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Chairman: Mr. Tomka ..... (Slovakia)

Contents

Agenda item 147: Report of the International Law Commission on the work of its forty-ninth session (continued)

97-82448 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 147: Report of the International Law Commission on the work of its forty-ninth session (continued) (A/52/10)

1. Mr. Leanza (Italy) welcomed the significant progress made by the International Law Commission on nationality in relation to the succession of States, its careful analysis of reservations to treaties and its establishment of two working groups on diplomatic protection and unilateral acts of States. On the general question of the Commission's mandate, he said that the codification and progressive development of international law were issues that should be kept separate. Codification was not intended to create rules of international law but to reflect and coordinate existing rules. However, it was not limited to reproducing in written form the principles and rules of international law; it generally fulfilled an interpretative function. Otherwise, codification would be of little practical importance, since States would be able to challenge whether the codified provisions conformed with those in force. The Sixth Committee, as a body made up of Member States, was the appropriate forum for ensuring that codification corresponded with custom. It was for States, as the originators of customary rules, to ensure that codification included their actions or omissions as characterized by the objective factor of repetition in time and space and the subjective factor of awareness of their obligatory nature. In short, they exercised control based on the two factors that formed the customary standard, diuturnitas and opinio juris sive necessitatis.

2. The progressive development of law, on the other hand, established new standards on the basis of existing law. It was a process of creating new rules of international law or adapting existing rules to the new needs of the international community, and necessarily required the agreement of those at whom the international legal standards were aimed, namely, States. The agreement of States was always required, whether the new standards were the crystallization of a customary provision still being formed or were entirely new ones for which the practice and opinio juris sive necessitatis had not yet been established.

3. The link between the work of the experts in the Commission and the positions taken by delegations in the Sixth Committee was not without its drawbacks, but it had interesting repercussions on the establishment of the rules of international law. Firstly, it kept the members of the Commission from losing sight of State positions and thus taking too academic an approach. Secondly, and much more importantly, the involvement of delegations in the process of codification and progressive development allowed them to express their opinion on the content of the rules of law being considered. That opinion was none other than the opinio juris sive necessitatis he had already mentioned, which could be expressed simultaneously by all members of the international community. Thus, Governments quickly became familiar with newly developed concepts, which helped to facilitate their eventual adoption in one form or another. The psychological effect produced by discussions in the Sixth Committee was not to be underestimated. He agreed with the Chairman of the Commission on the need for closer and more effective cooperation between the Commission and the Sixth Committee, so that results better reflected the legal conscience of the international community, and on the means suggested by the Chairman of the Commission for improving that cooperation.

4. On the question of nationality in relation to the succession of States (A/52/10, chap. IV), he said that States had exclusive responsibility for granting or taking away nationality. However, while other subjects could not challenge the criteria for granting nationality, they were not obliged to accept the individual consequences of decisions. Decisions taken by one State with regard to an individual were not opposable by other States, unless the criteria followed justified an extension of the rights derived from a personal qualification: citizenship, in relation to State succession, should reflect an actual relationship. International law was aimed at reducing conflict of nationalities, where a person had several nationalities or none at all, in order to better protect human rights, particularly the right to a nationality. The effects of a change in sovereignty on the nationality of the population of the territory involved was, as the Special Rapporteur had pointed out in his excellent third report (A/CN.4/480 and Add.1), one of the most difficult problems of the law of succession of States. Codification in that area was therefore necessary, since nationality, despite being primarily governed by domestic standards, was of ever greater interest to the international public order.

5. He expressed his appreciation for the Commission's efforts to find a balance between the rights and interests of individuals and the sovereign competence of States to grant citizenship, and its efforts to avoid statelessness and guarantee continuity between different nationalities and recognize the right of each individual to choose a nationality, whilst avoiding concepts of the obligation to attribute nationality, particularly in order to safeguard minorities. The right to nationality in cases of State succession was established in article 1 of the draft articles, which represented a fundamental standard and a great improvement in the international protection of human rights, as well as an

improvement on the principle contained in article 15 of the Universal Declaration of Human Rights. The importance of that principle was underlined by the inclusion of the provisions in article 3, on the prevention of statelessness, and article 4, on presumption of nationality. The obligation on States to take all appropriate measures to avoid statelessness was the corollary of the right of those concerned to a nationality. The qualified presumption of nationality on the basis of habitual residence was a further application of the principle of the need for a genuine link between the State and the individual in the area of naturalization. Article 15, on the arbitrary deprivation of nationality, was yet another instrument to protect the right of every person to a nationality.

6. He shared the Commission's view on the role to be played by respect for the will of the persons concerned. Article 10 reflected a fairly well-established domestic practice, particularly in cases where a new State was formed and territory ceded, which gave priority to residents or the original inhabitants of the territory in question. He had found of special interest the provisions on protecting the unity of a family (article 11), the right of a child to have a nationality (article 12) and the status of habitual residents (article 13), and the provisions that prohibited any form of discrimination (article 14). Article 11 would go beyond any international conventions or domestic provisions on the subject, by changing the nationality of a family at the same time as the nationality of the head of the family. That solution involved, in most cases, discrimination against women, who were treated as subordinate to men. Article 12 reinforced article 24 of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child, to guarantee, in the most difficult cases, a minimum level of certainty in determining the nationality of children involved in the succession of States. The protection of minorities, dealt with in article 14, was a sensitive matter, as pointed out by the Permanent International Court of Justice in the controversy on the acquisition of Polish nationality. He agreed with the Commission's approach not to include a list of circumstances that could give rise to discrimination, but rather to opt for phrasing which prohibited all forms of discrimination without reference to their cause.

7. Article 18 touched on one of the key roles of international law with regard to nationality, namely, that of defining the jurisdiction of States in that area. The provision was consistent with the overall logical and legal approach of the draft articles, setting a limit on the opposability of nationality to other States, consisting of the existence of a genuine link between the citizen and the State. That link was not simply a formality, but an expression of shared experience, interests and feelings that determined the reciprocal rights and duties of the State and the citizen.

8. As in the hypothesis of a territorial occupation, international law should typically be concerned with ensuring that the legal descriptions corresponded, as far as possible, with reality. It was true that the Commission had not dealt with the substance of the criteria for a genuine link, but to do so would have been beyond its mandate. In any case, international jurisprudence on the Nottebohm case and the Flegenheimer case could help to clarify the legal interpretation.

9. Part II of the draft articles listed the specific categories of succession of States, generally following the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. The categories of succession chosen by the Commission were exhaustive, and he endorsed the decision not to include decolonization, partly because of uncertainty in differentiating it from other categories, and partly because of the limited number of cases of decolonization. In practice, the categories of succession were difficult to identify, which might reduce the effectiveness of the draft articles concerned. From a legal point of view, the proposals concerning the effects of specific categories of succession on nationality were, in most cases, a true reflection of international practice or were the logical consequence, as in the case of article 22, of the dissolution of a State.

10. He agreed with the decision to adopt as the main criterion for identifying subjects to whom successor States must grant nationality the criterion of habitual residence rather than citizenship. Although habitual residence was less used in practice, it appeared to be more specific than citizenship, and was in line with the trend to enhance effectiveness in international law.

11. Mr. Chen Shiqiou (China) said that the issue of nationality was mainly governed by national law. Rapid changes in the world situation and the emergence of new countries made the issue of nationality in relation to the succession of States a matter of some urgency. Determining the requirements for the acquisition of nationality remained a sovereign right of States, but it was not a right without limits. A State must take due account of international law and international realities. It was therefore essential that an appropriate balance should be struck between the sovereign rights of a State and the limits set by international law. That balance had important implications for international stability and the maintenance of international peace and security.

12. The core issue addressed by the draft articles was the possible effects of State succession on the nationality of

natural persons. In the light of that mandate, entrusted to the International Law Commission by the General Assembly, the last article in the current draft adopted on first reading was not relevant or sufficiently specific. The same could be said of other parts of the draft. For example, the sixth preambular paragraph and article 27 had implications that were clearly extraneous to the core issue. He hoped that, at its second reading, the Commission would strictly adhere to the mandate given to it by the General Assembly.

13. In part II, four categories of succession of States were specified, but the category of decolonization, a major issue in international relations and international law, was omitted. The 1978 and 1983 Vienna Conventions both contained detailed provisions for newly independent countries as a separate category in the succession of States. The work of decolonization was not completely over yet. In the current draft, the general provisions in part I applied to decolonization, but newly independent countries were excluded from the specific categories of State succession in part II. He hoped that the concerns expressed on that point by a number of members of the Commission would be taken into account in the second reading of the draft articles.

14. Conflict over nationality in relation to the succession of States could be both passive and active. The draft articles had concentrated on the former, through consideration of the important issue of statelessness, but had neglected to provide for the latter, leaving it to States to decide on policy with regard to dual and multiple nationality. Active nationality conflict posed many problems for individuals and States, relating to such matters as taxation, loyalty, social security benefits, military service and the administration and protection of natural persons. Those problems often resulted in disputes and conflicts between States, such as those which China had peacefully resolved after years of concerted efforts with countries of South-East Asia. The fact that the current draft articles underscored the obligation of States to respect the will of the natural person and his or her right of option with regard to nationality was likely to generate active nationality conflict. The Commission should take due account of that risk at the second reading of the draft articles.

15. Ms. Skrk (Slovenia) said that the decision to give the draft articles on nationality of natural persons in relation to the succession of States the form of a declaratory instrument was regrettable. Her delegation continued to advocate the adoption of a legally binding instrument, such as a convention, which would complete the Commission's work on the codification of State succession issues in a legally appropriate manner. In that regard, the relevant Vienna Conventions on State succession should not be ignored, particularly in view of the role they had played in recent State succession cases.

16. The future declaration should be carefully drafted to strike the right balance between the legitimate interests of States and individuals. Although that point had been made in the preamble, the draft articles should be critically re-examined to ensure that they reflected the same principle.

17. The premise of the Commission's work on the nationality of persons and the succession of States had been that nationality was governed by national law, international private and comparative law and international law. While international law had not intervened in a State's sovereign right to decide to whom it should grant nationality, human rights law had moved rather further in that direction in recent decades.

18. Although the Commission's primary concern had been protection of the human rights of individuals concerned, care should be taken to ensure that in preparing the draft articles more stringent standards were not imposed on States affected by State succession than would be imposed on all States by the principle of sovereign equality. Moreover, States affected by succession were bound to respect the right of an individual to a nationality and to respect the will of the person concerned when choosing a nationality.

19. Draft articles 3, 4 and 10 of the text were central to the issue. With regard to article 4, the presumption of nationality, based on the criterion of the habitual residence of affected persons, was an appropriate means of preventing statelessness, but raised two legal issues requiring further examination.

20. Firstly, the Commission needed to find a balance between two legislative approaches: the granting of nationality on the basis of territorial origin, or on the basis of parental origin. The Commission appeared to have accorded greater importance to the former approach, so that the draft articles tended to promote cases of dual and multiple nationality, particularly where the right of option was not based on cooperation or exchange of information on nationality matters between States.

21. With regard to the right of option in cases where persons might qualify to acquire more than one nationality, her delegation believed that past practice had been based on international agreement, rather than on the internal legislation of the State concerned, as in the Commission's current text. Since national legislation could not regulate the acquisition of the nationality of another State, the term "free choice of nationality" would be more appropriate and would distinguish between the new option and the practice that pertained in

post-war treaties and in the case of some newly independent States. Moreover, the term "appropriate legal connection" (article 22 (b)) was too vague and should be replaced with the term "effective link".

22. The principle of the unity of a family laid down in draft article 11 should be upheld, but its provisions should not be interpreted as meaning that all members of a family remaining together had to have the same nationality, since that would contravene the principle of respect for the will of persons concerned. However, a State could consider the unity of a family as an effective link for granting nationality to family members under more favourable terms.

23. The Commission should not exceed its mandate by extending the provisions of the current draft to refugees and other categories of persons requiring humanitarian protection as a result of State succession. Moreover, the unclear wording of draft article 13, on the status of habitual residents, should be amended in accordance with the principle that State succession should not affect the acquired rights of natural and juridical persons.

24. Articles 14 and 15 of the text met the criteria of contemporary human rights law, but the wording of article 14 should specifically refer to prohibition of discrimination on the grounds of race, colour, descent, national or ethnic origin and religion.

25. With regard to the Commission's position that specific categories of the succession of States could also apply mutatis mutandis apply to newly independent States which were currently dependent territories, her delegation believed that the text should include a provision that would explicitly respond in an appropriate legal manner to cases of newly independent States.

26. With regard to the regulation of nationality following dissolution of a State, the Commission's decision to adopt the criterion of habitual residence of persons affected and its prescription of the right of option had not taken account of recent practice in Central and Eastern Europe. There, the criterion had often been the continuity of nationality of former federal units that had become independent States. To prevent statelessness, permanent residents had been granted the option to acquire the new nationality within a certain time-frame.

27. With regard to the prevention of statelessness, the Special Rapporteur's proposal in his third report to combine the criteria of habitual residence and the principle of continuity of "secondary" nationality was more in keeping with contemporary practice and realities than the Commission's reliance on habitual residence alone. As for the issue of legal persons, their nationality in relation to State succession might have consequences for individuals' property rights and should therefore be included as one of the practical problems for the Commission's consideration.

28. Mr. Beranek (Czech Republic) said that the decision to present the draft articles on nationality of natural persons in relation to the succession of States in the form of a draft declaration was perhaps the most practical method of providing States involved in a succession with a set of legal principles and recommendations for drafting their nationality legislation. A declaration would give States the flexibility to include a broader spectrum of issues than would be included in a convention and would obviate the need for discussion of whether its provisions could be invoked with regard to a State that had not participated in its adoption. If adopted by consensus, the declaration might even have a greater impact on State behaviour than a convention that awaited ratification.

29. In emphasizing the rights and interests of individuals, the Commission had departed considerably from the traditional view of nationality law as a primary domain of internal law. That approach was perfectly acceptable, so long as a balance was struck between the interests of States and those of individuals.

30. His delegation agreed too with the general structure of the draft articles, provided that the States concerned could decide, by explicit or implicit agreement, on a different method for applying the provisions of part I of the text in their particular case of succession.

31. The right of every person who had the nationality of a predecessor State to the nationality of at least one of the successor States involved was a sound basis for the draft as a whole, but care should be taken to underline the fact that that right referred to the context of succession of States, rather than the right to a nationality in abstracto.

32. Following the dissolution of Czechoslovakia, the two successor States had eliminated the risk of statelessness by adopting national legislation for the ex lege attribution of nationality along the lines of the current draft articles 1 and 3, although their conditions for optional acquisition of nationality and dual nationality policies differed considerably. The Czech Republic had acted quickly in that instance, to avoid the kind of uncertainty to which article 5 of the draft referred.

33. The Czech delegation questioned the wisdom of including article 4 in part I of the text, and believed that that provision might cause more problems than it resolved.

34. First, the provision had no general application. It made no sense to invoke it in the case of the unification of States,

where the principle that all persons concerned acquired the nationality of the successor State, as provided for in draft article 21, rendered the distinction based on the place of residence within or outside the territory concerned useless.

35. Secondly, he had serious doubts about the function of such a presumption in the case of the transfer of part of a territory. Since no transfer could take place lawfully except by agreement between the States concerned, such an agreement would obviously contain provisions on the nationality of persons having their habitual residence in the territory to be transferred. The presumption had no meaning in such a case. If the treaty provided for a change of nationality, the situation was clear; it was also clear, however, if the treaty was silent on the question – the persons concerned retained their nationality. A case in point was the border treaty between his country and Slovakia, which provided for an exchange of certain territories between the two States, but did not provide for any automatic change of nationality as a result.

36. Lastly, the presumption envisaged in draft article 4 might not be helpful even in the case of separation from a federal State of one of its units. It was unclear why the citizenship of such a unit, recognized under the federal constitution, should be disregarded, and habitual residence treated as the only relevant criterion. The citizenship of a unit of a federation was a reliable criterion for resolving the problem of nationality for those residing both inside and outside the territory concerned. On the other hand, while the presumption of nationality based on habitual residence might be applied easily to those living in the territory concerned, it did not help to clarify the situation of those living abroad. In the case of dissolution of a federation, the presumption could even create confusion. The matter should therefore be given further consideration.

37. It was essential to maintain a balance between provisions that ensured respect for the will of persons concerned (draft article 10) and those that ensured certain prerogatives of States (draft articles 7 to 9). He supported the inclusion of draft articles 11 (Unity of a family) and 12 (Child born after the succession of States), which were fully in keeping with the aims of the Convention on the Rights of the Child. Articles 13 (Status of habitual residents), 14 (Non-discrimination), 15 (Prohibition of arbitrary decisions concerning nationality issues) and 16 (Procedures relating to nationality issues) provided guarantees of respect for the rights of individuals which should be included in the text.

38. With regard to the principle of non-discrimination, the Czech nationality law had been criticized by some international bodies because it made having a clean criminal record a requirement for the optional acquisition of Czech nationality. As that requirement applied only to the optional acquisition of Czech nationality by persons who had already acquired Slovak nationality, it could not in itself be a cause of statelessness. Nevertheless, the rules relating to the application of that requirement had been changed, and nearly all cases had been resolved to the satisfaction of the applicants. In his view, a distinction should be made between a situation in which that requirement would prevent the person concerned from acquiring the nationality of at least one of the successor States, and a situation in which it was among the conditions for naturalization.

39. Draft article 17 (Exchange of information, consultation and negotiation) contained a reasonably formulated provision on negotiation and agreement. Agreement, however, was not an indispensable means of solving nationality problems. Legislative measures adopted by one State with full knowledge of the content of the legislation of the other State involved in a succession might be sufficient to prevent such succession from having detrimental effects on nationality.

40. He had no difficulty in supporting draft article 18 (Other States). Paragraph 1 of the article reflected the general principle of non-opposability to third States of nationality granted without the existence of an effective link between the State and the person concerned; it would prevent the person concerned from being treated as a de facto stateless person, and was fully justified in doing so. Paragraph 2, which focused on the situation of persons who would become stateless in spite of the provisions of the draft article, was aimed at preserving the delicate balance between the interests of States which could be involved in a situation of that kind; he therefore considered it acceptable.

41. Part II of the draft articles, in which the general principles contained in part I were applied to different categories of State succession, appeared to be intended mainly as a guide for States entering into negotiations in order to resolve nationality issues. In view of the complex nature of those provisions, he wished to reserve his position on the draft articles concerned until a later stage.

42. Sir Franklin Berman (United Kingdom) said that it was important not to lose sight of the significance of the decision in 1947 to establish the Commission as a permanent organ of the United Nations whose membership was to be composed of independent experts elected by the General Assembly. The remarkable legacy of that experiment could be measured in part by the Commission's record of completed projects.

43. Turning to the draft articles on nationality in relation to the succession of States (A/52/10, chap. IV), he said that

there was an obvious need for clear and humane rules on the subject, and that the concern for human rights embodied in the Commission's draft was the correct modern approach. As his country's past practice appeared to be largely in conformity with what the draft prescribed, he anticipated being able to support it, while reserving the possibility of making comments on points of detail.

44. He welcomed the Preliminary Conclusions of the Commission on the topic "Reservations to treaties" (A/52/10, chap. V) contained in paragraph 157 of the report. The Commission had performed the valuable function of integrating the general components of the law of treaties while respecting the particular considerations applying to some areas of international relations and the special treaty mechanisms that had been built up in some of those areas. He took note with satisfaction of the Commission's observation in the eighth preliminary conclusion regarding the powers of treaty monitoring bodies, and supported the Commission's recommendations addressed to States parties and to States negotiating future normative treaties.

45. Questions had been raised concerning the tenth and twelfth preliminary conclusions. The twelfth preliminary conclusion allowed for the development of specific rules and practices in the regional context. It was his understanding that such a provision was not an invitation to fragment the unity of international law governing reservations to multilateral treaties, but rather a sensible recognition of the possibility of regional diversity in respect of the monitoring function.

46. The tenth preliminary conclusion dealt with the situation between States parties after a finding that a reservation formulated by one of them was inadmissible. He agreed with the Commission's conclusion that the rejection of a reservation as inadmissible conferred some responsibility on the reserving State to respond. On the basis of his country's current treaty practice, he believed that there should be scope for further exchanges between objecting and reserving States with a view to eliminating the incompatibility. One of the disadvantages of the rule concerning tacit acceptance after 12 months contained in article 20, paragraph 5, of the Vienna Convention on the Law of Treaties was that it tended to freeze what should remain an open transactional situation. That was one of the reasons why his Government did not regard the article in question as a rule of customary international law. He looked forward to the Commission's further considerations on the legal effect of impermissible reservations and objections to them.

47. With regard to "State responsibility" (A/52/10, chap. VI), his Government was preparing substantial written observations which would deal with the issues highlighted in paragraph 30 of the report.

48. As to "International liability for injurious consequences arising out of acts not prohibited by international law" (A/52/10, chap. VII), he reiterated his delegation's position concerning the undesirability of further work on the liability aspect of the topic. While he understood that "international liability" had been the core issue of the topic as originally conceived, that did not mean that it should be retained for further work 25 years later, in the light of the meagre understanding reached in that time. Further work on the topic should be confined to the prevention aspect alone.

49. Turning to the topic of diplomatic protection (A/52/10, chap. VIII), he expressed broad satisfaction with the Working Group's proposals. The scope of the topic would be confined to the codification of secondary rules, in other words, the basis, conditions, modalities and consequences of diplomatic protection, and would avoid the question of responsibility for injury to aliens. Having no opinion, for the time being, as to whether functional protection exercised by international organizations fell within the scope of the topic, he could go along with the Commission's proposal to study the relationship between the protection exercised by States and functional protection exercised by international organizations and to report back at an early stage.

50. On the topic of unilateral acts of States (A/52/10, chap. IX), while the results set out in the Working Group's report were interesting, he believed that the topic needed to be refined further in order to be manageable. The proposed subject of study, as set out in paragraphs 199 and 200, was extremely broad, even if it omitted certain categories of unilateral acts. He wondered, for example, about the wisdom of including "recognition", which was in itself a vast and complex subject. It was to be hoped that the Special Rapporteur would be able to produce a more focused preliminary study within the following year, identifying the main practical issues to be examined.

51. Lastly, with regard to organizational matters, the Commission was to be commended for the improvements made to its report. The 1997 report was handy, usable, economical and well-focused. He wondered, however, whether it might be possible in the future for chapters II and III to be prepared and translated as a matter of priority and circulated to States in advance of the report as a whole. That might greatly facilitate the preparation of the debate at the second part of the Commission's session, which would not end until August 1998. While the idea of holding a split session was indeed an experiment, that did not invalidate the outcome. He was confident that more flexible arrangements,

including split sessions, offered real prospects for expediting the Commission's work.

52. Mr. Andrews (United States of America) said that the International Law Commission had made a major contribution to the growth and development of the role of international law in the post-war era. Its success, however, had not come easily nor had it always been as productive as it had been over the past two years. At one time it had been seen in some government and academic circles as a remote institution, at some remove from Governments' main concerns. It had sometimes continued to work on topics for many years, in the face of sceptical questions or even outright opposition from a growing number of Governments.

53. The Commission had recently appeared to take on a new lease on life. It had completed some long-running projects and laid the groundwork for the efficient completion of others. It had given serious study to its own programme and methods of work, making some useful improvements, and had sought more energetic and effective dialogue with Governments and the Committee. Much remained to be done, however, by all the parties concerned. His country had shown its support by providing concrete responses to the Commission's questions and to the Special Rapporteurs' questionnaires, with extensive comment on international liability for injurious consequences arising out of acts not prohibited by international law, and would work to provide thorough and timely responses on other topics. In the past week it had submitted a set of detailed comments regarding the draft articles on State responsibility. The comments stressed four areas in which it believed that the draft articles required significant revision on second reading, namely: the continued inclusion of the concept of international crimes, an idea that had no useful role in the law of State responsibility; unacceptable limitations on the duty to compensate, including the duty to pay interest, where States violated their obligations; unwarranted limits on the ability of States to take proportionate countermeasures in appropriate circumstances; and the excessively detailed and unrealistic dispute settlement provisions.

54. With regard to nationality in relation to State succession, his country strongly supported the thrust of the draft articles, which recognized the important human rights dimensions of nationality. The draft articles emphasized the importance of avoiding statelessness and of giving effect to the choices of affected individuals. They were clear and well organized and the commentary was thoughtful, giving a clear explanation of the texts. His country would submit more considered and detailed comments on the articles by the deadline of 1 January 1998.

55. His country would speak later regarding the work being done on reservations to treaties. It shared the Special Rapporteur's view that the provisions of the Vienna Convention on the Law of Treaties did not need revision and that the rules generally applicable to reservations applied with equal authority in the case of human rights and other normative treaties. The United States also looked forward to the fruits of the Commission's continued work on diplomatic protection and on the legal effects of unilateral acts, which were both of relatively clear scope and in which focused and efficient work by the Commission could help clarify the existing legal situation.

56. Mr. Perrin de Brichambaut (France) said that the International Law Commission continued to do indispensable and incomparable work. On the question of nationality in relation to the succession of States, his delegation supported the central intention of the draft articles, as contained in draft article 1 regarding the right to a nationality. The reaffirmation of that right constituted a real advance in international law, acting as a reminder that political change should not be allowed to have an unacceptable impact on individuals. The greater attention devoted to statelessness in the draft articles was also welcome. It was right that the draft text should draw attention to the various ways of dealing with the consequences of the main principle, since national legislation on nationality differed and the right of each country to select its own options should be respected. The same adaptability was apparent in the choices with regard to multiple nationality, drawing a distinction between the right to nationality of persons affected by mass displacement and that of the right of residence of those same persons in a specific place. It was harder to decide whether the question of unity of families and other human rights questions, such as non-discrimination, should also be covered.

57. The second part of the text, although equally flexible, required further consideration by both States and the Commission. It might therefore be more appropriate for the draft text to be adopted as a declaration rather than as a convention, although a decision on the matter should be deferred until detailed reactions from States had been received.

58. Diplomatic protection was a basic principle of international law, but it was not always honoured. For that reason it was particularly important that the Commission was considering the topic. The Working Group on Diplomatic Protection had been right to limit consideration to diplomatic protection stricto sensu and to address only indirect harm (harm caused to natural or legal persons whose case was taken up by a State) and not direct harm (harm caused directly to the State). With regard to diplomatic protection for the

agents of international organizations, he said that the "functional protection" extended by international organizations to their agents was comparable to that exercised by States and the Commission should therefore continue to include it in the topic. The Commission had also been right to limit its study to the codification of secondary rules and not to address the specific content of the international legal obligations that had been violated. It was precisely because the Commission's draft articles on State responsibility were not limited to secondary rules that France had expressed serious reservations regarding them. It was too soon to decide whether the draft articles on diplomatic protection should take the form of a convention or of guidelines, although the latter alternative would have the advantage of not putting the exercise on too formal a footing.

59. With regard to unilateral acts of States, the Commission's work had been most useful. States often acted unilaterally but often it was hard to know what the consequences of such acts would be. States did not necessarily wish to confer on such acts consequences identical to those resulting from what might be termed a "classic" legal engagement. The Commission should make it a priority to distinguish between unilateral acts of States creating legal situations that were opposable in conformity with international law and those that were not. If the effect of the former was to create, recognize, safeguard or modify rights, obligations or legal situations, it was hard to see the point of unilateral acts without such effects.

60. His delegation believed that unilateral acts by international organizations ought to be excluded from the study, although they could be the subject of a study on their own. Indeed, the Commission itself had catered for the possibility of considering the issue of decisions adopted by international organizations. The Commission should also take account of the interaction between unilateral acts of States and custom, since such acts could contribute to the formation of customary law. It should, in addition, study the relationship between unilateral acts and treaties. Some acts, such as those concerning accession, denunciation, reservations, interpretative declarations or withdrawal, were in fact governed by the law of treaties and therefore required no study. Others, however, were not, even though they were in treaty form, and should therefore be studied.

61. Some comparison with the law of treaties was essential. The withdrawal of a unilateral declaration, for example, was generally examined to see whether the declaration had created rights for a third party or not. The analogy with the law of treaties was particularly interesting: article 37, paragraph 2, of the Vienna Convention on the Law of Treaties of 1969 stated that when a right had arisen for a third State it could not be revoked or modified if it was established that the right had been intended not to be revocable or subject to modification without the consent of the third State. He wondered whether it could therefore be said, mutatis mutandis, that when a unilateral act, like a unilateral declaration, was clearly intended to create a right for a third party the originating State could not revoke that right at its own discretion. It was an issue that the Commission should consider. It was too soon to say whether a convention or guidelines should be the outcome of the exercise.

62. With regard to reservations to treaties, he welcomed the fact that the Commission considered that, as his country had said the previous year, the reservations regime in the Vienna Convention of 1969 was so flexible as to make it adaptable to all forms of treaty, including human rights treaties. His delegation believed that the permissibility of reservations depended on the object and purpose of the treaty concerned.

63. The establishment of monitoring mechanisms by many human rights treaties posed particular problems with regard to the role of such mechanisms in relation to the permissibility of reservations. Although such problems had not been envisaged when the Vienna Convention of 1969 had been drawn up, it would not be impossible to incorporate such mechanisms, which could be most useful and effective. Monitoring bodies should not, however, be able to control the permissibility of reservations except when that was expressly stipulated. The common will of States to grant such bodies competence should appear in the text of a treaty, as illustrated by the European system of human rights protection. Where such mechanisms were lacking, it was for the State making the reservation to draw the consequences of the incompatibility of the reservation with the object and purpose of the treaty, just as it was for the State objecting to the reservation to draw the consequences of its decision regarding the treaty between itself and the State making the reservation. A monitoring body had a jurisdictional or similar status entirely dependent on a given treaty. It could not have competence other than that explicitly conferred on them by the States parties. If States wished it to have the competence to assess or determine the permissibility of a reservation, there should be clauses in the multilateral treaties, particularly human rights treaties, to say so. His delegation would, therefore, find it difficult to subscribe to the fifth preliminary conclusion. Where treaties were silent, it was hard to see why or how monitoring bodies established under those treaties could comment upon or express recommendations with regard to the admissibility of reservations by States. The Commission itself seemed to share that view, given its suggestion, in the seventh preliminary conclusion, that protocols should be elaborated to existing treaties if States

sought to confer competence on the monitoring body to appreciate or determine the admissibility of a reservation. He reiterated that it was for States alone to modify a treaty or to elaborate a protocol to set up a monitoring mechanism, or else to react to a reservation that they considered incompatible with the object and purpose of a given treaty.

64. On the important topic of State responsibility France would submit written comments.

65. He welcomed the improvement in the Commission's working methods. It was for the Committee, in its turn, to reconsider its relations with the Commission, as the Commission's Chairman had said. In his delegation's view the Committee should adopt a more proactive stance, which would enable real dialogue to take place between the two bodies. Since the Commission's work related directly to the concerns of States, the latter should give the Commission guidelines, through the Committee. In that connection, his country hoped that the improved working methods would not put in question the location of Geneva as the normal meeting place of the Commission.

66. It was essential to research and propose other topics for consideration. One such was the scope and the legal consequences of resolutions adopted by international organizations and their role in the formation of international law. The Commission could also usefully undertake a specific study of countermeasures, rather than including that topic in its draft articles on State responsibility.

The meeting rose at 12.10 p.m.