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SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. SANDOVAL (Ecuador)
(Vice-Chairman)

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued) (A/46/10, A/46/405)

1. Mr. MARTINEZ GONDRA (Argentina), referring to the programme of work of the International Law Commission, observed that if no new items were added, the Commission would soon be dealing only with State responsibility, international liability for injurious consequences arising out of acts not prohibited by international law, and relations between States and international organizations. His delegation therefore considered that the addition of other items would help to maintain continuity in the Commission's contribution to the codification and progressive development of international law. For instance, the recognition of States, Governments and legal situations, a classic theme of international law, had evolved considerably in recent years and might deserve to be studied. Similarly, items related to the environment were certainly very urgent, and legal principles needed to be formulated to help States to cooperate on environmental protection. With regard to the topics already suggested for consideration, he questioned whether the law of confined international groundwaters should be studied, as such waters constituted a very large percentage of the Earth's available drinking water. In any case, before taking a decision concerning that topic it would be advisable to consider the extent to which such confined waters were used in human activities and how necessary international legal regulation thereof might be. An in-depth review of the Commission's future agenda was necessary and should, perhaps, be undertaken by a special working group. In any event, the Commission should not take on, or have imposed on it, unrealistic topics or impossible missions, but should examine more practical questions and those of great utility to States.

2. On several occasions, delegations had expressed the view that the Commission's methods of work were too dilatory. In view of the high quality of the Commission's work, however, such concerns seemed a little exaggerated. That was not to say that those methods could not be improved, particularly in the case of the Drafting Committee, which took a very responsible approach to its difficult task but could nevertheless function in a somewhat more orderly and expeditious fashion.

3. With respect to the topic "Jurisdictional immunities of States and their property", Argentina planned to present written observations, as requested by the Commission, but that might take some time since various departments of the State, apart from the Ministry for Foreign Affairs, were involved.

4. As many delegations had observed, in doctrine and in practice there were two diametrically opposed positions with regard to the scope of State immunity. The Commission's great contribution had been to reconcile both positions in a single text, although it was clear from the remarks of some delegations that that goal had not been fully achieved. In that context, it was necessary to consider how to proceed; one suggestion was that a

(Mr. Martinez Gondra, Argentina)

comprehensive convention on the matter was necessary or at least would be very useful. That seemed to be the opinion of many delegations, and Argentina agreed. It also welcomed the idea of convening a working group of the Sixth Committee before the holding of a codification conference so as to overcome through negotiation any differences of opinion that might persist.

5. With respect to the draft articles on the law of the non-navigational uses of international watercourses, his delegation agreed with the broad outlines of the draft, the essence of which was contained in articles 2, 5, 6 and 7. The draft recognized the concept of a watercourse "system", or the idea that the waters of such a system were interconnected in such a way that they constituted, by virtue of their physical relationship, a unitary whole. That concept should extend to all the waters making up a system, including groundwater, since what was done in any part of the system would affect the rest. The more groundwater connected with international watercourses a country had, the greater its need to have some means of protecting its water resources. The concept of a watercourse system implied a close relationship between watercourse States, since they shared a natural resource; their solidarity was certainly greater than mere good-neighbourliness. They were not so much neighbours as joint owners.

6. With respect to article 7, some delegations had expressed doubts as to the appropriateness of using the word "appreciable" to qualify "harm". The word did introduce an element of subjectivity, but it provided a threshold that could be set higher or lower depending whether the word was interpreted to mean "significant" or "substantial", for instance. The Special Rapporteur and the Commission preferred to keep the threshold low; Argentina, too, had concluded various agreements with neighbouring countries using the Spanish phrase "daño sensible", which in English was translated as "appreciable", and accordingly preferred that term to others. His delegation considered the principle of non-discrimination acceptable, but wondered, in view of its nature, whether it should not be included in part II, "General principles".

7. With respect to the draft Code of Crimes against the Peace and Security of Mankind, his delegation considered that important aspects of the topic would require a decision at the political level, but that the Commission should deal with the technical aspects and overcome any foreseeable legal obstacles so as to enable Governments to take a political decision.

8. Penalties should not be left to the sole decision of the courts, as their consistency would be affected and the principle nullum crimen, nulla poena sine lege might be violated. In liberal criminal law, penalties should always be known before the offences were committed. The best solution would be the one provisionally adopted by the Commission, namely, that penalties should be set in the Code itself. However, a single penalty could not be established for all offences; rather, each crime should entail a penalty that varied between a given minimum and maximum at the discretion of the judge. That was the system followed in the penal codes of many countries.

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9. With regard to an international criminal court, in theory, any legal order should have its own court, but establishing such a court would entail practical difficulties. The decision whether to establish the court or not was basically a political decision that would depend on the evolution of the international community and its collective values. The General Assembly's failure to pronounce on the question could be interpreted as indicating that it was an idea whose time had not yet come. The matter was a complex one which the Commission should continue to study.

10. The topic "State responsibility" had been on the Commission's agenda since 1975, but no substantial progress had been made. Higher priority should therefore be given to the topic.

11. With respect to international liability for injurious consequences arising out of acts not prohibited by international law, much had been said about the lack of agreement on the basic premises of the draft. The Special Rapporteur had included provisional articles in successive reports to stimulate debate and not as concrete proposals. However, broad areas of consensus, or trends of thought that could lead to future consensus, were apparent in chapter V of the Commission's report, on the following points.

12. The basic principle, inspired by article 21 of the Stockholm Declaration, would recognize the free exercise of all human activities not prohibited by the State in its territory, within the limits imposed by liability for the harmful consequences thereof beyond the borders of the State; the victim should not be left to bear the loss alone. Liability was based on harm, and not on risk; there had previously been much confusion on that point. There was a consensus on the principle of cooperation to prevent incidents and on the containment and minimization of transboundary harm. The majority of delegations would prefer that prevention procedures should be the subject of a separate non-binding instrument, but would agree that States should assume a unilateral prevention obligation (i.e. the obligation to adopt the necessary laws and regulations and the appropriate political and judicial measures. A very large majority was in favour of compensation for any transboundary harm caused, and there was agreement on the principle of non-discrimination set forth in article 10. There was also agreement as to the role to be played with regard to the topic by the concept of balance of interests. A very large majority was in favour of using the term "activities" rather than the term "acts" in the title of the topic. As liability was based on transboundary harm, the latter included the harm produced by activities involving risk as well as by those with harmful effects. There should be a threshold for harm, but there was no agreement on its level or on the modifying adjective to be used; both "appreciable" and "significant" had been suggested, although the latter seemed to be preferred. Harm had to be a physical consequence of the activity in question. A large majority thought the articles should regulate civil liability, and that any liability incurred by the State should be residual in nature. Lastly, there was a consensus that the final instrument should be more general and simpler than the draft.

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13. Many members of the Commission and many delegations had recommended a high priority for the topic during the next quinquennium; h' delegation agreed with that recommendation. A simple, brief and pri- .-based instrument seemed to represent the only chance for consens. .. an area where numerous conventions regulated specific dangerous or harmful activities.

14. Mr. VUKAS (Yugoslavia) said that the topic of State responsibility, which the Commission had been unable to consider in 1991 for lack of time, was the most important one on its agenda. The topic had been selected as suitable for consideration as early as 1949, but its codification was still a long way off, and the Commission should therefore give it priority.

15. On international liability for injurious consequences arising out of acts not prohibited by international law, he supported the idea of replacing the word "acts" in the title by "activities", particularly in view of the translation of the future instrument into the majority of languages spoken in Yugoslavia, but saw deeper problems with the title, relating to the scope and content of the draft articles. The draft dealt exlusively with the protection and preservation of the environment, although some other activities not prohibited by international law could entail international liability: for example, financial, trade or traffic activities. That content should be more accurately reflected in the title. Furthermore, Liability, the key word in the exisiting title, was dealt with in only one part of the draft instrument. Equally important in the text, and obviously more acceptable to States, were the provisions on international cooperation in preventing injurious consequences.

16. His delegation had no definite preference for either a binding or a recommendatory instrument. Treaties, however, had a greater impact on the behaviour of States than any kind of so-called "soft law". In any event, the nature of the instrument should be decided soon, as the concept of the rules adopted and their drafting could differ widely in consequence.

17. It should be borne in mind that many global and regional instruments already existed on environmental protection, and particularly on the prevention and abatement of marine pollution, but it was also true that States avoided accepting provisions on liability. Even in cases of catastrophes such as Chernobyl, States reacted by concluding treaties on early notification, assistance and other similarly important and, for them, more acceptable responsibilities in respect of environmental protection, rather than by discussing and applying civil liability and compensation. Hence, States might not be extremely enthusiastic about adopting and ratifying a convention containing elaborate rules on civil liability. In any event, Yugoslavia would not favour a division of the draft articles into two instruments, one representing "hard law" and the other "soft law".

(Mr. Vukas, Yugoslavia)

18. With respect to the scope of the topic, his delegation agreed with the Special Rapporteur that the instrument should deal both with activities involving risk and with those causing transboundary harm, and should treat them together.

19. Yugoslavia did not favour the inclusion of a list of dangerous substances in the instrument itself, though such a list could be annexed in the form of guidelines.

20. In respect of the principles relevant to the topic, his delegation agreed with the approach of the Special Rapporteur, and indeed had advocated the previous year strict liability for the operator, with residual liability being assigned to the State.

21. On the principle of prevention, his delegation had to take into account the relevant facts of the current war in the Republic of Croatia. Damage to the environment of Yugoslavia was already considerable and threats of transboundary harm were very serious. Most of such damage had been caused by acts that could be qualified as crimes against the peace and security of mankind. However, some of the harmful activities undertaken in order to avoid the effects of such crimes, as well as other hazardous activities caused by the war, were permitted under international law. In view of that unfortunate example, the competent international organizations might take a more active role than was proposed in draft articles 11 and 12. The United Nations Environment Programme or another body of the United Nations system should be entrusted with entering into contact with and influencing all those concerned so as to avoid or at least lessen the threat to nature. Naturally, Yugoslavia was not in favour of any separation of the substantive provision on prevention, contained in article 8, from the articles on the procedure for carrying out prevention.

22. Harm to the "global commons" should be included in the draft articles. The main principles of cooperation, prevention, and so on, should be appropriately applied to any harm caused beyond the limits of national jurisdiction, whether to another State or to mankind as a whole. The fact that the problems of liability were even more complicated in the case of harm to the "global commons" than in respect of harm caused to States and their citizens, should not play a decisive role with regard to the extension of the scope of the instrument.

23. Mr. Sandoval (Ecuador), Vice-Chairman, took the Chair.

24. Mrs. FLORES (Uruguay), referring to the topic of "International liability for injurious consequences arising out of acts not prohibited by international law", said that the crux of the question was prevention and reparation of transboundary harm. From the outset of the Commission's work on the topic, there had been a tendency to reject the existence of illegality in respect of transboundary harm. Her delegation felt, however, that such illegality could

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exist and that it was therefore possible to secure reparation on the basis of classic international responsibility. A State, in authorizing or carrying out an activity, was implicitly authorizing the consequences of such activity. If those consequences constituted transboundary harm the right of territorial sovereignty of the other State was infringed and that State was forced to bear damage in an area which was outside the jurisdiction or control of the State of origin of the activity. States had an obligation not to use or allow the use of their territory in a way that would infringe on the rights of other States. Transboundary harm infringed on the territorial integrity and inviolability of other States, and was in violation of the duty of non-interference laid down in customary international law and embodied in the precept "sic utere tuo ut alienum non laedas". It could also infringe upon the right to life, health, property, and so on and could be detrimental to the environment and to permanent sovereignty over natural resources. Those considerations did not exclude the possibility of an absolute liability regime in cases of transboundary harm. The affected party could opt to secure reparation under the liability regime most suited to him, as had occurred in the case of the Amoco Cadiz oil tanker. Minor damage should be covered under the application of the general principle of good-neighbourliness laid down in the Preamble and in Article 74 of the Charter of the United Nations.

25. Her delegation agreed that the title of the topic should be changed and simplified. It could then be made clear in the text that the activities referred to in the title were not prohibited by international law, because otherwise reparations for damage would be based on classic international responsibility. Her delegation felt that that instrument should be a framework convention with binding force.

26. In respect of activities involving risk, it was very difficult to determine whether there was a higher than normal probability of causing transboundary harm; it might therefore be more useful to refer to any activity that could cause such harm. In some circumstances activities such as routine agricultural operations could be more harmful than those classified as activities "involving risk". It would also be useful to include in the draft the principle that the innocent victim should not be left to bear the loss alone.

27. Her delegation felt it was appropriate to apply the criterion of balance of interests not only in the case of reparation but also in determining whether it was possible to carry out or continue carrying out an activity which normally caused transboundary harm and, in such cases, to fix the acceptable level of harm, reparation for such harm and measures to be adopted to prevent such damage. Preventive measures should be applied not only for activities involving risk but also for those which actually caused transboundary harm. In the first case the object would be to avoid the occurrence of harm and in the second it would be to avoid an increase in transboundary harm or reduce the frequency of its occurrence. Additional protocols could be formulated concerning specific activities and establishing requirements for them.

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28. Her delegation supported the idea of including procedural norms for applying preventive measures as well as a system for the peaceful settlement of disputes. It agreed that the obligation to make reparation should fall to the operator and secondarily to the State of origin of the transboundary harm. That State should provide reparation when, for example, the operator could not be identified. There could be an obligation for the State of origin to require from the operator an adequate guarantee that he would provide reparation for any harm that occurred. The reparation should cover all damage that occurred, but could be supplemented by principles designed to regulate the amount of reparation on the basis of the criterion of balance of interests. Norms could be included to facilitate the use of domestic legislation for the purposes of securing reparation for harm. It could be established that the State of origin could not invoke immunity of jurisdiction and that there should be equality of access to courts. A more remote possibility was to provide for public defence lawyers who could defend innocent victims in the courts of the State that carried out an activity.

29. As noted in paragraph 241 of the Commission's report, the principle of liability should be based not on risk, but on the concept of harm. In the field of international law, the persons who were entitled to make claims varied according to the type of liability that was established. In the case of absolute liability, the person or persons who suffered the damage (the State and/or individuals or legal entities) would be able to claim compensation. In the case of classic international responsibility for an illegal act, only States would have the right to seek reparation. However States, through the exercise of diplomatic protection, could secure reparations for damage suffered by individuals. Her delegation felt that it would be unjust to require that an individual first exhaust domestic remedies in the State of origin of the activity; there was no connection between the innocent victim and the State of origin. The problem of immunity from jurisdiction of the State of origin of the damage also arose.

30. On the question whether an activity that normally caused transboundary harm or could cause such harm should be suspended, two situations were involved: when the activity had not yet been started or was being planned, and when the activity was being carried out. In the first case it would be useful not to begin the activity until the end of a fixed period during which negotiations should be conducted with States which might be affected so as to reach agreement; failure to reach agreement within the time-limit could amount to a veto. In the second case, it could be agreed that the activity would continue during a fixed period with the obligation of reaching a negotiated agreement; without such a time-limit, failure to reach agreement would be a means for one State to force another State to bear harm it did not wish to accept.

31. It was useful to include the problem of the construction of major works in the draft. In respect of transboundary harm caused by natural phenomena in the territory of a State, specific norms could be established for prevention

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and obligations could be laid down for the State in which the damage originated individually and in cooperation with affected States to adopt measures to reduce the harmful effects.

32. The subject of "global commons" needed to be considered separately because of the special legal regimes involved.

33. Mr. YAMADA (Japan), speaking on the topic "International liability for injurious consequences arising out of acts not prohibited by international law", noted that the International Law Commission had held useful discussions on the seventh report of the Special Rapporteur, to whom thanks were due. The report provided a good basis for further progress in what was predominantly an exercise in the progressive development of international law rather than in the codification of existing rules.

34. With regard to the nature of the instrument being drafted he considered that, before determining what kind of legal instrument or instruments should be prepared, the Commission should clarify the types of harm to be covered by the draft articles. Existing conventions covering specific activities provided for a variety of distinct liability regimes. For example, air traffic accidents were covered mainly by civil liability, whereas in the case of nuclear accidents there was both civil and State liability and, in the case of damage caused by space objects, the State was exclusively responsible. Furthermore, with environmental problems the nature of liability varied depending on whether harm was caused to the atmosphere, the ocean or land. For those reasons, it would be difficult for the Commission to determine the nature of the proposed instrument without first clarifying and categorizing the types of harm to be covered. If the Commission was going to draw up a general framework agreement, the relationship between that agreement and existing conventions on specific activities, as well as agreements likely to be concluded on either a bilateral or a multilateral basis in the future, should be made completely clear. The framework agreement would then have value as a code of conduct or a set of guidelines or recommendations to serve as a reference for States when drawing up separate conventions. However, considering the importance of the topic as well as the Commission's own raison d'être, the Commission should not settle for a "soft law" instrument but strive to produce a legally binding document. In any event, it was essential that the Commission should determine which part of the topic was mature enough to be codified as "hard law".

35. With regard to the principles and rules applicable to liability to be included in the draft articles, his delegation did not think it was appropriate to treat the general rules of strict liability as general principles of international law in that area. Introducing the idea of strict liability also seemed premature because views on that issue were divided even among the Commission's members. Where the notion of strict liability had been incorporated in existing international laws, it was more or less confined to ultra-hazardous activities as defined in the relevant multilateral

(Mr. Yamada, Japan)

conventions; moreover, even in those conventions there was significant diversity as to the grounds for liability, the reasons for exemption, the allocation of liability and the extent to which the State was liable; procedures for remedy also varied according to the type of activity in question. In the view of his delegation, the concept of strict liability should be treated only in specific instruments covering well-defined areas.

36. A further source of complexity was the fact that the draft articles covered acts or activities which were carried out mainly by private entities, either individuals or enterprises. In the case of harm caused by the activities of transnational corporations, the question of State liability would give rise to great difficulty because the international community had not yet reached agreement on the legal status of multinational corporations or on a code of conduct to govern their activities.

37. As to the problem of harm to the "global commons", his delegation did not think it appropriate to refer to it in the proposed instrument in view of the vagueness of the concept, the difficulty of determining the State or States of origin or the State or States affected, and that of assessing the harm in question. As already stated at the forty-fifth session, Japan recognized the growing importance of protecting the "global commons". However, if the international community was to give that unexplored field the thought it deserved and deal with it on the basis of professional scientific knowledge, it would first have to decide on an appropriate mechanism for international cooperation. To establish new legal principles of international liability in that field at the current stage would be premature.

38. In view of the relationship between the topic under consideration and that of State responsibility, his delegation had initially taken the view that work on international liability should be deferred at least until the first reading of parts one to three of the draft articles on State responsibility had been more or less completed. In the light of increasing world-wide concern about the environment, however, his delegation recognized the growing need to establish rules in that field. It was to be hoped that, in the course of the future consideration of the topic, the relationship and linkage between it and State responsibility would be clarified, not only conceptually but also from the point of view of practical application to specific situations.

39. Although the Commission's work on the topic was undoubtedly of a pioneering nature, with few precedents to rely on, his Government fully recognized the need for the early establishment of legal rules in that field and therefore hoped that the Commission would hold exhaustive discussions taking into account the diverse views of its members on basic concepts and other important issues. For its part, Japan intended to contribute positively to that work.

(Mr. Yamada, Japan)

40. Turning to chapter VII of the report, on State responsibility, he said that, since the Commission had been unable to consider that topic at its forty-third session owing to lack of time, he would submit his comments following substantive deliberations at the next session. He wished to affirm, however, that his Government attached great importance to the topic and hoped that the first reading of the remaining parts of the draft articles would be completed as soon as possible.

41. Mr. ROUCOUNAS (Greece) said that, every year since 1978, the Sixth Committee and the International Law Commission had grappled with the topic under consideration, whose title bore witness to its inherent complexity. Everyone was fascinated by technological developments and sometimes alarmed by the rate at which the environment was deteriorating, but reaching agreement on the role of international law in that field was a difficult matter. However, the Commission's mandate in respect of the topic of international liability for injurious consequences arising out of acts not prohibited by international law was only indirectly related to the environment. Some agreement did appear to be forming around the proposition that the innocent victim of transboundary activities which, although lawful, entailed certain risks, should not be left to bear the costs. That proposition, however, was essentially an offshoot of the larger problem of responsibility or liability as such.

42. In view of the legal difficulties involved in establishing a causal relationship between prevention and reparation, the suggestion that the Commission might contemplate drafting two separate instruments, one dealing with liability and the other with prevention, seemed to open the way to an acceptable arrangement. Discussions in the Commission and the Sixth Committee, including the informal consultations held on the topic on 8 November 1991, offered the fullest possible picture of the main positions held with regard to the topic.

43. As stated on several previous occasions, his delegation agreed that the scope of the topic should include activities involving risk of causing transboundary harm, reparation in the event of harm, and the procedure governing reparation. In its view, the Commission's position on both aspects of the topic - prevention as well as reparation - would be strengthened by a study of internal legislation in those fields, including laws covering insurance and those applicable to specific sectors such as transport or other activities the effects of which went beyond the territory of one State or which actually took place in areas outside the jurisdiction and control of any State. With the help of such a study the Committee would be better equipped to establish a regime of reparation for transboundary harm caused by lawful activities, to be applied either to the operator alone or to the State as well. As to the suggestion that a preliminary decision should be taken on the form and the residual character of the instruments to be drafted, his delegation would have no objection on that point but was not altogether hopeful about the outcome.

44. Mr. BOONPRACONG (Thailand), speaking first on the draft articles on the law of the non-navigational uses of international watercourses, said that his delegation, representing as it did a watercourse State, naturally attached great importance to the topic. With regard to article 2, he said that, in his delegation's view, there was clearly some virtue in not giving too broad a definition to the term "watercourse". His delegation remained uncomfortable with the use of the "system" concept, and felt that further deliberations on that point would be useful.

45. Drawing attention to the term "appreciable harm", which appeared in articles 7 and 21, the word "appreciable" also being used in articles 3 and 4, he said that his delegation was not convinced that the word "appreciable" was appropriate in the contexts in which it was used. To protect the rights of a potentially affected watercourse State without at the same time providing adequate protection for the interests of all watercourse States would be inconsistent with the principles of equity. The subjective nature of the word "appreciable" might be exploited by some watercourse States with the intention of disrupting the proper use of an international watercourse by another watercourse State. His delegation felt that terms such as "serious harm" or "substantial harm" would be preferable as allowing adequate protection of the interests of all watercourse States.

46. The principle that States in which an international watercourse originated should enjoy priority use of that watercourse was a logical extension of the principle of sovereignty; however, States enjoying priority use naturally had to do their best to prevent injury to downstream States. A proper balance had to be preserved between the interests of those two categories of States. His delegation considered that in the case of danger of a primarily natural origin, the upstream State should notify affected downstream States as soon as practicable, but when the potential injury was a result of human activities, the State of origin of the international watercourse should be legally obliged to inform other affected States promptly. The exchange of available data and information concerning the uses of a watercourse should be encouraged. Exchanges should take place on a regular basis when that was required under a specific agreement between the States concerned.

47. Turning to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", he remarked that the topic continued to be a difficult one; a great deal of work still remained to be done. By way of example, he said that while there seemed to be general agreement to the effect that States should be placed under a legal obligation to prevent transboundary harm and had a duty to notify other States concerned, the extent of those duties and the penalty for failure to comply remained unclear.

48. With regard to the title of the topic, his delegation shared the view that the word "activities" would be more appropriate than the word "acts", which was felt to be too restrictive. The aim of the exercise was, after all,

(Mr. Boonpracong, Thailand)

to prevent activities, including those carried out by non-State entities, from causing transboundary harm. His delegation therefore fully supported the proposal to change the title of the topic as soon as possible.

49. It was also his delegation's view that the State of origin should be fully liable even in cases where transboundary harm was due to the activities of a private entity; in all cases of transboundary harm, the State of origin should pay compensation quickly and to the fullest extent. Lastly, on the question of the inclusion of a list of dangerous substances, his delegation wished to advocate a flexible approach. It was to be feared that an exhaustive list might hinder rather than facilitate the performance of what was already a most difficult task.

50. Turning next to the topic "Draft Code of Crimes against the Peace and Security of Mankind", he said that there again, the list of crimes included in the draft Code should be non-exhaustive with a view to maintaining flexibility. The draft Code needed to be responsive to any new and as yet unanticipated dimension of crimes. The non-exhaustive nature of the list should therefore be clearly stated.

51. The question of the establishment of an international criminal court had given rise to some highly useful and interesting discussions in the Commission. His delegation considered that efforts to identify the elements and issues involved should continue. Effective systems of universal jurisdiction did, of course, already exist for a large number of crimes. An international criminal court should only be established if the certainty existed that it would definitely add to those systems. The full implications of the establishment of such a court must therefore be carefully considered in advance. In the meantime, international efforts to enhance international cooperation in suppressing crimes against the peace and security of mankind outside the context of an international criminal court should continue with added vigour. The importance of bilateral and multilateral agreements to fight such crimes could not be overemphasized. Effective extradition treaties were vitally important, as were bilateral and multilateral treaties on mutual assistance in the area of criminal investigation prosecutions and other related proceedings. His delegation wished to urge all States to enter into as many extradition and mutual assistance treaties as possible.

52. In conclusion, he stressed the importance of the role played by the International Law Commission during the United Nations Decade of International Law. The success of the Decade depended to a great extent on the Commission's work. His delegation hoped that the Commission's next quinquennium would be as fruitful as the period currently drawing to a close.

53. Mr. PETROV (Bulgaria), referring to chapter V of the Commission's report (A/46/10), said that the inclusion in the draft articles of provisions on prevention brought the relationship between State responsibility and State liability into play. It was obvious that a State's failure to abide by its

(Mr. Petrov, Bulgaria)

obligation to prevent transboundary harm entailed that State's international responsibility. Accordingly, retaining the provisions on prevention, as advocated by many States, would lead to a dual legal regime. If transboundary harm was caused by a lawful activity, the State or the private operator, as the case might be, would be liable for compensation.

54. As stated in the report, there was a distinction to be made between procedural measures and unilateral measures of prevention. His delegation supported the predominant view in the Commission that a separate, non-binding instrument on prevention, which would include the procedural obligations of States, should be drawn up. Such a document could take the form of recommendations, guidelines or model rules to be adopted by States in connection with a specific activity. In that case, another controversial concept, about which his delegation had consistently expressed doubts, namely, "activities involving risk", would not arise.

55. A clear trend had emerged at the current session in support of the view that State responsibility should be entailed only where there was a breach of a State's legal obligations. If no such breach occurred, liability should rest with the private operator. Where a State conducted the activities in question, the State should be liable for compensation; otherwise, the State should be responsible for the breach of its legal obligations in terms of the above-mentioned unilateral measures of prevention, in other words, for the failure to act with due diligence.

56. An instrument providing for such measures could take the form of a framework convention or standards of behaviour with binding force, as proposed by the representative of Germany. Since the difference between State responsibility and State liability depended on whether the State was at fault, drafting two separate instruments, as proposed earlier, would mean that State liability would be entailed only if the State was carrying out a hazardous activity.

57. His delegation saw merit in the United Kingdom proposal that the title of the draft should be changed to "International responsibility for transboundary harm".

58. Turning to the topic "State responsibility", he said it was regrettable that the Commission had been unable to consider the third report of the Special Rapporteur. His delegation joined others in urging that priority should be given to the topic at the Commission's next session.

59. With regard to the topics to be included in the long-term programme of work of the Commission, his delegation believed that it would be preferable for the Commission to complete its work on the remaining topics already on its agenda. If a new topic was to be added, it should be done on the basis suggested by the representative of Austria.

60. Mr. RAO (India) said there were a number of reasons why relatively little progress had been made in the Commission on the topic "International liability for injurious consequences arising out of acts not prohibited by international law", although the topic had been on the Commission's agenda for many years. First, a good deal of preliminary effort had gone into defining the parameters of the topic as distinct from those of the international watercourses topic, on the one hand, and of State responsibility on the other. Second, developments in the environmental sphere, which had been particularly rapid and sweeping in recent years, had had to be brought into focus. Third, the question of liability in any field depended on agreement being reached on the basic principles governing the activity concerned; thus, for example, liability for air pollution could only be discussed in the light of general principles governing the control or limitation of air pollution and the establishment of air quality standards. No agreement had as yet been achieved on the general principles underlying the topic under consideration. Lastly, progress had been slow because the International Law Commission had been obliged to give priority to other items on its agenda.

61. While it considered the topic to be highly important, his delegation felt that further careful analysis was called for. A conceptual framework dealing not only with liability but also with the preconditions for the operation of liability regimes should be established before giving consideration to specific draft articles. The preparatory work being done for the forthcoming United Nations Conference on Environment and Development might have some relevance in that connection. Financial and resource transfers to financially weaker and developing countries were an important means of enabling such countries to orient their economies towards environmentally friendly methods of production. Programmes of international assistance, transfer of know-how and financial aid in emergency situations, as well as assistance designed to help States to deal with natural or environmental crises, were equally important.

62. The principle that a State should bear full responsibility for any activity that might take place within its frontiers was, in his view, too simple and failed to take into account the role and responsibility of multinational corporations with independent financial resources and governing bodies answerable to no one but their shareholders. The special needs and limitations of financially weaker and developing countries should be studied carefully and in depth, as a separate matter. The dependency of such countries on foreign sources for technology, funding and even for their daily necessities should be a determining factor in apportioning liability for activities conducted within their borders.

63. Certain principles of procedure discussed during the debate in the Commission, e.g. notification, consultation, negotiation and settlement of disputes concerning an environmentally "dangerous" activity, should be defined more clearly with regard to both their contents and the scope of their application. In their current form, those principles were of little use, and their consideration raised contentious issues which might enter into conflict

(Mr. Rao, India)

with other important principles of international law, such as sovereign equality of States, sovereignty of States over their people and territory, and sovereignty over natural resources. Instead of being conducive to cooperation, many of the procedural principles in question might well lead to disputes between States, especially in the absence of an agreed understanding between them on measures to be employed, safety standards to be monitored and steps to be taken in the case of inherently or potentially dangerous activities.

64. Indeed, the question could be asked whether a common code on liability was desirable or even necessary. The view had been expressed in the Commission that, for example, activities involving nuclear hazards were best dealt with in conventions dealing with that subject, just as liability for activities involving environmental pollution or, more specifically, the ozone layer should ideally be dealt with in the separate conventions devoted to those matters.

65. In the light of those considerations, he wished to recommend that the Commission should give careful analysis to the question of its future action on the topic, possibly by setting up a special working group to consider the issue. His delegation had an open mind as to the course such future action might take, including the option of producing a set of model principles or guidelines rather than a draft convention.

66. Turning to the question of the Commission's work on other topics, particularly that of State responsibility, he said his delegation was not in a position to make specific comments on that important issue at the current stage but had no doubt that significant progress would be achieved in the coming years. As for the programme, procedures and working methods of the Commission, he would support all proposals with due regard for financial considerations. He was also inclined to support the suggestion that the session of the Commission should be split in two parts.

67. Mr. CASTILLO (Venezuela) said that the international liability of States for legal acts was an important regulatory mechanism of international relations. In the modern world, internationally wrongful acts could not be the only basis for the international liability of States, and legal activities of States also could give rise to international liability in respect of other States and of individuals.

68. His delegation joined the consensus on the principle that the State had a sovereign right to carry out lawful activities within its territory but must ensure that the activities did not cause transboundary harm. The State had an obligation to adopt all necessary measures to ensure that activities within its territory did not cause harm beyond its frontiers. The draft articles must also include the obligation to adopt preventive measures before transboundary harm occurred and to make provision for measures to deal with harm when it did occur. A State should adopt unilateral measures, whether legislative, regulatory or administrative, to restrict harm caused by an operator in its territory to another State or to individuals in that State.

(Mr. Castillo, Venezuela)

69. In respect of reparation, his delegation felt that there must be joint liability; that of the operator in the first place, and that of the State in the second. The Commission must consider the most effective way of ensuring that the innocent victim was adequately indemnified. It was essential that joint responsibility of the individual and the State should be defined clearly so as to ensure adequate reparation for harm. The principle that the innocent victim should not be left to bear the loss alone must be one of the foundations of the draft instrument.

70. His delegation shared the concern about the constant deterioration of the environment; adequate international measures and norms must be adopted to deal with that situation. However, in some cases it was difficult to determine the origin of damage and reparation for it; there were also serious difficulties in establishing mechanisms to make such determinations and defining their jurisdiction and competence. Damage to the "global commons" was not sufficiently clear to permit the establishment of the relevant legal norms and principles. Separate legal instruments should be adopted embodying the recommendations of the Stockholm Declaration and of other international texts, but the draft articles could contain a very general provision on the environment.

71. On the question of the title of the topic, his delegation felt that it was closely related to the Commission's mandate and that there was a significant substantive difference between the words "acts" and "activities" which would definitely affect the scope and content of the draft. The term "actividades" in Spanish would be broader and more in keeping with the functions of a State. The content of the draft must be brought in line with the title without departing from the mandate given to the Commission. It was important to define the nature of the instrument to be drafted; his delegation felt that a framework convention of a general nature which would facilitate and encourage the conclusion of bilateral agreements was the most appropriate solution.

72. Mr. AL-BAHARNA (Bahrain), referring to chapter VII of the Commission's report (A/46/10), said that, while time constraints had prevented the Commission from considering the topic "State responsibility" at its latest session, it was to be hoped that a high priority would be given to the topic in future years, as it was of practical importance to States.

73. The Special Rapporteur's third report on the topic dealt with the legal regime of measures that an injured State could take against a State which committed an international delict. His delegation recommended caution in the use of "reprisals" as a generic term for the unilateral measures adopted by a State; the term had long been associated with the use of force, and it was generally agreed that any act of reprisal involving force was, per se, unlawful. Moreover, in view of the controversy surrounding types of reprisals, his delegation suggested that a more neutral term should be substituted, such as "response".

(Mr. Al-Baharna, Bahrain)

74. With regard to paragraph 313 of the Commission's report, he agreed that if responses were to be lawful, an internationally wrongful act must in fact have occurred. A bona fide belief that such an act had been committed would not be sufficient to justify lawful instrumental measures. Such measures would be adopted at the risk of the responding State and would entail its international responsibility. The case of "defensive" measures against an anticipated attack illustrated that point. While his delegation agreed with the Special Rapporteur that measures might have both restitutive and penal functions, that duality obscured the distinction between the two kinds of consequences of delicts.

75. In his first two reports, the Special Rapporteur had drawn a distinction between instrumental or procedural consequences and substantive consequences, which included remedies of cessation and reparation. The overlap between those two categories could be seen in the fact that instrumental measures could be employed to secure substantive remedies. There would be less of an overlap if the remedies were differentiated on the basis of those which vested solely in one party, namely, the affected State, and those which vested in all States, either individually or jointly. The distinguishing feature was that a failure on the part of the delinquent State to repair the wrong would, in the appropriate circumstances, be seen as a secondary wrong.

76. With regard to the purposes of countermeasures, the attribution of retributive functions to them was difficult to accept, since the international community regarded the adoption of punitive measures against coequal States as abhorrent. Accordingly, he suggested that the retributive function should be accorded a secondary status and should be applied only where there was a gross abuse of the law, with grave repercussions on the affected State. It followed that great significance should be attached to the compensatory and reparative aspects of countermeasures.

77. Paragraph 315 concerned prior demands of cessation, reparation and compensation, which must always be regarded as the mandatory first step in a graduated process of responses; however, his delegation preferred not to draw distinctions of dolus in the issuance of preliminary demands, even where the delict was continuing. Demands could be dispensed with where grave danger to life and limb and irreparable harm to property were imminent, provided that the measures adopted were consistent with preventing the recurrence of such situations.

78. Paragraph 316 dealt with the question of whether responses could lawfully be undertaken by the injured State before it resorted to one or more of the dispute settlement procedures provided in Article 33 of the Charter. His delegation believed that, to the extent that the impugned delict breached or threatened to breach international peace and security, Article 33 became, ipso facto, operational, and must therefore be satisfied. Where no such international situations existed, Article 33 would not be applicable, and the rules under the proposed instrument would take precedence. As for interim measures preceding prior demands, they were difficult to accept, because they were open to abuse and were conducive to an escalation of hostility.

(Mr. Al-Baharna, Bahrain)

79. With regard to the proportionality of measures referred to in paragraph 317, his delegation was fully aware of the difficulties inherent in the concept, and considered it inappropriate to attempt to formulate a definition of proportionality. Furthermore, the relationship between proportionality and other criteria, such as the nature of the delict and the damage caused, was best kept flexible so that the scope of application of the concept would remain as wide as possible. At any rate, responses which exceeded proportionality could themselves create responsibility for the responding State.

80. Paragraph 318 referred to the suspension and the termination of treaties in response to an internationally wrongful act, a proposition which his delegation could not support because it transgressed the fundamental doctrine of pacta sunt servanda. Nor would it be more acceptable if the suspension and the termination had been caused by minor breaches. However, where the delicts were closely linked with the purposes of the treaty, it could justifiably be suspended and terminated. That would be consistent with article 60 of the 1969 Vienna Convention on the Law of Treaties. In that connection, the Commission might consider whether a material breach of a multilateral treaty creating indivisible rights between parties necessarily entitled any one or more of the parties to suspend the treaty with respect to itself as provided for in article 60, paragraph 2 (c), of the Convention. If every affected party suspended treaties, that would ensure the collapse of the treaty regime. Accordingly, his delegation was of the view that "self-contained regimes", which by definition were indivisible, should be excluded from the measures of suspension and termination, thereby giving full rein to the collective dispute-settlement machinery.

81. In the context of paragraph 319, his delegation shared the Commission's scepticism with regard to the classification of the "directly" injured and the "indirectly" injured State. Such a classification was difficult to apply in specific cases, especially where certain States tended to fall into both categories. It would be more useful to emphasize that where there was a delict, there was a remedy, the scope of which depended on the nature of the delict. The response must be compatible with the degree of injury suffered, provided that the injury was assessed according to objective criteria. Hence it was irrelevant whether the injury had been caused directly or indirectly; as long as a State could show substantial wrongdoing on the part of the offending State, there would be a right of proportionate response.

82. He agreed with the comments made in paragraphs 320 to 322 concerning substantive limitations on responses. Such limitations must be based on well-recognized rules and concepts. Countermeasures could not violate the fundamental rule against the use of force, infringe humanitarian principles or ignore jus cogens. Accordingly, limitations based on controversial rules, such as economic measures, would probably be ignored in practice. Lastly, the proposed rule should stipulate that measures adopted in contravention of those principles would entail the responsibility of the affected State.

83. Mr. ASTAPENKO (Belarus) said that the topic "International liability for injurious consequences arising out of acts not prohibited by international law", by virtue of its complexity, was not one on which rapid progress could be expected, but it was unfortunate that the Drafting Committee had been unable to consider the articles submitted to it by the International Law Commission since 1988. His delegation none the less welcomed the unanimous decision by the Commission to devote attention to the issue in the coming five years as a matter of priority.

84. Environmental concerns were generating increasing disquiet, particularly in his own country in the wake of the tragic events in April 1986 at the Chernobyl nuclear reactor. The consequences of such disasters could not be borne by one State alone, so there was clearly a need for States to cooperate in mitigating their effects.

85. The title of the draft articles, in its existing form, was cumbersome and should be amended, as suggested by the United Kingdom representative to read "International responsibility for transboundary harm".

86. It appeared from paragraph 202 of the Commission's report that opinions within the Commission differed on the nature of the instrument to be drafted. His delegation favoured a binding framework convention, provided that it would be acceptable to a majority of States. Consideration should be given to activities which involved a risk of transboundary harm and also to those which actually caused such harm. If a State engaged in the former type of activities, it must pursue a resolute policy of diminishing the element of risk, and must exercise due control of the activity. The basic principle should be that an innocent victim should not have to meet the costs of the harm caused.

87. As to the question of a list of dangerous substances or activities, his delegation would prefer to establish general criteria for determining types of activities entailing a risk of harm. A list could never be exhaustive, and would take up a great deal of the Commission's time, although it might admittedly provide guidelines for preventive measures.

88. In paragraph 223 of the Commission's report it was noted that a combination of civil and State liability seemed to be favoured by most members of the Commission. According to that approach, residual liability would be assigned to the State. His delegation considered, however, that the State in whose territory a permitted activity, in both the public and private sectors, was carried on exercised ultimate authority. It would therefore make sense to refer to a primary liability of the State at the international level to provide compensation for the harm caused to other States or to their citizens.

89. At the same time a State should not have to bear the full cost of the harm caused. He agreed with the view that a system should be established whereby regimes of State liability complemented each other. Attention should be given to the question of urgent assistance in cases of environmental

(Mr. Astapenko, Belarus)

emergency, and provision made for establishing machinery for effectively mobilizing the efforts of the international community in order to mitigate the consequences of the harm caused. A compensation fund for such emergencies might also be envisaged.

90. In that connection, he pointed out that the Standing Committee on Liability for Nuclear Damage established within the International Atomic Energy Agency in 1990 had considered the issue of compensation and its relationship to the international regime of civil liability.

91. In conclusion, he said that the issue of damage to the "global commons", referred to in paragraphs 254 to 259 of the Commission's report, should not be considered in the context of the topic of international liability, but rather as a separate part of the Commission's long-term programme of work.

92. Mr. VERENIKIN (Union of Soviet Socialist Republics), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that his delegation largely agreed with the Special Rapporteur and the Commission that international law lacked a generally accepted principle of strict liability, and that, in general, any future instrument must be based on an equitable balance between the interests of all countries. His delegation believed that such liability should arise only in the case of activities involving risk, and that the threshold for liability should be raised from "appreciable" to "significant" or "serious" harm. Consideration should also be given to establishing a list of dangerous substances or activities. Hazardous activity should be acknowledged as an essential element of strict liability, but his delegation did not accept an interpretation which would make strict liability contingent on the occurrence of transboundary harm of any kind.

93. At the same time, it would not deny the importance of the existence of harm in giving rise to liability. It was evident that liability could and should arise, not as a result of risk, but only if harm were caused as a result of a hazardous activity, and only if the activity were on a sufficient scale: harm might be caused both by lawful and by unlawful acts or activities and could lead either to strict liability or, in the case of negligence, lack of due diligence, or a breach of standards of conduct, to responsibility. The problem lay in defining the origin and nature of liability. If harm were caused by an activity involving risk, but the State concerned acted fully in accordance with its obligations, the harm caused might simply be considered the result of forces beyond the control of the State: in such a case the State in which the event took place and the State incurring the transboundary harm were both victims, and must cooperate in remedying the situation. However, failure to comply with obligations led to another kind of liability which should be clearly differentiated.

(Mr. Verenikin, USSR)

94. An equitable solution to the problem would take due account of the status and role of the operator and the State, without detracting from the latter's absolute liability for the activities of the former. It would therefore be appropriate for the draft articles to invoke the notion of civil liability of operators in conformity with State practice.

95. His delegation favoured the idea of reducing the amount of compensation payable by the State of origin if the nature of the activity and the circumstances indicated that it would be equitable to divide the cost between that State and the State suffering the transboundary harm. It should also be pointed out that the question of compensation should be contingent upon the existence of an appropriate agreement.

96. His delegation agreed with the approach in draft article 17, which listed the factors that should be taken into account by States in conducting negotiations aimed at achieving an equitable balance of interests in relation to an activity causing, or creating a risk of causing, transboundary harm.

97. Article 20 established obligations to prevent possible harm: a breach of those obligations would entail a liability which went beyond the limits of strict liability. In the light of the current practice of States, his delegation was opposed to the concept of the primary liability of the State of origin: direct material liability for transboundary harm should lie with the operator rather than the State.

98. His delegation agreed with the idea expressed in article 23 that compensation should be reduced if the State of origin had taken precautionary measures solely for the purpose of preventing transboundary harm.

99. His delegation emphasized that, in general, when the draft articles were given further consideration, the interests of the State of origin should be taken into account. The proposal to include damage to the environment merited further study in association with experts and ecologists. The topic of harm caused to the "global commons" was also important, and principles and norms for environmental protection in those areas must be developed in separate agreements which paid due regard to the specific features and status of the existing legal instruments in that field. The question of strict liability for harm caused to the "global commons", however, should be considered as a distinct and highly complex issue.

100. Mr. SUY (Belgium), speaking on the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said he agreed with the Special Rapporteur that existing international practice, which was changing rapidly, should be carefully examined before specific provisions were finalized. Any violation of international law involved an element of State liability, but the problem lay in establishing what means were available to the injured State in responding to such a violation. Generally speaking it was acknowledged that first resort must be

(Mr. Suy, Belgium)

to procedures for the peaceful settlement of disputes: an injured State could not take countermeasures, such as sanctions and reprisals, until it had exhausted those procedures, and it no longer had the unilateral right it had enjoyed in the past to exercise judgement in such matters.

101. With that background in mind he wished to raise a number of questions and considerations in connection with the Special Rapporteur's seventh report (A/CN.4/437 and Corr.1). The first was whether reference should be made in the draft articles to the suspension or termination of treaties, an area of international law which was regulated by the 1969 Vienna Convention on the Law of Treaties.

102. Secondly, the various United Nations declarations and resolutions prohibiting armed reprisals should be borne in mind in the context of countermeasures, including the requirement in Article 2, paragraph 4, of the Charter that States "refrain in their international relations from the threat or use of force". In that context it would also be desirable to bear in mind the rules and practice of the Security Council and regional organizations.

103. Thirdly, it might be appropriate to draw a distinction between the liability of a State in respect of a breach of the peace and security of mankind and a breach of its other international obligations: the consequences of violating a double-taxation agreement, for example, should be different from those arising from a violation of the prohibition on the use of armed force.

104. Lastly, he observed that the principle of proportionality of response, although clearly established, gave rise to difficult problems which might themselves engender new disputes and create situations of conflict.

105. Mr. ROSENSTOCK (United States of America) said that his delegation shared the concern expressed in the Commission and the Committee that the topic "International liability for injurious consequences arising out of acts not prohibited by international law" was not proving amenable to codification. It agreed with the representative of the United Kingdom that the topic fell naturally within the ambit of State responsibility; at its next session, the Commission should clarify the relationship between the two topics. His delegation also felt that the Commission was trying to take on too much. The topic included ultrahazardous activities about which there was a fair amount of agreement but also a wide range of other activities which could result in transboundary harm but which could well require different liability regimes. The law in many of those areas was still at a very early stage of development and if the Commission attempted to address all activities that involved risk the topic would become much too broad and unwieldy.

106. His delegation agreed that it was too early to take a definite view of the form the draft instrument should take. It felt that the Commission should focus on the preparation of guidelines or principles, on the basis of an

(Mr. Rosenstock, United States)

analysis of State practice, rather than a draft convention, and should take careful note of the summary analysis provided by the representative of Yugoslavia.

107. His delegation agreed that it would not be helpful for the Commission to prepare a list of activities to which the future instrument would apply because that would create a risk of incompleteness and overreaching. It felt that damage to the "global commons" should not be included in the topic since that subject involved significantly different considerations and was much broader in scope and would therefore delay the Commission's work. His delegation wished to make it clear that liability for harm must fall on the operator rather than the State unless the State would be liable under the existing principles of State responsibility. The Commission should give greater recognition to the relationship of the topic to the topic "State responsibility".

108. At first glance, none of the topics on the preliminary list of topics for future consideration, with the possible exception of the law of confined international groundwaters, seemed to fall clearly within the Commission's mandate or to be of sufficient importance to merit priority consideration. The Commission had enough current topics to consider in the immediate future and should concentrate on completing the first reading of the draft articles on State responsibility, including reconsideration of the controversial part one with a view to eliminating article 19 and simplifying the text. That work and the work on jurisdictional immunities would round out the Commission's work on the major classical topics within its natural area of competence as an expert body and some more specific issues would remain. The Commission's consideration of the issues of an international criminal court, and its work on international watercourses and the injurious consequences arising out of acts not prohibited by international law, would take up most of the next quinquennium; the Commission should not overload its agenda and must be able to take on short-term tasks.

109. Communication between the General Assembly, particularly the Sixth Committee, and the Commission were important and could be improved so as to enable the Commission to accord priority in accordance with the wishes of States and produce drafts that were broadly acceptable to States. The Committee could maintain its practice of topic-by-topic consideration of items and revert to the practice of hearing omnibus statements at the end of its debate. The Chairman of the Commission should introduce the Commission's report topic by topic, and give responses in the same manner at the end of the debate. States must indicate their wishes to the Commission instead of waiting until a late stage to voice objections; it was of critical importance for States to inform the Commission of any doubts about the utility of topics before scarce human resources were wasted on them. His delegation agreed with the representative of Brazil that the second part of the topic "Relations between States and international organizations" did not merit priority. States must be sure to answer requests for written comments so as to give

(Mr. Rosenstock, United States)

adequate guidance to the Commission. The Commission, in turn, could do more to help the Committee and States focus on the questions to which it needed answers and could make a greater effort to end topics with a list of succinct questions and some alternative answers for States to choose between. The Commission could ask for written comments at turning points in its consideration rather than at the conclusion of its reading and should ask specific questions. It should also feel free to turn down requests from the Committee. The Commission could split its sessions and make greater use of small working groups and friends of the Special Rapporteur; it could also give a greater role to the Secretariat, especially now that the former political problems had disappeared.

AGENDA ITEM 131: 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.6/46/L.7, L.9)

110. The CHAIRMAN announced that Colombia had become a sponsor of draft decision A/C.6/46/L.7 and that Hungary had become a sponsor of draft resolution A/C.6/46/L.9.

AGENDA ITEM 124: UNITED NATIONS PROGRAMME OF ASSISTANCE IN THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW (A/C.6/46/5)

111. The CHAIRMAN drew attention to document A/C.6/46/5 on the question of the Advisory Committee on the Programme and said that the regional groups should submit candidatures of States wishing to serve on the Advisory Committee for the session beginning on 1 January 1992.

The meeting rose at 1.05 p.m.