupted by the establishment of a court. The question of the court's interaction with existing national and international systems of criminal law enforcement was a fundamental one and should be considered very carefully. There were also many practical questions which had to be addressed before States could decide whether the court would complement the existing machinery or merely interfere with it. For example, what rules of evidence and procedure would the court apply? How would evidence be obtained? Who would conduct the investigation and prosecution, and who would make the crucial decisions as to which individuals should be prosecuted? It appeared that the court might require a large prosecution arm and perhaps a penal facility. What would be their cost7 How would they be administered7 Most important, how would the answers to those questions affect the current system of national and international enforcement7

54. Given the relatively early stage of the Commission's consideration of those questions, his delegation took the view that the Commission should not be invited to focus its attention on the question of the type of court which should be established; rather, it should be requested to continue its analysis in greater detail, with particular emphasis on practical matters pertaining to the court's relationship to the existing system of enforcement. The results of such an analysis would make it easier to decide what model of a court, if any, would be most likely to enhance the international community's ability to combat crimes which affected all nations.

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(Mr. Knox, United States)

55. Turning to the topic of international liability for injurious consequences arising out of acts not prohibited by international law (chapter VII of the report), he said that his Government had not changed its view that the Commission should reconsider at least for the time being, its objective of drafting articles for Inclusion in a convention on the topic, As with the draft Code, the exercise appeared over-ambitious in view of the lack of consensus. His delegation therefore reiterated its suggestion that the Commission should consider confining itself to the elaboration of draft general principles on the topic, with a view to assisting States in the examination of specific related questions. His delegation's replies to the two specific questions raised by the Commission in connection with the topic were supplied in writing separately,

56. Mr. VILLAGRAN KRAMER (Guatemala) said that although his delegation had had doubts two years earlier regarding the usefulness of pursuing discussions in the Commission on the draft Code of Crimes against the Peace and Security of Mankind, those doubts had been alleviated by the presentation, by the delegation of Trinidad and Tobago in 1989, of the full political and legal dimensions of international drug trafficking. Moreover, the Commission had in a short time presented significant factors ta be considered with respect to the establishment of an international criminal jurisdiction to deal with such crimes.

57. The Achille Lauro hijacking, the Noriega case, the vast impact of the drug problem in Colombia and other countries, and the situation in the Persian Gulf prompted the idea that sanctions might at some point be applied not to States, but to government leaders, by courts along the lines of the Nürnberg Tribunal. While his delegation understood the concerns expressed by the United States delegation regarding the costs and benefits of the proposed court, it felt that the Commission definitely should continue to consider the question, and should prepare a much more complete text during the coming year.

58. The question of the nature of the proposed court's jurisdiction called for political, not legal, answers. The key question was whether States were ready to entrust cases involving heinous crimes to a more expeditious system. In his delegation's view, the concepts of a court with concurrent jurisdiction and one having only review competence were not mutually exclusive, and the draft Code could envisage both options. As to who might submit cases to the court, his delegation felt that in addition to States, in certain situations intergovernmental organizations could play a useful role. He drew attention in that connection to the valuable example provided by the Inter-American Commission on Human Rights. The requisite political will was what made such an arrangement succeed.

59. Turning to the new articles proposed by the Special Rapporteur on complicity, conspiracy and attempt, he said that the Commission had to prepare a more detailed list of the crimes to be included in the Code, before those concepts could be fully defined. Such a list would also facilitate consideration of the sensitive issues of the competence rationae personae and rationae materiae of the proposed court. While the Code was to be applicable to individuals, he also could foresee it extending to States and legal persons, for example, in cases involving terrorism or drug trafficking.

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(Mr. Villagran Kramer, Guatemala)

60. The Commission had before it a basic document for consideration of its future programme of work, and his delegation welcomed the recognition by a number of delegations that economic issues merited the Commission's attention. Other preening issues, including international drug trafficking, disarmament, environmental matters, foreign-debt problems and the Decade of International Law, provided further input for the Commission's future work.

61. Mr. PIZA-ROCAFORT (Costa Rica) said that the draft Code of Crimes against the Peace end Security of Mankind, the question of State responsibility in general and the question of international liability for injurious consequences arising out of acts not prohibited by international law all involved intricately linked issues pertaining to the rights of fndivfduals, States and the international community, guarantees of those rights, the strength of the authority of the bodies responsible for implementing those guarantees and of their decisions, and the responsibilities arising from the infringement of those rights.

62. Turning first to the draft Code, he said that the concepts of complicity, conspiracy and attempt required further refinement, With regard to article X, on illicit traffic in drugs, his delegation continued to believe that the international scope of the problem demanded an international solution, that drug trafficking should be described as a crime in the draft Code, and that the Commission should focus on drug trafficking on a large scale. While drug users certainly bore responsibility for drug trafficking, it would not be practical to define drug use as an international crime. It should be specifically stated that traffic in drugs on a large scale was a crime which all States - irrespective of where the actual crime had taken place - could prosecute and which, in the most serious instancee, could be prosecuted by an international jurisdiction.

63. With regard to draft article 16, on international terrorism, the definition must clearly state that the crime included acts perpetrated by individuals who were not agents or representatives of a State. In the matter of State responsibility, there clearly existed a link between an act or omission by an agent or organ of the State and the harm attributable thereto. However, that was not the case where responsibility lay directly with the perpetrator or the accomplices.

64. As to article 18, concerning mercenaries, paragraph 1 appeared to apply the definition of criminal only to agents who recruited, used, financed or trained mercenaries , and not to the mercenaries themselves. With respect to paragraphs 2 and 3, he said that the definition of "mercenary" appeared to exclude individuals who committed one of the acts listed for a reason other than the expectation of receiving materiel compensation, He trusted that that point would be properly addressed in another paragraph,

65. With respect to the proposed article 17, on breach of a treaty designed to ensure international peace and security, his delegation shared the concerns expressed in the Commission regarding the principle of universality. He cautioned even more strongly against using a generic and atypical definition. The 1 anguage of the draft Code should be specific enough to ensure that a penalty could be

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(Mr. Pina-Rocafort, Costa Rica)

imposed only in accordance with the principles of due process and nulla poena sine lege.

66. Accordingly, each crime should be clearly defined using standard language, and the Code as well as the international criminal jurisdiction should come into play only in cases involving the most serious international crimes. While endorsing the principle of non-applicability of statutory limitations to crimes against the peace and security of mankind, his delegation considered that full judicial guarantees and the principle of non bis in idem must apply; his delegation would be unable fully to adhere to the draft Code, particularly to article 4, concerning extradition, unless the death penalty was specifically ruled out.

67, As to the proposed international criminal jurisdiction, he said that the competence ratione materiae of the proposed court should apply to the crimes specifically spelt out in the Code, while still allowing for gradations. Accordingly, as the Commission had suggested, in the case of certain crimes, reservations concerning the jurisdiction or competence of the court, or the obligation to extradite envisaged in draft article 4, should be allowed.

68. As to the nature of the court's jurisdiction, his delegation favoured the third option, an international criminal court having only a review competence. As in the field of human rights, exceptions should be allowed to the rule that internal remedies must have been exhausted. Consideration should also be given to the possibility of establishing some sort of Cour de cassation along the French model during the early stages of the court's existence, and to the application by the court of some form of certiorari as in the Anglo-Saxon tradition.

69, The structure of the court should be defined and established in the Code itself, and the court should be part of the United Nations system. That would not require en amendment to the Charter. The legal force of judgements should be ensured; all the judgements should be binding. He noted in that connection that certain of the decisions of the Inter-American Court of Human Rights were binding, and that his Government accorded them the same status as those of its highest domestic courts. The proposed international court must have similar guarantees if its decisions were to be respected. For the time being, judgemente should be implemented under national systems, ensuring that the minimum rules for the treatment of offenders were observed.

70. Turning to chapters V and VII of the Commission's report (A/45/10), he emphasised that while States continued to be the principal subjects to which international responsibility attached, the application to them of criminal sanctions was neither feasible nor useful, and the effectiveness of principles guiding the conduct of States in matters such as environmental protection would continue to have its fundamental legal basis in the patrimonial responsibility of States under international law.

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(Mr. Piza-Rocafort, Costa Rica)

71. Five factors must exist to give rise to State responsibility. Firstly, clear, compensable damage must exist (not just possible damage); secondly, such damage must be directly or indirectly attributable to the responsible subject) thirdly, the dsmage must be contrary to what is legal (the injured party muet not be obligated to bear the injury); fourthly, there must be no concurrent causes providing any legal justification for the damager and, fifthly, there must exist a direct or indirect, but in any event appropriate, causal link between the act or omission (cause) attributable to the State and the compensable damage (effect). The concepts of fault and wrongfulness must continue to play a key role in determining the extent of reparation. The causal link between the unlawful act and the damage or between the lawful act and the damage, rather than immediate or exclusive, should be appropriate.

72. His delegation could not agree with those members of the Commission who felt that. in the determination of responsibility for wrongful acts, the principle of the juridical equality of States should not apply where obvious differences between States existed. However, flexible payment schedules could be worked out when the amount of reparation to be paid by less developed countries was being determined. On the other hand, such differences should be taken into account in connection with responsibility for lawful acts. Material damage should be compensated in accordance with the principle of equivalency. Moral and personal harm, although also assessable and indemnifiable in pecuniary terms, gave rise to reparation based on the principle of equity recognised by the Statute of the International Court of Justice.

73. His delegation was in favour of any steps to protect the environment for future generations, and therefore endorsed the idea underlying the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law, to the effect that States and, ultimately, private entities, had responsibilities to protect the environment that went beyond their contractual obligations.

74. His country, given its long history of democracy and the significant strides it had made with respect to education, health and political and social stability, depended very heavily on the rule of law. It accordingly attached the utmost importance to the development of international law and the work of the International Law Commission.

75. Mr. Mikulka (Czechoslovakia) took the Chair

76, Mrs. SILVERA (Cuba) welcomed the progress made by the Special Rapporteur on the draft Code of Crimes against the Peace and Security of Mankind. The Code should be sufficiently broad to identify all the acts that must be delimited therein.

77. In view of differences in the methodology and treatment of complicity, conspiracy and attempt - all forms of participation - under the criminal legislation of different countries, the task of codifying those concepts was very

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(Mrs. Silvera, Cuba)

complex. Its complexity was compounded by the need to determine the degree of responsibility attaching to each criminal act in order clearly to delimit the precise content of each act. Accordingly, the question of responsibility and its application to crimes against the peace and security of mankind should be very clearly enunciated in the future Code so as not to invite multiple interpretations of the norms involved.

78. Her delegation was pleased that international trafficking in drugs was included as a crime against the peace and security of mankind, as reflected in draft articles X and Y as submitted by the Special Rapporteur. She emphasised the importance of co-operation among States to combat international drug trafficking. The failure of some States to co-operate by combating manifestations of that crime within their own territory, including transit, distribution, sale, consumption and money-laundering, contributed to the disintegration of society. Her delegation welcomed the emphasis which paragraph 85 of the Commission's report (A/45/10) placed on international co-operation as a key to the eradication of the scourge of drug trafficking. Cuba had adopted bilateral co-operation agreements with some countries, while in other cases, the lack of political will had prevented their conclusion. The relevant provisions of such agreements should preserve the principles of sovereignty, territorial integrity and political independence.

79. She reiterated her delegation's doubts regarding the desirability of establishing an international criminal court. The subject was highly controversial, given the existence of different legal systems and the likelihood that conflicts would arise, inter alia, with respect to the nature of the court, whether there should be concurrent jurisdiction, and matters pertaining to extradition, cases in which a crime occurred in a third State, priority of jurisdiction, operation and composition of the court, and financial issues. It also had to be determined whether the court would be linked with the United Nations or would function independently. Her delegation was opposed to the idea of an international court with exclusive jurisdiction] Cuba would not cede national criminal jurisdiction, Other question6 to which the proposal gave rise included the structure of the court, enforcement of penalties, the application of the principle of extraterritoriality to nationals and their property, and the question of who could initiate proceedings.

80. The current international situation had little impact on the profound differences of views regarding the scope of the proposed court, and it was thus premature to link the draft Code to such a mechanism. The Commission first had to define in explicit legal terms the acts or offences which should be included in th Code, such as aggression, the practices of apartheid, colonialism and other forms of foreign domination, international terrorism, mercsnarism, the threat and use of force, and international drug trafficking. The Commission must also devise provisions covering Status which disregarded the Judgments of the International Court of Justice.

81. With respect to article 18, on the recruitment, use, financing and training c mercenaries, her delegation felt that the definition should have been broader and

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should net have been linked with that of the 1989 Convention, which was limited in scope.

82. Her delegation looked forward to further progress by the Commission on the Code and on other important issues of international law which called for urgent attention in the light of the activities planned for the Decade of International Law.

83. Mr. JACOVIDES (Cyprus) said that the report of the International Law Commission (A/45/10) showed that both the Commission and the Secretariat have once again performed substantive and solid work, and that, responding to General Assembly resolution 44/35, the Commission had succeeded in considering all the six topics in its current programme of work.

84. The Commission had also responded promptly and fully to the request of the General Assembly on the important question of the establishment of an international criminal jurisdiction. In his delegation's view, priority should be given to the draft Code of Crimes against the Peace and Security of Mankind and the question of State responsibility, without detracting from the importance of other topics.

85. With regard to chapter II of the report, he said that the Special Rapporteur had submitted three draft articles dealing with conspiracy, complicity and attempt which were eminently suited to inclusion in the proposed draft Code, thus keeping pace with the concerns of the international community. His delegation, on the basis of its long-held view that the draft Code should incorporate the tnree elements of crimes, penalties and jurisdiction, welcomed the Commission's conclusion on tbe desirability of establishing an international criminal court: such a court would be a progressive step in the further development of international law and, if widely supported by the international community, would strengthen the international rule of law.

86. Also in connection with chapter II, his delegation noted and generally approved the three articles provisionally adopted at the Commission's most recent session, on international terrorism, mercenaries and illicit traffic in narcotic drugs. It recalled the support it had expressed in the Sixth Committee in 1989 for the inclusion in the draft Code of an appropriate provision, to follow draft articles 12 and 13, to cover the case of deliberate non-compliance by an aggressor witb binding decisions of the Security Council. The proposal, for a third phase after the threat of aggression and aggression itself, was a logical step towards filling a gap, and had certainly proved prophetic in the light of the Gulf crisis. His delegation supported its inclusion in the draft Code in the interests of making provision for the type of illegal actions which had taken place in Ruwaii an.. in the occupied part of Cyprus as a result of foreign aggression and occupation. The two situations were not, of course, identical, but some of the issues involved, and the principles at stake, were certainly the same.

87. Regarding chapter III, entitled "Jurisdictional immunities of States and their property", his delegation, while not underestimating the need to resolve the

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remaining substantive issues, was pleased to note the substantive progress achieved towards finalixinq the draft articles.

88. Similarly, in the context of chapter IV, "The law of the non-navigational uses of international watercourses", it welcomed the prediction that by the next session there would be a complete set of draft articles on the topic adopted by the Commission on first reading.

89. Turning to chapter V, "State responsibility", he said that more rapid progress should be made on the topic, particularly in view of its importance and its relationship with other topics, such as the draft Code and international liability for injurious consequences arising out of acts not prohibited by international law. In that connection, he wished to state his delegation's view that it was no longer appropriate for discussion of State responsibility to concentrate on injury to aliens, thus catering to the requirements of a small number of powerful, developed States, often at the expense of weaker and less developed States. The topic of State responsibility now had a much broader foundation, and it was recognised by such organs as the International Court of Justice, that there existed obligations erga omnes, and that the interests of the international community as a whole must be duly taken into account. The Commission must ensure that the expectations of the international community, and in particular those of States which had come into existence after the classical rules of international law on that topic had been formulated, were not frustrated. It must also keep pace with contemporary notions of international law, such as the concept of international crimes, and recognize the opportunity provided by recent shifts of attitude on the part of the major Powers in accepting the notion of compulsory third-party dispute settlement. Procedures for such settlement should undoubtedly be included in the draft articles currently being elaborated on State responsibility.

90. Problems continued to arise, however, with regard to the concept of "economically assessable damage" and "punitive damages", and he agreed that the restoration of a situation through restitution in kind should be given priority whenever such restitution was legally and practically possible: it was indeed indispensable where there had been a violation of juscogens. His delegation also took the view that the issue of interest should be made part of draft article 8, rather than being included as a separate draft article 9. It was, none the less, encouraged by the assurance that the Commission would be able to devote more time to a topic which was of such importance.

91. On chapter VI, "Relations between States and international organisations", his delegation noted that substantive progress had been achieved, as was evidenced by the fact that 11 draft articles had been referred to the Drafting Committee.

92. Noting the discussion on the complex rnd technical issues raised in some of the proposed 23 draft articles on the topic "International liability for injurious consequences arising out of acts not prohibited by international law" in chapter VII of the report, he said that his delegation welcomed the extension of liability to the "global commons", and felt that ways shouid be found to attach

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more importance to protecting the environment under that item. It regarded the first of the two policy questions raised in paragraph 531 of the report, namely, the introduction of the list of dangerous substances in the context of a Significant risk, as being unduly restrictive, but took a positive view of the notion that liability should be incurred by the State of origin of transboundary harm. In the latter case, however, the liability should be residual, and only if the recourse by the innocent victim against the private operator did not provide adequate remedy. In his delegation's view, the key consideration was that the innocent victim should not be left to bear the damage. His delegation was also receptive to the proposal made by the United Kingdom delegation for a status report on the item as a whole.

93. Section A of chapter VIII of the report dealt with the programme, procedures and working methods of the Commission and its documentation. His delegation had already stated its position on the priority to be given to specific items, and it agreed with the view that there should be a closer relationship between the Commission and the General Assembly and also the International Court of Justice. It would also be useful to have closer co-operation with regional bodies in the legal field. In addition, Cyprus supported the proposal to declare the 1990s as the Decade of International Law, a proposal which had originated from the Non-Aligned Movement. It was pertinent to mention, in that connection, that the Commonwealth, representing a principal legal system and accounting for nearly a third of the membership of the United Nations, was currently in the process of reviewing in depth its priorities and areas of concern for the coming decade and beyond. With that in mind, the International Law Commission would certainly benefit from a closer association with that aspect of the Commonwealth's activities.

94. In terms of the Commission's long-term programme of work, his delegation would warmly commend the suggestions made by the Working Group established at its forty-first session, which were set out in footnote 325 of the report. One of the suggestions was that the Commission could indicate to the General Assembly its readiness to receive from the Assembly requests for legal opinions on some pressing legal issues of international law, such as the question of the establishment of an international criminal jurisdiction. His delegation keenly anticipated the Commission's recommendations in that respect, and could suggest other possible areas which could appropriately be looked into by the Commission in that context, namely, the question of the implementation of United Nations resolutions and the legal consequences of their non-implementation, and that of the binding nature of Security Council resolutions.

95. Cyprus had accepted the compulsory jurisdiction of the International Court of Justice, and was prepared to have the legal aspects of the Cyprus question and, more particularly, Turkey's 1974 invasion and the consequences of the continuing occupation, authoritatively adjudicated by the highest judicial organ of the United Nations.

96. Recent developments had laid renewed emphasis on the need to apply the rules of international law and to implement United Nations resolutions. and had given

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small countries, such as his own, which had been victims of aggression and foreign occupation fresh hope that peace with justice could be achieved through the solution of long-standing regional problems within the framework of the United Nations.

97. Referring to the question of elections to the International Law Commission, his delegation wished to reiterate its view that the applicable rules for nominations and the time-limits for their submission should be adhered to in the interest of ensuring fairness and the maximum range of choice.

98. Mr. CRAWFORD (Australia) said that chapter VI of the Commission's report (A/45/10) dealt with an important topic, but one in which the relationship between the constituent instruments of particular organizations and the Commission's general draft articles was likely to present difficulties.

99. Referring to the draft articles considered by the Commission at its most recent session, he said that the phrase "when the latter have accepted them" in draft article 2, paragraph 1, appeared to introduce a requirement of recognition of international organisations through the obscure and imprecise criterion of "acceptance". What would in fact constitute "acceptance" for that purpose7 The requirement threatened to introduce elements of controversy which were all the more undesirable as the draft articles applied only to international organisations of a universal character. A requirement of specific acceptance by States was contrary to the notion of objective legal personality adopted by the International Court of Justice, and thus would be a regressive step. It should also be noted that the provisions of the draft articles did not deal directly with the central issue of legal personality in the domestic law of non-member States. Draft article 5 was concerned solely with "legal personality under international law and under the internal law" of member States. Accordingly, while draft article 5 retained its limited scope, there was even less justification for an "acceptance" requirement in paragraph 1 of article 2.

100. His delegation's second comment related to draft articles 7 and 8, which dealt with the jurisdictional immunity of international organisations and their premises. In his delegation's view, those provisions required further detailed study on the part of the Commission. Among the more superficial difficulties raised by the draft articles was the fact that, under article 7, it was not possible for an international organisation to waive its immunity from executiona such a provision contradicted the principle of consent and raised the question why an express waiver, authorised by the competent organization, should be ineffective.

101. The underlying issue, however, was whether international organisations should continue to enjoy absolute immunity, despite the changes which had occurred in the field of State immunity. It seemed extremely strange that States could, through an international organisation they had set up, enjoy immunity with respect to transactions which, had they performed them separately, would not be covered by State immunity. The effect would be that third parties dealing with the organizations would bear the risk of default by some of the States parties, or of

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internal difficulties within a particular Organisation which the States parties were in a position to control. Historically, the immunity of international organizations had developed by analogy with diplomatic immunity, and international organisations had largely had delegated and representational functions. Doubts had even been entertained as to the separate legal personality of international organisations. The current situation was very different, in that there were more international organisations than States, and those organisations were able to engage in transactions, including those of a commercial and financial nature, in their own right. Some of those transactions, if carried out by States, would no longer be the subject of jurisdictional immunity.

102. There should at least be some recognition of the need to protect third parties in their dealings with international organisations. The rather vague reference to "the functional requirements" of the organisations in draft article 11 did not go far enough, since it was merely suggested as a basis for waiver by the orqanixation of the immunity confirmed by other draft articles, Such waivers could take into account any relevant matters, whether or not they related to "functional requirements".

103. His delegation agreed with the views expressed by the repreeentativs of Germany with regard to the working methods of the Commission. It also supported the call for a mid-term review of topics.

AGENDA ITEM 1441 REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/45/L.3, L.4)

104. Mr. TIONGSON (Philippines) said that, had his delegation been present for the voting on draft resolutions A/C.6/45/L.3 and L.4, it would have voted in favour of them.

105. Daw HLA MYO NWE (Myanmar) and Mr. LISHANISO (Namibia) said that, had their delegations been present for the voting on draft resolution A/C.6/45/L.4, they would have voted in favour.

The meeting rose at 1 p.m.