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Chairman: Mr. Mochochoko ..... (Lesotho)

Contents

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The meeting was called to order at 3.15 p.m.

Agenda item 150: Report of the International Law Commission on the work of its fiftieth session (*continued*) (A/53/10 and Corr.1)

1. **Mr. Magnuson** (Sweden), speaking on behalf of the Nordic countries — Denmark, Finland, Iceland, Norway and Sweden — and referring to the issue of international liability for injurious consequences arising out of acts not prohibited by international law (A/53/10, chap. IV), said that the Nordic countries noted with satisfaction the work done by the Commission during its fiftieth session on the prevention of transboundary damage from hazardous activities. The draft articles reflected basic principles of international environmental law as it had developed, from the 1972 Stockholm Conference to the Rio Declaration on Environment and Development. Understandably, the approach taken by the Commission was a cautious one, leaving out for the time being the question of compensation for harm caused, given the complexity of the issue and the widely disparate views expressed in the debates of the Sixth Committee. It remained, however, the view of the Nordic countries that a future international legal instrument should cover both the issue of prevention of transboundary harm and the duty to pay compensation for harm caused.

2. The Nordic countries had commented earlier on the issue of prevention, and he recalled their intervention in the Committee on 11 November 1996. They stressed their view that the issue of prevention was not only relevant to activities involving risk, namely hazardous activities, but also involved the obligation to minimize the adverse effects from such activities and from accidents. They therefore regretted that article 1 (b) of the draft text had been deleted, limiting the scope of the text to hazardous activities.

3. The time had come for the Commission to deal with the question of liability and, in that regard, the need for effective compensation to the innocent victim must be a guiding principle in the elaboration of those articles. The Nordic countries had a flexible approach regarding the nature of the instrument to be elaborated, which could take the form of a framework convention of a legally binding character, with the option of treating certain parts of the topic in the form of guidelines or recommendations.

4. The subject of reservations to treaties (A/53/10, chap. IX) seemed to have attracted a growing interest among States: within the Council of Europe, for instance, work was under way to create an observatory of reservations to international treaties. In April 1998, the Afro-Asian Legal Consultative Committee had held a special meeting devoted to reservations. The Nordic countries noted the growing interest in that topic with great satisfaction. Foreign ministries and international organizations were confronted almost every day with that problem, and an authoritative user's guide produced by the Commission would no doubt be of great practical value. The Nordic countries wished to compliment Mr. Pellet, the Special Rapporteur, for his excellent work, enabling the Commission to adopt some draft guidelines on first reading. The Nordic countries were, however, not convinced that too much work should be devoted to what had been labelled "extensive reservations", as in the proposed guidelines 1.1.5 and 1.1.6, neither of which had been adopted by the Commission. Although it was important to undertake a thorough analysis of questions that might arise concerning reservations, going too much into detail in relation to issues which appeared to be of a more theoretical than a practical interest might cause one to lose sight of the desired result, which was a guide to practitioners.

5. The Special Rapporteur had advocated approaching the questions of interpretative declarations and reservations to treaties in parallel. The Nordic countries had an open mind as to that approach: there was a very close link between reservations and such declarations, which might in some cases be hidden reservations. It was essential, however, that the work of the Commission and of the Special Rapporteur should provide easily understood guidelines which clarified the differences — and the similarities — between reservations and interpretative declarations. Neither the Commission nor the Sixth Committee had any intention of altering the reservations regime laid down in the Vienna Conventions. The guidelines would merely act to dispel confusion and provide auxiliary definitions to fill in any gaps left open by that regime, as in the case of inadmissible reservations.

6. Reservations carefully lodged could be seen as a sign that the reserving State took treaties seriously. But some reservations were so general that it was impossible to reconcile the scope of the reservations with the object and purpose of the treaty concerned, or to assess the practical impact of the reservation, as happened all too often with human rights treaties. When States had objected to such reservations, they had asked themselves whether the application of the Vienna regime led to a satisfactory result. According to the Vienna regime, the effect of an objection to a reservation was that the provisions to which the reservation related did not apply as between the two States "to the extent of the reservation". Such a result was, of course, acceptable in relation to multilateral treaties where there was a clear element of reciprocity on the bilateral level. Such characteristics were not so evidently present in human rights

or other normative treaties. What the objecting State would like to see in the sphere of human rights treaties was the opposite result, namely, that the reserving State should be regarded as a party to the treaty without the benefit of the reservation. That was the so-called severability doctrine which had been applied in a number of instances by, *inter alia*, the Nordic countries during the past few years. The Special Rapporteur had not completed his third report, but according to the plans he had indicated, the report would also deal with the formulation and withdrawal of reservations, acceptances and objections to reservations. The Nordic countries hoped that that part of the report would reflect the practice they had adopted lately, especially in connection with human rights treaties. The great majority of States parties to human rights treaties preferred to remain silent as to reservations declared by other parties, however troubling they might be. The Nordic countries noted with satisfaction, however, that more States than before showed an interest in that field. Furthermore, some States which had made unspecified reservations had endeavoured to make them more precise, thus facilitating for others the assessment of the practical impact of the reservation.

7. **Mr. Gaa** (Philippines) commended the Commission for its work on international liability for injurious consequences arising out of acts not prohibited by international law, particularly for the foresight it had shown and the judicious approach it had taken on the issue of the prevention of harm. The norms it had identified and formulated on the topic were of the utmost importance. International harm had now become more than just environmental damage. In a world where Governments and whole economies were becoming increasingly dependent on information technology and advances in communication, transboundary harm took on a different character. While transboundary harm occasioned by electronic and digital means might seem to be different, the basic rules of transboundary harm could conceivably be applicable.

8. His delegation did not at the moment have any specific formulations. Related work was already being done in other forums, and even in the Committee, on standardizing global electronic economic transactions. His delegation was confident that with the Committee and the Commission working jointly, it would be possible to anticipate the legal problems and challenges that would arise in an increasingly computerized world.

9. The growing globalization had also intensified transborder movements of individuals and corporations. Even though many misunderstandings between Philippine nationals and their host countries were often solved at a local or consular level, the Commission's work on diplomatic protection was without a doubt more than ever important. For a country like the Philippines whose nationals helped fuel the globalized economy and who continued to live in other countries, diplomatic protection was a high priority. It was an institution of longstanding, the practice in the matter was clear and the derogations few. The Commission had given welcome attention to that issue. Moreover, the identification, comparison and analysis of the different bases of the institution of diplomatic protection reflected the legal expertise and scholarship expected of the Commission. Nevertheless, any significant change in concepts of diplomatic protection, especially the relationship between a State and the national it sought to protect, should be approached with caution. He believed that it was preferable to maintain the existing legal concepts and codify them. A re-examination of State practice would perhaps show that States generally preferred to invoke norms based on classical concepts.

10. There would regrettably be areas where the juridical concept of diplomatic protection as currently formulated might prove inadequate because diplomatic protection required the presence of State actors. Recently, a non-State actor had refused to heed the call of the international community to release the nationals of a certain State and those nationals had eventually been executed. The Philippines was not of the view that the current rules of diplomatic protection should be changed so that a State could deal with a non-State actor, but it hoped that one day the law would prove adequate in preventing similar situations.

11. **Mr. Rao** (Special Rapporteur, International Law Commission), bringing to a close the discussion on international liability for injurious consequences arising out of acts not prohibited by international law, said that as Special Rapporteur, he had to work along the lines indicated by the Commission and the Committee, and thus to conclude the elaboration of draft articles on prevention. He was pleased that most of the members of the Committee approved the work done in that connection. As for the scope of the topic, the Commission had tried to be practical and had therefore initially set aside consideration of certain questions, such as the global commons, that some members would have liked to see dealt with in the draft articles. Moreover, with regard to prevention, only activities involving a risk of causing significant transboundary harm had been considered and not harm that had actually been caused. The question of liability would in any case be dealt with eventually, but it had been a matter of timing. In response to the comment that the Commission should have dealt with significant risk of causing harm rather than with risk of causing significant harm, he believed that if all harm had been taken into account, the

notion of threshold would necessarily have been affected. Furthermore, the Commission could not depart too drastically from the solutions adopted in the Convention on the Law of the Non-Navigational Uses of International Watercourses, and it had had to be realistic.

12. There had been comments on the provisions relating to settlement of disputes, non-discrimination and information to the public. Those provisions came under the progressive development of the law, and that trend was certainly more marked at the regional level. The concept of system was a familiar one in watercourse law, and it was likely that if development activities were conducted within a regionally integrated system, the provisions in question would seem much more acceptable.

13. Comments had also been made on the notion of diligence and on how to determine if due diligence had in fact been exercised. The Commission had chosen what had seemed to it the most reasonable solution, namely, to take account of the nature of the activity conducted and the level of technical development of the State of origin and of the injured State. In any case, the Commission and the Special Rapporteur had noted all comments made by delegations, and would not fail to bear them in mind in working further on the topic.

14. **Mr. Baker** (Israel), referring to unilateral acts of States, said that his delegation doubted the usefulness of trying to divide such acts into the categories of "protest" and "promise". Such an attempt would in fact distract from the central question, which was to determine the boundaries of the legal consequences of unilateral acts. The law of treaties was the most appropriate framework for the creation of international legal norms, and most unilateral acts of States fell within the law of treaties or under a rule of customary international law. Hence, they were not autonomous as unilateral acts.

15. Another major difficulty lay in the virtual impossibility of distinguishing between unilateral acts aimed at creating a normative legal obligation and those which were purely political in nature. His delegation agreed with the Rapporteur's conclusion that the task was so complex that it might lead nowhere. The suggested focus on the "intention" of the performing State as a leading criterion was problematic since that element did not lend itself to objective evaluation.

16. It would, moreover, be inappropriate to use specific formal criteria to characterize a binding legal declaration. Given the impossibility of finding a more scientific definition of a unilateral declaration, one was forced to come back to the three prior conditions proposed by the Rapporteur: the intention of the declaring State, the circumstances in which the declaration had been made and the contents of the declaration. In practice, however, the first and second criteria were often seen as one because the circumstances were usually perceived as the only means of evaluating intention. While recognizing the importance of the principle of good faith in contractual international relations, his delegation did not consider it an adequate basis for determining the binding nature of a declaration. Contrary to what was the case in the law of treaties, reciprocity was not needed in the case of a unilateral declaration, nor was any notification of acceptance of the declaration by other States. His delegation was convinced that any attempt to classify unilateral declarations within strict categories would run counter to the actual practice in the international arena. Any attempt to set strict boundaries would impede political manoeuvring by States, with the inevitable result that practical ways would be found to bypass the restrictions. It was imperative to limit the topic as much as possible and to restrict consideration to the existing international principles of good faith, estoppel and international customs and practice.

17. With regard to the question of nationality in relation to the succession of States, he said that consideration should be given to defining succession, in draft article 2 (a), as "the replacement of one State by another in the responsibility for the administration of territory and its population", rather than "... for the international relations of territory". While supporting the principle of presumption of nationality, as laid down in draft article 4, his delegation felt it important to stress that such presumption was subject to any specific arrangements that might be reached by the parties concerned in order to address the problem of temporary statelessness. In addition, it would be preferable, for the sake of consistency, to harmonize the text of draft articles 10 and 18 and to use the expression "genuine and effective link" in both articles. As for article 11, on unity of a family, the issue did not strictly relate to nationality and should be handled in the context of a human rights forum. Similarly, the concept of habitual residence covered by draft article 13 was not directly related to the issue of nationality. It might be preferable to subject the issue to a more detailed analysis independent of the question of nationality. Lastly, his delegation believed that the question of the nationality of legal persons should also be given separate consideration.

18. With regard to reservations to treaties, dealt with in chapter IX, his delegation wished to reply to the question contained in paragraph 41 as to whether unilateral statements by which a State purported to increase its commitments or its rights in the context of a treaty beyond those stipulated by the treaty itself would or would not be considered as reservations. In his delegation's view, there should be a distinction between

unilateral statements designed to extend the obligations of a State party and those designed to increase its rights: in the former case such a commitment did not constitute a reservation, while statements of the latter kind, which sometimes constituted a derogation from a State's commitments and could therefore be regarded as limiting the obligations of their author, could constitute a reservation. For that reason, his delegation agreed with the text of draft guideline 1.1.5 and the first part of draft guideline 1.1.6, the second part of which would gain from further clarification. Lastly, it believed that the question of unilateral statements relating to non-recognition should be given further consideration.

19. **Mr. Akbar** (Pakistan) said that he supported the general approach adopted by the Commission in the study of nationality in relation to the succession of States. It was, however, important that the draft articles should not encourage dual nationality. Nor was his delegation in favour of including the right of option contained in draft article 10. While recognizing the importance of the principle of family unity, his delegation considered that habitual residence ought to be considered the most important criterion in determining nationality. As for the form that the draft articles should take, his delegation believed that they should be adopted as a declaration of the General Assembly.

20. With regard to reservations to treaties, the rules established by the Vienna Conventions were generally accepted and respected. There should be no distinction between treaties: all laid down normative rules, so that establishing a regime specific to human rights treaties would make them less universal. States should therefore retain the possibility of making reservations, so long as they were compatible with the object of the treaty. Care should be taken not to alter fundamentally the relevant provisions of the Vienna Conventions.

21. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, he believed that by describing the harm arising from such acts as "significant" there was a risk of getting bogged down in discussions over the meaning of the word. It would therefore be better to delete it and to consider that it would suffice that "harm" had occurred for the injured State to be entitled to reparation.

22. Lastly, with regard to chapter VII of the report, his delegation believed that only States directly injured by a wrongful act should have the right to react and even then they should have to prove that they had suffered harm.

23. **Mr. Yamada** (Japan) said that the topic of unilateral acts of States, dealt with in chapter VI of the report, was undoubtedly one of the most difficult subjects that the Commission had taken up. The Special Rapporteur proposed to limit his work to strictly unilateral legal acts. His delegation supported that approach, bearing in mind that the purpose of the work was to promote legal stability and ensure the rule of law.

24. With regard to the political acts of States, which the Special Rapporteur proposed to exclude from consideration, it seemed difficult to distinguish such acts clearly from unilateral legal acts. In practice, almost all unilateral declarations made by States could be categorized as political acts, even though some might have legal effects. The Special Rapporteur would therefore have to devise effective criteria to differentiate between them. Noting that he also suggested excluding estoppel and acquiescence, the delegation of Japan believed that at the current stage the Commission should not be too restrictive. According to the Special Rapporteur, one of the two basic elements constituting "strictly unilateral acts" was their autonomy. Certainly the notion was important, but it was doubtful whether a purely autonomous act really existed in State practice. As for the scope of the work, his delegation would, given the inherent difficulty of the topic, prefer to limit it to unilateral acts issued to other States.

25. With regard to chapter VIII, his delegation fully shared the view expressed in paragraph 460 that, as the definition of the topic stood, the issues involved in the second part of the topic were too specific and the practical need for their solution was not evident. His delegation therefore thought that the Commission should not continue the study of the second part of the topic as currently defined. On the other hand, it would have no objection if the Commission considered the nationality of legal persons in international law in general, as a new topic.

26. With regard to chapter IX, his delegation commended the Commission and the Special Rapporteur on the excellent results that they had achieved, in the form of a text of draft guidelines on reservations to treaties, adopted on first reading. The guidelines were useful in supplementing the regime of reservations established by the Vienna Conventions, but it was regrettable that issues such as statements at the time of non-recognition or substitution, which had been raised by the Special Rapporteur, had not been included. The guidelines should be comprehensive, covering all State practices. Noting that paragraph 41 solicited comments on whether unilateral statements by which a State purported to increase its commitments or its rights in the context of a treaty beyond those stipulated by the treaty itself would or would not be considered as reservations, his delegation believed that at first sight such statements did not seem to constitute reservations, but the answer really depended on their specific formulation.

There might be cases where they could be considered as modifying the legal effects of certain provisions. The Commission should examine State practice in that regard and come up with clear guidelines.

27. **Ms. Dascalopoulou-Livada** (Greece), referring to chapter VIII of the report, said that Greece had sent its observations on the text adopted on first reading, following the work undertaken by the Special Rapporteur. The Commission faced a difficult task, since the question was not purely theoretical and had specific implications. It was, however, worth pursuing, albeit within the general context of the succession of States.

28. With regard to State responsibility, the Commission had made great progress, enabling it to indicate where the basic difficulties lay. Her delegation believed that the pace of the work should be increased and high priority accorded to the question, so that the second reading of the text could be proceeded with expeditiously, as provided in the Commission's programme.

29. With regard to the form that the draft articles should take, her delegation favoured an international convention as opposed to a declaration or guidelines. The conventional form was best suited to the nature of the rules on State responsibility. Secondly, the discussions within the Commission basically revolved around the question of whether the notion of State crime could indeed be sustained and whether the distinction between criminal and delictual responsibility should be the one employed. In her delegation's view, the notion of State crime, as expressed in article 19 of the draft text, was fundamental. Together with other notions already entrenched in international law, such as those of collective security and *jus cogens*, the notion of State crime constituted one of the pillars for the creation of an international public order. Furthermore, the notion was firmly rooted in the public conscience as a reality which could not be ignored by the law. It seemed, however, that the use of the term "crime" generated problems deriving from its domestic law connotations, even if a State crime could obviously in no way be compared with crimes under domestic penal law and its consequences were not comparable to those under domestic penal law. If there was any real danger of confusion, the use of an alternative expression, such as "exceptionally serious wrongful act" could be envisaged. Her delegation, however, preferred the term "crime", since it clearly denoted the gravity of the wrongful act envisaged.

30. As to the term "delict", it lacked a generally accepted significance and, in that sense, its use was perhaps not indispensable. It did, however, provide the necessary contradistinction to "crime" and, were the latter term to be retained, there would be no option but to retain the term "delict" as well. As in the case of State crimes, any connection between State delicts and delicts under domestic law should be excluded and such terms should always be understood within their context.

31. Concerning the relationship between the criminal responsibility of States and other, related concepts, such as obligations *erga omnes* and peremptory norms of international law (*jus cogens*), she said that the latter were much broader notions. "State crimes" were more serious than acts violating rules with a *jus cogens* character. Furthermore, the rules relating to State crimes were not subject to any exception. Violations of *jus cogens*, meanwhile, formed a narrower category than acts contravening obligations *erga omnes*. "State crime" could therefore not be replaced by either of the other two notions.

32. Part Two of the draft articles, on the consequences of an internationally wrongful act, was most complex but failed to live up to her delegation's expectations: the different categories of consequence appearing under different chapters of that Part did not seem well organized, perhaps because they reflected the indecisiveness of Part One. A general reorganization would therefore appear necessary in order to take into account the choices made in Part One. With regard to the content, her delegation attached great importance to chapter IV on international crimes, and in particular to draft article 53, which delineated the obligations of all States when an international crime was committed and which, in her delegation's view, should be strengthened.

33. **Mr. Omotosho** (Nigeria), referring to chapter IV of the report, welcomed the Commission's recommendation of a regime of prevention, which, however, would have to be accompanied by a regime of liability. Even if a transboundary activity was legally permissible, due diligence had to apply; if it did not, liability would arise. His delegation also welcomed the provisions in the draft articles dealing with the question of hazardous wastes and the prevention of marine pollution. The absence of such an instrument in the past had prevented the Nigerian Government from dealing effectively with what was known as the "Koko toxic waste incident", when radioactive hazardous waste had been dumped in Nigeria. With regard to public information, States should be obliged to provide information to the public regarding the activity and the risk involved and, furthermore, should ascertain the views of the public. That would also help Member States with limited technological capacities to grasp the consequences of the action in their territories. His delegation believed that the draft articles should take the form of a framework convention for adoption in national laws by interested States parties.

34. With regard to diplomatic protection, which was a sovereign prerogative of the State as a subject of international law, his Government was currently giving careful consideration to the recommendations contained in paragraph 108 of the report and would shortly supply the information there required. His delegation considered that diplomatic protection should not be applied discriminately nor used by a stronger State against a weaker State nor invoked as an excuse to interfere in the affairs of a weaker State. As the Working Group had emphasized, the importance of the Calvo doctrine could not be overestimated.

35. With regard to reservations to treaties, his delegation regretted that the Rome Statute of the International Criminal Court foreclosed the use of reservations. Reservations could be used, provided that their use did not totally defeat the intentions of the treaties. The Commission should continue its work in that area. Lastly, with regard to unilateral acts of States, his delegation thanked the Working Group and the Special Rapporteur for their excellent work and said that his Government was giving the Working Group's recommendations careful consideration.

36. **Mr. Choi Seung-hoh** (Republic of Korea), referring to the second part of the topic of nationality in relation to the succession of States, i.e., the question of the nationality of legal persons, said he did not regard as feasible the first option suggested by the Working Group on the question, which consisted of expanding the study of the question of the nationality of legal persons beyond the context of the succession of States to the question of the nationality of legal persons in international law in general. Although it would contribute to clarifying the question of the nationality of legal persons in international law in general, it would present numerous practical difficulties because of the diversity of national laws in relation to the question. The second option suggested by the Working Group, i.e., to limit the scope of the study to the succession of States, also seemed unattractive because of the problem of the diversity of national laws on the subject and also because it seemed difficult to limit the study of that question to State succession alone. Since the question was not a pressing international law issue, as was shown by the low incidence of legal disputes relating to it in recent cases of State succession, and since it was in any case generally dealt with in the context of private international law rather than that of public international law, he proposed that the Commission should decide not to consider it.

37. With regard to the question of the nationality of natural persons in relation to the succession of States — a question not without interest for his country, which remained divided but aspiring to reunification — he thought that a larger place should be given to questions relating to human rights and that any draft provisions should provide normative indications, so that a State's obligations would be owed directly to individuals on the basis of habitual residence, family unity, social and economic welfare and other humanitarian considerations, since certain human rights were so fundamental that they transcended national boundaries. That having been said, the two propositions, that the predominant vehicle of linkage between individuals and State was nationality and domicile, and that human rights were inherent to human persons and based on the inviolability of human dignity and integrity, were linked and should be kept so.

38. **Mr. Pfirter** (Observer for Switzerland) said that he shared the views expressed by the Special Rapporteur on the notion of unilateral legal acts and on the definition of the topic to be studied. He agreed that unilateral legal acts were manifestations of intention on the part of one or more States with respect to other subjects of international law and were intended to produce legal effects independent of the intervention of another subject of international law. That definition would lead to the exclusion of the following categories: unilateral acts which were not legal acts because they were not intended to produce legal effects, i.e., rights or obligations for their authors, such as so-called political acts and acts which were only the vehicle for other acts which themselves constituted unilateral legal acts, such as notification; legal actions, i.e., the conduct of States, which might be lawful or unlawful and, in the latter case, generated international responsibility, but were not intended to establish general or individual rules; legal acts — offer, acceptance, signature, ratification, the formulation of reservations — which were not really unilateral because the prior or consecutive action of one or more other subjects of international law was necessary for them to produce a legal effect; and legal acts carried out by international organizations because even when they were genuine unilateral legal acts they were special in character and purpose and thus required special rules, while in any case they did not fall under the Commission's mandate.

39. He also agreed with the reasoning of the Special Rapporteur with regard to estoppel and silence. In the case of estoppel, he shared the Rapporteur's view that it did not constitute a truly unilateral act because it was not specifically intended to create an obligation by the State invoking it and because in any case the characteristic element of estoppel was not the conduct of the State in question but the reliance of another State on that conduct. He also agreed with the Special Rapporteur that a unilateral legal act could be either individual or collective: thus, when two or more States agreed to give up to a third State a territory over which they exercised

common sovereignty, the treaty concluded to that effect was a bilateral or multilateral legal act but the promise it contained to the third State with respect to which it had been made was unilateral in nature. That was why he had doubts concerning those conclusions of the Working Group which had been asked to study the problem of unilateral legal acts which differed from those of the Special Rapporteur on estoppel and silence.

40. Responding to the questions raised by the Commission in paragraphs 29 and 30 of its report, he said that with respect to the question of whether the scope of the topic should be limited to declarations or extended to other unilateral expressions of the will of the State, he considered it self-evident that a unilateral legal act existed only to the extent that the State carrying it out had the clear intention of establishing a rule; as such an act usually took the form of a declaration, but perhaps not always, the expression "declaration" seemed unduly restrictive and should be replaced by the term "act". With respect to the question of whether the scope of the topic should be limited to unilateral acts of States issued to other States or whether it should also extend to unilateral acts of States issued to other subjects of international law, he wondered why the scope of the study should be limited to unilateral legal acts issued by States to other States, especially as such acts were often issued both to States and to other subjects of international law, including international organizations.

41. Lastly, he agreed with the Commission's decision not to prejudge the final form — whether convention, guidelines or recommendations — that should be given to the set of articles being prepared on the question of unilateral legal acts, as that would depend entirely on the results of its work.

42. **Mr. Tang Chengyuan** (Secretary-General of the Asian-African Legal Consultative Committee) said that the subjects of chapters I to VI of the report of the International Law Commission (A/53/10) were of immense interest to the Governments of the African and Asian regions, as well as to the Asian-African Legal Consultative Committee (AALCC). Concerning State responsibility, in particular the difficult and controversial question of countermeasures, he expressed the view that the first countermeasure which the injured State could take was not to comply with one or more of its obligations towards the wrongdoing State. Secondly, the injured State should not resort to countermeasures based on its unilateral assessment, as if that assessment were incorrect, it was taking a risk for which it could incur responsibility for a wrongful act. Furthermore, inasmuch as the right of an injured State to resort to countermeasures was circumscribed by the desired outcome, a proper evaluation of the subject was still required. The law relating to countermeasures had also been discussed during the seminar "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties", which AALCC had organized in Tehran in January 1998. On that occasion, it had been generally agreed that the rules of prohibited countermeasures formulated by the Commission in its draft articles on State responsibility should be applied in order to determine the legality of countermeasures purportedly effected by the extraterritorial application of municipal legislation. Those rules included the prohibition of injury to third States, the rule of proportionality and the rules relating to prohibited countermeasures incorporated in article 13 of the draft on State responsibility. The participants in the seminar had emphasized that the peaceful settlement of disputes should be the peremptory norm and also highlighted the interplay between countermeasures and non-intervention, as well as between countermeasures and the unilateral imposition of economic sanctions. The need for the Commission to review the formulation of principles concerning countermeasures vis-à-vis sanctions had been similarly highlighted.

43. It had also been generally agreed at the seminar that the validity of any unilateral imposition of economic sanctions through the extraterritorial application of national legislation should be tested against the accepted norms and principles of international law. The principles discussed included those of sovereignty and territorial integrity, sovereign equality, non-intervention, self-determination and freedom of trade, in addition to the right to development and permanent sovereignty over natural resources. AALCC recognized that the extraterritorial application of national legislation was necessary in certain instances and that contemporary international law provided for the extraterritorial application of municipal legislation in such instances as the performance of consular functions or the control of drug trafficking. It therefore sought to define the general theoretical principles governing the permissible or impermissible exercise of such measures.

44. AALCC had observed that the Commission had yet to find proper direction in furthering its work on the subject of international liability for injurious consequences arising out of acts not prohibited by international law. A view had been expressed that despite the confusing title the substance was very clear. The view had also been expressed that the Commission's work on prevention of transboundary damage should include the issues of liability and compensation. A further view had been that the duties of prevention should be distinguished from those of notification, which entailed duties of consultation and negotiation, and that the consequences of failure to fulfil the duties of prevention should be dealt with under State responsibility.

45. Having considered the Commission's preliminary conclusions on reservations to normative multilateral treaties, AALCC had emphasized the universal acceptability of the Vienna regime and proposed that any ambiguities and gaps could be filled by commentaries based on an empirical study of the behaviour of States and their underlying motives with a view to developing the reservation regime by way of interpretative codification. The question of whether reservations to human rights treaties were different from reservations to other normative treaties had been raised, as had been the question of whether human rights treaties should be classified among those which admitted no reservations. In that regard, it had been pointed out that the human rights covenants predated the 1968 Conference on the Law of Treaties between States and International Organizations or between International Organizations, which had not deemed it necessary to differentiate human rights treaties from other treaties. As AALCC shared that view, it could not agree with the text of paragraph 3 of the preliminary conclusions. On the other hand, having considered the functions and role of the monitoring bodies in appreciating or determining the admissibility of a reservation, AALCC had expressed approval of the Commission's view that the legal force of the findings made by such bodies in the exercise of their functions could not exceed those resulting from the powers given to them. However, the suggestion of providing specific clauses or elaborating protocols to confer competence on the monitoring body to appreciate or determine the admissibility of reservations had met with resistance, the fear being that a strict regime of reservations with a monitoring body at its apex would impair the objective of universality.

46. With regard to the topic of nationality of natural persons in relation to the succession of States, the view had been expressed that the draft articles were fairly flexible and provided enough options for States to adopt the draft.

47. The subject of diplomatic protection was of interest to the member States of AALCC in that it complemented the Commission's work on the subject of State responsibility, particularly since a view had been expressed that the item should be restricted to internationally wrongful acts. In that regard, the stipulation contained in the Hague Convention of 1930 whereby a State could not accord diplomatic protection to one of its nationals against a State whose nationality that person also possessed was still applicable. Given the increasing trend towards exchange of persons and commerce across States, which encouraged dual or even multiple nationalities, AALCC felt that any departure from the established principle could have unforeseeable consequences. Although, as a matter of principle, a State could espouse claims only on behalf of its nationals, the Commission might wish to consider the case of claims of non-nationals forming a minority in a group of national claimants. The scope of such a study, however, should be restricted and exclude from its purview the question of protection claimed by international organizations on behalf of their agents.

48. The Commission's objective should be to identify the constituent elements and effects of unilateral acts of States, a subject closely linked with that of the extraterritorial application of national laws. It should also formulate rules generally applicable to such acts.

49. Lastly, the International Criminal Court should be an independent, impartial and efficient judicial institution based on the principles of complementarity, State sovereignty and non-intervention in the internal affairs of States. In addition, the Statute of the Court should be such as to win wide acceptance by States so that it could be established as a universal institution.

The meeting rose at 5.25 p.m.