1486th meeting

Monday, 28 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1486

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)* (A/C.6/L.987, L.989)

1. Mr. WEHRY (Netherlands), introducing draft resolution A/C.6/L.987 on behalf of the sponsors, said that a rather large gathering of representatives from all the regional groups had held four lengthy and rather difficult internal meetings so that a sampling of sponsors from the various groups could submit a text truly reflective of consensus by compromise. He felt sure that the Committee as a whole would be grateful if the resulting draft resolution, which concluded five years of intensive and critical examination of one of the six principal organs of the United Nations, the International Court of Justice, could be adopted unanimously.

2. The participants in the informal consultations had sacrificed many of their views when they had finally agreed on the text of draft resolution A/C.6/L.987. The Netherlands, which hosted the Court with a pride deriving from that country's attachment to the ideal of universally harmonized adjudication of disputes between States, considered that text a severely pruned minimum of what it had originally had in mind. His delegation felt that the international community owed to the ideal incorporated in the Charter more constructive and more hopeful language. It recognized, however, that there was little advantage in papering over the realities of State practice at the current time. If the draft resolution could be adopted by consensus, the Committee would have completed a useful examination of the role of the Court.

3. Speaking for the Netherlands delegation only, since there had been no time to consult all the sponsors of draft resolution A/C.6/L.987, he expressed regret and concern at the amendment contained in document A/C.6/L.989. The sponsors of the amendment knew, from the informal consultations and many private talks on the subject matter of their amendment, that there could be no consensus but only very sharp and even passionate debate from the questions of principle raised by any admonition to the Court. The Netherlands considered the Court an independent organ and felt that it would be contrary to the Charter for the General Assembly to draft such an admonition to it. Whether the amendment was adopted or rejected, he reserved the right to describe in detail the three great dangers which his delegation saw in having the Sixth Committee and the General Assembly entertain such a text. At the current juncture, he would confine himself to appealing most earnestly to the supporters of the amendment not to press that most divisive issue to a vote. It was an issue which, in his delegation's view, would more properly be discussed under a separate agenda item or under an item such as that relating to the review of the Charter. He appealed to the understanding and goodwill of the sponsors not to breach a consensus that had been reached with such great difficulty.

4. Mr. GOMEZ ROBLEDO (Mexico), introducing amendment A/C.6/L.989 on behalf of the sponsors, said that it actually served to supplement draft resolution A/C.6/L.987. The sponsors fully endorsed the draft resolution, but, as had been reiterated both in the Sixth Committee and in the informal consulting group, they felt that it was improper for the draft resolution to make no reference to declarations and resolutions adopted by the General Assembly, which were unquestionably a reflection of the most recent developments in contemporary international law. The purpose of the amendment was to fill that gap. It was hardly conceivable that the main legal organ of the United Nations should show a total lack of interest in the proceedings of the most important organ of the Organization, namely the General Assembly.

5. He stressed that the amendment in no way altered or introduced any new element into Article 38 of the Statute of the International Court of Justice. In other words, it was not a question of adding another source of international law to those enumerated in that Article but rather of drawing attention to certain elements of legal interpretation to which the Court must inevitably have recourse when deciding in accordance with international law such disputes as were submitted to it—in strict implementation, of course, of Article 38 of its Statute. The Court unquestionably had to take account of international custom as reflected in the many resolutions and declarations adopted year after year by the General Assembly, whose very reiteration was irrefutable proof of the *diuturnitas* which had traditionally been recognized as one of the constituent elements of international custom. He mentioned by way of example the General Assembly resolutions condemning colonialism, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, and the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. Those and many other General Assembly declarations and resolutions of a similar type reflected the desire of Member States to promulgate juridical rule of unquestionable validity to which they all subscribed, in other words, the general *opinio juris*, which was the second traditional element of custom. The amendment contained in document A/C.6/L.989 was thus more conservative than its opponents might think, since it merely drew attention to an important element in the interpretation of Article 38, and particularly paragraph 1, subparagraphs b and c thereof.

6. It would be strange, to say the least, if the Court were to take into account the teachings of the most highly

qualified publicists as subsidiary means for the determination of rules of law and not also the unanimous and reiterated pronouncements of the international community as a whole, as represented in its most authoritative forum, the General Assembly of the United Nations. Moreover, the amendment was a selective one and did not accord the same value to all declarations or resolutions adopted by the General Assembly. It referred only to those which reflected developments in international law resulting from the agreed practice of States.

7. As he had said in the general debate (1470th meeting), his delegation had felt that it would be useful to amend the provisions of Article 38 of the Statute of the Court, as proposed by the delegation of Austria in its reply to the questionnaire of the Secretary-General[1] to include non-binding resolutions and declarations of international organizations among the subsidiary means for the determination of rules of law. Amendment A/C.6/L.989 did not go so far as to propose such a reform—which seemed, to his delegation, plausible although not viable at the present time—but merely aimed at adding an element for the interpretation of Article 38 in accordance with the function of the Court and the development of international law. It was designed, in its application, to rejuvenate Article 38, the formal origin of which went back over half a century and, as many scholars had said, had its roots in the classic international law of the nineteenth century.

8. It might perhaps be asked why there was no reference to declarations or resolutions of international organizations —or at least of their principal organs—in Article 38. The reason was simply that in 1920, when that provision had been adopted as a part of the Statute of the Permanent Court of International Justice, no such declarations had existed nor had they been envisaged. Moreover, the Permanent Court of International Justice had not been an organ of the League of Nations.

9. When Article 38 of the Statute of the International Court of Justice had been formulated at San Francisco on the basis of Article 38 of the Statute of the Permanent Court of International Justice, the latter text had been taken over as it stood, although it was clear that the international organization was currently quite different from what it had been 50 years earlier. Under the provisions of the Charter, the promotion of international law in its multifarious aspects was a duty of the principal organs of the United Nations. In that connexion, he drew attention to Article 13, paragraph 1, subparagraph a, of the Charter; the function of encouraging the progressive development of international law and its codification referred to therein should be entrusted to the International Court of Justice by virtue of the close relations which it maintained with other United Nations bodies.

10. The amendment contained in document A/C.6/L.989 represented an attempt to reconcile the old and the new or, in other words, to give the instruments in force a new spirit in accordance with the contemporary world.

11. He had taken note of the Netherlands appeal, but, speaking on behalf of his own delegation, he did not feel it possible to withdraw the amendment. There were legitimate grounds for hoping that a consensus might be reached if the amendment was adopted. His delegation would be open to any other amendment which might improve the draft, and he reiterated that the sponsors of the amendment were not trying to introduce any other source of law than was already covered by Article 38 of the Statute of the Court.

12. Mr. SA'DI (Jordan) said that he would appreciate further clarification concerning amendment A/C.6/L.989. The English text appeared incomplete. It was not made clear for what purpose the Court should take into account the developments in international law reflected in declarations and resolutions adopted by the General Assembly. The words "take into account" also seemed ambiguous.

13. Mr. GOMEZ ROBLEDO (Mexico), speaking on behalf of his own delegation only, said that the intended meaning was that the International Court of Justice, when determining applicable rules of international custom and the general principles of law recognized by civilized nations in respect of any case submitted to it, should draw upon United Nations declarations and resolutions.

14. The CHAIRMAN announced that Italy had joined the sponsors of draft resolution A/C.6/L.987 and that Kuwait had joined those of amendment A/C.6/L.989.

15. Mr. WEHRY (Netherlands) said that it was clear from the statement by the representative of Mexico, as it had been from the informal consultations, that the intentions of Mexico and the other sponsors of amendment A/C.6/L.989 were quite acceptable to many delegations, including his own. It was quite clear that no effort was being made to introduce a new source of international law. However, he did not feel that the intention behind amendment A/C.6/L.989 was duly reflected in its wording. The difference was one of form and not one of substance. Yet, if difficulties of interpretation arose at the present juncture, how much more likely was misinterpretation at a later stage. He proposed that the sponsors of draft resolution A/C.6/L.987 and those of amendment A/C.6/L.989 should meet with other interested delegations for further informal consultations before either document was put to the vote.

It was so decided.

16. Mr. PETRELLA (Argentina) drew attention to an error in the Spanish translation of the draft resolution contained in document A/C.6/L.987. In paragraph 6, the last part of the sentence should read as follows: "... *no debería ser considerado un acto inamistoso entre los Estados*". He asked the Chairman to request the Secretariat to bring the Spanish text into line with the English.

17. Mr. WEHRY (Netherlands) said that there were also some errors in the French translation of the draft resolution. In paragraph 3, the word "*constamment*" should be deleted. Also, in paragraph 6, the last part of the sentence should be amended to read as follows: "... *ne devrait pas être considéré comme un acte d'inimitié entre Etats*".

18. A slight correction should also be made in the English text. The first "by" in the sixth preambular paragraph, appearing in the phrase "by judicial settlement of dis-

[1] See A/8382, p.25.

putes", should be replaced by the word "for". The passage following "Rules of Court," would thus read as follows: "with a view to facilitating recourse to it for judicial settlement of disputes,".

19. The CHAIRMAN said he would ask the Secretariat to make the relevant changes.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

20. Mr. CASTRÉN (Finland) expressed appreciation to the Chairman of the International Law Commission for his excellent introduction of its report (A/9610 and Add.1-3). Despite its very full work programme, the Commission had succeeded in completing a large part of it, including what he regarded as the most important part, namely, its work on succession of States in respect of treaties.

21. He recalled that the Commission's first set of draft articles on the topic[2] had been well received in the Sixth Committee at the twenty-seventh session and that at that time (1320th meeting) his delegation had stated that the draft articles were based on sound principles that were accepted by a majority of States and of legal authorities. The new set of draft articles (see A/9610, chap. II, sect. D) was in many respects a considerable improvement on the earlier one. The substance and, in particular, the form of various provisions had been changed, generally for the better. The order of the articles had been changed, some articles had been combined and others divided up, and some new articles and supplementary provisions had been added to make the text clearer, although it had in places become rather cumbersome. The Commission had tried to take into account as much as possible the oral and written comments of Governments. The present text was, on the whole, very satisfactory and constituted a good basis for a future convention on the subject.

22. With regard to paragraph 81 of the Commission's report, his delegation felt that it would be desirable for a convention on succession of States in respect of treaties to contain provisions governing the settlement of disputes that might arise from the interpretation or the application of its articles; however, he proposed that that question should be left for a decision by the conference of plenipotentiaries.

23. His delegation had no comments to make on the first five articles of the draft, nor would it oppose article 6, although it seemed to go without saying that the articles of the draft would apply only to the effects of a succession occurring in conformity with international law. Article 7 seemed superfluous since non-retroactivity was a general principle of the law of treaties reflected in article 28 of the Vienna Convention on the Law of Treaties.[3] Article 8, paragraph 2, and article 9, paragraph 2, should be deleted since they added nothing, as should article 13.

24. The words "any territory, not being part of the territory of a State, for the international relations of which that State is responsible" in the introductory part of article 14 were not clear, and he suggested that the expression "territory under the ... administration of a State", contained in article 10 of the 1972 draft, should be used instead. On the other hand, he supported the addition of the words "or would radically change the conditions for the operation of the treaty" at the end of article 14 *(b)*.

25. He supported the appropriate changes which had been made in articles 16-19 and also the more flexible wording given to article 20. Article 21 also differed in a number of ways from the corresponding article of the 1972 draft, and it would seem that the new paragraph 4 was superfluous. The new article 22 concerning the effects of a notification of succession was a significant improvement on the former article 18, and the three articles 26-28 concerning provisional application were a successful development of their counterparts in the 1972 draft.

26. The text of the new article 29 had become too long, but it was also more precise and more complete. It might be appropriate to insert in paragraph 1 of the article an explicit reservation taking into account the many exceptions contained in paragraphs 2 and 3 to the rule established in paragraph 1. He supported the modifications made in the text of article 26 of the 1972 draft, now article 30, including the distinction made between articles 14 and 30 and the deletion of former article 26, paragraph 3. The Committee had developed the rules governing the effects of a uniting of States in respect of treaties by adding two new articles, 31 and 32, both of which he supported. The Commission had been right to limit the application of those provisions to multilateral treaties by contrast with article 30, which also concerned bilateral treaties.

27. Article 27 of the 1972 draft had been criticized by his delegation (1320th meeting) when it had been examined in the Sixth Committee on the grounds that in State practice the principle of continuity with regard to succession to treaties was only valid in the case of the dissolution of a union of States whose members had possessed a certain degree of international personality, whereas in other cases of dissolution, where it was a question of the disappearance of a unitary State, it would be better to apply the "clean slate" principle. He was therefore pleased to note that the Commission had somewhat altered its position by deleting former article 27 altogether and replacing that and article 28 by two new articles, 33 and 34. However, the principle of continuity was still the point of departure in the new text, although there were many exceptions which could easily alter the presumption in State practice in favour of the "clean slate" principle. Article 33, paragraph 3, in particular, by its rather vague wording, allowed many possible interpretations in one way or another. It was probable that States would prefer freedom of action if it suited them. As in the case of the uniting of States, the Commission had rightly added two new articles, 35 and 36, to the provisions concerning separation of parts of a State.

28. A new draft article 37 governed notification under articles 30, 31 and 35. Since the provisions of that article were essentially the same as those contained in article 21 concerning notification of succession, the two articles could

2 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

3 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

easily be amalgamated. Article 31 of the 1972 draft had been split in the new draft into two articles, 38 and 39. While an express reservation might be called for concerning the international responsibility of a State, the other two reservations in those two articles were not necessary, since military occupation and the outbreak of hostilities between States could never give rise to succession in respect of treaties. The analogy with article 73 of the Vienna Convention on the Law of Treaties did not apply, as was stated in the commentary on those articles, since the situations governed by that Convention and the present draft were not the same.

29. Chapter III of the Commission's report dealt with the question of State responsibility. Because of the lack of time, the Commission had been able to adopt on first reading only the three new articles 7-9. Like the six preceding articles adopted in previous years, the text of the new articles was acceptable. It appeared from the commentaries on the articles that the rules contained in them were corroborated by State practice and almost all theory. Article 7, concerning the attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority, was useful. The conciseness of article 8 *(b)* was complemented by the detailed commentaries which clarified the difference between subparagraphs *(a)* and *(b)*. He supported retaining article 9 governing the relatively rare case of attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization. It should be emphasized that the expression "placed at its disposal" presupposed that the organs concerned could exercise their prerogatives only with the consent and under the exclusive direction and control of the territorial State, as stated in paragraphs (4) and (5) of the commentary. He hoped that the Commission would continue to prepare the draft articles on State responsibility.

30. Some progress had also been made on the question of treaties concluded between States and international organizations or between two or more international organizations. Those provisions adopted by the Commission were only the beginning of the whole set of draft articles (see A/9610, chap. IV, sect. B) and therefore only preliminary observations were called for. He agreed with the report concerning the draft's relationship to the Vienna Convention on the Law of Treaties and concerning the method to be followed in the preparation of the draft. At first sight, the text of the articles adopted seemed acceptable. The wording of article 3 was a little heavy and tautological, but the Commission had–rightly, he thought–preferred precision to simplicity.

31. He noted with satisfaction that the Secretariat had finished the supplementary report on the legal problems raised by the non-navigational uses of international watercourses (see A/9732) and that the Commission had designated a Special Rapporteur and established a Sub-Committee which had already submitted a report (see A/9610, chap. V, annex) to it on the matter.

32. The programme of work proposed by the Commission for its forthcoming session was acceptable, and the Commission had given sound reasons to extend its sessions to 12 weeks on a permanent basis.

33. The Commission had devoted several paragraphs of its report to rejecting the criticism of its methods of work made by the Joint Inspection Unit (see A/9795). He had not read that criticism, but was of the opinion that the Commission's composition, procedure, methods of work and organization were judicious, appropriate and efficient.

34. He was gratified to note that the International Law Seminar had again been successful and was pleased to announce that his Government had again offered a fellowship worth $2,000 for participants from developing countries in the International Law Seminar to be held in 1975 in Geneva.

35. Mr. ELIAN (Romania) congratulated the Commission on the positive results achieved during its twenty-sixth session, which constituted a valuable legal contribution to the development of détente and international co-operation.

36. The Commission had continued to study the question of succession of States in respect of treaties, and the 39 draft articles with their commentaries were a praiseworthy contribution to the future development of international law. On completing its work on that question, the Commission had singled out certain principles which were particularly applicable in international law. It had also given due attention to the importance of analogies with internal law for questions in international law. The Commission had also considered State practice, the concept of "succession of States", the relationship between succession in respect of treaties and the general law of treaties, and the principle of self-determination and the law relating to succession in respect of treaties. Its report indicated the scope and usefulness of the draft articles and the commentaries. In the modern world, with the definitive condemnation of colonialism and its gradual disappearance, new independent States were emerging, and the Commission's study was therefore of great current interest. The Commission's activities during the 25 years of its existence were of the greatest importance for the establishment of legal principles, definitions and standards for the modern organization of international relations; the definitions contained in article 2 were a good example. The Commission had made a good choice of models for certain articles and definitions by following the Vienna Convention on the Law of Treaties.

37. The Commission had taken into account the modern context of State practice with regard to succession. It had emphasized that the much greater interdependence of States in the modern world would make it necessary for successor States to maintain in effect the treaty relations of the territory to which they had succeeded, on the basis of the principles of the United Nations Charter. In that connexion, he drew attention to the Commission's concern with the question of recognition by the successor State of the obligations or rights of a predecessor State. The Commission had also been concerned to determine the necessary conditions under which a treaty was considered as being in force in the case of a succession of States. It should be emphasized that new States should be born and live in total independence. The principle of the independence of a successor State should be proclaimed in the draft articles, perhaps in one of the first of them. At the same time, there were sometimes obligations, mainly economic in

nature, which were based on the international agreements concluded by the predecessor State. International legality made it necessary in such cases to identify the moment when the obligations of the successor State began and to specify the principles and the method to be applied in order that a predecessor State or a territory that became a new State might continue its international life in the world community. The forthcoming conference which was to prepare a convention on succession of states in respect of treaties might wish to examine such problems with a view to expanding articles 15-19 and 24 of the draft.

38. The draft and the commentaries made a constructive approach to the questions concerning the effects of the uniting and separation of States. It might be preferable to put all the provisions concerning notification, which were somewhat scattered, in a single article—perhaps after article 37.

39. The final adoption of the draft by the Commission at its twenty-sixth session was very important, and the document could serve as a solid base for the future preparation of a convention by a suitable international conference.

40. The Commission had also studied the question of State responsibility (see A/9610, chap. III, sect. B). His delegation supported the Commission's decision to give its study the form of draft articles, thus following the General Assembly's recommendations in resolutions 2780 (XXVI), 2926 (XXVII) and 3071 (XXVIII). The scope of the question should be emphasized, as should the need to specify the limits of civil as opposed to criminal wrongfulness in international law. The main problems of State responsibility were unquestionably of current interest, namely, responsibility for acts of aggression and for crimes against peace and humanity. The United Nations Charter continued to provide the legal base on which the Commission could prepare the final draft articles on State responsibility. The remedies for the possible prejudicial consequences stemming from certain wrongful activities should be based principally on the obligations of Members of the United Nations contained in the Charter. The rules set forth in the final draft should take those principles into account. The Commission had adopted that approach by referring to general principles rather than violations of specific international obligations; and the report clearly stated in paragraph 13 that the draft articles dealt with the general rules of the international responsibility of the State for internationally wrongful acts.

41. The Commission had adopted the first provisions of the draft concerning the question of treaties concluded between States and international organizations or between two or more international organizations, the importance of which had first been recognized at the Vienna Conference in 1969. The General Assembly had then recommended by resolution 2501 (XXIV) that the International Law Commission should study the question in consultation with the principal international organizations.

42. The Commission's study of the law of the non-navigational uses of international watercourses was at a similar stage. The progressive development and codification of that sphere of international law was of great interest. With regard to his own country, the Danube basin could be used extensively for industrial, commercial and agricultural purposes. An extensive hydroelectric project at the Iron Gates had been undertaken jointly with Yugoslavia, and other projects of a similar kind were at an advanced stage of study. The problem of pollution should be given priority in the Commission's study, but his delegation would give further thought to the question of creating a committee of experts to deal with that problem.

43. His delegation looked forward to the results of the study begun by the Commission on the most-favoured-nation clause. The uninterrupted expansion of world trade was highly necessary during the currently developing détente.

44. His delegation would like to make some suggestions regarding the Commission's long-term work programme. In the first place, the Commission might take up the juridical implications under international law of the measures envisaged in the historic documents adopted by the General Assembly at its sixth special session, particularly the Declaration and Programme of Action on the Establishment of a New International Economic Order (resolutions 3201 (S-VI) and 3202 (S-VI)). Both the Declaration and the Programme repeatedly mentioned the new rules that should govern future relations among States. Their juridical implications under international law did not concern trade alone, which fell within the competence of the United Nations Commission on International Trade Law. They would instead have far-reaching implications for the new relations and international co-operation that should be established between the developed and the developing countries.

45. In the second place, the wide variety of juridical sources and internal State systems in the world often led to serious problems in the establishment and development of juridical, economic and even political relations. In particular, the socialist countries and the States that had recently become independent had made their own contributions to development and international juridical life. Any effort at codification should therefore take into account their experience, their traditions and their needs. Some delegations had expressed the view that the International Court of Justice should apply more widely the principles of law of different juridical systems. His delegation agreed with the statement made in paragraph 208 of the report of the Commission to the effect that the Court was entrusted with the task of applying international law to controversies between States, while the Commission performed the task of formulating draft rules of international law.

46. The principles of international law were highly regarded by his country. The President of Romania had often stressed the importance of ensuring absolute respect for international legality, which was closely linked with the principles of sovereign equality, independence and the right of nations to self-determination. His delegation had therefore examined with special attention the report of the Commission and the results of its work.

47. Mr. GÖRNER (German Democratic Republic) said that consideration of the draft articles on succession of States in respect of treaties had undoubtedly been a matter of priority at the twenty-sixth session of the Commission. It was with great interest that his delegation had taken note of the final draft articles.

48. The codification of the succession of States in respect of treaties should achieve the following objectives.

49. On the one hand, it was in the interest of all States to ensure that cases of State succession did not disturb existing international treaty relations which had been established in accordance with the generally recognized principles of co-operation. On the other hand, the entry into international relations of the successor State should be facilitated so as to enable it to exercise its rights as a sovereign State and to examine critically the treaties concluded by its predecessor State in order to continue them, apply them provisionally or terminate them.

50. The draft articles adopted by the Commission were now based essentially on the "clean slate" principle, which, in accordance with the right of self-determination and the principle of sovereign equality, gave the successor State the right of free decision regarding the treaties concluded by its predecessor State, except for boundary treaties and a few other categories of treaties. His delegation gave its general support to the "clean slate" principle.

51. Draft articles 11 and 12, which stipulated that treaties establishing a boundary or a territorial régime were not affected by a succession of States, were in full harmony with State practice and the generally recognized principles of international law. His delegation agreed with the decision adopted by the Commission at its 1296th meeting on those articles–which appeared in part V of the 1972 draft as articles 29 and 30–whereby they were transferred to part I of the current draft, entitled "General provisions", for that would make it more obvious that they were applicable to all cases of State succession. For the maintenance of world peace and the strengthening of international security, it was of particular importance that a boundary or a territorial régime established by a treaty should not be affected by a succession of States.

52. His delegation regretted that in the final version of the draft articles the Commission had not included article 12 *bis* on multilateral treaties of universal character, contained in foot-note 54 of the Commission's report. His delegation held the view that it was in the interest both of the successor State and of the community of States as a whole that any multilateral treaty of a universal character which at the date of the succession of a State was in force in respect of the territory to which the succession related should remain in force until such time as the successor State might declare the said treaty terminated for that State. In the interest of peaceful international co-operation, it was indispensable that a future convention on the succession of States in respect of treaties should contain a provision which met the purpose set forth in article 12 *bis*.

53. The draft articles did not contain any provision concerning the relationship between recognition and State succession in respect of treaties. Apart from succession in respect of bilateral treaties, which could hardly be effected without mutual recognition, it would seem necessary to include in the future convention a provision that would make it clear that succession in respect of multilateral treaties occurred independently of the recognition of a State. That would also take account of the generally recognized principle of international law that the international personality of a State existed independently of its recognition by other States.

54. The draft articles dealt mainly with those cases of State succession which had emerged from the process of decolonization. His delegation held that the principles contained in the draft applicable to such States could also be applied to other cases where successor States had emerged in the exercise of the right of peoples to self-determination. In a successor State which had come into being after the destruction of the former German Reich by the anti-Hitler coalition, the people of the German Democratic Republic was shaping the developed system of socialist society. Today there existed a socialist State, the German Democratic Republic, in which the socialist nation was developing, and the capitalist Federal Republic of Germany, in which the capitalist nation existed.

55. It would be very helpful if the Commission would re-examine the draft on succession of States in respect of treaties, since that would greatly facilitate the work of a future conference of States on the codification of that important problem of international law. His delegation supported the proposal of the Commission to adopt a separate convention on the succession of States in respect of treaties; at the same time, however, it would like to point to the close relationship existing between succession in respect of treaties and succession in respect of matters other than treaties. The inseparable connexion in substance of the two fields of State succession should be especially taken into account when codifying the two topics in separate conventions.

56. His delegation noted with satisfaction that the Commission had adopted on first reading three new draft articles on State responsibility. The Commission's further work on that question, which was of primary importance for the observance and fulfilment of the obligations of States under international law, would undoubtedly be encouraged by the definition of aggression that had been completed (see A/9619 and Corr.1, para. 22).

57. Now that the definition of aggression had reaffirmed that a war of aggression was a crime against international peace, the Commission should not confine itself to stating that a breach of an international obligation of the State entailed its international responsibility. His delegation considered it to be essential from both a political and a legal point of view to go further and distinguish clearly between categories of breaches of international obligations. Thus, aggression as a crime against international peace, as well as colonialism and genocide, should, for example, not be regarded as ordinary violations of treaties. That was in keeping with existing laws and was of great practical importance for the legal consequences resulting from breaches of international obligations. His delegation felt that the inclusion of such different categories in the existing concepts of the Commission was possible and that it was not necessary to investigate or define the obligation violated or the so-called primary obligation.

58. It seemed more important to distinguish between such fundamentally different categories of breaches of international law than to cover special and very exceptional situations which related, for example, to the actions of *de*

facto organs or of insurgents. Today entirely different problems were at the centre of attention, e.g. the extent to which a State was held responsible if its organs promoted certain actions of multinational corporations directed against the sovereignty of other countries or if the organs of such States failed to hinder or prosecute such actions.

59. Articles 7, 8 and 9, adopted on first reading by the Commission, were in harmony with the principle of State sovereignty. It was an important result of the Commission's work that now only those acts which were performed by the organs of a State or by persons acting on behalf of the State or in the exercise of governmental authority were clearly defined as acts of the State. Thus it was also guaranteed that in accordance with international law the structure of the State was respected as its own internal affair and that at the same time the State was regarded as an entity in international relations.

60. His delegation felt that, in discussing article 9, the Commission should have explicitly asserted that a State could not evade international responsibility for breaches of international law committed by its organs because it had placed them at the disposal of another State. Article 3 *(f)* of the definition of aggression defined as aggression the action of a State in allowing its territory, which it had placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State. In harmony with that principle, the rules of international responsibility should establish that a State should not shirk international responsibility by saying that it had placed its organs which acted in violation of international law at the disposal of another State. The Commission had not contested that principle. In the light of its practical importance, it should be included in the draft convention on international responsibility.

61. His delegation appreciated the work done by the Commission in dealing with the question of treaties concluded between States and international organizations or between two or more international organizations. The five draft articles adopted by the Commission at its twenty-sixth session on first reading stood out for clarity and simplicity of expression. The wording of most of the draft articles did not give rise to discussions on fundamental problems. His delegation considered that the distinction made in article 1 between treaties concluded between one or more States and one or more international organizations on the one hand, and treaties concluded between international organizations on the other hand, was a correct point of departure for further work, because treaties between international organizations would have to be governed by specific and perhaps different provisions.

62. In its report, the Commission had pointed out quite rightly the great importance of article 6, which dealt with the capacity of international organizations to conclude treaties. It was well known that international organizations, unlike States, had only a limited capacity to conclude international treaties. The Commission's commentary on that article, in paragraph (5), pointed out quite rightly that the question of how far practice could play a part in the capacity of an international organization to conclude treaties depended on the highest category of the rules of the organization, those which formed, in some degree, the constitutional law of the organization and which governed in particular the source of the organization's rules. However, practice must in no case develop irrespective of, or contrary to, the constitutional documents on the founding of an international organization which had been agreed upon by the member States on the basis of sovereign equality. Therefore, his delegation approved the Commission's decision not to mention practice in the formulation of the draft article regarding the capacity of an international organization to conclude treaties.

63. At its twenty-sixth session, the International Law Commission had also discussed a programme of work and the method of study of the law of the non-navigational uses of international watercourses. His delegation deemed it essential to define precisely the meaning and the scope of the term "international watercourse" without conceiving it in too wide a sense. The question should be carefully studied whether the geographical concept of an international drainage basin, which the Sub-Committee set up by the Commission for the study of that question mentioned in its report, was the appropriate basis for the study of the legal aspects of non-navigational uses of international watercourses. In paragraph 37 of the report of the Sub-Committee, the question was asked whether a committee of experts should be set up to assist the Commission in dealing with the question of non-navigational uses of international watercourses. His delegation believed, however, that careful thought should be given as to whether it was necessary to establish such a committee.

64. His delegation could at present make only a preliminary comment on the problems raised in the report of the International Law Commission. As far as the future work of the Commission was concerned, his delegation endorsed the intention of the Commission, expressed in its report, to continue at its twenty-seventh session, as a matter of priority, its study of the topic of State responsibility and the preparation of the draft articles relating thereto. In the light of the extraordinary importance a convention on State responsibility would have for the observance and implementation of the norms of international law, it was imperative that the International Law Commission at its next session should centre its attention on that matter with a view to adopting all the draft articles for such a convention on first reading.

65. His delegation agreed that the Commission at its next session should also deal with other topics in its current programme of work on which a first set of draft articles had already been prepared. The work done by the Commission at its twenty-sixth session had shown that concentration on a few priority tasks was particularly appropriate for making the work of the Commission more efficient.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued) (A/9619 and Corr.1, A/C.6/L.988, L.990)**

66. The CHAIRMAN announced that Brazil had asked to be made a sponsor of working paper A/C.6/L.988.

The meeting rose at 12.35 p.m.

* Resumed from the 1484th meeting.