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

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The meeting was called to order at noon.

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

1. Mr. Pellet (Chairman of the International Law Commission), introducing the report of the International Law Commission on the work of its forty-ninth session (A/52/10), said that he would first make some general remarks on the work of the Commission and its interaction with the Sixth Committee.

2. On the occasion of the Commission's fiftieth anniversary, which would be celebrated in the next few days, its work, accomplishments, failures and future mission would be thoroughly scrutinized by scholars, legal advisers and other experts. That was to be expected, since in order to remain relevant, institutions must comprehend the realities in which they operated and determine the needs of their "clients". In the Commission's case, those "clients" were States, whose collective voice was, or should be, the Sixth Committee. In order to meet the needs of States, however, the Commission had to know what they were and to be given guidelines as clear and precise as possible.

3. As an academic expert, and not a government representative, he considered it his duty to speak frankly. The Commission often had the impression that the Committee did not always discharge its role of guidance and leadership properly. To be sure, it criticized the Commission's work, and when the criticism was well thought out, it was accepted with gratitude. Nevertheless, the criticism often did not lead to clear or constructive guidelines. All too frequently, the Commission received no reply to the questions that it put to the Committee, although it had endeavoured to make its questions increasingly clear and precise. Governments individually seldom made the comments that the Commission hoped for on draft articles that had been in preparation for a long time. To date, for example, just one State had submitted its comments to the Secretariat on the draft articles on State responsibility, which had been adopted on first reading in 1996. Only two States had reacted to the 1996 report of the Working Group on international liability for injurious consequences arising out of acts not prohibited by international law, a topic whose political and economic implications were such that it was practically impossible for the Commission to conclude its work without precise guidelines from the Committee. On the subject of reservations to treaties, 31 States had transmitted replies to the questionnaire which he had drawn up two years earlier. While he was grateful for their generally interesting and valuable comments, he could not help noting that 31 out of the 185 States Members of the Organization was not exactly an impressive figure.

4. The Commission had in accordance with the wishes expressed by the Committee, undertaken to reconsider its working methods. That process, which the year before had resulted in a detailed report containing specific proposals that had been well received by the General Assembly, was beginning to bear fruit. However, the Commission could not by itself reform the way it prepared its drafts, any more than it could respond by itself to the wish expressed in Assembly resolution 51/160 for the Commission's dialogue with the Sixth Committee to be improved.

5. It was particularly important for government officials to study the Commission's reports carefully, consider the suggestions made in them and take positions at an early stage of work on a topic, at a time when policy issues were being formulated and before the basic structure of any legal instrument had been decided on. Even if States, when they could not agree, had to ask the Commission to submit alternative proposals in the form of optional draft articles, its output would be more polished and more useful to the international community as a result.

6. Mention should also be made of the concerns which the Commission's members had begun to feel since reading the Secretary-General's most recent report on reform of the Organization (A/51/950). It was striking that the Secretary-General was not planning any reform in the development and application of the norms of international law. While the Commission had nothing to be ashamed of in that area, it believed that the time had come to think about adaptations and reforms that might enhance its effectiveness. He had written to the Secretary-General on that subject, and was convinced that the Commission's fiftieth anniversary could and should be an occasion not only for deep thought about that issue, but also for specific reform proposals.

7. In that connection, he drew attention to the 1996 report of the Planning Group of the Enlarged Bureau on the Commission's programme, procedures and working methods (A/51/10, paras. 141-251), which had been endorsed by the Commission as a whole. Implementing the recommendations contained in the report was chiefly the responsibility of the Commission itself; however, it needed the help and support of the Committee, which alone could amend the Commission's statute. While amending the statute was not necessarily a priority, it might be an appropriate means of addressing some issues, such as the way the Commission elected its members. The elections held in 1996 had resulted in the Commission having 18 new members out of 34. Despite the adaptability and spirit of cooperation shown by both the newcomers and the long-time members, such abrupt changes

in the Commission's composition adversely affected the continuity of its work. It would be useful and timely to think about methods of election that could result in a "gentler" change in membership, particularly as the next statutory renewal was four years away.

8. Another problem was the fact that no woman had ever been elected to the Commission in the 50 years of its existence. The reasons for that situation were complex; ways of remedying it were far from obvious, and would doubtless depend more on political will than on the adoption of legal measures. The Committee could, however, anticipate some regulatory measures that would at least be an incentive and might even be compulsory in nature.

9. The Commission's 1997 report comprised fewer than 160 pages. While rather small in comparison with the average size of previous years' reports it was in keeping with the resolutions adopted by the Commission in 1996. The questions posed to Governments in the report addressed the fundamental aspects of two new topics and the reworking of an old topic. The Commission had also presented a complete set of draft articles on the nationality of natural persons in relation to the succession of States, on which it sought comments from Governments. The Preliminary Conclusions of the Commission on reservations to normative multilateral treaties, including human rights treaties, required careful consideration. In addition, since 1997 was the first year of the quinquennium, the Commission had drawn up a work schedule for the remainder of the period.

10. Turning to the overall structure of the report, he outlined the contents of each of the 10 chapters, dwelling particularly on chapter X – the traditional chapter on other decisions and conclusions of the Commission – since it most closely reflected the general concerns that he had expressed. In 1997 the Commission had focused its attention more on implementing the decisions and guidelines it had adopted the previous year than on adopting new ones. In that context, he drew the Committee's attention to paragraphs 222 to 224 of the report, on methods of work. He also noted that the Commission had endeavoured, if not to take a new approach to its relationships with other bodies, at least to strengthen them. The most spectacular evidence of that had been the invitation to Judge Schwebel, President of the International Court of Justice, to visit the Commission. Judge Schwebel had accepted the invitation, although in the event he had been represented by Judge Shi, with whom the Commission had had a fruitful exchange of views. It had also enjoyed its customary contacts with members of the legal services of the International Committee of the Red Cross, the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the Council of Europe. It had also been pleased to receive a visit from the Secretary-General.

11. Pursuant to decisions taken in 1996, the Commission had decided to involve more of its members in the inter-sessional work of the special rapporteurs. Three of the new special rapporteurs had opted for the establishment of a consultative group consisting of members of the Commission who would assist them in the preparation of their reports. The members of the consultative group would exchange ideas and would help the special rapporteurs shape policies on the issues associated with their topics. With regard to the fourth topic, State responsibility, the Commission had decided to establish working groups to deal with the more sensitive problems.

12. The never-ending, recurrent problem of a starting date for the session had once more been the subject of sharp debate. He drew attention to paragraph 226 of the report, which made clear the constraints under which the Commission was operating; the experiment of the split session arrangement was not being made under the best conditions. Similarly, the 10-week session in 1997 should remain an "exceptional measure", an 11-week session should be held in 1998 and a 12-week session in 1999, so that the Commission could deal with the many complex topics on its agenda.

13. He drew attention to the seminar, mentioned in paragraphs 229 and 230, to celebrate the Commission's fiftieth anniversary. Paragraphs 247 to 258 described the thirty-third session of the International Law Seminar, which had been attended by 22 participants of different nationalities, mostly from developing countries. Seminars were a "sideline" activity of the Commission, but he was very much in favour of them, since they provided a unique opportunity for young scholars and junior government officials to become familiar with the work of the Commission and many international organizations. It was therefore very important to try to raise the level of participants – which could be uneven – and endeavour to offer adequate financing. The Commission thanked Governments that had contributed to the United Nations Trust Fund for the International Law Seminar.

14. Lastly, he drew the Committee's attention to chapter III, entitled "Specific issues on which comments would be of particular interest to the Commission". It had been prepared in response to the request in General Assembly resolution 51/160 and was intended to help Governments identify some of the important policy issues underlying a particular topic. The Commission was most anxious to hear the views of the Committee and of Member States on those and other topics.

15. Mr. Cede (Austria) said that a careful reading of chapters III and X of the report of the International Law

Commission, on which he would concentrate his remarks, showed that the Commission was fully committed to playing its part in the reform of the codification process within the United Nations system. He expressed appreciation for the arrangement of chapter III. The list of issues implicitly suggested a structure for the comments to be made by States and clearly set out such aspects of the Commission's work as called for political decisions. The "question and answer" pattern was itself an effective mechanism for activating dialogue between States and the Commission. An explanation of State practice and customary law on given questions was very much needed.

16. Chapter X, with its stringent programme of work and its ambitious timetable, also testified to the eagerness of the Commission, in its new composition, to carry out its mandate with energy. He hoped that, in view of the Commission's heavy workload, the schedule could be kept.

17. The Commission had demonstrated its readiness for reform in 1996, developing a set of general conclusions and recommendations designed to give a new impetus to its work, which his delegation had wholeheartedly supported. Some of those had related to the necessary interaction between the Commission, as a body of independent legal experts, and the Committee, as a body of government representatives. The two formed a tandem whose proper functioning was of the utmost importance for the advancement of codification and the progressive development of international law within the United Nations system. The new dynamic in the working methods of the Commission had no parallel as yet in the Committee, which should consider some structural reforms of its own. He therefore trusted that he might make a few suggestions which were neither original nor radical, but contained elements that merited serious consideration.

18. First, rather than retaining the tradition whereby delegations made oral statements, which in fact were often accompanied by written versions handed out during the debate and which were generally lengthy, sometimes technical and often resembled academic lectures, the Committee could achieve true dialogue by encouraging delegations to structure their statements to be as concise as possible, stressing the key legal positions of their Governments on the topic under consideration and leaving it to a written memorandum to outline the legal points in greater detail. Such written presentations could be circulated simultaneously with the oral intervention. The advantages seemed obvious. Precious time would be saved and the oral statements would be more user-friendly, in that in a short and well-focused statement the relevant State position could be easily identified.

19. Secondly, in order to stimulate real discussion, a less formal set-up for open exchanges among State representatives might be envisaged, open to all delegations. Such consultations, to which sufficient time should be allotted, could take place under the authority and leadership of the Chairman of the Committee.

20. His third suggestion was to establish a rule that, whenever a topic was under discussion directly involving a particular member of the Commission, that member should be available during the consideration of the relevant issue, so as to allow the Committee to receive clarification direct from a current member of the Commission. That would appear to be a matter of common sense. Such a procedure would, of course, have to be placed in the context of the possible restructuring of the proceedings of the Committee along the lines described above. An exchange of views between the Committee and the relevant members of the Commission could not fit into the current format of delegates reading out their statements.

21. With regard to the split session for 1998, it was regrettable that, although the experiment might prove worthwhile, the large number of conferences to be held in 1998 did not allow for sufficient flexibility for scheduling Commission sessions. As for cooperation with other bodies, his delegation commended the Commission for having expanded its contacts with learned societies all over the world; it looked forward to a further intensification of contacts that could streamline the codification process and thereby avoid duplication of work.

22. Lastly, with regard to the establishment of consultative groups to assist the special rapporteurs in their tasks, he said that, although in the real world there might be a danger of potentially divergent views within such groups, the advantages outweighed the disadvantages overall, since consultative groups made it possible to make better use of the available resources and facilitate a sharing of responsibility within a collegiate body of proven experts in the field.

23. The Chairman noted that the Commission had made substantial progress on two topics and had held valuable discussions on the others. He trusted that the colloquium to be held the next day would be a suitable forum for informal exchanges on all those topics and that the role of the Committee and of States as well as that of the Commission would be considered.

The meeting rose at 1 p.m.