



OFFICIAL RECORDS OF THE GENERAL ASSEMBLY
THIRTIETH SESSION

SIXTH COMMITTEE

LEGAL QUESTIONS

SUMMARY RECORDS OF MEETINGS

17 SEPTEMBER – 5 DECEMBER 1975

UNITED NATIONS



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New York, 1976

INTRODUCTORY NOTE

The *Official Records of the General Assembly* for a given session consist of records of meetings, annexes to those records, supplements, the *List of Delegations* and the *Check List of Documents*. Information on other documents is given in the Check List and in the relevant annex fascicles.

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Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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[Note: The agenda items are listed in the order in which they appeared in the letter dated 19 September 1975 from the President of the General Assembly to the Chairman of the Sixth Committee (A/C.6/434).¹ The number in brackets after the title of each item indicates the number of the item on the General Assembly's agenda.]

The General Assembly, at its 2353rd plenary meeting, on 19 September 1975, decided to allocate the following items on the agenda of the thirtieth session to the Sixth Committee for consideration and report:

1. Report of the International Law Commission on the work of its twenty-seventh session [108].
2. Succession of States in respect of treaties: report of the Secretary-General [109].
3. Report of the United Nations Commission on International Trade Law on the work of its eighth session [110].
4. Question of diplomatic asylum: report of the Secretary-General [111].
5. Report of the Committee on Relations with the Host Country [112].
6. Report of the *Ad Hoc* Committee on the Charter of the United Nations [113].
7. Respect for human rights in armed conflicts: report of the Secretary-General [114].
8. Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict [70].
9. Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention [115].
10. Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism [116].
11. United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General [117].
12. Resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations [118]:
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 - (b) Resolution relating to the application of the Convention in future activities of international organizations.
13. Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General [29].

¹ For the order of consideration of the items decided by the Committee, see the 1524th and 1525th meetings.

GENERAL ASSEMBLY

THIRTIETH SESSION

SIXTH COMMITTEE

Summary records of the 1522nd to 1582nd meetings, held
at Headquarters, New York, from 17 September to 5 December 1975

1522nd meeting*

Wednesday, 17 September 1975, at 11.35 a.m.

Temporary Chairman: Mr. Gaston THORN (Luxembourg).

A/C.6/SR.1522 and Corr.1

Election of the Chairman

1. Mr. JOB (Yugoslavia) nominated Mr. Frank X. J. C. Njenga (Kenya).
2. In the absence of further nominations and in accordance with rule 103 of the rules of procedure of the General Assembly, the TEMPORARY CHAIRMAN declared Mr. Njenga (Kenya) elected Chairman by acclamation.

Mr. Njenga (Kenya) was elected Chairman by acclamation.

The meeting rose at 11.40 a.m.

* Incorporating document A/C.6/SR.1522/Corr.1.

1523rd meeting

Tuesday, 23 September 1975, at 11 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1523

Election of the Vice-Chairmen

1. Mr. ABDALLAH (Tunisia) nominated Mr. Víctor Godoy (Paraguay).
2. Mr. CASTRÉN (Finland) nominated Mr. Alfons Klafkowski (Poland).
3. Mr. MANGAL (Afghanistan) seconded the nominations.

Mr. Godoy (Paraguay) and Mr. Klafkowski (Poland) were elected Vice-Chairmen by acclamation.

Election of the Rapporteur

4. Mr. SANDERS (Guyana) nominated Mr. Eike Bracklo (Federal Republic of Germany).

Mr. Bracklo (Federal Republic of Germany) was elected Rapporteur by acclamation.

5. Mr. STARČEVIĆ (Yugoslavia), speaking on behalf of the Chairman of the Sixth Committee at the preceding

session, on behalf of his delegation and on behalf of the Committee as a whole, extended warmest congratulations to the Chairman, the two Vice-Chairmen and the Rapporteur on their election. His delegation took particular satisfaction in seeing the Chair of the Committee held in the current year by the representative of a proud African country, which was also a member of the community of non-aligned States. The Chairman's well-known personal qualities, his legal knowledge and ability to take the initiative in finding solutions to complicated problems qualified him eminently for the post and offered the best guarantee for the effective and fruitful work of the Sixth Committee during the thirtieth session.

6. The Committee was also fortunate to have such outstanding jurists as Mr. Godoy, Mr. Klafkowski and Mr. Bracklo as members of its Bureau. They would no doubt make a valuable contribution to the Committee's work and assist in organizing the work in a manner conducive to its effectiveness and success.

7. The Committee was once again facing a substantial work programme, but with the able guidance of its Bureau and its traditional spirit of co-operation and serious dedication, he was confident that it would be successful once again in dealing with the important legal and political questions entrusted to it and would find mutually acceptable and constructive solutions that would further advance the rule of law in international relations.

8. He assured the Chairman and other officers of the Committee's full support and co-operation.

Organization of work (A/C.6/434, A/C.6/L.1015)

9. The CHAIRMAN said there were several financial and administrative questions which the Chairmen of the Main Committees had been requested to draw to the attention of delegations.

10. The first concerned documentation. It would be recalled that the Main Committees, which were normally provided with summary records, were authorized, under paragraph 10 (e) of General Assembly resolution 2538 (XXIV), to decide on the reproduction *in extenso* of a statement made during a meeting, provided that a specific decision to that effect was taken by the body concerned after it had been informed of the financial implications of such a decision. He had been given to understand that the current cost of translating and reproducing a statement was approximately \$250 per page of the original text where the latter was available from the speaker. If the text was not available, the cost of transcribing the statement from the sound recording should be added to that figure. Should the Committee decide to include a statement *in extenso* in the summary record, an additional cost of approximately \$80 per page would be incurred. The above-mentioned figure of \$250 per page would also apply if the Committee decided to include a summary of the main trends of the debate in its report to the General Assembly.

11. Over the years, as the members of the Committee knew, the General Assembly had adopted a number of resolutions concerning the control and limitation of documentation to which he felt obliged to draw attention once

again. He urged delegations to exercise restraint in making special requests for the circulation of additional documents.

12. To ensure the highest possible quality of interpretation, it would be desirable for members of the Committee to observe certain simple rules, such as speaking slowly and supplying at least six copies, if possible, of prepared texts of their statements in advance for the interpreters and one additional copy for the *précis*-writers. When referring to United Nations documents, they should indicate wherever possible the paragraph number rather than the page, since the pagination of the various language versions obviously differed.

13. The normal duration of meetings was from 10.30 a.m. to 1 p.m. for morning meetings and from 3 p.m. to 6 p.m. for afternoon meetings. He intended to start meetings no later than 15 minutes after the scheduled time and apologized for the late start at the current meeting. In order to make the fullest possible use of the time available for meetings, delegations were requested to be punctual so that meetings could start on time. As a general rule, he intended to adjourn meetings at the specified time, namely 1 p.m. or 6 p.m. As far as the interpretation service was concerned, any substantial prolongation of a meeting beyond the normal time would require a change of teams, which could not be done unless requested at least one hour beforehand.

14. Drawing attention to documents A/C.6/434 and A/C.6/L.1015, he suggested that the Committee should adopt the recommendation of the Secretariat, in paragraph 4 of its note (A/C.6/L.1015) that item 108, which appeared at the top of the list in document A/C.6/434, should be deferred for consideration until after the discussion of item 110 was completed.

15. Mr. BOUAYAD-AGHA (Algeria) felt that the Secretariat's note on the organization of work (A/C.6/L.1015) was a practical document which indicated clearly the enormous task facing the Committee. In his view, however, item 113, relating to the report of the *Ad Hoc* Committee on the Charter of the United Nations, needed more meetings than the seven allotted to it. The problem was delicate but very urgent, in the opinion of many, especially the non-aligned countries. He requested that more meetings should be allotted to that item so that all delegations could express their views. Furthermore, item 116, concerning measures to prevent international terrorism, should be moved to the end of the Committee's agenda and the number of meetings allocated to it should be reduced. The question had been exhaustively discussed in the past two years and it would not be useful to devote five meetings to the item at the thirtieth session.

16. The CHAIRMAN felt it would be wise to defer a decision on item 113 pending the issue of the relevant report, scheduled for the end of October. There were, furthermore, four additional meetings held in reserve which could be used, if necessary, for discussion of the item. He gave his assurance that the report would not be glossed over.

17. Mr. ROSENSTOCK (United States of America) said it would be inappropriate at the current stage to move item 116 to the end of the Committee's agenda. The record did

not, in fact, show that the item had been considered thoroughly.

18. Mr. STEEL (United Kingdom) said that he had no objection to the Algerian proposal to allocate more time to item 113. Noting certain affinities between that item and item 29, relating to the strengthening of the role of the United Nations with regard to the maintenance and consolidation of peace, which had previously been discussed in plenary and was on the Committee's agenda for the first time, he suggested that those two items might be brought closer together, roughly in the middle of the agenda, and discussed together. Speakers could then save time by commenting on both items at once. He felt furthermore that it would be difficult to begin the Committee's work with consideration of item 109 concerning the succession of States in respect of treaties, since the relevant report of the Secretary-General had not yet reached many missions. Delegations would need two or three days' time to consider the report and possibly seek instructions from their Governments.

19. Mr. PEDAUYE (Spain) supported the Algerian proposal that more meetings should be allocated to item 113 and the United Kingdom proposal concerning items 113 and 29. He inquired about the status of the report of the *Ad Hoc* Committee on the Charter, given that body's decision to publish statements *in extenso* in an annex.

20. Mr. RYBAKOV (Secretary of the Committee) said the last statement had been received on 8 September and the report was currently in production. The technical services had been overburdened by the requirements of the special session and the current session but the report was still expected by the end of October.

21. Mr. BOUAYAD-AGHA (Algeria) felt that the United Kingdom proposal concerning items 113 and 29 was interesting but presented problems, because the *Ad Hoc* Committee was still a fragile body and required support from the Committee, which should consider its report very carefully. He again urged that item 116 be placed last on the Committee's agenda.

22. Mr. BAJA (Philippines) supported the Algerian proposal that more meetings should be allocated to item 113, which was of considerable interest. He urged that item 29 should be discussed separately after item 113, as the two items had previously been considered in different forums.

23. Mr. FERNANDEZ BALLESTEROS (Uruguay) reminded the Committee that it had been stated at the previous session that the order of the list of items for consideration in no way indicated their relative importance. All items were of major importance, including item 116, which had been the last item discussed by the Committee at the previous session, when it had been postponed for the second time. He agreed with the representative of the United States of America that the item was important and should not be transferred to the end of the Committee's agenda where it ran the risk of being postponed again.

24. Mr. STEEL (United Kingdom) wished to clarify his proposal. Items 113 and 29 did have distinct identities. Their subjects overlapped, however, and it would be useful if delegations had the possibility of speaking on both items at the same time and thus could avoid saying the same or similar things twice. The discussion would then be more flexible and there might be fewer and shorter speeches.

25. Mr. DROZDOV (Union of Soviet Socialist Republics) felt that the Committee needed more time to consider the organization of work and proposed that the discussion be postponed to the next meeting.

26. The CHAIRMAN welcomed the Soviet proposal and urged that the delegations of the United Kingdom, Spain, the Philippines and Algeria consult and reach agreement on items 113 and 29. He asked that in general the order of consideration of items should not be changed and urged delegations to study the report relating to item 109 before the next meeting.

The meeting rose at 12.05 p.m.

1524th meeting

Wednesday, 24 September 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1524

Organization of work (A/C.6/434, A/C.6/L.1015)

1. The CHAIRMAN inquired about the progress of the informal consultations he had suggested at the end of the preceding meeting with regard to items 113 and 29 and their place in the Committee's agenda.

2. Mr. STEEL (United Kingdom) said he had been able to contact the representatives of Spain and the Philippines but not the representative of Algeria. He felt that they were moving towards a solution but would need more time.

3. The CHAIRMAN said he realized that the question of the position of item 116 had likewise not yet been resolved but wished to know whether any representative wished to make other proposals. He asked whether, apart from the questions of discussing items 113 and 29 together and the position of item 116, the rest of the Secretariat's suggestions concerning the organization of the work of the Committee were acceptable.

4. Mr. BAJA (Philippines) said his delegation was willing to accept the proposed order of items but felt that the

question of the number of meetings allocated to each item needed further discussion. The representative of Algeria had requested, for instance, that more than seven meetings be allocated to item 113.

5. The CHAIRMAN said that if items 113 and 29 were discussed together ample time would be allowed for a full discussion of both items.

6. Mr. BAQIR (Pakistan) said that his delegation was opposed to discussing items 113 and 29 together. The items were distinct and should be discussed separately.

7. The CHAIRMAN urged the representative of Pakistan to join the informal consultations on those items. He said that, if there were no objections, he would take it that the Committee adopted its programme of work as set out in paragraphs 2 and 8 of document A/C.6/L.1015, subject to the results of informal consultations concerning items 113, 29 and 116.

It was so decided.

The meeting rose at 11.05 a.m.

1525th meeting

Friday, 26 September 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1525

Organization of work (A/C.6/434, A/C.6/L.1015)

1. The CHAIRMAN said that, pursuant to the decision taken by the Committee at the preceding meeting, he had had consultations with interested delegations concerning the order of consideration of the agenda items allocated to the Committee. In the consultations it had been agreed that items 113 and 29 might be discussed jointly by any delegation wishing to do so, on the understanding that they remained separate items and that any draft resolutions concerning them would be completely distinct. Accordingly, item 29 in the list of agenda items in document A/C.6/434 should be moved up to appear after item 113. It had also been agreed that agenda item 116 should be moved to the end of the list, on the understanding that an adequate number of meetings would be allocated for consideration of the item and that it would not be deferred to a later session.

2. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that, in his delegation's view, the order of consideration of items suggested in the note by the Secretariat (see A/C.6/L.1015, para. 4) should be adhered to. He was willing to agree, however, that item 116 should be dealt with last, subject to a firm assurance that that item, to which his delegation attached considerable importance, would be dealt with at the current session.

3. Mr. MONTENEGRO (Nicaragua) and Mr. PRIETO (Chile) supported those comments.

4. Mr. SABEL (Israel) said that his delegation was unhappy with the proposal to move item 116 to the end of the list. Such an action by the Committee might well be interpreted as an attempt by the Committee to evade its responsibility towards the United Nations and the world community at large to consider and draft legal measures to combat the scourge of terrorist activities that continued to strike, cripple and kill innocent civilians throughout the world. His delegation felt strongly that the Committee should find sufficient time to deal adequately and comprehensively with the item and appreciated the Chairman's

assurance that sufficient time would be provided for its consideration.

5. Mr. ABDALLAH (Tunisia) endorsed the Chairman's proposals regarding the order of consideration of the items; however, he had reservations concerning items 113 and 29. He saw no link between the two.

6. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed that items 113 and 29 might be discussed jointly by those wishing to do so and that item 116 should be taken up last, on the understanding that adequate time would be allocated for its consideration.

It was so decided.

7. The CHAIRMAN said that the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) was expected to arrive in New York shortly and would be available to introduce its report from 29 September onwards. He therefore suggested that the Committee might find it convenient to suspend discussion of item 109 on 30 September so that the Chairman of UNCITRAL could introduce its report and delegations might put any questions they had to him.

It was so decided.

8. Mr. ROSENSTOCK (United States of America) said that it might be helpful for the Committee to have the opportunity to discuss item 109 in conjunction with item 108. Consideration should be given to listing the two items together and adding together the number of meetings allocated for them as separate items.

9. The CHAIRMAN said that the United States suggestion was a good one. In conclusion, he announced that the list of speakers on item 109 would be closed at the end of the meeting scheduled for 29 September 1975.

The meeting rose at 11.15 a.m.

1526th meeting

Monday, 29 September 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1526

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (A/10198 and Add.1, A/9610/Rev.1*)

1. The CHAIRMAN said that the list of speakers wishing to make statements on the item under consideration would be closed at the end of the current meeting. After the meetings planned for the following day, the Committee would suspend consideration of the item in order to begin consideration of agenda item 108, concerning the report of the United Nations Commission on International Trade Law.

2. Mr. KLAFKOWSKI (Poland) said that his delegation wished first of all to congratulate the International Law Commission (ILC) and its two Special Rapporteurs on the question of the succession of States in respect of treaties on the draft articles they had prepared and the very extensive commentary accompanying them to be found in section D of chapter II of the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1). Ten multilateral codification conventions had already been concluded on the basis of the drafts prepared by ILC, so that the draft articles under consideration would therefore become the eleventh convention prepared in that way. Such success was due above all to ILC's method of work, as described in paragraphs 45 to 47 and 51 to 56 of its report. In that respect his delegation supported the conclusions appearing in paragraph 83 of the report regarding the work of ILC on the succession of States in respect of treaties.

3. Secondly, his delegation noted with satisfaction that ILC had taken into account some of the observations made by his Government. It considered that the draft articles were generally acceptable and constituted a good basis for the preparation of a convention. ILC had done well to incorporate articles 11 and 12 in the first part of the draft (General provisions). His delegation supported articles 11 (Boundary régimes) and 14 (Succession in respect of part of territory) of the final version of the draft articles. His Government had already in its observations¹ explained its attitude in that respect. The new article 13 (Questions relating to the validity of a treaty) was certainly useful from the point of view of the draft as a whole. His delegation considered that the new articles 31, 32, 35, 36 and 37 derived from the practice of States, which could facilitate their application.

4. Thirdly, his delegation noted that some problems had not yet been resolved; they concerned, *inter alia*, article 7, the distinction referred to in paragraph 72 of the report,

and the two texts proposed by members of ILC (*ibid.*, paras. 75 to 80). In his delegation's view, those questions could be studied by an international conference convened to prepare and adopt a convention on the matter.

5. Finally, his delegation believed that the draft articles could be submitted to a diplomatic conference of plenipotentiaries and that their juridical and political value justified consideration at an early date, bearing in mind also the importance of the subject and the interest of the security of international juridical relations.

6. Mr. ROSENSTOCK (United States of America) said he considered that ILC had successfully completed a difficult task in preparing draft articles which constituted a satisfactory basis for codification. The manner in which the draft had been harmonized with the Vienna Convention on the Law of Treaties² was an important aspect of that work. However, some improvements could be made to the draft; his Government had already made specific suggestions in that respect, which appeared in document A/10198, so that there was no need to go into them in detail.

7. In the view of his Government, the draft's handling of the question of non-retroactivity needed further examination. There did not seem to be any reason for preventing a State which gained independence prior to the entry into force of the proposed convention from becoming a party thereto after it had entered into force and making full use of its provisions in regulating its treaty relations in the light of the situation existing at the time when the articles became applicable to the successor State.

8. With regard to the proposals concerning multilateral treaties of a universal character, he understood the motivation in seeking the widest possible application of the fundamental norms frequently found in such treaties. There were, however, a number of objections to including provisions on that question in the draft. First, there was no consensus as to what was meant by "multilateral treaty of a universal character". The definition that had been suggested, instead of clarifying the problem, seemed rather to reflect the lengthy and inconclusive discussions on the matter at the Vienna Conference on the Law of Treaties. There were so many treaties whose status would be uncertain under the proposed definition that it would be likely to cause more trouble than it was worth. Moreover, it was liable to impose a wide range of obligations on newly independent States, including financial obligations of which they might not be fully aware. The most important aspects of treaties which might be referred to as "multilateral treaties of a universal character" were those aspects which

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ Subsequently distributed as document A/10198/Add.2.

² See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

codified existing law or which were now regarded as norms of international law binding on all, such as for example the provisions of Article 2 of the Charter and virtually all the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations and on the Law of Treaties. Those norms would in any event apply to all States, new and old.

9. With regard to the question of notification of succession to multilateral treaties, he regarded the approach taken in the draft as satisfactory. His delegation, however, continued to believe that provisions should be included regarding the effect of objections to a notification of succession on the grounds that that succession would be incompatible with the object and purpose of the treaty. In that respect his delegation maintained the views which its Government had already expressed (see A/10198).

10. With regard to the question of the settlement of disputes, he considered that it was essential that the proposed convention should provide for a procedure in that respect. The convention could stipulate that all questions relating to its interpretation or application be subject to the jurisdiction of the International Court of Justice. Only the Court would be able to ensure equality of treatment for all countries, rich and poor, large and small, and create a body of jurisprudence which could guide the actions of all States. Since the draft had been prepared in the light of the observations of so many Governments and since it was to become an instrument open for the signature of all States, he did not believe that the objections raised by some to the application of a binding procedure for the settlement of disputes would be valid. He believed that, should the international community consider that it was not at a sufficiently advanced stage of development to accept that solution, there would be grounds for adopting, as a bare minimum, the conciliation and arbitration procedure provided for in the Vienna Convention on the Law of Treaties.

11. His delegation considered that the subject matter of the draft articles was important and that the text constituted an excellent basis for codification. It therefore believed that a diplomatic conference should be convened to deal with the matter. That conference should be held either in the spring of 1976 or, if that was not possible in the light of the calendar of conferences, in the early spring of 1977.

12. Mr. BUSSE (Federal Republic of Germany) said that his Government's observations on the draft articles had just been circulated in document A/10198/Add.1. He would therefore confine himself to mentioning the main points.

13. In his Government's opinion, the draft articles provided an appropriate basis on which to continue to elaborate a convention on the succession of States in respect of treaties. ILC had acted wisely in deciding to model the draft on the structure and terminology of the Vienna Convention on the Law of Treaties, thus ensuring the emergence of a uniform and coherent body of law in that important field of international relations.

14. His Government had proposed that, parallel with its work on the draft articles, ILC should undertake a codification of the law of the succession of States in respect

of matters other than treaties. It might therefore be advisable to postpone a final decision on the contents of a convention on succession of States in respect of treaties until clearer concepts had emerged concerning the legal basis for the succession of States in respect of matters other than treaties.

15. His Government welcomed the suggestion that the draft should include rules governing the settlement of disputes. Such clauses were indispensable in view of the considerable number of complex and insufficiently defined terms and rules which might give rise to differences in interpretation. Mr. Kearney's proposal of a new article 32 (see A/9610/Rev.1, foot-note 58) should meet with the approval of all States, even those which were opposed to a mandatory settlement of disputes. It would, however, be necessary to examine whether the settlement procedure suggested by him would be adequate in all cases of dispute or whether, under certain conditions, a more cogent procedure might have to be followed. Provision might be made for the issue to be referred to an arbitration tribunal or to the International Court of Justice.

16. With regard to Mr. Ushakov's proposal on article 12 *bis* (*ibid.*, foot-note 57), his Government considered it inadvisable to accord a different treatment to multilateral treaties of a universal character. It did not appear possible to make a satisfactory differentiation between such multilateral treaties as deserved a guarantee of survival and other treaties. The concept of general multilateral treaties had been clearly rejected during the elaboration of the Vienna Convention and should not therefore be incorporated in a convention on the succession of States.

17. His Government doubted whether draft articles 29 and 30 had been sufficiently clarified to be ready for codification. They should be given further consideration so as to avoid any confusion and misunderstanding in the event of their implementation.

18. He stressed that his Government shared the general conviction that further efforts must be made to work out practicable rules on the succession of States in respect of treaties. It seemed too early to think of convening an international conference. He thought that it would be desirable, therefore, to ask ILC to re-examine the draft articles on the basis of the written observations of States and to discuss the additional proposals made by Messrs. Kearney and Ushakov.

19. Mr. NOLAN (Australia) said that, as ILC had noted in its report on the work of its twenty-sixth session, the principal problem involved in codifying the rules applicable to the succession of States in respect of treaties was to establish a balance between the principle of continuity and that of the "clean slate". The result to date of the Commission's work was far from perfect, as was inevitably the case with a set of compromises. It had obviously been necessary to bow frequently to practical and political considerations at the expense of precedent or purely legal principles. Nevertheless, his Government considered that the draft articles were generally acceptable.

20. While his delegation recognized the importance of the principle that newly independent States should have the

right to determine their own treaty commitments, it was pleased to see that certain reservations had been placed on that principle in the draft articles. The "clean-slate" principle, if rigidly applied, would not only jeopardize the stability and continuity of international relations but would also deprive newly independent States of the provisions of those treaty arrangements applying to them before independence which had been beneficial to them and which they still saw to be beneficial. It would be a mistake to assume that all treaties entered into by a colonial Power and applicable to its dependent Territories were motivated purely by self-interest and were therefore to the disadvantage of those Territories. In that regard, it might be useful to draw the Committee's attention to the position adopted by the new State of Papua New Guinea in a letter addressed to the Secretary-General. Papua New Guinea stated that it recognized the desirability of maintaining, so far as practicable, continuity in treaty relations with other States. It also recognized the need to examine all treaties previously applicable to it in order to determine whether they should continue in force. The Government of Papua New Guinea proposed to examine all previous bilateral and multilateral treaties with the intention of making a statement of intent in respect of each. Meanwhile, the Government of Papua New Guinea, on the basis of reciprocity, would honour all treaties applicable to its Territory prior to independence.

21. While it recognized the need to safeguard the legitimate interests of newly independent States, his Government was firmly of the opinion that a certain degree of continuity in international obligations was important. Australia, which had itself once been a colony, had considered itself bound by the imperial British treaties applicable to it before independence. Since then it had carefully examined such treaties and those which now appeared in the Australian treaties list were considered as continuing in force, while those not so listed were regarded as no longer applying to Australia. In that way, at the outset of its involvement in international affairs, Australia had inherited a wide range of useful treaties which would otherwise have required renegotiation. As an example of some of the difficulties which might arise if the "clean-slate" principle were adopted without qualification, a State not wishing to be bound by an imperial British treaty could regard it as inapplicable between itself and Australia. As there was no provision for acts of novation in some imperial treaties appearing in the Australian treaties list, the acceptance of the "clean-slate" principle without qualification might call into question the continuing applicability of those treaties. For that reason, Australia could not endorse retrospective application of principles which could prejudice long-established treaty relations.

22. His delegation felt that the obvious advantages of a continuity of international obligations and the understandable desire of newly emerging States to review their treaty commitments must be balanced in order to achieve a universally accepted framework for treaty succession. ILC's general approach was perhaps, as a matter of practical politics, the most universally acceptable. Some States might consider that the draft did not go far enough in taking into account the principle of self-determination, whereas others might think that it did not lay sufficient stress on the principle of continuity; his delegation regarded the draft as

constituting an acceptable balance between those two opposing views.

23. Mr. SETTE CÂMARA (Brazil) welcomed the delegations of the three new Member States—Mozambique, Cape Verde and Sao Tome and Principe—which had enlarged the community of Portuguese-speaking Member States.

24. He recalled that ILC, since the nomination of the first Special Rapporteur, Sir Humphrey Waldock, in 1967, and the submission of the final draft articles on succession of States in respect of treaties, had devoted seven long years to the study of that question. The procedure provided for in article 16 of the statute of ILC had been carefully complied with, and Member States had had an opportunity to submit their comments and observations on the draft articles both after the first and second readings. The comments and observations submitted by Governments after the first reading had been punctiliously examined by the new Special Rapporteur, Sir Francis Vallat, in his first report,³ and the Special Rapporteur had accepted and embodied in the draft articles many of the suggestions made by Governments. The articles in their final form had been adopted by ILC, with one single abstention, and submitted to the General Assembly in compliance with the express recommendation contained in resolution 3071 (XXVIII). It was therefore beyond doubt that the draft articles submitted by ILC and its report on the work of its twenty-sixth session represented the final form of the draft articles. In paragraph 84 of the report in question, ILC had recommended that, in conformity with article 23 of its statute, the General Assembly should invite Member States to submit their written comments or observations on the final draft articles and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject. It was therefore with some surprise that his delegation had noted, in reading the report of the Secretary-General (A/10198), that some Member States seemed to favour the idea that ILC should undertake a sort of "third reading" of the draft articles. In his delegation's view, such a procedure would be a subversion of the traditional methods of work of the ILC and would imperil the future work of codification. Moreover, States were not bound to accept the findings of ILC and were free to change in whole or in part the text prepared by its members, who served in their individual capacities as experts and not as representatives of Governments. It would be wrong to send back to ILC for reconsideration a set of draft articles already presented in final form.

25. In fact, there were two questions relating to the draft articles which remained unresolved. For lack of time, ILC had not been able to discuss the proposals put forward on those questions. The first dealt with multilateral treaties of universal character, and ILC favoured their continuity *ipso jure*. That proposal was in line with the problems raised by the so-called law-making treaties, which several Governments considered as possible exceptions to the "clean-slate" rule. The difficulties with that proposal would be the same as those which had prompted ILC to reject the suggestions of Governments for the exceptional treatment of the

³ See *Yearbook of the International Law Commission*, 1974, vol. II, document A/CN.4/278 and Add.1-6.

"law-making treaties", on the ground that problems might arise with regard to the definition of that expression. The concept of a "multilateral treaty of universal character", like the concept of a "law-making treaty", was rather vague. Moreover, if States other than newly-independent States were not regarded as automatically bound by "law-making treaties" or by "treaties of universal character", why should the newly-independent States be limited in their right to opt in? Should such a proposal be adopted, the newly-independent States would emerge into international life with a huge load of treaty commitments imposed upon them without their having been consulted in the matter. No member of the international community should be forced automatically to be party to any Convention, unless it had freely expressed its will to do so.

26. His delegation endorsed article 12 in the form in which it had been proposed by ILC and believed that it was not necessary to provide for exceptions in the case of certain types of treaties. However, it respected the right of any delegation to propose, at a future conference convened for the purpose of elaborating a convention on the succession of States in respect of treaties, a departure from the basic criteria of the draft articles prepared by ILC, which purported to preserve the integrity of the "clean-slate" rule. His delegation believed that it would be an error to send back to ILC the draft presented in final form for the examination of a proposal which was contrary to the philosophy of the draft.

27. The other pending question dealt with a machinery for the settlement of disputes. ILC had been right to leave that problem open. It would be up to the future conference of plenipotentiaries to choose the appropriate machinery for that purpose. The conciliation procedure provided for in the Annex to the Vienna Convention on the Law of Treaties was one possibility; the one embodied in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents⁴ was another; other avenues could be explored. In any event, the provisions relating to the settlement of disputes could be adopted independently of the body of the draft itself. Inasmuch as ILC had declared its readiness, if so requested by the General Assembly, to consider at its next session the question of the settlement of disputes for the purpose of the draft articles, his delegation would hope that such a decision would not imply that ILC would be required to reconsider the draft articles as a whole. His delegation would prefer to leave the problem open for discussion at the time of the elaboration of the convention itself. In his delegation's view, the Sixth Committee should for the time being confine itself to the procedural questions raised by the draft articles and at a later stage take up the consideration of substantive questions, which might be referred to the Sixth Committee or to an international conference of plenipotentiaries: any of those two solutions would be acceptable to his delegation.

28. Mr. HAGARD (Sweden) said that, in his delegation's view, the draft articles on the succession of States in respect of treaties was important from both the political and legal viewpoints. The draft articles reflected the rapid changes in the world resulting from the process of decolonization and

were important for the development of international law, particularly since they covered a field not fully dealt with by customary law. Moreover, there were conflicting doctrinal views as to the most suitable way of codifying the unresolved issues. During the debate at the twenty-ninth session of the General Assembly on the report of ILC on the work of its twenty-sixth session, there had been a consensus that it would have been premature at that time to take decision to convene a conference to finalize the draft or to entrust that task to some other forum. Complying with part II, paragraph 2, of resolution 3315 (XXIX), which the General Assembly had adopted by consensus, a number of countries, including Sweden, had submitted their comments and observations on the draft articles on succession of States in respect of treaties and on the two proposals referred to in paragraph 75 of the report of ILC, one dealing with multilateral treaties of universal character and the other with settlement of disputes, as well as the procedure to be followed and the form in which work on the draft articles should be completed. Those comments, which were reproduced in the report of the Secretary-General (A/10198), as well as the comments made earlier, ought to be further considered. The proposal regarding multilateral treaties of universal character was a very interesting one and deserved thorough study. As to the second proposal, his delegation deemed it essential that provisions on that subject should be included in the draft articles. ILC was particularly well qualified to evaluate the two proposals in the context of the draft articles.

29. His delegation therefore hoped that the General Assembly at its current session would request the ILC to continue its work on the draft articles and also to examine the questions of multilateral treaties of universal character and the settlement of disputes. Once that work was completed, it would be for the General Assembly to decide on the forum and time for finalizing and adopting the text, preferably in the form of a convention.

30. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) welcomed the delegations of the three new States which had just been admitted to the United Nations, the Republics of Mozambique, Cape Verde and Sao Tome and Principe.

31. The question of the succession of States in respect of treaties appeared on the Sixth Committee's agenda for the first time, although the Committee had already discussed it during several previous sessions when considering the reports of ILC. During those discussions, the Committee had shown general agreement on the complex nature of the succession of States in respect of treaties and the quality of the draft articles drawn up by ILC after many years of effort. Each set of draft articles relating to international law must be considered by the Sixth Committee since they were to become an essential part of contemporary law and would contribute to the progressive development of international law in general. It was even more necessary to observe those criteria when dealing with the succession of States, because that question was closely linked to the principles of the sovereign equality of States and self-determination of peoples as well as to the right of new States to decide which treaties should remain in force for them and which should not, in the interest of balanced and stable international relations. The ILC draft met those demands; it embodied a

⁴ General Assembly resolution 3166 (XXVIII), annex.

just concept of the succession of States and was aimed at facilitating access to international treaty relations for many new States. The draft took into account the major trends of modern treaty law as well as the general rule, embodied in articles 11 and 12 of the draft, to the effect that the succession of States did not affect boundary régimes or certain territorial régimes established by a treaty.

32. For those reasons, the draft constituted a useful basis for continuing work on codification in that subject. However, that did not mean that it was sufficiently advanced to make it possible at the current stage to solve the problem of the procedure to be followed for the final phase of codification. Work on the draft must be continued, particularly since the different opinions expressed in 1974 in the Sixth Committee revealed quite serious disagreement on certain fundamental questions concerning the basic principles.

33. She agreed with the representative of Brazil that ILC had respected all the phases of the procedure provided for, but could not agree to sacrifice the substance to procedure. The profound differences which were revealed during the discussions could not be allowed to pass without comment. For example, the matter of which cases were covered by the draft posed difficult problems. The draft did not mention cases of social revolution and dealt particularly with cases of accession to independence following the fall of a colonial régime. Yet the process of decolonization was nearing its end, whereas cases of succession as a result of merging, unification or separation of territories might well become more numerous; but such cases were dealt with in less detail in the draft articles.

34. The two new draft articles proposed—12 *bis* and 32—had not been studied in depth and markedly divergent views on those questions had been expressed in the comments reproduced in the report of the Secretary-General. Moreover, her delegation wished to draw the Committee's attention to the fact that only a few States had submitted comments on the draft which testified to the complexity of the problems raised and might well imply that many States needed more time to study the draft in depth. Furthermore, the majority of States which had submitted observations felt that it was premature to consider the question of convening a conference.

35. Attention should also be drawn to the close link between succession in respect of treaties and succession in respect of matters other than treaties. In both cases, the general provisions should be identical, particularly with regard to the concept and date of succession. A satisfactory drafting of the provisions common to these two aspects of the succession of States could be achieved only if decisions were taken on the basis of a detailed consideration of both aspects.

36. Her delegation therefore felt that a decision on the procedural question would be premature and that ILC should reconsider the draft articles in the light of the observations of Governments and discussions in the Sixth Committee at the twenty-ninth and thirtieth sessions of the General Assembly.

37. Mr. SADI (Jordan) said that his delegation had already expressed its point of view on the question at the previous

session (1492nd meeting) and did not consider it useful to repeat it now. His Government had not yet been able to submit written observations. He felt that the time-limit for submitting comments should be extended.

38. Mr. GOBBI (Argentina) congratulated ILC and the Special Rapporteurs on having produced a legal instrument which took into account the needs of new States entering international life. The time had come to co-ordinate differing views so that the draft could be submitted to an *ad hoc* conference at the diplomatic level. However, at the present stage the Committee should not consider only the question of procedure and his delegation would like to make some substantive comments.

39. Article 7 on non-retroactivity was not in the right place and its wording could give rise to certain difficulties in the future. The observations of the Austrian Government on paragraph 2 of article 19 (see A/10198) were entirely valid because, even if that provision did not exist, it would be possible to formulate reservations through the appropriate machinery without prejudice to the "clean-slate" principle. His delegation felt that articles 38 and 39 could be deleted since that kind of situation should be governed by the general principles applicable to each case.

40. As for the uncertainty prevailing with regard to multilateral treaties, only a conference of plenipotentiaries could find the appropriate formula since that problem could not be fully solved by a body of experts. The conference could also deal with the problem of the settlement of disputes by establishing a new procedure or falling back upon article 66 of the Vienna Convention on the Law of Treaties.

41. His delegation shared the view of those delegations which considered that the work already accomplished by ILC together with the detailed analysis of that work to be carried out by the Sixth Committee could serve as a basis for the codification of that material within the framework of a conference of plenipotentiaries.

42. Mr. MEISSNER (German Democratic Republic) welcomed the progress achieved between the first ILC draft of the articles⁵ and that which was being considered, but felt that the text should be reconsidered before it was referred to another body. In the succession of States, the aim must be to ensure stability and security in treaty relations in accordance with the basic principles of international law and to facilitate the entry of the successor State into international relations so that the latter could make use of its rights without hindrance or delay, on the basis of sovereign equality and self-determination, and re-examine the treaties concluded by predecessor States.

43. To maintain world peace and foster international co-operation, the principle of continuity must apply to all multilateral treaties of a universal character, irrespective of the type of succession involved. Examples of such treaties, which were open to all States and were of world-wide interest, were the Treaty on the Non-Proliferation of Nuclear Weapons, the Human Rights Covenants and the

⁵ See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chapter II, section C.

Red Cross Conventions. His delegation therefore strongly endorsed article 12 *bis* proposed by Mr. Ushakov. Some delegations had pointed out that it was difficult to differentiate between what were called law-making treaties and non-law-making treaties. But such a distinction was not required for that purpose. The universal character of a treaty sufficed as a criterion to judge the applicability of the principle of continuity. Similarly, his delegation could not endorse the view expressed in the commentary on article 15 that the continuity of multilateral treaties of universal character was not necessary because the rules they contained also formed part of customary law. Since at present treaties, especially those of universal character, were the main source of international law, it appeared useful to proceed from that solid foundation. The very purpose of the codification of international law was to eliminate the ambiguities inherent in customary law. His delegation felt that the time would not be ripe for convening a conference on the codification of that subject at least until the above-mentioned problems and others still outstanding had been solved by ILC.

44. Mr. LAMPTEY (Ghana) said that his country's views on the draft articles on succession of States in respect of treaties would be presented during the final formulation of the convention. For the present, his delegation felt that the draft prepared by ILC was satisfactory, on the whole, and that its adoption would contribute to the development and codification of international law. The definition of "newly independent State" contained in article 2, paragraph 1 (*b*) was very important, since it determined the circumstances in which the "clean-slate" principle would apply to successor States. In effect, it would limit that principle to States emerging from colonialism and similar processes of emancipation. However, when it was read in conjunction with article 33, paragraph 3, there would appear to be a need to be more precise and to complete the criteria laid down in article 2. While appreciating the rationale behind article 6, in the absence of more positive criteria for determining illegality his delegation could foresee the possibility of treaty vacuums with respect to certain successor States flowing from that provision. Article 9 was a useful codification of a practice quite common with newly independent States and was complementary to article 26. Articles 11 and 12 dealt with treaties establishing "local obligation". Article 11 safeguarded boundaries from the effects of succession of States and would facilitate international stability. Article 12, however, was less acceptable. In effect, the territorial régimes protected by that article would seem to include naval bases established by treaty in perpetuity, or at least for a considerable length of time, as well as demilitarized zones and territories that had been originally demilitarized in the interest of the predecessor State and its allies. The effect of that article was that the successor State was bound by servitudes on its territory which were not necessarily in its political or military interest. The compromise intended by article 13 would not always prove a safeguard, since such a treaty might be perfectly legal and valid.

45. The free choice inherent in the "clean-slate" principle enunciated in article 15 should be maintained, even in respect of "law-making treaties". Article 18, although not based on solid State practice, was a natural corollary to

articles 15 and 16 and contributed to the development of international law.

46. The purpose of article 22, paragraph 1, was not clear. The provisions of that paragraph apparently were intended to resolve the conflicts that might arise from retroactivity and the likelihood of a hiatus between the time of succession of States and notification. However, the establishment of a legal nexus in paragraph 1 between the newly independent State and the treaty was unnecessary, first, because under the "clean-slate" principle the newly independent State was not obligated to participate in the treaty and, secondly, because pursuant to the provisions of paragraph 2 the treaty remained inoperative until the date of notification, which was the more important date for the States parties. Whether the newly independent State became party to a treaty as from the date of succession or as from the entry into force of the treaty was largely irrelevant, since what it thus became party to was a treaty which was considered suspended vis-à-vis other States parties.

47. In article 26 there appeared to be a distinction between the provisional application of treaties already in force in respect of a territory and that of treaties not yet in force. In the former case, dealt with in paragraph 1, the newly independent State might notify its intention to have the treaty provisionally applied in respect of its territory. In the latter case, dealt with in paragraph 2, such notification might be made only if at the date of succession the treaty was being provisionally applied to the territory. That could mean that a State which became a party to a treaty under article 17 could not provisionally apply such a treaty unless it was already being so applied to its territory. The intention behind article 17 was to make it possible for newly independent States to participate in treaties not yet in force with respect to them at the date of succession.

48. It might have been expected that under article 26 a newly independent State would be able to seek to have such a treaty apply to it provisionally pending its notification of succession to the treaty under article 17. The effect of article 26, however, seemed to be that a State wishing to apply provisionally a treaty not yet in force would first have to notify its succession either as a contracting State or as a party, unless the predecessor had provisionally applied the treaty before. His delegation saw no need for that distinction and feared that in the case of paragraph 2 it might result in forcing the hand of a newly independent State which would have liked a provisional application pending its decision whether or not to participate fully in the treaty. It ought to be possible to drop paragraph 2 without objection, since under article 28 the provisional application of a treaty terminated on the notification of an intention not to become party to the treaty.

49. Article 33, paragraph 3, created an exception to the general rule that where a State separates from another State, treaties applicable to the whole territory of the latter State remain in force with regard to the former. In that paragraph the "clean-slate" principle was applied under circumstances presenting essentially the same characteristics

as those which existed in the case of the formation of the newly independent State. That provision, although acceptable, would inevitably give rise to problems unless there was a more precise definition of the circumstances under which that paragraph was applicable.

50. On the question of the settlement of disputes it would appear reasonable to adopt a system analogous to the one provided in the Vienna Convention on the Law of Treaties, which the proposed convention was designed to supplement. However, his delegation had no fixed opinion on that matter as yet.

51. On procedural matters, it would have no objection to a reconsideration of the draft articles by ILC and felt that the convention would have to be adopted at a diplomatic conference of plenipotentiaries.

52. Mr. URIBE (Colombia) said that his delegation had carefully studied documents A/10198 and Add.1 and did not feel that the number of comments and observations by Member States received by the Secretary-General was sufficient to indicate a consensus which would justify convoking an international conference in the immediate future. It believed that a new appeal should be made to those Member States which had not yet done so to submit their observations on the draft articles of ILC. In the light of those new observations, ILC could improve its draft articles and the result, after a reasonable time, could be the convoking of an international conference, possibly in 1977. The instrument to be adopted might, in his delegation's view, take the form of an additional protocol to the Vienna Convention on the Law of Treaties.

The meeting rose at 5.05 p.m.

1527th meeting

Tuesday, 30 September 1975, at 10.45 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1527

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (A/10017)

1. The CHAIRMAN invited the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) to introduce its report (A/10017).

2. Mr. LOEWE (Chairman, United Nations Commission on International Trade Law) made a statement.¹

3. The CHAIRMAN proposed that, since Mr. Loewe's statement contained many important points not dealt with in the report of UNCITRAL, it should be reproduced *in extenso*.

¹ The full text of the statement was subsequently issued as document A/C.6/L.1017.

4. Mr. RYBAKOV (Secretary of the Committee) said that the cost of producing the statement as a document of the Committee in the six working languages would be approximately \$250 per page. Furthermore, to produce the statement *in extenso* as part of the summary record of the meeting, rather than as a separate document, would entail additional costs of \$80 per page, since final summary records were published in printed form. If no text of the statement was available, the cost of transcribing it from tape recordings would be approximately \$400. The total financial implications, therefore, would be from \$6,650 to \$8,650.

5. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished Mr. Loewe's statement to be reproduced *in extenso* by the least expensive method possible.

It was so decided.

The meeting rose at 11.55 a.m.

1528th meeting

Wednesday, 1 October 1975, at 3.25 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1528

In the absence of the Chairman, Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

Organization of work

The CHAIRMAN said that no delegation present had requested to speak on item 110. Since the number of speakers for the coming meetings was relatively small, he suggested that the Committee should take up concurrently that item and item 109. Delegations wishing to speak on the latter item were therefore requested to have their names entered on the list which would be opened for that purpose.

The meeting rose at 3.35 p.m.

1529th meeting

Thursday, 2 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1529

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016, A/C.6/L.1017)

1. Mr. MANNER (Finland) congratulated the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) on his excellent presentation of the report of UNCITRAL on the work of its eighth session (A/10017). He also congratulated UNCITRAL itself, its working groups and its secretariat on the results achieved during the past year. It was particularly gratifying to note the readiness of all parties concerned to compromise. That attitude had, for example, enabled the Working Group on International Legislation on Shipping to draw up a draft Convention on the Carriage of Goods by Sea,¹ which his delegation found extremely useful and on which it would comment in detail in its answer to UNCITRAL. Attention should also be drawn to the fact that that was the first major draft convention prepared by UNCITRAL in an area where substantial economic, and therefore political, interests were at stake. It was also an area in which, from the legal point of view, some uniformity already existed. It would therefore be regrettable if the new convention were allowed to exist side by side with the Hague rules² for too long. At its ninth session, UNCITRAL should endeavour to preserve and enlarge uniformity in that field.

2. The work of the Working Group on the International Sale of Goods has also progressed rapidly and it should be possible to draw up a convention on the international sale of goods, which would certainly be of importance to international trade and would also promote the harmonization of national legislation in that area. It should be noted in that connexion that a Finnish working group, set up to prepare a new Act on Sales, had been instructed to take the UNCITRAL draft convention into account in its deliberations.

3. In the preparation of instruments relating to international trade law, an effort should be made to avoid excessive complexity which could create difficulties for States wishing to adapt their own legislation to those instruments. Thus far, UNCITRAL seemed to have been able to avoid that danger.

4. His delegation whole-heartedly approved of UNCITRAL's decision to keep the question of products liability on its agenda and to continue its preparatory work

on the subject. In view of the importance of that question, UNCITRAL should be able to consider it as soon as possible.

5. His delegation also approved of UNCITRAL's decision to keep the item concerning multinational enterprises on the agenda and to defer a final decision on its own programme of work in that field until the Commission on Transnational Corporations had identified the legal issues susceptible to action by UNCITRAL. That decision should also make it possible to avoid duplication between the work of UNCITRAL on the one hand and that of the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations on the other.

6. His delegation approved of the measures taken by UNCITRAL and its secretariat in respect of the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (*ibid.*, annex I) and emphasized the importance of work in that field. The continuous increase in commercial relations between parties representing different economic systems could only increase the number of disputes. The rules and principles set out in the preliminary draft were, in the main, based on well-established international practice and were generally acceptable. However, it was doubtful whether special rules relating to arbitration administered by arbitral institutions should be included in the rules.

7. With regard to the procedure to be followed when a working group had completed a draft, his delegation felt that the draft should be transmitted for comments to all States Members of the United Nations and not only to those represented in UNCITRAL. That would enable UNCITRAL to assess the support for the draft before itself adopting its own position.

8. The symposium on the role of universities and research centres with respect to international trade law seemed to have been successful. UNCITRAL should therefore continue its activities in that field and hold other symposia which, if they involved the participation of a large number of teachers of international trade law, would be sure to promote the unification of trade law and have a beneficial effect on the work of the Commission.

9. Mr. VAN BRUSSELEN (Belgium) congratulated the Chairman and the other members of the Bureau on their election and thanked the Chairman of UNCITRAL for his presentation of UNCITRAL's report on the work of its eighth session.

10. Referring to the question of arbitration, he said that the importance of the preliminary draft set of rules contained in annex I of the report of UNCITRAL was

¹ A/CN.9/105, annex.

² See International Law Association, *Report of the Thirtieth Conference*, vol. II, *Proceedings of the Maritime Law Committee* (London, Sweet & Maxwell, Ltd., 1922), p. 249.

heightened by the fact that it was one of those texts which, if approved the following year, could quickly make its full effects felt in one of the most important fields of international relations. The Belgian authorities wholeheartedly agreed with the decision recorded in paragraph 83 of the report, but hoped that some changes could be made in the text of the preliminary draft and that some of the ideas which were merely implied could be either confirmed or expressed more forcefully in the revised text. Commenting on paragraph 4 of annex I, he emphasized that the Belgian authorities definitely felt that the UNCITRAL rules could not replace national legislation and that the attention of the parties concerned should therefore be drawn to that aspect. In that connexion, the Belgian authorities had no marked preference for either of the procedures recommended at the end of paragraph 4.

11. The problem of the scope of the rules was more complex. In their existing form, they covered two types of arbitration, known as "administered arbitration" and "non-administered arbitration". The reasons why the Belgian authorities considered that the scope of the rules should not apply to administered arbitration were stated in paragraph 7 of annex I. The extension of the rules to administered arbitration could only lead to confusion and conflict, since arbitral institutions already had their own rules. For the parties concerned, reference to two sets of rules would inevitably give rise to ambiguity, at the very least. Therefore, the Belgian authorities entirely shared the prevailing view among the members of UNCITRAL that, for the time being, administered arbitration should be excluded from the scope of the rules.

12. One criticism that could be made of article 6 of the preliminary draft was that it provided for a cumbersome and complicated procedure for the appointment of arbitrators. That procedure would be simplified if greater importance was accorded to the competent authority of the place of arbitration. That was no doubt the idea underlying the last three sentences of paragraph 13 of annex I. The meaning of that passage would probably be clearer if it read as follows:

"The view was also expressed that the competent authority should be that of the place of arbitration. Only where no place of arbitration or no competent authority at the place of arbitration has been designated might recourse to a central authority be envisaged."

13. Turning to the comments on article 31, paragraph 1 (a), he noted that the Belgian authorities subscribed to the view that the power of arbitrators to fix their own fees should be limited in one way or another. One of the main criticisms of arbitration was, in effect, that it was a costly institution, particularly for small-scale enterprises. Concluding his remarks on arbitration, he informed the Committee that his country had just ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and that the European Convention on International Commercial Arbitration of 1961 had also been approved by Parliament and would therefore be ratified in the near future.

14. As far as the uniform rules governing the international sale of goods were concerned, his delegation whole-

heartedly associated itself with UNCITRAL's decision (see A/10017, para. 17) concerning the way in which the text of the draft Convention should be dealt with. In a matter of such importance, it seemed essential that all Governments—and not only those represented in UNCITRAL—and interested international organizations, should be able to examine the draft and submit their views and comments well before the draft was submitted to a conference of plenipotentiaries for adoption.

15. However, his delegation was less enthusiastic about the decision (*ibid.*, para. 25) concerning general conditions of sale and standard contracts. It seemed unlikely that the preparatory work on a set of "general" general conditions could result in a really usable international instrument that would represent a real advance over the existing situation. Truly "general" general conditions would have to be reflected in general provisions similar to those of the Uniform Law on the International Sale of Goods (ULIS). Besides, there were such substantial differences between the sale of different goods, such as agricultural products and manufactured goods, that it seemed unlikely that "general" general conditions could be applied to the sale of those different types of products.

16. On the subject of international legislation on shipping he welcomed the decision (*ibid.*, para. 77) to consider the draft Convention on the Carriage of Goods by Sea at its following session and warmly congratulated the members of the Working Group, and particularly its Chairman, on their excellent work.

17. With regard to training and assistance in the field of international trade law, he informed the Committee that, for the second time, two fellowship-holders were currently beginning a six-month course of academic and practical training in Belgium. Since the recipients of such fellowships the previous year had definitely benefited from them, it was probable, if the experiment repeated by his Government in 1975 was as conclusive, that the offer would be renewed in 1976.

18. Mr. PRANDLER (Hungary) recalled that it had been on his delegation's initiative that, 10 years earlier, the General Assembly had adopted resolution 2102 (XX), concerning the progressive development of private international law with a view to promoting international trade. The adoption of that resolution had led in 1966 to the establishment of UNCITRAL, the major aim of which was the development of international trade by appropriate legal means in the interest of all countries with different socio-economic systems and in particular in the interest of the developing countries.

19. He felt that the report of UNCITRAL reflected considerable progress in the field of unification and harmonization of international trade law and he congratulated the Chairman of UNCITRAL for its eighth session on his excellent presentation of the report. Among the many topics considered by UNCITRAL, certain items had particularly caught his delegation's attention. Thus, he noted from paragraph 72 of the report that the Working Group on International Legislation on Shipping had completed the second reading of a preliminary version of a draft convention on the liability of carriers of goods by sea and had

adopted the text of a draft convention on the subject. UNCITRAL had also been able to consider at its eighth session the basic concepts of a draft set of arbitration rules. With regard to paragraph 116 of the report, his delegation thought that the decision to establish a Committee of the Whole, which would consider the draft Convention on the Carriage of Goods by Sea and the draft arbitration rules might be useful in that particular case, but that such a practice should not become the general rule.

20. As indicated in paragraph 17 of the report, the draft Convention on the International Sale of Goods was to be transmitted to Governments and interested international organizations for their comments. The Working Group on the International Sale of Goods apparently intended to hold a preliminary discussion on the formation and validity of contracts of sale at its following session. At the seventh session of UNCITRAL, his delegation had indicated that the Working Group's terms of reference were very complex, in view of the many instruments that it had to study. It had therefore suggested that UNCITRAL should take all appropriate steps to enable the Working Group to expedite its work and to complete it within a maximum of two years, in other words, by the tenth session of UNCITRAL.

21. His delegation noted with satisfaction that UNCITRAL had made some headway in considering the item on general conditions of sale and standard contracts, and was of the opinion that the completion of the work in that field would greatly promote international trade. It also welcomed the further progress made in the field of training and assistance and believed that the organization of a symposium would make a valuable contribution to the teaching, dissemination and wider appreciation of international trade law.

22. Mr. BUSSE (Federal Republic of Germany) congratulated UNCITRAL on the work accomplished during its eighth session, and thanked its Chairman for his presentation of the report.

23. With regard to the international sale of goods, he recalled that his Government had taken part as an observer in the sessions of the Working Group responsible for the formation of the uniform rules. The work accomplished was highly satisfactory and held out the prospect of its early and successful completion. The decision adopted by UNCITRAL to transmit to all Governments the final text of the draft Convention on the International Sale of Goods was a welcome one. The Federal Government was especially anxious to ensure that the various sales agreements were complementary to each other and did not give rise to contradictions. With regard to general conditions of sale and standard contracts, it did not seem necessary, in his Government's opinion, to frame rules that might, in practice, duplicate ULIS, as revised by the Working Group of UNCITRAL. He therefore welcomed the decision to request the Secretariat to make inquiries about the practical need for such rules.

24. As to the uniform law on international bills of exchange and promissory notes, his Government continued to have some doubts about the need to formulate an international instrument, which it believed to be of little economic interest. Turning to the subject of international

legislation on shipping, he expressed satisfaction over the completion of the draft Convention on the Carriage of Goods by Sea by the Working Group at its eighth session. The draft provided a sound basis for the work of a diplomatic conference which, in his Government's view, should be convened as early as possible, given the unsatisfactory legal situation in that field. With regard to international commercial arbitration, it would be interesting to see how the suggestions put forward at the previous session of UNCITRAL would be incorporated in the new draft set of arbitration rules. His delegation, like most others, had suggested that the provisions relating to "administered arbitration" should be deleted and that greater emphasis should be placed on the autonomy of the parties as the basic principle of arbitration. Also, the procedure for the appointment of arbitrators should be simplified.

25. As to liability for damage caused by products intended for or involved in international trade, his Government did not consider that there was a particularly urgent need to undertake further preparatory studies, since there seemed to be little prospect of a world-wide agreement on that complex question.

26. With regard to training and assistance in the field of international trade law, the Federal Government welcomed the symposium on the role of universities and research institutes in the field of international trade law and had contributed to its costs. It considered that it would be useful if a similar meeting were held in 1977, provided that other industrialized countries were also willing to make an adequate contribution.

27. Mr. TODOROV (Bulgaria) congratulated the Chairman of UNCITRAL on his excellent introduction of its report. His delegation considered that the activities of UNCITRAL were conducive to the development of international economic relations, especially among States with different social systems, and that UNCITRAL thus contributed to the common efforts aimed at reducing international tension. The texts being prepared by UNCITRAL dealt with subjects of the highest importance; they must be co-ordinated and acceptable as a basis for the diplomatic conferences convened for the purpose of adopting conventions; the difficulties which arose during the formulation of the texts should be overcome in a spirit of mutual comprehension. His delegation would co-operate in the preparation of the various draft conventions begun by UNCITRAL. However, at the current stage it considered it appropriate to emphasize certain aspects of the work of UNCITRAL which appeared to be of greater importance.

28. With reference to the draft Convention on the International Sale of Goods, UNCITRAL had acted correctly in requesting the Secretary-General to transmit the revised draft text to all States Members of the United Nations for comments; the convention should be of universal character and should also take into account the observations of States which were not members of UNCITRAL. His delegation would prefer that the rules on the formation and validity of contracts of sale should be the subject of a separate convention and not be incorporated in the proposed Sales Convention. The drafting of the latter Convention had already reached a very advanced

stage, unlike the rules referred to, which should be brought into harmony with the Sales Convention. Furthermore, practice had proved that when a diplomatic conference had before it several documents at the same time, work progressed with greater difficulty.

29. With reference to the preliminary draft set of arbitration rules, his delegation considered it to be of exceptional importance for international trade since it would create conditions conducive to objectivity in the solution of issues under dispute, thus enabling countries with different economic and political systems to revert with confidence to its provisions. His delegation favoured free *ad hoc* arbitration; at the same time, it would carefully study the rules relating to organized arbitration, which must take into account the interests of all parties to a dispute. It would perhaps be advisable if such arbitration were not too closely linked to institutionalized arbitration.

30. He noted that the practice of UNCITRAL in the preparation of draft conventions was to consult specialized institutions of a regional character and eminent specialists in specific fields of international law. He expressed the view that UNCITRAL should also request the opinion of international organizations and experts from the socialist countries which, within the framework of the Council for Mutual Economic Assistance (CMEA), had to deal with problems similar to those studied by UNCITRAL. That would make it possible to fill a gap in the activities of the Commission and to give the texts a greater degree of universality.

31. Mr. BUBEN (Byelorussian Soviet Socialist Republic) thanked Mr. Loewe for his very detailed introduction of the report under consideration.

32. It should be noted that the current international climate was favourable to the expansion of international trade. The recent European Conference on Security and Co-operation, which had confirmed the principles of peaceful coexistence and equality among all States, regardless of political or social systems, had also recognized the favourable effects of the most-favoured-nation clause on international trade. While the improvement in the general political climate contributed to the expansion of international trade, the latter also made possible wide-ranging co-operation among States and promoted higher levels of living for their populations, the development of their economies and full employment. An effective legal regulation of international trade was consequently of primary importance, since it made possible the development of economic relations among all States. It was therefore appropriate to regulate international trade, limiting the discriminatory practices to which certain States still resorted and introducing elements favourable to its expansion. UNCITRAL thus had an essential role to play, taking into account current objective political requirements.

33. The report of UNCITRAL on the work of its eighth session showed that the working groups of that body had made progress in their respective fields. Thus the Working Group on International Legislation on Shipping had prepared a draft Convention on the Carriage of Goods by Sea, which had been transmitted to Governments for comments. In view of the importance of that question, he welcomed

the fact that UNCITRAL had decided to devote a full session in 1976 to the adoption of the final text on that subject, which could then be submitted to a diplomatic conference.

34. The report of the Working Group on the International Sale of Goods on the work of its sixth session showed that that body had continued to consider the questions which it had been unable to settle at its previous sessions. He supported the decision whereby UNCITRAL had requested its Working Group to work out a draft Convention, which would then be transmitted to Governments and interested international organizations for their comments and hoped that the Working Group would be able to complete its work at its seventh session.

35. The Working Group on International Negotiable Instruments had continued, at its third session, its consideration of the uniform law on international bills of exchange and international promissory notes. Uniform rules in that field would undoubtedly promote a more precise regulation of international seals.

36. With reference to security interests in goods, he noted that the study entitled "Study on security interests"³ was unfortunately incomplete, since it did not reflect, as pointed out by UNCITRAL, the legal norms of all States, and in particular of the socialist States of Eastern Europe. He supported the decision of UNCITRAL (*ibid.*, para. 63) to request the Secretary-General to complete his study of that subject.

37. At its eighth session, UNCITRAL had also considered the question of international commercial arbitration, discussing article by article the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade. He wished to draw the Secretary-General's attention to the fact that he should, in preparing the revised draft rules which UNCITRAL had requested him to submit to its ninth session, take into account the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the European Convention on International Commercial Arbitration of 1961 and the Convention on the Settlement through Arbitration of Civil Disputes arising from Activities related to Economic, Technical and Scientific Co-operation concluded by the CMEA countries in 1972.

38. With reference to the very important question of multinational enterprises, his delegation had already had the opportunity, at previous sessions, to stress that multinational capitalist monopolies represented a threat to the sovereignty and harmonious economic development of the countries in which they operated. That problem must be studied very carefully by UNCITRAL and he supported the decision of that body (*ibid.*, para. 94) to study specific legal aspects of the question, as identified by the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations.

39. The question whether it would be appropriate to establish uniform rules on liability for damage caused by products intended for or involved in international trade was

³ ST/LEG/11.

complex. UNCITRAL had rightly decided to request the Secretary-General to study that problem more thoroughly in order to determine the practicability and advantages of unification of the applicable rules at a global level.

40. With reference to the future work of UNCITRAL, he would like to see that body continue to scrutinize its methods of work. Instead of thinking about extending its sessions, UNCITRAL should be careful not to incur additional expenditure and should endeavour, to that end, to rationalize its method of work by making the best use of the time at its disposal.

41. He stressed that his delegation took a positive and favourable view of the work of UNCITRAL at its eighth session.

42. Mr. LANG (Austria) commended UNCITRAL on the outstanding quality of the work of its eighth session. Austria had been gratified by the election of its representative as Chairman of that session. By that election UNCITRAL had probably wished to show its appreciation for the contribution Mr. Loewe had made to its work for many years.

43. As a country in which foreign trade played an important role, Austria had followed the work of UNCITRAL with great interest, in the belief that improved legal conditions for the conclusion and execution of commercial contracts could only expand the flow of goods and services.

44. With reference to the uniform rules governing the international sale of goods, Austria had refrained from becoming a party to ULIS because it first wanted to know the outcome of the work of UNCITRAL in that field.

45. On the subject of international legislation on shipping, Austria was primarily interested in ensuring that the provisions of that legislation were equitable, since many of its imports and exports were carried by sea.

46. His delegation appreciated the work undertaken by UNCITRAL in the field of negotiable instruments. Whereas some trading partners of Austria were parties to the three 1930 Geneva Conventions on bills of exchange and promissory notes, others were not. It would be of great help if a uniform system could be established in that field.

47. It appeared from the report that UNCITRAL had devoted a considerable part of its eighth session to the consideration of the draft arbitration rules for optional use in *ad hoc* arbitration relating to international trade, which would have to be studied in detail by the competent authorities. Austria's particular interest in those rules was due to the experience it had acquired with regard to commercial arbitration between parties belonging to different social systems. He wished furthermore to mention that a permanent arbitration body had been established recently in Vienna and was at the disposal of parties involved in a dispute arising out of a contract concluded by them.

48. Austria had made a financial contribution to the symposium on international trade laws and was gratified by its success. Austria's interest in training in the field of

international trade law was demonstrated by the fact that an Austrian bank had awarded two fellowships enabling the recipients to spend six months in the bank's legal office as interns.

49. With regard to the future programme of work of UNCITRAL, his delegation welcomed any initiative aimed at improving the legal rules governing international trade. It would be useful, however, to conclude the current projects under review by UNCITRAL before embarking upon new issues.

50. He wished to draw the attention of UNCITRAL to General Assembly resolution 3350 (XXIX) concerning the inclusion of Vienna in the pattern of conferences, which gave UNCITRAL the possibility of holding a session in Vienna. Needless to say, the Austrian Government would welcome any such decision by UNCITRAL.

51. Mr. SEIDEL (German Democratic Republic) warmly thanked Mr. Loewe for his outstanding introduction of the UNCITRAL report.

52. The competent organs of the German Democratic Republic had thoroughly examined the report of the Working Group on the International Sale of Goods on the progress made in respect of the revision of ULIS annexed to the 1964 Hague Convention. He welcomed the decision by UNCITRAL that the draft Convention on the International Sale of Goods should be submitted to Governments and interested international organizations for their comments and that the draft, as adopted by UNCITRAL, should once more be presented to those Governments and organizations for further examination before it was submitted to a diplomatic conference. He felt that UNCITRAL should follow that procedure with regard to all the other questions it was considering. States not members of UNCITRAL would thus have the opportunity to study draft conventions in good time. That approach would also correspond to the objectives of the process of unifying laws, which could only be effective if a large number of States were to include the unified rules in their national legislation. The decision of States whether or not to accede to a convention depended largely on their being given an opportunity to inform themselves comprehensively on the subject-matter in good time.

53. His delegation felt that the work of UNCITRAL in the field of international commercial arbitration was of great importance, for it was highly interested in the evolution of an efficient arbitration system. In many cases, in his opinion, specific features of international commercial transactions could be better taken into account by arbitration than by civil law procedures. His delegation supported the objectives of the draft arbitration rules prepared by UNCITRAL and was ready to support UNCITRAL in revising the draft. His delegation regretted, however, that one essential element, namely *ad hoc* arbitration with the assistance of a chamber of commerce or a permanent arbitration board, had not been included during the discussion at the eighth session of UNCITRAL. The new draft, which was to be submitted to the ninth session of UNCITRAL, should take that problem into account.

54. The German Democratic Republic was very much concerned by the problem of multinational enterprises, since they intervened in the internal affairs of States where they operated. For that reason his country strongly supported the decision of UNCITRAL to maintain the item concerning multinational enterprises on its agenda. In view of the current stage of the preliminary work in that field, he felt it would be appropriate to defer a decision concerning UNCITRAL's programme of work pending the identification by the Commission on Transnational Corporations of specific legal issues relating to that problem. He therefore welcomed UNCITRAL's intention to co-operate

closely with that Commission and the Information and Research Centre on Transnational Corporations. The question of multinational enterprises should not, however, be postponed indefinitely and UNCITRAL should deal with all the political and juridical aspects of the question in concrete form as soon as possible.

55. The CHAIRMAN announced that the list of speakers on the item would be closed on Friday, 3 October at 6 p.m.

The meeting rose at 4.45 p.m.

1530th meeting

Friday, 3 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1530

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016, A/C.6/L.1017)

1. Mr. STEEL (United Kingdom) congratulated the United Nations Commission on International Trade Law (UNCITRAL) on the useful and constructive work reflected in the report on its eighth session (A/10017). Characteristically, it had taken a practical approach to its work, thus paving the way to very real achievements in international trade law.

2. He thanked the Chairman of UNCITRAL for his thorough and lucid introductory statement and expressed the hope that he would convey his delegation's thanks and appreciation to his colleagues on UNCITRAL, as well as to its dedicated and knowledgeable secretariat under the leadership of Mr. Vis.

3. It was commendable that the eighth session of UNCITRAL had been, in general, well attended. For its part, the United Kingdom had always been a strong supporter of the Commission's work and taken an active part in all its deliberations. Like other members of UNCITRAL, his Government prided itself on ensuring that the experts who attended its meetings and its working groups as representatives of the United Kingdom were persons of the highest standing and authority in their respective fields. He was pleased to note the continuing and valuable role being played in the work of UNCITRAL by observers from the specialized agencies and from inter-governmental and non-governmental organizations. UNCITRAL had made valuable use of some of the work done by the International Chamber of Commerce, especially in the field of banking law: for example, on the topic of bankers' commercial credits and the review of "Uniform Customs and Practice for Documentary Credits". The utility to UNCITRAL of the work being carried out by such bodies as the International Chamber of Commerce was

also well illustrated in paragraphs 42-46 of the report of UNCITRAL, which dealt with bank guarantees.

4. His delegation was pleased to note the solid progress achieved in the very important field of international legislation on shipping. That field was of particular interest to the United Kingdom as one of the major shipping countries of the world, but was also of great interest to the international community as a whole, since it could have a tremendous influence on international trade and consequently on the prosperity and rate of development of many countries. In that connexion, his delegation echoed the hope recorded in paragraph 75 of the report of UNCITRAL that many Governments would submit comments on the draft convention prepared by the Working Group.

5. The work of UNCITRAL was being pursued substantially on the right lines and was producing substantially the right results. It was to be commended for maintaining its steady progress in the multitude of tasks assigned to it.

6. With regard to the new topics entrusted to UNCITRAL, his delegation approved of the careful preparation of the ground for its consideration of the problem of liability for damage caused by products intended for or involved in international trade, and considered that UNCITRAL had acted wisely in deciding to defer its work on multinational enterprises pending the identification by the Commission on Transnational Corporations of specific legal issues that would be appropriate for action by UNCITRAL.

7. Criticism sometimes had been expressed of the pace at which UNCITRAL carried out its work. However, the complicated and detailed nature of the problems under consideration did not allow for speedy or spectacular results. Furthermore, the high calibre of the experts attending the working groups and the necessity for views to be obtained from Governments did not make it possible for meetings to be held more frequently or for longer periods. In his delegation's view UNCITRAL continued to be one of the most effective, efficient and valuable instruments that

the United Nations had at its disposal for increasing prosperity and accelerating development. His delegation looked forward to receiving the report on its ninth session in the confident hope that the record of achievement attested in the present report would be equalled.

8. Mr. LAMPTEY (Ghana) recalled that his delegation had served on both the Working Group on the International Sale of Goods and the Working Group on International Legislation on Shipping. He expressed his delegation's satisfaction with the work done thus far by UNCITRAL and hoped that further progress would be made.

9. He recalled that at the twenty-ninth session, his delegation had expressed (1500th meeting) its dissatisfaction with article 59 of the text of the Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964,¹ which, in its view, would tend to curtail the freedom of countries with balance-of-payments problems to regulate the outflow of scarce foreign exchange reserves to the industrialized countries. Regrettably, the Working Group on the International Sale of Goods had still not found it possible to accept the amendment his delegation had proposed to meet that concern and his delegation intended to press that amendment at the next session of the Working Group. His delegation had similarly objected to the formulation of article 73 (1) on the ground that it gave the seller unlimited discretion to determine unilaterally when the buyer's economic circumstances warranted a suspension of the seller's lawfully assumed obligations. His delegation was quite pleased with the new formulation of article 73 (1),² which laid down more objective criteria for determining the obligations of the seller. In choosing the criterion of deterioration of credit-worthiness, the new formulation had come as close as a uniform law could be expected to come to accepting the criterion of bankruptcy or general insolvency, which was familiar enough to provide a safe working criterion. His delegation endorsed the decision of the Working Group to refer to the instrument under preparation as a "Uniform Law".

10. Turning to international legislation on shipping, he congratulated the UNCITRAL on its formulation of the draft Convention on the Carriage of Goods by Sea. His delegation looked forward to the diplomatic conference which would finalize that work. In that connexion, his delegation would appreciate information on the status of the Convention on a Code of Conduct for Liner Conferences adopted under the auspices of the United Nations Conference on Trade and Development and opened for ratification in July 1974. The current inequitable system prevailing in the carrying trade clearly served the interests of some developed countries. However, it would be most regrettable if that important Convention failed to receive the number of ratifications needed for it to enter into force.

11. His delegation supported the continuation of the work by UNCITRAL on international payments, international

commercial arbitration, the legal problems presented by the different kinds of multinational enterprises and training and assistance in the field of international trade law.

12. Mr. AL-OTHMAN (Kuwait) said that his delegation had carefully studied the report of UNCITRAL on the work of its eighth session. Being a trading country, Kuwait was sensitive to problems relating to maritime trade, such as the liability of shippers and owners of goods and liability for damage caused by products intended for or involved in international trade. The settlement of international payments between Kuwait and its foreign trading partners, whether individuals or corporations, was also an important subject which deserved careful examination. His delegation wished to emphasize the importance of the rules governing the international sale of goods, which it hoped would narrow the vast gap between the different legal, social and economic systems of various States. His delegation supported the formulation of an international definition of bills of lading, as recommended in the report of UNCITRAL, and also favoured co-operation between UNCITRAL and the Commission on Transnational Corporations in establishing a code of conduct to protect the developing countries from the activities of corporations, which often were inconsistent with the economic and social development goals of those countries. In that connexion, he hoped that UNCITRAL would take up the topic of the laws governing corporations and investments. His delegation requested the Secretary-General to prepare a study on the subject of liability for damage caused by products in relation to insurance, since insurance often failed to provide comprehensive compensation.

Mr. Klafkowski (Poland), Vice-Chairman, took the Chair.

13. Mr. LOEWE (Chairman, United Nations Commission on International Trade Law) expressed regret that it would not be possible for him to attend the remainder of the Committee's debate on the report of UNCITRAL. Before leaving New York, he wished to thank the Chairman and all the members of the Committee for the interest they had shown in the work of UNCITRAL and the warm welcome he had personally received. Having listened carefully to the statements made thus far—and he hoped that further comments would be made the following week—he was convinced that the Committee approved in large part of the decisions taken by UNCITRAL at its eighth session. Some delegations had referred to questions of detail, such as arbitration, which would undoubtedly be taken up by the working groups at their forthcoming meetings and further considered at the ninth session of UNCITRAL. As the ninth session's programme of work was a very heavy one, he fully supported the view expressed by several delegations that, in so far as possible, UNCITRAL should work expeditiously and keep its sessions as short as possible. In the matter of financial implications, he pointed out that it posed great difficulties for professors and high Government officials to leave their duties for any extensive period of time. However, in his personal estimation, the results which UNCITRAL was expected to achieve at its ninth session would not be possible if the session was to be less than four weeks in duration. He appreciated the difficulty that simultaneous meetings of two different working groups would pose for some smaller delegations, but did not see any lightening of the burden of the programme of work at

¹ See *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I (United Nations publication, Sales No. E.71.V.3), p. 39.

² See A/CN.9/87, annex I.

the tenth session, which would be expected to prepare the final draft of the convention on the international sale of goods. Given the time necessary to complete its work, he was confident that UNCITRAL would be able to produce the results expected of it. He would certainly convey to UNCITRAL all of the comments and observations made by delegations in the Sixth Committee, which would be of great help to it in its work.

14. Being himself of Austrian nationality, he was very pleased to note the invitation extended by the representative of Austria that UNCITRAL should hold its next session in Vienna. He hoped that at least some members of the Sixth Committee would be able to attend that session and that the Sixth Committee would continue its work in the same fruitful manner as it had done thus far and would achieve the results desired by all.

15. The CHAIRMAN thanked the Chairman of UNCITRAL for his remarkable introductory statement, which was before the Committee in document A/C.6/L.1017, and for the summing up he had just made.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*)* (A/10198 and Add.1-3, A/9610/Rev.1**)

16. Mr. PEDAUYE (Spain) agreed with the view expressed by the representative of Brazil (1526th meeting) that, since the International Law Commission (ILC) had prepared a final draft, it would be inappropriate to refer it back for reconsideration. Such a step was unprecedented and could hinder the work of ILC, the programme of work of which was currently very heavy. The proposals made by two of its members on multilateral treaties of a universal character and the settlement of disputes (see A/9610/Rev.1, footnotes 57 and 58) should be discussed at a diplomatic conference. Furthermore, there appeared to be no reason to bring the codification process on that topic to a rapid conclusion. The draft related to only one aspect of the succession of States, and it was doubtful whether it would be desirable to establish rules in that sector while leaving aside the rest. For example, since ILC was continuing its consideration of the succession of States in respect of matters other than treaties, it would be better to wait until it had completed its work on that topic, so that States would have before them two complementary drafts that should form a harmonious whole. In view of the importance of the topic and the advantage of having as many views as possible, it might be advisable to ask Governments once again for comments on the completed draft.

17. His delegation believed that the convening of a conference of plenipotentiaries would enable the draft to be considered in greater detail. Furthermore, the difficulties anticipated by some countries in sending representatives to such a conference could be overcome if it were not convened in the immediate future. The question of the legal

form to be given to the draft could also be discussed at that conference.

18. Mr. FUENTES IBÁÑEZ (Bolivia) felt that the item was of great relevance because it was linked to the decolonization process, which was currently approaching its end. The body of juridical rules proposed by ILC for the succession of States in respect of treaties applied mainly to the newly independent States, which ought to have the greatest possible freedom of choice with regard to duties and should not have to assume any duties which might limit the exercise of their sovereignty, hinder the protection of their natural resources or hamper their speedy and legitimate development. Certain economic agreements, for instance, could be harmful to the interests of a new State, and for that reason many Governments, including his own, had requested that the draft include provisions relating to procedures for the settlement of disputes. A valuable precedent could be found in the existing provisions of the Vienna Convention on the Law of Treaties.³

19. He approved of the choice by ILC of the "clean-slate" principle with regard to succession and the establishment of exceptions with regard to territorial régimes as contained in articles 11 and 12 of the draft (*ibid.*, chap. II, sect. D). Such exceptions should also include free navigation and access to the sea for land-locked countries.

20. He agreed with those representatives who favoured embodying the articles in an additional protocol to the Vienna Convention.

21. The application of the "clean-slate" principle as an unrestricted attribution of a new State should be studied more carefully by ILC, since the principle could not apply in all cases. The so-called universal conventions, such as the Geneva Conventions of 1949 for the protection of war victims, should remain outside the scope of the "clean-slate" principle, as they represented the most cherished and permanent aspirations of the international community. It should be possible to establish a body of rules which would permit the gradual acceptance of existing conventions by new States without detriment to the "clean-slate" principle. The revised draft articles should be discussed at a conference of plenipotentiaries.

22. Mr. GARCIA ORTIZ (Ecuador) reaffirmed the views on the succession of States in respect of treaties expressed by his delegation at the twenty-ninth session (1494th meeting).

23. His delegation had studied with interest the observations of Member States contained in documents A/10198 and Add.1-3 and agreed with some of them. The Government of Ecuador was currently considering its own comments but had not yet formulated them in writing. He suggested that, since many other States appeared to be in the same position, the Secretary-General might be requested to ask Governments once again to submit their observations as soon as possible. Since that could be done in 1976, no decision should be taken on the final form of

* Resumed from the 1526th meeting.

** Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

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

the draft articles before the thirty-first session of the General Assembly.

24. One very interesting point raised in the observations of Member States was whether the text finally adopted should be given the form of a convention, a resolution or a declaration of principles. The succession of States had remained thus far subject to customary law and it was therefore quite legitimate to wonder whether it was worth making it the subject of a convention or whether it would be sufficient to formulate a set of general principles which would govern the subject. It should also be borne in mind that regulations of that type would be applied less and less since the cases of succession of States would inevitably diminish with the passage of time, as the process of decolonization and the formation of new States came to an end.

25. His delegation favoured the deletion of articles 38 and 39 of the draft. His Government would give careful consideration to the remaining articles and would make known its views on them.

26. The question of the settlement of disputes depended on whether the final document took the form of a convention or some other form, since only a convention would contain provisions on that question. Moreover, such provisions should be the same as those contained in the Vienna Convention on the Law of Treaties concerning the settlement of disputes. The form to be given to the document could not be decided until the thirty-first session of the General Assembly; if it was decided to give it the form of a convention, such a convention should be considered by a conference of plenipotentiaries, which therefore could not be held until 1977.

27. His delegation shared the concern expressed by a number of Governments at the suggestion that it might be advisable for ILC to adopt a position immediately with regard to the succession of States in respect of matters other than treaties so that work could begin on the whole task of regulating all aspects relating to succession. However, that question, too, should be given more detailed consideration in the forthcoming observations.

28. Mr. GODOY (Paraguay) observed that the principle of *pacta sunt servanda* had currently given way largely to the concept of *rebus sic stantibus*. The "clean-slate" principle, which constituted the corner-stone of the draft articles, reflected that trend perfectly. Article 15 of the draft left no doubt in that regard. Quite rightly, ILC had accorded priority to the inherent right of a newly independent State to genuine self-determination rather than to the principle of continuity and legal stability in international relations. That step represented a *de jure* application of the principle of the sovereign equality of all States to decide for themselves which conventional obligations undertaken on their behalf by their predecessors should be continued and which should be renounced. However, in view of the increasing interdependence of relations between States regardless of their level of development and their economic, social and political systems, it was also in the interest of the newly independent State, as a member of the international community, to ensure that the succession had the minimum effect on existing conventional relations established in

accordance with international law, and to contribute to the equilibrium essential for the maintenance of a harmonious international order. At the same time, it was absolutely necessary that new States, regardless of the measures that they might adopt with regard to the conventional relations of the predecessor States, should recognize the general principles of international law emanating, for example, from the geographical position of their territories. Such was the situation for the transit States whose territory was used for international river navigation or other forms of transit recognized under customary international law. Those territories had the character of rights of way and the resulting obligations must, in normal circumstances, pass to the new State. In that regard, his delegation felt that article 5 afforded sufficient safeguards for the principle in question. The same was true for the so-called "multilateral treaties of a universal character".

29. His delegation agreed in general with the substance of the draft submitted by ILC. However, he felt that, in article 2, paragraph 1 (b), the words "of territory" should be replaced by "of the territory to which the succession of States relates". That amendment would render the article less vague and at the same time conform with the terminology used elsewhere in the paragraph. In subparagraph (h) it would be clearer and more concise to replace the words "of a State" and "the State" by "of the successor State" and "that State" respectively. Similar changes should be made in subparagraphs (i) and (j). Furthermore, the wording of the last part of subparagraph (h) was defective because of the repetition of the word "notification".

30. In the light of current political geography, his delegation viewed with concern the possible delay in the convening of a conference of plenipotentiaries to adopt the final text of the convention on the succession of States in respect of treaties and of the conference to adopt the convention on the succession of States in respect of matters other than treaties, particularly in view of the provisions of draft article 7 and the fact that a multilateral international instrument normally did not enter into effect for several years after its adoption. Nor should it be forgotten that ILC was to renew the whole of its membership at the end of the following year and that the new members would require a certain amount of time to familiarize themselves with working procedures and with the substance of any item under consideration. An undertaking which had consumed so many years of effort should be made use of while there was still a need for it. He therefore shared the view that there was no time to refer the draft back to ILC for further amendments, additions or deletions of a substantive nature. To do so would be to risk undoing the progress made. In any event, any necessary changes of a political nature and any finishing touches should be left to the conference of plenipotentiaries. Meanwhile, to save time and to facilitate the work of the conference, the Special Rapporteur, in co-operation with the Drafting Committee of ILC, could incorporate, where appropriate, the observations and suggestions submitted by Governments and delegations during the last two sessions of the General Assembly. In addition, any ambiguous wording must be deleted.

31. His delegation also supported the concept of making maximum use of the terminology used for the Vienna

Convention on the Law of Treaties and other similar multilateral instruments. That procedure would undoubtedly contribute to the development and codification of international law.

32. His delegation was also doubtful about the current wording of article 12, in particular the use of the words "does not as such affect" in connexion with the obligations and rights applying to territories by virtue of treaties. It was not clear whether those obligations and rights would continue in effect as a result of a succession of States or whether that succession would nullify the effects of an existing treaty, as far as the rights and obligations considered as attaching to the territories were concerned. The same observation applied to article 11.

33. It would also be preferable if the reservations referred to in article 19 were limited to a minimum to avoid weakening the effectiveness of that or any other convention. Such reservations should not be used to nullify or weaken the principle of continuity and stability of relations between States.

34. He expressed regret that no provision was made in the draft for any machinery for the peaceful settlement of disputes arising as a result of the interpretation or application of the rules governing the succession of States in respect of treaties. Such machinery could be provided for in the text of the draft, or an additional protocol drawn up to rectify that deficiency. The procedures involved should be based on the Vienna Convention on the Law of Treaties.

35. His delegation was firmly convinced that the future convention would meet a widely felt need in the field of international legislation since there was currently a lack of uniform practice by States in that field.

Mr. Njenga (Kenya) resumed the Chair.

36. Mr. CEAUSU (Romania) said that the topic of the succession of States in respect of treaties was very important and the Committee should therefore further discuss the draft articles prepared by ILC, with a view to finding generally acceptable solutions to matters of principle mentioned in the report of ILC, such as the holding of a conference of plenipotentiaries and the formulation of a convention or code, as well as certain concrete questions such as multilateral treaties of universal character and the settlement of disputes. The most appropriate way of completing the work of ILC would be for the Committee itself to consider and adopt the draft articles, as had been done, for example, in the case of the draft articles on special missions. As to the juridical form which the draft articles currently under consideration might take, the Committee might consider, in addition to a convention or a code, a document similar to that on the Definition of Aggression and the Charter of Economic Rights and Duties of States, which would be adopted by a declaration or resolution of the General Assembly. The matter of multilateral treaties of universal character was particularly important and timely and should be studied more deeply than provided for in paragraph 76 of the report of ILC. The presumption of continuity and the juridical qualification of

express consent as accession and not as succession should not be based on the normative character of such treaties but rather on their general interest to all States.

37. Commenting on specific articles of the draft, he said, with reference to article 4, that no rules other than the rules concerning acquisition of membership in an international organization should affect the application or acceptance of certain conventional instruments adopted within international organizations.

38. With reference to article 5, he said that the use of article 43 of the Vienna Convention on the Law of Treaties as a source was not completely appropriate. Article 5 dealt with the application or accession in the future to certain treaties as a whole and not to separate rules which had already become or would become customary rules.

39. With reference to article 6, he said that the question whether a succession conformed to the principles of international law was too complex to be treated in such a concise manner with reference to succession to treaties. If the article was retained, it would be necessary to establish basic criteria for defining a succession of States.

40. With reference to article 9, he said that unilateral declarations concerning the application of a treaty by a newly independent State ought to be considered at least as offers to continue to exercise certain rights and obligations. However, such declarations could not be considered as general declarations of intent which awaited confirmation. If they were sufficiently exact they could be considered as notification of the acceptance of certain treaties.

41. With reference to article 10, he said that if a treaty provided for the possibility of a newly independent State's considering itself a party to a treaty, it was not clear why that State should have to announce its succession to the treaty instead of making the usual notification. The new State should be considered a party from the date on which it gave its consent.

42. The provisions of article 12 were debatable and the commentary of the Commission lacked conviction. It contained many references to practice and the writings of jurists of certain metropolitan countries and not to the practice and views of the new States. He could not support the proposal of ILC to exclude territorial treaties from the application of the "clean-slate" principle. Article 12 would impose on the newly independent State the obligation to respect conditions conceded by the metropolitan State towards other States. The article should instead provide that the successor State might, with a view towards good relations with its neighbours, maintain such facilities as transit, for example, but only to the extent that it felt the continuance of those facilities would not impinge on its sovereignty or its right to use its resources as it saw fit. If article 12 could not be improved, it should be deleted.

43. With reference to article 17, he felt that some of the terms used were vague and that the participation of newly independent States in treaties not in force at the date of their succession should be covered by the general rules concerning treaties.

44. Article 18 should be deleted, since the nexus between the predecessor State and the treaty was very weak. A State could not ratify or approve the signature of another State. It would be more useful to study the situation in which the predecessor State had had the right to accede to a treaty, particularly a restricted treaty, but had not exercised that right.

45. With reference to article 19, he felt that it would be useful to study the question of objection by the predecessor State to reservations by third States, as well as the objection of the newly independent State.

The meeting rose at 12.15 p.m.

1531st meeting

Monday, 6 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1531

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016, A/C.6/L.1017)

1. Mr. NORDTØMME (Norway) congratulated the United Nations Commission on International Trade Law (UNCITRAL) on the progress made at its eighth session and expressed his appreciation to the Chairman of UNCITRAL for his excellent introduction of its report (A/10017).

2. Norway was a carrier of goods between most countries, and had one of the world's highest levels of foreign trade activity *per capita*, and the harmonization and unification of international trade law were consequently of special importance to his country, which was a member of UNCITRAL and an active participant in its deliberations.

3. His Government favoured the established working methods of UNCITRAL, which seemed able to accomplish its tasks in a constructive atmosphere through the time-saving use of working groups, which enabled UNCITRAL to reach all of its decisions by consensus.

4. His Government intended soon to sign the 1974 Convention on the Limitation Period in the International Sale of Goods,¹ the only Convention produced thus far by UNCITRAL. His Government wished to draw attention to the Secretary-General's invitation to all States to submit comments on the draft Convention on the Carriage of Goods by Sea by October 1975, so that UNCITRAL could take into account the remarks of as many States as possible and realistically finalize the text, which would be of great importance as the basis for a future diplomatic conference.

5. In most countries the national law relating to the important matter of liability for damage caused by products intended for or involved in international trade was often ambiguous or even undeveloped and he therefore hoped that UNCITRAL at its tenth session would prepare a

new set of rules which might have the effect of developing national law, thus benefiting both the international community and the consumers.

6. With regard to the inclusion of new items in the agenda of UNCITRAL, his Government shared the view that it seemed premature to entrust UNCITRAL with more tasks at the present stage and suggested that the Committee revert to the question when UNCITRAL had completed more of its current tasks. He expressed the hope that the Committee would, during the current session of the General Assembly, reach by consensus a resolution reflecting the various recommendations of UNCITRAL.

7. Mr. ESGUERRA (Philippines) commended the Chairman of UNCITRAL for his very comprehensive and useful introduction of the report.

8. With regard to the international sale of goods, his delegation believed that the revised text of the Uniform Law on the International Sale of Goods (ULIS) annexed to the 1964 Hague Convention should be drafted in the form of a convention rather than as a uniform law annexed to a convention. That arrangement would avoid numerous reservations which might tend to minimize the value of the convention and unduly limit its field of application. The new convention should only adopt existing provisions of other conventions, such as the Convention on the Limitation Period in the International Sale of Goods, where such adoption would not lead to an inappropriate result. It would be desirable for the new convention and any codification relating to the formation and validity of contracts of sale to be considered at the same conference, provided both texts were ready, and embodied in the same convention.

9. With regard to general conditions of sale and standard contracts, his delegation welcomed the establishment of a study group composed of representatives of various concerned regional organizations. The practical need for a draft set of general conditions proceeded from the idea that the general conditions applicable to a wide range of commodities might also be applicable to a law of sales. Such general conditions for use in specific trades or for specific commodities could, however, correspond to commercial needs only if a desire for such conditions had been

¹ See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/15.

expressed by the trade concerned. It was therefore appropriate to establish a group to study the matter.

10. With regard to international legislation on shipping, his delegation joined others in congratulating the Working Group concerned on its expeditious and successful completion of a new draft Convention on the Carriage of Goods by Sea.

11. His delegation supported the proposals designed to seek information relating to legal problems presented by the different kinds of multinational enterprises and the implication thereof for the unification and harmonization of international law. UNCITRAL should study the legal issues on which it might take action on its own in close co-ordination with the Commission on Transnational Corporations.

12. His delegation continued to believe that the work of UNCITRAL and decision-making should be based on consensus. It supported the programme of work of UNCITRAL, including the proposed date and the duration of its ninth session, and commended it for its praiseworthy efforts in connexion with the holding of international trade law symposiums.

13. Mr. STANFORD (Canada) congratulated UNCITRAL and its Chairman on the work completed during the past year. He was glad to hear that some of the complex subjects studied by UNCITRAL and its working groups over the past years would soon be ready for consideration by a diplomatic conference.

14. Although Canada was not a member of UNCITRAL, it was particularly interested in two items on its agenda, namely international legislation on shipping and multinational enterprises. His Government had participated actively in the work of the Working Group on International Legislation on Shipping and wished to congratulate the Group on its preparation of the draft Convention on the Carriage of Goods by Sea, which was currently being discussed by his Government and the Canadian private sector, with a view to the preparation of comments for consideration by UNCITRAL.

15. The fact that the Commission on Transnational Corporations had already identified for study several items with significant legal aspects confirmed the view of his delegation that UNCITRAL had an important role to play in the work to be done by the United Nations in relation to multinational enterprises. His delegation therefore welcomed UNCITRAL's readiness to co-operate with the Commission on Transnational Corporations. It was important that the United Nations ensure that multinational enterprises played an appropriate role in the economic development of the developing countries. The experience of Canada confirmed the considerable contribution which those enterprises could make to the economies of those countries in which they invested their substantial resources. That same experience also confirmed the need for adequate regulation of the enterprises to ensure that their activities were consistent with host country development policies and objectives. The law obviously had an important contribution to make to the development of such a regulatory framework and UNCITRAL should assign a high priority to

items referred to it by the Commission on Transnational Corporations.

16. Mr. ENKHSAIKHAN (Mongolia) said that the current world political situation was particularly favourable for the development of international economic co-operation among all States, irrespective of their social and economic systems. Important recent events in Indo-China and Helsinki had opened up new possibilities for the consolidation of international peace and security and created favourable conditions for solving pressing problems of international economic relations, such as the struggle by developing countries to overcome the devastating consequences of colonial and neo-colonial oppression, the restructuring of the existing unequal relations between developing and capitalist countries and the liquidation of discrimination in international trade. The decisions of the sixth and the seventh special sessions of the General Assembly had made a positive contribution to the development of just international economic relations.

17. With regard to chapters II and III of the report of UNCITRAL, his delegation welcomed the considerable progress made by the Commission in its work and approved of its decision to request the Secretary-General to complete the "Study on security interests"² by including the law of additional countries, in particular of the socialist States of Eastern Europe, and to continue, in consultation with interested international organizations and trade and financing institutions, the feasibility study on the possible scope and content of uniform rules on security interests in goods. The question of the formulation of criteria which would identify the international trade transactions to which the proposed uniform rules would apply, as well as other serious problems arising from questions relating to liability for damage caused by products intended for or involved in international trade, needed additional study by the Secretariat.

18. With regard to chapter IV of the report, his delegation felt that the Working Group on International Legislation on Shipping had successfully fulfilled the task assigned to it at its seventh and eighth sessions and supported the decision of UNCITRAL to examine the draft Convention on the Carriage of Goods by Sea at its ninth session.

19. With regard to chapter V, his delegation felt that UNCITRAL had acted wisely in agreeing to concentrate on the basic concepts underlying the preliminary draft set of arbitration rules and the major issues dealt with in the individual articles. The Secretary-General, in accordance with the Commission's request, should prepare a revised draft set of arbitration rules, taking into account observations made by various governmental and non-governmental organizations as well as those made at the Commission's eighth session. The provisions of the Convention on the Settlement through Arbitration of Disputes arising from Activities relating to Economic, Technical and Scientific Co-operation, concluded by the States members of the Council for Mutual Economic Assistance in 1972, for example, could further contribute to the formulation of a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade.

20. With regard to chapter VI he expressed the hope that the detailed draft programme of work in relation to multinational enterprises to be submitted by the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations would identify specific legal issues to be considered by UNCITRAL. His delegation supported UNCITRAL's decision to maintain the item on multinational enterprises on its agenda and to defer the elaboration of its programme of work on the item pending the identification of specific legal issues by the Commission on Transnational Corporations.

21. Mr. SIMANI (Kenya) congratulated UNCITRAL and its Chairman on their excellent work and report.

22. With regard to the international sale of goods, his delegation approved of the decision of the Working Group concerned to produce a draft convention rather than a uniform law attached to a convention. When completed by the Working Group the draft Convention on the International Sale of Goods should be referred to Governments for their comments and observations before a diplomatic conference was convoked to consider the adoption of the Convention. His delegation welcomed the decision of the Working Group to take up the question of general conditions of sale and standard contracts and formation and validity of contracts of sale at a later stage.

23. With regard to international payments, his delegation noted with satisfaction that the Working Group on International Negotiable Instruments had already considered a number of draft articles for a uniform law on international bills of exchange and international promissory notes. He suggested that the question of cheques should be considered together with that topic and that uniform rules of law should be produced at the same time, if possible. His delegation appreciated the work being carried out by the Commission in co-operation with the International Chamber of Commerce (ICC) on other related topics.

24. With regard to international legislation on shipping, his Government hoped soon to submit its comments and observations on the draft Convention on the Carriage of Goods by Sea.

25. It would be desirable for UNCITRAL and the Commission on Transnational Corporations to work in collaboration on the important topic of multinational enterprises.

26. With respect to training and assistance in the field of international trade law, his Government wished to express its appreciation to the countries which had made it possible for participants from developing countries, including a participant from the University of Nairobi, to attend the symposium on the role of universities and research centres with respect to international trade law by contributing to their expenses.

27. His delegation agreed to the proposal by UNCITRAL that it complete work on the topics it was currently considering before adopting new topics.

28. Mr. MUSEUX (France) complimented UNCITRAL on the work which it and its Working Groups had done and which, save for a few exceptions, was very constructive.

29. With regard to the international sale of goods, his Government, which thought that ULIS was adapted to the needs of international trade, nevertheless noted with satisfaction the significant progress which UNCITRAL had made in respect of the revision of the text. A widely accepted convention would be of great economic importance and his delegation therefore hoped that the work would be highly successful.

30. On the subject of general conditions of sale and standard contracts, the current approach taken by UNCITRAL, which consisted in drawing up a set of "general" general conditions that would be applicable to a wide range of commodities, did not seem to his delegation to meet the needs of commercial circles. It would be more realistic and useful to produce a number of standard clauses, each adapted to a category of commodities. Furthermore, UNCITRAL should be guided to a greater extent by the work done in that area by the Economic Commission for Europe.

31. His delegation was happy to note the progress made with regard to the draft uniform law on international bills of exchange and international promissory notes. It welcomed in particular the results achieved with regard to documentary credits, since the work had led to a new text of "Uniform Customs and Practice for Documentary Credits", which would now be applied by banks in a great number of countries. His delegation was also pleased to see the fruitful co-operation established in that area between UNCITRAL and ICC. It welcomed the study on security interests, but regretted that the text had been circulated only in English. It was necessary for all delegations to be able to familiarize themselves with that text.

32. He welcomed the fact that the Working Group on International Legislation on Shipping had been able to complete its work so rapidly, so that UNCITRAL would be able to consider the draft Convention on the Carriage of Goods by Sea at its ninth session.

33. With regard to the question of international commercial arbitration, his delegation congratulated the Secretary-General on the valuable work accomplished and welcomed the fact that the uncertainties which had existed between *ad hoc* arbitration and "administered arbitration" had been removed. It hoped that the arbitration rules, as finally drawn up, would enjoy broad recognition and therefore be used to the widest possible extent.

34. Ever since the inclusion of the question of multinational enterprises in the agenda of UNCITRAL, his delegation had had doubts about the possibility of pinpointing problems which were strictly legal in relation to those already being examined by the United Nations Conference on Trade and Development, the International Labour Organisation and now the Economic and Social Council through its Commission on Transnational Corporations. The desire to avoid duplication, as well as the essentially economic nature of the problems posed by the existence of multinational enterprises, led his delegation to believe that UNCITRAL was not the appropriate forum to deal with the question, at least in the near future.

35. The question of liability for damage caused by products intended for or involved in international trade was

one of the agenda items which gave rise to reservations on the part of his Government, which considered that UNCITRAL should deal only with subjects which reflected a need that was clearly felt in all parts of the world and in all legal systems. That did not apply in the case in question. He noted that there was a 1973 Hague Convention relating to conflicts of laws and that at the European level the question of liability for damage caused by products had been the subject of a convention within the framework of the Council for Europe as well as of a directive of the European Economic Community. Furthermore, his delegation believed that UNCITRAL had adopted an unduly ambitious approach in the matter, in that it had set itself the goal of drawing up uniform rules at the world level. Yet, it sufficed for an important State to reject those rules for the enterprises of States which had accepted them to find themselves in an unfavourable competitive situation on international markets.

36. Mr. LOPUSZAŃSKI (Poland) said that his delegation wished to stress the importance of the activities of UNCITRAL. In fact, his country was among the few States which had signed the Convention on the Limitation Period in the International Sale of Goods of 1974. His delegation was pleased with the work of UNCITRAL and noted that the Working Group concerned had been able to complete its work on a draft Convention on the Carriage of Goods by Sea, which would be considered by UNCITRAL at its ninth session. The work on the draft Convention on the International Sale of Goods was in its final stages and considerable progress had been made with respect to the draft convention on a draft uniform law on international bills of exchange and international promissory notes.

37. His delegation had noted with satisfaction that fruitful co-operation had been established between UNCITRAL and ICC, thereby enabling experts from countries whose Chambers of Commerce were not members of ICC to participate in the latter's work. Thus, experts from the socialist countries had been able to participate in the revision of the text of "Uniform Customs and Practice for Documentary Credits", adopted in 1974. Experts from the socialist countries had also participated in the work of ICC on a matter of vast importance for the conduct of international trade, namely bank guarantees.

38. His delegation supported the view that in the work on security interests, account must be taken of the legislation, practices and legal doctrines of the socialist countries.

39. His delegation was pleased to note that the work on a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade had entered its final phase. In that regard, he endorsed the decision to submit the draft rules for the consideration of the Fifth International Arbitration Congress, held at New Delhi in 1975.

40. His delegation believed that UNCITRAL should continue its work on the problem of multinational enterprises. The problems and difficulties caused in certain countries as a result of the activities of such enterprises were well known.

41. His delegation also favoured continuation of the work on liability for damage caused by products intended for or

involved in international trade. The problem was not solely economic but also social in nature, since it had a deeply human aspect which could not be overlooked.

42. He expressed his delegation's satisfaction at the decision by UNCITRAL to sponsor further symposia on international trade law. In that regard, he noted that at the 1975 symposium, eight representatives, including one from Poland, had given lectures.

43. Mr. ROSENSTOCK (United States of America) commended UNCITRAL on its serious methods of work and noted the constructive and beneficial relationship that had been established between it and other bodies such as ICC and the International Institute for the Unification of Private Law. The Convention on the Limitation Period in the International Sale of Goods adopted by a diplomatic conference the previous year was the harbinger of a series of conventions designed to eliminate obstacles arising from legal divergencies to the growth of international trade.

44. His delegation welcomed the decision by UNCITRAL to have the Working Group on the International Sale of Goods complete its revision of ULIS early in 1976. In six sessions, the Working Group had substantially completed a first reading of a draft Convention on the International Sale of Goods. Although some issues remained to be resolved, the broad contours were already apparent. For example, the decision had been made that the revised text should be in the form of an integrated convention rather than a uniform law attached to a convention. In his delegation's opinion, that was a sound approach. His delegation also supported the Working Group's decision that, where appropriate, it would in principle be desirable to follow to the largest extent possible formulations incorporated in the Convention on the Limitation Period in the International Sale of Goods.

45. On the question whether the proposed Sales Convention and the rules on the formation and validity of contracts of sale should be incorporated in a single convention or whether the rules should be the subject of a separate convention, his delegation was in favour of the latter course. With regard to the related question whether the conference of plenipotentiaries at which the Sales Convention would be considered should also examine the separate convention on formation, his delegation supported the agreement by UNCITRAL to defer a decision until the tenth session, at which time all pertinent data would be available.

46. His delegation noted with pleasure that the Working Group on International Negotiable Instruments had made substantial progress during the previous year. Although some issues remained unresolved, the Working Group had considered three quarters of the articles in the draft uniform law prepared by the Secretariat. His delegation hoped that that rate of progress would continue and that the Group would complete the first reading of the articles at its meeting in February 1976. Completion of the work at that time would make possible compliance with the programme of work established at the seventh session of UNCITRAL, namely that the draft should be completed in sufficient time to permit full consideration by Governments in advance of the eleventh session of UNCITRAL, at which the draft articles would be examined in detail.

47. With regard to the draft uniform law on international bills of exchange and international promissory notes, his delegation supported the decision by UNCITRAL to request the Secretary-General to make inquiries regarding the use of cheques for settling international payments, in order to determine whether, in that context, legal problems arose similar to those posed by international bills of exchange. In that connexion, his delegation expressed its appreciation of the contribution made so far to the work of UNCITRAL by its study group on that subject, which was composed of experts provided by interested international organizations and banking and trade institutions, and expressed the hope that they would continue to assist UNCITRAL in its work.

48. The adoption of a draft Convention on the Carriage of Goods by Sea by the Working Group on International Legislation on Shipping was a significant achievement. His delegation looked forward to participating in the continuing work on the subject at the ninth session of UNCITRAL, at which all its members would have an opportunity of participating in an article-by-article examination of the Convention.

49. His delegation thought that UNCITRAL had acted wisely with regard to the question of multinational enterprises. The approach taken reflected a recognition of the central role of the Commission on Transnational Corporations in examining the question and the important role which UNCITRAL could perform with respect to its legal aspects. His delegation was confident that UNCITRAL's high standard of professionalism and its tradition of eschewing political propaganda would ensure that when it dealt with that question it would take full account of the fact that the scope of concern included enterprises which were private, State-owned and of mixed ownership. His delegation's only regret in that connexion was the unwarranted propaganda remarks which some delegations had seen fit to make. Their comments were a disservice to UNCITRAL and also had the effect of diverting the United Nations from serious efforts being made to deal with important issues arising in connexion with multinational enterprises.

50. The advanced state of the work on the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade and the substantial consensus on suggestions for improvement had led UNCITRAL at its eighth session to request the Secretary-General to prepare a revised draft of the rules, taking into account the debate at that session. His delegation hoped that the revised draft would be available to Governments before the end of 1975 so that they could consult their national arbitration experts and experienced businessmen well in advance of the debate to take place at the ninth session of UNCITRAL. If that schedule was met, his delegation hoped that the work of UNCITRAL on that important subject would be concluded in the spring of 1976.

51. Mr. VALLADÃO (Brazil) thanked the Chairman of UNCITRAL for his introduction of the report on the work of its eighth session.

52. It was gratifying to note the progress being made with regard to the harmonization and unification of interna-

tional trade, since the removal of legal obstacles in that field helped to improve the standards of living of all peoples. It was also gratifying to note that the consideration by UNCITRAL of the questions of the international sale of goods and the carriage of goods by sea had already reached a fairly advanced stage. Its members were to be congratulated on their efforts.

53. With regard to the international sale of goods, his delegation considered it advisable, for the sake of uniformity and interpretation, that the formulations in the Convention on the Limitation Period in the International Sale of Goods should be followed as far as possible in the draft Convention on the International Sale of Goods. He endorsed the decision by UNCITRAL to seek comments from Governments and interested organizations before embarking on a final review of the draft. The establishment of general conditions of sale and standard contracts might prove very useful in facilitating transactions between new partners or partners accustomed to different commercial practices. However, the studies and consultations with interested commercial circles should take into account the progress made in the projected Convention on the International Sale of Goods so as to avoid unwelcome conflicts or duplication.

54. With regard to international payments, his delegation was gratified at the results of the third session of the Working Group on International Negotiable Instruments. The fruitful exchanges between UNCITRAL and non-governmental organizations such as ICC with regard to bankers' commercial credits and bank guarantees were also to be commended.

55. The adoption, after several years of careful analysis by the Working Group concerned, of a draft Convention on the Carriage of Goods by Sea was a major achievement. With the continuous expansion of maritime trade, an updating of rules governing the liability of carriers was most timely. In such an exercise, an overriding consideration was the effective strengthening of the protection of the partners with regard to the conditions of safety of goods, without imposing excessive insurance charges. His delegation agreed that the draft Convention should be discussed by UNCITRAL in the light of the comments to be presented by Governments and international organizations.

56. His delegation supported the decision by UNCITRAL to establish, at its ninth session, a Committee of the Whole to consider the revised set of optional arbitration rules. That action was justified by the preliminary deliberations on the matter, as set out in annex I to the report. It was his delegation's view that well-balanced rules would play a positive role in giving parties engaged in international transactions confidence in the speedy and equitable settlement of their contractual disputes.

57. He complimented those who had contributed to the first symposium on international trade law, including the Governments of Austria, the Federal Republic of Germany, Norway and Sweden for the funds they had made available to cover the travel costs of participants from developing countries, and the members of UNCITRAL who had spared no efforts to give lectures, without prejudice to their duties in UNCITRAL. Over the past two years, his delegation had

followed with great interest the preparations for that event and was gratified that it had lived up to expectations.

58. Mr. ABUL-KHEIR (Egypt) commended UNCITRAL on the excellent work it had done, and expressed the hope that it would be able to carry out its future work in the same spirit of co-operation and mutual understanding.

59. His delegation had always attached great importance to the participation as observers of representatives from non-governmental and governmental organizations, who throughout the years had made a positive contribution to the work of UNCITRAL. His country had participated in the deliberations of UNCITRAL for some time and had thus been able to express its views on a number of items before that body. His delegation was pleased with the progress of the work on ULIS. He hoped that in considering the draft Convention on the International Sale of Goods, UNCITRAL would take into account the situation of developing countries which had long suffered from a balance-of-payments deficit.

60. His delegation agreed with the remarks of the Chairman of UNCITRAL regarding the great importance of the question of international legislation on shipping. There was no doubt that comments by States on the draft Convention on the Carriage of Goods by Sea would lead to a well-balanced and definitive text.

61. In his delegation's view, it would be well for UNCITRAL to await the results of the studies of the Economic and Social Council on multinational enterprises. It would then be able to pinpoint the specific legal issues which it should consider.

62. Mr. CEAUSU (Romania) thanked the Chairman of UNCITRAL for his very instructive statement on the work of UNCITRAL and its Working Groups.

63. For Romania, as for all developing countries, the normal conduct of trade and co-operation with other States was necessary for economic and social progress. Consequently, Romania favoured the expansion of trade and co-operation with all countries. His Government hoped that UNCITRAL would make an even greater contribution to the improvement of international trade law by drawing up uniform rules and preparing new instruments, taking account of current concerns, with a view to establishing a new system of international economic relations.

64. Both UNCITRAL and its Working Groups had made appreciable progress in their work. In that connexion, it might be useful for the General Assembly to review the programme of work of UNCITRAL in the light of recent decisions concerning the establishment of a new international economic order, to establish appropriate priorities and to provide UNCITRAL with new guidelines for its future work.

65. His delegation congratulated UNCITRAL on the progress made in the preparation of a draft Convention on the Carriage of Goods by Sea, and was pleased to note that UNCITRAL had finally decided to draw up a new Convention instead of revising the rules contained in the International Convention for the Unification of certain

Rules relating to Bills of Lading completed in Brussels in 1924. In view of the economic importance of the instrument in question, the Commission's decision to transmit the draft text to Governments and interested international organizations for comments was very sound. He expressed the hope that UNCITRAL would be able, at its next session, to complete its work on the draft Convention so that the General Assembly could convene a diplomatic conference for its adoption as soon as possible.

66. His delegation noted with satisfaction that UNCITRAL had begun its consideration of the preliminary draft set of arbitration rules. In view of the importance of international arbitration in the promotion of international trade, UNCITRAL should speed up its work on the question with a view to drawing up standard rules of arbitration and thus unifying national rules in that field. Furthermore, in view of the interest shown by business and scientific circles in being informed of arbitration practice in different countries, it would be worth while publishing a compilation of arbitration awards or, at least, periodic studies of identified trends, as suggested by the Special Rapporteur in paragraph 185 of his 1972 report on international commercial arbitration.³

67. His delegation had expected more substantial progress to be made with regard to the draft Convention on the International Sale of Goods, on the preparation of "general" general conditions of sale and standard contracts and on international payments. He expressed the hope that UNCITRAL would accelerate its work on the drafts relating to the international sale of goods so that international instruments acceptable to all States could be adopted as soon as possible.

68. His delegation congratulated UNCITRAL on the holding of a symposium on the role of universities and research centres with respect to international trade law and supported the decision to hold another symposium in 1977. The Secretariat of the United Nations should use every means to ensure broader participation in that symposium and in other training activities in the field of international trade law. In that connexion, he thanked the Governments of Austria, Belgium, Norway, the Federal Republic of Germany and Sweden for their voluntary contributions to the symposium. He expressed the hope that the United Nations Institute for Training and Research would make a more substantial contribution to the holding of seminars on international trade law for persons from developing countries.

69. His delegation was convinced that UNCITRAL would do its best to expedite its work further so as to submit to the Committee drafts which could be transformed into international conventions.

Organization of work

70. Mr. OLMOS (Argentina) proposed that the opening of the Committee's morning meeting on 7 October should be

³ See *Yearbook of the United Nations Commission on International Trade Law*, vol. III (United Nations publication, Sales No. E.73.V.6), "Problems concerning the application of existing multilateral conventions on international commercial arbitration and related matters: report by Mr. Ion Nestor (Romania), Special Rapporteur (A/CN.9/64)", p. 193.

postponed until noon to enable members of the Committee to hear the address to be given by the President of Mexico to the General Assembly.

71. Mr. KRISHNADASAN (Swaziland) supported the proposal of the representative of Argentina and proposed that a similar procedure should be adopted for the afternoon meeting, to enable members of the Committee to hear the statement of the President of Cyprus to the General Assembly.

72. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to postpone the opening of the following day's meetings until the Presidents of Mexico and Cyprus had addressed the General Assembly.

It was so decided.

73. Mr. ROSENSTOCK (United States of America), speaking in a purely personal capacity, said that, while he did not disagree in the least with the decision just taken by the Committee, he hoped that it would not be taken as a general precedent. The Committee had always considered itself as dealing with technical questions and as being able to continue its deliberations concurrently with the debate in the plenary. If the Committee adjourned its proceedings whenever a Head of State addressed the General Assembly, it might find itself very short of time at the end of the session.

74. Mr. OSMAN (Somalia) disagreed with the views expressed by the representative of the United States. The visit of a Head of State to the United Nations to address the General Assembly was a matter of general interest and it was important that members of the Committee, as representatives of their respective countries, should be present when such an address was delivered.

75. Mr. GÜNEY (Turkey) fully supported the view expressed by the representative of the United States. From a practical point of view, it was not possible for the Committee to adjourn whenever a Head of State came to address the General Assembly. His observations should not be taken, however, as reflecting on the decision just taken by the Committee.

76. The CHAIRMAN said that the decision taken by the Committee was not intended to set a precedent, but merely related to the following day's meetings.

77. Mr. MAÏGA (Mali) said that it was the practice of all the Main Committees to adjourn whenever a Head of State took the floor in the General Assembly. The same respect should be shown to all Heads of State, regardless of the country they represented. The Committee was not setting a precedent, but continuing an established practice.

78. Mr. BOOH BOOH (United Republic of Cameroon) agreed that whenever a Head of State visited the United Nations, he should be treated with appropriate courtesy. That was the procedure which had been decided upon by all the other Main Committees and he saw no reason why the Sixth Committee should be an exception.

79. Mr. FUENTES IBÁÑEZ (Bolivia) disagreed with the views expressed by the representative of the United States. He informed the Committee that the President of Bolivia was to address the General Assembly on Wednesday, 8 October, and he would be very gratified if members of the Committee could attend the debate on that day. Such a practice was very proper.

The meeting rose at 4.55 p.m.

1532nd meeting

Tuesday, 7 October 1975, at 12.10 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1532

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016, A/C.6/L.1017)

1. Mr. RAKOTOSON (Madagascar) thanked the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) for his clear and comprehensive introduction of its report.

2. His delegation had studied with great interest the report of UNCITRAL on the work of its eighth session (A/10017). Madagascar, which was situated at a cross-roads, had a particular interest in expanding its trade with as many

countries as possible and it was therefore especially interested in the unification and simplification of the rules and practices of international trade law.

3. The Working Group on the International Sale of Goods had rightly drawn up provisions which were sufficiently flexible to prevent the automatic imposition of penalties in the event of lack of conformity of goods, delays in declaring sales contracts avoided and non-performance of the obligations of one party. His delegation approved UNCITRAL's decision, which was reproduced in paragraph 17 of the report, requesting that the draft Convention on the International Sale of Goods should be transmitted to Governments and interested international organizations for study and comments.

4. With regard to the general conditions of sale and standard contracts, the efficiency of those instruments seemed to depend on two conditions, namely, that they should be in harmony with the provisions concerning the international sale of goods and that they should apply to as wide a range of commodities as possible. The work in that sphere was complex and might well duplicate the work on uniform rules for sales. However, his delegation considered that it should continue and it approved UNCITRAL's decision, reproduced in paragraph 25 of the report, to the effect that the Secretary-General should make inquiries about the practical need for such conditions and should establish, for purposes of consultation, a study group composed of representatives of regional commissions, trade associations, chambers of commerce and similar organizations from different regions. The Convention on the International Sale of Goods and the rules on the formation and validity of contracts of sale should be considered at a single conference.

5. With regard to international payments, the work on preparing uniform simplified rules on the subject was bound to contribute to the development of trade. It would therefore be desirable for the Secretariat and the Working Group on International Negotiable Instruments to continue their research on the possible use of cheques for settling international payments. With regard to bankers' commercial credits, commercial letters of credit played an important role in payments for international trade transactions. The role of bank guarantees was also considerable, especially for developing countries. Since the most recent edition of the "Uniform Customs and Practice for Documentary Credits" of the International Chamber of Commerce (ICC) had not been made available to members of the Committee, his delegation could not express an opinion either on that text or on the decision of UNCITRAL, reproduced in paragraph 41 of the report, recommending that the 1974 revision should be used, as from 1 October 1975, in transactions involving the establishment of a documentary credit. Co-operation between UNCITRAL, ICC and other banking and trade institutions on the question of bank credits and guarantees, was bound to be fruitful.

6. Since Madagascar had no merchant fleet engaged in international carriage, his delegation attached particular importance to the rules governing the responsibility of ocean carriers. For that purpose documents other than bills of lading should be given the same status as the latter, and the responsibility of ocean carriers and loaders should be increased by keeping the grounds for exoneration from liability as limited as possible. The Working Group on International Legislation on Shipping had performed a useful task in completing the text of a draft Convention on the Carriage of Goods by Sea.

7. With regard to arbitration, he said that institutionalized arbitration should not exclude the possibility of "non-administered arbitration". Even in the case of the former, the parties should be allowed some latitude with regard to procedure. On a similar issue, his delegation suggested that a provision should be included in article 23 of the preliminary draft set of arbitration rules (see A/10017, annex I) authorizing the parties to nominate experts, or if necessary counter-experts, by agreement after the delivery of the report of the experts appointed by the arbitrators. It

feared that article 31, which provided that the arbitrators should fix their fees themselves would make arbitration too costly. His delegation had no special preference for institutionalized arbitration over *ad hoc* arbitration. However, *ad hoc* arbitration seemed to offer more advantages at the practical level, as long as it was not too costly.

8. With regard to multinational enterprises, it was to be hoped that progress in the work of the Commission on Transnational Corporations of the Economic and Social Council would be such as to enable UNCITRAL to resume its work on the subject as soon as possible.

9. Mr. HAFIZ (Bangladesh) congratulated the Chairman and officers on their election and welcomed the three new Member States, the Republic of Cape Verde, the Democratic Republic of Sao Tome and Principe, and the People's Republic of Mozambique.

10. Bangladesh, whose trade was heavily dependent on international shipping, attached great importance to UNCITRAL's efforts to promote the harmonization and unification of international trade law. His delegation thanked the Chairman of UNCITRAL for his excellent introduction of the report and expressed its satisfaction with the work carried out by UNCITRAL and its working groups.

11. The draft Convention on the International Sale of Goods prepared by the Working Group on that question was very useful. The final draft should be completed as expeditiously as possible.

12. On the question of international negotiable instruments, he said that the Working Group concerned should incorporate uniform rules applicable to international cheques in the final draft uniform law on international bills of exchange and international promissory notes.

13. His delegation was gratified to note that UNCITRAL had given high priority to the work of the Working Group on International Legislation on Shipping and especially to the revision of the International Convention for the Unification of certain Rules relating to Bills of Lading, completed in Brussels in 1924. The draft Convention on the Carriage of Goods by Sea was important in that connexion. The provisions of the Brussels Convention was out of date and provided no solution to the problems of the trading communities in the developing countries, which should be taken into consideration in finalizing the legislation on shipping. It would be desirable for a convention on bills of lading to be signed before 1978.

14. The question of liability for damage caused by products intended for or involved in international trade was of vital importance to the buyer country. UNCITRAL should therefore provide for reasonable protection for the consumer in the final draft of the uniform rules governing the international sale of goods.

15. His delegation noted with satisfaction that the text of the "Uniform Customs and Practice for Documentary Credits" had been revised by ICC.

16. On the subject of international commercial arbitration, it should be noted that although civil proceedings for

the settlement of disputes between shippers and sellers on the one hand and buyers on the other were lengthy and unsatisfactory, the preliminary draft set of arbitration rules prepared by UNCITRAL also contained many provisions which would cause delay in arbitration proceedings. They should therefore be revised in such a way as to remove causes of delay. Moreover, the interests of the developing countries should be taken into consideration in revising the preliminary draft.

17. Training and the dissemination of knowledge of international trade law certainly contributed to the development of international law. That type of activity was, unfortunately, still very limited in the developing countries; there was a need to hold more seminars and to train more young jurists from those countries. UNCITRAL's efforts in that field were laudable, and his delegation was gratified to note that generous contributions had been made for that purpose by the Governments of Belgium, Austria, Norway, Sweden and the Federal Republic of Germany. He suggested that centres for research and training in international trade law should be established in the developing countries in order to enable the countries of the third world to benefit from the knowledge acquired by the developed countries in that field.

18. In view of the important role to be played by the smaller States and developing countries in shaping a new international economic order, UNCITRAL and its working groups should give priority to the problems of those countries in the codification of international trade law.

19. Mr. STARČEVIĆ (Yugoslavia) said that the work of UNCITRAL should be viewed within the general context of activities aimed at changing the existing system of international economic relations and establishing a more equitable international economic order. The sixth and seventh special sessions of the General Assembly had shown that the international community had embarked on a course which necessarily led to changes in economic relations. At the sixth special session, objectives had been set and, although the results achieved at the seventh special session were still a far cry from what the developing countries had proposed and rightly expected, the document adopted by consensus at that session (General Assembly resolution 3362 (S-VII)) provided a framework for further important action. As his country's representative had stated at the current session of the General Assembly (2360th plenary meeting), the General Assembly should request all organizations of the United Nations system to accord, in their activities, the highest priority to the questions within their competence referred to in the document of the seventh special session.

20. The structure of international trade and the conditions in which it operated were of great importance in the context of the forthcoming changes in international economic relations. In order to accelerate the economic development of the developing countries, international trade had to be made easier, freer, more equitable and less restrictive. UNCITRAL's activities consisted precisely of reducing or eliminating through progressive harmonization and unification of international trade law the legal obstacles hampering international trade. In that way UNCITRAL was participating in the fulfilment of the

general tasks laid down by the sixth and seventh special sessions of the General Assembly—which did not mean, however, that its activities could not be made still more effective.

21. So far UNCITRAL had concentrated on questions which were vital to international trade and had achieved notable results in a relatively short time. UNCITRAL should, as it had done so far, direct its work towards both the adoption of new rules and the revision of existing rules. All the instruments so far adopted had been the result of the work of international bodies in which the developed countries had played a dominant role. UNCITRAL should also continue and intensify its co-operation with other international bodies and organizations dealing with the same problem.

22. He thanked the Chairman of UNCITRAL for his excellent introduction of the report under consideration and stressed the important role played by the working groups at the most recent session of UNCITRAL. His delegation would study with interest the final text of the draft Convention on the International Sale of Goods, since the adoption of that basic document would facilitate the adoption or revision of other documents in that field.

23. His delegation was gratified by the work on preparing uniform rules applicable to various aspects of international payments. In that field, progress should be gradual, since the questions involved were often very complex and the rules applied by individual countries or groups of countries were often very different.

24. As a maritime country with a large merchant fleet, Yugoslavia attached special importance to international legislation on shipping. That matter was also of great importance to the developing countries, as a number of international conferences had shown by demanding that the United Nations Conference on Trade and Development and its subsidiary bodies, and UNCITRAL, should speed up their work in that field. Consequently, his delegation was pleased to learn that the enlarged Working Group on International Legislation on Shipping had completed the second reading of the draft Convention on the Carriage of Goods by Sea. That draft was clearly a considerable advance on the Brussels Convention of 1924 and its Protocol of 1968.

25. The legal problems arising in connexion with the activities of multinational enterprises were among the most complex and most delicate before the United Nations. Because of the impact of the activities of transnational corporations on the economies of developing countries and because of certain reprehensible practices of those corporations, some of which disregarded the laws and regulations of the developing countries in which they operated, those problems had received the attention of the United Nations and of working bodies of the non-aligned countries. Efforts had been made to find ways of making private foreign investment subservient to national development objectives and to establish common standards governing the activities of the transnational corporations. The political, legal, economic and other aspects of the problem made it imperative to approach it very carefully and to ensure that there was close co-operation between UNCITRAL and the

two bodies set up by the Economic and Social Council, namely the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations. Until such time as those bodies were organized and in a position to reach conclusions, UNCITRAL might begin its own studies of certain problems, without necessarily confining itself to those mentioned in the Secretary-General's report on the question.¹

26. The question of liability for damage caused by products intended for or involved in international trade was becoming increasingly important as a result of growing concern for consumer protection. The work of UNCITRAL on international commercial arbitration and, in particular, on the preparation of a draft set of arbitration rules for optional use in *ad hoc* arbitration also deserved attention.

27. He was glad to note that the programmes of training and assistance in the field of international trade law were continuing and he expressed the hope that the programme of symposia could be expanded still further through contributions from Governments, international organizations and other sources.

28. Yugoslavia, although not currently a member of UNCITRAL, had followed its work with keen interest and considered the results achieved so far to be satisfactory. His delegation believed, however, that UNCITRAL could play a more active role in other fields as well, so that it could make a greater contribution to the establishment of a new international economic order.

29. Success had been experienced by UNCITRAL in resolving certain specific problems of international trade law without straying into the area of political or legal-political discussions. As UNCITRAL appeared to have overcome successfully the difficulties of that first phase, it might be asked to consider problems of a more general nature, such as the preparation of uniform rules for the investment of capital or the transfer of know-how and technology from developed to developing countries, thereby contributing to the creation of better and more equitable conditions for the conclusion of agreements. Of course, those questions also involved political considerations, in addition to their purely legal aspects, but the eight years of UNCITRAL's existence and the practical results it had achieved showed that it was capable of dealing competently with the most complex problems. Solving the legal aspects of the macro-problems of international trade would undoubtedly contribute to solving the non-legal aspects of those problems. UNCITRAL would in that case assume the role of "international legislator" for questions of vital interest for the promotion of international trade and for narrowing the gap between the developed and the developing countries.

30. Mr. GÜNEY (Turkey) thanked the Chairman of UNCITRAL for his excellent introduction of the report and welcomed the significant progress made by the Commission at its eighth session.

31. The Working Group which had been commissioned to draft an international instrument on the international sale

of goods had reached complete agreement on the texts dealing with the matters covered in articles 1 to 83 of the Uniform Law on the International Sale of Goods, which contained a total of 101 articles. His delegation believed that the convention on sales and the rules on the formation and the validity of contracts of sale should logically be considered by a single conference at some future date.

32. General conditions of sale and standard contracts were another aspect of the law of sales on which UNCITRAL was currently working. The draft set of general conditions of sale submitted by the Secretary-General² required further work and research in order to make them applicable to a wide range of commodities. The study group established for that purpose would facilitate discussions on the subject and might remove the doubts expressed at the most recent session of UNCITRAL.

33. In the field of negotiable instruments, consideration was being given to the preparation of a final text of a draft uniform law on international bills of exchange and international promissory notes and to the desirability of preparing uniform rules applicable to international cheques. His delegation would therefore confine itself to taking note of the progress made so far by the Working Group.

34. With regard to bankers' commercial credits, UNCITRAL had considered the 1974 revision of the text of the "Uniform Customs and Practice for Documentary Credits". His delegation was pleased to note that ICC had also co-operated effectively with countries whose chambers of commerce were not affiliated to it. UNCITRAL's recommendation that the 1974 revision should be used, as from 1 October 1975, in transactions involving the establishment of a documentary credit was timely, since ICC had made the 1974 revision more acceptable than the 1962 version.

35. It had been concluded by UNCITRAL that the two studies on security interests in goods, that were referred to in paragraph 48 of the report, were highly useful but incomplete. They should therefore be continued or completed.

36. His delegation noted with satisfaction that the Working Group on International Legislation on Shipping was to finalize the draft convention on the responsibility of ocean carriers of goods for cargo. In the discussion of the draft convention in the light of the comments of Governments and interested organizations, the complexity and importance of the subject would become evident.

37. With regard to international commercial arbitration, the preliminary draft set of rules submitted by the Secretary-General should be revised in the light of the comments made at the latest session of UNCITRAL and the impracticable innovations it contained should be eliminated.

38. The question of multinational enterprises was also under consideration by the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations, the two bodies established by

¹ See A/CN.9/104.

² See A/CN.9/98.

the Economic and Social Council. His delegation therefore endorsed UNCITRAL's decision to wait until the issues relating to multinational enterprises had been more clearly identified, but at the same time to maintain the item on its agenda.

39. His delegation noted with satisfaction that a symposium had been held on the role of universities and research centres with respect to international trade law and was pleased that another symposium was scheduled for

1977. It endorsed UNCITRAL's decision to add no new items to its programme of work.

40. The suggestion made by the representative of Austria (1529th meeting) to the effect that UNCITRAL might in future hold some of its meetings in Vienna merited careful consideration.

The meeting rose at 1 p.m.

1533rd meeting

Tuesday, 7 October 1975, at 4.45 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1533

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016 and A/C.6/L.1017)

1. Mr. MUHAMMAD (India) welcomed the delegations of Cape Verde, Sao Tome and Principe and Mozambique to the Committee.

2. He thanked the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) for his comprehensive account of its work at its eighth session. There was a growing appreciation among Members of the United Nations of the importance of the work of UNCITRAL. India was a member of UNCITRAL and had always participated actively in its deliberations. The subjects dealt with by it were of a highly technical nature and, although not all developing countries yet possessed sufficient experts in trade law, it was to be hoped that they would take an increasing interest in the work of UNCITRAL. The report of UNCITRAL (A/10017) occupied a very important place in the Committee's agenda.

3. His delegation was generally satisfied with the manner in which UNCITRAL had implemented its mandate as set out in General Assembly resolution 2205 (XXI). However, it was important that UNCITRAL should not see itself purely as a drafting body. It should allow itself to be exposed to the shared expectations of the majority of the international community in the area of international trade co-operation. International law in that area should evolve according to the requirements of contemporary international economic life. The United Nations had recognized the imperative need to redress the economic imbalance between developed and developing countries and his delegation sincerely hoped that, in order to achieve just and equitable solutions, UNCITRAL would take due account of the principles of the Declaration and Programme of Action on the Establishment of a New International Economic Order contained in General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), the Charter of Economic Rights

and Duties of States in resolution 3281 (XXIX) and also resolution 3362 (S-VII).

4. The consensus procedure adopted by UNCITRAL in reaching its decisions had considerably enhanced the usefulness of its work and it was to be hoped that UNCITRAL would follow the same procedure in the future. Furthermore, since the success of the working groups depended to a large extent on the background work done by the Secretariat, all facilities should be provided to enable the Secretariat to continue its preparation of research studies and background papers for the benefit of UNCITRAL. The participation of observers from governmental and non-governmental organizations and specialized agencies with a wide variety of practical experience in the field of international trade law had also been of benefit to UNCITRAL which should continue to encourage consultation with such expert organizations. Another practice which had helped to accelerate its work and which should be continued was the establishment of working groups to deal with different topics.

5. Referring to the programme of work of UNCITRAL, he said that, while the decision not to add any new topics to the existing programme of work until it had completed the major tasks on which it was already engaged was basically sound, UNCITRAL should keep under review the identification of new areas of study for its programme of future work.

6. The regulation of the activities of multinational enterprises was of vital importance to developing countries. Since the legal issues in respect of multinational enterprises were closely interconnected with those of an economic, social and political nature, UNCITRAL had acted wisely in deciding not to finalize its programme of work in that field pending the identification by the Commission on Transnational Corporations of specific legal issues that would be susceptible to action by UNCITRAL. It was to be hoped that that Commission and UNCITRAL would maintain a system of consultation so as to avoid duplication of work. His delegation was pleased to note that UNCITRAL had

expressed its willingness to consider favourably any request from the new Commission for specialized assistance in legal questions.

7. He noted that considerable progress had been made by the Working Group of UNCITRAL and expressed the hope that a convention on bills of lading would be adopted soon.

8. He expressed appreciation to the Governments of Austria and Belgium, which had made available training fellowships in their countries for nationals from developing countries. Thanks were also due to the Governments of Austria, the Federal Republic of Germany, Norway and Sweden for their voluntary contributions to cover the costs of travel and subsistence for participants in the symposium on the role of universities and research centres with respect to international trade law. The importance of training programmes in the field of international trade law could not be over-emphasized and it was to be hoped that more contributions would be forthcoming.

9. Mr. JACHEK (Czechoslovakia) welcomed the delegations of Cape Verde, Mozambique and Sao Tome and Principe.

10. He said that the progress made with regard to peaceful coexistence and mutual co-operation among States with different economic systems, as demonstrated in the Final Act of the Conference on Security and Co-operation in Europe, had increased the importance of international trade law. It was in that political context that his Government understood and evaluated the role of UNCITRAL. In the unification and harmonization of international trade law it was necessary to seek solutions acceptable to the greatest possible number of States, regardless of their social systems. The adopted instruments should give maximum encouragement to the development of equitable and reciprocally advantageous international economic relations and provide for legal security in those relations, in accordance with the principles and purposes of the Charter, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), and the Charter of Economic Rights and Duties of States.

11. Czechoslovakia attached special importance to the unification of rules governing the international sale of goods, since agreements on the international sale of goods were the most important type of treaty used in international trade. His delegation welcomed therefore the decision by UNCITRAL contained in paragraph 17 of its report and would expect all States to participate in the conference of plenipotentiaries.

12. In the field of international payments, his delegation valued the work of the Working Group on International Negotiable Instruments and also attached considerable importance to the uniform rules relating to bank guarantees and contract guarantees. While welcoming the assistance of the International Chamber of Commerce (ICC) in that connexion, his delegation considered that the rules worked out by ICC and merely recommended by UNCITRAL were not quite adequate. It would be preferable for UNCITRAL itself to complete the legal draft, so that the uniform rules

could also replace the cogent rules of otherwise applicable legal codes.

13. In respect of international legislation on shipping, his delegation, while gratified at the results achieved by the Working Group concerned, considered that a uniform basis which did not limit the international effectiveness of the uniform rules to relations between persons from the treaty States would be more suitable.

14. His delegation regarded the co-operation of UNCITRAL with other United Nations bodies in resolving various legal questions relating to the activities of transnational enterprises as useful, and agreed with the decision by UNCITRAL contained in paragraph 94 of its report. However, UNCITRAL, in its future work in that field, should give consideration to the protection of the sovereign rights of States over their natural resources and should take account of the principles governing relations between States and multinational enterprises as embodied in the Charter of Economic Rights and Duties of States. However, it did not appear from paragraph 92 of the report that UNCITRAL would keep in view the entirely consistent protection of the interests and rights of States in which multinational enterprises operated, since the object of the model rules seemed to be only to enable States to exercise "a greater degree of control" over the activities of multinational enterprises.

15. In view of the very extensive range of problems to be dealt with by UNCITRAL, questions of marginal importance or of doubtful relevance to international trade should not be included in its agenda. Consequently, his delegation did not support the proposal to include the question of liability for damage caused by products intended for or involved in international trade from which rights would result for persons other than the participants in international trade in the work of UNCITRAL. It appeared appropriate, therefore, to leave the settlement of questions discussed in chapter VII of the report to the legal systems of the different countries.

16. Referring to chapter IX of the report, he said that consideration should be given to adopting a broader conception of the envisaged regulations relating to sales contracts and the conditions of their validity and to drafting general provisions on the conclusion of contracts in international trade or stipulating conditions for their validity. It would also be appropriate to review existing methods of unification and harmonization of international trade law, which were based on a selection of certain limited legal issues or on a certain type of contract and did not deal with more general questions for which different provisions existed in the legal systems of individual countries. The existing partial methods would not be adequate if a number of international conventions or other instruments were adopted without co-ordination of their contents. There was also the danger that it would be difficult to find one's way through the adopted provisions, that there would be gaps in them as a result of insufficient co-ordination and that, in any event, the unification work would be uneconomical, since the same general questions would have to be resolved with each different type of contract, although they could be formulated generally and deviations from the general principles could be provided for in the same way as

in comprehensive legal codes. Although it might be premature to consider the question of drafting such a comprehensive international trade code, his delegation wished to draw attention to the problem so that UNCITRAL would keep it in mind and in due course consider the possibilities of harmonizing the different provisions and of gradually building up uniform international trade legislation.

17. Referring to the methods of work in the codification of international trade law, he said that in the preparation of the respective instruments, the experience of all legal systems must be taken into account, including the legal regulations of the socialist countries of Eastern Europe. His delegation noted with satisfaction the statement of the Chairman of UNCITRAL (A/C.6/L.1017) that certain inadvertencies, committed in the past, would be rectified.

18. In general, the work of UNCITRAL, its working groups and its secretariat was satisfactory.

19. Mr. PRIETO (Chile) thanked the Chairman of UNCITRAL for his outstanding introduction to the item under consideration. His delegation welcomed the attendance of a large number of observers from specialized agencies and governmental and non-governmental organizations at the eighth session of UNCITRAL, since such participation enriched the work of UNCITRAL and made it more universal.

20. The fundamental task of the present generation was to build a world of peace and harmony in which the vast gaps currently separating developed and developing countries would no longer exist. One way to promote the attainment of that goal was to take measures aimed at improving the terms of trade of the developing countries and eliminating all discrimination in that connexion. His delegation was therefore pleased that UNCITRAL had been made responsible for the unification of international trade law, since it thereby helped to make peace among nations a reality as a result of increased trade relations among States.

21. In reviewing the work done thus far by UNCITRAL, it was gratifying to note the progress made with respect to the unification of the rules governing the international sale of goods. His delegation likewise welcomed the progress made in connexion with international negotiable instruments, which, while not as spectacular as the progress made with respect to the international sale of goods, was nevertheless encouraging, especially in view of the complicated nature of the subject.

22. With regard to the question of security interests, his delegation believed it was necessary to revise and supplement Mr. Drobnig's valuable study¹ with a view to remedying a number of omissions, the occurrence of which was perfectly understandable in view of the scope of the study. For example, the study failed to mention a number of important cases of security interests which were part of Chilean law.

23. The activities of the Working Group on International Legislation on Shipping, of which Chile was a member,

were of fundamental importance to the developing countries. It was therefore highly satisfying to note that a draft Convention on the Carriage of Goods by Sea had been completed.

24. His delegation considered the preliminary draft set of arbitration rules to be on the whole satisfactory, since it provided a quick and relatively simple procedure for settling disputes on the basis of uniform and universally accepted rules which would have a positive effect on the promotion of international trade.

25. His delegation agreed that UNCITRAL should confine itself to the legal aspects of the question of multinational enterprises, especially if unnecessary duplication of the work of other United Nations bodies could thus be avoided. Adequate co-ordination should be ensured with other organs of the system which were dealing with problems relating to the activities of such enterprises. In that connexion, the suggestion made by the representative of France at the previous session (1500th meeting) that, as the first step, a satisfactory definition of the concept of a multinational enterprise should be worked out had considerable merit. His delegation believed that the definition should be worked out in due time and with scientific accuracy; the definition eventually reached might prove to be broader than the current concept of a multinational enterprise.

26. With regard to liability for damage caused by products intended for or involved in international trade, the chief legal question seemed to be the extent of liability, which would be determined by the decisions taken concerning the types of product in regard to which liability should be imposed, the classes of persons on whom liability could be imposed, the kinds of damage for which compensation could be recoverable and the kinds of transaction falling within the scope of the proposed liability. Significant factors to be taken into account were that many products currently being produced could cause serious damage to persons and objects and that above and beyond the legal problems involved such damage had important social and economic repercussions.

27. With regard to training and assistance in the field of international trade law, mention should be made of the fellowships awarded by a commercial bank in Austria and the Government of Belgium. Gratitude should also be expressed to the Governments of Austria, Norway, the Federal Republic of Germany and Sweden for providing funds to cover the travel expenses of a number of participants from developing countries who had attended the international trade law symposium. It was to be hoped that their example would be followed by other wealthy countries. The teaching of international trade law should be given the emphasis which it deserved. Universities should be encouraged to include that subject in their regular curricula; recent experiments along those lines in Chile had produced successful results.

28. His delegation fully endorsed the proposals made regarding the venue, agenda and dates for the forthcoming sessions of the Working Groups and of UNCITRAL.

29. Mr. SIAGE (Syrian Arab Republic) commended UNCITRAL on its excellent report.

¹ ST/LEG/11.

30. With regard to the international sale of goods, his delegation endorsed the decision by UNCITRAL, contained in paragraph 17, requesting the Secretary-General to transmit the draft Convention on the International Sale of Goods to Governments and interested international organizations for their comments. In his opinion, those comments, which were to be studied at the tenth session of UNCITRAL, would enrich the draft because the views of all the legal systems of the world would thus be made available.

31. He noted that arbitration was gaining increasing importance as a means of settling disputes arising out of international trade transactions. His delegation therefore supported the principles underlying the preliminary draft arbitration rules (see A/10017, annex I). However, it was also essential to take account of the local legislation of the parties involved.

32. His delegation attached considerable importance to the matter of multinational enterprises, which constituted a threat in particular to the sovereignty and independence of developing countries. It supported the decision by UNCITRAL to retain the item on its agenda. It believed that UNCITRAL should co-operate closely with the Economic and Social Council, the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations.

33. With regard to training and assistance in the field of international trade law, his delegation stressed the importance of awarding fellowships to students from developing countries. In its opinion, it would be appropriate to hold symposia during the sessions of UNCITRAL, as had been done in 1975. He expressed his delegation's appreciation to those Governments which had made training fellowships available to nationals of developing countries.

34. His country had participated in the deliberations of UNCITRAL at its eighth session and was pleased with the work accomplished. It supported the decisions of UNCITRAL and the efforts being made to develop international trade law, particularly for the benefit of the developing countries.

35. He expressed the hope that UNCITRAL would continue to carry out its work in a spirit of co-operation.

36. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the report of UNCITRAL showed that that body was concerned with important and relevant questions. Established 10 years previously on the initiative of Hungary to promote the progressive development of international trade law, UNCITRAL was called upon to work out international legal instruments in the commercial field which would enhance equitable and mutually advantageous economic co-operation between all countries, including those with different social and economic systems. As had been pointed out in the Final Act of the Conference on Security and Co-operation in Europe, international trade was one of the most important factors of economic growth and social progress. Stable economic relations, in turn, enabled countries to make full use of the advantages of the international division of labour and promoted the development of friendly relations between States. Those were goals which the work of UNCITRAL was also intended to serve.

37. Constructive work had been done by UNCITRAL on the various questions before it at its eighth session. His delegation agreed that the Working Group on the International Sale of Goods had been particularly effective, since it had managed to achieve full agreement on most of the articles of the draft Convention on the International Sale of Goods. He supported the decision by UNCITRAL set out in paragraph 17 of the report and, in particular, the request to the Secretary-General to transmit the draft Convention to Governments and interested international organizations. It agreed with a number of previous speakers that it would be desirable to adopt as a broad working method the practice of transmitting drafts prepared by the Working Groups and UNCITRAL itself to Governments and interested international organizations for comments. Such a practice should be encouraged, since it would enable all Members of the United Nations to follow the work of UNCITRAL and to assist that body.

38. It was gratifying to note that considerable progress had been made during the current year in respect of international legislation on shipping and that a draft Convention on the Carriage of Goods by Sea had been completed.

39. It was clear from the report that UNCITRAL had held an exhaustive discussion on the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade. In his delegation's opinion, UNCITRAL had done well to submit the draft articles with its comments to the Sixth Committee.

40. His delegation took note of the readiness of UNCITRAL to consider specific legal issues posed by the activities of multinational enterprises and to retain the item on its agenda. It understood the difficulties which UNCITRAL had encountered in considering that question, but it would like to be assured that the delay in the examination of such issues would not go beyond reasonable limits, since, as had been stated on several occasions in the Committee, the elaboration of measures, including those of a legal nature, to curtail the activities of international monopolistic corporations would constitute substantial steps towards the elimination of inequalities existing in international economic relations as a result of imperialism.

41. The success of the activities of UNCITRAL depended largely on whether account was taken of the requirements of the principal legal systems of the world. It was regrettable that in the consideration of such problems as international payments UNCITRAL had not taken sufficient account of the legislation of the socialist countries. The error of such an approach was clear if account was taken of the volume of the trade of the socialist countries. Failure to consider the foreign trade practices of socialist countries in the preparation of drafts constituted a disservice to UNCITRAL and his delegation hoped that that body and the Secretariat would take its comments into consideration.

42. The subject of training and assistance in the field of international trade law was beginning to acquire increasing importance in the activities of UNCITRAL. His delegation welcomed the positive results of the symposium held during the eighth session of the Commission. The holding of such a

symposium was a sound practice and prompted the development and further recognition of international trade law. He also supported the idea of involving UNCITRAL in the organization of symposia on international trade law in developing countries.

43. He expressed the view that UNCITRAL should not seek to extend its sessions but rather to shorten them, thus making its work more effective. It was difficult for experts to leave their countries to attend the meetings of UNCITRAL. No less important was the fact that an effort must be made to effect economies. The United Nations budget continued to grow, mainly because of the constant increase in the administrative machinery and the number of meetings of the various commissions and committees.

44. Mr. YOKOTA (Japan) said that, since its establishment, UNCITRAL had become a major forum for international co-operation in the unification of international trade law. Its membership constituted a well-balanced representation of the various legal systems and economic interests in the world. His delegation noted with satisfaction the efforts made by UNCITRAL to maintain close contact and to strengthen its co-operation with other international organizations, both governmental and non-governmental, that were interested in the unification of international trade law. Since tasks entrusted to UNCITRAL called for a highly technical knowledge of domestic trade law and business practices, his delegation hoped that UNCITRAL would continue to avail itself of the experience of other international organizations and bodies.

45. Considerable progress had been made by UNCITRAL since its seventh session, especially in the field of international legislation on shipping. In that connexion, his delegation wished to congratulate the Working Group concerned on the completion of a draft Convention on the Carriage of Goods by Sea. His delegation would soon submit its comments on that draft to the Secretary-General and would also express its views thereon at the ninth session of UNCITRAL. In view of the importance of a new Convention on the Carriage of Goods by Sea, UNCITRAL should take fully into account existing commercial practices and the development of new techniques in maritime transportation and should strike a balance between the interests of shippers and carriers.

46. Furthermore, UNCITRAL was expected at its ninth session to give final form to the preliminary draft rules on international commercial arbitration. In that connexion, one of the important issues was the scope of the draft rules. The prevailing view, as summarized in annex I to the report of UNCITRAL, seemed to be in favour of excluding "administered arbitration" from the scope of the rules, for the time being, a view shared by his delegation, since it adequately reflected current arbitration practice.

47. With regard to general conditions of sale and standard contracts, his delegation approved of the decision by UNCITRAL to establish a study group composed of representatives of regional commissions and interested trade organizations and associations, including chambers of commerce. Such close contact with interested organizations was the most suitable method of work, not only for that

particular topic, but also for the unification of laws and rules in the field of international trade in general. UNCITRAL should continue its step-by-step work on that item by considering various practical aspects and, in particular, the characteristics of the trade in specific commodities.

48. In its work on multinational enterprises, UNCITRAL had rightly taken into account the establishment of the Commission on Transnational Corporations. His delegation agreed with UNCITRAL's decision to refrain from taking a final decision concerning its programme of work in that field, pending the identification by the Commission on Transnational Corporations of specific legal issues suitable for action by UNCITRAL. The legal issues raised by multinational enterprises were closely related to the economic and political issues and could not be discussed profitably unless the economic and financial aspects of the problem were fully explored.

49. He was pleased to note the success of the symposium sponsored by UNCITRAL on the role of universities and research centres with respect to international trade law. The informative function of UNCITRAL was no less important than its involvement in the preparation of draft conventions, since information activities helped to foster understanding, which was a necessary prerequisite for the unification and harmonization of international trade law. His delegation therefore also welcomed the decision by UNCITRAL to request the Secretary-General to organize an international symposium on international trade law in connexion with its tenth session.

50. With regard to the future programme of work of UNCITRAL, his delegation endorsed the proposal to hold a four-week session from 26 April to 21 May 1976, because UNCITRAL would have to deal with two extremely important topics, namely the draft Convention on the Carriage of Goods by Sea and the revised set of arbitration rules.

51. His delegation welcomed the realism shown by UNCITRAL in deciding to complete the major tasks it was already carrying out before embarking on new projects.

52. Mr. LAUTERPACHT (Australia) said that while the Sixth Committee might be described as a technical body, it was important not to lose sight of the political aspects of its role. It was right to say that it was the duty of members to apply technical and legal expertise to international problems, but such expertise must be focused in such a way as to ensure a positive and constructive contribution to the quest for a better adjusted and self-fulfilling international society.

53. He applauded the work of UNCITRAL as reflected in its report. With regard to each of the subjects under consideration, he said that UNCITRAL appeared to be proceeding with the degree of thrust or restraint appropriate to the particular case: thrust in the case, for example, of the preparation of a draft Convention on the International Sale of Goods, its studies on general conditions of sale and standard contracts, its work on the mechanics of commercial payments, its development of a new draft Convention on the Carriage of Goods by Sea and in the

promotion of symposia; and restraint in the case of multinational enterprises, where it had decided to coordinate its work with that of the Commission on Transnational Corporations and of the Information and Research Centre on Transnational Corporations.

54. His delegation was particularly interested in the first stages of the approach of UNCITRAL to international commercial arbitration. He congratulated it on the substantial work which it had done on the subject thus far. The intrinsic importance of the legal resolution of disputes in international trade was obvious. Indeed, it was an indication of the current political relevance of the subject that express reference had been made to it by 35 States in the Final Act of the Conference on Security and Co-operation in Europe. What might be more easily overlooked was that that category of dispute settlement was but one aspect of the much broader problem of international dispute settlement to which the Committee would be turning its attention the following month. For that reason, his delegation approved of the absence from the rules of any provision expressly limiting their scope to trade. UNCITRAL had avoided any doctrinaire commitment to the identification of the parties involved in the transactions which might give rise to international trade arbitration. Nor had it sought to impose a substantive limitation on the concept. That was not to say that rules for international trade arbitration could or should be applied to traditional disputes between States. However, the current era was one in which the State itself was a trader. Not only did it buy and sell commodities; it also engaged in trade-related activities in the public sector and hence came into a wide range of "international" contractual relationships with foreigners which might ultimately occasion disputes in which international arbitration of the kind contemplated in the draft set of arbitration rules might be appropriate. Thus, the rules for optional use in *ad hoc* arbitration formed a useful complement to, and extension of, such important institutional methods as the World Bank system for the settlement of international investment disputes. Such rules would, moreover, have a useful role to play in disputes which might arise out of contracts to which international organizations were parties and for which in many cases no settlement process other than arbitration

existed. For those reasons, it was to be hoped that UNCITRAL would not seek to limit the current scope of the rules.

55. With regard to the relationship between municipal law and arbitration, UNCITRAL was quite correct in identifying the overriding effect of municipal law on arbitration activities which occurred within the territory of a particular State. But there would seem to be room for further clarification of what was currently one of the most uncertain features of arbitration, namely the absence of control or guidance on the question of the seat of the tribunal, which gave rise to an element of unpredictability. The importance of that point was more striking when it was related to article 27 of the preliminary draft, which dealt with the question of the law to be applied by the arbitrators but did not indicate the impact which the public policy of the seat of the arbitration might have upon the substance of the award.

56. It was to be hoped that fuller consideration would be given to the problem of the effect of the arbitral award. At present, articles 29 and 30 of the preliminary draft dealt respectively with the interpretation of the award and its correction. The effect of the award was not specifically treated. In particular, there was no express consideration of the problem of challenge to the award on the grounds of procedural or substantive error, which were, however, questions of considerable practical importance.

57. Some of the other matters of detail on which his delegation would in due course comment in UNCITRAL and which he wished to mention in passing included the problem of appointing arbitrators who also represented a party; the duty of the arbitrator to ensure that the parties which appeared were properly heard in all matters relevant to the award; and the manner of formulating questions of experts.

58. He said that his country looked forward to continuing to assist UNCITRAL in its important work and welcomed its report.

The meeting rose at 6.25 p.m.

1534th meeting

Wednesday, 8 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1534

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (A/10010)

1. The CHAIRMAN invited the Chairman of the International Law Commission to introduce the report of the Commission on the work of its twenty-seventh session.

2. Mr. TABIBI (Chairman of the International Law Commission) recalled that many changes had taken place since the presentation of the first report of the International Law Commission (ILC) to the Sixth Committee in 1949. On that occasion there had been no more than a few Asians and almost no Africans present. He was happy to see that at the current meeting there were more Asians and Africans present than representatives from other nations and was

certain that they would have a great influence on the development of modern international law, which for centuries had been a monopoly of Western chancelleries and European jurists.

3. He paid tribute to the outstanding contribution the Sixth Committee had made to the progressive development of international law during the past 30 years and expressed the hope that continued co-operation between the Committee, ILC and the International Court of Justice would help to ensure permanent world peace.

4. He also praised the significant contributions made by the Office of Legal Affairs to the work of the Committee, ILC, the United Nations Commission on International Trade Law and other legal bodies. Despite the difficult budgetary situation facing the United Nations, efforts should be made to find ways of increasing the staff of the Office, particularly the Codification Division and the General Legal Division. It would be very useful to have the Office participate actively in the vitally important task of preparing and formalizing normative documents relating to the New International Economic Order referred to in General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).

5. Turning to the report of ILC (A/10010), he said that at the twenty-seventh session it had shaped its programme and established the priority given to the topics to be considered in line with General Assembly resolution 3315 (XXIX) and had made considerable progress with regard to all the items on its agenda.

6. With respect to chapter II of the report, dealing with the topic of State responsibility, he recalled that the draft articles on that topic were limited to the responsibility of States for internationally wrongful acts and did not extend to the international liability of States for injurious consequences arising out of the performance of certain activities that were not prohibited by international law; the latter question had become a separate topic in the programme of work of ILC. The draft articles dealt with the international responsibility of the State for the breach of any international obligation and were not limited to responsibility for the breach of obligations belonging to a particular sector of international law. The draft did not, however, overlook the importance attached by the international community to respect for certain obligations, such as those relating to the maintenance of international peace and security. In so far as distinctions between different categories of international obligations might be relevant, they would be fully studied by ILC. The draft was not supposed to define the obligations, violation of which might be a source of international responsibility, the so-called "primary rules", but rather to focus exclusively on codifying the general rules of the international responsibility of States for internationally wrongful acts as such, namely the rules governing all the new legal relationships that followed from an internationally wrongful act of a State as a consequence of the failure to fulfil an international obligation.

7. The draft articles on State responsibility were divided into two parts; part 1 was concerned with the origin of international responsibility and part 2 with the content, forms and degrees of international responsibility. ILC might decide to add a third part dealing with certain problems

concerning the settlement of disputes and the "implementation" of international responsibility. ILC had taken into account the desire expressed by several delegations in the Sixth Committee during previous sessions to have a clear picture of the topic in its entirety and had therefore decided to include in its report (*ibid.*, paras. 42-44) a general description of the matters to be studied in each part of the draft.

8. Part 1 would contain about 31 articles divided into five chapters. At its twenty-seventh session ILC had completed its consideration of chapter II, comprising articles 5 to 15 and entitled "The Act of the State Under International Law", which dealt with the determination of the conditions in which a particular kind of conduct must be considered as an "act of the State" under international law, i.e., the subjective element of the internationally wrongful act. Chapter III, containing provisions relating to the breach of an international obligation, would be examined at the next session of ILC.

9. He recalled that articles 5, 6 and 7, adopted at previous sessions of ILC, provided for the attribution to the State *qua* subject of international law, as a possible source of international responsibility, of the conduct of organs which formed part of the State machinery proper and of the conduct of organs of territorial governmental entities or other entities also empowered by internal law to exercise elements of the governmental authority. Those provisions applied, of course, only to the conduct which the persons constituting the organ had adopted in performing their functions as members of those organs and not as private individuals. Article 10, adopted at the twenty-seventh session, provided that such conduct should be attributed to the State even if the perpetrators had exceeded their competence under internal law or contravened instructions, i.e. had acted *ultra vires* with regard to internal law. For reasons developed in the commentary ILC considered that there was no exception to that rule even in the case of manifest incompetence of the organ and even if other organs of the State had disowned the conduct of the offending organ. However, under the system adopted by ILC, the actions of human beings constituting the organs in question performed in their capacity as private individuals were not regarded as acts of the State and did not incur, as such, international responsibility.

10. Articles 12, 13 and 14, which were based on the same basic principle, provided respectively that the conduct of an organ of a State, of an international organization or of an insurrectional movement, acting in that capacity, remained an act of the State, international organization or insurrectional movement to which the organ in question belonged and was not considered an act of the State in the territory of which such conduct might have been adopted. Those provisions presupposed that the organ concerned was not under the control of the territorial State, the latter case having been dealt with in article 9. Articles 13 and 14 did not intend to define the international capacity or status of international organizations and insurrectional movements. They presupposed that, in the concrete cases to which they applied, the acts taken into consideration emanated from an international organization or an insurrectional movement possessing a personality of its own under international law.

11. Article 15, which related to the attribution to the State of the act of an insurrectional movement which became the new government of a State or which resulted in the formation of a new State, would certainly attract observations from the members of the Sixth Committee. The question of attribution contemplated in the article arose solely when the insurrectional movement, having triumphed, had substituted its structures for those of the previous Government of the State in question, or when the structures of the insurrectional movement had become those of a new State, constituted by succession or decolonization. The article, which was based on the continuity principle, provided that the act of an insurrectional movement should be considered an act of the State with which the insurrectional movement identified itself after its triumph. It also provided that when such a movement became the new Government of a State the attribution to the State in question of the acts of the movement was without prejudice to the attribution to that State of any conduct which would have been previously considered as an act of the said State by virtue of articles 5 to 10 of the draft and in no way excluded, therefore, the parallel attribution to that State of the actions carried out during the conflict by the organs of the Government then established.

12. In its work on the important, yet difficult and complicated, topic of succession of States in respect of matters other than treaties, ILC had continued to make progress. It had already adopted eight articles on the topic, concentrating for the time being on succession to State property. One of the important new articles provisionally adopted by ILC was article 9 entitled "General principle of the passing of State property". ILC had also provisionally adopted an article X spelling out the absence of effect of a succession of States on third State property and a new subparagraph to be included in article 3, defining the term "third State". During the discussion in ILC, several members had expressed reservations on the text of article 11. The view had been expressed, *inter alia*, that the article was not relevant to the topic, that its wording was not adequate to express the desired rule and that it might make more difficult negotiations between the predecessor and successor States. For those and other reasons noted in the commentary, ILC had decided to place the entire article in square brackets to draw the Committee's attention to those questions. ILC intended to continue its work on State property, on which considerable progress had been made, and then proceed to consider "public debts", possibly confining its study to State debts.

13. With regard to chapter IV of the report, dealing with the most-favoured-nation clause, he observed that at its twenty-seventh session, ILC had considered the fourth, fifth and sixth reports of the Special Rapporteur, containing a further series of draft articles, and had adopted 14 additional articles, thus making a total of 21. Drawing attention to a few salient points, he referred first to the relationship between the most-favoured-nation clause and the national treatment clause. Because of the interaction between the operation of the most-favoured-nation clause and the national treatment clause, clauses which often appeared in treaties side by side and were sometimes combined, the Special Rapporteur in his fifth report¹ had

proposed several draft articles dealing with national treatment and national treatment clauses. In his sixth report,² the Special Rapporteur had reaffirmed his belief in the need to mention explicitly both the most-favoured-nation clause and the national treatment clause in the articles applicable to the two clauses. After a general discussion, ILC had agreed to concentrate on rules concerning most-favoured-nation clauses and most-favoured-nation treatment. Nevertheless, it had adopted two provisions (articles 16 and 17) touching on national treatment. ILC had wished to give the General Assembly an opportunity of pronouncing on the advisability of extending the draft further in relation to national treatment clauses and national treatment. The views of the Committee would therefore be valuable to ILC in concluding its first reading on the topic, which it was hoped would take place the following year.

14. His second point concerned the relationship between the most-favoured-nation clause and the different levels of economic development, a question of great importance to the third world. Referring to the increasingly predominant trend in the General Assembly and the United Nations Conference on Trade and Development (UNCTAD) towards application of the most-favoured-nation clause to all countries regardless of their level of economic development, he said that such application involved implicit discrimination against the countries of the third world. For the purposes of economic development, it was necessary to ensure that the most-favoured-nation clause would not apply for a certain period of time to certain types of international trade relations. General Principle Eight of the recommendations adopted by UNCTAD at its first session³ supported that view. Since the matter had a significant bearing on the final codification of the topic, ILC, recognizing its importance, had begun to examine at its twenty-seventh session the question of exceptions to the operation of the clause and had provisionally adopted a first article (article 21) concerning most-favoured-nation clauses in relation to treatment under a generalized system of preferences. ILC intended to study further at its next session the question of the application of the most-favoured-nation clause to developing countries, in order to determine whether some additional provisions might be necessary to protect their interests adequately and to review, within that context, article 21, with a view to its possible improvement. According to members of ILC who belonged mainly to the third world, that article, which should be the first step in a series of draft articles devoted to the question, was not adequate. He personally favoured a set of articles intended to cover the interests of the economically weaker nations, including land-locked countries.

15. The third point to which he wished to draw the Committee's attention related to the question whether a most-favoured-nation clause did or did not attract benefits granted within customs unions and similar associations of States. ILC had held a preliminary discussion on the matter at its twenty-seventh session, but had not taken a definite stand. It wished to take into account the reactions of the representatives of States when it considered the matter

² A/CN.4/286 and Corr.1.

³ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

again at its next session. To that effect, ILC had deemed it useful to include in its commentary on article 15 some of the materials contained in the Special Rapporteur's report as well as a summary of his findings and conclusions on the subject. Although some members of ILC had supported the Special Rapporteur's position, others had expressed reservations.

16. It must be emphasized that the articles on the most-favoured-nation clause were designed to supplement the Vienna Convention on the Law of Treaties.⁴ Since the general rules pertaining to treaties had been stated in that Convention, the draft articles contained particular rules applicable to a certain type of treaty provision, namely most-favoured-nation clauses. The draft articles were, in general, without prejudice to the provisions which the parties might agree to in the treaty containing the clause or otherwise. To emphasize that residual character, two alternative approaches might be adopted: to introduce in each individual article, as appropriate, an opening clause such as "unless the treaty otherwise provides or it is otherwise agreed", or to insert in the draft an article expressly recognizing that residual character, which would be of general application to all the provisions which were of the same nature. ILC would take a decision at its next session on which of the two approaches to adopt.

17. Substantial progress had been made by ILC on the question of treaties concluded between States and international organizations or between two or more international organizations. Chapter V of the report reviewed in detail the work done so far in that field and explained the scope and character of the draft articles. It also explained the close relationship of the draft articles with the Vienna Convention as a whole as well as with regard to specific articles of that Convention. At its twenty-seventh session, ILC, in addition to completing the gaps in article 2 on the use of terms, had adopted 12 further articles. As pointed out in the general comments in the introductory part of the chapter, ILC was largely following the provisions of the Vienna Convention, which concerned treaties between States, for treaties concluded between one or more States and one or more international organizations and treaties concluded between two or more international organizations. In so doing, however, ILC was not overlooking the fact that international organizations could not, at the current stage of development of international law, be assimilated to States. Consequently, the rules laid down in the Vienna Convention were being adapted by ILC, whenever it felt it necessary, to international organizations, a task which was not always easy. The difficulties involved had emerged during the current year when ILC had considered some of the draft articles adopted and in particular, when it had begun to examine the provisions of the Vienna Convention relating to reservations, which would continue to be studied at the next session of ILC.

⁴ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

The particular nature of international organizations had also required that in some instances the terms used in the Vienna Convention be supplemented by new ones.

18. The twenty-seventh session of ILC had been one of the most productive: 35 draft articles had been adopted on first reading and a step forward had been made in the preparation of draft articles relating to four of the topics to which priority had been given in the light of relevant General Assembly recommendations.

19. In addition, ILC had paid particular attention to the wish expressed in the Committee that an effort should be made to rationalize further the organization and methods of work of ILC when that was suited to the realization of the tasks entrusted to it. A planning group had been established to study the functioning of ILC and to formulate suggestions regarding its work. The group had undertaken a review of the workload of ILC with a view to proposing general goals toward which ILC might direct its efforts. ILC had reached certain important conclusions on the basis of that review. It was the belief of ILC that while the adoption of any rigid schedule of operations would be impracticable, the use of the goals in planning its activities would afford a helpful framework for decision-making. It had also been agreed that the planning group should continue to review the progress of the work of ILC as well as suggestions regarding the activities and needs of ILC. The following year ILC intended to continue considering the topics included in its current programme, namely State responsibility, succession of States in respect of matters other than treaties, the most-favoured-nation clause, the question of treaties concluded between States and international organizations or between two or more international organizations and the law of the non-navigational uses of international watercourses.

20. Co-operation with regional legal bodies, which was useful to both ILC and the regional legal committees, had continued during the past year. Observers from ILC had participated in the meetings of the regional legal bodies and ILC had heard statements by the observers of those bodies.

21. The International Law Seminar had been held as usual during the twenty-seventh session and all members of the Seminar had attended meetings of ILC and heard lectures given by many of its members. A large number of participants had been young jurists from the developing world.

22. In accordance with a decision taken by ILC at its twenty-third session, and on the basis of a generous grant by the Brazilian Government, the third Gilberto Amado Memorial Lecture had been given at the Palais des Nations on 11 June 1975 by the President of the International Court of Justice. As in previous years the lecture had been published, with an introduction by the Chairman of ILC, and would soon be circulated.

The meeting rose at 4.45 p.m.

1535th meeting

Thursday, 9 October 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1535

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General* (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1**)

1. Mr. STANFORD (Canada) congratulated the members of the International Law Commission (ILC) and its Chairman on the continuing high quality of their work. The scope of international law had expanded rapidly in recent years and ILC was, to a large extent, the focal point for the growing demands made by the community of nations upon international law and lawyers. Noting with particular interest chapter VI, part B of the report of ILC (A/10010) dealing with the organization of its work and the forecast of its likely progress during the next six years, he expressed the belief that considerable restraint should be exercised in referring additional items to ILC at the present time. Recent developments gave reason to hope that debates taking place elsewhere on matters which had become of increasing importance to the United Nations in the past few years might soon lead to a consensus on certain of those issues. It would then be appropriate for the international community to seek to elaborate rules of particular application to those subjects. When that occurred, it might be expected that additional demands would be made on ILC. For that reason, it was important that ILC concentrate during the next two years on the completion of its work on the subjects currently before it, in particular the questions of State responsibility, State succession and treaties concluded by international organizations.

2. With regard to the draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, section D), he noted that the commentary on article 7 suggested that the purpose of that article was to incorporate in the draft a provision similar to article 4 of the Vienna Convention on the Law of Treaties¹ and the general principle of non-retroactivity of treaties reflected in article 28 of that Convention. His delegation agreed with the view expressed by the Government of the Federal Republic of Germany in its comments on the draft articles (A/10198/

Add.1) that the deliberate drafting of the article with a view to its application to any succession of States which might occur after the general entry into force of the articles, rather than after their entry into force with respect to a particular party, was a clear departure from the principle of non-retroactivity reflected in article 28 of the Vienna Convention. It was questionable whether such a departure from a fundamental principle of treaty law was justified and whether a provision of that kind was likely to make the articles as a whole more or less acceptable to States which became independent after their general entry into force.

3. The succession by Canada to treaties concluded on its behalf by the United Kingdom had been governed by the principles of customary international law which Canada considered to be in force at the time of that succession and which did not correspond in all respects to the principles reflected in the present draft articles. The latter articles took into account much of more recent State practice. His Government had consistently taken the position, for instance, that, upon attaining the status of an independent State, Canada had succeeded to extradition treaties concluded by the United Kingdom and applied to Canada prior to the acquisition of independent status by Canada. There existed considerable State practice between Canada and its treaty partners which confirmed that view of customary international law as it existed at the time of the State succession in respect of Canada.

4. On the question of the action to be taken in respect of the draft articles, he noted that two issues remain unresolved, namely the proposed article 12 *bis* on multilateral treaties of a universal character and the proposed article 32 on the settlement of disputes (see A/9610/Rev.1, footnotes 57 and 58). It had been suggested that those questions should be referred back to ILC for further study. While greatly appreciating the willingness of ILC to devote further time and effort to the subject, his delegation did not share the view that a referral of those issues back to ILC was either necessary or desirable.

5. With respect to the question of multilateral treaties of a universal character, he reminded the Committee that the United Nations Conference on the Law of Treaties had abandoned its attempt to introduce the distinction between general and restricted multilateral treaties into the Vienna Convention, because of its inability to agree on the necessary definitions of those two kinds of treaties, which would be both exhaustive and mutually exclusive. It was therefore doubtful whether ILC could be expected to reach agreement on a definition of multilateral treaties of a universal character and whether such a definition could be maintained in the deliberations of whatever diplomatic body might subsequently be called on to discuss and formally adopt the draft articles. His delegation believed

* Resumed from the 1530th meeting.

** Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10. Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

¹ See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

that the practice under the existing articles was likely substantially to meet the concerns of those who had proposed article 12 *bis* and that an attempt to introduce the concept of multilateral treaties of a universal character might, in the end, create more problems than it solved.

6. With regard to the question of dispute settlement procedures, his delegation believed that, if the draft articles eventually took the form of a convention, that convention must include provisions on that matter. Ideally; those provisions would provide for conciliation to be followed, if necessary, by compulsory and binding third-party adjudication. As an absolute minimum, however, the dispute settlement provisions should correspond to those found in the Vienna Convention, to which any convention on State succession in respect of treaties would be closely related. Any discussion of dispute settlement procedures would, in all probability, turn on whether there was to be provision for compulsory and binding third-party arbitration, which in turn would lead to a discussion of whether and in what circumstances binding arbitration was compatible with the concept of the sovereign equality of States. Because of the necessarily highly political content of such a discussion, his delegation doubted whether further study of the question by ILC would significantly advance the political discussions which must take place in whatever diplomatic body was eventually called upon to discuss and formally adopt the draft articles.

7. He noted that ILC had recommended the usual practice of convening a diplomatic conference to consider the draft articles and adopt and open for signature a convention based on the draft by ILC. His delegation, however, shared the reservations expressed by the Governments of Belgium and France in their written comments (see A/10198) as to whether the adoption of a convention was really the most appropriate and effective means of advancing the codification and progressive development of international law on the subject. On a practical and juridical plane, when, subsequent to the adoption and entry into force of a convention on State succession in respect of treaties, a State acquired independence—an event likely to arise much less frequently in future because the era of colonization was drawing to a close—it would of course not be bound by the convention. It might be assumed that the newly independent State would examine the treaties previously applicable to its territory, determine which it was prepared to apply and which it was not and declare itself accordingly. Only then, if at all, could it be expected to consider the question whether to accede to the convention.

8. States which had a particular interest in the question of the succession of States with respect of treaties might consider that the codification and progressive development of international law on the subject would be better served by the adoption of articles in the form of a code by a resolution of the General Assembly rather than by the adoption of a convention which might attract only a small number of ratifications and accessions. If it should be decided to hold a diplomatic conference on the subject, his delegation would urge that a decision on the timing of such a conference be deferred until the conclusion of the Third United Nations Conference on the Law of the Sea, so as not to aggravate the burden on manpower and financial resources imposed by conferences already scheduled.

9. Mr. CASTRÉN (Finland) thanked the Chairman of ILC for his introduction of its report.

10. Referring to the question of State responsibility dealt with in chapter II of the report of ILC, he said that the texts of articles 10 to 15, adopted by ILC at its twenty-seventh session, were clear and concise and their provisions seemed to be generally supported by international and national judicial practice, State practice and most of the writings of modern jurists, as shown by the very comprehensive commentaries contained in the report. Although some of the rules laid down in those articles might appear almost self-evident, their inclusion was useful in order to dispel certain doubts and erroneous interpretations which had existed in the past. Although he was not sure as to the need for the safeguard provision contained in the paragraph of each of articles 11, 12 and 14 and in the second sentence of article 15, paragraph 1, there was no reason why it should not be retained for greater safety. Referring to article 14, paragraph 1, he said that, although the provision as a general rule was indisputably well-founded, it was debatable whether, in the light of paragraphs (25) to (27) of the commentary, there were not a number of exceptions to that rule. Although ILC had given a negative answer, some writers had put forward differing opinions. In any event, there appeared to be grounds for the insertion of a reservation to the provision, since article 15 embodied a contrary rule. Although the provision contained in paragraph 1 of that article was just, the wording appeared imprecise and should be supplemented in the light of the observations contained in paragraph (5) of the commentary.

11. Referring to chapter III of the report dealing with succession of States in respect of matters other than treaties, he said that articles 9, 11 and X relating to succession to State property and the new article 3 (*e*) were acceptable to his delegation. Although a number of theoretical objections could be raised to article 9 on the grounds that it did not distinguish between public and private domain, it coincided in that respect with the standard State practice. As far as article X was concerned, he would like to retain the words "of the predecessor State or" contained in the first set of square brackets and to delete the words in the second set of square brackets. Article 3 (*e*) was necessary and the definition it contained acceptable.

12. Considerable progress had been made by ILC in its consideration of the most-favoured-nation clause. As a result, very little remained to be done on that question at the following session of ILC. His delegation saw no objection to extending the scope of the draft currently in preparation to national treatment and the national treatment clauses, in view of the close links between those questions and the most-favoured-nation clause, provided that such an extension would not delay the work of ILC excessively. His delegation was in general agreement with the substance and wording of the articles adopted (see A/10010, para. 119). The rules set out in those articles reflected modern trends in State practice and the writings of jurists. Furthermore, the very comprehensive commentaries of ILC and the Special Rapporteur were very convincing. Referring to article 15, he said that his Government would revert to the question of the extension

of treatment under a bilateral or multilateral agreement in due course. In the light of the commentaries of ILC and the Special Rapporteur, it appeared that State practice and the opinions expressed in the writings of jurists on the question were not uniform. The same was true of the question dealt with in article 16. However, the text presented by ILC appeared to be sound. With regard to article 21, the more general text proposed by some members of ILC and reproduced at the end of paragraph (15) of the commentary could be considered as an alternative for the existing text.

13. Considerable progress had also been made on the question of treaties concluded between States and international organizations or between two or more international organizations. Thus far, the work of ILC on that question had been relatively easy since, to a large extent, it had been able to follow the text of the corresponding articles of the Vienna Convention on the Law of Treaties, with some slight drafting changes. A comparison of the Vienna texts and those prepared by ILC (*ibid.*, para. 137) revealed substantial differences only in article 7. There were also some innovations in the new subparagraphs of article 2. It would probably be useful to add to that article one more formal definition concerning the expression "participants in the drawing up of the treaty". As stated in paragraph (3) of the commentary on article 9, ILC proposed to consider that question later. While he had no comment to make on the substance of the articles in question, he considered that the form of certain articles could be condensed. For example, it seemed possible to merge paragraphs 3 and 4 of article 7 and the two paragraphs of article 10. However, his delegation could accept the current wording if it was necessary for reasons of clarity and precision. As paragraphs 121 to 132 of the report of ILC showed, a number of difficult questions still remained to be considered before the set of draft articles on conventional relations to which international organizations were parties was completed. One such question concerned the termination of treaties.

14. The question of the law of the non-navigational uses of international watercourses had not been considered by ILC at its twenty-seventh session because it had been awaiting replies from Governments to a questionnaire of the Secretary-General's. Since then, replies and data had been received by the Secretary-General which would be published. The Government of Finland had sent a long reply stating that ILC should, in its deliberations, give considerable attention to the proposals prepared by the International Law Association, the Institute of International Law and other international institutions and bodies concerned with the codification and progressive development of the law of international watercourses. In its reply, his Government had also stressed that ILC should not concern itself, at least at the initial stages of its work, with too many technical details, but should rather endeavour to find and formulate general principles which constituted the basis for the regulation of questions concerning the use of water resources. At the same time, it should consider the questions of the use and protection of watercourses and regulations governing pollution. His delegation noted that ILC already had sufficient data to deal with the question and that the same reasons which had led the General Assembly, five years earlier, to adopt the Finnish proposal

to entrust the consideration of the question to ILC² were still valid, so that work on the question should begin without delay.

15. It had been generally recognized that the work of ILC had been very fruitful but it could not undertake alone the whole task of the codification and development of international law, the time available for its annual sessions being limited. Draft conventions drawn up by other United Nations codification organs were not always prepared with sufficient thoroughness, which tended to complicate and delay the work of conferences of plenipotentiaries convened to conclude conventions on the various aspects of international law. It might be advisable, therefore, for the United Nations to consider how the work on the codification and development of international law could best be organized, with particular attention to the working methods of ILC. For example, to begin with, a small working group could be established. He did not wish to make a formal proposal or specific suggestions, but simply to draw the Committee's attention to the question.

16. He said that his delegation had noted with satisfaction the success of the International Law Seminar held during the twenty-seventh session of ILC. He was also pleased to announce that the Government of Finland intended to offer once again a fellowship of \$2,000 to participants from developing countries in the seminar to be held in 1976 in Geneva.

17. Mr. SIBLESZ (Netherlands) said that his Government's observations on the draft articles on succession of States in respect of treaties had been published in the report of the Secretary-General (see A/10198).

18. Referring to the proposed draft article 12 *bis*, he emphasized that his Government's positive stand towards such a provision was prompted only by its desire to avoid, in the case of multilateral conventions of a universal character, the legal vacuum which would result from too strict an application of the "clean-slate" rule. Although continued application of such treaties would seem to be an exception to the already established "clean-slate" principle, it should be emphasized that the principle of self-determination itself remained untouched, since article 12 *bis* provided for the right of the newly independent State to opt out. His delegation agreed that the definition proposed by one member of ILC of the term "multilateral treaty of universal character" was open to criticism. The qualification "open to participation by all States" resulted in the scope of the proposed article being too strictly defined, since it would exclude from that category most of the conventions which, by their very nature and object, qualified for continued operation between the newly independent State and the other State parties to the conventions in question. The proposed definition certainly deserved further study, which could perhaps be undertaken by ILC.

19. His Government's views regarding the important question of the settlement of disputes had already been made known. A procedure for that purpose was needed, for a

² See *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 91, document A/7991.

realistic assessment of the issues covered by the draft articles easily revealed their potentially explosive character. Several suggestions had been made with regard to an effective procedure, ranging from bilateral negotiations to submission to the International Court of Justice. Governments should therefore consider which of the existing formulas they preferred to be included in a future convention. If, however, Governments preferred the draft article on the settlement of disputes as proposed by one member of ILC, a provision should be inserted to the effect that either party to a dispute relating to interpretation or application of the draft articles could submit it to the International Court of Justice for a decision in cases where a previous conciliation procedure would not produce a final settlement. In that connexion, he recalled the provisions of paragraph 2 of General Assembly resolution 3232 (XXIX).

20. With regard to the final form to be given to the draft articles, his delegation held the view that the form of a convention was appropriate, since the articles had been drafted as a supplement to the Vienna Convention on the Law of Treaties. As to the procedure to be followed, in view of the calendar of forthcoming legal conferences, the draft should preferably be finalized by the General Assembly. If, however, the Committee wished to refer certain issues still to be settled to ILC, and if as a result a complete draft emerged at a later stage, his Government would be willing to reconsider its position in the light of the circumstances prevailing at that time.

21. Mr. MANSFIELD (New Zealand) said that his delegation would not offer detailed comments at the current stage on the draft articles on succession of States in respect of treaties, since its general attitude to the articles and its approach to the underlying principles had been outlined in statements made in the Committee during the twenty-seventh (1323rd meeting) and twenty-ninth (1439th meeting) sessions. It had pointed out on those occasions that the starting point of the draft articles—the idea that a newly independent State commenced life with a “clean-slate”—was one which it was initially inclined to doubt. The “clean-slate” principle did not seem to fit with the practice in the part of the world in which New Zealand was situated, where countries had always considered themselves the rightful heirs to the obligations and rights they had inherited from the United Kingdom or from whatever other Power they had sprung. He recalled the statement by his delegation the previous session in the Committee’s debate (*ibid.*) on the report of ILC that his country had in its own practice as a State time and again invoked aging bilateral conventions concluded by the United Kingdom long before the birth of New Zealand as something to which it was entitled and which was a practical advantage, because in many fields, such as extradition and reciprocal enforcement of judgements, governed by bilateral treaties, a considerable period of time was required to make new treaties. Nevertheless, bearing in mind that the work of ILC would not have retrospective application, his delegation had accepted that in establishing its basic principle ILC was justified in giving a certain priority to more recent practice than its own as evidence of the *opinio juris* of the modern world and that it was equally justified in paying special attention to the United Nations principle of self-determination. Moreover, as the articles drawn up by ILC had taken shape, his Government had seen that its concern, based on its own

experience, for the protection of the real interests of newly independent States was being adequately taken account of, most notably in the enunciation of a principle that a newly independent State had the right to establish its status as a party to general multilateral treaties.

22. Some speakers had suggested that the draft articles should be referred back to ILC for further study. In his delegation’s opinion, that was not an appropriate course of action for the Committee to take. In resolution 3071 (XXVIII) the General Assembly had requested ILC to complete at its twenty-sixth session its second reading of its articles on succession of States in respect of treaties. In submitting the report of ILC on its twenty-sixth session, its Chairman had noted (1484th meeting) that it had re-examined the articles as requested by the Assembly in the light of the comments of Governments and had adopted the final text of its draft articles on the subject. As a codification instrument, ILC was a unique body, combining as it did the highest levels of professional expertise with a sensitivity to the views of Governments. It was not a body of academic lawyers operating in an atmosphere removed from the world of practical politics. In saying that it had reviewed its articles in the light of the comments of Governments, there could be no doubt that those views had been fully taken into account. In those circumstances, to return the articles to ILC would be radically to alter the established codification procedures and create a most unfortunate precedent. Furthermore, from the practical standpoint, to ask ILC to conduct a review of its final draft of the subject would be substantially to delay its work on the other important items on its agenda.

23. In its report the previous year ILC had noted that two proposals had been made by members which ILC as a whole had not had time to discuss fully (see A/9610/Rev.1, para. 75). His delegation had some serious reservations on the first of those proposals, concerning multilateral treaties of a universal character. In its view, there must continue to be the greatest difficulty in defining what was or what was not a treaty of universal or law-making character, so that the inclusion of an article such as that proposed could lead to a large area of uncertainty about the rules applying to multilateral treaties in general. Moreover, in the case of a multilateral treaty which was indisputably of a universal or law-making character, it would be received into the body of customary law so that the question of whether or not a successor State was bound by the treaty became irrelevant.

24. Regarding the second proposal, his delegation considered the inclusion of a provision on the settlement of disputes to be important. As was pointed out in paragraph 79 of the report of ILC on its twenty-sixth session, in many cases the draft articles laid down tests which could give rise to difficulties in their application. The draft article proposed to ILC set out in foot-note 58 of that report, appeared to his delegation to be a sensible provision which was consistent with the view that the draft articles drawn up by ILC would form the missing chapter of the Vienna Convention on the Law of Treaties. In his delegation’s opinion, there was no need for ILC to do any further work on the question since the possibilities for a provision on the matter were well known.

25. With regard to the manner in which the work of ILC on the draft articles might be completed, there were two

possibilities: first, the convening of an international conference of plenipotentiaries; secondly, the completion of the work in the Sixth Committee. His delegation believed that the case in favour of making use of the Sixth Committee for that purpose was a strong one, since the convening of an international conference would involve considerable additional expenditure both to the United Nations and to the Governments of participating States. Furthermore, there seemed no indication of an unduly heavy workload for the Committee in the near future.

26. An even more important consideration was the question of participation. Members would agree that the codification and progressive development of international law was an important task at the United Nations and that its success depended in no small measure on the active participation of the largest possible number of the States making up the international community. However, his delegation was concerned at the increasing number of legal conferences, which were usually lengthy and placed considerable strain on the limited resources of trained staff in the smaller States such as his own. It believed that, as shown by the recent United Nations Conference on the Representation of States in their Relations with International Organizations, the addition of more and more legal conferences to the conference programme would mean that at a certain point a significant proportion of the Members of the United Nations would be simply unable to take part in the last stage of the process of codification and progressive development.

27. Mr. MUSHOBOKWA (Zaire) congratulated the members of ILC on the work accomplished, in particular with regard to the set of draft articles on the succession of States in respect of treaties.

28. His country was one of those which supported the idea of the continuity of treaties, reconciling easily the concept of the succession of States in respect of treaties with the *pacta sunt servanda* rule. Nevertheless, it accepted the "clean-slate" principle whenever the fundamental principles of its sovereignty were endangered.

29. As the expression "succession of States" meant the replacement of one State by another in the responsibility for the international relations of territory, his Government had opted for automatic succession, with benefit of inventory, to use a term derived from private law. In other words, his country agreed to accept responsibility for treaties negotiated and signed in its absence, with the possibility of denouncing at a later stage those which affected its fundamental interests.

30. Thus, the rights and obligations of the predecessor State had been transferred to his State without any action on its part and even against its will, i.e. automatically. A change in sovereignty did not therefore change international relations.

31. His country's practice with regard to succession to both bilateral treaties and multilateral treaties of a universal or restricted nature was therefore in accordance with the provision in its Constitution that international treaties concluded before 30 June 1960 would be valid only if they were not modified by national legislation.

32. The principle was therefore that of the preservation of treaties signed on his country's behalf by the predecessor State—Belgium. His Government nevertheless reserved the right to reject or denounce those which had not been prompted by noble ideals. Such a position obliged his Government to make a careful examination of such treaties, which was not an easy task since they were over 200 in number. It was on the basis of those principles that the Republic of Zaire had preferred to renegotiate its membership of the General Agreement on Tariffs and Trade (GATT), whereas it had accepted the succession with regard to the International Labour Organisation.

33. In spite of the clear language of the Constitution of Zaire, some States had preferred to renegotiate certain agreements with the new independent country, particularly in the case of agreements relating to air transport, trade and investment guarantees. Furthermore, many States had rejected the succession of Zaire to the rights and duties of the former metropolitan country in so-called extradition and legal assistance agreements. His country believed in a genuine succession of States in respect of treaties and favoured the idea of a slate which was not entirely clean, in other words, the principle of continuity of a certain type, which could be called succession with benefit of inventory.

34. In general, his delegation welcomed the way in which the draft articles had been prepared, i.e. the consistent desire to ensure an indisputable succession based on the two corollaries of continuity, *rebus sic stantibus* and the relativity of commitments *res inter alios acta*. Where there was a change in circumstances or in partners, commitments could be modified.

35. With regard to article 7, his delegation had some difficulty with the principle of non-retroactivity which it set forth. Although the Vienna Convention on the Law of Treaties embodied that principle, on the basis of the principle of non-retroactivity of laws in internal law, the same was not the case with regard to the succession of States in respect of treaties. His delegation agreed that laws were enacted only in respect of the future. However, it was essential not to lose sight of the fact that treaties were signed in order to be implemented. His delegation therefore considered that the article in question had been made meaningless by article 22, which re-established the principle of retroactivity for the newly independent countries. Since the principle of the non-retroactivity of treaties was already contained in the Vienna Convention, article 7 should be deleted.

36. With regard to article 11, relating to boundaries, his delegation approved of the "clean-slate" principle adopted by ILC. There could be no succession to treaties establishing boundaries. His country rejected such succession and took note of existing situations, i.e. boundaries which constituted the limits of the exercise of its sovereignty. Thus, the Assembly of Heads of State and Government of the Organization of African Unity meeting in Cairo at its first ordinary session had stated that the member States of the organization pledged themselves to respect the boundaries existing on their achievement of national independence.

37. To accept the application of the succession of States in the matter would be tantamount to recognizing that any

successor State had the right to denounce a boundary treaty on the basis of article 23, paragraph 2, which would give rise to many border conflicts. The Republic of Zaire was not an expansionist country and respected certain boundaries established by agreements signed by Belgium and Portugal. It approved of the wording of article 11 in its entirety.

38. Referring to article 12, he said that even though it was poorly drafted, his delegation approved of the exclusion of the treaties in question from the scope of the succession of States in respect of treaties. The provisions of the article were in conformity with history and with the new political order.

39. With regard to articles 15 to 29, which dealt with the newly independent States, he said that his country could not approve of the “clean-slate” principle set out in article 15. It would favour a formula that would embody the *pacta sunt servanda* principle, with the possibility of denouncing those treaties which were incompatible with the new political and legal order. Article 15 was contrary to the practice followed thus far by the majority of the new countries in respect of treaties concluded by the former metropolitan country. Either they remained silent or they negotiated a new treaty with the predecessor State. In its commentary on article 15, ILC had given examples of countries such as the United States of America, Belgium, Panama, Ireland, Poland, Czechoslovakia and Finland, which in his view were not newly independent States. His country had some difficulty in accepting the distinction drawn between multilateral treaties (article 16) and bilateral treaties (article 23). It was hard to see why the presumption of acceptance of succession to bilateral treaties should not apply to multilateral treaties. That would contribute to respect for the principle of continuity in international relations.

40. Mr. BOJILOV (Bulgaria) said that his delegation shared the basic philosophy of the draft articles on succession of States in respect of treaties prepared by ILC, since they were based, as a general rule, on the law of treaties, the general principles of international law and the Charter of the United Nations. ILC had succeeded in striking a proper balance between the two important principles, namely the “clean-slate” principle and the principle of continuity *ipso jure*.

41. His delegation firmly supported the “clean-slate” principle. The population of a territory under colonial domination could not be bound by treaties to which it had not consented. However, certain exceptions to the “clean-slate” principle were needed to protect the interests of both the newly independent States and the international community as a whole. One example was article 11, dealing with the question of boundaries.

42. While sharing the basic philosophy of the draft articles, his delegation felt that they could still be improved. He strongly questioned the conclusion by ILC that it was inappropriate to include in the scope of the draft articles problems of succession arising as a result of changes brought about by social revolution. Article 7, dealing with the question of non-retroactivity, had, furthermore, been adopted by a narrow majority and the importance of the draft articles as a whole had thereby been drastically reduced. The question of non-retroactivity deserved further study and discussion.

43. It was, furthermore, desirable that ILC discuss proposed article 12 *bis* on multilateral treaties of universal character and proposed article 32 on settlement of disputes in detail, as there had apparently been no time to do so at its twenty-sixth session. It would be worth while to consider again whether it would not be preferable to introduce the contracting-out system solely for multilateral treaties of universal character. The contracting-out system would strengthen the role of international law in the interest of the international community as a whole. If there were no political disagreements on the question, then it should be a matter of mere juridical technique to find the most appropriate formula for establishing the contracting-out system for such treaties.

44. The draft prepared by ILC constituted a good basis for further work. It was premature to consider the question of convening a diplomatic conference on the matter. ILC should reconsider the draft articles, taking into account the observations made by Governments and the discussions in the Sixth Committee at the twenty-ninth and thirtieth session.

The meeting rose at 4.50 p.m.

1536th meeting

Friday, 10 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X.J.C. NJENDA (Kenya).

A/C.6/SR.1536

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. MUHAMMAD (India) said that his delegation agreed with the unanimous view of the International Law Commission (ILC) (see A/9610/Rev.1, para. 63) that the draft articles on succession of States in respect of treaties (*ibid.*, chap. II, sect. D) should be given the same status as the Vienna Convention on the Law of Treaties¹ and that, accordingly, they should be established in the form of a convention rather than in the form of a declaration of principles. The primary objective in codifying that branch of law was to set forth an authoritative statement on the subject, which would be best realized by means of a convention.

2. With regard to the procedure by which work on the draft articles should be completed, his delegation endorsed the recommendation by ILC (*ibid.*, para. 80) that an international conference of plenipotentiaries should be convened to conclude a convention on the subject, given the complex character of the issues involved and the unique importance of the instrument to be adopted. The Sixth Committee itself should not generally be burdened with codification work, since it would have other important items to deal with. However, a decision on the question would be facilitated if the Secretariat could inform the Committee of the schedule of international legal conferences for the following two or three years. In any event, his delegation would support the adoption of a convention on the subject in the near future.

3. Referring to the proposals submitted to ILC concerning multilateral treaties of universal character and settlement of disputes (*ibid.*, footnotes 57 and 58), he noted that the Government of Austria, in its reply to the Secretary-General (see A/10198), had stated that experience from previous conventions codified under United Nations auspices had shown that the formulation of a provision on settlement of disputes, usually requiring a great amount of negotiation, was best undertaken in the framework of a diplomatic conference. He also noted that the Government of the United States of America, too, considered it unnecessary for ILC to reconsider the matter. The proposal concerning multilateral treaties of universal character was a complex one. In addition to the difficulties described in paragraphs 76 and 77 of the report of ILC on its twenty-sixth session, there was also the problem of reaching

a clear and precise definition of the term "multilateral treaty of universal character". His delegation understood, however, the concern of delegations which held a different view. His Government was giving careful consideration to the proposal and would express its views on it at an appropriate time. Nevertheless, the proposal in question could also be considered by a plenipotentiary conference.

4. In view of the heavy programme of work of ILC, his delegation saw no justification for sending the draft articles on succession of States in respect of treaties back to it for reconsideration.

5. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that ILC had accomplished a great deal of constructive work on the topic of succession of States in respect of treaties; the present draft articles reflected such important aspects of the topic as the principle of self-determination of peoples and the question relating to succession in respect of territories and boundaries. As the draft correctly pointed out, succession of States took place in accordance with international law and in accordance with the principles of international law laid down in the Charter of the United Nations.

6. On the whole, however, the draft articles had not yet reached a stage of preparedness which would justify the convening of a conference to consider them. The draft still needed further work and suffered from various drawbacks. For example, in referring to the "clean-slate" principle, the draft was defective in that it left open the possibility that the successor State might take advantage of that principle in order to refuse to comply with generally accepted rules of international law, particularly obligations assumed by the predecessor State as a party to multilateral treaties. Predecessor States, such as colonial Powers, might also take advantage of that principle as an excuse to shirk their responsibility for unlawful actions committed in the territory in question before it had become independent.

7. It should also be recalled that new States might arise not only as a result of decolonization but also by means of a social revolution, and States of the latter type should enjoy the right to apply the same principles as were applied in the case of States which had emerged as a result of decolonization. ILC had failed to give proper attention to problems relating to succession of States in the event of social revolution. It was essential that such cases should be covered by the draft articles. There were certain deficiencies in the formulation of article 7 relating to non-retroactivity, particularly the fact that the provisions of that article applied only in respect of a succession of States occurring "after the entry into force of these articles". That would mean that many cases of succession which had occurred in the past as a result of the collapse of the colonialist system of imperialism might be outside the convention's sphere of application.

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

8. In his delegation's view, article 13 substantially weakened the provisions set forth in article 11 concerning the inviolability of boundaries.

9. Late in the twenty-sixth session, one member of ILC had submitted draft article 12 *bis* concerning multilateral treaties of universal character and another had submitted draft article 32 on settlement of disputes. ILC had not been able to consider those proposals in depth and take a decision on them. In view of that problem and the other inadequacies of the draft, to which many delegations had referred in the course of the debate on the item at the twenty-ninth and thirtieth sessions of the General Assembly, his delegation was of the view that the only correct decision the Sixth Committee could take would be to recommend that ILC should once again seriously go through the draft articles on succession of States in respect of treaties, taking into account the observations made by States and the discussion in the Sixth Committee. In continuing its consideration of the draft, ILC might also have an opportunity to complete its work on the topic of succession of States in respect of matters other than treaties; that would be desirable, since both topics were interrelated. After that, the draft articles might be submitted to the Sixth Committee for consideration rather than to an international conference convened specially for that purpose.

10. Sir Vincent EVANS (United Kingdom) said that the draft articles before the Committee represented yet another achievement of the high quality that the Committee had become accustomed to expect of ILC. The United Kingdom had a special interest in the draft articles because of the contribution to their preparation made by Sir Humphrey Waldock and Sir Francis Vallat, as Special Rapporteurs. His delegation would be pleased to convey to them the complimentary remarks made on their work in the course of the discussion in the Committee.

11. With regard to the two proposed draft articles 12 *bis* and 32 on the questions of multilateral treaties of universal character and settlement of disputes, his delegation maintained the views expressed in its reply to the Secretary-General (see A/10198) that draft articles of the kind proposed would add to the utility of a convention and that ILC should have a further opportunity to examine them. In the view of his delegation, there were powerful arguments why, in the interest of both newly independent States and the international community as a whole, multilateral treaties of universal character should not cease to be in force for newly independent States. While understanding the sentiments underlying the "clean-slate" principle, his delegation had repeatedly expressed doubts as to whether sufficient weight had been given to the instances in which the States concerned had favoured continuity, bearing in mind the essential role which treaties, bilateral as well as multilateral, played in the orderly conduct of international relations and the immense tasks which a new State with limited manpower might face in order to regain valuable treaty rights lost in consequence of the automatic application of the "clean-slate" principle. Multilateral treaties of universal character constituted a significant part of those treaty relations and the proposed draft article was therefore worth further examination.

12. His Government considered it highly desirable that there should be appropriate provisions for the settlement of disputes. Furthermore, since ILC had expressed willingness to consider the matter further and to prepare a report, it should be invited to do so. The proposal contained in the report of ILC on its twenty-sixth session might not be sufficient in itself to cover the wide variety of disputes which might arise from the provisions of the proposed draft articles, particularly in view of the necessarily broad nature of some of the definitions contained in the draft. It might also be advisable to provide for the submission of certain kinds of disputes to arbitration or to the International Court of Justice. His delegation considered, therefore, that there would be every advantage in referring the two draft articles back to ILC for further study.

13. A third question which ILC might usefully be asked to examine further concerned the modalities by which a newly independent or successor State should be enabled to apply the régime embodied in the articles to its own situation. That question was obviously crucial to the effectiveness of the proposed rules, since they could only be effective in any particular instance of State succession if they applied to the successor State. The longer the delay in their becoming applicable, the greater the difficulties that were liable to arise, particularly in respect of the question of retroactivity. Like other members of the Committee, he was not altogether satisfied that the difficulties inherent in the problem had been satisfactorily resolved by the existing article 7. The question should therefore be referred back to ILC for further study.

14. His delegation did not consider that ILC should review the whole set of draft articles. He agreed with the views expressed by other delegations that ILC had achieved a generally satisfactory compromise between the conflicting views in a somewhat controversial branch of international law. He fully agreed with the representative of Brazil (1526th meeting) that it would be neither advantageous nor justifiable to ask ILC to give the whole of its draft a third reading and that it would be unduly disruptive of the programme of work of ILC to do so. However, it should be understood that, in dealing with the three specific matters which should be referred back to it, ILC should be at liberty to propose any consequential or other amendments that it might find desirable to the remaining provisions of the draft articles. Furthermore, ILC should be requested to report back on the three draft articles in question, if possible, to the thirty-first session of the General Assembly, so that the momentum in the programme of codification of international law might be maintained.

15. As could be seen from its report on its twenty-seventh session (A/10010), ILC was proceeding with the completion of its work on other topics, and it was important not to build up an accumulation of unfinished projects. If the course of action which he proposed was adopted, it would be neither necessary nor desirable for the Committee to decide at the current session whether the work of finalizing the draft articles should be carried out by a diplomatic conference or by the Committee itself. Those questions could best be decided after ILC had reported to the Committee, in the light of the conference programme at that time and of the Sixth Committee's own programme of work and when the Committee was in a position to form a

more considered view as to whether the draft articles should be embodied in a convention, which was the preference of his delegation, or in some form of resolution.

16. Mr. VAN BRUSSELEN (Belgium) said that the comments submitted by his Government in response to General Assembly resolution 3315 (XXIX) were contained in document A/10198.

17. Under current circumstances, his delegation could not agree with the proposal to include an article 12 *bis* as formulated in foot-note 57 of the report of ILC on the work of its twenty-sixth session. However, that position of principle, which had been explained in his Government's reply to the Secretary-General, in no way lessened the concern, which his Government shared with some members of ILC, that the application of certain multilateral conventions, and in particular those of a humanitarian nature, might be interrupted. Nevertheless, if it came to a choice between the provisional application of a treaty or having a text which was as clear as possible and which presented the minimum latitude for differing interpretations, his delegation would have no hesitation in choosing the latter course. If, as a result of more detailed consideration of the question, ILC could find a more satisfactory solution, his Government might reconsider its opinion. Consequently, his delegation suggested that the draft should be sent back to ILC for further consideration.

18. That conclusion was equally applicable with regard to the problem raised by the absence of any machinery for the settlement of disputes. There, too, there was an undoubted advantage in entrusting the preparation of such machinery to ILC, since a proposal had already been made by one of its members and because ILC would be in a better position than a conference of plenipotentiaries to ensure that the texts to be included conformed with the provisions of the Vienna Convention on the Law of Treaties.

19. With regard to the final stage of codification, his delegation felt that the draft articles should be submitted once again to ILC so that it could consider further the two proposals referred to in paragraph 75 of its report. Although his delegation would not insist that ILC should give a third reading to all the draft articles, if ILC felt it necessary to review other articles, it should be free to do so. It therefore appeared logical not to proceed further for the time being; all that the Committee could do would be to take decisions of principle which might have to be revised later. In his view, the Committee would be in a better position to take the necessary decisions on the final stage of codification in 1976. The results of the work of ILC would then be available and the Committee would have a clearer idea of the real possibilities of convening a conference of plenipotentiaries, of which his delegation was in principle in favour. The Committee would also be in a better position to consider the advisability of drawing up a single text relating to both succession of States in respect of treaties and succession of States in respect of matters other than treaties.

Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

20. Mr. BULL (Liberia) said that, on the issue of succession of States in respect of treaties, his delegation

supported the thesis that every State had the inherent right to determine for itself by what it would be bound. That inherent right was embodied in the principles of self-determination and the sovereign equality of States. It would be a gross violation of those well-established principles if newly independent States were compelled to be automatically bound by treaty obligations in whose formulation they had played no part. Every sovereign State should remain free to decide for itself which bilateral or multilateral treaty entered into—in most instances—by the former colonial Power would be binding upon it and which treaties would be rejected. Newly independent States, especially African States, prior to attaining their independence, had not been consulted when those treaties were concluded, nor had their interests been taken into account. Every new State should be free to examine critically treaties concluded by the predecessor State and then to make a determination as to which treaties were beneficial.

21. In his view, there should be no exception to that freedom of choice. He therefore did not subscribe to the concept that newly independent States should be automatically bound by multilateral treaties of a so-called universal character. The meaning of that expression was unclear and provided no worth-while grounds for making an exception to the generally accepted and fair principles of sovereign equality of States and self-determination.

22. His delegation whole-heartedly accepted the "clean-slate" principle as set out by ILC. That proposal was a fair and workable one and strengthened the freedom of choice of newly independent States.

23. His delegation congratulated ILC on the work it had accomplished on the draft articles on succession of States in respect of treaties, the importance of which could not be over-emphasized. Their prompt adoption by the world community could further ensure the maintenance of international peace and order among nations which was a fundamental objective of the United Nations. In view of the importance of the draft articles, it was imperative that they should be submitted for proper consideration to a diplomatic conference of States as early as possible.

24. Mr. MUSEUX (France), after thanking the Chairman of ILC for introducing the report on the work of ILC at its twenty-seventh session, observed that his Government had already stated its position (see A/10198) with regard to the draft articles drawn up by ILC on the topic of succession of States in respect of treaties. His delegation therefore wished to make only a few points to supplement its earlier observations on the subject.

25. His Government paid tribute to the very important work accomplished by ILC. However, it did not believe that any set of draft articles produced by ILC in its task of codifying and developing international law should automatically take the form of a convention. His Government did not subscribe to the view that it was preferable to prepare a convention simply because such an instrument would enjoy greater authority. It would be a mistake to draw up in the form of a convention provisions which were not designed to govern in a directly binding manner cases of succession of States which might occur, because of the relative effect of treaties and particularly since in most

cases there would be no succession to the convention on the succession of States in respect of treaties. Paragraph 62 of the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1) contained some very relevant and convincing points in that regard. Technically, of course, it might be possible to remedy the imperfections of the existing draft. However, at the current stage, unless new ideas were brought forward to solve the problem, such a step could only be taken at the expense of doing violence to the principles of relativity and non-retroactivity, violence of such magnitude, particularly with regard to the security of legal relationships, that his Government would not be able to accept such a step. It would be more appropriate to draft model rules which, it was to be hoped, could be adopted unanimously rather than a convention which, in the final analysis, might not receive a sufficient number of ratifications to have the scope ILC had envisaged for it. In that connexion, he wondered whether it would have enhanced the authority of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) of its provisions had been embodied in a convention which might currently have been ratified by only a small number of States.

26. In his delegation's view, it would be premature to come to a final conclusion regarding the draft articles prepared by ILC. ILC might usefully delve further into drafting problems and the consequences deriving therefrom,

as well as the problems referred to by other delegations in the current debate. Thus the Sixth Committee would have all the information necessary to take a final decision on the matter.

27. Mr. CALLE Y CALLE (Peru) said he was gratified that the Chairman of ILC had been able to come to New York to introduce the report on the work of ILC at its twenty-seventh session. ILC had carefully studied the topic of succession of States in respect of treaties for many years and the time had come to deal with specific problems raised by individual draft articles, as the representative of the United Kingdom had observed. His delegation paid a tribute to the outstanding contributions made to the work of ILC by the two British Special Rapporteurs. Further progress on the subject would only be retarded by referring the draft articles back to ILC for more intensive study. A more dynamic approach was called for in the current circumstances: a diplomatic conference should be convened to complete the last stage of codification of the draft articles. Before the diplomatic conference met, States should have a last opportunity to state their views in writing on the topic. The two rather thorny questions raised late in the twenty-sixth session of ILC—multilateral treaties of universal character and the settlement of disputes—could be adequately dealt with at a conference of plenipotentiaries, which could finalize the draft.

The meeting rose at 4.20 p.m.

1537th meeting

Monday, 13 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1537

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. ABUL-KHEIR (Egypt) congratulated the International Law Commission (ILC) on its excellent work on succession of States in respect of treaties, as well as on the other important work it had done with regard to the codification of international law, which had led most notably to the adoption of the Vienna Convention on the Law of Treaties¹ and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.² His

* *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.*

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

² See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

delegation also wished to commend the excellent work done by Sir Humphrey Waldock and Sir Francis Vallat, the Special Rapporteurs of ILC.

2. The question of succession of States in respect of treaties was one of the most important and delicate dealt with in the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1), in that it involved legal questions arising out of the elimination of colonialism, the self-determination of colonized peoples and the integration of those peoples into the international community as full members. The draft articles (*ibid.*, chap. II, section D) filled a gap in international law, since there was no uniformity in the area, either in State practices or in the views of international legal scholars. ILC, with great foresight, had concerned itself with the practice of newly independent States without ignoring that of older States and had based its work on the principles of the Charter of the United Nations, which all States had committed themselves to uphold. In its work on the succession question, ILC had correctly viewed the right of peoples to self-determination as one of the corner-stones of the Charter.

3. Newly independent States must enjoy complete freedom to re-examine treaties entered into by predecessor

States in matters concerning sovereignty over their territory and to determine which of those treaties were consonant with their national principles and amenable to succession. They would thus avoid entering into unacceptable or unjust obligations, for history showed that many treaties entered into by predecessor States involving the sovereignty of successor States were unjust. A clear example was the case of South Africa, whose occupation of Namibia had been declared illegal by the International Court of Justice.³ South Africa had allowed foreign interests, pursuant to treaties, to exploit the natural resources of Namibia to the detriment of its people and those treaties could not continue after Namibia achieved independence.

4. The "clean-slate" principle was a just one and should form the basis of succession of States in respect of treaties. ILC had rightly stated in paragraph 58 of its report that the "traditional" principle that a "new State" began its treaty relations with a "clean slate", if properly understood and limited, was consistent with the principle of self-determination and well designed to meet the situation of newly independent States.

5. His delegation understood the considerations which had led ILC to treat certain agreements, namely boundary settlements and certain other situations of a territorial character, as limitations on the "clean-slate" principle. It understood ILC to take the view that such agreements did not form a separate class unto themselves, but rather that the situations arising from such agreements called for stability and continuity. In that regard, ILC had succeeded in reconciling the "clean-slate" principle with the principle of continuity and his delegation agreed fully with that approach.

6. His delegation did not share the fear that the "clean-slate" principle would predominate over that of continuity. The newly independent States were politically aware, as was shown by their enthusiastic work in the United Nations with regard to codification, and it should not be assumed that they would apply the "clean-slate" principle from a narrow territorial viewpoint. They understood the principle well and it would be unreasonable to expect a newly independent State which found advantages in a certain treaty to refuse to succeed to it. If such a State freely chose to continue to be bound by the obligations of a treaty entered into by a predecessor State, and so declared, then it would not be doing so under compulsion of law but would be expressing its free will and independence.

7. His delegation agreed with the general approach taken by ILC in codifying the principles of succession, and felt those principles could form the basis of an agreement that could be reached at a diplomatic conference, to be held as soon as the calendar of conferences permitted.

8. He agreed with the view expressed in paragraph 63 of the report of ILC that the relationship between the draft articles and the Vienna Convention on the Law of Treaties should be maintained as to both structure and language. Therefore, so long as the text of article 7 was compatible

with article 28 of the Vienna Convention it should be retained. The draft articles could stand by themselves and at the same time be compatible with the Convention.

9. With regard to proposed article 12 *bis* (*ibid.*, foot-note 57), his delegation viewed the creation of multilateral treaties of universal character as being without adequate legal foundation. The Vienna Convention did not treat such treaties as a distinct class, and ILC had been unable to arrive at an acceptable definition of them. The definition in paragraph 76 of the report was not entirely convincing, even though it might be true that some of those treaties were of a humanitarian character. Without an adequate definition, distinguishing such a class of treaties would seriously endanger the "clean-slate" principle. Newly independent States were fully aware that if such treaties were advantageous to them they could act accordingly. Thus, no time at all might elapse between the succession of a State and the announcement by the State concerned of its succession to such treaties, since in practice the State, after independence, might voluntarily accept the obligations arising out of the treaties. In that case, the "clean-slate" principle would be maintained.

10. His delegation favoured inclusion in the draft articles of a provision on the settlement of disputes which was compatible with the provisions of the Vienna Convention and which, at the same time, did not ignore the possibility of resorting to the International Court of Justice if other means failed. General Assembly resolution 3232 (XXIX) drew attention to the advantage of including in treaties clauses providing for the submission to the Court of disputes which might arise from their interpretation or application, and that tendency should be encouraged. A good example was the fact that Morocco, Mauritania and Spain had had recourse to the Court as a means of resolving their dispute concerning the Spanish Sahara.

11. His delegation believed that the draft articles on succession were generally acceptable. The differences of view regarding them did not involve basic principles and could be resolved at a diplomatic conference without returning the draft to ILC. The agreement reached at the conference would be of great importance in the future in connexion with the uniting and separation of States.

12. Mr. THEODORACOPOULOS (Greece) said that his delegation had studied with much interest the draft articles submitted by ILC, which constituted a satisfactory basis for the codification of the rules on succession of States in respect of treaties.

13. Greece, which had achieved its national independence by successive stages, had had to deal, on several occasions, with problems resulting from the implementation of treaties in respect of the liberated territories. His Government was therefore well qualified to appreciate the difficulties which ILC had encountered in preparing the draft articles, which merited the Committee's admiration.

14. The draft articles sought to strike a balance between two opposing principles: the principle of the rupture of conventional relations and the principle of continuity. His Government had accepted the principle of continuity and applied it on several occasions in its bilateral and multi-

³ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion, I.C.J. Reports 1971*, p. 16.

lateral relations. In that connexion, he observed that the agreements concluded between Greece and the United Kingdom in 1910 and 1926 concerning respectively extradition and the tonnage of merchant vessels, remained in force and were applied in relations between Greece and a number of former colonies of the United Kingdom.

15. It was with respect to territorial régimes that the principle of continuity found its most fitting application. In that connexion ILC had rightly given preference to the continuity of contractual relations, which was in accordance with customary rules and usual practice.

16. However, in the case of newly independent countries, ILC had opted in favour of the "clean-slate" principle, which was in conformity with the right of self-determination of peoples. His delegation considered, however, that the appearance of a newly independent State did not necessarily mean the disappearance of all conventional relations. Furthermore, his delegation shared the view that as the era of colonialism was drawing to a close, it was necessary for the draft to contain provisions covering other cases of the appearance of new States.

17. His delegation feared that the application of the proposed article 12 *bis* might give rise to difficulties, since the article was not worded in sufficiently clear terms and it was difficult to envisage multilateral treaties of universal character.

18. His delegation was in favour of the establishment of a procedure for the settlement of disputes that might arise from the interpretation and application of the draft articles. It therefore considered that the proposal already made on the subject should be re-examined by ILC before the draft was submitted for consideration by a conference of plenipotentiaries, which, in its opinion, was the most appropriate forum for the final formulation of the draft articles.

19. His delegation considered that the draft articles should take the form of a convention.

20. Mr. RAKOTOSON (Madagascar) said that in accordance with the invitation contained in paragraph 2 of part II of General Assembly resolution 3315 (XXIX), his Government would soon be submitting written comments and observations on the draft article on succession of States in respect of treaties, including proposed articles 12 *bis* and 32.

21. His delegation congratulated ILC on the valuable work it had done since 1962 with regard to the codification of international law relating to the extremely difficult question of succession of States. ILC had once again demonstrated the importance of its role in that area and had helped to ensure the primacy of law in relations between States and, hence, the maintenance of international peace and security. However, in the case of succession of States in respect of treaties, political considerations had a great influence on legal considerations and it must therefore be determined whether draft articles drawn up by ILC on that topic struck the necessary balance between, on the one hand, the stability of conventional relations between States and, on the other, the imperatives of national sovereignty

and equality of States, two conditions which were not always easily reconciled.

22. His delegation considered that, on the whole, the draft articles reflected the desire by ILC to meet those two conditions. By adopting the "clean-slate" principle, the draft articles sought to respect the principle of self-determination and equality of States, which was embodied in article 15. In his delegation's opinion, the expression "clean-slate" principle meant that the successor State had the right but not the obligation to become a party to treaties concluded by the predecessor State.

23. The provisions of article 22 might give rise to some concern, since they seemed to impart a retroactive effect to a notification of succession. However, his delegation considered that a country might invoke, on the one hand, article 26, which provided for the possibility of suspension and provisional application of treaties, and on the other, the phrase in article 22 "or it is otherwise agreed", which made it possible to avoid the retroactive effect.

24. The 12 months' notice provided for in article 28, paragraph 3, seemed to be too short for a newly independent State, which frequently had to deal with difficulties of all kinds after its accession to independence. Although the paragraph also stated "unless . . . it is otherwise agreed", his delegation thought that it would be preferable, in order to avoid difficulties, for the text explicitly to provide for a longer period of notice.

25. His delegation shared the concern of some representatives concerning the questions of boundary régimes and other territorial régimes, dealt with in articles 11 and 12 respectively. In its view, those two articles excluded treaties in those categories from the application of the "clean-slate" principle. His delegation was well aware that in drafting those articles ILC had been prompted by its desire to safeguard the maintenance of international peace and security. The same preoccupation had undoubtedly inspired the resolution adopted by the Organization of African Unity at its Conference in Cairo in 1969 and the relevant decisions of the Conference of Heads of State or Government of Non-Aligned Countries held the same year in that city. However, there were treaties in those categories where the principle of continuity could not be reconciled with that of sovereignty, in particular the case of "unequal" treaties establishing territorial régimes. Such treaties were in contradiction with the imperative norms of international law within the meaning of articles 53, 64 and 79 of the Vienna Convention on the Law of Treaties.

26. The question had been raised whether the draft articles should contain a special provision concerning multilateral treaties of universal character. While it was theoretically possible to identify certain aspects of multilateral treaties of universal character in order to distinguish them from treaties of a restricted character, it was not always easy to arrive at a practical distinction. Multilateral treaties which were apparently of a restricted character could be open to participation by all States and would, therefore, by virtue of the proposed article 12 *bis*, be subject to the principle of continuity. The fact that that paragraph of that article provided that a multilateral treaty of universal character would remain in force between the

newly independent State and the other States parties to the treaty until such time as the newly independent State gave notice of termination of the said treaty meant that it ran counter to the "clean-slate" principle. Furthermore, the depositaries of treaties had been unable to make a distinction between the two categories of treaties. They had never regarded a newly independent State as being bound by a convention unless that State had made known its intention to remain or to become a party to it.

27. With respect to general multilateral conventions concluded by the administering Power before its independence, Madagascar had on various occasions opted in favour of continuity subject to confirmation, of the "theory of reflection", of the system of acceptance as a new State, or of a statement of continuity pure and simple subject to denunciation. His country's position was essentially pragmatic. It might be said that Madagascar had accepted multilateral conventions, even those which might be regarded as having a universal character, only under certain conditions. His delegation considered that it would be inappropriate to include the proposed article 12 *bis* in the draft articles.

28. With regard to the question of the procedure by which and the form in which work on the draft articles should be completed, his delegation thought that the Vienna Convention on the Law of Treaties and the present draft articles did not have the same scope and that the law relating to the succession of States had implications which were much more complex than those of the law codified in the Vienna Convention. Moreover, the question of the succession of States in respect of treaties, in particular treaties involving financial obligations, was closely related to the question of succession in respect of matters other than treaties. Common principles might govern the two cases of succession and it might be wondered whether they should not be the subject of a single draft. His Government would not be able to adopt a definitive opinion on the subject until ILC had concluded its work on the draft articles on the succession of States in respect of matters other than treaties. In its view, ILC should give both that matter and the question of State responsibility priority consideration.

29. Mr. JACHEK (Czechoslovakia) said that his Government appreciated the considerable work done by ILC on succession of States in respect of treaties, particularly since the matter also involved the solution of questions closely related to the victorious liberation movements and the fight against colonialism.

30. His delegation welcomed the fact that the set of draft articles on succession of States in respect of treaties incorporated correct and progressive principles of international law and therefore could be regarded as a solid basis for the codification of that important topic.

31. As his Government had submitted in October 1973 written comments on the draft articles on succession of States in respect of treaties (*ibid.*, annex I) and had explained its views in detail at the previous session (1488th meeting), he wished at the current stage to comment on only a few problems, which he considered to be particularly timely.

32. His delegation had noted with satisfaction that the "clean-slate" rule was one of the main principles underlying the draft. It regarded that approach as correct but wished to draw attention to the fact that that principle was not fully formulated in the draft, in particular in so far as it concerned the question of succession in respect of divided States. It considered that the "clean-slate" principle should also be applied when a new State appeared as the result of the dismemberment of the predecessor State. His Government's position in that respect was based on its own experience, since it had come into existence in 1918 as the result of the dismemberment of the Austro-Hungarian Empire. His Government considered that in such cases there was no reason for the continuity of treaties. However, that did not mean that his country did not admit of exceptions to the "clean-slate" principle. On the contrary, it considered that it would be appropriate to evaluate the possibility that that principle might be used by a successor State as a pretext for the non-fulfilment of the generally accepted norms of international law contained in certain multilateral treaties of universal character which had been concluded by the predecessor State and related, for example, to the defence of fundamental human rights.

33. His delegation regarded as a flaw the fact that the proposed draft articles failed to recognize situations where new States were formed as a result of a social revolution. The concept of a newly independent State set out in article 2, paragraph 1 (*f*), did not cover all cases of the formation of new States and the matter required further study.

34. Although article 7 contained the expression "except as may be otherwise agreed", his delegation considered that the provision stipulating that the draft articles applied only in respect of a succession of States which had occurred after the entry into force of the articles deserved further study, in particular in connexion with the gradual disappearance of the colonial system.

35. The question of the date of succession should also be resolved, since failure to do so might have serious legal consequences. It could be asked whether it was possible to establish the date of succession from an objective standpoint. Article 2, paragraph 1 (*e*) did not give a sufficiently clear reply to that question. Succession of States meant the replacement of one State by another in respect of responsibility for the international relations of territory. If the matter depended solely on a subjective act by the new State, problems might arise in respect of the determination of its international responsibility. There might also be problems if the new State failed to give a notification stipulating the date of succession. His delegation therefore considered that it would be useful to base the determination of the date of succession on objective facts. That question, too, deserved further study.

36. The fact that only a few States had submitted substantial comments in respect of a number of the draft articles gave reason to think that the holding of a diplomatic conference to consider and adopt the Convention might not be successful. ILC should therefore reconsider some of the draft articles, in particular proposed articles 12 *bis* and 32, in the light of the current discussion and the comments of Governments.

37. Mr. GÜNEY (Turkey) said that ILC had succeeded in its difficult task of preparing the draft articles on succession of States in respect of treaties. The draft articles were important from both the legal and political points of view and could constitute a sound basis for determining the principles and rules in that field. His delegation wished to express its appreciation for the considerable efforts made by the Special Rapporteur in preparing the draft articles.

38. His Government had not yet submitted written comments and observations on the draft articles because it had preferred to wait for the final form of the draft, in order to be able to consider it in its entirety. His delegation agreed with the view expressed by a number of delegations that the General Assembly should renew its invitation to Member States which had not yet done so to present their comments and observations on the draft articles.

39. His delegation was not convinced that the law concerning the succession of States in respect of treaties should be codified in the form of a convention. Since a succession of States necessarily implied the establishment of a new State, a convention on the law of the succession of States in respect of treaties would be enforceable with respect to the successor State only if it became a party and from the date on which it became a party. In such a case, the convention would not be binding on the State in respect of an act prior to the date on which it had become a party. Furthermore, other States would not be bound by the convention in respect of the new State until that State became a party. The participation of the successor State would also raise problems regarding the mode of expression and the retroactive effect of consent to be bound by the convention. If appropriate provision was made in the final articles for the participation of a successor State to take effect on the date of succession, the form of a convention would have some merit. Although on the basis of the current content of the articles, his delegation favoured a declaration of principles rather than a convention, it was prepared to be guided by the wish of the majority.

40. The draft articles should be sent back to ILC to enable it to consider the texts of proposed articles 12 *bis* and 32. Such a procedure would be particularly useful if the draft articles were to be given the final form of a convention. Experience had shown that, when put into practice, codification conventions based on drafts prepared by ILC were of great value as instruments consolidating juridical opinion.

41. As far as the final phase of codification was concerned, for the sake of efficiency, his delegation would prefer a conference of plenipotentiaries. The date of such a conference could be set according to the calendar of conferences, taking into account the views expressed by the third world countries on the question.

42. Mr. WISNOEMOERTI (Indonesia) welcomed the delegations of Cape Verde, Mozambique and Sao Tome and Principe.

43. The preparation by ILC of the draft articles on succession of States in respect of treaties constituted a significant contribution to the progressive development and codification of international law. His delegation was partic-

ularly grateful to the Commission for adopting the "clean-slate" principle as the basic tenet of the legal régime concerning newly independent States, a principle which was in conformity with the principle of self-determination recognized by the Charter of the United Nations. As a sovereign State, a newly independent State was not, *ipso jure*, under any obligation to continue to enforce treaties concluded by the predecessor State and previously applicable to its territory. At the same time, it was noteworthy that ILC had successfully balanced the "clean-slate" principle with the principle of *ipso jure* continuity in part IV of the draft. In succession resulting either from the merger of two or more States or from the separation of a part or parts of a State to form one or more independent States, the successor State was an independent State already having international personality, or part of a State which had enjoyed a great degree of independence at the date of succession. In such cases, the element of consent on the part of the successor States existed prior to the date of succession. The *ipso jure* continuity principle, deriving from the *pacta sunt servanda* principle, should indeed prevail over the "clean-slate" doctrine, so that juridical certainty and continuity in treaty relations could be maintained. Moreover, with the process of decolonization nearing an end, States would be more often confronted with cases of succession which fell under part IV of the draft articles embodying the *ipso jure* continuity principle.

44. Referring to the proposed article 12 *bis*, he said that it did not take sufficient account of the interests of newly independent States in that it deprived such States of the right to determine whether treaties concluded by the predecessor State were consistent with its national interests. Some of the conventions categorized as treaties of universal character in the explanatory note concerning the proposed article 12 *bis* in fact had limited participation, although their object and purpose were of world-wide scale and thus were open to participation by all States. States generally had legitimate reasons for refraining from becoming parties to such conventions. It was therefore unreasonable to expect a successor State with such a legitimate reason to be bound by the proposed article 12 *bis*. That was simply one illustration of the difficulties which might arise from such a provision. His delegation considered therefore that the proposed article 12 *bis* was unnecessary.

45. Referring to the proposed article 32 (see A/9610/Rev.1, foot-note 58), he said that one important feature of the conciliation procedure set out in that draft article was its non-binding character which, in many cases, was considered more effective—and therefore more attractive—than a compulsory procedure. The proposed article, together with its annex, was a sound proposal worthy of serious consideration. However, although the settlement of disputes was essentially a legal question, it nevertheless had political implications. The question of whether it was appropriate to include such a provision in the draft articles and if so, what the appropriate procedure would be, should therefore be resolved by a conference of plenipotentiaries.

46. The articles prepared by ILC provided an acceptable basis for the final stage of codification. His delegation was therefore in favour of the proposal by ILC to convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject.

He did not agree that either the draft articles as a whole or the two proposals referred to in paragraph 75 of the report should be referred back to ILC. Such a step would merely impose an additional burden on ILC and delay its consideration of priority matters, especially if it had to deal with such controversial issues as those raised by the two proposals in question. However, the convening of such a conference should take account of the United Nations calendar of conferences in the coming years, to allow for adequate representation of States with a shortage of legal expertise, in particular the developing countries. Within that context, his delegation was prepared to support the proposal that work on the draft articles should be completed by the Sixth Committee only if ample assurance was given that such a procedure would not unduly delay the work of the Committee. With regard to the timing, his delegation had an open mind.

47. Mr. BOOH BOOH (United Republic of Cameroon) welcomed the delegations of Mozambique, Cape Verde and Sao Tome and Principe.

48. The draft articles on succession of States in respect of treaties prepared by ILC were of undeniable importance. His delegation had noted with interest the way in which members of ILC had succeeded in reconciling apparently conflicting interests through an objective evaluation of State practice, judicial practice and the writings of jurists. The written observations submitted by Governments and the statements made in the Committee had revealed many areas of agreement on the draft articles. His delegation was prepared to support any constructive measure designed to further the consideration of the draft, which undoubtedly constituted a useful supplement to the work of codification already carried out in respect of the law of treaties. Even when the process of decolonization had been completed, and the concept of a newly independent State had disappeared from legal terminology, the future convention on the succession of States in respect of treaties would continue to provide pertinent answers to problems concerning the unification and separation of States. His Government would submit detailed written comments on the draft in due course.

49. Referring to article 15, he said that his delegation approved of the "clean-slate" principle adopted by ILC as a working hypothesis. Accession to independence in no way implied obligatory acceptance of commitments entered into by a colonial administration. That principle was applied by his country because it conformed more closely to the demands of its sovereignty, to its freedom to determine its own conventional relations and to its determination to accept commitments entered into by the predecessor State only on strict conditions. In practice, the "clean-slate" principle had been applied in general by the newly independent countries with sufficient responsibility and regard for the interests of the international community to obviate the need for further safeguards.

50. In its commentary on article 15, ILC rightly pointed out that the practice of States and depositaries confirmed that the "clean-slate" principle applied to general multilateral treaties and to multilateral treaties of a law-making character. Consequently, while agreeing that the newly independent State had the right of option to be a party to

certain categories of multilateral treaties in virtue of its character as a successor State, as provided in article 16, his delegation had serious difficulties in accepting the proposed article 12 *bis* in its current form. The question raised by that article had given rise to considerable controversy at the Vienna Conference on the Law of Treaties and postulated principles which were incompatible with the protection of the interests of newly independent countries. As had already been pointed out by one delegation in document A/10198, the adoption of article 12 *bis* could impose a host of obligations on newly independent States, including financial obligations, the scope of which could not be accurately assessed at the time of succession.

51. The provisions of article 11 concerning boundary régimes conformed closely to the principle of the inviolability of boundaries which the African States had incorporated into the Charter of the Organization of African Unity, and which had been adopted by the political leaders of the United Republic of Cameroon. Although the colonial administration had been prejudicial to his country's interests with regard to boundaries, his Government adhered to the principle of inviolability of boundaries because it seemed preferable to serve the interests of peace, understanding and stability in Africa.

52. The concept of other territorial régimes used in article 12, however, could give rise to misunderstandings and impose excessive burdens. To the extent that that notion related to such international obligations as leasing and foreign military bases, it seemed justified to make the enjoyment of such rights after independence conditional on a new arrangement between the successor State and the other parties concerned. The commentary by ILC indicated, moreover, that the concept of international obligation had often been accepted in exceptional circumstances either to permit an international settlement in the general interest of the international community, or of a region, or by virtue of firmly established local custom. In the absence of such circumstances, a new contractual arrangement was called for in order to take account of the interests of the new sovereign State. Consequently, it would be advisable to delete article 12.

53. Because of the complexity of its provisions and the interests which it attempted to reconcile, the future convention on succession of States in respect of treaties would undoubtedly give rise to different interpretations. Consequently, his delegation supported the idea of including a provision on settlement of disputes and felt that the proposed article 32 was worthy of consideration. The difficulties which might arise in the implementation of the convention could be resolved reasonably by conciliation. Any other system of peaceful settlement might create serious difficulties for his delegation, for reasons which it had already explained in the Committee at the twenty-ninth session (1492nd meeting), in the debate on the item relating to the review of the role of the International Court of Justice.

54. Referring to the procedure to be followed and the form to be adopted in order to conclude the work on the draft articles, he noted that only a dozen or so countries had been able to submit written observations to the Secretary-General in accordance with General Assembly

resolution 3315 (XXIX). All but one of them were developed countries. In the view of his delegation, that limited response was due not to a lack of interest in the draft articles, but to the heavy demands made on human and technical resources, particularly those of the developing countries, as a result of the large number of legal conferences held during the year. Consequently, the Committee would be wise to postpone its decision on the procedure to be followed and to make a new appeal to States to communicate their views on the draft articles so that a position acceptable to all could be adopted at the thirty-first session.

55. As the programme of future work of ILC was very heavy, it would not be appropriate to send the draft articles back to it for a third reading without first knowing the views of a large proportion of Member States on the work already carried out and without first knowing for certain that no other course of action could be followed in order to reconcile the views of States on the few remaining articles which still gave rise to justified differences.

56. Mr. ALIHONOU (Congo) welcomed the delegations of Cape Verde, Mozambique, Papua New Guinea and Sao Tome and Principe.

57. International law should reflect the fundamental changes brought about by decolonization, in order that it might gain acceptance by the majority of States, particularly new States which acceded to international conventional relations after recovering their freedom. The question of succession of States in respect of treaties should therefore be studied seriously in the light of the experience acquired by new States since gaining their independence.

58. No one would disagree with the principle that a State had the right to determine freely and in good conscience the obligations which bound it, since many States had had to sign treaties under all kinds of pressure.

59. The draft articles under consideration, which were the result of commendable work by ILC, were a useful basis for preparing a final text. However, his delegation regretted that article 2 referred only to newly independent States and did not refer to States in which profound changes had taken place, particularly through the replacement of an old social order by a new one. The Committee would be criticized if it were to disturb international stability, but it would be criticized much more if it were to impose on a State obligations which flagrantly contradicted that State's concept of society. The emphasis on newly independent States in the draft articles led his delegation to wonder how many Territories would still be dependent when the final text entered into force.

60. For the time being, his delegation could only recommend that ILC review the draft in the light of observations submitted by Governments and the views expressed during the Committee's debates, bearing in mind that it was

dealing with a little-developed field of law and that world developments created new problems and legal concepts which could not be ignored.

61. His delegation tended to favour consideration of a convention at a special diplomatic conference. Further observations would be submitted by his Government at a later stage.

62. Mr. BRUNA (Chile) said it was apparent from the provisions of General Assembly resolution 3315 (XXIX) that the item under consideration had been included in the agenda in order that States might make their views known to the Secretary-General and take a decision, if appropriate, on the draft articles.

63. Document A/10198 and Add.1-4 showed that only 14 Member States, or about 10 per cent of the total membership, had submitted observations. His delegation tended to believe that even if Member States were given more time, the number of replies would not increase significantly. The draft articles adopted in second reading by ILC appeared to satisfy a large percentage of Member States, so that many had found it unnecessary to make observations.

64. His delegation had made its views on the substance of the draft articles known in the Committee at the twenty-ninth session (1491st meeting) and had analysed the complete report submitted by ILC. The debate had centred on a few articles such as articles 7, 11, 12 and 22 and, in particular, had focused on questions not dealt with by ILC, namely the proposals on multilateral treaties of a universal nature and on settlement of disputes. His delegation shared the concern that had been expressed about those matters but did not believe a third reading by ILC was necessary. If the Committee wished ILC to submit a finished, perfect draft which satisfied all States, a third and perhaps many more readings would be necessary. His delegation believed that the work of ILC on the draft articles was complete, and that the Committee could not request a new version without interfering with the other important projects of ILC.

65. His delegation shared the view of ILC and of many States that the present draft articles should take the form of a convention adopted in a diplomatic conference. Substantive observations on the articles could be made at the conference. His delegation did not wish to take a position on the timing of such a conference, which would have to be determined in light of the calendar of legal conferences. It felt, however, that the conference should take place in 1976 or early 1977, and until that time, States which had not yet done so could submit their observations to the Secretary-General, so that they could be taken into account in the preparation for the conference.

The meeting rose at 5 p.m.

1538th meeting

Tuesday, 14 October 1975, at 3.10 p.m.

President: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1538

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. DIAZ GONZALEZ (Venezuela) expressed gratitude to the Chairman and members of the International Law Commission (ILC) for the report on the work at its twenty-seventh session (A/10010), which represented the fruits of arduous and scholarly labour. In view of the importance of that work, his delegation endorsed the recommendation by ILC that its sessions should be 12 weeks in duration.

2. The draft articles on succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D), which ILC had so painstakingly prepared during a period of seven years, constituted an adequate basis for the drafting of an international instrument. In preparing the articles ILC had complied with the procedure laid down in article 16 of its statute and Member States had been given an opportunity to present their observations and comments on the draft. ILC had approved the draft in its final form with one abstention and had submitted it to the General Assembly in accordance with resolution 3071 (XXVIII). Accordingly, his delegation shared the view expressed by the representative of Brazil (1526th meeting) that the draft was a final draft and that it would be a mistake to refer it back to ILC for additional study. Following further discussion, the draft should be converted into a convention by a conference of plenipotentiaries. As many previous speakers had observed, the question of multilateral treaties of universal character was a question of principle. Clearly, no member of the international community could be obliged, without an express manifestation of its will, to become automatically a party to any treaty. The question of settlement of disputes could be resolved at the conference of plenipotentiaries.

3. It would be advisable to appeal to all Member States which had not yet submitted observations on the draft, in accordance with the Secretary-General's request, to do so. Those observations would be an essential element in guiding the debates at a plenipotentiary conference.

4. He was pleased to note that although the progressive development of international law had been reflected in many of the provisions of the draft, at the same time the

obligatory rules of customary international law had been respected. That was certainly true with respect to articles 10 and 11. His delegation fully supported the provisions set forth in the draft articles as drafted by ILC.

5. Mr. SETTE CÂMARA (Brazil) said that the twenty-seventh session of ILC had been one of its most successful and productive, thanks to the continued application by ILC of traditional methods which had proved their worth in the past. He thanked the Chairman of ILC for his lucid introduction of the report on the work of that session and said he wished to comment on the texts presented in that report, it being understood that time did not permit a thorough examination of the various sets of articles proposed.

6. Referring to the topic of State responsibility, dealt with in chapter II, he congratulated the Special Rapporteur on his able and precise drafting and scholarly commentaries. The Special Rapporteur had discarded the narrow frontiers within which the problem of State responsibility had been discussed in the past and had succeeded in eliminating all the previous confusion between the problem of State responsibility and questions relating to the rules on reparation for injuries suffered by aliens. The detailed and exhaustive commentaries of the Special Rapporteur's fourth report (A/CN.4/264 and Add.1)¹ had not been disputed in the meetings of ILC. It would indeed be inadmissible to question the rule that States were responsible for acts of their organs, or those entities empowered to exercise elements of the governmental authority, acting in their official capacity, which exceeded their competence under municipal law or contravened the rules of that law concerning their activity. The members of ILC had agreed with the Special Rapporteur that the obsolete conceptions of the nineteenth century which exempted the State from international responsibility for acts *ultra vires* committed by its organs had been completely discarded. The reason behind the doctrine of responsibility for such acts was that the stability of international life required something sounder than the rules of competence set by internal law, which could be changed by the State itself, as expedient and convenient, simply by observing its own proper constitutional procedures. Otherwise it would be difficult to reach agreement on any rule that would satisfactorily cover the broad principle of the responsibility of States for wrongful acts committed by their organs.

7. In his delegation's view, ILC had been right to delete paragraph 2 of article 10 proposed by the Special Rapporteur in his fourth report (*ibid.*, para. 60) embodying the doctrine that an exception should be allowed in cases in which the *ultra vires* character of the acts was too obvious

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ See *Yearbook of the International Law Commission*, 1972, vol. II, p. 71.

to be ignored by the parties concerned. ILC had felt that that provision was unnecessary and would only weaken the general principle embodied in the rule. Indeed, acts which fell strikingly outside the competence of such organs would obviously constitute simple acts of individuals and as such would fall under a different draft article, and particularly under article 11 of the draft articles.

8. The principle embodied in article 11, as proposed by the Special Rapporteur, had proved to be sound and consistent with the philosophy of the draft. The text adopted by ILC had followed the wording suggested by the Special Rapporteur, with minor drafting changes to bring it into line with the formulations previously adopted and to broaden the scope of the concept of wrongful acts committed by States so as to cover action as well as omission. There was no doubt that the State could not be held responsible for the acts of individuals acting in a private capacity. However, it often happened that acts of individuals caused a legal situation which might call in question the responsibility of the State concerned. Nevertheless, a distinction should always be drawn between the acts of individuals and the eventual collateral breach of an international obligation by a State or its organs. The latter, not the former, was a source of international responsibility. The doctrine according to which a State, by action or omission, endorsed or condoned the acts of individuals and thereby became an "accomplice" in committing such acts currently enjoyed very limited support. Indeed, it would be difficult to admit that an individual, by his acts, could violate an international obligation, since individuals were not subjects of international law. The acts of individuals could be of some importance only if they served as a catalyst in the wrongful conduct of State organs, and could not in any event be considered as a source of international responsibility.

9. Arbitral tribunals were almost unanimous in attributing to the State responsibility only for action or omission by its organs, which might have failed to prevent wrongful acts by individuals or to punish those concerned. In most cases such responsibility would involve denials of justice, failure to provide security and protection, and lack of effectiveness in promptly prosecuting and punishing the perpetrators of the acts in question. The two paragraphs of article 11 reflected the dichotomy between the two juridical relationships involved, one affecting individuals and pertaining to the internal legal order and the other affecting the State and pertaining to the international legal order.

10. With regard to the problem of specially protected persons, it must be borne in mind that the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly in 1973 in its resolution 3166 (XXVIII), established new international obligations which could be a source of State responsibility. The alternatives either to prosecute or to extradite, for example, could make a State liable for refusal to extradite. On the other hand, the importance of the principle underlying article 11 was illustrated by the hijacking of aircraft, which was beyond question the result of acts of individuals, in their private capacity; neither the State of which they were nationals nor the State from whose territory the aircraft took off had ever been held responsible for such acts.

Responsibility would arise only if the State where the original seizure took place had failed to exercise due vigilance or if the State where the aircraft finally landed and the culprits disembarked failed to prosecute and punish them. For all the foregoing reasons, his delegation supported the text of article 11, as adopted by ILC.

11. Very wisely ILC had decided to divide article 12, as proposed by the Special Rapporteur in his fourth report (*ibid.*, para. 192), into three different provisions: articles 12, 13 and 14, each encompassing a different situation. A distinction should be drawn between the situation covered by article 12 and that dealt with in article 9, which involved organs placed at the disposal of the State by another State or by an international organization. The text of article 12 should contain a reference to "entities empowered to exercise elements of the governmental authority" so as to complement the concept of State organs. It was necessary to consider the possibility that the action of such entities in a modern State might take place in the territory of another State—without an action or omission of an "organ of the State" properly speaking. Moreover, that would bring the text into line with the economy of the draft articles as a whole. On the other hand, the saving clause in paragraph 2 of article 12 was very useful.

12. With regard to article 13, it should be noted that the Special Rapporteur had failed to provide actual instances from which the general rule could be established. Although precedents were scarce, no one could deny that international organizations were subjects of international law and as such could be considered responsible for an internationally wrongful act.

13. Article 14, paragraph 1, affirmed the principle that the State in whose territory an insurrectional movement took place should not be responsible under international law for the acts of organs of that movement. The new formulation was much more precise than the one set forth in paragraph 2 of the original article 10 (*ibid.*, para. 60). The insurrectional movement *per se* was ample proof of the inability of the State to control the territory under its jurisdiction, especially if the movement had acquired sufficient dimensions to be recognized as having international personality. The responsibility of the so-called territorial State for failing to exercise vigilance and afford protection was therefore of an exceptional nature. That exceptional possibility was covered by the saving clause in paragraph 2. In that connexion, the remarks of the Special Rapporteur, contained in paragraph 154 of his fourth report, to the effect that more often than not the activities in question were completely beyond the control of the State should be born in mind.

14. Article 14, paragraph 3, dealt with insurrectional movements that possessed international personality. The replacement of the formulation of paragraph 2 of the original article 12 (*ibid.*, para. 192), referring to movements "possessing separate international personality", by the new draft which spoke only of cases in which the attribution of wrongful acts to organs of the insurrectional movements could be made under international law, was a very able semantic circumvention and obviously improved the text.

15. His delegation had no difficulties with the text of article 14 as proposed, although it might be safer to speak

simply of the insurrectional movement rather than referring to its “organs”.

16. The principle embodied in article 15 was soundly grounded in the doctrine and practice of States, and his delegation supported the text as proposed by ILC.

17. Turning to the topic of succession of States in respect of matters other than treaties, dealt with in chapter III of the report, he noted that ILC had approved a new text of article 9 which abandoned the obsolete distinction between the public domain and private domain of the State, and discarded other types of categorization which contained some vestiges of that distinction. His delegation agreed completely with ILC that the best solution was to resort to a general formula, leaving the door open for States to decide otherwise whenever they deemed it necessary. Accordingly, the principle set forth in article 9 became a residual rule. His delegation fully endorsed the text of the article as adopted.

18. After a long discussion of the text for article 10 proposed by the Special Rapporteur, ILC had decided to delete the provision. Full support should be given to that decision, which had been a wise one, given the new text of article 9 and the definition of State property contained in article 5.

19. His delegation had no special difficulty with regard to the substance of article 11, but it shared the doubts expressed by some members of ILC as to whether the article was altogether necessary, in the light of the texts of articles 5 and 9. The subject of State debts was vast and complex, and it might be misleading to devote only one article to it, dealing solely with the position of creditor States. Moreover, the nature of the succession would play a very important rôle in questions relating to debt: for example, the solution of any problem would depend on whether the predecessor State retained its personality or ceased to exist. Furthermore, there were many kinds of debt that would be considered separately. His delegation therefore thought that ILC had acted with caution and wisdom in postponing a final decision on the substance of article 11.

20. With regard to the three additional articles—articles X, Y and Z—proposed by the Special Rapporteur,² he noted that article X, after discussion, had been inserted in the text as article 3 (*e*). Articles Y and Z had been combined in a single text, subsequently referred to as article X,³ which contained expressions in square brackets, showing that there had been no agreement in ILC on a definitive formulation. His delegation was happy that ILC had discarded the Special Rapporteur's proposed exception for cases in which the rule of respect for the property of third States could be contrary to the public policy of the State, because the concept of public policy could change from State to State and could be altered even by the internal law of the State, at its convenience. Such exceptional situations could normally be dealt with individually, through specific agreement between the States concerned, and should not be envisaged in a rule designed for general application. His delegation considered it useful to include provisions on the

property of third States and hoped that agreement would be reached on the text of article X when ILC resumed its examination of the subject.

21. With reference to chapter IV of the report, relating to the most-favoured-nation clause, he noted that ILC had made considerable progress and had adopted articles 8 to 21, giving grounds for optimism as to the possibility of concluding the work on the draft articles at the next session of ILC.

22. Article 8 had caused no difficulty in ILC, for the unconditionality of the most-favoured-nation clause was now undisputed in practice and in the writings of jurists.

23. Article 9 had likewise raised no controversy in ILC. In that connexion, it was important to draw a distinction between formal reciprocity, which was the normal exchange of most-favoured-nation treatment under clauses embodied in bilateral or multilateral treaties, and material reciprocity, which was the subject of article 10. His delegation agreed with the simple, concise and comprehensive formulation of both articles.

24. Article 11 obviously related to interpretation, and would always operate in the light of articles 31 and 32 of the Vienna Convention on the Law of Treaties.³ ILC had been right to try to avoid using Latin expressions in a legislative text, and the resulting formulation of the principle was concise and meaningful. His delegation had no difficulty with the substance of article 11 or that of article 12, which likewise related to interpretation. Those two articles comprehensively covered the field of the *ejusdem generis* rule, which was recognized in arbitral decisions and State practice as beyond dispute in relation to the most-favoured-nation clause.

25. His delegation had no problems with regard to article 13, which was fully in line with the general philosophy of the draft and in particular with articles 6, 7 and 8.

26. He noted with satisfaction that ILC had not resorted, in its formulation of article 14, which dealt with the formerly controversial question of the so-called *clauses reservées*, to old ideas which purported to admit the existence of certain special domains, agreed on by the granting State and third States and deemed to be outside the field of play of the most-favoured-nation clause. According to modern State practice, the *clauses reservées* were *res inter alios acta* and could not interfere with the most-favoured-nation clause, unless expressly intended to be used in that way. It should be noted that article 14 was not *jus cogens* and States could decide otherwise whenever they wished.

27. He found equally sound and beyond dispute the principle in article 15 that any favours granted through bilateral or multilateral conventions might be invoked by the beneficiary to claim most-favoured-nation treatment, regardless of whether the treaty in question was open or restricted. Treaties might contain negotiated and expressly

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

² See A/CN.4/282.

agreed upon exclusions or waivers of most-favoured-nation treatment, but otherwise the general solution would be that such favours could be claimed by any beneficiary of most-favoured-nation treatment. He supported the straightforward position of ILC concerning the problem of customs unions and other similar associations and its refusal to accord them the nature of an exception to the general rule embodied in article 14.

28. With regard to the somewhat controversial problem of national treatment, dealt with in article 16 and 17, he had no objection to its being dealt with fully in the draft. There had always been a relationship in State practice between the most-favoured-nation clause and the national treatment clause, the latter having lately found wide application in the field of trade. The developing countries had reservations about both clauses, because internal parity between their domestic enterprises—which often lacked capital and technical know-how—and powerful foreign competitors frequently led to the stifling of local private initiative. He supported articles 16 and 17 and likewise articles 18, 19 and 20.

29. The inclusion in the draft of article 21 was of the utmost importance. ILC could not brush aside the special situation of developing countries facing the realities of present world relations. Noting that equality of treatment between unequals was tantamount to inequality, he said that privileged treatment for the developing countries was necessary so that the equality of situations arising from the functioning of the most-favoured-nation clause would not result in unfair competition. ILC should therefore make sure that the draft articles did not hinder whatever steps had been already taken to assure justice of treatment for developing countries in their struggle towards economic development, such as those taken in connexion with the establishment of a new system of generalized, non-reciprocal and non-discriminatory preferences. The article was satisfactory in its present formulation, being couched in general terms and not purporting to treat in detail the problem of preferences for developing countries. However, the principle of a privileged exception to the equality rule, namely that third States could not invoke most-favoured-nation treatment to claim benefits granted to the developing countries as such, was fully preserved. He welcomed the decision of ILC to delete any express limitation of the effects of the article to the field of “trade”, noting that related matters could also be the object of preferential treatment, in particular shipping and port facilities. Eventually other matters could also be involved in such treatment, such as those normally embodied in the so-called establishment treaties, dealing with the rights of aliens, inheritance rights of aliens, *locus standi in judicio*, and liability for military service. The current text was well balanced, but the door should be left open for further progress in the field of privileged treatment for developing countries. He hoped that ILC would explore new avenues to consolidate the formulation of the article and enlarge its scope in the light of the realities of State relationships in the modern world.

30. Turning to chapter V of the report of ILC, dealing with treaties involving international organizations, he welcomed the decision to continue to align the draft articles as closely as possible with the Vienna Convention on the Law

of Treaties. He also welcomed the inclusion of article 7, paragraph 2(e), which was consistent with article 12, paragraph 1, of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.⁴

31. He noted that article 7 gave an affirmative reply to the question whether full powers in the form traditionally used by States applied to international organizations, although the powers of representatives of such organizations for the purpose of adopting or authenticating the text of a treaty were called simply “powers”. ILC had recognized that the practice of international organizations thus far did not make the presentation of powers indispensable, but had preferred not to include an express recognition that powers were not necessary, since that could lead to confusion in the practice. With regard to the rule contained in article 9, paragraph 2, on the two-thirds majority rule at certain international conferences, he felt that that practice could not yet form the basis for a binding rule of international law. Conferences were recognized as sovereign to establish their own rules of procedure and that should continue to be the case.

32. His only objections to the texts of articles 10 to 18 concerned the problem whether ratification should be retained as the means for an international organization to establish consent to be bound by a treaty. If ratification were extended to international organizations, problems would arise from the fact that texts could not be formally adopted prior to a two-stage approval by a complex consultative machinery, involving organs of different ranks. The new concept, “act of formal confirmation”, which had been introduced into the articles, did not solve those problems and constituted an innovation which had no grounds whatsoever in the practice of organizations. The draft would be more realistic if attempts to introduce the ratification procedure into the life of international organizations were simply discarded for lack of precedents.

33. With regard to the organization of the work programme of ILC, as discussed in chapter VI of the report, he congratulated ILC for having established a planning group to study the functioning of ILC and formulate suggestions concerning its work. Concerning co-operation with other bodies, he noted with satisfaction that ILC had had the benefit of hearing statements by many distinguished observers from regional bodies entrusted with the study, development and codification of international law. Such an interchange of information among jurists dedicated, at the international and regional levels, to the common goal of promoting the rule of law in the relations between States was a very sound and useful practice. He also congratulated the Department of Legal Affairs of the United Nations Office at Geneva on the organization of the eleventh International Law Seminar, which like the preceding Seminars had proved to be extremely useful. He expressed satisfaction with the success of the third Gilberto Amado Memorial Lecture, which had been an exceptional tribute to the memory of a great citizen of Brazil.

⁴ See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, (United Nations publication, Sales No. E.75.V.2), document A/CONF.67/16.

34. Mr. GODOY (Paraguay) thanked the Chairman of ILC for his introduction of its report and congratulated ILC on its work.

35. Paraguay, which was a founder Member of the United Nations, had never been a member of ILC. That was perhaps one instance in which the principle of universality and equitable distribution in the United Nations still remained to be applied.

36. Referring to chapter II of the report of ILC, concerning the question of State responsibility, he said that the fact that ILC had thus far been able to adopt only 15 articles was a clear indication of the magnitude of that undertaking and of its paramount importance for the codification and progressive development of international law.

37. The draft articles drew a clear distinction between wrongful acts and the injurious consequences of certain lawful activities. Nevertheless it was essential to devise machinery which would prevent the gradation of State responsibility for the commission of such acts or the practice of such activities from being used consciously and continuously to evade or diminish responsibility for such acts or activities. States must be prevented from conceiving or carrying out seemingly lawful acts which were in fact calculated to produce effects similar to those of wrongful acts. In questions of responsibility, it was the subjective element of intent which must ultimately be determined in order to qualify the act and to establish blame and responsibility.

38. With regard to draft article 10, his delegation had serious doubts about the words "such organ having acted in that capacity". It was difficult or almost impossible in practice to dissociate official capacity from private capacity in the case of certain individuals representing organs of the State. The words in question led to the conclusion that, if such an organ—which would be represented at all times by natural persons—had not acted in the capacity of an organ of the State, the act in question could not be considered an act of the State for the purposes of international relations. The dangers of considering as an act of the State any conduct on the part of individuals representing or belonging to its organs were quite clear. Nevertheless, the practical difficulties, at the international level, of distinguishing between acts committed as an organ of the State or as a private citizen would be insurmountable. Moreover, the words in question were open to unacceptable abuse, since it could quite easily be argued in any given case that the organ or person in question had acted solely in a private capacity and not as an organ of the State. It would therefore be preferable to delete the words in question.

39. In article 11, the words "not acting on behalf of the State" again raised the difficulty of determining, in practice, when a person or group of persons was or was not acting on behalf of the State. Obviously, in cases where State responsibility threatened to jeopardize one State's relations with another, the former would immediately dissociate itself completely from the acts in question. Paragraph 2 of the article appeared to indicate that any omission on the part of the State in failing to take reasonable measures to prevent the acts or in not punishing

or extraditing private individuals presumed to have acted on their behalf, would be considered, for the purposes of the draft articles, as an act of omission by the State.

40. Article 12 appeared to exclude cases of complicity or tolerance on the part of the territorial State in connexion with organs of another State which enabled those organs to commit internationally wrongful acts to the prejudice of third States. If the territorial State was implicated in such wrongful acts by omission, it should be considered almost as responsible as the State whose organs had carried out the acts. His delegation would prefer the words "in that capacity" in paragraph 1 of article 12 to be deleted.

41. Article 13 was completely acceptable to his delegation.

42. With regard to article 14, it should perhaps be made clear that it applied to insurrectional movements whose acts were directed against the Government of the territory in which they were established. As it stood, the article could be interpreted as applying to an insurrectional movement which established a base in one State simply to facilitate its activities against a neighbouring State, which was the real target of its operations.

43. His delegation shared the view of the authors of the draft that it was necessary to distinguish between responsibility for a failure to exercise vigilance and to prevent or repress a simple revolt, and possible responsibility as a result of inability to control a well-organized and firmly-established insurrectional movement. In the first case, the State should assume responsibility, while in the second case, the insurrectional movements were, to a certain extent, capable of committing wrongful international acts on their own account and should therefore be held directly responsible for the acts of their organs, although that did not necessarily imply recognizing that they possessed international personality.

44. Article 15 appeared to be completely acceptable. The provisions of paragraph 2 would be particularly appropriate in the cases of territories which had been under colonial rule.

45. He had full confidence in the future work of ILC and hoped that consideration of the draft would soon be completed. His delegation would also like to see appended to the current draft some articles relating to the question of the peaceful settlement of disputes arising out of the interpretation and application of the rules codified in the draft articles.

46. Referring to succession of States in respect of matters other than treaties, he said that, as far as article 9 was concerned, his delegation had doubts solely regarding the words "agreed or decided". Although it could be presumed that those participating in such an agreement would be the two parties directly involved—i.e. the successor and predecessor States—it was not clear whether such a decision would be made by those same States, under the Convention itself, or by some other international authority or tribunal. Consequently, the deletion of the words "or decided" would strengthen the draft article. The same was true for article 11. Similarly, in article 9 the term "property"

should be made more specific so as to clarify, not necessarily the public or private nature of such property, but its physical nature. Means of transport or other movable assets, for example, could be situated outside the territory at the time of succession.

47. With regard to article X, it was quite clear that, regardless of the arrangements agreed between the predecessor and the successor States, the property, rights and interests of third States situated in those territories should be respected and their future determined by direct agreement between such third States and the successor State.

48. His delegation also agreed with the insertion of article 3(e) as a safeguard for the interests of the international community in general.

49. He expressed the hope that ILC would speed up its work on succession of States in respect of matters other than treaties, with a view to submitting a complete set of draft articles as soon as possible, particularly in view of the fact that work on the draft on succession of States in respect of treaties had almost been completed.

50. Referring to articles 8, 9 and 10 of the draft articles on the most-favoured-nation clause, he agreed that it was preferable to leave the States concerned to decide, within reasonable limits, on the type of clause best suited to their needs and interests. Between States with a similar level of development, the conditional or reciprocal formula was normally acceptable. In such cases, the concepts of granting and beneficiary State would disappear, since both parties would act in both capacities at the same time. However, when the level of development or international trade capacity of the States involved differed appreciably, it would be unjust to require that the benefits or privileges received by the State most in need should be made conditional on the automatic granting of equal benefits or privileges. To make the unconditional formula a *sine qua non* would discourage the conclusion of international agreements. For some States, the cost of extending the most-favoured-nation clause to all States with which it concluded any type of agreement, would be, in certain cases, prohibitive, as had been shown by the General Agreement on Tariffs and Trade (GATT).

51. His delegation also agreed with the *ejusdem generis* rule used in the formulation of article 11. That principle made it possible to limit the granting of most-favoured-nation treatment to specific commodities and categories. It also protected the sovereign will of States and limited their liability to specific cases and situations.

52. Assuming that the clause referred to was of the unconditional type, his delegation agreed with the current wording of article 13, since it reflected the main reason for the existence of the unconditional concession.

53. The text of article 14 also seemed very appropriate.

54. Article 15 reflected the case of GATT. That provision, which undoubtedly favoured the beneficiary State, encouraged some degree of "isolationism" among States which had difficulty in accepting certain conditions of GATT, while, at the same time, maintaining the principle of the universality of the most-favoured-nation clause.

55. With regard to articles 16 and 17, his delegation maintained that the national treatment granted under bilateral agreements, whether of the unconditional or reciprocal type, should not be invoked by third States when such concessions were exclusively a result of the unfavourable geographical situation of the beneficiary State. Such a measure would limit the possibilities of land-locked States of obtaining treatment appropriate to their special situation, since the granting State would not be in a position to extend that treatment to third States. A safeguard of that kind was provided for in article 10 of the Convention on Transit Trade of Land-locked States.⁵

56. Article 21 would be of very positive benefit to the less economically developed countries, and confirmed his delegation's conviction that law, like any social science, should be reviewed and adapted to changing social and economic circumstances.

57. With regard to the draft articles on treaties concluded between States and international organizations or between international organizations, he was gratified to note that much of the terminology and methods used in the Vienna Convention on the Law of Treaties had been retained, with a few necessary modifications. Although the legal nature and characteristics of States and international organizations differed radically, the progressive codification of international law would be substantially accelerated and strengthened with the adoption of texts which, because of their similarity, facilitated the interpretation and application of the host of new and complex international instruments. Consequently, ILC should conclude the preparation of that draft as soon as possible, taking account of the practical lessons to be learned from the Vienna Convention on the Law of Treaties.

58. With regard to the non-navigational uses of international water courses, he expressed the hope that as many Governments as possible would submit answers to the Secretary-General's questionnaire, so that ILC could continue its consideration of that important topic at its next session and submit its report to the General Assembly at its thirty-first session.

59. Mr. KURUKULASURIYA (Sri Lanka) said that the unprecedented suffering unleashed during the Second World War, the rapid development of science and technology in the post-war period and the emergence of nearly 100 independent nations had radically changed the foundations on which international law had been built. Feudal and fundamentally exploitative relationships between States had given way to a relationship based on sovereignty, equality and mutual respect. International law was no longer an instrument of domination in the hands of a few. In short, the frontiers of international law had shifted, and continued to shift, to encompass new norms and concepts. The Sixth Committee had the heavy responsibility of translating into legal norms the fundamental principles developed both within and outside the United Nations system in the social, humanitarian and, in particular, the economic fields. The Committee must be technical only to the extent that it dealt with the subject of law and jurisprudence. However, it would be failing in its duty if it did not establish, in the context of economic, social and

⁵ United Nations, *Treaty Series*, vol. 597, No. 8641, p. 41.

cultural developments, the new frontiers of international law which would serve as guidelines for the specialized organizations which translated into legal form the principles regulating the conduct of States in various fields of human activity.

60. The sixth and seventh special sessions of the General Assembly had been held in order to formulate a new economic frontier which took account of the rightful demands of developing countries for full and complete economic emancipation. The Committee should call on specialized bodies such as ILC and the United Nations Commission on International Trade Law to take account of the Declaration and Programme of Action on the Establishment of a New International Economic Order (General Assembly resolutions 3201 (S-VI) and 3202 (S-VI)), the resolutions of the seventh special session and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)). Although some countries had expressed strong reservations on those documents, in the view of the vast majority of Member States, they established the new international economic frontier. Those called upon to participate in the process of translating into law the accepted norms of the time could not afford to ignore the principles contained in those documents.

61. Referring to the question of the succession of States in respect of treaties, he said that the draft articles reflected an acceptable compromise between the "clean-slate" principle and the principle of continuity. However, he felt that proposed article 12 *bis* (see A/9610/Rev.1, foot-note 57) might create more difficulties than it was intended to resolve. The definition of multilateral treaties of universal character could encompass many treaties to which many countries, particularly the newly independent ones, might find it difficult to become parties, for a number of reasons. His delegation did not see sufficient reason for a provision of that kind which would place newly independent States in a difficult position, since while considering whether or not they should continue to be parties to such treaties, they would continue to be bound by their provisions.

62. With regard to proposed article 32 (*ibid.*, foot-note 58), his delegation was of the view that, since the proposed convention on succession of States in respect of treaties was necessarily complementary to the Vienna Convention on the Law of Treaties, provisions similar to those contained in the Vienna Convention might be appropriate for inclusion in the proposed convention.

63. The two proposed articles should be resubmitted to ILC for careful consideration in the light of the views expressed in the Committee. However, if in considering those two proposed articles ILC deemed it necessary to review other articles, it should not be prevented from doing so.

64. With regard to the report of ILC, he said that the work of ILC was of unparalleled importance for the progressive development and codification of international law. One aspect of its work which was of considerable importance to Sri Lanka was that concerning the most-favoured-nation clause and in particular the application of that clause to countries of different levels of economic development. His delegation was in complete agreement with the view expressed by the secretariat of the United Nations Conference on Trade and Development, mentioned in paragraph (2) of the commentary on article 21 of the draft articles on that subject, to the effect that "to apply the most-favoured-nation clause to all countries regardless of their level of development would satisfy the conditions of formal equality, but would in fact involve implicit discrimination against the weaker members of the international community... The recognition of the trade and development needs of developing countries requires that for a certain period of time, the most-favoured-nation clause will not apply to certain types of international trade relations". His delegation was confident that ILC would be conscious of those realities during its consideration of the draft articles.

The meeting rose at 5.50 p.m.

1539th meeting

Wednesday, 15 October 1975, at 10.45 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1539

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

1. Mr. MEISSNER (German Democratic Republic) after having congratulated the Chairman of the International Law Commission (ILC) on his excellent introduction of the report under consideration (A/10010), explained that his delegation's comments would only be of a preliminary nature.

2. On the question of State responsibility, his delegation felt that it was essential to differentiate between internationally wrongful acts according to their severity. In particular, aggression should be regarded as a crime against world peace, and colonialism and genocide should not be

regarded as ordinary violations of treaties. He therefore noted with satisfaction that ILC intended to consider the origin of international responsibility, in a first phase, and the content, forms and degrees of such responsibility, in a second phase. In the second phase of its work, ILC would first of all have to establish the basis for the distinction between internationally wrongful acts which gave rise only to an obligation to make reparation and those which incurred a penalty, and to consider a possible distinction between cases where legal relationships arising out of the internationally wrongful act were established solely between the State which had committed the act and the State directly injured by it and cases where such relationships were also established with other States or even with the international community as a whole.

3. Reviewing the draft articles on State responsibility which ILC had adopted at its twenty-seventh session (*ibid.*, chap. II), he said that article 10 (Attribution to the State of conduct of organs acting outside their competence or contrary to instructions concerning their activity) and article 11 (Conduct of persons not acting on behalf of the State) were in full conformity with international practice. With regard to article 12 (Conduct of organs of another State), his delegation considered interesting the proposal that separate provision should be made for the important case of obvious complicity by a State which knowingly consented to the use of its territory for the perpetration of an internationally wrongful act against a third State. Even a State which confined itself to giving permission for its territory to be used for the commission of acts of aggression could be regarded as an aggressor within the meaning of the definition of aggression adopted by the General Assembly at its twenty-ninth session (resolution 3314 (XXIX), annex). That question should be dealt with in chapter IV of the draft (Participation by other States in the internationally wrongful act of a State). With regard to articles 14 and 15, both relating to insurrectional movements, he expressed the view that the term "insurrectional movement" should be defined more exactly. In determining the attribution of responsibility, the legitimacy of the struggle of a successful insurrectional movement could not be disregarded; a fascist coup d'état could not be treated in the same way as a national liberation movement. He said he doubted whether the time-table suggested in paragraph 143 of the report under consideration would allow ILC to continue its work on State responsibility at the pace expected by the General Assembly.

4. In view of the complexity of the question of the succession of States in respect of matters other than treaties, his delegation felt that it was premature to comment on the draft articles already adopted. It would be preferable if substantive progress was made on that matter before the question of the succession of States in respect of treaties was definitively settled. Moreover, his delegation had always considered that those two questions should be dealt with on the basis of the same principles.

5. After having emphasized the importance of the most-favoured-nation clause, which helped to promote trade relations among all States irrespective of their social system and level of economic development, he said he was pleased to note that ILC had made substantial progress in the study of that subject, which had been dealt with in a masterly

manner by the Special Rapporteur responsible for it. In general, the draft articles adopted by ILC (see A/10010, chap. IV, sect. B) seemed to codify the rules applicable in the matter of most-favoured-nation treatment. That codification, however, raised a number of problems on which his delegation would like to explain its point of view. It was gratified that the principle of the unconditionality of most-favoured-nation clauses had been stated in article 18; it was not opposed to the idea of a conditional most-favoured-nation clause but could not agree to interventionist or other conditions which would be inconsistent with generally recognized international law and would impair the sovereign rights of other States. Article 21, which concerned the generalized system of preferences, had come into existence as a result of a proposal by the Special Rapporteur. That provision was in full conformity with article 26 of the Charter of Economic Rights and Duties of States, adopted by the General Assembly at its previous session as resolution 3281 (XXIX). It was indispensable to grant developing countries preferences which would be non-transferable to developed countries through a most-favoured-nation clause. ILC, which had unanimously accepted that viewpoint, should not let its work be delayed by questions of definition. The term "developing country" had acquired a broad connotation within the United Nations and the United Nations Conference on Trade and Development which could be further clarified by those organizations and could be used as a basis for ILC's work. A convention on most-favoured-nation treatment should not, however, contain a definition of that term. His delegation supported the goal expressed by ILC in paragraph 141 of its report of concluding the first reading of the articles on the most-favoured-nation clause at its 1976 session so that they could be submitted to the General Assembly at its thirty-first session.

6. His delegation welcomed the progress that had been achieved in the study of the question of treaties concluded between States and international organizations or between two or more international organizations. In his excellent reports, the Special Rapporteur responsible for the study of that subject had used the Vienna Convention on the Law of Treaties as a model. It would, however, be necessary subsequently to establish distinctions between States and international organizations, as ILC has done in connexion with article 6 (Capacity of international organizations to conclude treaties) of the draft articles (*ibid.*, chap. V, sect. B). In his delegation's view, the capacity of an international organization to conclude treaties depended basically on its founding instrument; that view derived from the fundamental principle of the sovereign equality of States. The scope and content of that capacity must not be contrary to the will of States Members. Moreover, it was worth-while making a clear distinction from the outset between treaties to which both States and international organizations were parties and treaties concluded between international organizations only. Such a distinction took into account differences between the international status of States and that of international organizations. Lastly, his delegation believed that the second reading of the series of articles could be completed in 1981, or earlier, as indicated in paragraph 145 of the report under consideration.

7. Mr. LANG (Austria) commended the members of ILC and the Special Rapporteurs on the extremely productive

work they had done at the twenty-seventh session of ILC. The new articles presented by ILC on the question of State responsibility included an article concerning the conduct of organs acting outside their competence or contrary to instructions concerning their activity. The Austrian Government would carefully study the criterion of the manifest lack of competence. The decision of ILC to exclude private acts of organs from State responsibility would certainly be welcomed. His delegation subscribed to article 11 (Conduct of persons not acting on behalf of the State); it considered, however, that the expression "on behalf of the State" signified in the exercise of governmental authority. A person was therefore not acting on behalf of a State if he was acting on behalf of a company or other private body totally or partly owned by that State. That interpretation appeared to be confirmed by the conclusions reached by ILC in paragraph (36) of its commentary to article 11. In general, his delegation considered that the attribution of responsibility was justified when the person engaged in the wrongful conduct would be entitled to claim State immunity if he was brought before the courts of the territorial State. It was fair to say that the territorial State incurred international responsibility on the occasion of, and in connexion with, the internationally wrongful conduct of a foreign organ, especially if the organs of the territorial State had been unduly passive in their conduct. It would depend to a great extent on the circumstances how that passivity was regarded, and whether it was assimilated to complicity. His delegation agreed with article 13 (Conduct of organs of an international organization) since the rule set out therein was already included in section 46 of the Agreement between the Republic of Austria and the International Atomic Energy Agency regarding the Headquarters of the International Atomic Energy Agency, of 11 December 1957.¹

8. With regard to the new articles elaborated on the subject of the succession of States in respect of matters other than treaties, he believed that the members of ILC should give further thought to the assimilation of property in the private domain to property in the public domain, even if that distinction was mainly a theoretical one, as the representative of Finland had pointed out (1535th meeting).

9. Concerning the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation approved of the approach of the Commission, which had established a relation between the set of articles in preparation and the Vienna Convention on the Law of Treaties. With regard to article 6 (Capacity of international organizations to conclude treaties) of the draft articles on that matter, his delegation continued to believe that that provision could be interpreted as meaning that an organization could extend its treaty-making capacity at will by adopting or developing rules to that effect. However, the powers of an international organization in that respect were limited by the object and purpose of the organization in question, as set forth in its constituent instrument. While agreeing that representatives of international organizations should establish their competence to perform certain acts relating to the conclusion of treaties, his delegation believed that the

question of the representation of international organizations should be re-examined in order to determine whether there existed in most of them organs which enjoyed representational capacity "in virtue of their functions". His delegation generally agreed with all the draft articles already adopted, although the wording of some of them could be improved.

10. With regard to the law of the non-navigational uses of international watercourses, he recalled that his Government had already replied to the questions contained in the report of the Sub-Committee set up to consider the question (see A/9610/Rev.1, chap. V, annex, paras. 17 and 30). Because of its geographical position, Austria was particularly interested in the subject. For that reason, his delegation wished to reaffirm its opinion that the problem of pollution should not be considered at the initial stage. Since water pollution resulted from various uses of fresh water, that should be the starting point for the examination of the problem. In view of the difficulties encountered by other international bodies which had tried to develop and codify rules relating to the pollution of international waters, it appeared that ILC should endeavour to identify general principles and to close the gaps that still existed, as, for example, with regard to State responsibility for pollution-damage in general. In that respect, his Government believed that the question of international liability for harmful consequences arising out of certain lawful activities which entailed a high degree of risk merited study by ILC. Having begun negotiations with neighbouring States concerning the establishment of nuclear plants near Austria's borders, his Government had realized that in that respect, international law was neither sufficiently developed nor sufficiently precise. The Organisation for Economic Co-operation and Development had in fact decided to set up a working group to study State liability for activities likely to cause pollution damage beyond the frontiers of the country in which they were conducted. His delegation welcomed the decision by ILC to take up again, at its twenty-eighth session, the question of the law of the non-navigational uses of international watercourses and hoped that in the meantime as many Governments as possible would submit their observations on the question.

11. Austria's position concerning the draft articles on the succession of States in respect of treaties was stated in document A/10198. With regard to the procedure to be followed in respect of proposed articles 12 *bis* and 32 (see A/9610/Rev.1, foot-notes 57 and 58), his delegation believed that the decision whether to adopt those articles should be left to a conference of plenipotentiaries, to be convened in due time by the General Assembly.

12. As to the most-favoured-nation clause, his Government was satisfied with the work accomplished thus far by the Special Rapporteur and ILC and would examine with great care the draft articles already prepared.

13. Turning to the programme and organization of the work of ILC, he said that he was gratified to learn that a planning group had been set up within the Enlarged Bureau. It was certainly difficult to adopt a rigid plan for the organization of work; nevertheless, the planning efforts could only improve the working methods of ILC, whose work unquestionably contributed to the maintenance of international peace and security.

¹ United Nations, *Treaty Series*, vol. 339, No. 4849, p. 152.

14. Mr. KLAFFKOWSKI (Poland) associated himself with those delegations which had congratulated the Chairman of ILC, whom he thanked for his excellent introduction of the report of ILC. The four sets of draft articles submitted in that report were of the highest calibre.

15. His delegation shared the view of ILC that the preparation of a set of draft articles was the most effective method of identifying and developing the rules of international law concerning State responsibility. The 15 draft articles prepared thus far by ILC represented only the first two chapters of the first part of the draft, with three chapters still to be considered. As that first part was intended to form a self-contained whole, it was perhaps still too soon to comment on it. Nevertheless, certain trends could already be observed. For example, the tendency to broaden the notion of State responsibility was apparent in the report of Mr. Ago, Chairman of the Sub-Committee on State Responsibility, and was confirmed in paragraph 37 of the report of ILC. ILC had also given a broader interpretation to the concept of internationally wrongful acts. There was also a noticeable trend towards extending the concept of State organs that could give rise to State responsibility and towards keeping to a minimum the circumstances which might limit that responsibility. The 15 draft articles on State responsibility prepared thus far constituted an excellent starting point.

16. Turning to the succession of States in respect of matters other than treaties, he noted that at its twenty-seventh session, ILC had adopted only three new articles in first reading. In his excellent reports, the Special Rapporteur had submitted recommendations which had served mainly to identify the criteria to be applied in distinguishing between the succession of States in respect of matters other than treaties and the succession of States in respect of treaties. Although work on that question was progressing slowly, paragraphs 71-74 of the report of ILC gave reason to hope that it was well under way.

17. Considerable progress had been made in the work on the most-favoured-nation clause. In paragraph 102 of its report, ILC, while recognizing the fundamental importance of the role of the most-favoured-nation clause in the domain of international trade, expressed its intention of not confining its study to the operation of the clause in that field but extending the study to the operation of the clause in as many fields as possible. That was a laudable intention which proved that ILC wished to take into consideration all recent developments that could affect the codification or progressive development of the rules relating to the operation of the most-favoured-nation clause. With regard to the scope of the draft articles, it should be pointed out that the most-favoured-nation clause came entirely within the purview of the general law of treaties and that the draft articles concerning that clause presupposed the existence of the Vienna Convention on the Law of Treaties, to which it was to be considered a supplement.

18. The chapter concerning the question of treaties concluded between States and international organizations or between two or more international organizations was very interesting. In general, the draft articles reflected the wish of ILC to remain faithful to the spirit of the Vienna Convention on the Law of Treaties, particularly to its

preciseness and flexibility, while at the same time taking account of the special characteristics of the international organizations participating in the treaties. However, it must be recognized that, although international practice gave evidence of great terminological freedom in respect of the conclusion of treaties, the placement of international organizations on the same footing as States was fast becoming inaccurate, since international organizations were the result of a deliberate act on the part of States, and that determined their legal character by conferring a specific role on each of them. The draft articles dealt with a question which was fundamental to contemporary diplomacy and was an accurate reflection of international practice and modern doctrine on the subject. Although a number of important questions still remained to be resolved, it was already possible to predict that the work of ILC on the question would be highly successful.

19. Referring to chapter VI, entitled "other decisions and conclusions of the Commission", he noted that not enough replies to the ILC questionnaire on the non-navigational uses of international watercourses had yet been received to determine the scope and content of work done on the question. Nevertheless, the work of the Sub-Committee dealing with the topic seemed to be well under way. The Sub-Committee's report constituted an adequate basis for a preliminary discussion and could be used as an initial framework for codification of the subject.

20. His delegation noted with satisfaction the information on the Gilberto Amada Memorial Lecture and on the International Law Seminar held during the twenty-seventh session of ILC.

21. Mr. CALLE Y CALLE (Peru) expressed satisfaction with the extremely valuable report of ILC and the authoritative statement by the representative of Brazil (1538th meeting), who had acted as President of the United Nations Conference on the Representation of States in their Relations with International Organizations, a matter of the highest importance affecting the lives of representatives of States to international organizations.

22. With regard to the question of State responsibility, he said that Latin America had formulated doctrines on the subject which had facilitated the evolution of that branch of international law. Articles 10 and 15, currently before the Committee, completed the part of the draft which defined the subjective elements of international responsibility: the circumstances under which a given conduct or a given act could be attributed to a State. In the future, ILC would study the objective element of international responsibility, namely what constituted an illegal act at the international level. It would subsequently study participation by other States in the internationally wrongful act of a State, circumstances precluding wrongfulness and attenuating or aggravating circumstances. Concerning article 10, dealing with the attribution to the State of conduct of organs acting outside their competence or contrary to instructions concerning their activity, he felt that ILC had solved one of the most discussed theoretical problems and that article 10 reflected the practice of States and the current trend in arbitral awards. He thought, furthermore, that, far from being deleted, as proposed, the phrase "having acted in that capacity", should be strengthened.

Yet, the State was not responsible for the acts of persons not acting on its behalf, since at the international level, responsibility must be attributable to the State, to a State official or to an organ depending on the State. Peru had, furthermore, always supported the principle of non-responsibility of the State for the actions of private persons. In that connexion, he expressed regret that no article treated the case of public disorder and demonstrations involving group violence which a State might have difficulty in controlling, despite the fact that that possibility had been envisaged in the original draft articles. He furthermore deplored the deletion of the provisions concerning the case of insurrectional movements having a personality of their own, distinct from that of the State and recognized in international law. He noted, however, that it had been provided that, in the case where an insurrectional movement became a new State, the latter became responsible. With regard to the other articles before the Committee, his delegation approved of them as a whole.

23. Turning to the question of succession of States in respect of matters other than treaties, he felt that ILC had made little progress, despite the detailed report the Special Rapporteur had prepared, taking into account the observations expressed in the Committee. His delegation approved of the three new articles drafted by ILC (see A/10010, chap. III, sect. B), in particular article 9, which supplemented article 8 dealing with the passing of State property without compensation and provided that State property situated in the territory to which the succession of States related should pass to the successor State. With regard to article 10, he felt it would be better to return to the initial idea expressed by the Special Rapporteur, because the property of the predecessor State remained under the responsibility of the latter and were not affected by the succession.

24. With regard to the most-favoured-nation clause, a traditional institution which now had to be regulated, he observed that ILC was trying to accomplish that task, not only in a specific area, trade or customs for example, but in the broadest possible terms. His delegation considered the articles satisfactory but was concerned over the respect

shown for a clause dating from the mercantile era. It was nevertheless true that progress had been made, in response to a demand for social justice, towards a system of generalized preferences in favour of "economically weak countries". There existed in fact a new principle of international economic and trade law, according to which different rules applied to the developed countries from those which applied to the developing countries and which corresponded to the idea of a law adapted to the economic problems of underdevelopment. But his delegation feared that the most-favoured-nation clause would discourage efforts aimed at the establishment of free trade areas and the conclusion of regional, interregional and subregional integration agreements. Article 14, dealing with the irrelevance of restrictions agreed between the granting and third States, was valuable in theory, but in practice it might be necessary to extend special treatment to a country. The most-favoured-nation clause must not have the effect of allowing a State to benefit from the special treatment extended to another State for very definite reasons.

25. With regard to the draft articles or treaties concluded between States and international organizations or between two or more international organizations, he said that ILC had solved the technical difficulties very ably, thanks to the preparatory work of the Special Rapporteur. Once the capacity of international organizations to conclude treaties had been recognized, they ought to be placed on the same footing as States with regard to treaties. The terminology was not yet well established in that area and ILC had adopted different terms in dealing with States and international organizations, but he felt it was not necessary to go too far in that direction, even if nuances were sometimes useful. ILC had made progress in its work, but had not completed the articles dealing with reservations. International organizations should not, in his view, be denied the possibility of formulating reservations when that was not incompatible with the ultimate purpose of the treaty. It was, in fact, necessary, for juridical and practical reasons, to maintain a liberal system of reservations for the benefit of both States and international organizations.

The meeting rose at 12.10 p.m.

1540th meeting

Wednesday, 15 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1540

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. OSMAN (Somalia) congratulated the International Law Commission (ILC), its Chairman, the Legal Counsel of the United Nations and the Director of the Codification Division for their most valuable services and contributions to the progressive development and codification of international law. ILC had made impressive progress at its twenty-seventh session and his Government would, in due course, submit its comments and observations on the report of that session (A/10010), in particular with respect to the draft articles on State responsibility.

2. Turning to the question of succession of States in respect of treaties, he said that the draft articles submitted by ILC (see A/9610/Rev.1, chap. II, sect. D) could form a general basis for codification. His delegation expressed its appreciation to ILC for the progressive stand it had taken in adopting the "clean-slate" principle as a fundamental basis for its draft. That decision was a true reflection of the contemporary universal trend of the international community towards the institution of necessary reforms in international law with a view to making it consistent with current realities and the aspirations of mankind as a whole.

3. Given the different and sometimes conflicting concepts and positions on the matter of the succession of States, it would be a mistake to assume that there existed uniform and universally acceptable principles and doctrines on the subject, particularly with regard to treaties of a territorial character (dispositive treaties). No rigid universal principle could be laid down to govern all treaties on boundaries and territorial régimes, unless saving clauses were incorporated to provide for special situations. The line of argument put forward by some delegations in favour of the rule that dispositive treaties constituted a special category and should be considered an exception to the "clean-slate" principle was, he felt, politically oriented and influenced by extraneous considerations not consistent with universal juridical principles and international morality.

4. The codification of international legal principles should not be viewed within the narrow context of political arrangements geared to regional co-operation and security.

Similarly, it would not be in the interest of peace and the welfare of nations if international rules formulated through the influence and pressure of former colonial Powers were confirmed. Serious political and human implications would arise if the doctrine of the inviolability of frontiers were applied to all peoples and countries, without due regard to the historical, political and social factors peculiar to them. His delegation could not agree to the evolution of legal principles and rules which merely condoned colonial legacies and arbitrary decisions and were in clear contradiction with the purposes of the Charter of the United Nations. The protagonists of the exclusionary rule regarding dispositive treaties apparently based their opinion on customary international law as reflected in the traditional norms and principles applied by European Powers during the colonization era. More emphasis needed to be placed on the modern practice of States, with particular regard for the situation of emerging countries in Africa and Asia.

5. The argument in paragraph (11) of the commentary on Articles 11 and 12 citing a resolution of the Assembly of Heads of State and Government of the Organization of African Unity held in Cairo in 1964, as substantiating the doctrine of the inviolability of frontiers as applicable to all boundary and territorial cases, should be viewed with the utmost caution. A number of countries, including his own, had reserved their position with regard to that resolution. His country was one of the few States which had inherited serious territorial problems from the colonial period. The cases cited by the Rapporteur in favour of the inviolability of frontiers were applicable only to circumstances and situations prevailing during the eighteenth and nineteenth centuries and could not be taken as a precedent establishing a general principle on boundary régimes in modern times. It followed, therefore, that the distinction drawn between dispositive treaties and other treaties was based neither on a concrete principle of international law nor on modern State practice. The attempt in the report to establish an exception to the "clean-slate" principle with regard to dispositive treaties was unsuccessful.

6. Reference had been made to the concepts of continuity and stability as the underlying principles supporting the inviolability of frontiers as an exception to the "clean-slate" principle. If the application of that rule were confined to permanent frontiers demarcated on a just basis and with due regard to the rights and interests of the peoples concerned, there would be grounds for its adoption in the interest of continuity and stability in international relations. It was, however, questionable whether that would be a valid argument in the case of dispositive colonial treaties, which had been concluded purely to safeguard and promote the selfish interests and ambitions of colonial Powers. International peace and security would be seriously jeopardized if the validity of unequal colonial treaties dealing with boundary régimes created by the colonial

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

Powers in the eighteenth and nineteenth centuries and clearly in contradiction with the right of self-determination and the sovereign equality of States were confirmed. It was time for the international community, through institutional procedures, to formulate legal principles, not only with regard to the building of new titles on the basis of *de facto* provisions but also, where appropriate, in the case of old territorial titles, with a view to investigating, analysing and appraising their legitimacy on the basis of peace and justice.

7. His delegation shared the concern expressed by the representative of Madagascar (1537th meeting) and others with regard to the validity of articles 11 and 12. He proposed that those articles should be deleted from the draft, as international boundaries and territorial arrangements were matters which fell essentially within the domain of bilateral negotiations, conclusion and arbitration. Problems arising from boundary treaties could not be satisfactorily solved by universal rigid rules which were in contradiction with the right of self-determination and independence. There was, furthermore, a need to incorporate in the draft articles a separate article providing for adequate arbitration and conciliation procedures. In addition, proposed article 12 *bis* (see A/9610/Rev.1, footnote 57) should be deleted or formulated with greater accuracy and precision. Provided the draft articles were reviewed on the lines he had suggested, his delegation would have no objection to the convening of an international diplomatic conference of plenipotentiaries to discuss and finalize the draft.

8. Mr. GOBBI (Argentina) congratulated ILC on its remarkable report.

9. Regarding the draft articles on State responsibility (see A/10010, chap. II, sect. B), he said that the description of the Latin American position in paragraph (19) of the commentary on article 10 was not accurate. Very narrow positions had at certain times been adopted in the field in question in order to prevent diplomatic protection from serving as an excuse for interfering in the domestic affairs of a given country, but those attitudes were not the guiding line of the Latin American doctrine. The essence of the Latin American position lay in trying to define international rules that would prevent abuses and place inter-State relations on an equal footing and a level of mutual respect, without advocating the elimination of responsibility. In the past the more powerful countries, by means of the concept of the minimum rights of all civilized societies, had imposed their own scale of values and assumed the powers of international legislators. The Calvo clause, whereby diplomatic protection was contractually waived and aliens were placed exclusively under local jurisdiction, had been an effort to ensure equal treatment of nationals and aliens. Although initially treated with hostility and contempt, it was now beginning to be accepted, even in one of the countries where the opposition had been greatest. Moreover, the Calvo clause had been praised at the 1960 session of the Asian-African Legal Consultative Committee, where one delegation had even expressed the view that it was indispensable in order to avoid intervention and safeguard the independence of States. He was gratified to note that ILC in its report had taken up the ideas of Calvo on the non-responsibility of States in the case of civil wars.

10. With reference to article 10, he said that the ideas it contained were correct, although its wording was somewhat unclear. It might have been more useful to lighten the text of the article by counterposing the private conduct of the organs of a State to that of private persons in a separate subparagraph of article 11.

11. With regard to article 11, he noted that the accepted theory was consistent with long-established Latin American practice. He agreed with the commentary on the article, but wished to clarify a passage which was critical of partisans of certain restrictive positions. The report had failed to mention the equal danger of certain unduly wide definitions of responsibility which the narrower definitions had been designed to counteract. The problem lay in the fact that the texts did not clearly set forth the principle of non-liability for private acts, though admitting that the State should recognize responsibility in the possible case provided for in paragraph 2 of article 11.

12. With regard to articles 12 and 13, he felt that the acts of organs of another State and of international organizations could be linked with the acts of private persons without needing to set up a specific category for them. Clearly, the latter were acts in which no State organ was directly linked to the wrongful conduct. Of course, it would be difficult to prove the link of casualty between the conduct of the territorial State and that of the foreign State.

13. With regard to articles 14 and 15 referring to insurrectional movements, he agreed with the criterion applied. While accepting the principle embodied in article 14 and the exception contained in paragraph 2, he felt that paragraph 3 was a conceptual and methodological error. The language of the paragraph was very confused and it appeared that what was intended was to establish the responsibility of the organs of the insurrectional movement for acts imputed to it. If that was the case, it became a matter of establishing the responsibility of a subject possessing, a relative international personality but distinct from the State, a question which fell outside the scope of the draft articles under consideration. Paragraph 3 should therefore be deleted, because it dealt with a clearly extraneous subject. However, that subject warranted thorough study and should be considered in a different context.

14. His delegation appreciated the practical usefulness of the precepts contained in article 15, which were primarily intended to preserve legal security. However, any new government would possess a twofold responsibility, both that resulting from its own actions and that inherited from its predecessor. In the latter case, the new government could conceivably be held responsible for the wrongdoings of the previous government, even including armed acts perpetrated to put down the insurrection itself.

15. Referring to chapter III, concerning succession of States in respect of matters other than treaties, his delegation congratulated the Special Rapporteur on his successful incursion into a complex field, the doctrinal and judicial background of which was scarce and hard to find.

16. Turning to chapter IV, which dealt with the most-favoured-nation clause, he said his delegation believed that

the Commission had adopted an appropriate technical approach to the problems involved. Articles 9 and 10 had been felicitously dealt with by the Special Rapporteur. Articles 11 and 12 had also been extremely well-drafted and would do yeoman service as a framework for future interpretation, since they limited the application of the most-favoured-nation clause as well as the scope of the rights acquired by the application of the clause. Article 13 was consistent with the earlier articles, and articles 14 and 15 were in keeping with the Vienna Convention on the Law of Treaties.¹

17. Articles 16 and 17 raised problems of an altogether different kind. Conceptually speaking, the topic of the most-favoured-nation clause and the matter of national treatment were two different subjects. Nevertheless, they were connected in practice and were of importance in the context of the General Agreement on Tariffs and Trade (GATT). His delegation agreed with ILC that national treatment could be studied in conjunction with the most-favoured-nation clause. National treatment implied some consequences that the developing countries should weigh very carefully. Moreover, that subject was not directly connected with the Latin American doctrine of equal treatment designed to produce a basic standard in the matter of international responsibility. ILC had correctly decided to deal with the subject of national treatment, but in its future work the impact of the two clauses, particularly with regard to customs unions and similar economic integration movements, should be taken into account.

18. One of the most interesting aspects of the most-favoured-nation clause was the consideration of exceptions thereto. In that connexion, the existence of two main types of situations was recognized: the case of various forms of economic integration (free-trade areas, customs unions) and preferential treatment for developing countries. In the first situation, there could be no doubt that in recent practice customs unions and similar groupings had been considered to be exceptions to the clause. However, the importance of that should not be exaggerated, especially since it was dealt with in article XXIV of GATT.

19. Article 21 constituted a novelty in international legislation, being designed to adapt the old clause to the realities of the present-day world, having particular regard to the developing countries. The article was intended to improve the situation of countries possessing fewer resources and was conceived as an exception to the general principles of the most-favoured-nation clause. Without such an exception, the effect of the clause would be to make the poor countries even poorer. Article 21 furthermore met the concerns expressed by the United Nations Conference on Trade and Development and set forth in the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)). It might be appropriate to adopt a broader and more flexible approach to article 21 which, *inter alia*, would cover such existing situations as the trade preferences which developing countries had granted each other.

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

20. With regard to chapter V, his delegation endorsed the idea of following, so far as possible, the framework laid down in the Vienna Convention on the Law of Treaties of 1969. It was also a positive element that ILC had incorporated into the draft of the articles contained in chapter V the concepts of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 1975. Some articles were identical to those in the 1969 Convention or differed only in form, and others diverged from the 1969 Convention because of the inherent differences in the subject-matter. The latter type of provisions raised certain problems, which appeared in articles 7, 9, 10 and 11. Other matters, such as reservations and the geographical sphere of application, also posed certain problems. In article 7, the distinction between "full powers" and "powers" seemed to be unnecessary. With regard to article 9, paragraph 2, his delegation thought it inadvisable to establish a two-thirds rule for the adoption of texts at an international conference. ILC had done commendable work in chapter V, and the Special Rapporteur should be congratulated on his excellent presentation of the subject.

21. It was unfortunate that ILC had not had time to consider more fully the topic of the law of the non-navigational uses of international watercourses. That subject was of great topical concern, and a study of it by ILC would present the challenge of codifying the relevant legal provisions. His Government had already replied to the questionnaire sent out by ILC on that topic (see A/9610/Rev.1, chap. V, annex, paras. 17 and 30) and had defined its position, which in its view reflected the current stage of evolution of international law. He reiterated his delegation's confidence in the ability of the Special Rapporteur to deal with the topic.

22. Mr. GARCIA ORTIZ (Ecuador) thanked the Chairman of ILC for his excellent introduction of its report, which was a work of great legal scholarship and showed that ILC was continually surpassing itself.

23. He said that ILC should not take up new topics until it had completed work on some of the subjects currently before it. Without prejudice to its independent judgement, it should set its priorities in accordance with the requests made by the General Assembly on the basis of the recommendations of the Sixth Committee. In his delegation's view, it would be desirable for ILC to assign first priority to the topic of State responsibility, followed by succession of States in respect of treaties and matters other than treaties. The other topics could be treated in the order which ILC deemed appropriate.

24. The question of State responsibility was one of the most intricate in international law; the precedents deriving from arbitral decisions were not uniform, and the fact that there were penal as well as political and diplomatic aspects to the question made it even more controversial. At one time the principle of State responsibility had even been used by strong States to exert pressure on small and weak States, particularly in relations between the great Powers and Latin American countries. The Calvo doctrine, just referred to by the representative of Argentina, was of great relevance in that regard. Not infrequently, at the end of the nineteenth and the beginning of the twentieth century,

foreign citizens who had suffered minor injury in Latin American countries because of a disturbance of the public order had managed to mobilize an entire political and diplomatic apparatus in their own countries in order to demand and obtain indemnity. The result had sometimes been that the Latin American countries had been obliged, as a precaution, to include in contracts with foreign legal persons the so-called reserve clause, by which the foreign contracting party waived all diplomatic claims. That clause had even taken the form of a constitutional provision. But that was mainly a historical precedent, useful to remember when measuring the magnitude of the problems relative to State responsibility. It was understandable that ILC itself had encountered difficulties in studying the question.

25. The method used in considering the question of State responsibility should be exclusively juridical. The responsibility of States, by analogy with that of individuals, should be treated as a complex of duties and conduct that could be imputed to a State.

26. Although the 15 draft articles, particularly the first 10, had been approved by consensus in ILC, he believed that article 2 in its current form was redundant.

27. Article 13 appeared to be correctly drafted. However, as noted in paragraph (7) of the commentary on that article, the question arose whether clauses in technical or other assistance agreements by which a beneficiary State assumed responsibility in the event of claims by third parties against the international organization constituted an exception to the rule embodied in the article. The statement by ILC in paragraph (7) that "it is not at all a matter of attributing the conduct of others to the territorial State, but simply of that State assuming, by virtue of a special agreement, the consequences of conduct . . . of the organization" was simply a play on words: such clauses did indeed involve "indirect responsibility" or responsibility for the conduct of others, as the Commission itself stated later in the paragraph. His delegation was awaiting the results of subsequent consideration by ILC of the matter. However, it questioned to what extent it was fair to apply indirect responsibility, which admittedly existed in civil law, in international relations. Such application enabled bodies providing technical assistance to obtain every possible advantage from the beneficiary States, which were obliged to assume all kind of responsibility as a condition for obtaining assistance. ILC should study that point and offer solutions based on justice and the juridical equality of States.

28. His Government intended to undertake a fuller study of the draft articles on State responsibility and would submit its observations to the Secretary-General in due course.

29. While his delegation reserved the right to make further observations on the question of the most-favoured-nation clause, he wished at the current stage to express agreement with the statement of the Peruvian representative at the previous meeting. The most-favoured-nation clause was clearly an institution that corresponded to past economic realities, which were being superseded by new realities that required an adjustment of rules. His delegation was in favour of maintaining the principle of duality of systems

for the two different economic worlds which now confronted one another, pending the establishment of a single new economic order based on mutual co-operation.

30. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) expressed appreciation to the Chairman of ILC for his very comprehensive introduction of its lengthy report. His delegation did not propose to comment in detail on all the subjects covered in the report.

31. It was gratifying to note that ILC had finally completed its consideration of one important topic of contemporary international law, that of State responsibility, which had been on its programme of work as a priority item since 1949. Commenting in detail on the draft articles on that topic, he said that his delegation had no serious objections to the wording of articles 1 and 2. The definition in article 3 of an "internationally wrongful act" was not entirely satisfactory, since it did not cover a number of aspects of wrongful acts perpetrated by States. Such serious acts as aggression, war crimes and crimes against humanity, the use of military force to suppress national liberation movements, racial discrimination and so on, were glossed over in the definition. It was true that in chapter III of the draft articles, ILC would seek to define certain categories of breaches of an international obligation. His delegation welcomed the effort by ILC in that direction and hoped that the wrongful acts it had referred to earlier would be reflected in the draft articles.

32. With regard to article 10, his delegation was of the view that a State must in all cases bear the responsibility for the conduct of its organs, inasmuch as such organs were acting under governmental authority. The phrase "such organ having acted in that capacity" might give rise to an ambiguous interpretation, and should be redrafted by ILC.

33. Article 13 failed to make it explicit that any organ of an international organization situated and operating in the territory of a given State and recognized by that State must act in accordance with the constituent instrument of the organization concerned, respecting and complying with the laws and customs of the receiving State. The receiving State, in turn, was obliged to assist and co-operate with the international organization and its organs in performing the functions laid down in the constituent instrument of the organization.

34. In view of the importance of the topic of State responsibility, his delegation considered that ILC should give priority attention to speedy completion of its work thereon, without sacrificing quality.

35. Turning to the question of succession of States in respect of matters other than treaties to which reference was made in chapter III of the report, he noted that ILC had been able at its twenty-seventh session to give further consideration to only three articles, namely, 9, 11 and X, which had been adopted in first reading.

36. With regard to article 9, his delegation had difficulty with the use of the expression "is situated in the territory to which the succession of States relates", since that expression did not cover movable State property situated outside the territory of the successor State. In paragraph

(10) of the commentary on article 9, ILC had recognized the tenuous nature of the link between movable property and the territory in which it was situated at a given time and had noted that the passing of movable property from the predecessor State to the successor State had often been the subject of agreements based on criteria other than that of the situation of such property at the time of the succession of States.

37. Article X, as his delegation understood it, referred to all the property of third States, whether or not situated in the territory of the predecessor or successor State. Accordingly, the property of third States should not suffer any injurious consequences as a result of relations between the predecessor State and the successor State during the process of succession.

38. In its further work on the topic, ILC should take into account the fact that questions relating to succession in respect of matters other than treaties should be treated with due regard for the principle of State sovereignty. Any attempts to use force, aggression or occupation in order to bring about succession were contrary to the charter of the United Nations and international law. His delegation agreed with those who considered that a unified text should be prepared covering the questions of succession of States in respect of treaties and succession in respect of matters other than treaties, since the questions were interrelated.

39. Turning to the most-favoured-nation clause, his delegation expressed satisfaction with the great contribution made in the formulation of the draft articles by the Special Rapporteur (see A/10010, chap. IV, sect. B). His delegation supported the Special Rapporteur's proposal regarding the need to consider the most-favoured-nation clause in conjunction with the topic of national treatment, since both questions were closely connected. That would require further consideration of the present set of draft articles; in particular, articles 17 and 18 would have to be carefully studied. On the whole, however, his delegation took a favourable view of the draft articles on the most-favoured-nation clause, which was a progressive democratic principle designed to regulate the rights of States in commercial relations. However, the most-favoured-nation clause would promote the expansion of trade only if it was applied without any discrimination whatsoever. In its further work on the topic, ILC should take into account new progressive developments in the field of international trade, including the relevant provisions of the Final Act of the Conference on Security and Co-operation in Europe.

40. The draft articles on treaties concluded between States and international organizations or between international organizations (*Ibid.*, chap. V, sect. B) seem to deal more with the procedural machinery for the conclusion and entry into force of such treaties than with the specific status of international organizations which were parties to a treaty, which must be distinguished from the status of States. The juridical personality of international organizations differed in many substantive respects from that of States, the former being more limited than the latter. The juridical personality of international organizations was created, amended or ceased to exist through a joint expression of the will of the groups of States constituting such organizations. Any international organization was no more than a

collective body whose purpose was to adopt measures decided upon by the States comprising it. A distinction should be made between treaties concluded between States and international organizations, on the one hand, and treaties concluded between international organizations, on the other. In his delegation's view, those questions had not been adequately dealt with in the draft articles. As a number of delegations had observed, the principles of the relevant articles of the Vienna Convention on the Law of Treaties could not be automatically applied to the topic taken up in chapter V of the report of ILC; that Convention contained a number of provisions which ran counter to fundamental principles of contemporary international law. It was regrettable that the Special Rapporteur and ILC had not taken the observations of the aforementioned delegations fully into account.

41. Although ILC had done considerable constructive work on a number of draft treaties, conventions and agreements, the possibilities for further enhancing the effectiveness of its work were far from having been exhausted. ILC was proceeding rather slowly in its work on a number of important topics. As it dealt with several topics at once, many were carried over from year to year with detrimental effects on the quality of the work on certain topics. In his delegation's view, ILC should carefully analyse the topics on which work remained to be done and endeavour to improve its working methods with a view to speedier completion of the topics already taken up. ILC should take greater account of the positive processes taking place in the world, such as the strengthening of détente and the affirmation of the progressive principles enshrined in the Charter of the United Nations. The role of ILC in preparing draft instruments of international law should be enhanced.

42. His delegation wished to state that it would support the approval of the report of ILC on the work of its twenty-seventh session.

43. Mr. HAMBRO (Norway) commended the Chairman of ILC for his statement introducing its report.

44. As a member of ILC he was particularly interested in statements which were critical of its work, since criticism was more useful than praise. In that regard he had listened with interest and concern to the statement by the representative of Sri Lanka (1538th meeting) to the effect that international law had until recently been mainly the work of colonialists and imperialists. There was more than a grain of truth to that remark, since international law had been created mostly by European States. It was for that reason that his Government attached great importance to the work of ILC. Only through that work, as followed up in the General Assembly and in international conferences, could a new model of international law, created by all States, be established. The purpose of codification and progressive development of international law was to create a modern law of nations in harmony with the contemporary international community. Such law could be created by all States, big and small, old and new, so that all nations could feel responsible for it and be confident that it was the expression of the needs of the world community.

45. He understood that the representative of the Byelorussian SSR had expressed impatience with the slow pace of

the work of ILC. There were many reasons why it must work fairly slowly. In particular, if its work was to be an expression of the entire international community, everyone must be allowed and encouraged to take part in it; statements before ILC were at times repetitive, but its work would be of considerably less interest if all groups did not participate. ILC represented all regions of the world, all forms of civilization and the main systems of law. That had to be reflected in the debates. It also had to be borne in mind that all its members were busy people, mostly ambassadors and professors. It was not their fault that membership did not imply full-time work as international legislators. He wished to point out that the General Assembly had decided in 1952 not to take any action in respect of its request by ILC to authorize its members to work full-time, so that all its members had other responsibilities. Moreover, ILC had had to struggle in order to obtain authorization to sit for 12 weeks instead of 10. Nevertheless, the problem of slowness in its work should be considered.

46. In international law, as in all law, there was a tension between static and changing elements. The basis of law should be security, and law had to be static to some extent in order that its subjects might know what the law was. If law became too static, however, it would become fossilized, like Roman law, and could be discarded only by revolution.

47. Corresponding to the static and changing elements in law were the twin tasks for ILC of codification and development, which overlapped and were often difficult to distinguish. At times, some members of the ILC might feel that an element of international law already existed and was suitable for codification, while others felt that the same element formed part of development.

48. His Government was entirely in agreement with most of the draft articles on State responsibility. The Special Rapporteur was extremely able and his report was a monument of legal knowledge and wisdom. The report was based on existing law in a way that was at the same time progressive and, quite appropriately, treated recent practice more fully than previous practice. The debate in ILC had been useful to the Special Rapporteur in preparing the report, as was shown, for example, by the deletion of a second paragraph concerning *ultra vires* acts, which had been proposed for article 10 and which had involved a dangerous weakening of that article. The work of ILC in that field clearly showed the primacy of international law where municipal law as far as State responsibility was concerned. The topic of State responsibility had inevitably taken ILC a long time to study, and the work was still not complete. In that connexion, he observed that delays in bringing the work begun by ILC to final completion resulted not only from the proceedings of ILC itself but from other states of the codification process, such as the submitting of a report to the General Assembly, the ensuing discussions, the preparation of a treaty and the convening of an international conference. The time-lag between signature and ratification of a treaty tended to be particularly long, as a result of doubts concerning the correctness of the treaty, bureaucratic slowness or over-cautiousness, or

a desire to see how other Governments reacted. He felt that all representatives had a responsibility to encourage their Governments to ratify treaties so that the last stage of the codification process would be completed quickly.

49. He expressed admiration for the learned and concise chapter V of the report on the question of treaties involving international organizations. There were two approaches to that question. Some tended to emphasize the differences between international organizations and States and to stress that international organizations were not sovereign and could only exercise the power granted to them by States. His Government took the opposite approach, namely that international organizations should play a greater part in the international law of the future, and that everything ought to be done to facilitate their development. In that regard, he did not feel it helpful to distinguish the powers given by Governments from those given by international organizations by calling the former "full powers" and the latter merely "powers". That smacked of conceptualism and was an unnecessary complication. Norway took a pragmatic view of that question and believed that international organizations would acquire powers whatever name was given them.

50. Turning to the question of the most-favoured-nation clause, he recalled, as a member of ILC, that all its members had favoured helping the developing countries in the fashion provided in draft article 21. The foot-note relating to that draft article did not reflect any substantive disagreement in that regard. Some members of ILC had simply felt that the question of a generalized system of preferences was a matter for codification, while others had felt it should be treated as developing law.

51. The question of the applicability of the most-favoured-nation clause to customs unions and free-trade areas did not only or primarily involve such groups as the European Economic Community and the European Free Trade Association. Customs unions and similar associations of States could play an important role in Africa, Asia and Latin America, and representatives should not take a negative attitude towards them simply because they had arisen in the industrialized countries first.

52. With regard to the future programme of work, he observed that when ILC was composed of new members, it would have to decide which subjects it wished to consider. Subjects should be selected which were politically important, otherwise the work would be purely academic. However, they should be of such a character that they were fit for legal formulation. They should have reached a certain state of maturity, yet still be capable of progressive development. Such subjects included responsibility for the legal acts of States and international organizations, immunity of States, succession of Governments, recognition of States and Governments, extradition, and other topics. He hoped that all delegations would think about those possibilities and give guidance to ILC and its new members regarding which subjects it should consider.

The meeting rose at 5.20 p.m.

1541st meeting

Thursday, 16 October 1975, at 3.40 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1541

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. LAUTERPACHT (Australia) said that the report of the International Law Commission (ILC) (A/10010) commanded respect both because of the eminence of those who had prepared it and because of its intrinsic merit. Detailed comment on the substance of the report in the Committee was unnecessary since, in the case of the specific formulations by ILC of law, that was better done in writing by each Government, and since the range of questions covered in the report was in any event so great as to preclude comprehensive discussion. Moreover, United Nations codification procedure provided for detailed governmental comment at the interim stage in writing only. Substantive discussion in the Committee was appropriate only in limited situations, such as when a representative could offer personal knowledge of the work of ILC, as the representative of Brazil had done (1538th meeting), when circumstances required that the Committee approve or amend the substantive direction of the work of ILC, or when there would be no other occasion to present views to ILC before it next considered a particular subject. For the last reason mentioned, he wished to comment on several substantive points in the report.

2. Articles 14 and 15 of the draft articles on State responsibility (see A/10010, chap. II, sect. B), and the commentaries thereon, were learned and lucid expositions of the law concerning the consequences of insurrection. However, one aspect of that subject which was of specific practical importance was the question of the effect of the acts of *de facto* rebellious authorities on the creation or discharge of State obligations. An example of that problem was the question of what right, if any, the organs of an insurrectional movement had to require payments from aliens, whether by way of tax or otherwise, and, if such payments were exacted, to what extent they discharged any obligations of the alien to the legitimate authorities. There was an allusion to that topic in paragraph (26) of the commentary on article 14, but the matter deserved more specific formulation in the body of the article itself.

3. The question which he had raised illustrated the rather general nature of the draft articles. That was perhaps an

inescapable consequence of the nature of the subject of State responsibility, but perhaps there would be value in greater particularization of the rules so that uncertainties such as the one he had mentioned could either be resolved or at least identified as not susceptible of resolution.

4. A further illustration of the desirability of more specific statements of the rules was the definition of "an organ of an insurrectional movement" as used in article 14. Organs of a State or an international organization, referred to in earlier articles, could be identified without definition because the structures of States and international organizations were regulated by law, but the same was not true of insurrectional movements. That point was recognized in paragraph (3) of the commentary on article 14, but the difficulty was left unsettled by the statement that "the situation changes as soon as an insurrectional movement, in the sense which this term has in international law, takes shape". It was precisely the question of the sense of the term "insurrectional movement" in international law which needed to be resolved.

5. Referring to the draft articles on the succession of States in respect of matters other than treaties (*ibid.*, chap. III, sect. B), he drew attention to paragraph (4) of the commentary on article 9, in which ILC noted that it had decided not to formulate a general rule regarding property situated outside the territory to which the succession of States related. That comment was helpful in pointing out that the problem was a practical one, but some further probing of the matter might produce a positive result, if only in the form of a general statement which acknowledged the right of the successor State to such assets as were attributable to or associated with the administration of the territory to which the succession of States related.

6. His last substantive comment concerned the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B). Articles 7 and 20 referred to the treatment extended by the granting State to a third State, but neither article dealt with the temporal aspect of that problem. For example, a granting State might permit a national of a third State to establish himself in its territory under a domestic policy then in force, but subsequently discontinue that policy prospectively while permitting aliens already established to continue the activity they had already begun. A problem could then arise if the national of a beneficiary State claimed the right to establish himself on the ground that nationals of a third State were continuing activities in the granting State under the discontinued policy. That was a question of general and practical concern and he hoped that ILC would be able to give it attention.

7. Past practice showed that the Committee had played only a limited role in examining the substantive aspects of the work of ILC. The resolutions of the General Assembly

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

on previous reports, for example, approved on the recommendation of the Committee, alluded only in a general way to substantive matters, and were concerned primarily with procedure. That limited role of the Committee raised the important question of what should be required in the report of ILC. It was true that the contents of the report, although formally directed to the Committee, were studied by practitioners, scholars and many others. But the undoubted value and interest of the report did not excuse the Committee from the need to assess more carefully whether it went beyond the needs of the situation. ILC should of course tell the Committee enough about its work to enable the Committee to play its part, but he wondered whether there was adequate justification for a report of around 400 mimeographed pages in length.

8. Analysis of earlier reports of ILC showed a striking change in practice. Up to and including 1970 the reports had hardly exceeded 40 printed pages, except in 1966 when ILC had presented the full text of the final draft articles on the law of treaties. But in 1971 the length of the report had increased sharply to more than 150 printed pages and now it had increased still more. That sudden growth could not be explained by expansion of the membership of ILC, which had not increased in proportion to the length of the reports. The explanation lay, rather, in the greater length of each individual chapter and in the greater number of topics which ILC examined.

9. The report now included a very full academic commentary on each draft article, as illustrated by the chapters on State responsibility and the most-favoured-nation clause in the report under consideration. That meant that the secondary role of the report, namely that of disseminating scientific material, was beginning to overwhelm its primary role of keeping the General Assembly informed about the work of ILC. Such a wealth of material reduced the Committee's ability adequately to study the report in the limited time between its appearance and the debates, and made it difficult for the Committee to focus on the central points which called for its attention. Also, those outside the Committee were eventually bound to note the expense of producing such substantial reports.

10. Those transient considerations should not be allowed to prejudice work which in a sense was written for posterity. On the other hand, much of the same scientific material could be found in earlier and later stages of the work of ILC. The reports of the Special Rapporteurs, which contained detailed citations of judicial decisions, State practice and doctrinal writing, appeared in the *Yearbook* of ILC, often in much the same terms as in the report. Later, in connexion with the formulation of a final set of draft articles, ILC would no doubt prepare commentaries, as it had done in the past for the draft articles on the law of the sea and on the law of the treaties. If scientific material was to appear in the commentary on the final articles there was perhaps a great deal to be said for omitting it from the reports of ILC in the intermediate stage.

11. Instead of containing detailed academic commentary, the report could give the Committee an explanation of the considerations behind the formulation by ILC of the draft articles. Judicial and State practice, as well as doctrinal writings, were of some relevance in that regard, but presentation of them should not overwhelm the commen-

tary or obscure issues. The commentary should, indeed, specifically identify any points on which ILC desired assistance from the General Assembly and the Committee.

12. His observations on the length of the report were not a criticism of either ILC or its distinguished Rapporteur and Special Rapporteurs. They were intended only to identify a trend which, if maintained, might eventually work to the disadvantage of the cause of codification and progressive development of international law.

13. Another factor in the length of the report was that each of the substantive chapters opened with a recapitulation of the work done on the subject at earlier sessions of ILC. He did not question the need for such recapitulations in the circumstances currently prevailing. With the present method of spreading consideration of a subject over a number of years, passages which related one year's work to that of previous years were essential, though there was some room for abbreviation. He wondered, however, whether there might not be an advantage in urging ILC to concentrate more intensively on fewer subjects for shorter periods. For example, it might be suggested to ILC that it limit its work, as it had done on occasion in the past, to one or two subjects in a session instead of four, so that it could conclude its deliberations more rapidly. That would require additional restraint on the part of Members of the United Nations which wished to propose topics for examination by ILC, and would mean even more careful planning by ILC of its programme. It would also make greater demands, though for a shorter period, on the Special Rapporteurs appointed for each subject. But those objectives ought to be attainable, and the Committee should at least identify them as desirable.

14. It followed from what he had been saying that his delegation welcomed the statement in paragraph 140 of the report to the effect that a planning group had been established in the Enlarged Bureau to study the functioning of ILC and formulate suggestions regarding its work. His delegation noted with concern that on the basis of the estimates of that group, the time available to ILC until 1981 would be entirely taken up with matters already under consideration. Yet as the report on the work of ILC at its twenty-sixth session (A/9610/Rev.1) stated, there were already a number of further topics deemed suitable for examination by it and the dynamic character of international society meant that still other subjects were bound to be proposed. How was ILC to cope with that accumulation of work? He believed that there was general agreement that the solution did not lie in increasing the size of ILC, dividing it into sections, or lengthening its sessions. Thought must therefore be given to different and perhaps simplified or even additional techniques.

15. In recent years, when ILC had found time to review its long-term programme of work, it had done so almost exclusively in terms of the selection of subjects for examination. Only in 1973 did several members refer to the need to improve methods of work and even now the most recent written consideration of the techniques of ILC was the Secretariat's factual account annexed to the report on the work of ILC at its twentieth session.¹ He hoped, therefore, that in the months to come ILC would be able to

¹ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9.*

give further thought to its methods as well as to its programme.

16. The questions he had raised were only part of a larger problem. The representative of Norway, at the previous meeting, had reminded the Committee of the need to recognize the limitations on the capacity of States adequately to consider material coming from ILC, and that warning should be heeded. But since only a small fraction of new international multilateral treaty material reflected the work of ILC, it appeared that the United Nations was approaching the moment when it should take a comprehensive look at the whole system of international treaty-making, outside as well as inside ILC. The respective roles of the Secretariat and of the Special Rapporteurs should be examined. The possibility should be considered of developing a set of guidelines to ensure a uniform approach to commentaries on drafts so that governmental examination of them could be simplified. The extent to which there was a role for legislative sub-committees should be assessed, and the functioning of diplomatic conferences should be reviewed. The Committee should reflect on its own role as the Legal—and he emphasized the word “Legal”—Committee of the General Assembly in the total international legislative process. International legislation by treaty-making was an art and not an accident. It was a complex and flexible technique, and changed as society changed. If the Sixth Committee did not inspire thought about the problem, there was small likelihood that anyone else would.

17. Mr. KHAN (Pakistan) expressed his appreciation to the Chairman of ILC for his lucid introduction of its report. With regard to the important subject of State responsibility, he supported the approach of ILC, namely to move gradually from general to particular questions. The subject merited detailed consideration and particular attention should be focused on problems arising as a consequence of aggression.

18. With regard to succession of States in respect of treaties, the views of his delegation were known from the record of previous sessions and he wished only to add that, in regard to territorial treaties, his delegation supported the principle of continuity in the interests of amity and international peace and security. With regard to the most-favoured-nation clause, he urged that the interests and concerns of developing countries be fully protected.

19. Mr. FRANCIS (Jamaica) expressed his delegation's warm appreciation for the informative presentation of the report of ILC by its Chairman.

20. With regard to the draft articles on State responsibility, he said that no one could easily take issue with the rule in article 10 attributing responsibility to the State for the conduct of organs acting beyond the scope of their competence or contrary to their instructions. He regretted that the analogous provisions in article 8, dealing with the actions of individuals, had not been formulated with equal lucidity and precision, but noted that an explicit, clear and precise explanation of the rule implicit in article 8 was to be found in paragraph (2) of the commentary on article 10. Article 11, closely linked with article 8, was also somewhat defective. The question remained: when was a person or a group of persons not acting on behalf of the State? For the

purposes of articles 8 and 11, the necessary formulation would have to emphasize the essential elements that the person or group of persons concerned must have purported to act on behalf of the State and, further, it must be established that they had not been in fact so acting. The text of paragraph 1 of article 11 should then read as follows:

“The conduct of a person or group of persons purporting to act on behalf of the State should not be considered as an act of the State under international law if it is established that such a person or group of persons was not in fact acting on behalf of the State.”

That formulation would not affect paragraph 2 of article 11, with which his delegation was in full agreement, and he commended it to ILC for consideration.

21. He noted that in its work on State responsibility ILC was faced with the supreme challenge of harmonizing the *lex lata* of its 1949 draft Declaration on the Rights and Duties of States² with the *lex lata* and *lex ferenda* of the Charter of Economic Rights and Duties of States adopted by the General Assembly in 1974 in its resolution 3281 (XXIX).

22. With regard to the work by ILC on the most-favoured-nation clause, he noted the particular importance of draft article 21 to third world countries. In the light of the comments in paragraph (11) of the commentary on that article and the statement by the Chairman of ILC that the article did not go on far enough in the protection of the interests of the third world countries (1534th meeting), it was the view of his delegation that the best course of action would perhaps be for the General Assembly to request the United Nations Conference on Trade and Development to collaborate with ILC in its further work on drafting article 21 with a view to ensuring that the interests of developing countries were adequately covered.

23. Mr. SADI (Jordan) was grateful that the representative of Australia had taken the initiative of raising the problem posed to members of the Committee by the size and content of the report of ILC. It was especially difficult for a small delegation such as his own to analyse so substantial a report in the short time available and prepare comments and judgements of substantive value. He suggested that the proper area of activity for the Committee at the current stage was to make statements of policy and establish guidelines for the work of ILC. While not at all wishing to minimize the value and importance of the hard work carried out by the legal experts and jurists who were members of ILC, he asked that it take into account the comments of the representatives of Australia and that, in the future, its report be more concise and more suited to the work programme of the Committee. Given the short time available for consideration of the report the Committee could not be expected to go into detail and deal fully with 200 pages of draft articles. The submission of such lengthy reports was tantamount to asking the Committee not to read them at all. The result was that the Committee found itself, unfortunately, unable to deal properly even with the procedural aspect of the work.

The meeting rose at 4.30 p.m.

² *Ibid.*, Fourth Session, Supplement No. 10, Part II.

1542nd meeting

Friday, 17 October 1975, at 10.45 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1542

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that State responsibility was related to the guaranteeing of the maintenance of international peace and security. The Sixth Committee had already expressed its view on the interpretation to be given to the meaning and scope of State responsibility *inter alia* in resolution 3315 (XXIX) adopted by the General Assembly on the recommendation of the Sixth Committee. While conscious of the complexity of codifying that question, her delegation was concerned at the slow pace of work and was sorry that the International Law Commission (ILC) had so far adopted only 15 articles (see A/10010, chap. II, sect. B), in other words, only half of part 1 of the plan of the draft. Those articles related to the general theory of responsibility and laid down general principles defining the content and orientation of the draft. ILC would now have to tackle a task that might be even more complex, namely that of expressing those general principles in more precise and detailed terms. Her delegation drew the Committee's attention to paragraph 35 of the report of ILC which stated that it intended to concentrate on determining the rules which governed responsibility, maintaining a strict distinction between that task and that of stating the rules which imposed on States obligations the violations of which might be a source of responsibility. In codifying the question of responsibility, account should be taken of the evolution of the actual concept of responsibility in contemporary international law. Emphasis should therefore be placed on State responsibility in the case of serious violations such as aggression which was a crime against peace and mankind.

2. With regard to the articles which ILC had adopted at its twenty-seventh session, her delegation endorsed the choice it had made in article 10; indeed, in view of modern practice and theory the conduct of State organs should be attributed to the State even when the organ exceeded its competence. As for article 11, it delimited clearly the legal bases of State responsibility. In connexion with article 12, she observed that the State in whose territory another State committed an internationally wrongful act was responsible if it had agreed to or co-operated in the act. Article 13 merited closer study and articles 14 and 15 should be simplified and made more specific.

3. With regard to the draft articles on the succession of States in respect of matters other than treaties (*ibid.*, chap. III, sect. B), her delegation attached particular importance to article X, which had been provisionally adopted, under which a succession of States would not as such affect property, rights and interests owned by a third State.

4. Turning to the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), she noted with satisfaction the important results obtained by ILC, due largely to the Special Rapporteur, who had studied the problem in depth on the basis of an analysis of practice and theory. The most-favoured-nation clause had existed for over a century and had become increasingly important as co-operation among States had grown. In its work, ILC should accord its rightful place to the study of the rules of international law likely to encourage co-operation and eliminate the artificial obstacles to international co-operation inherited from the cold war. Her delegation supported the idea that the most-favoured-nation clause should be one means of putting into practice the principles of the equality of States and non-discrimination. It was pleased that ILC, while recognizing the fundamental importance of the role of the most-favoured-nation clause in the domain of international trade, did not wish to confine its study to the operation of the clause in that field but to extend the study to the operation of the clause in as many fields as possible. During its most recent session, ILC had raised a number of questions which it had not entirely resolved. It had wondered, *inter alia*, whether provisions on national treatment should be included in the draft articles. Her delegation was inclined to support the view of the Special Rapporteur, who deemed it essential to include provisions to that effect, because the two institutions had a number of common features. Moreover, ILC, which had decided to concentrate on formulating articles relating to the most-favoured-nation clause, had been constrained by logical consideration to formulate also two articles relating to national treatment. If it had proposed two sets of articles concurrently, one dealing exclusively with the most-favoured-nation clause, the other dealing with both that clause and national treatment, its future work would have been facilitated and Governments would have been able, in their observations, to express their preference for one or other version.

5. A second question facing ILC was whether the most-favoured-nation clause conferred the right to enjoy the benefits granted within customs unions or similar associations of States. In that connexion, her delegation fully shared the view of the Special Rapporteur that the benefits granted within a customs union should not be excluded from the scope of application of the most-favoured-nation clause. Particular attention should be given to two considerations. First, it was clear from an in-depth analysis of the question that no general rule of contemporary international

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

law tended to exclude the benefits granted within a customs union from the scope of application of the clause in question. The fact that certain agreements contained one or other exception to the most-favoured-nation clause confirmed the absence from contemporary international law of a rule to that effect; States were entirely free to include in their agreements any provision agreed on between them. Secondly, the inclusion in the draft articles of a clause tending to exclude the benefits granted within a customs union from the scope of application of the most-favoured-nation clause would considerably diminish the draft's value, would go against the trends towards the development of co-operation among States especially States with different economic and social systems, and would not meet the legitimate needs for the development of contemporary international relations.

6. Moreover, noting that ILC wished to continue studying the most-favoured-nation clause and the different levels of economic development, her delegation pointed out that the foundation of draft articles designed to solve that question should be based on a proper understanding of the objective needs of the development of economic relations and of the interests of the developing countries.

7. Turning to the question of treaties concluded between States and international organizations or between two or more international organizations, she drew attention to the preliminary nature of her observations, since the preparation of the draft articles was only in its very early stages. It appeared from chapter V of the report, devoted to that question, that ILC had decided to adhere as much as possible to the Vienna Convention on the Law of Treaties, but that in its future work it would have to base itself on a more detailed analysis of the fundamental differences between the juridical nature of States and that of international organizations. That question had become a separate topic for codification because considerable differences had been noted at the legal level between treaties concluded between States and those concluded between international organizations. It was not possible to brush aside the difficulties to which ILC had drawn attention, (particularly the article relating to full powers and powers), by simply changing the terminology used. Codification of that topic necessitated a search for solutions based on a more detailed analysis of the very nature of international organizations. Account should also be taken of practice, which was characterized specifically by the strengthening of the role of international organizations in international relations, the increase in the number of such organizations and the diversification of their nature.

8. The consideration of the report of ILC by the Sixth Committee was an important element in the contribution of the General Assembly to the codification of international law. In order to evaluate the progress achieved by ILC, it was important to analyse the results it had obtained on a given subject of codification and compare them with the task of codification with which it had been entrusted at a given moment. Such an approach to problems would make it possible to reach more correct solutions better adapted to reality.

9. She observed that ILC had devoted some time during its preceding session to consideration of its programme of

work. There was no doubt that codification was a difficult task which required in-depth study of a number of questions and that the members of ILC must demonstrate the highest professional ability, but it was nevertheless true that ILC should improve its methods of work in order to utilize its capabilities to the full. It should not dissipate its efforts. By focusing its attention on a more limited number of problems, it would be able to solve them fairly rapidly so that they would not lose their topicality, as was the case with the succession of States in respect of treaties. In view of the fact that each year ILC postponed the consideration of certain questions which it had not had time to take up, her delegation proposed that it should confine itself to consideration of the topics for which there were already draft articles, namely State responsibility, the succession of States in respect of matters other than treaties, the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations. Taking those observations into account, her delegation was in favour of approving the report of ILC.

10. Mr. LUGOE (United Republic of Tanzania) said that in the Sixth Committee at the twenty-ninth session (1496th meeting), his delegation had commented on the slow pace that had characterized the work of ILC. Although law should meet the needs of the moment, ILC seemed to tend to put more emphasis on scholarly expositions rather than on the search for legal solutions to the problems currently confronting the international community. For instance, the study on the succession of States, with which ILC had been concerned for some time, had finally resulted in a draft convention only at the end of the period of decolonization. That raised the question of the usefulness of ILC or, at least, emphasized the need to re-examine its methods of work. The usefulness of an organ depended on its ability to produce certain results when they were needed. In the case of ILC, it would be noted also that organs had had to be created to deal with issues which would normally have been within its competence. His delegation, however, was gratified to note that ILC now recognized the need to speed up its work, as was shown by the number of topics it had considered in 1975.

11. After having explained that because of the stage which the work of ILC had reached the views of his delegation on the report under consideration must be only tentative, he said that his delegation supported the general principle formulated with regard to State responsibility. The principle set out in article 12 of the draft articles on that topic should be clarified. In fact, international relations contained many examples of confused situations on which that article could throw light. In many cases, powerful nations had committed acts in the territory of other States which were detrimental to third States and had subsequently denied their responsibility by invoking the fact that such acts had not been committed in their own territory. It was therefore important to proclaim in no uncertain terms that a State was responsible for its own acts even if those acts had been committed in the territory of another State. Not only would such a provision help to protect the rights of sovereign States, in particular those of small nations, but it would show those who were given to such clandestine activities against other States that they were unquestionably responsible for the conduct of their organs.

12. The rule set forth in article 15 concerning the attribution to the State of the act of an insurrectional movement was based on the theory of continuity. In his delegation's view, ILC should also take account of the history of insurrectional movements and of the fact that when they were victorious they generally made a declaration concerning the responsibilities which they were prepared to assume. Moreover, ILC should establish a clear distinction between insurrectional movements and liberation movements, which could not be equated. The legitimacy of the struggle of the liberation movements derived from the provisions of the Charter of the United Nations. It should be absolutely clear that States which denied their population the right to self-determination were responsible to third States for the acts of their national liberation movements. In that connexion, ILC must also take account of the history of the national liberation movements; it would be noted that in most cases they operated from the territory of third States. Those States had frequently been threatened with retaliation and other similar acts allegedly authorized by classical international law. In view of the primacy of the legal rules set out in the Charter, it seemed that a third State which supported a people fighting to exercise its right to self-determination in accordance with the Charter incurred no responsibility with regard to colonial or racist régimes which denied that right to their people. A successful liberation movement should also not be held responsible for acts committed during its struggle. A provision to that effect should be included in the draft articles.

13. His delegation was conscious of the progress achieved by ILC in the study on the succession of States in respect of matters other than treaties, but it did not understand why its work should be confined to property situated in the territory of the successor State. In the case of the succession of States in respect of treaties, it had noted that the principle enunciated by ILC was that of a "clean-slate" with exceptions in respect of treaties relating to boundaries and other treaties relating to the rights of third States to use the territory. In that connexion, it was important to take into account the fact that when such treaties had been concluded by the predecessor State, the latter had not always had the authority to confer such rights of utilization on third States. That had been the case, for example, when the powers of sovereignty of a colonial Territory had been entrusted to an administering Power. There had been cases where treaties had been concluded by an administering Power overstepping its mandate. His delegation therefore believed that before such treaties could be considered as being succeeded to, it was essential to be certain of their validity.

14. The two main questions raised by the draft articles on the succession of States in respect of treaties were of a political nature and were outside the strictly legal mandate of ILC. It would be in keeping with past practice to convene a diplomatic conference but, in view of the difficulties of personnel and resources facing the small countries, his delegation would be in favour of the proposal being considered by the Sixth Committee.

15. Mrs. HERNANDEZ CARMONA (Cuba) thanked the Chairman of ILC for his excellent introduction of its report. Owing to lack of time, she would confine her

comments to the two priority questions studied in the report, namely State responsibility and the succession of States in respect of matters other than treaties.

16. With regard to State responsibility, it had been agreed at the twenty-ninth session that for the time being the scope of the draft articles should be limited to responsibility for internationally wrongful acts (General Assembly resolution 3315 (XXIX)). ILC had therefore confined itself to establishing a general notion of responsibility, that term denoting the set of new legal relationships that might follow from an internationally wrongful act, regardless of the sector to which the rule violated, either by the act or by omission attributable to the State under international law, might belong. It was still not very clear what position ILC would take in future on that question: it could stick to the general formulas accepted to date or it could define more specifically various types of violations of international obligations of a civil, administrative and criminal nature. Her delegation believed that it was not sufficient to affirm that any internationally wrongful act entailed the international responsibility of the State; it was essential to give an objective definition of acts which generated international responsibility, since to confine oneself to enunciating a general principle was tantamount in fact to leaving to the interpreter of the law the discretionary power to decide whether an act characterized as wrongful by one of the parties entailed the international responsibility of the State in question. It was important therefore to define in the draft articles at least the categories of violations of which the universal conscience disapproved most strongly, for example those which endangered international peace and security, and to provide the necessary remedies. Among the other serious violations, mention might be made of aggression, whether of a military, political or economic nature, and, in connexion with economic aggression, it was important to place particular emphasis on economic blockade and the plundering of the natural resources of a dependent Territory. Emphasis should also be placed on violations of human rights, racial discrimination and the brutal exploitation of foreign workers. Her delegation was convinced that international responsibility was one of the areas in which the progressive development of international law had a particularly important role to play.

17. With regard to article 8, which provided for the attribution to the State of the conduct of persons acting in fact on behalf of the State, her delegation thought that subparagraph (a) was positive, but was concerned at its ill-defined scope. Would it be sufficient to establish that a person had acted on behalf of a State for his acts to be considered as an act of that State? For example, there was a real link between certain States and transnational corporations which made it necessary to consider the activities of those corporations beyond national boundaries as a source of responsibility for the imperialist State which protected and supported them by making available to them the forms of pressure which it possessed. Subparagraph (b) of article 8 went too far. In fact, the persons to whom it referred were not properly speaking officials of the State but persons exercising elements of governmental authority under exceptional circumstances which were not defined. Under that rule, in the event of an aggression, the State which was the victim would become responsible for the acts of the authorities imposed on it by the aggressor State.

18. Her delegation also had reservations regarding the attribution to the State of the conduct of organs acting outside their competence. The State did not have to assume international responsibility for acts of that nature since the victim, even if he were an alien, had the right of access to local remedies. The international responsibility of the State was entailed only with regard to damage and harm caused to aliens by acts contrary to the provisions of the treaties in force. Despite the attitude adopted by ILC in its report, her delegation continued to think that the provisions of article 10 were unacceptable. In the present-day international community, there were still relationships of subordination which meant that decolonized countries were constantly obliged to submit to the interference of imperialist powers in their internal affairs. Furthermore, her delegation did not think that the State should protect the rights of aliens better than those of its own nationals. She approved the position on the matter adopted by ILC which was proposing to codify in the draft articles the rules governing responsibility of States for internationally wrongful acts in general, and not only in certain particular sectors such as responsibility for acts harmful to the person or property of aliens. It was not the task of the United Nations to provide special guarantees for foreign investors but to establish machinery to reinforce the sovereignty and independent development of peoples. International law could not be identified with the practices of capital-exporting countries.

19. Turning to the question of succession of States in respect of matters other than treaties, she referred to the Special Rapporteur's second report entitled "Economic and financial acquired rights and State succession",¹ which dealt with the problem of public property and public debts, concession rights and government contracts, in the light of the right of peoples to dispose of their natural resources. Nevertheless some members of ILC had considered that the topic of acquired rights was extremely controversial and that its study prematurely could only delay the work of ILC on the topic as a whole. Her delegation did not share that view; it was a problem which arose in connexion with all aspects of State succession and consideration of it could therefore not be indefinitely deferred. The articles approved to date by ILC did not present major difficulties. Article 9, which established the general principle of the passing of State property, nevertheless required some commentary. ILC had evaded the issue of State property situated outside the territory to which the succession related and had not attempted to establish rules on that subject. Furthermore, the use of the word "decided" in the reservation to which the general rule stated in article 9 was subject was rather surprising. Article 11 relating to the passing of debts owed to the State supplemented article 9, ILC having felt that the criterion of the physical situation of State property set forth in article 9 could scarcely be applied in most cases of debts owed to the State. For a debt to pass to the successor State it was sufficient that at least one of the following two conditions should be satisfied: that the debt should be owed to the predecessor State by virtue of its sovereignty over the territory to which the succession of States related, or that it should be owed by virtue of the activity of the predecessor State in such territory. Her delegation endorsed the reservations ex-

pressed by those who considered that the rule stated in article 11 would make more difficult the negotiation between a predecessor State and a successor State of an agreement concerning the passing of debts owed to the State that was based on other principles. That brought out the difference between the way in which the great imperialist Powers and the third world countries regarded international law.

20. Her delegation wished to stress the close link between succession of States in respect of treaties and succession in respect of matters other than treaties; it was in favour of a single convention in which both aspects of the succession of States would be codified on the basis of the same principles.

21. Mr. BULL (Liberia) expressed his respect and admiration for the invaluable contribution that ILC had made since its establishment to the codification and progressive development of international law. He congratulated the Chairman of ILC on his lucid introduction of the report under consideration and said that Liberia was becoming increasingly aware of the effect which international law might have upon the political and economic well-being and development of third world countries.

22. His delegation recognized the need to develop rules of international law relating to State responsibility, which could form the basis for concluding a convention on the subject. In general, the draft articles already approved appeared to be satisfactory, but ILC could define more closely the general principle stated in article 3, whereby conduct constituting a breach of an international obligation of the State was considered as an internationally wrongful act. It was undoubtedly difficult to draw up detailed rules in an area in which delicate problems, particularly of a political nature, arose. Although the Liberian Government had always asserted the right to prescribe what acts it would be liable for to private persons, it recognized that in order to promote international peace and stability, there was a need for some intervention in that area of State sovereignty. The principle of unrestricted and vicarious international responsibility of the State for the conduct of its organs when they were acting under its authority and within their competence was sound and in conformity with legal norms universally recognized in the internal laws of most modern States. His delegation also agreed with the exception to that principle, which related to the acts of persons not acting on behalf of the State either *de facto* or *de jure*. However, a State would be held responsible for the conduct of private persons when they had been legally entrusted with the exercise of governmental authority. That rule should also be applicable to foreign envoys. With regard to article 15, he would confine himself to observing that the act of an insurrectional movement which became the new Government of a State should not be considered as an act of that State. Such a provision would be in harmony with the principle of decolonization, especially where all peaceful means of removing the colonial yoke had failed.

23. With regard to succession of States in respect of matters other than treaties, his delegation thought that the articles so far completed were satisfactory.

24. The subject of the most-favoured-nation clause was of particular interest to countries, like Liberia, which were

¹ See *Yearbook of the International Law Commission*, 1969, vol. II, document A/CN.4/216/Rev.1, p. 69.

engrossed in economic development. His delegation particularly welcomed the concern of ILC to ensure a more just application of that clause to third world countries. There was no doubt that if the most-favoured-nation clause was applied alike to economically strong and weak nations, it would result in serious disadvantages for the latter. As ILC had stated in paragraph 112 of its report, while States were bound by the duty arising from the principle of non-discrimination, they were nevertheless free to grant special

favours to other States. It was precisely with that aim that ILC had drafted article 16, which his delegation considered of particular interest.

25. He stressed the value of the international law seminars which ILC organized annually.

The meeting rose at 12.15 p.m.

1543rd meeting

Monday, 20 October 1975, at 10.45 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1543

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. RASHID (Afghanistan) congratulated the Chairman of the International Law Commission (ILC) on his excellent introduction of its report (A/10010) and said that he would confine himself to commenting on a number of the draft articles prepared by it concerning succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D). It would be useful to repeat the invitation to States to submit their comments and observations on the draft articles, in view of the limited number of observations and comments received thus far.

2. With regard to article 7, his delegation considered that, in the light of the wording of article 6, it was necessary to specify that the draft articles would have no retroactive effect. The inclusion of article 7 might encourage a number of States which would otherwise abstain to accede to the instrument. It was entirely unnecessary to make any reference to the Vienna Convention on the Law of Treaties,¹ which was not accepted by a sufficient number of States. Article 7 should be retained in the position next to article 6.

3. Regarding articles 11 and 12, he recalled that his delegation had already expressed its views at the twenty-eighth session (1406th meeting). He noted that a number of delegations, including those of Madagascar, Somalia and the United Republic of Tanzania, had stated they found it

difficult to accept those two articles as currently worded. The categorical statements made in the current version were at variance with the evolution of contemporary international law and might have detrimental consequences for its future. As ILC itself had acknowledged in paragraph (1) of the commentary on article 11, the question of territorial treaties was a most delicate one, since such treaties were important, complex and controversial. The opinions of modern writers on the subject differed widely. His delegation shared the view that the doctrine of *rebus sic stantibus* should apply in the case of territorial treaties whenever a fundamental change in circumstances had occurred. It could be argued that the dissolution of the colonial empires in the first half of the twentieth century had brought about a fundamental change in circumstances with vast juridical implications for State boundaries. According to that line of reasoning, all agreements concerning the territorial possessions and sovereignty of the colonial Power were no longer valid. Some States, in fact, had suffered grave losses not only as a result of colonization but also as a result of decolonization, because it had allegedly not been possible to apply the doctrine of *rebus sic stantibus* with respect to them. ILC had put forward another argument based on article 62, paragraph 2, of the Vienna Convention on the Law of Treaties, to which many States had not acceded. It had also attempted to justify articles 11 and 12 by arguing that the application of the "clear-slate" principle with regard to territorial treaties might create dangerous friction between States instead of becoming an instrument for peaceful development. His delegation, however, believed that relations between neighbouring States, which otherwise might live in concord and mutual respect for each other's sovereignty, were only complicated by such considerations.

4. The question of treaties establishing boundaries from the angle of the principle of self-determination had also been considered by ILC. Its views in that regard were given in paragraph (10) of the commentary on articles 11 and 12, in a quotation from its commentary on what had become article 62 of the Vienna Convention on the Law of Treaties, which stated that the Commission had taken the view that "self-determination", as envisaged in the Charter of the United Nations, was an independent principle and that it

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

might lead to confusion if, in the context of the law of treaties, it were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the present article would not exclude the operation of the principle of self-determination in any case where the conditions for its legitimate operation existed". His delegation considered those comments to be excessive and disjointed.

5. His delegation therefore shared the view that it would be going too far to exclude territorial treaties completely from the rule of fundamental change in circumstances and that such an exclusion would be inconsistent with the principle of self-determination laid down in the Charter. Needless to say, the principle of self-determination as set forth in the Charter was accompanied by another principle of equal importance, namely that of the equal rights of peoples. In their accession to independence, the majority of African States, like those of South America, being confronted with the existence of arbitrary colonial boundaries, had not been able to find any other solution but to accept them as they were. However, such a solution was difficult to apply in Asia, where long-established States had existed prior to the relatively short colonial period and where colonial boundaries had been nothing more than imaginary lines separating peoples and régimes whose political cohesion was greater than that which had existed in other colonized continents.

6. Against that background, ILC had adopted the majority view that the boundaries of the newly independent States and others were inviolable, thus setting itself at variance with the will of peoples living in border areas, who were extremely jealous of their independence. Moreover, in opting for the principle of the continuity of boundary treaties, ILC had cast aside the principle of the equal rights of peoples and their right to self-determination as set forth in the Charter of the United Nations.

7. The application of the principle of continuity with respect to colonial territorial treaties had in a number of cases resulted in the replacement of the colonial system by alien and foreign domination, which was condemned by the United Nations, and in that perspective the current wording of articles 11 and 12 was not consistent with United Nations practice or the democratic concept of progressive international law. His delegation was not opposed to the application of the principle of continuity with respect to territorial treaties; however, it did believe that that principle was only valid to the extent that it passed the test of self-determination. In that connexion, he drew attention to the new peremptory norm of international law known as *jus cogens*, which was designed to promote the liberation of subject peoples and which maintained that any legal view to the contrary was null and void. Thus, the application of the "clean-slate" principle with regard to territorial treaties was entirely justified, as it afforded an opportunity for all those who had suffered under colonialism to regain their rights, their property and their territorial integrity. Without such a reservation, the liberation of a State would only perpetuate unequal treaties or those imposed by force, which lay at the heart of many international tensions. His delegation therefore felt in duty bound to request ILC to reconsider its position on that matter.

8. With regard to the settlement of disputes, his delegation agreed with those who felt it necessary to provide for a satisfactory procedure. In view of the importance of the matter covered by the draft articles, it would be most helpful to have a conciliation procedure for cases where a dispute could not be settled by direct negotiation. ILC should be encouraged to continue its study of that question and to submit its results to Member States for their comments.

9. On the question of social revolution, referred to in paragraph 66 of the report, his delegation was inclined to support the line of reasoning advanced by ILC and considered that phenomenon as a succession of governments rather than a succession of States.

10. As for future action to be taken with regard to the draft articles, his delegation shared the general view that it was necessary to continue studying them so as to elaborate practical and coherent rules, taking into account the observations of Governments. More work was needed to refine the draft articles and to remove the current contradictions, which were apparent from the fact that no consensus had been reached on the draft. Once that was achieved, a decision could be taken as to what forum would be appropriate to finalize the draft.

11. Mr. MELESCANU (Romania) congratulated the members of ILC and the Special Rapporteurs for the admirable work incorporated in the Commission's report.

12. The matter of State responsibility was of great importance to his delegation as it was the only legal guarantee for the *bona fide* implementation of agreements entered into by subjects of international law. It was no longer merely the legal expression of the "big stick policy" practised by colonial States but had become an institution which guaranteed to each State, regardless of its size and strength, the possibility of asserting its rights in relation to other States. His delegation found acceptable the step-by-step approach of ILC whereby the codification of the rules relative to responsibility deriving from wrongful acts would be followed by the codification of the rules concerning objective responsibility, based on the risk created. ILC must ensure that the formulation of the earlier articles did not prejudice the future articles.

13. It was important that the difference between various types of responsibility—material, political, civil and penal—be recognized and reflected in the draft articles on State responsibility (see A/10010, chap. II, sect. B). Covering both the penal and civil responsibilities of States in the same articles implicitly put both types of responsibility on the same footing, despite the special seriousness of acts against peace, independence and the territorial integrity of States. Article 12, for example, provided that the conduct of an organ of a State acting in that capacity, which took place in the territory of another State should not be considered as an act of the latter State. He could accept such an exemption from the State's material responsibility but not from its political responsibility. He cited, in support of his view, the definition of aggression in article 3 (f) of the annex to General Assembly resolution 3314 (XXIX). It would, therefore, be advisable to review the article.

14. His delegation was in general agreement with the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), and in particular with the principle of unconditionality embodied in article 9. The question of preferential treatment, however, raised certain problems in view of current development problems and the need to equalize the levels of development of various countries. His delegation agreed that ILC should undertake the codification of rules regulating preferential treatment for developing countries, in accordance with the resolutions adopted at the sixth and seventh special sessions of the General Assembly. Preferential treatment should apply not only to trade relations but also to the transfer of technology, the exploitation of resources constituting the common heritage of mankind and all areas of economic life and international economic relations.

15. On the draft articles on treaties concluded between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he felt that a distinction should be made between States and international organizations, which were two distinct types of subjects of international law. Article 11, for instance, dealt with them in very similar terms with respect to consent to be bound by a treaty. The concept of an "act of formal confirmation", embodied in paragraph 2, seemed forced and was not sustained by legal thinking or international practice. Moreover, it was superfluous, since the words "or by any other means" would cover any procedure used by international organizations in that connexion.

16. With regard to the programme of work of ILC, he felt that there were possibilities, as yet unexplored, for accelerating its work and increasing its productivity. It might be useful for ILC to use all of its members actively in the preparation of reports and draft articles. Members might submit their comments on reports and drafts in writing and resort to oral discussions only when formulating draft articles in their final form. In his view, priority items for ILC were State responsibility and the most-favoured-nation clause, which should also include rules on a generalized system of preferences.

17. Mr. CASSESE (Italy) said his delegation was gratified that ILC had made considerable headway in codifying and developing areas of international law.

18. He wished to join the other representatives who had praised the Special Rapporteur for the topic of State responsibility for his outstanding work. On the whole, his delegation supported the draft articles on that subject.

19. With regard to specific articles, he said that articles 14 and 15, concerning the possible attribution of internationally wrongful acts to insurrectional movements, correctly disregarded the political or ideological characteristics of such movements. He did not share the view expressed by the representative of the German Democratic Republic (1539th meeting) that the legitimacy of a successful insurrectional movement should be taken into account in determining the attribution of responsibility so as not to treat a fascist coup d'état in the same way as a national liberation movement. In his view, the political or ideological nature of insurrectional movements should have no bearing whatsoever on the attribution of responsibility. If

such movements caused damage by acting contrary to international law, reparation must be made regardless of the political goals of the insurgents. The purpose of international codification, especially in the area of State responsibility, was not to pursue short-term goals but to restate and develop the law in such a way that it could govern international relations over a long period of time. It would therefore be inappropriate to inject political or ideological values into international rules, since such values changed rapidly with time and were difficult to define properly.

20. The commentary on article 15, paragraph 1, as his delegation understood it, meant that in certain exceptional situations, such as a major social revolution brought about by a successful insurrectional movement, the wrongful conduct of the former government could not be attributed to the new State which resulted from the revolution. That qualification of article 15, paragraph 1, was justified, since in such exceptional cases the rationale of *de facto* continuity, which lay behind the general rule, no longer held true, and there was instead a complete break in the social structure as well as in the government machinery of the State. Non-attribution to the State of acts committed during the conflict by the former governmental apparatus was also warranted by common sense. For instance, if insurgents overthrew a pre-existing racist and authoritarian government in order to introduce democracy and equality and accordingly changed the whole fabric of the State, it could surely not be claimed that they were responsible for acts of genocide or other gross and large-scale violations of human rights of foreigners perpetrated by the pre-existing government during its attempt to put down the rebellion.

21. It might be objected that the exception to article 15, paragraph 1, to which he had referred did not lend itself to a definition covering all cases of political and social revolution. That objection could, however, be dismissed, since ILC could try to achieve such a definition by pointing to some basic and objective requirements that a change of government should fulfil in order for it to fall within the exception. Since the definition should be objective, the ideological or political goals of both the "lawful" government and the rebellious movement would only come into play as objective elements to be taken into account in verifying whether a hiatus between the old State machinery and the new government had actually come about.

22. A second possible objection to the exception was that the victims of internationally wrongful acts committed by the pre-existing government during the struggle for power could be left without redress. That consequence, although no doubt very regrettable, would be nothing new, because in the case of wrongful acts committed by insurgents, injured persons were also left unprotected in the event of the insurgents' failure. That irremediable drawback was common to all systems of law. It stood to reason that a victim had no redress if the person against whom the claim was lodged had disappeared and could not be reached through legal channels.

23. He wished to pay tribute to the Special Rapporteur for the topic of the most-favoured-nation clause for his excellent work. His delegation supported the suggestion by ILC that it should endeavour to consider the articles on that subject in first reading for submission to the thirty-first

session of the General Assembly, and hoped it would conclude its first reading in 1976, taking into consideration the remarks made in the Committee.

24. In response to the query by ILC addressed to the General Assembly in paragraph 108 of the report, his delegation believed that the draft articles should not extend further in relation to national treatment and national treatment clauses. ILC had already pointed out, in its commentary on article 17, how many practical difficulties arose when an attempt was made to link the standard of national treatment with the most-favoured-nation clause. For the sake of clarity and simplicity, it would therefore be preferable for ILC to concentrate on formulating draft rules specifically concerning the most-favoured-nation clause.

25. After stressing that most-favoured-nation treatment was but a corollary of the principle of non-discrimination, ILC had rightly pointed out that most-favoured-nation clauses should not be applied without taking due account of the striking inequalities between developed and developing States. Otherwise, for the sake of ensuring formal equality, implicit discrimination would arise against the weaker members of the international community. His delegation therefore welcomed article 21, which provided for the special needs of the developing countries. As rightly stressed by ILC itself, the wording of that article needed to be improved, but the basic idea underlying the article was sound and his delegation fully supported it.

26. By contrast, his delegation had some misgivings about article 15, which did not allow for another necessary exception to the most-favoured-nation clause. That article did not exclude from the operation of the clause multilateral treaties which set up customs unions, free trade associations, and similar State groupings. The exception was strongly needed, as already pointed out by the representatives of Peru (*ibid.*) and Argentina (1540th meeting). The reasons why his delegation took that view would be explained at a forthcoming meeting in a statement on behalf of the European Economic Community.

27. With regard to succession of States in respect of treaties, there was merit in the view that the two aspects of the question which had not been discussed by ILC, namely the proposed articles on multilateral treaties of universal character and on the settlement of disputes, should be sent back to ILC for its consideration. His delegation would be ready to support such a procedure if that were the view of the majority of the Committee, but it was also aware of the heavy workload of ILC and of the consequent need to avoid delay in its work. Moreover, if ILC re-examined the question of succession of States in respect of treaties, it would risk embarking on lengthy debates, which could even lead to reopening the discussion of certain key provisions that had already been adopted. His delegation therefore felt that the most suitable solution would be to reiterate the request to Governments to submit comments on the articles. Since as yet only a few Governments had complied with the previous year's request for comments, it would be appropriate to wait for more Governments' reactions before deciding how to proceed with the proposed articles.

28. Doubts had been expressed as to whether the programme of work of ILC suggested in paragraph 143 of the

report met the General Assembly's recommendation in resolution 3315 (XXIX) that work on State responsibility be continued on a high-priority basis. However, he felt that to hasten excessively the work by ILC on that subject could jeopardize the excellent results already achieved. The topic was of great magnitude and touched on many sensitive areas of international law; the pace of work could therefore not be exceedingly rapid. Consequently, it would be sufficient progress for the forthcoming year if ILC could satisfactorily resolve the crucial question of whether there existed a special category of particularly serious internationally wrongful acts. His delegation trusted that ILC would continue to live up to its tradition of scrupulous and careful drafting without neglecting the need to enact new legislation as soon as possible in certain crucial areas of international law.

29. Mr. ALTING VON GEUSAU (Netherlands) said that the progressive development and codification of international law was no easy task in an organization like the United Nations, which was confronted with continuous changes in international relations and profound political and ideological divisions between its Members. In view of the challenges facing it, ILC had made commendable progress, its work on State responsibility and the most-favoured-nation clause being especially outstanding examples of scholarly excellence. Ultimately, however, the accomplishments of ILC depended on the willingness of Member States to approve the final texts adopted by ILC. Consideration of several important topics referred to ILC had had to be postponed or abandoned. Even in those cases in which its work had led to the adoption of conventions, the pattern of acceptance by Member States had not been altogether promising, as the representatives of Norway (*ibid.*) and Australia (1541st meeting) had pointed out.

30. Among the conventions adopted as a result of drafts produced by ILC, the Vienna Convention on Diplomatic Relations was the only one which had thus far been ratified or acceded to by a majority of Member States. Moreover, many important conventions and declarations had been adopted in the General Assembly over the past 30 years, without the participation of either ILC or the Sixth Committee. Some of those instruments might be regarded as contributions to the progressive development of international law, although that may not have been their primary purpose. An objective analysis of the work of ILC and the way in which it had been followed up by the General Assembly and Member States could not but lead to the conclusion that the scope for the progressive development and codification of international law was indeed limited. The broad acceptance of the Conventions on Diplomatic Relations and on Consular Relations would seem to indicate that ILC had been most successful in the domain of formulating formal rules of international law.

31. His delegation commended the approach adopted by ILC with regard to the question of State responsibility. ILC had wisely maintained a strict distinction between the task of determining the rules governing responsibility and that of stating the rules which imposed on States obligations violation of which might be a source of responsibility. That distinction had enabled ILC to formulate a generally clear set of draft articles dealing with the act of the State under international law.

32. Commenting on articles 10 to 15, his delegation supported the explicit enumeration, in articles 11 to 14, of conduct that should not be considered as an act of the State under international law. The conduct of private persons, organs of another State or organs of an insurrectional movement, as covered by articles 11, 12, and 14, could not be attributed to a State either directly or indirectly. Nevertheless, such conduct might entail certain duties for States. His delegation therefore supported paragraph 2 of articles 11, 12 and 14, although it had reservations as to the desirability of the identical formulation of those paragraphs. The conduct of private persons, as referred to in article 11, paragraph 1, must be presumed to take place in the territory over which the State exerted exclusive control. Consequently, the State might be presumed to be able to perform its international duties in cases where it was under an obligation—under general international law or under special treaties—to prevent unlawful acts by private persons, to protect potential victims or, if it failed to do so, to arrest the offenders concerned and bring them to justice. It was indeed difficult to define more comprehensively the responsibility of the State in such a situation for its own omission or for lack of due diligence on the part of its organs. That question deserved close attention and further study.

33. In the case of article 12, paragraph 2, the State could be presumed not to be fully able to exert exclusive control over the territory in question and hence to comply with its international duties in respect of the unlawful conduct of organs of another State.

34. Article 14 apparently dealt with two distinct situations. On the one hand, paragraph 2 of that article adequately expressed the responsibility of the State with regard to the conduct of organs of an insurrectional movement operating from within the territory of the State against the government in power. On the other hand, article 14 also dealt with the conduct of the organs of an insurrectional movement operating from within the territory of the State against the government of another State. His delegation would like ILC to consider the possibility of drafting a separate article to deal with the latter situation, in which it might be presumed that the specific aim of the insurrectional movement was to do injury to the organs of the other State or its citizens. In the former situation, injury done to aliens might be merely one of the consequences of the conduct of organs of the insurrectional movement.

35. Regarding the future plans of ILC for the completion of the draft articles on State responsibility, his delegation feared that the profound disagreements between States on the content, forms and degrees of international responsibility were likely seriously to impair further progress on parts 1 and 3 of the proposed draft, not to mention the contentious issue of the objective element of an internationally wrongful act. Accordingly, his delegation would suggest that part 1 should be completed as a separate instrument for adoption by the Sixth Committee.

36. His delegation had examined with particular interest chapter IV of the report of ILC, dealing with the most-favoured-nation clause. Its particular interest stemmed from the fact that the Netherlands was a Contracting Party

to the General Agreement on Tariffs and Trade (GATT), a member of the European Economic Community and a proponent of a generalized system of preferences in trade in favour of developing countries. In its report, ILC indicated that it did not wish to confine its study to the operation of the clause in the field of international trade but to extend it to as many fields as possible. In practice, however, ILC had focused primarily on the operation of the clause in the field of trade, the regulation of which as part of a broader effort to develop rules of international economic law was complicated by continuous and fundamental changes in economic relations between States. After the Second World War, a number of fundamental changes had taken place in international trade. First, GATT had marked the beginning of a new period in which the most-favoured-nation clause had become an instrument for promoting multilateral trade relations on the basis of non-discrimination. Secondly, the emergence of State-owned trading enterprises had created new problems in the application of the most-favoured-nation clause between countries with different economic systems. Thirdly, customs unions and free trade areas had established a new trend, which might be seen as constituting exceptions to the operation of the clause. Fourthly, the needs of developing countries had necessitated new rules to facilitate the access of their products to the markets of developed countries. In his delegation's opinion, ILC had neglected most of the above-mentioned post-war changes and had attempted to reaffirm traditional, pre-war rules of international law.

37. With respect to article 15 and the observations of the Special Rapporteur, on the case of customs unions and similar associations of States, his delegation endorsed the statement that would be made in the Committee on behalf of the nine members of the European Economic Community.

38. His delegation had serious doubts as to the desirability of ILC drafting articles on the most-favoured-nation clause in an area in which the rules governing international economic relations were still subject to continuous change.

39. Regarding the future programme of work of ILC, he recalled that at the twenty-ninth session (1494th meeting) his delegation had requested that ILC should give priority to studying the topic of the non-navigational uses of international watercourses. It was to be hoped that that topic would be taken up as soon as a sufficient number of replies from Governments of Member States had been received.

40. Mr. NICOL (Sierra Leone) thanked the Chairman of ILC for his lucid introduction of its report.

41. With regard to State responsibility, his delegation was in general agreement with the draft articles, noting with satisfaction that ILC, in drafting them, had rejected certain obsolete conceptions. With reference to articles 14 and 15, dealing with acts committed by insurrectional movements, his delegation had noted with interest the comments and suggestions by the representative of the United Republic of Tanzania (1542nd meeting) concerning the distinction that should be made between ordinary insurrectional movements and liberation movements. For the present, his delegation could accept the general principle of making

successful insurrectional movements responsible for acts committed during their struggle.

42. With regard to succession of States in respect of matters other than treaties, he urged ILC to conclude its work on the subject rapidly, in view of the current stage of the decolonization process. He noted with satisfaction that in the draft articles on that topic (see A/10010, chap. III, sect. B) ILC had resisted the temptation to draw a distinction between the public and private domain in the passing of State property to the successor State. He felt that the provisions of article 9 were mainly residual and left plenty of room for whatever special arrangement might be deemed necessary, such as just and adequate compensation. His delegation agreed with those who had expressed misgivings about the necessity for article 11, questioning in particular the justification for singling out debts for special treatment.

43. With regard to the most-favoured-nation clause, he said that his country welcomed with particular interest the inclusion of article 21 in the draft. ILC had thus given due

regard to the generally accepted fact that the application of the most-favoured-nation clause could create difficulties, not only in the field of economic relations but also in other areas, where the parties concerned were not on equal levels of development. Further careful study of the question would be advisable, so as to arrive at the formulation of further articles, if necessary, to protect the interests of the economically weaker nations.

44. With regard to the organization of the work programme of ILC, his delegation associated itself with the comments and suggestions of the Australian representative. He welcomed the establishment of a planning group within the Enlarged Bureau of ILC which was to take into account proposals of Member States with a view to drawing up a reconsidered plan for research and drafting by ILC. The Committee should be careful not to overburden ILC by referring additional items to it for consideration, unless that was found absolutely necessary due to current international developments.

The meeting rose at 12.10 p.m.

1544th meeting

Tuesday, 21 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1544

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. NYAMDO (Mongolia) expressed his gratitude to the Chairman of the International Law Commission (ILC) for his presentation of its report (A/10010).

2. With regard to the important matter of State responsibility, he noted that many members of the Committee had expressed their dissatisfaction with the slow rate of progress made by ILC. The draft articles (*ibid.*, chap. II, sect. B) could nevertheless be seen as still another step towards the formulation of rules governing State responsibility. His delegation supported in principle the basic idea of article 10, on the attribution to the State of conduct of organs acting outside their competence or contrary to instructions, but the concept "territorial governmental entity", introduced into the article by ILC, was unclear. If such governmental entities could act as organs of the State, then they were covered by the latter concept. If they could

act as private individuals, then States bore responsibility for their actions in accordance with another rule, namely connivance at their actions. Noting that the article established the important rule that the State should not be exempted from responsibility for the *ultra vires* actions of its organs, he said that his delegation was in complete agreement with paragraph (18) of the commentary on the article.

3. Article 11 contained a restatement in negative form of the principle in article 8 on the attribution to the State of the conduct of persons, with which his delegation had expressed its complete agreement during the twenty-ninth session (1488th meeting), and he had no objections to article 11, despite its somewhat redundant character.

4. With regard to article 12, he noted that ILC, in its commentary, had stated that it had wished to eliminate any thought of responsibility on the part of the territorial State for the conduct of organs of other States which took place in its territory. He felt that that clarification should have been included in the text of the article itself, as had been done with article 13. It must also be remembered that there were cases when a State placed its territory at the disposal of another State for the commission of wrongful acts. In such cases, the territorial State was, of course, guilty and must therefore bear responsibility.

5. Articles 14 and 15 dealt with problems demanding careful study. His delegation shared the views of other members of the Committee who insisted that a clear

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

distinction must be drawn between insurrectional movements and national liberation movements, with regard to their legality. The distinction might serve as a criterion for deciding whether the conduct of an organ of an insurrectional movement was to be considered as an act of the State in whose territory it took place. Other such criteria must also be worked out.

6. With respect to succession of States in respect of matters other than treaties (*ibid.*, chap. III), he noted that the general principle of the passing of State property from the predecessor to the successor State applied equally to movable State property, wherever it might be situated. His delegation had no difficulty in accepting article X. In general, the question of succession of States in respect of matters other than treaties was closely linked to that of succession of States in respect of treaties and the two matters ought to be dealt with in accordance with the same principles.

7. His delegation was keenly interested in the topic of the most-favoured-nation clause (*ibid.*, chap. IV), especially in view of its timeliness with regard to the achievement of equality and non-discrimination among States. His delegation agreed with the proposals of the Special Rapporteur on the value of considering the most-favoured-nation clause together with the national treatment clause, in view of their largely common subject-matter. Article 8 was, in his view, of cardinal importance in that it dealt with the essential principle of the unconditionality of the most-favoured-nation clause. His delegation had no objection to the remaining articles. Noting the decisions of the United Nations Conference on Trade and Development and the provisions of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX), annex) with regard to a generalized system of preferences and the great interest shown by members of the Committee with regard to article 21, his delegation hoped that ILC, at its next session, would adopt a position on the implementation of the most-favoured-nation clause in favour of the developing countries.

8. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that ILC had accomplished important work at its twenty-seventh session having considered sets of draft articles on four topics. It was worth pointing out that the Special Rapporteurs for those topics represented not only the Western countries but also the socialist and developing countries.

9. The work of ILC on State responsibility was of particular importance and it had rightly focused its attention on elucidating the fundamental principles of international law relating to that topic. His delegation fully supported the idea reflected in paragraph 49 of the report that it was necessary to distinguish those categories of particularly dangerous internationally wrongful acts which should be described as international crimes. The need for such a distinction derived from many important instruments relating to the struggle against aggression, *apartheid* and racism which had been adopted over the years by the United Nations.

10. While refraining from detailed comments on the draft articles on State responsibility, his delegation would like to point out, in reply to an observation made by the Austrian

representative (1539th meeting) concerning article 11, that in the progressive development of international law the question of State responsibility for the activities of private companies and transnational corporations was being raised with increasing frequency. It was no secret that national and transnational corporations were commonly used as a means of supporting imperialist policies of intervention in the internal affairs of sovereign States and the economic plundering of peoples. Contemporary international law was based on the progressive principles inspired by the Great October Revolution and the historical process of the decline of colonialism, which had prepared the way for the nations of Africa, Asia and Latin America to participate in international life. International law was being developed increasingly under the influence of the socialist and developing countries.

11. With regard to article 15, the representative of the United Republic of Tanzania (1542nd meeting) had correctly stressed the need for a distinction between the concept of "insurrectional movement" and a national liberation movement. A third State providing assistance to a people fighting for self-determination could not incur any responsibility vis-à-vis colonial and racist régimes which were denying the right to self-determination. That was, in his delegation's view, one of the rules of present-day international law.

12. It was regrettable that ILC had proceeded so slowly in its work on the draft articles on State responsibility. The lack of a final draft on that topic had been keenly felt in connexion with the preparation of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) and the Definition of Aggression (General Assembly resolution 3314 (XXIX), annex). Because of the slow progress made by ILC, the General Assembly had been obliged to resort to other bodies for codifying those topics. His delegation strongly recommended that at its next session ILC should give serious and priority attention to the question of State responsibility. ILC should primarily focus on formulating the rules governing State responsibility for such wrongful acts as breach of the peace, the use of armed force to suppress national liberation movements and other serious international crimes.

13. His delegation was gratified to note that ILC had made substantial headway at its twenty-seventh session on another important and topical issue in international law, namely the draft articles on the most-favoured-nation clause. The principle of most-favoured-nation treatment was part of the struggle against discrimination in international trade and his delegation found the 14 new draft articles adopted in first reading by ILC to be, on the whole, acceptable. His delegation also endorsed the intention of ILC to complete the full set of draft articles on the most-favoured-nation clause in 1976. In that connexion, it should be noted that the Special Rapporteur for the topic, who had made a great contribution to the task of ILC, had suggested that further work on the topic should be accompanied by consideration of the provisions relating to national treatment, since both topics had many elements in common. That suggestion deserved attention and support.

14. As to the substance of the formulations adopted by ILC, he noted that there were no generally accepted rules with regard to exceptions to the most-favoured-nation clause, apart from the generalized and non-reciprocal system of preferences to be granted to the developing countries, as set forth in article 21. There were no valid grounds to exempt from the application of the clause those benefits which members of economic associations or customs unions granted to each other.

15. With regard to the topic of treaties between States and international organizations or between international organizations (see A/10010, chap. V), he felt that ILC had taken a correct approach in its effort to make a distinction between States and international organizations, since the latter had only limited legal personality. It would be incorrect, in dealing with that topic, simply to repeat the corresponding provisions of the Vienna Convention on the Law of Treaties.¹ Treaties concluded between international organizations must be distinguished clearly from treaties concluded between States.

16. With regard to the draft articles on succession of States in respect of matters other than treaties, his delegation attached particular importance to article X concerning the absence of effect of a succession of States on third State property. That article correctly referred to the necessity of preserving property owned by a third State in cases of succession. Clearly, that provision also related to the validity of contractual debts assumed with respect to a third State. In that connexion, the reference merely to the internal law of the successor State might be insufficient, and it might be necessary to include an appropriate reference to international law.

17. Turning to the topic of succession of States in respect of treaties (see A/9610/Rev.1, chap. II), he pointed out that, in accordance with General Assembly resolution 3315 (XXIX), his Government had submitted its comments on the draft articles in writing (A/10198/Add.4). On the whole, the draft articles provided an acceptable basis for further work on the subject and many provisions of the draft reflected generally acknowledged rules of law and had consequently met with wide support in the Sixth Committee. That was particularly true of one of the fundamental ideas set forth in the draft articles, namely that a succession of States as such did not affect boundaries. At preceding sessions of the General Assembly his delegation had analysed the draft articles in detail; it was therefore unnecessary to do that again. ILC should be asked to take into account the comments and observations made by States in the Sixth Committee earlier in the current session. It was necessary to draw particular attention to the fact that the application of the "clean-slate" principle should in no way prejudice the generally accepted principles and rules of international law and the obligations of all States deriving from those principles and rules. Newly independent States must also be guided by the generally accepted principles and rules of international law. After another reading of the draft articles, ILC might resubmit them to the General Assembly at its thirty-first session, at

which time a decision could be taken as to how best to finalize the draft. His delegation in principle found interesting the suggestion made by a number of delegations that the Sixth Committee itself should complete the consideration of the draft articles.

18. With regard to the future programme of work of ILC, he stressed the importance of concentrating on the questions of greatest relevance, in particular, State responsibility and the most-favoured-nation clause. The question of the non-navigational uses of international watercourses had clearly not yet reached a stage where it could be seriously worked on by ILC. He hoped ILC would continue to give serious consideration to the question of reducing the duration of its sessions, improving its methods of work and enhancing its efficiency.

19. Mr. BUSSE (Federal Republic of Germany) expressed his Government's great respect for the admirable work done by ILC and thanked its Chairman for the concise and lucid way in which he had explained and commented on its report. He agreed with the Australian representative (1541st meeting) that detailed comment on the report in the Committee was inappropriate, and would therefore confine his remarks to a few important points.

20. His delegation was gratified that ILC had been able to complete its review of chapter II of the draft articles on State responsibility which was concerned with the subjective element of internationally wrongful acts. His Government had a fundamental interest in the draft articles on that subject, since they would have an impact on such problems as international investment law and the international protection of human rights. Further codification of the rules on State responsibility would lead to greater stability and legal clarity in those and other fields.

21. Retroactivity of the proposed convention had been considered in earlier discussions in ILC; but his delegation believed that retroactivity would allow international disputes that had long since been settled to re-emerge. The convention would thus become a source of legal uncertainty, to the point where a number of Governments might not ratify it. It therefore seemed reasonable to apply the "clean-slate" principle when the convention came into force. In the interest of the success of the convention, it would also be desirable if ILC included an article which expressly restricted its validity and applicability to future events, thus following the pattern of the draft convention on the succession of States in respect of treaties. His delegation continued to take a very favourable attitude towards the Special Rapporteur for the topic.

22. With regard to succession of States in respect of matters other than treaties, he said that his Government had strong doubts as to whether an acceptable compromise could be reached in the near future on a subject with such delicate political implications. The draft articles on that subject, in their current form, were incomplete and vague in some respects. It would be difficult to form a final opinion on them until the problem of succession of States in respect of public debts and of public property other than State property had been settled.

23. His Government welcomed the adoption during the twenty-seventh session of ILC of 14 additional articles on

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

the most-favoured-nation clause. The close interrelation between that topic and the Vienna Convention on the Law of Treaties made it fairly well-suited for codification by ILC. World-wide codification of most-favoured-nation treatment, on the other hand, would affect extremely significant trade interests in the field of East-West trade and trade between industrialized and developing countries, interests which in due course would require very careful review of the draft convention.

24. The provision in article 6 that most-favoured-nation treatment should be accorded to States only on the ground of a legal obligation was of considerable importance. He wished to point out in that connexion that the granting of most-favoured-nation treatment had played an essential role in the discussions at the Conference on Security and Co-operation in Europe. However, no legal obligation within the meaning of article 6 had been established in the Final Act of the Conference.

25. His delegation endorsed the statement which would be made by the spokesman for the European Economic Community concerning article 15.

26. As to the question whether a beneficiary State could claim national treatment under a most-favoured-nation clause on the ground that the same privilege had been granted to a third country, his delegation believed that such a broad interpretation of the most-favoured-nation clause would give rise to serious doubts. In response to the remarks of the Chairman of ILC (1534th meeting) on that subject, he said that his Government shared the view already expressed during discussions in the ILC that the question of national treatment was beyond the terms of reference of ILC and should therefore not be dealt with in the context of the draft articles on the most-favoured-nation clause.

27. In view of the important trade aspects of those draft articles, the views of Member States should be solicited at an early stage of the codification work, especially on the subjects to which he had just referred.

28. At the current stage of the work of ILC on treaties between States and international organizations or between two or more international organizations, it did not seem appropriate to express detailed views on that subject. His country welcomed in principle endeavours to codify and further develop the law of treaties between international organizations as a follow-up to the Vienna Convention on the Law of Treaties which related to treaties between States.

29. Despite their close interrelation, treaties to which international organizations were parties differed greatly from those concluded between States, especially with respect to such matters as the capacity to conclude treaties, defects which might prevent a treaty from coming into being, and procedures to be followed in concluding a treaty. A further question was whether the established principle that treaties between States were valid only *inter partes* could be applied to treaties with international organizations. In view of those difficulties, his delegation believed that a considerable amount of additional work on specific items remained to be done.

30. It had become apparent that some members of ILC tended to emphasize the differences between States and international organizations and were thus in favour of terminology which differed from that used in the Vienna Convention on the Law of Treaties. His Government took the view that an effort should be made to achieve the largest possible degree of homogeneity between the draft articles and the Vienna Convention. It would seem premature, however, to adopt at the current stage a final attitude with regard to specific subjects. That included the problem of reservations, which had been discussed at length during the current year's session.

31. As to the capacity of international organizations to conclude treaties, his Government agreed to the wording of article 6, which provided that the capacity of an international organization to conclude treaties was governed by the relevant rules of that organization. In conclusion, he expressed his delegation's confidence in the work of the Special Rapporteur for that topic.

32. Mr. JARROUD (Libyan Arab Republic) welcomed to the Committee the representatives of Cape Verde, Mozambique, Papua New Guinea and Sao Tome and Principe.

33. He congratulated the Chairman of ILC for his clear and full presentation of its report, which would be of great benefit to the Committee in studying that document.

34. His delegation did not intend at the current stage to express its views on the substance of the report and might do so at the appropriate time after it had studied the report fully. It had asked for the floor only to express its appreciation for the admirable work of ILC during its twenty-seventh session on the difficult and sensitive subjects of State responsibility, succession of States in respect of matters other than treaties, the most-favoured-nation clause, and treaties concluded between States and international organizations or between two or more international organizations. His delegation was confident that ILC, in preparing its draft articles, would make use of its great abilities in such a way as to reflect the past experiences of third world countries, thus meeting the aspirations of those countries to participate in drafting international laws which were compatible with changes in the modern world and based on principles of freedom, justice and peace.

35. His delegation favoured co-operation between ILC and other United Nations organs, in order to unify efforts to codify and develop international law.

36. He wished to commend the United Nations Office at Geneva for organizing an International Law Seminar for advanced students and junior officials during the twenty-seventh session of ILC.

37. Mr. CASSESE (Italy), speaking on behalf of the European Economic Community (EEC) and its nine member States, said EEC and its members considered that the general orientation and some provisions of the draft articles on the most-favoured-nation clause, particularly article 15, as well as the submissions of the Special Rapporteur concerning customs unions and similar associations of States, raised serious problems which affected all of them.

38. It followed from article 15 that States favouring economic unions, customs unions, free trade areas and similar associations of States would have to accord to third States, under a most-favoured-nation clause, the same treatment as they accorded to each other. EEC and its members noted that, as stated in paragraph (23) of the commentary on that article, ILC reserved its position on that subject. The consequences of an article cast in the terms proposed by the Special Rapporteur, however, would be so far-reaching and would give rise to such serious reservations on the part of the EEC countries that they thought it right to express their initial view at once, especially since ILC had indicated in paragraph (71) of the commentary on article 15 that it wished to take into account the reactions of the representatives of States on those matters.

39. While the EEC countries did not deny that an article expressed in the current terms might have some merit as a generalized proposition, and while they fully appreciated the valuable commentary submitted by the Special Rapporteur, they wished to voice three main objections. First, the draft article was cast in so rigid a form that it could have adverse consequences on the current tendency towards regional integration of States. That trend was by no means an exclusive feature of Europe but could also be seen in other areas of the world, such as Latin America, where there existed some outstanding examples of such groupings. The trend was justified by the widespread need to solve pressing economic problems jointly by instituting close links among States of the same geographical area. It would be a serious setback if States, as a result of subscribing to a treaty on the most-favoured-nation clause, were led to shun regional arrangements.

40. By the same token, the adoption of article 15 would result in making States extremely wary of granting most-favoured-nation treatment for fear that their hands would be tied if they wished in the future to form an economic union or to conclude agreements for regional integration, since it was clearly difficult for States to foresee what future international arrangements they might make.

41. Secondly, article 15 in its current form did not take into account the fact that in some multilateral treaties instituting economic unions, special advantages were closely linked to common institutions set up to implement and verify compliance with the rules granting those advantages. Moreover, such advantages could not be divorced from the sometimes very extensive duties imposed by the treaties on each contracting State towards other members of the community. For instance, the treaty establishing EEC included such sweeping obligations as duties to allow free

movement of persons, services and capital, to achieve harmonization of domestic laws and regulations, to promote improved working conditions and an improved standard of living for workers, and to finance a European Social Fund to facilitate employment within EEC. It could hardly be claimed that States parties to such unions should extend such benefits to third States which were neither subject to the scrutiny of the common institutions of the community nor under an obligation to fulfil the duties connected with those benefits.

42. That was particularly true in the case of such advanced unions as EEC, in which regional integration was not limited to economic and trade relations but also covered wide social fields and included a special legal order with rules directly applicable in each member State, the observance of which was ensured by a Court of Justice with very extensive jurisdiction. It would be especially difficult in such a case to separate the specific advantages provided for in the treaty establishing the regional grouping from the general social and legal context of which those advantages formed an integral part.

43. A third consequence of the current wording of article 15 was that it could have a disruptive effect on the current relationships between members of existing customs unions or similar associations and third States with which those members had previously entered into agreements containing a most-favoured-nation clause. In the case of EEC, negotiation of mutually acceptable arrangements with third States had been a practical solution to the question of the effect of pre-existing most-favoured-nation clauses, and an article along the lines of article 15 would therefore run counter to modern legal developments and disrupt the existing legal situation by upsetting a balance achieved through long and arduous efforts.

44. For the reasons he had mentioned, EEC and its nine members believed that article 15, and other articles in so far as they concerned customs unions and similar associations, should be qualified so as to reflect the current trend towards closer regional co-operation. The attitude of EEC and its members with respect to the current text of those draft provisions was therefore one of general reservation.

45. The questions to which he had referred remained under active study by the competent authorities of EEC and he therefore wished to reserve the possibility for an additional short statement to be made in the next few days on behalf of EEC.

The meeting rose at 12.15 p.m.

1545th meeting

Tuesday, 21 October 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1545

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. SIMANI (Kenya), having stressed the consistently high standards of the work of the International Law Commission (ILC), said that his delegation considered the draft articles on succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D) to be final. It was of the opinion that they might serve as a basis for the conclusion of a convention. Since the calendar of conferences for the period 1976-1977 was very crowded, the Committee might examine the draft articles at one or more of its sessions, as it had done in the case of the draft articles on special missions.

2. Although some delegations had highlighted the diversity of historical factors which had led to the establishment of certain boundaries, his delegation supported article 11 because its rejection would create innumerable and insoluble problems affecting the maintenance of peace and security among nations. It was after having seriously considered the writings of jurists and the practice of States that ILC had reached the conclusion that the majority of modern writers and States supported the traditional doctrine that treaties of a territorial character constituted a special category and were not affected by a succession of States. In 1963, similar considerations had motivated the Organization of African Unity (OAU) to include in its charter two provisions stating that the member States of OAU solemnly declare their adherence to the principle of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence and also pledged themselves to observe that principle scrupulously. Moreover, the purpose of boundary treaties was to mark out with precision the limits of a particular State's sovereignty. Once that had been done, those treaties constituted only documentary evidence. In the event of a succession, the successor State replaced the predecessor State as far as boundaries were concerned not because of the boundary treaty but because of the mere fact of the existence of such boundaries. In such a case, it was irrelevant and confusing to raise the issue of self-determination.

3. His delegation was of the opinion that any other exception to the "clean-slate" principle would have the

effect of weakening that principle. That was why it would have some difficulty in accepting the proposed article 12 *bis* (*ibid.*, foot-note 57), which provided that multilateral treaties of universal character would not be affected by the rule enunciated in article 15, which defined the position of the newly independent State in respect of treaties of the predecessor State. His delegation also failed to understand the distinction which had been made with regard to bilateral treaties in articles 23 and 27. He noted that article 19 relating to reservations was completely out of step with the "clean-slate" principle. That provision was based on the assumption that the successor State automatically inherited reservations in the absence of any evidence of their withdrawal, but the commentary on that article gave a number of practical examples which contradicted that assumption.

4. Referring to the voluminous report of ILC on the work of its twenty-seventh session (A/10010), which had been brilliantly introduced by the Chairman of ILC, he said that his delegation had not had time to consider it in detail and that his observations would therefore be only of a preliminary nature.

5. With regard to the draft articles on State responsibility (*ibid.*, chap. I, sect. B), his delegation appreciated the high standard of the six articles which had recently been adopted on the basis of the remarkable work of the Special Rapporteur for that topic. ILC had rightly decided to consider the question of State responsibility in its entirety, and not in parts, as it had done in the case of the succession of States.

6. Since the study of succession of States in respect of matters other than treaties was only in the preliminary stage, he merely wished to point out that, sooner or later, it would be necessary to provide a definition of the word "property" as used in the draft articles (*ibid.*, chap. III, sect. B).

7. With regard to the study of the most-favoured-nation clause (*ibid.*, chap. IV), considerable progress had been achieved, but, in view of the complexity, importance and scope of that topic, his delegation intended to make its views known only at a later stage.

8. Considerable progress had also been made in the study of the question of treaties concluded between States and international organizations or between two or more international organizations (*ibid.*, chap. V). The 11 articles which ILC had adopted at its twenty-seventh session were closely based on the Vienna Convention on the Law of Treaties.¹ Subsequently, the draft articles might be brought even more into line with that instrument.

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ See Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

9. With regard to the law of the non-navigational uses of international watercourses (*ibid.*, chap. VI, sect. A), he said that his Government would communicate its replies to the questionnaire on that topic as soon as possible.

10. He supported the establishment of a planning group to study the functioning of ILC and formulate recommendations concerning its work and noted with satisfaction that co-operation with other bodies dealing with the same questions as ILC continued to exist. He also recognized the usefulness of the International Law Seminars organized during the sessions of ILC.

11. Mr. BEKELE (Ethiopia), referring to the draft articles on succession of States in respect of treaties, noted with satisfaction that ILC had adopted the "clean-slate" principle, which reflected the reality of modern international relations. That principle endorsed the primacy of consent in treaty relations. Thus, a newly independent State did not automatically inherit, without its consent, the treaties of the predecessor State. Similarly, ILC had been right to provide for the application of the principle of continuity in certain exceptional cases, such as that of treaties establishing boundaries. That exception to the "clean-slate" rule, which was based on long established and universally recognized principles of international law, was reflected in the practice of the large majority of States and supported by most writers. Moreover, the United Nations Conference on the Law of Treaties had decided to exclude treaties establishing boundaries from the application of the fundamental change of circumstances rule. In addition, the principle of respect for established boundaries had been endorsed by the majority of African States when the Assembly of Heads of State and Government of OAU, meeting in Cairo in 1964, had adopted a resolution in which they had pledged themselves to respect borders existing on their achievement of national independence. His delegation failed to understand how a contradiction could exist between the principle of the continuity of treaties establishing boundaries and the right to self-determination. It was therefore of the opinion that article 11 had a solid basis in international law and the practice of States and that its retention in the future convention was an essential condition for the convention's broad acceptance.

12. With regard to the proposed article 12 *bis* dealing with multilateral treaties of universal character, his delegation was of the view that it was not necessary to refer it back to ILC. A plenipotentiary conference should decide what constituted a multilateral treaty of universal character and whether article 12 *bis* should be retained in the future convention. Similarly, the proposed article 32, (see A/9610/Rev.1, foot-note 58) dealing with the settlement of disputes, need not be referred back to ILC, although it could be further refined; it would be better for a plenipotentiary conference to examine it in depth.

13. Turning to the report of ILC on the work of its twenty-seventh session, ably presented by its Chairman, he stressed the clarity and concision of the draft articles on the most-favoured-nation clause. Most-favoured-nation treatment would doubtless promote trade relations between States with different economic and social systems and at different stages of development. In turn, those relations could contribute to the consolidation of international peace

and security. In provisionally adopting article 21, which constituted an exception to the application of the most-favoured-nation clause, ILC had recognized the need to give special treatment to the developing countries by granting them preferences which could not be claimed by developed countries on the basis of the most-favoured-nation clause.

14. He welcomed the progress made by ILC in the study of the question of treaties concluded between States and international organizations or between two or more international organizations. It agreed with the Special Rapporteur's method of using as a basis the Vienna Convention on the Law of Treaties.

Mr. Klafkowski (Poland), Vice-Chairman, took the Chair.

15. Mr. MAKEKA (Lesotho) observed that the report of ILC had reached Governments very late. He hoped that, in future, Governments would receive those documents well in advance of the General Assembly session so that they would be able to consult their experts. Otherwise, delegations would be obliged to limit themselves to general and preliminary remarks which had been considered in depth by eminent jurists.

16. With regard to the draft articles on State responsibility, although he had no specific difficulties with articles 1 to 13, he wondered whether it would not be wise to define what was meant by "organ of a State". Before an entity could be referred to as an organ of a State, a nexus must be established between that entity and the State in question showing that at the time of the wrongful act that State exercised some control over the acts of the entity. Under the draft articles the act of an entity was liable to be attributed to a State simply because that entity purported to act on behalf of that State. Governments such as his own could very well find themselves saddled with claims arising from acts over which they had no actual control. Articles 14 and 15 dealt with acts of insurrectional movements, although the draft articles were concerned with the responsibility of States. The issue raised in those articles could be dealt with in the context of succession of States and his delegation considered that it was difficult to assign responsibility to insurrectional movements which acceded to power for acts committed during the battle while insurrectional movements which failed escaped all responsibility. In most cases, fighters in insurrectional movements had to use all means at their disposal to achieve their objectives. Moreover, the organs of an insurrectional movement often acted independently without control from higher bodies. His delegation failed to see the logic of burdening a new Government or State with claims arising from the acts of a movement which might or might not have brought about the existence of that new Government and considered that greater caution was necessary in that sphere.

17. On the question of succession of States in respect of treaties, his delegation fully supported the "clean-slate" theory. It was true that in practice Lesotho had followed the principle of the continuity of treaties in order to give itself the possibility of reviewing the treaties concluded before independence. However, it should be noted that, eight years after independence, that review had not yet

been completed. He wished to thank the Australian Government for the assistance it had provided to his Government in that regard. However, in the meantime the Government was saddled with responsibilities which it could not possibly carry out. Thus, the United Kingdom, a maritime Power, had extended maritime treaties to Lesotho, a land-locked country. That was why his Government preferred a system based on free accession of the successor State rather than the presumption of continuity. Furthermore, his Government supported the position taken by OAU with regard to boundary treaties.

18. With regard to the work of ILC on the most-favoured-nation clause, his delegation noted with satisfaction that ILC had taken into account the different levels of economic development in the world, and in particular that it had decided to exclude the situations referred to in article 21 from the application of the clause. His delegation recommended that at its next session ILC should act likewise with regard to free access to the sea and the right of transit of land-locked countries. In its view, that would correspond to the interests of the "economically weak" land-locked countries, which formed the majority of the least developed countries. With regard to transit, the land-locked countries should be accorded national treatment.

19. Lesotho was a party to a customs union agreement and considered that most-favoured-nation treatment could not be equated with the treatment accorded to other partners of a customs union.

20. He commended ILC for having organized the International Law Seminar and said that his Government would like to participate in it in the future.

21. Mr. HAGARD (Sweden) said, before turning to the substance of the report of ILC, that his delegation had listened with great interest to the remarks made by the representative of Australia (1541st meeting), on the methods of work of ILC, whose idea of planning the codification and development of international law within and outside the United Nations touched on some important and complex problems which merited further consideration.

22. With regard to State responsibility, he would refrain at the current stage from making detailed comments on the draft. However, his Government had noted that ILC had laid down an important principle in article 10 concerning attribution to the State of the conduct of organs acting outside their competence or contrary to instructions concerning their activity. It was reasonable that the State should in principle bear responsibility for acts of public authorities even where they exceeded their competence; corresponding provisions existed in the Vienna Convention on the Law of Treaties and in Swedish law. His delegation also found article 15 particularly interesting, especially the idea that it was necessary to continue to attribute to the State, after the victory of the insurrectional movement, the conduct previously engaged in by the organs of the pre-existing State apparatus. But with regard to paragraph (6) of its commentary on article 15, where ILC stated that "the acts of the organs of the pre-existing State are in no way attributable to the new State, which has separated from the pre-existing State by secession or decolonization",

his delegation considered that the problem was outside the scope of the current draft articles and should be considered in the context of the question of succession of States in respect of matters other than treaties.

23. Furthermore, his delegation considered that ILC should retain on its programme of work a separate item on international liability for injurious consequences arising out of the performance of acts not prohibited by international law, the study of which should result in the production of a draft instrument.

24. The report of ILC showed that considerable progress had been made in the work on the most-favoured-nation clause. His delegation hoped that, at its next session, ILC would be able to take a position on the complex question of the application of most-favoured-nation clauses to benefits accorded within the framework of customs unions or free-trade areas. At the current stage, his delegation could not give a definite opinion on the issue and felt that the question of whether a most-favoured-nation clause gave a contracting State the right to certain benefits granted by another contracting State to its partners in a customs union was basically a question of treaty interpretation, in other words that the conclusion to be drawn might differ from case to case. Nevertheless, it remained to be seen whether it would be reasonable to establish a legal presumption in favour of a particular interpretation, a presumption which would not apply in cases where there were sufficiently strong elements speaking in favour of a different conclusion. If there were reasons for the existence of a presumption to the effect that the most-favoured-nation clause could not be invoked with regard to customs unions and free-trade areas, that presumption should preferably apply mainly to cases where the customs union or free-trade area had been established after the conclusion of the agreement containing the most-favoured-nation clause. In such cases, it would be preferable if the most-favoured-nation clause did not have the effect of granting a right to the benefits deriving from the co-operation characterizing a customs union or free-trade area. Conversely, if a State which was already party to an agreement establishing a customs union or free-trade area concluded with a third State an agreement containing a most-favoured-nation clause, that State should be expected to make it clear whether or not it intended to provide for an exception to the clause. In such cases, it did not seem justified to presume that the most-favoured-nation clause did not extend to the benefits granted under the original agreement.

25. Another interesting provision had been proposed by ILC, namely article 21, under which a most-favoured-nation clause did not extend to other States the benefits granted to developing countries on a non-reciprocal basis within a generalized system of preferences. There too, it was a question of treaty interpretation, and it would be totally illogical to interpret a most-favoured-nation clause so as to give a developed country the right to enjoy the benefits granted to developing countries within a system of preferences. In the light of those considerations, there was some question as to whether it was necessary to include a specific article on the subject.

26. His delegation had no particular observation to make on the other subjects dealt with by ILC, but hoped to have

the opportunity, in due course, to present its comments on the draft articles relating to the succession of States in respect of matters other than treaties and on treaties concluded between States and international organizations or between international organizations. He also expressed the hope that, at its next session, ILC would be able to consider the law of the non-navigational uses of international watercourses in the light of replies to its questionnaire.

27. With regard to the International Law Seminar in which the participation of students from developing countries was made possible by scholarships financed from voluntary contributions, he said that it would be advisable for a number of scholarships to be financed from the regular budget of the United Nations, but his delegation would revert to that issue later. However, he announced that his Government had decided to increase to \$2,500 its contribution to the seminar to be held in 1976.

28. Mr. BENJELLOUN (Morocco) said that Morocco had not yet submitted in writing to the Secretary-General its observations and comments on the draft articles on the succession of States in respect to treaties, but it would not fail to do so.

29. The draft articles on the succession of States in respect of treaties were of special importance to newly independent States. There was some question as to whether it was advisable to give the draft the form of a convention. In his delegation's opinion, it would be more appropriate for the text finally agreed on to be adopted in the form of a General Assembly resolution. However, if the majority favoured the drafting of a convention, that task should be entrusted to a diplomatic conference. In preparing the set of draft articles, ILC had preferred to base itself on the principle that there was no automatic succession and to provide for exceptions to that principle, instead of choosing the opposite approach. In doing so, ILC had adopted a wise solution, but one which necessarily led to radical positions, as evidenced in article 11. As ILC had itself pointed out, a close examination of State practice had afforded no convincing evidence of any general doctrine by reference to which the various problems involved could find their appropriate solution. It was inevitable, therefore, that in certain cases ILC should adopt a compromise between different points of view. The study conducted and the draft prepared by ILC were thorough and detailed. However, some draft articles called for further consideration.

30. Article 7, which had been adopted by a very small majority, should be deleted since non-retroactivity was a general principle of the law of treaties. Furthermore, the proposed wording lacked precision, and it was not certain what was meant by the words "as may be otherwise agreed".

31. Articles 8 and 9, relating to agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State and to unilateral declaration by a successor State regarding treaties of the predecessor State, also seemed unnecessary. If the draft was adopted, the subject would be governed by its own provisions, which in fact provided for the same solution. Articles 8 and 9 seemed, therefore, to duplicate the rest of the text.

32. Article 11, which constituted a very important exception to the "clean-slate" principle, provided, *inter alia*, that a succession of States did not as such affect a boundary established by a treaty. In its commentary ILC of course made it clear that such a provision would have no effect whatsoever on any other grounds which might be invoked in calling for the revision or rejection of a boundary settlement, whether such grounds were self-determination, or the invalidity or termination of the treaty. Nor would it affect the legal arguments which might be invoked to justify any claim. ILC had added in paragraph (17) of its commentary on articles 11 and 12 that the mere occurrence of a succession of States would not consecrate the existing boundary, if it was open to challenge. That assertion appeared to conflict with the purpose of the draft as a whole and the explanations provided by ILC gave his delegation some cause for concern with regard to the scope of the draft itself. Morocco, which had been the victim of actual dismemberment in 1912, had since its independence consistently proclaimed its right to its territorial integrity and had called for the restitution of its territories still under foreign domination. It had regularly voiced its reservations whenever the principle of the inviolability of boundaries had been put forward—for example, when article 62, subparagraph 2 (a), of the Vienna Convention had been adopted, or when, in 1964, the Assembly of Heads of State and Government of OAU had adopted a resolution proclaiming that all member States pledged themselves to respect the borders existing on their achievement of national independence. Article 11, which adopted the same approach, gave rise to the same reservations. To take account only of treaties, many of which had been concluded to the disadvantage of the decolonized States, was tantamount to perpetuating, as it were, the effects of colonization. The choice made by ILC appeared in that respect to have been guided by the importance which it accorded to the concept of self-determination. However, in the area of decolonization, that concept was not exclusive of all others. The Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), while proclaiming the principle of the right of peoples to self-determination, also provided in paragraph 6 that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". Furthermore, in principle VI of the annex to General Assembly resolution 1541 (XV), it was provided that a Non-Self-Governing Territory reached a full measure of self-government by: (a) emergence as a sovereign independent State; (b) free association with an independent State; or (c) integration with an independent State. The case of West Irian, which had been restored to Indonesia, was significant in that connexion, and the fact that the General Assembly had adopted resolution 3292 (XXIX), in which it had requested the opinion of the International Court of Justice on the legal ties which had existed, at the time of colonization, between Western Sahara, on the one hand, and Mauritania and Morocco, on the other, proved that the United Nations recognized the existence of specific cases requiring special solutions. Moreover, ILC had retained only boundary régimes or certain territorial régimes established by treaty as exceptions to the "clean-slate" rule. It could perhaps have studied more diligently the question of what other kinds of treaty could be regarded as binding the

successor State, which would necessarily have focused its attention on other aspects of the problem and perhaps have led it to adopt a less categorical solution. His delegation reserved its position on article 11 and also on article 12, which completed it.

33. It was not in favour of inserting an article 12 *bis* relating to multilateral treaties of universal character, since in its opinion that concept lacked precision. With reference to the proposed article 32 relating to the settlement of disputes, it should be noted that that question would arise only if the draft finally took the form of a convention. It should then be left to the diplomatic conference entrusted with the task of drawing up the convention to adopt the solutions which it deemed most appropriate. With reference to articles 38 and 39 concerning cases of State responsibility and the outbreak of hostilities and of military occupation, he said they should be deleted because they concerned questions which did not relate to the succession of States.

34. In the view of his delegation, the draft articles, although they had great value, deserved more thorough study. The draft did not yet provide a satisfactory basis for the formulation and adoption of a final text.

35. Mr. ROSENSTOCK (United States of America) noted with satisfaction that ILC had accomplished a substantial amount of work during its twenty-seventh session under the chairmanship of Mr. Tabibi. It had completed chapter II of part 1 of the draft articles on State responsibility—a chapter which dealt with the circumstances under which the conduct of individuals or juridical entities could be attributed to States. That was a difficult subject which had been the source of great variance in legal views throughout the years. Chapter II embodied a set of carefully thought-out principles for determining problems of attribution. The United States would comment on those and the other articles in the field of State responsibility at an appropriate time. However, he wished to suggest at the current stage that article 11 dealing with the conduct of persons not acting on behalf of the State was somewhat cursory. Examination of paragraph (2) of the commentary of ILC revealed that the article was intended to make clear the rule that acts of legal persons having “parastatal” status, as well as other entities which were public but which had not been empowered to exercise elements of the governmental authority, or which had been empowered only in a sector of activity other than that in which they had acted, were not to be considered as conduct of the State under international law. It was possible to draw that conclusion by interpreting paragraph 1 of article 11 in conjunction with articles 5 and 7. However, it would appear desirable to clarify the coverage of article 11, in order to avoid the necessity of interpretation.

36. The United States welcomed the outline setting forth the contents which ILC proposed for the remaining three chapters of the first part of the draft. In article 20 of chapter III, the Special Rapporteur proposed to deal with the problem of the exhaustion of internal remedies in connexion with the breach of an obligation of result and it seemed that he intended to deal with only a restricted area of the question of exhaustion of internal remedies. However, in his delegation's view, ILC should examine the subject in all its aspects.

37. His delegation welcomed the decision of ILC to complete the set of articles comprising part 1 of the draft articles on State responsibility in final reading during the course of the next five-year term of office of its members. It also commended the establishment of a planning group to study the functioning of ILC and formulate suggestions regarding its work. In view of the magnitude of the task entrusted to ILC and the limited time and resources at its disposal, the rational organization of its work was essential. Suggestions had already been made in that connexion in the Committee. Improvements were possible, but the advantages of the current working methods of ILC should not be forgotten, as they enabled several Special Rapporteurs to work simultaneously between sessions and left sufficient time to Governments to submit their comments during the preparation of a text, which improved the chances of general agreement on the text once it was completed. The planning group must take into account those advantages and also the suggestions which had been put forward.

38. The three new draft articles on succession of States in respect of matters other than treaties which had been adopted by ILC attested to the complexity of that question. Article 9, which provided that State property situated on the date of the succession of States in the territory to which succession related passed to the successor State, was in accordance with generally accepted State practice and was based in theory.

39. The work of ILC on the most-favoured-nation clause had also made substantial progress, and his delegation noted with satisfaction the 21 draft articles. The principle contained in article 21, that favourable treatment extended by a developed granting State to a developing State on a non-reciprocal basis, and within a generalized system of preferences, should not give rise to rights under a most-favoured-nation clause, was consistent with the position adopted by the United States in various bodies dealing with problems of trade between developing and developed States. However, the expression of that principle as a binding rule and its inclusion in a treaty with a possible life of many years might give rise to certain difficulties of application, for it was difficult to draw a clearly defined line between the concepts of developed and developing States. Further difficulty could arise from the question of whether the developed granting State was the sole judge of what might be encompassed within a generalized system of preferences. Moreover, ILC had only provisionally adopted the text of article 21, which was subject to further consideration and improvement at the twenty-eighth session. The problems he had mentioned should be taken into account at that time. The commentary on article 21 examined in detail various reports on trade preferences. However, it seemed that the problems of trade policy dealt with in those reports fell outside the normal scope of its work and that the draft articles on the most-favoured-nation clause did not offer an appropriate context in which to deal with matters of economic policy rather than legal principles.

40. Substantial progress had also been achieved in the field of treaties concluded between States and international organizations or between two or more international organizations. However, his delegation believed the distinctions established by ILC between States and international organi-

zations were too sharp. Article 7, for example, provided that for the purpose of authenticating the text of a treaty between one or more States and one or more international organizations, the representative of a State must produce “appropriate full powers”, whereas the representative of an international organization must produce “appropriate powers”, and article 11 provided that a State could express its consent to be bound by a treaty through “ratification”, while an international organization did so through an “act of formal confirmation”. While recognizing that it might be necessary in certain areas to make distinctions between States and international organizations, his delegation saw nothing to be gained through the use of artificial distinctions and, indeed, something to be lost in seeking to

diminish the stature of international organizations through the use of such distinctions.

41. On the whole, the work accomplished by ILC at its twenty-seventh session was highly satisfactory and it was to be hoped that it would be able to meet the schedule of work which it had laid down for itself in chapter VI of its report and to move ahead with its work on the law of the non-navigational uses of international watercourses, in view of the great importance of that subject at a time when there was a continually increasing demand upon all natural resources.

The meeting rose at 4.40 p.m.

1546th meeting

Wednesday, 22 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1546

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. JACHEK (Czechoslovakia) expressed appreciation to the Chairman of the International Law Commission (ILC) for his introductory statement (1534th meeting) and fully endorsed his comments regarding the successes achieved in the codification and progressive development of international law and the momentous positive changes that had taken place in the composition of United Nations bodies dealing with questions relating to international law. The strengthening and further development of the system of modern international law, which was firmly based on the Charter of the United Nations, was one of the foremost tasks facing the Organization and all its Member States.

2. The twenty-seventh session of ILC had been one of its most productive. Progress had been made on all the topics under consideration, including the need to rationalize its work. His delegation in principle approved of the programme of work recommended by ILC but hoped that its efforts to rationalize its work would focus on the speediest possible completion of the work on such important topics as the draft articles on State responsibility and the most-favoured-nation clause. Completion of the work on succession of States was also very important and there was a danger that, as the years passed, the drafts under consideration might lose their relevance.

3. Commenting on the draft articles on State responsibility (see A/10010, chap. II, sect. B), he emphasized the importance of a more accurate definition of the concept of a “breach of an international obligation”. The definition in article 3 was too general. In defining the various categories of breaches of international obligations, it might be useful to distinguish a category of internationally wrongful acts that could be described as international crimes, such as aggression, war crimes, crimes against humanity, *apartheid* and the like. With regard to articles 14 and 15, concerning which some important observations had been made by the representative of the German Democratic Republic (1539th meeting), his delegation shared the view that the concept of an “insurrectional movement” should be clarified so as to obviate any possibility of attributing responsibility for internationally wrongful acts committed by a predecessor State to a new State of an entirely different character, which might have been formed as a result of social revolution or a struggle for national liberation against colonialism or fascism.

4. His delegation was pleased to note the substantial progress made in the work on the draft articles on the most-favoured-nation clause (see A/10010, chap. IV, sect. B) at the twenty-seventh session of ILC and hoped that ILC would be able to complete that important draft the following year. The sixth report by the Special Rapporteur on the topic,¹ which had been excellently prepared, provided an eminently adequate basis for codification of the legal principles relating to the most-favoured-nation clause, which were of great importance for peaceful coexistence between States with different social systems and for the strengthening of international co-operation on the basis of equal rights and mutual benefits. The importance of most-favoured-nation treatment had been underscored in one of the most significant political documents of recent times, namely the Final Act of the Conference on

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

¹ A/CN.4/286 and Corr.1.

Security and Co-operation in Europe. In its future work on the most-favoured-nation clause, ILC should also give attention to the question of national treatment since, as a number of delegations had pointed out, both clauses had many elements in common. His delegation would have no objection to those two issues being considered simultaneously, if that was deemed appropriate. ILC should continue to concentrate on the most-favoured-nation clause, which was of great importance for the promotion of commercial and political relations between States and the elimination of discrimination. His delegation would suggest that, in its work on the question of national treatment, ILC should include a saving clause so that contracting parties would have the opportunity to include any stipulations they might wish in an agreement involving the most-favoured-nation clause. His delegation supported the idea underlying article 21, namely that developing countries should be granted a special exception with regard to the most-favoured-nation clause so that they could receive preferential treatment. However, that should be the only exception to the clause; any other exceptions would be inadmissible and would detract considerably from the effectiveness of the clause.

5. Commenting on the draft articles on treaties between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he noted that articles 7 to 18 had been modelled on the corresponding articles of the Vienna Convention on the Law of Treaties.² ILC had rightly pointed out that from the legal point of view international organizations could not be assimilated to States and that whatever juridical personality they possessed was conferred on them by their member States. In its future work on that topic, ILC should proceed from the premise that international organizations could not be regarded as having any supranational powers and could not become parties to general multilateral treaties on an equal footing with States. International organizations must not usurp the prerogatives of their member States in becoming parties to multilateral treaties of a universal character.

6. He expressed his delegation's gratitude to the members of the ILC and, in particular, to the Chairman of its twenty-seventh session, the Special Rapporteurs on the various topics dealt with by ILC and all those staff members of the Secretariat who had contributed so greatly to the success of the work accomplished by ILC at that session.

7. Mr. SABEL (Israel) expressed appreciation for the extremely thorough and valuable work done by ILC at its twenty-seventh session.

8. The question of succession of States in respect of treaties, referred to in the report of ILC on its twenty-sixth session (A/9610/Rev.1), in particular, was a subject of more than academic interest to his country. Upon the termination of the British Mandate in Palestine, the problem had arisen as to how far, if at all, treaties to which the Mandatory Power had been a party were binding on Israel. Israel had adopted the position that, as a new international

personality, it was not automatically bound by the treaties to which Palestine had been a party and that its future treaty relations with foreign Powers were to be regulated directly between Israel and the foreign Powers concerned. With reference to paragraph 75 of the report of ILC, his delegation believed that it would be almost impossible to reach agreement on a list of multilateral conventions having special status in relation to the "clean-slate" principle. As to the settlement of disputes, his delegation was of the view that an article on that issue should be included in the draft. His delegation was not sure whether the time was right for the convening of a conference of plenipotentiaries, particularly in view of the already heavy calendar of international legal conferences scheduled for the near future.

9. The subject of succession of States in respect of treaties was largely of academic interest to most Governments. In view of the provisions concerning the non-retroactive effect of the proposed convention set forth in draft article 7 (*ibid.*, chap. II, sect. D), it was difficult to foresee any situation in which the proposed convention could be applied. Accordingly, it was unlikely that many States would participate in a conference on that subject or be willing to sign and ratify such a convention. His delegation therefore tended to sympathize with those who favoured a declaration of principle on the topic, which might well be of more lasting value than a convention with a very limited number of parties. However, it was doubtful whether the Committee had the means or the time necessary for the detailed article-by-article examination of the draft which would be essential to ensure an acceptable text. In the circumstances, the best solution would be to defer further action on the question until such time as ILC had completed its work on the question of treaties concluded between States and international organizations or between two or more international organizations. Thus, those questions could be dealt with by a single diplomatic conference which would have the task of drafting a new instrument to complement the Vienna Convention.

10. Regarding the draft articles on State responsibility, his delegation accepted the principle of attributing to the State responsibility for the conduct of its organs which acted contrary to the provisions of internal law. Israel agreed with ILC that there was no room for considering the question whether or not the act had been *ultra vires* and that it would be inappropriate to make a distinction between manifest lack of competence and apparent competence. In the field of internationally wrongful acts, the presumed or inferred state of mind of the entity suffering the wrong was irrelevant. Negation of the international responsibility of the State involved would entail the negation of any liability vis-à-vis the victim, who by definition remained without means to obtain redress. The general rule laid down in article 12 required very careful study. Paragraph 2 of the article, which was referred to by ILC as the "saving clause", was a vital and integral part of the rule as a whole. The responsibility which a State might incur by its act, omission, action, negligence or passive behaviour in relation to a wrongful act by the organ of a foreign State in its territory could in some circumstances be comparable to the responsibility of the foreign State itself. Furthermore, the question whether there was any presumption as to liability in such matters needed careful examination. In so far as article 13 was concerned, ILC had probably quite wisely

² See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5) document A/CONF.39/27, p. 287.

left unexplored a tremendous amount of legal territory. His delegation looked forward to a full study by ILC and the Sixth Committee of the various aspects of relations between international organizations, participating members and host States, but that would have to be a study in depth exceeding the limited scope of the Vienna Convention on the Representation of States in their Relations with International Organizations of Universal Character.³

11. Like others, his own delegation found it a tremendous strain to have to study within a very short period so voluminous a report as that of ILC. Any measure to relieve that pressure would be greatly appreciated; however, care must be taken not to introduce changes in procedure that could lead ILC to feel that the quality of its work was not appreciated or that the Sixth Committee did not require the current high standards of legal scholarship. One helpful step might be to have the report published well in advance of the Sixth Committee's meetings so that delegations could study it in detail. His delegation supported the suggestion that the annual report of ILC should be limited strictly to the additional work done by it during the year in question and that references to previous work and research material should be confined to foot-notes. Such a condensation of the report might create some slight practical problems for those studying it; however, that would be outweighed by the great advantage of having a considerably shorter report and would prevent the problem of repetitiveness referred to by the Australian representative (1541st meeting).

12. His delegation welcomed the proposal that the United Nations should consider taking a comprehensive look at the whole system of international treaty-making, including the role of the Sixth Committee and ILC in that process. Such a study would be timely and of benefit to the United Nations as a whole.

13. Mr. MOGENSEN (Denmark) noted with satisfaction that ILC had continued its priority consideration of the questions of State responsibility and succession of States in respect of matters other than treaties at its twenty-seventh session.

14. With respect to State responsibility, it seemed to be widely agreed that States should be held responsible only for acts of their own organs and not for acts of private individuals. That principle underlay several of the articles adopted thus far. Article 14, for example, provided that an act of an insurrectional movement in the territory of a State should not be regarded as an act of that State under international law. Nevertheless, the State might incur responsibility for such acts if it had neglected its duty to do whatever was within its power to protect the persons and property of aliens. In that event, the responsibility of the State would arise out of omissions on the part of organs of the State. That whole problem, however, did not belong within the context of articles relating to acts of insurrectional movements.

15. In article 15 ILC had taken a position on the controversial question whether an act of an insurrectional

movement which *ex post facto* seized power in a State should be regarded as an act of that State. The answer by ILC was in the affirmative and that was in keeping with existing practice on that issue. It might seem peculiar that the prospects of an injured party obtaining from the insurrectional movement the satisfaction or reparation to which it considered itself entitled should depend on whether the insurrectional movement defeated the government in power. It would, however, be unreasonable and inconsistent with the principle embodied in article 14 if a State, having put down an insurrectional movement, should be held responsible for acts of the insurgents, except of course such responsibility as might result from the negligence of its organs. In his delegation's view, the solution envisaged in article 15 was appropriate in that it preserved the continuity of responsibility. If the insurrectional movement was victorious, a claim could be presented to the new régime, but if it failed, there would be no possibility of obtaining reparation from the movement or from others for its wrongful acts.

16. Following the provisional adoption, in 1973, of eight articles of the draft convention on succession of States in respect of matters other than treaties, of which the last three were based on the premise of *de facto* passing of public property from the predecessor State to the successor State, the need had arisen for an article explicitly establishing that principle. That important general rule, which was now embodied in article 9 (see A/10010, chap. III, sect. B), might be more appropriately inserted as a direct continuation of article 5, so as to make clear the basis for the more detailed provisions of articles 6 to 8. The definition given by the Special Rapporteur of public property to be passed to the successor State had been based on the concept of sovereignty, which was politically difficult to interpret in a generally acceptable way. His delegation agreed, however, that some form of definition was necessary and considered the revision of article 9 undertaken at the twenty-seventh session to be a significant improvement. The limitation of the scope of applicability of the provision to public property situated in the territory to which the succession related provided a clear and generally reliable point of departure. The provision, as currently worded, if supplemented with provisions relating to public property situated outside the territory concerned, would take adequate account of the multifarious problems involved in the various forms of succession.

17. With regard to article 11, it would seem to be logical and consonant with the general principle enunciated in article 9 that the successor State should succeed to the outstanding debts of the predecessor State. As in the case of article 9, greater clarity could probably be achieved by leaving out the references to the concept of sovereignty and activity. His delegation would have no objection to the incorporation in the draft convention of an explicit rule concerning the property of third States in cases of succession, provided that no exceptions were made to such a rule, as had been done for instance in the draft of the Special Rapporteur,⁴ which included a reference to the *ordre public* of the successor State. Such an exception would be out of place in articles relating to succession, if only for the reason that the legal system of the successor

³ See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

⁴ See A/CN.4/282.

State and consequently the concept of *ordre public* emerged after the succession when the successor began to exercise State authority over the territory in question. Any measure which a successor State might take with regard to the property of third States could not therefore be regarded as being an effect of succession; it would merely be a manifestation of the jurisdiction which every State was entitled to exercise within its territory.

18. Turning to the draft articles on the most-favoured-nation clause, his delegation commended ILC on the substantial progress achieved at the twenty-seventh session. The articles adopted thus far contained valuable provisions regarding the effect as between parties of the most-favoured-nation clause. In connexion with commercial treaties, it had been argued that the application of the most-favoured-nation clause in relations between States at different levels of economic development was of questionable value in the eyes of the third world. Although formally the rule met the requirement of equality, in its traditional form, based on the principle of reciprocity, the clause would be of limited value to developing countries because they were rarely able to compete on an equal footing with the industrialized countries and therefore required preferential treatment. His Government was fully aware of those problems and had repeatedly supported the adoption of preferential treatment schemes. ILC should concentrate on the juridical aspects of the clause, however, leaving the question of its application in commercial treaties between States at different levels of economic development to other international organs, notably the United Nations Conference on Trade and Development (UNCTAD).

19. With respect to article 15, his delegation endorsed the statement made by the representative of Italy (1544th meeting) on behalf of the European Economic Community and its nine members.

20. Noting that ILC had not had an opportunity at its twenty-seventh session to consider the question of the non-navigational uses of international watercourses, his delegation expressed the hope that at its next session, when the replies of Governments would be available, it would find time to consider that important topic, which involved problems of an urgent character. It would be of great value to have a convention establishing the main principles for legal regulation of the exploitation of international watercourses.

21. He announced that his Government, as in previous years, would make scholarships available to cover the expenses of participants from developing countries attending the International Law Seminar in Geneva.

22. Mr. YOKOTA (Japan) paid tribute to ILC for its accomplishments and to its Chairman for his lucid introduction of the report.

23. Noting that some criticism had been voiced concerning the method of work of ILC, he said that the preparation of a legal document which would be viable for years to come and acceptable to a wide segment of the international community must proceed on the basis of careful study of State practice, precedents and legal opinions and the

current trend of their development. Such thorough study took time but was absolutely necessary if ILC was to maintain its authority. He therefore supported the current method of work of ILC, given the nature of the task entrusted to it. It was doubtful whether much could be gained by reducing the number of topics to be dealt with by ILC at each session, as that might place an excessive burden on the Special Rapporteurs concerned.

24. With regard to the draft articles on State responsibility, his delegation attached considerable importance to the part of the draft dealing with the act of the State under international law and the problem of the attributability of conduct, and eventually of responsibility, to the State. Noting that there had been many cases in which conflicts of view on the matter had led to tension in the relations between States, he said that clarification of the question was sure to help States in their conduct of international relations. Although his delegation had no difficulty in endorsing articles 5 to 9 in substance, article 10, dealing with the most controversial issue, namely the attribution of *ultra vires* conduct of organs, presented certain problems. While his delegation had no theoretical difficulty in accepting the formulation by ILC that the only criterion to be applied in attributing *ultra vires* conduct to the State should be that the organs in question had "acted in that capacity", it was concerned about the difficulty which was sure to be encountered in applying the rule in practice. It was not always easy to establish in a specific case whether the person had acted as an organ or as an individual. Even the commentary did not seem to be successful in setting out a clear delimitation of those acts which fell within the scope of article 10 and those which did not. His delegation hoped that ILC would undertake further study on the matter with a view to developing a clear-cut rule based on one or several criteria. His delegation had no practical difficulty in accepting the principle contained in article 15.

25. With regard to the draft articles on succession of States in respect of matters other than treaties, his delegation attached considerable importance to article X. It had some doubts regarding the appropriateness of the reference to the internal law of the successor State. It would be more consistent to use the formulation "in the territory to which the succession of States relates", which was used in article 9, instead of another formulation which might give rise to misunderstanding. With regard to articles 9 and 11, his delegation had some reservations but wished to see how the work of ILC on the formulation of more specific rules on the subject would proceed before commenting on the articles.

26. His delegation welcomed the work by ILC on the most-favoured-nation clause, which would greatly help to clarify the often controversial situations arising out of the interpretation of that clause. With regard to the relationship between national treatment and most-favoured-nation treatment, his delegation considered that they were two different questions. The draft articles on national treatment proposed by the Special Rapporteur in his sixth report would not, however, cause much difficulty in the elaboration of draft articles on the most-favoured-nation clause, because the former treated only the mechanism in which the national treatment clause operated, without entering into the substance of the treatment itself. With regard to

the very controversial question of the “*clause réservée*” and its “implied exception”, he felt that ILC had succeeded in drawing up a clear-cut rule on some aspects of the matter in articles 14 and 15. As to the question of customs and other economic unions, he noted that ILC had not reached a final conclusion at its twenty-seventh session. His country had in the past expressly made customs unions an exception to the operation of the most-favoured-nation clause in most of its treaties and fully understood the concern of certain countries regarding the adverse effect which that clause might have on the formation of customs and other economic unions. He suggested that a rule of non-retroactivity, such as the one in article 4 of the Vienna Convention on the Law of Treaties, might be incorporated in the current draft articles, which would then not directly affect the interests and positions currently maintained by States in respect of customs unions. A formulation of a clear-cut provision on the question of customs and other economic unions would, moreover, make States more cautious in formulating a most-favoured-nation clause and would help to clarify the situation. His delegation appreciated the attitude of ILC in considering the generalized system of preferences as an exception to the application of the most-favoured-nation clause and had no particular difficulty in accepting the substance of article 21 on the matter. From a legal point of view, however, his delegation preferred a formulation such as that in paragraph (15) of the commentary, namely a provision to the effect that nothing in the articles prejudiced the special régimes which might prevail in the relations between developing and developed countries. The current system of generalized preferences, envisaged on a temporary basis for a period of 10 years, might be modified in the future, probably in favour of developing countries. In that case, the current wording of article 21 might not be sufficient to cover the new situation. It would be desirable to avoid adopting a formulation of a rule of law that was unstable and might require modification at a later stage.

27. With regard to the draft article on succession of States in respect of treaties, he noted that there were certain difficult questions involved in the two proposals set out in foot-notes 57 and 58 of the report of ILC on its twenty-sixth session. His delegation was not entirely satisfied with the formulation of the term “multilateral treaties of universal character” as proposed in the report and considered that the application of the principle of continuity to such treaties should be studied with particular care because of the vagueness of the scope of the term. If those treaties already had the character of customary international law, there was no need to talk about succession.

28. His delegation had always preferred a clear and, if possible, compulsory procedure for the settlement of disputes and believed that the addition to the draft of such a clause would certainly improve it. The question might admittedly be seen as highly political and might, therefore, better be dealt with at a plenipotentiary conference or in the Sixth Committee, when either one of them set out to finalize the draft on the succession of States in respect of treaties. It would nevertheless be useful to have the proposal of ILC on the matter.

29. With regard to the finalization of the draft articles on succession of States in respect of treaties, his delegation

favoured the convocation of a plenipotentiary conference. In view of the possible difficulties in obtaining legal experts for such a conference in the near future, consideration of the matter might be deferred to the next session of the General Assembly, when there might be a clearer picture of the demand for such experts for other conferences.

30. His delegation did not see much reason to defer the finalization of the draft for a long time, for example, until the draft on succession of States in respect of matters other than treaties had been prepared by ILC. The close relationship between the two drafts was undeniable, but when ILC had decided to consider the question of the succession of States in respect of treaties in the framework of the Vienna Convention on the Law of Treaties, rather than in the framework of the general theory of State succession, the subjects had become virtually separate. With regard to the final form of the draft, his delegation had not yet taken a firm stand but had found the proposal of the representative of the United Kingdom (1536th meeting) concerning a study by ILC of modalities by which new States could be associated with the rules on succession of States in respect of treaties to be of great interest.

31. Mr. STARČEVIĆ (Yugoslavia) congratulated the Chairman of ILC on his excellent introductory statement of the report on the work of ILC at its twenty-seventh session.

32. On the question of State responsibility, he noted that ILC had provided general rules as to what could be considered as an act of the State, without prejudging the question of the responsibility of that State; it was to be expected that ILC would in the course of its future work define precisely the rules for determining the existence of responsibility. Viewed in that light, articles 10 to 15 adopted at the twenty-seventh session became more acceptable and his delegation would make specific comments on them at a later stage. However, if it were to be assumed that the chapter of which those articles were a part, namely chapter II, entitled “The act of the State under international law”, constituted, *per se*, a basis for determining the responsibility of States, he might be tempted to emphasize in connexion with article 12, for example, that in view of the existence of military-political bloc organizations the responsibility of a State might exist even if the act of the organ of another State operating in its territory was not formally attributed to it in the sense of that article. It might also be stressed, in connexion with article 15 and in view of article 3, paragraph (b), that in the case of a new State emerging from an insurrectional movement the determination of responsibility for acts committed in the course of the movement remained a rather complicated matter. His delegation agreed, generally, to the orientation by ILC of its future work on the matter outlined in paragraphs 42 to 45 of the report. Updated and codified replies to questions relating to State responsibility would be in the interest of small and medium-sized States and would at the same time be of inestimable importance for the development of international law on a comprehensive system of compulsory legal rules.

33. On the complex question of succession of States in respect of matters other than treaties, he hoped that ILC could speed up the consideration of the matter, with a view to completing its work on the whole matter of the

succession of States. He felt that the comments made by the representative of Australia (1541st meeting) concerning article 9 deserved the attention of the Committee.

34. On the matter of the most-favoured-nation clause, it was necessary to bear constantly in mind the position of the developing countries and the absolute need to provide for an exception to the application of the clause in respect to those countries, since application of the clause to them would amount to implicit discrimination against them. Article 21 showed that ILC had borne those considerations in mind. In addition to the decisions of UNCTAD and GATT mentioned in the commentary on that article, it was also necessary to take into account the resolutions adopted at the sixth and seventh special sessions of the General Assembly and the relevant provisions of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)), all of which emphasized that the principles of non-reciprocity, non-discrimination and preferential treatment for developing countries constituted the foundation on which trade between the developed and the developing countries should be based; the draft rules on the most-favoured-nation clause should reflect that. Article 21 might not be sufficient to exclude completely the application of the most-favoured-nation clause to the developing countries and ILC might consider the possibility of adopting at least one more article for the purpose of protecting those countries, possibly along the lines of article 21 of the Charter of Economic Rights and Duties of States. Such an article would provide protection for the developing countries against the application of article 15, the provisions of which should apply only to agreements concluded between developed countries. In his view article 15 should apply also to customs unions and other economic communities. The new article he proposed should be drafted along the same lines as article 15, bearing in mind that it would not apply to associations of developing countries.

35. He stressed the need for further intensive work on the topic of treaties concluded between States and international organizations or between two or more international organizations, since the ever-increasing number of such treaties necessitated the application of uniform rules.

36. He wished to renew the appeal to States to submit their views on the question of the non-navigational uses of international watercourses, so that ILC might continue its work on that important question at its next session.

37. He supported the proposed general programme of work for ILC and noted with satisfaction the efforts by ILC to accelerate its work with regard to the questions currently on its agenda. He likewise commended the holding of the latest International Law Seminar, the continued co-operation between ILC and regional bodies active in the field of international law and the holding of the third Gilberto Amado Memorial Lecture.

38. Mr. AL-KINDI (Oman) said that the report of ILC was an important statement of legal principles which demanded the Committee's careful study. He thanked the Chairman of ILC (1534th meeting) and the representative of Brazil (1538th meeting) for their excellent analyses of the report.

39. Although some representatives had expressed concern about the length of the report and had made worthwhile suggestions in that regard, he would not support the omission of the sources of the conclusions of the reports. Instead, he would suggest that summaries of the reports should be issued for immediate use, earlier than the reports themselves. Highlights such as those given by the Chairman of ILC could be contained in such summaries. That would increase the Committee's ability to discuss the reports, while allowing those with the time and interest to do so to read the full reports.

40. His delegation would not assess in detail the draft articles on State responsibility. It considered it essential, however, that sovereign States should assume responsibility for the wrongful acts of their organs, whether or not those organs acted outside their competence or contrary to their instructions. Their competence or instructions were relevant to the internal laws of States; not to international law. Other States were not expected to know or inquire whether State organs had the power to bind their State.

41. The provision that the conduct of organs not acting for a State should not be attributed to the State, although it stated the obvious, was acceptable. He presumed that ILC had its reason for including such an obvious provision, but wondered whether it was really necessary.

42. With regard to article 15, his delegation welcomed the suggestion of some representatives that there was a need to draw a clear distinction between, on the one hand, acts of a national liberation movement which was struggling legitimately against colonial or racist régimes for the attainment of self-determination and the overthrow of foreign domination and, on the other, acts of aggression by outlaws whose sole aim was destruction, whatever label they might adopt.

43. He thanked the Special Rapporteur for the topic of State responsibility for his excellent work.

44. He also thanked the Special Rapporteur for the topic of succession of States in respect of matters other than treaties for his expert work on the tricky subject of succession to State property. The approach to that question was correct and his delegation approved of it, especially since the provisions allowed the parties to reach their own agreements. But he urged further development of the draft articles so as to include the question of succession of States to property outside their jurisdiction. Moreover, he doubted the wisdom of including debts as inheritable property, as that could cause untold complications to the successor and predecessor States if such liabilities were incurred at the time when the successor State was incapable of expressing itself.

45. The Special Rapporteur for the topic of the most-favoured-nation clause and the related question of national treatment deserved the Committee's gratitude for his masterly work. His delegation would make its views known later on draft articles 16 and 17 concerned with that topic and in the meantime would welcome further study of the matters covered by those articles. His delegation shared the concern that had been expressed concerning the applicability of the most-favoured-nation clause to States with different levels of economic development. Special treat-

ment could achieve better results than equal treatment in an unequal situation, as there was a need to adjust the imbalances in the economies of third world countries brought about by previous practices. His delegation therefore approved of article 21 and urged further development of similar provisions which gave due weight to the comments already made in the Committee in that regard.

46. He thanked the Special Rapporteur for the question of treaties between States and international organizations or between two or more international organizations for his detailed work. As a result of that work, ILC had been able to adopt articles 7 to 11 and improve article 2. The proliferation of international legal bodies should not be allowed to obscure the purpose for which those bodies were created. They were granted certain powers, rights and duties in order to carry out the functions assigned to them. Therefore, although the question should be studied further, some suggested distinctions such as that between powers and full powers did not seem justifiable. When international legal bodies were given powers to enter into legal relationships with other bodies, such powers were complete in themselves even if some form of confirmation was required from another juridical person.

47. His delegation found it somewhat difficult to accept the notion that ratification applied only to States and that confirmation applied to international organizations as indicated in article 14. If that distinction arose only because ratification necessarily implied a certain procedure within the State, then it seemed rather artificial. An act of confirmation was an act of ratification, whatever terminology was employed. The international community had moved away from old concepts, and the equal treatment of States and international organizations in that regard was reasonable.

48. His delegation welcomed the establishment of a planning group within the Enlarged Bureau of ILC. Serious thought should be given to completing studies on subjects which had been on the agenda of ILC for a long time, and to limiting the number of subjects studied.

49. His delegation wished to express its gratitude to those States which had made possible the International Law Seminar and the Gilberto Amado Memorial Lectures and hoped they would continue to make them possible.

50. He urged continued co-operation between ILC and regional legal bodies, which could only lead to fruitful results.

51. Mr. RAKOTOSON (Madagascar) thanked the Chairman of ILC for his clear introduction of its report.

52. He would confine himself to preliminary observations on the report, as his Government would submit its final views at a later stage.

53. In considering the important question of State responsibility, which was closely related to the maintenance of international peace and security, ILC should bear in mind the provisions of the Charter of the United Nations and of pertinent United Nations resolutions regarding the characterization of internationally wrongful acts and the attribution

of such acts to a State. Such General Assembly resolutions as 2625 (XXV), 1514 (XV) and 3314 (XXIX) included respectively the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, (particularly paragraph 3 of the annex), the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Definition of Aggression. Those instruments were the foundation of modern international law and the international community should follow their spirit in defining internationally wrongful acts and attributing responsibility. Many examples of wrongful conduct mentioned in those instruments were more appropriate as a source of International law on State responsibility than the legal history of past centuries. They included interference in the domestic affairs of another State, acts aimed at partial or total disruption of the national unity and territorial integrity of another State, acts aimed at partial or total disruption of the national unity or territorial integrity of another State, the threat or direct or indirect use of force, resistance to exercise by a people of the right to self-determination and independence, direct or indirect aid to such resistance, the policy of *apartheid*, which was a crime against humanity, and the plundering of a country's natural resources.

54. In the light of the instruments he had mentioned, a clear distinction should be made between two kinds of insurrectional movement. A national liberation movement struggling against colonialism, *apartheid*, or foreign domination was exercising a legitimate right recognized in the instruments to which he had referred, and the consequences of such action could not be considered as giving rise to responsibility even when the movement became a new State. But if the territory was not linked to a metropolitan country, the problem of attributing responsibility arose. Those considerations should underlie articles 14 and 15 on State responsibility.

55. With regard to the draft articles on succession of States in respect of matters other than treaties, he observed that paragraph (10) of the commentary on article 9 indicated that only movable property situated in the territory to which the succession related passed to the successor State, whereas movable property situated elsewhere did not. He wondered what would happen if the administering Power, in order to deprive the future new State of its rights transferred movable property to the metropolitan country shortly before the territory achieved independence. In his delegation's view, the fact that movable property was situated in the territory to which the succession related should not be the sole criterion for the passing of such property to the successor State. The saving clause "unless otherwise agreed or decided" would, in certain cases, be of little help in solving that problem.

56. In its work on the draft articles on the most-favoured-nation clause, ILC should likewise take into account the letter and spirit of the resolutions adopted at the sixth and seventh special sessions of the General Assembly. The principles of those resolutions, particularly in the field of international trade, included preferential treatment and non-reciprocity for developing countries and treatment of imports from developed countries that was no more favourable than that accorded to imports from developing

countries. Those principles were reiterated in articles 18 and 26 of the Charter of Economic Rights and Duties of States. In other words, law on the most-favoured-nation clause should take into account the special interests of the developing countries and contribute to efforts to establish a new economic order. To impose the same obligation on the rich and the poor would sometimes be unjust.

57. His delegation wished ILC success in its work of developing and codifying international law. It was because of that sentiment that he wished to comment on the method of work of both ILC and the Sixth Committee. His delegation supported the observations on that subject made by the representative of Australia and others. The report could profitably have been made more concise without being too brief. Furthermore, the work of ILC would have been more effective if the Committee and the General Assembly had carefully set priorities for the topics to be considered. The Committee had a tendency to require that a number of subjects considered by ILC be given priority, as could be seen from General Assembly resolution 3315 (XXIX), which referred to at least five such topics. ILC had faithfully followed those recommendations, and the Committee was therefore in part responsible for the excessive length of the report, of which it was now complaining.

58. Another resulting problem was that the members of the Committee had to consider in a very short time a number of questions which had nothing in common, and it could not do so in depth while at the same time supervising the work of ILC. It might well fail in the latter task if it continued to require priority for most of the topics referred to ILC and should therefore assign priority to one topic only. If it did so, ILC would be able to finish its programme earlier and would be able to complete in the near future the draft articles on State responsibility or on succession of States in respect of matters other than treaties. The draft articles on one of those two subjects should be completed in 1976, since the first subject was a useful supplement to the Definition of Aggression and the second, in the view of many delegations, supplemented that of the succession of States in respect of treaties.

59. It would perhaps be appropriate to require that the report of ILC reach Member States at an earlier date so that they would have enough time to examine it before the General Assembly session. Because the twenty-seventh session of ILC had not begun until early May and had ended in late July, the report had in actual fact not been distributed until the current session was already under way. Although he realized that the members of ILC had other duties, it might be well for ILC to begin its session earlier, in order to enable the Committee to perform its functions properly.

60. Just as ILC had established a planning group to study its functioning and formulate suggestions regarding its work, so the Sixth Committee might well undertake some self-criticism; in his delegation's view, the Committee should accord priority to one topic only. In that connexion, he drew attention to the cautionary example of the topic of state responsibility, which the General Assembly had first recommended for study in 1955 and on which work would not be completed until 1981.

61. Mr. LOPEZ BASSOLS (Mexico) complimented the Chairman of ILC on his lucid introduction of the report.

62. His delegation had often stated Mexico's great interest in the subject of State responsibility. Indeed, the history of Mexican international relations could perhaps be written in terms of international claims. From the earliest days of Mexican independence until 1940, Mexico's application of its legislation to alien residents in its territory, though the acts of a sovereign State, had been subject to review by various claims commissions. That belonged irrevocably to the past, now that the sovereignty of weaker States had triumphed over the "unlimited protection" practised by the great Powers, but the history of those commissions explained the many and not altogether fortunate references to them in the report. Two examples were the Mexico City Bombardment Claims case and the United States claim concerning the detention of certain sailors in Tampico in 1914, referred to in paragraphs (18) and (28) respectively of the commentary on article 14. In connexion with the former claim, the Mexican Commissioner had stated that a State was not responsible for damage caused by a military uprising if it was proved that it had taken the necessary steps to restore order. With regard to the second claim, his Government's position had been that it was not responsible for damage caused by armed forces which did not succeed in establishing a government. Reparation in that case would be made only on an *ex gratia* basis. On the other hand, the Government would assume responsibility for lawful governmental acts or for acts of revolutionary forces which had succeeded in establishing governments. The principles contained in articles 14 and 15 of the draft articles on State responsibility conformed to the Mexican position as stated in connexion with the two cases he had mentioned and his delegation was therefore in complete agreement with those articles.

63. The fact that the international community would soon adopt a body of rules governing the responsibility of States for internationally wrongful acts was of particular importance to Mexico. A study of that subject should go hand in hand with study of other aspects of responsibility for internationally wrongful acts, including responsibility for possible damage resulting from certain lawful activities, from activities which international law had not yet definitely prohibited, or from activities in the grey area between lawfulness and wrongfulness. Such activities were becoming more and more frequent in the areas of navigation, space and nuclear power, particularly in connexion with protection of the environment. The more specialized and technical aspects of that new field continued to be the subject of special agreements and of regulations worked out in technical gatherings, but the time might come when it was necessary to identify the essential principles in that new field of law and establish them as juridical norms. Thus, it might be appropriate for ILC to use its well-known technical competence and creativity to study new subjects within its terms of reference, other than State responsibility, succession of States and aspects of the law of treaties.

64. His delegation therefore felt that the Committee could recommend that the General Assembly, at the current session, should go beyond its usual recommendation that ILC continue studies already begun. It felt that the

resolution to be adopted by the Assembly should reflect the lively interest of at least some Member States in giving priority to the study of State responsibility for internationally wrongful acts and in supplementing that study with all possible urgency.

65. Turning to chapter IV of the report, he said that the subject of the most-favoured-nation clause was of vital importance to international economic relations. The Committee did not yet have a complete draft and could therefore not analyse the draft articles in detail. However, his delegation believed that ILC, in its work on the most-favoured-nation clause, should take into account the fundamental changes which were taking place in economic relations, which had important effects on the application of the clause. In that connexion, he wished to refer to the resolutions adopted at the sixth and seventh special sessions of the General Assembly and to the Charter of Economic Rights and Duties of States. The development and codification of legal norms in that field would thus be adapted to present-day reality.

66. Recognition of the existence of various levels of development and of the need for a world trade system based on a system of preferences was one of the important elements of developing international law. In that connexion, he recalled that General Principle Eight of the recommendations adopted at the first session of UNCTAD⁵ was based on the theory that the trade needs of a

⁵ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

developing economy were very different from those of a developed economy. Consequently, those two types of economies should not be subject to the same rules in their international trade relations. Application of the most-favoured-nation clause to all countries regardless of their level of development would mean formal equality, but in fact would entail implicit discrimination against the weaker members of the international community. That did not mean permanent rejection of the most-favoured-nation clause. Recognition of the needs of the developing countries simply meant that for a certain period the most-favoured-nation clause should not be applied to certain types of international trade relations.

67. He also wished to point out that articles 18, 19, 21 and 26 of the Charter of Economic Rights and Duties of States contained provisions designed to establish a system of generalized non-reciprocal and non-discriminatory preferences for the benefit of the developing countries.

68. His delegation had already sent to ILC its comments on the subject of succession of States in respect of treaties (see A/10198). With regard to the procedural aspects of that topic, his delegation felt that the draft was final, except for two articles which should be returned for consideration by ILC, perhaps in the light of comments by States. It could then be decided what the appropriate procedure was for the last step in the codification process.

69. He wished to congratulate ILC for its excellent work during the current year and to wish it success in the future.

The meeting rose at 1.05 p.m.

1547th meeting

Thursday, 23 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X.J.C. NJENGA (Kenya).

A/C.6/SR.1547

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. HAFIZ (Bangladesh) said that the report of the International Law Commission (ILC) (A/10010) was a valuable document which bore eloquent testimony to its monumental work in promoting the progressive development and codification of international law.

2. The role of ILC was assuming greater importance as new international relations developed as a result of the changing structure of international society brought about by the end of colonization and the birth of new States. The newly independent States and developing countries were facing complex international economic and political problems. The fundamental principles regulating the international community needed to be translated into legal terms in establishing the new economic order which had been accepted by the vast majority of Member States.

3. The main problems facing the developing countries were chronic food shortage and over-population. Food could no longer be treated as charity or as a purely commercial commodity of international trade. It was therefore the moral and political duty of the international community, particularly the developed countries, to extend economic co-operation to solve permanently the problem of under-production of food in the developing countries. A new concept of international food law had to be reflected

* *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.*

in the international law concerning international peace and security, since any State with a hungry population was a source of danger to world peace. Although ILC concerned itself primarily with public international law, it was not precluded from entering the field of private international law as well.

4. He commended the Chairman of ILC for his informative introduction to the report. His delegation was satisfied with the decision by ILC to give priority consideration to the subjects of State responsibility and succession of States in respect of matters other than treaties, which were of increasing importance to the international community.

5. The work of ILC on State responsibility had yet to be examined by the appropriate organ of his Government, and his delegation's statement on the item would therefore be preliminary. However, he wished to place on record his delegation's great appreciation of the fact that ILC had considered that very important question.

6. Doubts arose as to the attribution of responsibility to a State when an official performed a public act outside his competence. His delegation considered that the State was responsible only when the official acted within the scope of his office. The essential problems to be considered in that regard were whether the organs of the State had been the means by which the damage was caused and whether the acts performed were within the official competence of the person performing them. His delegation appreciated the work of ILC and its Special Rapporteur on the question of the consequences of insurrection.

7. The work of ILC on succession of States in respect of matters other than treaties was very important and he wished to congratulate the Special Rapporteur for his scholarly report on that topic. However, his delegation had reservations concerning the wording of draft article 11 (*ibid.*, chap. III, sect. B).

8. It was gratifying to note the progress made by ILC on the question of the most-favoured-nation clause. His delegation took the view that equality of treatment between unequal States resulted in inequality and would seriously affect the economic development of the developing countries. The interests of those countries should be properly protected, and draft article 21 (*ibid.*, chap. IV, sect. B) should be reformulated to protect them more effectively.

9. His Government had a vital interest in the law of the non-navigational uses of international watercourses and was therefore anxiously looking forward to the results of the study by ILC on that subject. It urged ILC to undertake that study on a priority basis. Because of the geographical position of Bangladesh, his delegation was concerned about the problems of flood control and erosion and believed that they should be included in the study of that important item. Regulation of the use of the waters of international rivers was also of grave concern to his country. Water had become a major economic resource in some countries and the interests of small and poor countries should be given special attention in formulating the rules of international law on the subject. The law regarding pollution should also be framed in such a way as not to affect the economic development of other countries.

10. His delegation wished to express its satisfaction that ILC had continued to maintain relations with various legal bodies, particularly the Asian-African Legal Consultative Committee, since such co-operation meant that the international community was fully informed of all opinions emanating from the legal systems and civilizations of the world.

11. Continuation of the International Law Seminar was of vital importance to the development of international law. In 1973 a Bangladesh national had been one of the participants in that Seminar. The programme of work in that area should be not only continued but expanded, as that would greatly benefit the developing countries, in which the teaching and dissemination of knowledge of international law were limited.

12. His delegation had not yet made a detailed study of the draft articles on succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D), and his comments on that topic would be preliminary. His country had great faith in the principle of self-determination, and believed that the law on succession in respect of treaties was assuming great importance because of changes in the structure of international society. Although his delegation was highly satisfied with the work of ILC on the topic, it had reservations concerning some provisions of the draft articles, particularly the definition of "newly independent State" in article 2, paragraph 1 (*f*), and the formulation of article 33, paragraph 3.

13. He said that ILC was to be congratulated for adopting the "clean-slate" principle, which was part of the progressive development of international law and was based on the principle of self-determination. The "clean-slate" principle meant that newly independent States had the right to choose not to be bound by old treaties concluded by a predecessor State. But ILC had not extended the "clean-slate" principle far enough in its definition in draft article 2, paragraph 1 (*f*), and had thus not given the principle of self-determination adequate consideration. According to his delegation, the concept of a "newly independent State" included not only all formerly dependent territories such as colonies, Trust Territories, mandate territories and protectorates, but also new States which emerged as a result of separation of part of an existing State or by social revolution, as well as religious, linguistic or cultural minorities of the territory of an existing State which had struggled for the right of self-determination based on the principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). Those documents made no distinction between the right of self-determination of peoples of colonial and other territories.

14. His delegation was likewise unhappy with article 33, paragraph 3, which was not only vague but also introduced a subjective element that would give rise to contradictions. There was no possible justification for making a distinction between a "newly independent State" and a State emerging from the separation of part of an existing State. It followed from the draft article that if a State formed by secession wished to claim the benefits of the "clean-slate" principle it

must fit the definition of a "newly independent State" in article 2, paragraph 1 (f) or fulfil the undefined criteria set out in article 33, paragraph 3. The latter paragraph was vague and constant disputes as to its interpretation would render it ineffective. Those provisions of the draft articles should be reformulated to include all cases.

15. His delegation believed that there should be an independent provision in the draft articles covering the settlement of disputes arising out of the interpretation or application of a future convention.

16. He wished to comment on the dynamic role of international law. In Asia, Africa and Latin America, a great majority of the people were suffering from hunger, poverty, disease, illiteracy, inequality, want of shelter and unemployment and those conditions made it impossible for an individual to achieve a better life. International law could therefore not be viewed as an isolated phenomenon, but must take into account the reality of the life of people in States which suffered from chronic underproduction and could not fulfil basic human needs. If national laws could not meet the growing demands of rapidly changing times, international law must provide the developing countries with the benefits of technological progress. Otherwise, human efforts for world peace would be retarded and the principles of the Universal Declaration of Human Rights would remain a dead letter.

17. Mr. GÜNEY (Turkey) expressed his delegation's satisfaction with the excellent work done by ILC during its twenty-seventh session and thanked its Chairman for his eloquent and clear introduction of the report.

18. His delegation would confine itself to preliminary comments. It approved of the scope of the draft articles on State responsibility (see A/10010, chap. II, sect. B), of the distinction made between "primary" and "secondary" rules and of the method followed in preparing the draft. The fact that the draft articles were limited to responsibility for internationally wrongful acts would of course not prevent ILC from studying at the appropriate time the question of international responsibility for the harmful consequences of certain activities not prohibited by international law. The rules set forth in the draft articles were based on a long evaluation of State practice, judicial decisions and the writings of jurists and ILC had done well to specify its sources in codifying and developing customary law in that area.

19. Article 10 of the draft articles on State responsibility was not a new source of attribution of responsibility, since article 5 already covered the conduct of a State organ acting in that capacity. However, article 10 supplemented article 5 by stating that the conduct of such an organ was considered an act of the State under international law even if it exceeded its competence according to internal law or contravened instructions concerning its activity.

20. Article 12 was necessary, in his delegation's view, since it was a corollary to article 9 and also in part, to article 11. Article 12 should also take into account joint conduct by the State or organization to which the organ belonged and the State in whose territory the organ was situated.

21. Article 14 was very important because of the increasing role being played by insurrectional movements and the increased international recognition they were receiving. His delegation was pleased that ILC had avoided dealing with the problem of the recognition of insurrectional movements and had limited itself to stating that the conduct of such movements could not be attributed to the State.

22. Considerable difficulties had been encountered by ILC in drafting the new articles on succession of States in respect of matters other than treaties, since the State practice, judicial decisions and legal writing on those questions were neither sufficient nor uniform. The matters covered by those articles had often been treated in agreements which did not constitute an adequate basis for such broad codification and progressive development. Difficulties had also arisen because of the breadth and the complexity of the subject which encompassed public property, public debts, the legal régime of the predecessor State, territorial problems and acquired rights. Article 11 supplemented article 9. However, it was necessary to specify the legal nature of the acquisition of debts (*créances*) of a predecessor State by a successor State and to determine which State debts passed to the successor State. ILC should also take care to mention not only State debts but also the obligations associated with those debts.

23. Considerable progress had been made by ILC on the question of the most-favoured-nation clause by considering it both as a separate question and as an aspect of the law of treaties. His delegation agreed with the view of ILC that a special study of the clause was desirable even though it was part of the general law of treaties, since the clause was of particular interest because of its frequent use in economic relations. The new articles adopted at the latest session of ILC were based on the abundant State practice, judicial decisions and legal writing in that area.

24. His delegation agreed that there was a relationship between the most-favoured-nation clause and the principle of non-discrimination. Maintaining equality among all States interested in application of the clause without taking into account geographic, economic and political considerations could only result in inequality, and exceptions should be made in applying the clause to the developing countries. Article 21 was therefore well conceived, since it reflected the general agreement that States should refrain from invoking their right to most-favoured-nation treatment in order to obtain, in whole or in part, the preferential treatment which the developed countries accorded to the developing countries. That article could avoid all harmful effects resulting from automatic application of the draft articles to the developing countries.

25. His delegation had noted the progress made by ILC with regard to treaties between States and international organizations or between two or more international organizations. ILC had followed in so far as possible the relevant provisions of the Vienna Convention on the Law of Treaties. However, because international organizations could not be assimilated to States and because their competence to conclude treaties differed from that of States, certain modifications were necessary in order to make the rules of the Vienna Convention applicable to international organizations.

26. The question of the non-navigational uses of international watercourses was a complex one which could not be treated hastily. In considering it, ILC should study the utilization and protection of watercourses and the question of pollution.

27. Turning to the programme of work of ILC, he welcomed the establishment of a planning group which would periodically examine the progress of ILC. The work of ILC was less fruitful when it dealt with several questions during the same session and caution should be exercised before assigning new subjects to it, particularly priority subjects.

28. His delegation was pleased that the third Gilberto Amado Memorial Lecture had been held thanks to another generous gift by the Brazilian Government and hoped that everything would be done to organize another such lecture in 1976 during the session of ILC and during the International Law Seminar.

29. Mr. PHUMAPHI (Botswana) agreed with the Australian representative and others that the time available for studying the report of ILC was too short. He would therefore be pleased if future reports were issued earlier. Some delegations had also suggested that the report itself should be shortened. That would save time, but would lead to difficulties for his delegation and those of other developing countries, since the report set forth clearly the sources of the conclusions of ILC and did not require those delegations to undertake their own research. His country, although it had been independent for 10 years, had not yet been able to compile a library sufficient to provide all necessary information on the authorities considered by ILC.

30. He anticipated that his Government would comment more fully on the two items under consideration at a later stage. The draft articles on succession of States in respect of treaties, a great achievement on the part of ILC, were generally acceptable. His delegation welcomed the "clean-slate" principle, which was consonant with the principle of self-determination. It was common knowledge that treaties entered into by colonial Powers on behalf of their colonies frequently served the interests of the colonialists themselves more than those of the colonies. Therefore, to ask newly independent States to be bound automatically by such treaties was tantamount to denying them their sovereignty. His delegation also appreciated the exception to the "clean-slate" principle embodied in article 11, which sought to ensure that emergent States did not engage in border disputes on attaining sovereignty. The delimitation of boundaries by colonial Powers had been so arbitrary that if no such exception were made to the principle, withdrawal of those Powers might trigger border feuds. However, the exception in article 11, though necessary, should not be interpreted as absolute, since there might be circumstances in which an emergent State might claim an adjustment of boundaries on valid legal grounds. It was for that reason that his delegation welcomed article 13.

31. The compelling arguments in favour of article 11 did not appear to apply to article 12, which seemed to give rise to more problems than it would solve. In the first place, the article was very vague and did not specify which obligations

relating to the territory would be inherited by a successor State. If the article encompassed an agreement allowing foreign troops to remain in the territory, it was contrary to the cardinal principle of State sovereignty, and if it did not, then it was defective by omission and therefore likely to lead to future controversy.

32. Treaties concerning water rights had been considered by ILC in its drafting of article 12. It was clear from those treaties that some riparian States had been given more rights to the water in common rivers than other States, in total disregard of the development of the States on whose behalf the treaties were signed. Riparian States should always agree on the best method of equitable distribution of water, but his delegation was opposed to any treaty that gave one State unfettered power to decide how much water other riparian States should get. If treaties of that nature were to bind successor States automatically they would not only seriously infringe on the sovereignty of those States but would in certain circumstances deprive them of their means of livelihood. It was for that reason that his delegation found that article most unpalatable and would be pleased to see it deleted.

33. His delegation was not quite convinced of the need for a further exception to the "clean-slate" principle such as that embodied in the proposed article 12 *bis*. Self-determination required the minimum of interference with the decisions of emergent States and an unnecessary exception such as the one in the proposed article would only give rise to future disputes. Moreover, the proposed article was very vague, since the meaning of "multilateral treaty of universal character" was unclear.

34. His delegation supported those who had stressed the need for the proposed article 32, on settlement of disputes.

35. Turning to the report on the work of the twenty-seventh session of ILC, he commended the work by ILC on the most-favoured-nation clause. Particularly welcome was article 21, which recognized the wealth differential between the developed and developing worlds. The indiscriminate invocation of the most-favoured-nation clause would almost certainly doom the infant economies of the developing countries. While his delegation viewed article 21 as a major step towards meeting the particular interests of the developing countries, it felt that the article left out some very vital areas of the economies of the developing world such as customs unions and free-trade areas.

36. The land-locked States were a *sui generis* case which merited exceptional treatment in the application of the most-favoured-nation clause. If the clause was to be invoked against any coastal State which granted concessions to its land-locked neighbours, then coastal States might be reluctant to grant such concessions, and that would retard the development of the land-locked States. He wished to point out that that question had been treated as an exception in article 10 of the Convention on Transit Trade of Land-locked States¹ of 1965.

37. Mr. ROMULO (Philippines), after expressing appreciation to the Chairman of ILC for the excellent work he was

¹ United Nations, *Treaty Series*, vol. 597, No. 8641, p. 41.

doing for the United Nations, said that the business of making law was at best a slow one, since lawyers had to envision innumerable situations, unpredictable circumstances and unforeseen conflicts. However, there were times when lawyers, in their role as law-makers, should also act swiftly to meet pressing needs. Indeed, there were times of urgent crisis when the law must be made to confront and resolve problems which would otherwise be treated in a lawless way. The world was currently faced with a general economic crisis and nations were seemingly divided by conflicting demands, fears and urgent needs. The Secretary-General had recently at a reception at the Philippine Mission referred to the many new challenges facing the Organization, among the most important being the achievement of a new international economic order and the bridging of the gap between rich and poor nations. In that connexion, Mr. Waldheim had referred to the special message addressed to the General Assembly by the First Lady of the Philippines, in which Mrs. Marcos had spoken of the United Nations as the only organization where the necessary dialogue on a new world economic order could take place.

38. Giving point and substance to the thoughts expressed by the Secretary-General and Mrs. Marcos, he suggested that ILC should be requested to give priority consideration to the economic rights and obligations of States. His delegation was prepared to initiate a draft resolution on that matter and would appeal to others to join in that effort. The relevant resolutions adopted by the General Assembly, such as the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)), lacked the legal formulation and hence the enforceability of international law. Accordingly, his delegation would like ILC to address itself to that issue as a matter of priority and to submit a report, if possible, to the General Assembly at its next session. Among the many questions which ILC should consider in that regard were the following: (a) What were or should be acceptable regulations on foreign investments or the activities of transnational corporations? (b) What was or should be the international law on the nationalization or socialization of foreign property and the compensation payable therefor? (c) By what rules should two or more States share common resources? (d) What were the legal limits, if any, on the marketing and pricing of raw materials and commodities? (e) What constituted economic aggression, and how was the use or threat of economic force to be defined?

39. It was a matter of importance and urgency to translate the Charter of Economic Rights and Duties of States into an enforceable convention. He hoped that the Committee would request ILC to give that work the highest priority.

40. Mr. PRANDLER (Hungary) said that the yearly discussion on the reports of ILC served as a useful basis for a dialogue not only between ILC and the Sixth Committee but also between those whose major concern was to codify international law and those whose major function was to implement it. His delegation was grateful to the Chairman of ILC for his very lucid and comprehensive presentation of the report and requested him to be kind enough to convey to the members of ILC his delegation's appreciation of the very positive results achieved by it at its twenty-seventh session.

41. Commenting on State responsibility, which was one of the most important topics in international law, he said that his delegation was in agreement with the basic philosophy of the draft articles prepared by ILC. While the draft articles should relate solely to the responsibility of States for internationally wrongful acts, it was important not to minimize the principle of the absolute responsibility of States for the injurious consequences of certain types of lawful activity causing damage to third countries. Although ILC had rightly concentrated on determining the rules governing responsibility in general, at a later stage serious attention should be given to those rules which imposed specific obligations on States. In that regard he drew attention to paragraph 36 of the report. His delegation did not wish to enter into a detailed discussion of the content or drafting of the articles but would like to place on record its very serious concern at the slow pace of the work of ILC on the topic of State responsibility. While fully aware of the formidable obstacles impeding the work of codification and appreciating the excellent contribution made by the Special Rapporteur, his delegation was disappointed at the slow progress of the work on the draft articles, even considering the very crowded agenda of ILC recently. The 15 articles prepared thus far constituted only the first half of part 1 of the draft. The second half of part 1 would deal with even more complicated questions, such as the breach of an international obligation and the participation of other States in internationally wrongful acts. Thereafter ILC would face the new challenge of working out the articles of part 2 on the content, forms and degrees of international responsibility. A decision would then have to be taken as to whether ILC would commence work on part 3 of the draft, relating to the settlement of disputes and the implementation of international responsibility. He hoped that ILC would adhere to the time-table established in paragraph 143 of the report, which envisaged the final completion of the articles of part 1 by 1981 at the latest.

42. Turning to the topic of succession of States in respect of matters other than treaties, his delegation took note of the work accomplished by ILC and congratulated the Special Rapporteur on his success in working out the major lines for codification of that very complex topic. His delegation was of the opinion, however, that the draft articles could not be finalized until the remaining controversial points concerning succession of States in respect of treaties were cleared up.

43. The work by ILC on the most-favoured-nation clause was of the utmost importance. From the practical point of view the clause played a significant role not only in the domain of international trade but also in other fields of international economic, social and legal relations. The intention of the clause, according to the opinion formulated by the International Court of Justice, was to establish and maintain at all times fundamental equality without discrimination among all the countries concerned.² Furthermore, the topic was important from the theoretical point of view because it represented virtually the first time that an attempt had been made to codify that aspect of international law. Thanks, *inter alia*, to the work of the

² See *Case concerning rights of nationals of the United States of America in Morocco, Judgment of August 27th, 1952: I.C.J. Reports 1952, p. 192.*

Special Rapporteur for the topic, ILC had reached an advanced stage in the elaboration of a complete set of draft articles.

44. Commenting on articles 8 to 14, his delegation was of the opinion that they could be regarded as final, while not excluding the possibility of further drafting improvements. Speaking as the representative of a land-locked State, he wished to emphasize that land-locked States in certain situations were unable to reciprocate for most-favoured-nation treatment. Favourable treatment accorded to land-locked States in multilateral most-favoured-nation clauses should therefore be considered as exceptions to the general rule of reciprocity. In paragraphs (9) and (10) of the commentary on article 14 it was pointed out that land-locked States, in view of their special geographical position, were excluded from the operation of the most-favoured-nation clause vis-à-vis third States which were not land-locked. In his delegation's opinion, that rule could be derived from existing positive law.

45. With regard to article 15, his delegation fully agreed with the conclusion of the Special Rapporteur that there were no customary rules of international law which established an implied exception for customs unions and similar associations of States in relation to the most-favoured-nation clause. As had been pointed out at the preceding meeting by the representative of Japan, it was a general practice of States to insert in treaties any exceptions they might wish to make in regard to the most-favoured-nation clause.

46. Commenting on some of the arguments advanced by the representative of Italy, who had spoken on behalf of the States members of the European Economic Community (EEC) (1544th meeting), he respectfully disagreed with the conclusion which questioned the correctness of article 15 in its current form. The representative of Italy had argued that article 15 was cast in so rigid a form that it could have adverse consequences on the current trend towards regional integration of States. As an active member of the Council for Mutual Economic Assistance, his Government was of the opinion that the creation of organizations designed to promote economic integration, if they were based on the principles of non-discrimination and mutual benefit, was an objective trend in the world economy. His delegation could not, however, see that accepting article 15 would pose any real danger to economic integration in any part of the world. The Italian representative had further argued that article 15 did not take into account the fact that in some multilateral treaties instituting economic unions, special advantages were closely linked to common institutions and, that it would, therefore, be difficult to separate those advantages from the general social and legal context of which they formed an integral part. While it was true that some economic associations, including EEC, did have a very complicated structure and a wide range of common institutions, that was not the issue as far as article 15 was concerned. The problem raised by the Italian representative should rather be discussed within the framework of article 7, which left it to the discretion of individual States to determine the scope of the most-favoured-nation treatment and to separate the specific advantages from the general social and legal context. The representative of Italy had argued that article 15 could have a disruptive effect on

the current relationships between members of existing customs unions or similar associations and third States with which those members had entered into agreements containing a most-favoured-nation clause. It would be wrong, in his delegation's opinion, to attribute any disruptive effect to article 15 as to economic relations among States; the fault lay rather with the refusal to extend to third countries the privileges enjoyed by the members of certain economic groupings. It was the intention of article 15 merely to state the obvious, namely that there was no generally recognized rule which would prove the existence of an implied customs union exception. As paragraph (60) of the commentary on article 15 pointed out, no adherent of the implied customs union exception had ever offered a satisfactory solution to the formidable problem presented by those treaties which contained explicit provisions as to one or more exceptions to the clause without reference to customs unions or the like.

47. Articles 16 and 17 were acceptable to his delegation. He wished to recall in that connexion, however, that the Special Rapporteur had proposed that more attention should be given to national treatment. ILC had decided to concentrate on formulating draft rules concerning most-favoured-nation treatment, presumably because it was afraid of getting bogged down on two different topics. In his delegation's view, a greater effort should be made to extend the current draft to cover national treatment. As the representative of Argentina (1540th meeting) had rightly pointed out, the practical connexion and parallel importance of those two clauses must be recognized, *inter alia*, with reference to the General Agreement on Tariffs and Trade. The very fact that ILC had adopted articles 16 and 17 proved that there was a close link between most-favoured-nation treatment and national treatment.

48. With regard to article 21, there appeared to be general agreement that diversity in levels of economic development and differences in economic and social systems should be recognized in the codification and progressive development of international law. Consequently, as stated in paragraph (13) of the commentary on article 21, there seemed to be a general agreement also that States would refrain from invoking their rights to most-favoured-nation treatment with a view to obtaining in whole or in part the preferential treatment granted to developing countries by developed countries. Thus, article 21 was in conformity with articles 18 and 26 of the Charter of Economic Rights and Duties of States. In that connexion he pointed out that his Government had introduced a unilateral system of duty-free imports from developing countries in 1968, which had been amplified and improved in 1971 and 1974. Beneficiary countries included developing countries in Africa, Asia and Latin America whose *per capita* national income was less than Hungary's. The current wording of article 21, subject to some drafting improvements, seemed to his delegation to strike a proper balance between the two schools of thought on the subject and should be retained as it stood. ILC should endeavour to avoid an unduly prolonged discussion of article 21, which might lead to problems that would jeopardize the successful conclusion of the first reading of the draft articles the following year.

49. Turning to the question of treaties concluded between States and international organizations or between two or

more international organizations (see A/10010, chap. V), his delegation took note of the substantial progress made by ILC on the basis of the excellent reports by the Special Rapporteur. The importance of that topic was increasing and there were already thousands of treaties to which international organizations were parties. The majority of those treaties, however, were generally restricted in terms of subject-matter and participation. His delegation was gratified that ILC had based its work on the very sound principle that no international organization had the same treaty-making capacity as a State. ILC should endeavour to apply that approach even more consistently. In paragraph (5) of its commentary on article 9 ILC had stated that it had no intention, in proposing paragraph 2 of that article, to recommend the participation of one or more international organizations in the drawing-up of a treaty at an international conference and that that was a question which must be examined case by case and was a matter for States to decide. That point could not be over-emphasized and should be appropriately reflected in the draft articles.

50. With regard to the law of the non-navigational uses of international watercourses, he noted that his Government had submitted its views to the Secretary-General on that subject in accordance with General Assembly resolution 3315 (XXIX). His delegation's interest in the topic stemmed from the fact that 95 per cent of the water of the rivers in Hungary came from neighbouring countries.

51. Mr. FERNANDEZ BALLESTEROS (Uruguay) congratulated the Chairman of ILC on his introduction of its report.

52. The statement by the Australian representative (1541st meeting) had caused everyone to reflect, since there was no doubt that ILC produced voluminous reports and that the Committee had only limited time in which to study them, so that many delegations could do no more than join in the general expression of approval of the reports. But the reports were impressive not only by reason of their length but also by reason of the erudition they reflected, and it must be acknowledged that they were the result of requests by the Committee itself, as expressed, for instance, in General Assembly resolution 3315 (XXIX). Some delegations, including his own, even regretted that ILC had been unable to consider the question of the law of the non-navigational uses of international watercourses, which was of such importance for the countries of the Rio de la Plata Basin.

53. The zeal of ILC was reflected, sometimes excessively, in the draft articles on State responsibility for internationally wrongful acts. From the strictly legal point of view, his delegation believed that articles 11, 12 and 13 were unnecessary. His delegation fully supported the rules in those articles, but felt that they had already been covered in articles 8 and 9, and that the commentary on articles 11, 12 and 13 could be applied to those articles. If ILC had placed more emphasis on the drafting of the conditions in articles 8 and 9 it would have achieved the result sought in articles 11, 12 and 13. He agreed with the Brazilian representative (1538th meeting) that article 14 should refer to the conduct of an insurrectional movement and that the confusing reference to an "organ" of such a movement should be deleted.

54. With regard to the draft articles on the most-favoured-nation clause, his delegation supported the innovative approach of considering the interrelationship between the application of that clause and national treatment clauses. In that regard, his delegation had no reservations concerning articles 16 and 17. It felt, however, that the draft as a whole should take article 21 as its guiding principle, since the welcome inclusion of that article was a highly important achievement with regard to the establishment of a new international economic order.

55. The success of the recent United Nations Conference on the Representation of States in their Relations with International Organizations gave grounds for hope that a final and definitive regulation of the law of treaties would be achieved. It was to be hoped that the work of ILC on the question of treaties between States and international organizations or between two or more international organizations would progress more rapidly because of the excellent work done by the working group assigned to that item.

56. His country, which was celebrating the 150th year of its independence, was not indifferent to the need for a legal order adapted to the needs of new nations and therefore supported continuation of the work by ILC on succession of States in respect of matters other than treaties.

57. His delegation did not consider it appropriate to resubmit to ILC the draft articles on succession of States in respect of treaties, since that would be detrimental to the development of international law and set a dangerous precedent which would threaten the independence of ILC. The conclusions reached by ILC during its second reading of those draft articles at its twenty-sixth session had been supported by the Sixth Committee at the twenty-ninth session of the General Assembly, and the Committee should now correct or amend the text, or recommend that the question be studied by an international conference of plenipotentiaries.

58. Countries which, like his own, had participated in 30 sessions of the General Assembly with a view to giving full expression to the purposes and principles of the United Nations saw ILC as an effective ally in the progressive development of international law, and believed that support for its work would lead to lasting peace.

59. Mr. AL-ADHAMI (Iraq) thanked the Chairman of ILC for his excellent presentation of its report.

60. With regard to the draft articles on succession of States in respect of treaties, he felt they were acceptable and formed the basis for the preparation of an agreement. His delegation could not, however, support the proposed article 12 (*bis*) on multilateral treaties of universal character, which was incompatible with the right of newly independent States to self-determination and the administration of their own affairs. It was difficult to define such treaties precisely and to distinguish between multilateral treaties which were desirable and should continue and other treaties. The draft article was, furthermore, incompatible with the principle of equality of States, since it discriminated between newly independent States and other States. Newly independent States should have the right to select the treaties by which they would be bound.

61. He noted that there was disagreement in the Committee as to how to proceed with the draft articles in question. Some representatives had urged that all the draft articles be referred back to ILC, while others felt that it should reconsider only the two proposed articles 12 (*bis*) and 32 relating respectively to multilateral treaties of universal character and the settlement of disputes. His delegation supported neither of those courses, since, as many representatives had already noted, ILC was already overburdened and needed to speed up its work. The best way to deal with the draft articles, the questions raised during the discussion and the comments by Governments would be to hold a diplomatic conference of plenipotentiaries to formulate an agreement. Delegations could, of course, submit comments and proposals for inclusion in the draft. The date of such a conference would naturally depend on the calendar of international conferences, but 1977 might, in his view, be a possibility.

62. Mr. BRUNA (Chile) congratulated the Chairman of ILC on his presentation of its report and noted that such introductory statements considerably facilitated the Committee's consideration of the report.

63. Noting that several representatives had made observations and suggestions concerning the length and content of the report, with particular reference to the difficulty of studying such a long, profound, complicated and amply annotated document in the short time available, he reminded the Committee that, in presenting not only the conclusions of its discussions but also an explanation of its goals and procedures and a justification of its opinions, ILC had produced an excellent reference work on the matters concerned. The report was self-sufficient and a model of order and logic in its explanations and documentation. The quality of the report was, in his view, proportional to its length. The problem should be solved not by shortening the report, but by making it available sooner. He suggested several possible remedies. First, the Secretary-General could accelerate the processes of drafting, translation and distribution. Secondly, the report could be divided into two volumes, the first of which would be made available sooner. Thirdly, ILC could begin its sessions earlier, in April for instance, if that did not conflict with other international legal meetings. A fourth and less desirable solution would be to delay the consideration of the report in the Committee.

64. He welcomed the decision of ILC to set up a planning group to review the progress of its work, and hoped that it would prove possible to accelerate the work. While the items under consideration by ILC were interesting, other equally interesting and more topical items were awaiting consideration. He welcomed the contacts made by ILC with regional juridical organizations, which might yield new matters for consideration by ILC.

65. On the matter of State responsibility, which had been on the agenda of ILC since 1949, he said that, in view of the growing interdependence of States and the increasing movement of individuals and goods from one State to another, it was of the greatest importance that norms be established to regulate the responsibility of the State with

regard to those persons and goods in connexion with internationally wrongful acts, not merely internally, but also at the international level. The purpose was not to grant excessive protection to aliens but to establish rules providing guarantees of safety and responsibility that would benefit States and individuals alike. To that end, the attribution of maximum responsibility to a State would lead to maximum security for those entering its territory from abroad for various social, cultural, scientific, technological and commercial purposes. Articles 1 to 4 tended to establish such maximum international responsibility. He noted with satisfaction that article 10 was based on the theory of *ultra vires* responsibility, which was a modern solution to long-standing problems. He agreed with the representative of Argentina, however, that the wording of the article could be made less obscure.

66. With regard to article 14, he accepted the theory embodied in paragraph 1 and the exception thereto in paragraph 2, but agreed with the representative of Argentina that paragraph 3 was useless and should be deleted. He had reservations concerning article 15, dealing with the attribution to the State of the act of an insurrectional movement which became the new government of a State. The State was one, indivisible, perpetual and permanent, and should not be confused with the government, the characteristics of which were variable and transitory. The introduction of the concept of an insurrectional movement as successor government might give rise to the observation that a new State, and not a new government, had been formed as a result of a fundamental revolution. On the pretext that a new State had been formed, it would become easier to disregard the responsibilities of the predecessor government. The subject was, however, very political and he feared that, in practice, exceptions to the rule of attributing responsibility retroactively to the new government would nullify the effect of the rule or lead to problems having nothing to do with the law. The method of work of ILC and its approach to the topic were correct and he looked forward to future reports dealing with the breach of an international obligation and in particular with the question of circumstances precluding wrongfulness and aggravating and attenuating circumstances.

67. With regard to succession of States in respect of matters other than treaties, his delegation supported articles 9 and 11 but felt that the subject should be treated from the point of view of not only the creditor but also the debtor. While in general agreement with article X, his delegation felt that the rule it embodied should also cover property situated outside the territory to which the succession related.

68. With regard to the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation was in general agreement with the methodology and procedures of ILC and would comment on the substance of the matter on another occasion.

The meeting rose at 1 p.m.

1548th meeting

Friday, 24 October 1975, at 3.15 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1548

Expression of sympathy in connexion with the death of two Ambassadors of Turkey

1. Sir Vincent EVANS (United Kingdom) offered his delegation's sincere condolences to the Turkish delegation in connexion with the horrifying assassinations at Vienna and Paris of two Ambassadors of Turkey.
2. The CHAIRMAN, speaking on behalf of the members of the Committee, offered the Committee's condolences to the Turkish Government.

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1 to 4, A/9610/Rev.1*)

3. Mr. BAVAND (Iran) noted that its report (A/10010) indicated that the International Law Commission (ILC) had made substantial progress in its work at its twenty-seventh session, even if no set of articles had been completed. He congratulated the members of ILC and particularly its Rapporteurs.
4. With regard to the draft articles on State responsibility (*ibid.*, chap. II, sect. 3), by adopting article 10, ILC had put an end to the doctrinal debate on the concept of *ultra vires* and had adopted a position in line with the realities of modern international life: States could no longer easily evade their international responsibilities by alleging that certain actions or omissions of their organs were contrary to the provisions of their internal law. In his delegation's view, the principle embodied in article 10 was therefore consistent with the philosophy of the draft. It did, however, have reservations regarding two points. First, the expression "such organ having acted in that capacity" seemed to be redundant. It was not always easy to establish in a specific case whether a person had acted in an official or private capacity. In addition, stressing the official capacity of an organ would open the way to dispute. Secondly, his delegation would prefer the expression "in the particular case" to be replaced by a more general wording that would preclude any difficulties of interpretation.
5. The principle embodied in article 11 seemed to be sound and in harmony with the philosophy of the draft.
6. There was no doubt that the State could not be held responsible for the conduct of individuals acting in a private capacity. In connexion with individual acts, however, one State might through acts or omissions of its organs contravene an international obligation and thus become responsible. Of course, the doctrine of complicity of the State currently had very limited support. It should be borne in mind, however, that very often States did not hesitate to use riots and mass demonstrations for the realization of their political objectives. To the extent that they violated their international obligations on such occasions, it went without saying that they should be held responsible.
7. The principle embodied in article 12 closely corresponded to the content of article 5, which set no territorial limitation on the attribution to the State of acts of its organs. In addition, the provisions of article 12 clarified the scope of article 9. The Iranian delegation believed, however, that the territorial State could indirectly incur international responsibility for acts committed in its territory by organs of another State and that account should be taken of that possibility.
8. His delegation endorsed the criterion applied in drafting article 13, concerning conduct of organs of an international organization.
9. Article 14 dealt only with those insurrectional movements which were endowed with international personality and were subjects of international law; movements which did not meet those criteria were covered by article 11. On the basis of that analogy, acts committed in a private capacity by an organ of an insurrectional movement should not be attributed to the movement as a whole. Although ILC had not actually defined the term "insurrectional movement" within the meaning of international law, it had in paragraph (3) of its commentary adopted a sort of traditional definition by stating that the term meant an organization which had its own machinery and whose organs might act on behalf of the insurrectional movement itself in a portion of the territory under the sovereignty or administration of the State. According to that narrow definition, in order to be a subject of international law, an insurrectional movement had to assume the status of belligerent power and be recognized as such. ILC should first spell out the requirements imposed by international law for a movement to be classified as an insurrectional movement and adopt a sufficiently flexible definition to cover the various types of insurrectional movement.
10. The Iranian delegation generally supported the text of article 15, concerning attribution to the State of the act of an insurrectional movement which became the new government of a State or which resulted in the formation of a new State. It had doubts, however, about the legitimacy of attributing to the existing government injurious acts

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

committed earlier by an insurrectional movement the leaders of which had then been asked to participate in the government. From a legal standpoint, there had been no break in continuity, since the identity of the State remained the same despite the participation of some members of the insurrectional movement in the government. Contrary to the position adopted by ILC in foot-note 273, the Iranian delegation believed that from a legal point of view a situation in which the legitimate authorities formed a coalition government with the leaders of an insurrectional movement was analogous to a situation in which a legitimate government, after overcoming an insurrection, granted an amnesty to the insurgents, and asked their leaders to participate in the government.

10. Turning to the draft articles on the succession of States in respect of matters other than treaties (*ibid.*, chap III, sect. B), he congratulated the Special Rapporteur on his work.

11. The draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D) reflected the changes in the world resulting from the process of decolonization and represented a step forward in the progressive development of international law. A delicate balance had been struck between the principle of continuity, derived from the rule *pacta sunt servanda*, and the "clean-slate" principle, derived from the right to self-determination. ILC had adopted the "clean-slate" principle as the basic principle, but had provided for exceptions in the case of boundary régimes and other territorial régimes. His delegation had no objection to an exception being made in the case of the boundary régimes dealt with in article 11. On the other hand, in the case of other territorial régimes, which were the subject of article 12, the successor State should be given the opportunity to refuse or accept obligations contracted by the predecessor State. Article 12 should therefore be deleted.

12. With regard to the proposed article 12 (*bis*) concerning multilateral treaties of a universal character (see A/9610/Rev.1, foot-note 57), his delegation appreciated the concern expressed by certain ILC members regarding such treaties, particularly those of a humanitarian nature. It considered, however, that there was no need to abandon the "clean-slate" principle and give special treatment to such treaties. With regard to the proposed article 32, concerning the settlement of disputes (*ibid.*, foot-note 58), the future conference of plenipotentiaries should be left to choose the appropriate machinery. Since the draft articles were to supplement the Vienna Convention on the Law of Treaties, it would seem logical for them to take the form of a convention, which should be adopted by an international conference of plenipotentiaries.

13. Mr. WISNOEMOERTI (Indonesia) thanked the Chairman of ILC for his brilliant introduction of the report under consideration and welcomed the considerable progress made at the twenty-seventh session of ILC.

14. His delegation noted with satisfaction the progress of the work of ILC on State responsibility, for which the principal merit was due to Mr. Ago, the Special Rapporteur on the question. Article 10, which dealt with attribution to the State of conduct of organs acting outside their

competence or contrary to instructions concerning their activity, was important and complemented articles 5 and 7 concerning attribution to the State of the conduct of its organs or the conduct of other entities empowered to exercise elements of the governmental authority. His delegation endorsed the principle embodied in article 10, which reflected State practice, decisions of international tribunals and *opinio juris*. It was indeed necessary, in order to ensure stability and security in international relations, that any act or omission of organs of a State which were acting in that capacity should be attributable to that State, even if the act or omission had been in violation of the provisions of internal law. It should be noted that the international responsibility of the State would be incurred only if it was established that the act or omission attributable to it constituted a breach of an international obligation and that the existence of such a breach could not be established until the injured person had exhausted local remedies. These two rules of international law should protect the State whose organ had acted outside its competence against possible abuses of article 10 by a prospective claimant State. Nevertheless, the absolute terms in which the article was drafted were a matter of concern to his delegation. The need to limit the scope of the principle embodied in article 10 had been recognized both in State practice and in international jurisprudence and opinion, since the basic idea was that, if the lack of competence of the organ had been manifest at the time of the commission of the act, the injured person should have been aware of it and could thus have avoided the injury. After considering the idea of limitation based on manifest lack of competence, ILC had concluded that it should not be incorporated in the rule embodied in article 10. Nevertheless, in the opinion of the Indonesian delegation, ILC would do well to reconsider its position in that regard.

15. The provisions of article 11 on the conduct of persons not acting on behalf of the State stated the long-established principle that the conduct of such persons did not constitute an act of the State under international law entailing its international responsibility. Such a negative limitation of the notion of act of the State was necessary in view of the existence of borderline cases in which an organ of the State acted in its private capacity and which might create ambiguity. The criterion stated in the words "not acting on behalf of the State" was acceptable because it was wide enough to cover different kinds of persons, including parastatal or quasi-public legal persons, which were not regarded under municipal law as private persons, natural persons, who possessed the status of organs of the State and other entities mentioned in article 7. The conduct of such persons might, however, render an organ of the State guilty of a wrongful act or omission which constituted an act of the State under international law and thereby entailed its responsibility. In that event, however, the responsibility of the State did not derive from the act of the person or group of persons referred to in paragraph 1 of article 11 but emanated from the wrongful act, or more often the omission on the part of the State when, for example, it had failed to use all means at its disposal to prevent and punish the particular act. Paragraph 2 of article 11 was a saving clause which prevented a State from evading its international responsibility for its internationally wrongful acts or omissions committed through the conduct of private persons or groups of persons.

16. Article 12 dealt with the conduct of an organ of a State acting in that capacity in the territory of another State or in any other territory under the latter's jurisdiction, and provided in paragraph 1 that such conduct did not constitute an act of the State in whose territory it was committed. The usefulness of the provision lay in the fact that it negated the old notion that a State could be held responsible for everything that occurred within its territory. It was unrealistic to hold a State responsible for internationally wrongful acts or omissions of an organ over which it had no control. It should be stressed, however, that in accordance with the provisions of article 9, internationally wrongful acts committed by the organ of one State after it had been placed at the disposal of another had to be considered as acts of the State at the disposal of which the organ in question had been placed and entailed its international responsibility. Moreover, article 12, paragraph 2, provided that any other conduct of a State which was related to that referred to in paragraph 1 was to be considered an act of the State and, as such, to entail its international responsibility. As the ILC had pointed out in paragraph (5) of its commentary, it would be dangerous to draw too close a parallel between that situation and the situation contemplated in article 11, paragraph 2.

17. Article 13 dealt with the same principle as it affected the conduct of organs of an international organization. In that case, it remained to be determined whether the conduct of the organ in question was attributable to the international organization, as such, or to its member States.

18. Article 14 stipulated that the conduct of an organ of an insurrectional movement established in the territory of a State did not constitute an act of that State under international law entailing its international responsibilities. The article covered either a situation in which the territorial State existed side by side with the insurrectional movement or a situation in which the insurrectional movement, having been crushed by the territorial State, had ceased to exist. His delegation was in agreement with the criterion used to determine the non-attribution principle embodied in that article, namely, a lack of control on the part of the State over the insurrectional movement. It approved the saving clause contained in paragraph 2. On the other hand, it had some doubts about the relevance of the saving clause in paragraph 3. Although article 14 was entitled "Conduct of organs of an insurrectional movement", the provisions of paragraphs 1 and 2 came within the scope of chapter II of the draft articles, since they dealt with the question of the attribution or non-attribution of particular conduct to the State as the subject of international law. Paragraph 3, however, dealt with the issue of the attribution or non-attribution of conduct to a special type of international legal person, namely, an insurrectional movement. His delegation had found in the commentary by ILC no argument justifying the incorporation of a provision of that nature in the draft articles. Should the existence of such a provision be found necessary, it would be wiser to formulate it in general terms in a separate article which would serve as a disclaimer applicable to the draft articles as a whole.

19. Another important provision was article 15, which stated the rule that the act of an insurrectional movement which became the new government of a State or whose

actions resulted in the formation of a new State in part of the territory of the pre-existing State or in a territory under that State's administration constituted an act of the new State entailing its international responsibility. ILC held that that principle was justified by the fact that there was no break in continuity in such cases since the identity of the State remained the same. Although his delegation granted that the principle of continuity was important in order to ensure stability in international relations, it was not sure that ILC had taken into account another important principle recognized in the preceding articles, namely, that an internationally wrongful act or omission of a State organ was attributable to the State under international law only if that State had effective authority and control over the organ in question. That principle should also govern the rules concerning successful insurrectional movements if the consistency of the draft articles was to be maintained. Article 15, as it stood, could create difficulties. Recent history indicated that an insurrectional movement did not always constitute a homogeneous organization and could not at all times exercise effective authority and control over its organs in the course of the insurrection. It was therefore unrealistic to attribute international responsibility retroactively to the new government of a State or, where applicable, to the new State for wrongful acts committed by the organs of the successful insurrectional movement prior to its victory. His delegation hoped that ILC would at its twenty-eighth session reconsider article 15 and improve its wording.

20. He hoped that ILC would continue its work on the topic of State responsibility on a high priority basis at the twenty-eighth session. He reaffirmed the importance of the General Assembly's recommendation in resolutions 3071 (XXVIII) and 3315 (XXIX) that ILC should take up as soon as appropriate the separate topic of international liability for injurious consequences arising out of activities not prohibited by international law.

21. He was gratified by the progress made by ILC with regard to the draft articles on the most-favoured-nation clause (see A/10010, chap. IV, sect. B) and by its intention to complete the first reading of the draft articles at the following session. His delegation subscribed to the principle stated in articles 8, 9 and 10. The unconditionality of the most-favoured-nation clause was indeed in conformity with State practice in modern times. His delegation was also pleased that account had been taken in the draft articles of another modern State practice, namely, the option open to contracting parties to attach conditions of material reciprocity to the most-favoured-nation clause, the application of which was limited to certain fields and which implied treatment of the same kind and in the same measure.

22. Articles 11 and 12, which dealt respectively with the scope of rights under a most-favoured-nation clause and entitlement to rights under it were the expression of the *ejusdem generis* rule, which itself stemmed from the principle that a State could not be regarded as being bound beyond the obligations that it had expressly undertaken. In view of the usefulness of that rule, his delegation unreservedly supported articles 11 and 12.

23. It also supported article 13. The rule stated in it was indeed consistent with the principle of the unconditionality of the most-favoured-nation clause.

24. It had been a wise course to deal, as ILC had done in articles 16 and 17, with the right to national treatment under a most-favoured-nation clause. There was a close relationship between most-favoured-nation treatment and national treatment. Nevertheless, the national treatment clause should be embodied in the draft articles only to the extent that its relationship to the most-favoured-nation clause was considered.

25. One of the most important draft articles was article 21, concerning the most-favoured-nation clause in relation to treatment under a generalized system of preferences. The rule adopted by ILC in that respect was realistic and took account of the striking inequality which prevailed in international economic relations between States which were not at the same level of economic development. In order to overcome the existing imbalance in international economic relations, agreement had emerged within the United Nations system on the need to establish generalized non-discriminatory, non-reciprocal preferential treatment. That agreement had been affirmed in, among other documents, the International Development Strategy for the Second United Nations Development Decade (General Assembly resolution 2626 (XXV)), in the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)) and in resolution 3362 (S-VII) of the seventh special session of the General Assembly. Article 21, which also affirmed that need, deserved the full support of the Committee. His delegation recognized, however, that the provisions of that article were not sufficient to protect the interests of the developing countries and commended the ILC's intention to reconsider and develop them.

26. Mr. VILLAGRAN KRAMER (Guatemala), referring to the draft articles on succession of States in respect of treaties, said that ILC should review the two articles which had given rise to the greatest number of observations before the question of convening a conference of plenipotentiaries was settled. Multilateral treaties could be divided into two categories, according to whether or not they codified rules of international law in force. The rules contained in treaties in the first category were binding on new States, irrespective of their consent, whereas those in treaties in the second category were based on the consent of the contracting States and thus of the successor State also. ILC should also consider the case of multilateral treaties which required that certain conditions be fulfilled before the successor State could give its consent. His delegation agreed with ILC that boundary treaties were not, in principle, affected by a succession of States, but wished to stress that if a treaty concerning the ceding of territory became void it could not then be claimed that the delimitation of boundaries which it established was immutable. As was shown by paragraph (17) of the commentary on article 11, the mere occurrence of a succession of States did not consecrate a boundary established in an earlier boundary treaty when that boundary was challenged or the validity of the treaty was questioned because it had become void. In such cases, it could not be considered that the boundary was established in a mandatory manner and it could even be claimed that there was no boundary at all. In practice, all kinds of situations could give rise to controversy regarding the existence or legal scope of such treaties at the time of a succession of States, and the successor State could then invoke the "clean-slate" principle.

27. Turning to State responsibility, he stressed the abundant Latin American judicial precedents cited by ILC in its report. It was surprising to see, after what had happened in Latin America, that international law relating to State responsibility had developed in a way unfavourable to the developing countries. Generally speaking, his delegation endorsed the observations made by other Latin American delegations, particularly with regard to the need to clarify the grey area between what was lawful and what was not, and to take into account current Latin American theories.

28. A more up-to-date approach should be taken by ILC to the question of the most-favoured-nation clause. In codifying that subject it should take into consideration the changes which had occurred in the sphere of international economic law with regard to both legal concepts and institutions. In some spheres reciprocity was no longer current and in others it had undergone fundamental changes, tending towards the establishment of régimes based on equity and the development of all countries. As was shown by studies carried out in third world countries, the most-favoured-nation clause was better adapted to relations between highly industrialized countries than to relations between those countries and developing countries; it even hampered economic relations between developing countries. It was precisely for that reason that economic integration agreements had been concluded. Those agreements provided for exceptions to the automatic application of the most-favoured-nation clause and permitted the balanced development of all the States parties to them. That was why his delegation was somewhat concerned about article 15. As the representative of Italy had pointed out when speaking on behalf of the European Economic Community (EEC) (1544th meeting), the principle set out in that article might lead to the dismantlement of economic integration projects. Guatemala, which was a member of the existing Central American Common Market and was taking an active part in the creation of a Central American economic and social community, considered that a provision such as article 15 might cancel out the advantages which the States members of that common market granted each other and considerably reduce the objectives of an economic and social community. Article 21 concerned only generalized systems of preferences in force between States, but made no reference to agreements which might be concluded between two communities or two economic integration areas. Although he appreciated the many difficulties ILC faced in preparing a series of articles on the most-favoured-nation clause, he wished to stress the need to take into account recent instruments concerning international economic law, such as the Charter of Economic Rights and Duties of States.

29. Mr. FUENTES IBÁÑEZ (Bolivia) expressed his admiration for the work done by ILC at its most recent session.

30. Reviewing the articles on State responsibility already prepared, he said that the question of the attribution to the State of conduct of its organs or other entities empowered to exercise elements of the governmental authority had never been better defined than in the draft submitted by ILC. Article 10 drew a distinction between acts of the State and acts of its organs or entities acting outside their competence; under international law, an act of the State existed in both cases. That view seemed justified in view of the

exception in article 11 with regard to the conduct of persons not acting on behalf of the State. Article 12, on the conduct of organs of a State other than the territorial State, called for more detailed study by ILC. In the modern world there still existed certain forms of foreign interference in a territorial State, to the detriment of third States, which benefited by the tolerance or even co-operation of the local authorities. The same was true of article 13, on the conduct of organs of an international organization: it was necessary to prevent representatives or agents of Governments or international organizations from lending themselves to manoeuvres which endangered good international relations.

31. For the same reason, his delegation considered that the text of article 14, on the conduct of organs of an insurrectional movement, was not entirely satisfactory. The substance of the problem had not been properly elucidated, except as an exception. However, the activities of an insurrectional movement did not usually fall solely within the competence of subordinate authorities and the tolerance shown towards them expressed the will of the territorial State, which endorsed the objectives of the insurgents. The fact that subordinate organs were not competent did not mean that the responsibility of the State was not entailed. Article 14 should therefore be revised in the light of contemporary experience and, more especially, of cases where terrorist bands installed themselves in the territory of a State to establish a combat front there. His delegation considered that a justifiable exception could be made for national liberation movements struggling against a colonial régime, but that exception should not be generalized. It was not justified when the acts of insurrectional movements were directed against a country constituted as a free State and possessing traditional institutions. In its commentary on article 14, ILC stressed that the relations between an insurrectional movement and the country in which it was established must be close in order for the latter's complicity to be recognized. If such were the case, the acts of insurrectional movements ceased to be the acts of individuals, from the international point of view, and became acts of entities acting in concert with the State. The case which ILC had in view was an extreme one, which exceeded the case of tacit complicity covered by article 14. Furthermore, that case had not been expressly treated in the article. Consequently, his delegation would like the relevant provisions to be revised or a new article to be devoted to violations of that kind.

32. With regard to the damage which aliens might incur in the case of insurrections, rebellions or disorder, his delegation admitted that the responsibility of the territorial State was limited, unless there was negligence or manifest omission on its part.

33. The reserve with which the Latin American States regarded current developments was explained by their experience in the past, when foreign Powers had exerted on them pressure which infringed their sovereignty and their dignity. However, more recently they could count on effective security services to protect them, maintain order in their international relations and guarantee the security of their inhabitants.

34. With regard to the most-favoured-nation clause, his delegation, like the delegation of Paraguay (1538th meet-

ing), considered that the national treatment granted in bilateral agreements and the treatment received by developing countries should not be invoked by third States when those privileges flowed solely from the unfavourable geographical situation of the beneficiary States. The clause should likewise not be applied in the case of free-trade areas, customs unions or regional groupings pursuing common objectives relating to economic co-operation and development, which should not be extended to countries that were obviously more developed. In preparing a code of international legal rules in the economic sphere, account must be taken of the Charter of Economic Rights and Duties of States and the rules to be contained in the future convention on the law of the sea.

35. With regard to the draft articles on the succession of States in respect of matters other than treaties, his delegation was in favour of articles 5, 6 and 7. The principle of the extinction of the rights of the predecessor State on the date on which the successor State assumed territorial sovereignty was an irrefutable one, which should also be applied to property situated in foreign countries. As to the principle enunciated in article 9, it was supported by judicial practice and any change would only engender confusion. Moreover, the predecessor State and the successor State could always derogate from it and in the report under consideration ILC mentioned cases in which debts had been transferred to the successor State. Like certain members of ILC, his delegation felt that the term "*pasarán*" in article 11, which was used with respect to debts owed to the predecessor State, was imprecise; it might be replaced by "*pasarán a beneficiar al Estado sucesor*" or by "*serán transferidos en beneficio del Estado sucesor*".

36. Summarizing the position of his delegation, he said that the draft articles on succession of States in respect of treaties should not be referred to ILC; the Sixth Committee or a conference of plenipotentiaries should at the appropriate time consider the observations made on them during the current debate; the concept of foreign intervention through armed insurrections or terrorist bands should be more satisfactorily defined in the articles on State responsibility; provision should be made for exceptions to the application of the most-favoured-nation clause in the case of developing countries and particularly land-locked countries and geographically disadvantaged countries; the reports of ILC should be circulated earlier so that they could be studied with the attention that they deserved, but they should not be too brief, nor, in particular, should they be issued without commentaries. His delegation had a special interest in the law of the non-navigational uses of international watercourses.

37. Sir Vincent EVANS (United Kingdom) noted the substantial progress made by ILC at its previous session in the study of many important subjects and he congratulated its Chairman on his excellent presentation of its report.

38. It was important that ILC should continue to enjoy a high degree of autonomy in the conduct of its work. His delegation welcomed the establishment by ILC of a planning group to study its functioning and formulate suggestions regarding its work. The Sixth Committee should exercise restraint in issuing directives to ILC about the conduct of its work, although ILC and its planning group

could be expected to take into consideration the views expressed during the current debate.

39. He welcomed the progress made by ILC with respect to four major projects but wondered if it would not be preferable for it to concentrate on fewer topics at each of its sessions. That would make it easier for the Sixth Committee and Governments to follow the work of ILC and comment on its drafts. Endorsing the suggestion made at the previous meeting by the representative of Chile, he said that ILC should consider issuing its reports in two or more parts so as to give Governments a little more time to study the chapters that were ready first. With reference to the observations made by other members of the Committee concerning the role and content of the annual reports of ILC, and particularly the need to include so much material in the commentaries which accompanied the draft articles, he observed that there was no provision in the Statute of ILC requiring it to submit an annual report to the General Assembly. It would therefore be open to the Sixth Committee to request a report presented in a form different from the traditional one. However, the report had taken its present form for reasons to be found in the Statute of ILC itself. When ILC codified a topic of international law it was required, under article 20 of its Statute, to prepare its drafts in the form of articles and submit them to the General Assembly together with a commentary covering the points specified in that provision. Other provisions of the Statute concerned the preparation of proposals for progressive development and also required that the draft by ILC should be accompanied by such explanations and supporting material as ILC considered appropriate. In practice, of course, ILC rarely distinguished between draft articles which were measures of codification and those which were proposals for progressive development of international law.

40. Accordingly, the commentaries which accompanied the draft articles of ILC were part of the process of codification and progressive development and were drafted along with the draft articles. It would therefore be difficult to reserve them for the final draft and to provide only commentaries in a summary form in the interim reports of ILC. The fact was that they could not be dissociated from the actual text of the draft articles and they were included in the report to enable members of the Committee to see how the work of ILC was progressing and, where appropriate, to make preliminary comments. However, it was true that the commentaries, excellent though they were, tended to be unduly lengthy.

41. As other members of the Committee had observed, it seemed premature to formulate detailed comments on the numerous draft articles contained in the report of ILC, particularly since they had not yet been formally referred to Governments for comment. He was therefore obliged to reserve his Government's position on them until they could be studied in the context of a complete set of draft articles on each topic.

42. With regard to the draft articles on State responsibility, he said that some 20 years earlier he had been involved in a case which made him wonder whether some of the expressions used in the draft articles, such as "organ of a State" or "organ of an entity which is not part of the

formal structure of the State or of a territorial governmental entity but which is empowered ... to exercise elements of governmental authority" should not be defined with greater precision. The case to which he referred involved a collision in the English Channel between a ferry operated by the British Transport Commission, a public corporation set up to run the nationalized railways and ferries, and a United States naval vessel. What would be the status under the draft articles of an autonomous public corporation set up by internal law to operate a nationalized industry? Would it be an organ of a State? At the time it had been argued that the British Transport Commission was not an organ or agent of the United Kingdom Government. But, if it was not an organ of the State, was it, when operating ferries which were part of the nationalized transport system, an entity exercising "elements of governmental authority"? Further, if either vessel had been guilty of negligence, did its conduct constitute a breach of an "international obligation" within the meaning of article 3(b)? In that connexion he noted the statement in paragraph 40 of the report that ILC would at a later stage be considering the desirability of including definitions of some of the terms used in the draft articles.

43. With regard to articles 7, 8, 9 and 11 of the draft articles on succession of States in respect of matters other than treaties, each of which was qualified by the phrase "unless otherwise agreed or decided", he said that his delegation had considerable reservations about attempting to deal with complex matters by the application of rules drafted in very general terms, particularly as they might apply in situations in which there was no opportunity for agreement between the predecessor and successor States. However, the draft was still in its early stages and the Committee should not be unduly impatient for the results of the work of ILC on that subject.

44. The Italian delegation had already made a statement on behalf of the nine States members of EEC drawing attention to some of the problems raised for the Community and other economic and customs unions by the draft articles on the most-favoured-nation clause. With respect to paragraphs 105 to 108 of the report, concerning the question of national treatment, he said that it was his delegation's view that ILC should not complicate its task by extending the scope of the draft articles to cover national treatment clauses.

45. His delegation welcomed the progress made on the draft articles on treaties concluded between States and international organizations or between international organizations (see A/10010, chap. V, sect. B) and thought that ILC should intensify its efforts to complete its work on the topic by 1981.

46. He said that as a member of the European Committee on Legal Co-operation, one of the three regional bodies with which ILC maintained relations, he wished to state that that Committee followed with close interest the work of ILC and always welcomed with great pleasure its Chairman or other representative of ILC at its meetings.

47. Miss AGUTA (Nigeria) recognized the need for the codification and development of international law in the areas of State responsibility, succession of States in respect

of matters other than treaties, the most-favoured-nation clause, treaties concluded between States and international organizations or between two or more international organizations and the non-navigational uses of international watercourses. Moreover, ILC had prepared draft articles on the first four topics which would provide a satisfactory basis for codification. However, the report of ILC was voluminous and should have been sent to delegations earlier than it had been, so as to allow more time to study it before the current session.

48. Nigeria was proud that one of its jurists was a member of ILC, the work of which it would support in the light of the suggestions and comments made by the members of the Committee and by Governments.

49. With regard to the succession of States in respect of treaties, she said that at the current stage of international relations all that it was possible to produce in the way of international law was compromises derived from political interests, compromises which would be modified with the passage of time. In fact, part of the task of the Committee was to identify those areas where improvements were needed. If all the ideas contributed by representatives were combined it would be possible to work out an orderly international arrangement. When all interests became one, then the world would have more stable international laws and regulations. The question of succession of States in respect of treaties was a delicate and important one in that the aim was to eliminate relationships of domination so that peoples could exercise their right of self-determination. Newly independent States must have the right to review treaties entered into on their behalf by predecessor States in matters concerning sovereignty over their territory and to choose those by which they wished to be bound. Therefore, Nigeria found acceptable the "clean-slate" principle, which, if properly applied, would not be prejudicial to the principle of continuity, which envisaged the preservation of international norms the value of which had been established. After review, treaties concluded in the obvious interest of the successor State by the predecessor State could doubtless easily be adopted by the successor State. Recalling a maxim of the representative of Ghana that one's friends should not help one to choose one's enemies, she said that thanks to those principles a newly independent State would begin life among other members of the world community with a relaxed and mature attitude.

50. Her delegation recognized the need to safeguard the interests of newly independent States, while also believing that no newly independent State would reject treaties entered into on its behalf by a predecessor State just for the sheer joy of exercising its right of self-determination. Her delegation welcomed the general approach adopted by ILC in formulating the draft articles and reserved its right to make further and more detailed commentaries in future.

51. Furthermore, since ILC felt that it had completed its work on the matter, it would be possible either to convene a conference of plenipotentiaries to deal with the matter further or leave it for the Sixth Committee for discussion. In order to avoid clashing with other conferences, it might be wiser to include the matter in the agenda of the Sixth Committee for the next session.

52. Mr. SIAGE (Syrian Arab Republic) said, with reference to the succession of States in respect of treaties, that his delegation supported the efforts by ILC to develop and adopt progressive principles which would serve as a basis for the codification of the question in the form of an international convention. His delegation supported the "clean-slate" principle because countries formerly dominated by colonial Powers could not be compelled to respect treaties concluded without their consent. Consequently, his delegation had reservations on articles 11 and 12. Indeed, the principle underlying those articles was contrary to the inalienable right of people to self-determination. The international community could not confer any legitimacy on territorial concessions granted with the aim of achieving political objectives which failed to take into account the geographical and historical unity of the colonized country. On the whole, his delegation approved the draft articles on the succession of States in respect of treaties but at the appropriate time it would express reservations on articles 11, 12 and 12 *bis*, which required further review. Similarly, because of the political nature of article 32, ILC should review it in the light of the comments of States and of the discussion in the Sixth Committee. ILC should re-examine the draft articles and it would therefore be premature to convene a diplomatic conference.

53. With regard to State responsibility, a question which reflected the development of relations between newly independent States and colonial Powers, a distinction should be made between internationally illicit acts and acts which threatened international peace and security. States should be held responsible for the most dangerous acts, namely, the expulsion of populations from their territories, aggression, territorial expansion and discriminatory and racist policies, which constituted crimes against peace and humanity. The agents of States guilty of those crimes should be brought to justice and States should assume civil responsibility for them. It would also be appropriate for ILC to base its discussions on the Definition of Aggression adopted by the General Assembly at its twenty-ninth session (resolution 3314 (XXIX), annex) and on the comments made by the delegations of the German Democratic Republic and Romania (1539th and 1543rd meetings).

54. Furthermore, a distinction should be made between articles 14 and 15 to the extent that the legitimacy of national liberation movements was derived from the Charter of the United Nations itself because the Charter recognized the right of peoples to self-determination. Also, national liberation movements could not be held responsible for acts committed during their struggle for independence and freedom.

55. The new rules of international law should be based on the needs and interests of the developing world. There were two short-comings in the report of ILC: on the one hand, it precluded many countries of the third world from taking part in the discussion because they lacked specialists and, on the other hand, it was too long and had been circulated too late. Nevertheless, objectivity should not be sacrificed to concision. He therefore requested the Chairman of ILC to study his comments and to bring them to the attention of its members. Thus the delegations of the developing world could play a greater role in the debate on the work of ILC.

56. With regard to the question of the law of the non-navigational uses of international watercourses, he pointed out that the competent authorities of the Syrian Arab Republic were studying the question and would submit detailed comments on it. Meanwhile, he wished to state that each riparian State of a basin should have an equitable share in the uses of the water of the basin; that it was important to take into account the geographical nature (surface, climate, population) and the hydrological nature of the basin, its previous and current uses, the degree of importance of each use at the social level and present and future needs (from the economic, social and development viewpoints); that allowance should be made for the existence of other water resources; and that priority should be given to development needs and to the riparian States whose water resources were meagre.

57. He pointed out that his delegation supported the work of ILC.

58. Mr. MANSFIELD (New Zealand) said, with reference to the methods of work of ILC, that his delegation had noted with particular interest the establishment of a planning group within ILC to study its functioning and its programme and organization of work. Notwithstanding the fact that ILC had adopted a record number of articles, the establishment of the planning group might well prove to be the most important development of the last session of ILC. Largely because of the group's work, the report of ILC gave a clear perspective of the state of progress with current topics and a time-table for future action. The group's activities should be helpful to ILC and also to the General Assembly itself, in its developing a close understanding of the aims and priorities of ILC. His delegation was glad to note that ILC had endorsed the idea that the review in which the group was engaged was an ongoing process. From the findings of the planning group it would seem that four sets of articles (the first phase of State responsibility, succession in respect of public property and debts, the most-favoured-nation clause and treaties between States and international organizations or between international organizations) should be completed in first reading during the next six years and that at least two or three of the topics might be advanced to a second reading within that period. In that case, the Assembly might expect, possibly in each of those six years, to receive a completed set of draft articles.

59. It was clear that if ILC was to adhere to that time-table and to advance the consideration of other topics, ILC itself and the Codification Division would have a considerable amount of work. Careful attention should therefore be paid to the manning table of the Division, which did not only support the work of ILC, so that it was able to

continue fully the high level of its contribution and support to the work of ILC.

60. It was essential that ILC always retain a sufficient degree of flexibility to be able to take up new matters to which the Assembly attached urgency. At the same time, his delegation was fully conscious of the fact that, if its work was to retain not just its high quality but also its political relevance, ILC should not be unduly rushed. It was sensible for ILC to recognize the peculiar difficulties of succession in respect of matters other than treaties and to invite the Special Rapporteur to concentrate his work in the area of public property and debts. For the same reason, his delegation was inclined to wonder whether it would prove wise, at the present stage, for ILC to extend the coverage of its articles on the most-favoured-nation clause to the question of national treatment. There might well be other areas, too, in which time and effort should be conserved.

61. The working methods of ILC were commendable, particularly the system of Special Rapporteurs. With the support of the Codification Division, a Special Rapporteur could advance a particular subject a very great distance without actually taking up the time of ILC as a whole.

62. There seemed to be a case for greater brevity in the reports of ILC. Yet it would be hard to exaggerate the value of a passage such as the introduction to the chapter on State responsibility, which enabled the reader to follow easily the working plan of ILC. The second phase of the State responsibility project should be carried out when the articles of the first phase had been completed, thus providing a framework of the progressive development of the law and a thread of continuity in the changing fields of the work programme of ILC. Thus, the focus of interest on responsibility for wrongful acts also highlighted the importance of the topic of responsibility for risk. The topic of responsibility, like the topic of international waterways, was very closely bound up with the striving of the world community towards a better planned and more disciplined use of its natural environment.

63. There seemed to be quite good prospects of involving ILC in new areas of great topicality without any abrupt changes of method or direction. However, the orderly dispatch of business would seem to demand the completion of the work on the most-favoured-nation clause and continued progress on the topic of treaties with and between international organizations on the current promising lines.

The meeting rose at 5.45 p.m.

1549th meeting

Monday, 27 October 1975, at 3.25 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1549

In the absence of the Chairman, Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*) (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. ROJANAPHRAUK (Thailand) said he was gratified to learn that the International Law Commission (ILC) had made further progress in its work on State responsibility, but pointed out that it had yet to take up the question of international liability for injurious consequences arising out of acts not prohibited by international law. With respect to article 14 of the draft articles (see A/10010, chap. II, sect. B) in particular, regarding the conduct of organs of an insurrectional movement, it should be noted that under paragraph 2, a State could be held responsible for conduct which was related to that of the organ of the insurrectional movement and which was to be considered as an act by that State by virtue of articles 5 to 10. His delegation was of the opinion that articles 5 to 10 should not apply to the conduct of organs of an insurrectional movement, which in no case could be considered to be an act of an organ of the State acting in that capacity since, by definition, the insurrectional movement was opposed to the legitimate government, the principal organ of State. His delegation was fully aware that that provision was drafted to be used as a safeguard clause in order to avoid any ambiguity with regard to any failure by a State to fulfil its international obligations. It was for that reason that it suggested adding the phrase "unless it provides otherwise" at the end of paragraph 1 of article 14. That addition would cover all exceptions to the principle of the non-attribution to a State of the conduct of an organ of an insurrectional movement.

2. With regard to the draft articles on succession of States in respect of matters other than treaties (*ibid.*, chap. III, sect. B), he shared the view of the members of ILC who maintained, with respect to article X (Absence of effect of a succession of States on third State property), that since the property, rights and interests of the third State existed before the date of the succession of States, only the law of the predecessor State should be taken into account in determining their ownership.

3. With regard to the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), his delegation believed that they should also extend to national treatment.

* Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

4. With regard to the draft articles on treaties concluded between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he pointed out that the wording of the draft articles was based on the Vienna Convention on the Law of Treaties¹ and he therefore doubted the usefulness of adopting separate terms with respect to a State or an international organization, because he believed that that distinction would only complicate the drafting of the treaties under consideration.

5. His delegation had no views to add to the remarks it had made at the previous session on the succession of States in respect of treaties (1496th meeting), but believed that a conference of plenipotentiaries, convened at an appropriate time, should be entrusted with considering the question of multilateral treaties of universal character and the question of settlement of disputes.

Mr. Njenga (Kenya) took the Chair.

6. Mr. TODOROV (Bulgaria) said that on the occasion of the thirtieth anniversary of the United Nations, ILC deserved to be congratulated for its contribution to the progressive development and codification of international law in the service of peace and peaceful coexistence. However, compared to the dynamism of international life, the results achieved by ILC seemed insufficient. It was true that the elaboration of treaties was an art in itself, but the procedures should be adapted to the rapid changes in international society. He wondered whether it would not be preferable for ILC to focus its attention on fewer topics with a view to their speedier completion. Then the Sixth Committee could assist it substantially and thus avoid criticizing ILC for the slow pace of its work.

7. Stressing the importance of the codification of international law relating to State responsibility, he observed that ILC had drawn up only 15 articles, even though that item had been on its agenda since 1947. He believed that there should be a clearer definition of the acts for which a State could be held responsible. A distinction should be made between the different categories of internationally wrongful acts according to their severity, with particular respect to colonialism, genocide and aggression. A clearer definition should be provided which would comprise political, military and economic aggression, including economic blockades, plundering of natural resources and ill-treatment of foreign workers. Furthermore, when a third State supported a people fighting to exercise its right to self-determination, no responsibility could be incurred towards the colonial and racist régime which refused the people that very right. A provision to that effect should

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF. 39/27, p. 287.

therefore be included in the draft articles on State responsibility.

8. His delegation noted with satisfaction that ILC had taken into account the international responsibility of States in cases of breaches of international obligations and the importance which the international community attached to obligations related to the maintenance of peace and security.

9. On the question on succession of States in respect of matters other than treaties, his delegation believed that ILC should draft a single text on succession of States in respect of treaties and succession of States in respect of matters other than treaties. It should also take up consideration of articles 12 *bis* and 32 (see A/9610/Rev.1, foot-notes 57 and 58) which had been proposed for inclusion in the draft articles on that topic (*ibid.*, chap. II, sect. D) and for which ILC had not followed its usual procedure.

10. The most-favoured-nation clause was a significant instrument for enhancing commercial relations in the world, expanding co-operation among countries and strengthening international peace and security. In the future, ILC should take into consideration the new progressive trends in international trade, such as the provisions contained in the Final Act of the Conference on Security and Co-operation in Europe, signed in Helsinki, concerning co-operation in the fields of economy, science, technology and the environment. On the whole, his delegation was satisfied with the draft articles, on the understanding that the draft would be based only on the principle of unconditionality laid down in article 8. His delegation, being firmly convinced that that principle reflected the prevalent trends in international legal doctrine and the irreversible trends in contemporary practice, welcomed that decision by ILC. There was no doubt that the draft on the most-favoured-nation clause would contribute to developing beneficial co-operation among all States on the basis of sovereign equality. ILC had also taken into consideration the particular position of the developing countries in contemporary international economic relations.

11. Article 21 bore witness to the fact that United Nations decisions, particularly those of the United Nations Conference on Trade and Development (UNCTAD), were beginning to find concrete expression in international legal texts. The article took into account the different levels of economic development, a very important point for developing countries.

12. His delegation believed it was imperative to word precisely the draft articles on treaties concluded between States and international organizations or between international organizations, in order to reflect the particularities that distinguished international organizations from States. When it resumed its work on that item, ILC should keep in mind the recommendations and suggestions made by members of the Sixth Committee and should pay particular attention to the question of reservations, giving due consideration to the fact that the legal personality of international organizations existed only as a result of the free will of States.

13. His delegation was satisfied with the efforts made by ILC aimed at rationalizing the organization and methods of

its work. In order to accelerate its work on certain matters, it should receive in time the comments, opinions and proposals of States on particular points. It would be worth while to seek ways of speeding up the communication of those replies, and the order of priority of questions entrusted to ILC should be revised more often.

14. Mr. MONTENEGRO (Nicaragua), referring to the criticisms which had been voiced concerning the length of the report of ILC, which according to some delegations had proved an obstacle to thorough consideration of its contents, said that the report attested to the sense of responsibility and legal knowledge of the members of ILC. He did not personally feel competent to suggest to ILC ways of improving its methods of work. Moreover, in the last analysis, it was for Governments to give their approval to the report of ILC, which in reality served as a kind of basis for consultations. In that spirit, his comments would be of a preliminary and general nature and his Government would submit its comments on the draft articles prepared by ILC in due course.

15. With regard to succession of States in respect of treaties, his delegation endorsed the "clean-slate" principle on the ground that every new State must be able to accept or reject with complete freedom the treaties to which the predecessor State had been a party, in accordance with the principles of self-determination, State sovereignty and freedom of decision. Furthermore, ILC had struck a balance between the "clean-slate" principle and the principle of *pacta sunt servanda*. The draft articles were of great significance at a time when new States were coming into existence.

16. Turning to the question of State responsibility, one of the most controversial topics ILC had to consider, he said that his delegation endorsed the criteria for determining internationally wrongful acts and the organs the conduct of which engaged the responsibility of the State. It endorsed the idea that an act of the State could be characterized as internationally wrongful only under international law. The question of State responsibility, which had been on the agenda of ILC for a number of years, but whose consideration had not, for a number of reasons, led to the preparation of draft articles, was closely related to the question of breaches of rules of international law and international obligations and the question of wrongful acts likely to pose a threat to international peace and security.

17. With regard to succession of States in respect of matters other than treaties, his delegation agreed with the approach followed by ILC in its draft articles.

18. Turning to the most-favoured-nation clause, which had contributed not only to the development of trade relations among States but also to economic development, he said he feared that in the case of movements towards regional integration, such as the one in Central America, the participating States could grant the benefits of the most-favoured-nation clause to third States only in exceptional cases.

19. Mr. KRISHNADASAN (Swaziland) welcomed the delegations of Cape Verde, Mozambique, Papua New Guinea and Sao Tome and Principe.

20. His delegation was pleased by the progressive and pragmatic approach taken by ILC to the question of succession of States in respect of treaties. In that connexion, the central problem seemed to be the extent to which treaties previously applicable to a given territory remain applicable after a change in sovereignty over that territory.

21. With regard to newly independent States, article 15, which provided that a newly independent State was not *ipso jure* bound by the treaties concluded by the predecessor State nor under any obligation to become a party to them, was based on the "clean-slate" principle and took due account of the principle of self-determination and equality of States. However, articles 16 and 17 granted a newly independent State the right, if it wished, to participate in a multilateral treaty on its own behalf as a separate contracting party by a notification of succession. In accordance with article 22, paragraph 2, the operation of such a treaty was regarded as suspended between the date of a succession of States and the date of making the notification of succession. Nevertheless, the treaty could be applied provisionally during the interim period in accordance with article 26. Those provisions were, in a sense, a departure from the "clean-slate" principle, since they presupposed some legal relationship between a new State and its predecessor. In his delegation's view, article 24 spelled out the obvious and was therefore unnecessary. Articles 18, 32 and 36, which related to participation in treaties signed by the predecessor State subject to ratification, acceptance or approval, likewise seemed unnecessary and should be deleted. In such cases, at the moment of the succession of States, the predecessor State had not contracted or acquired any definitive obligations or rights which could be transmitted to the successor State. Moreover, in accordance with the decisions of the International Court of Justice and article 14 of the Vienna Convention on the Law of Treaties, a signature subject to ratification, acceptance or approval did not bind the State in question.

22. Articles 11 and 12 pertaining to boundary régimes and other territorial régimes constituted the principle exception to the "clean-slate" principle. While they represented a laudable effort by ILC to ensure peace and tranquillity, they could be criticized on the ground that they did not respect the principles of self-determination and the sovereign equality of States that underlay article 15. Colonial frontiers had been established for strategic or economic reasons, without any regard to geographical or ethnic considerations. The fact that in 1964 both the Assembly of Heads of State and Government of the Organization of African Unity (OAU) and the Conference of Heads of State or Government of Non-aligned Countries had adopted resolutions whereby States Members pledged to respect the borders existing on their achievement of national independence did not necessarily mean that a future convention on succession of States in respect of treaties should elevate to the status of a rule of international law a provision which had been adopted at a given moment in history in the interests of stability. While it was correct that article 62 of the Vienna Convention on the Law of Treaties stated that the argument "*rebus sic stantibus*" could not be invoked as a ground for terminating or withdrawing from boundary treaties, that article must be read in the light of other well-established rules of international law. The Vienna

Convention and customary international law provided that a State could be bound only by an act of will establishing consent to be bound. Without that consensual element, there was no reason why a successor State should automatically succeed to a treaty establishing a boundary or other territorial régime concluded by the predecessor State. He was not denying the need for territorial treaties, but if it was necessary to formulate rules governing boundary and other territorial régimes, they should be in keeping with current realities and in harmony with widely accepted rules of international law.

23. Part IV of the draft articles, entitled "Uniting and separation of States", seemed to be based on a principle that was diametrically opposed to the "clean-slate" principle. It was difficult to see what difference there was between newly independent States and new States formed by unification or division which justified the application of the "clean-slate" principle in the case of the former but not the latter. ILC had recognized in article 33, paragraph 3, that the "clean-slate" principle could apply to cases where the separation occurred in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State. However, the application of that provision might entail difficulties and since both the unification and separation of States could result in the creation of radically different personalities, it would have been preferable to have the "clean-slate" principle apply.

24. Article 7 regarding the principle of non-retroactivity seemed unnecessary as that general principle of the law of treaties was already reflected in article 28 of the Vienna Convention. Moreover, it might minimize the usefulness of the draft articles for newly independent States, despite the inclusion of the words "except as may be otherwise agreed". It would be preferable to incorporate in the draft a provision stipulating that a successor State could, if it so wished, have the draft articles apply to it as from the date of succession.

25. His delegation did not favour the inclusion of the proposed article 12 *bis* in the draft articles. On the one hand, the concept of a multilateral treaty of universal character was far too vague, while, on the other, a newly independent State had as much right as any other to exercise its will by deciding whether to become a party to a multilateral treaty. Moreover, certain multilateral conventions, such as the Geneva humanitarian conventions, embodied rules of customary law and were therefore binding on a newly independent State, irrespective of whether or not it was a party to such treaties.

26. On the question of the settlement of disputes, the conciliation procedure provided for in the proposed article 32 merited serious study. The best solution would be for the question to be decided in the forum responsible for finalizing the draft articles.

27. With regard to the matter of procedure, his delegation considered that ILC need not revert to the draft articles. Since the draft articles were intended to supplement the Vienna Convention on the Law of Treaties, they should be adopted in the form of a convention. That task might be entrusted either to a conference of plenipotentiaries or to

the Sixth Committee. His delegation was ready to accept either solution.

28. Turning to the report of ILC on the work of its twenty-seventh session (A/10010), he said that articles 14 and 15 on State responsibility raised a number of questions and ought to be further examined by ILC. Could the same criteria regarding responsibility for an internationally wrongful act be applied to a victorious national liberation movement which had rid its country of colonialism and to an insurrectional movement which was trying to overthrow an established Government? Since international law recognized that a national liberation movement had the right to self-determination should not a provision be included to the effect that the articles on State responsibility were not applicable to the activities of such a movement? What was really meant by an insurrectional movement? Could an insurrectional movement which had completely ceased to exist be held responsible for an internationally wrongful act? Finally, given the very nature of such a movement, was it really possible to speak of the organs of an insurrectional movement?

29. With regard to the most-favoured-nation clause, his delegation shared the opinion expressed by UNCTAD in its report on "International trade and the most-favoured-nation clause" ("the UNCTAD memorandum"),² namely that to apply the most-favoured-nation clause to all countries regardless of their level of development would satisfy the conditions of formal equality, but would in fact involve implicit discrimination against the weaker members of the international community. Universally accepted rules certainly needed to be formulated on the subject of the clause, but they should take account of differences in the level of economic development and in the economic and social system. Articles 18 and 26 of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)), were extremely pertinent in that regard. Given the unequal situation prevailing in international trade relations, the terms of article 21 were satisfactory. It would, however, be desirable to go further and provide a similar exception to the application of the most-favoured-nation clause in the case of treatment extended by a developing State to a developing third State under a generalized system of preferences.

30. As to the question whether a most-favoured-nation clause permitted a beneficiary State to benefit from advantages accorded under a customs union or similar association of States it would be desirable to have a rule precluding the granting of such benefits by virtue of a most-favoured-nation clause. The adoption of an article on the lines of the provision proposed by a member of ILC and reproduced in paragraph (70) of the commentary on article 15 would make it possible to meet the needs of developing countries and of States, developed or not, wishing to co-operate at the subregional, regional or interregional level. In view of the close connexion between the most-favoured-nation clause and the national treatment clause, it was as well to make explicit mention of both clauses in the relevant articles, and his delegation had no objection to extending the scope of the draft to national treatment and the national treatment clause.

31. With regard to the comments made in the Committee on the report of ILC, his delegation wished to state that it found the present form of the report excellent. The information and detailed references which it contained were very useful. In view, however, of the inevitable length of the report, it would be better if it were distributed at least one month before the beginning of the General Assembly session, in two parts, if necessary, as suggested by the representative of the United Kingdom (1548th meeting). It might also be useful if ILC confined its work to the study of fewer topics.

32. His delegation noted with satisfaction the increased co-operation of ILC with other international organs concerned with the codification and progressive development of international law. It also wished to thank all the Governments which had provided fellowships for lawyers from developing countries to enable them to participate in the International Law Seminar, and in particular those Governments which had increased their contributions. The Committee might consider the possibility of the United Nations defraying part of the expenses of the Seminar.

33. Mr. MUSEUX (France) expressed his sympathy to the Turkish delegation in connexion with the tragic events which had occurred in Vienna and Paris.

34. His delegation had noted with satisfaction the results of the twenty-seventh session of ILC and particularly the decision by ILC to plan its work. It fully approved of the methods established by ILC in that connexion and of its conclusions on its general programme of work.

35. On the subject of State responsibility, he felt that ILC had been right to confine itself, for the time being, to the question of responsibility for internationally wrongful acts. With regard to the basis for the articles in course of preparation, his Government thought it necessary to emphasize the importance it attached to the notion of damage. If the text of article 1, which provided that "Every internationally wrongful act of a State entails the international responsibility of that State", was to be interpreted as disregarding the necessity for the existence of damage, and if that basic prerequisite for responsibility—either taken alone or as part of the internationally wrongful act—was not established, it could imply that any violation of any international obligation *ipso facto* entailed responsibility to the international community as a whole, a responsibility which could be invoked or implemented by any State. In view of the existing state of international relations, his Government would not be ready to recognize the relevance of statements made in such a general way. The question of the existence of damage as a prerequisite for responsibility should, therefore, be given more thorough study. Otherwise, the texts proposed by ILC were *a priori* acceptable to his delegation, although that did not necessarily mean that it agreed with all the statements contained in the commentary on the articles.

36. His delegation noted with satisfaction the work accomplished by ILC on the most-favoured-nation clause. Although there were grounds for reservations on some points—and in that connexion he recalled the statement made by the representative of Italy on behalf of the European Economic Community (EEC) and its members

² United Nations Conference on Trade and Development, Research memorandum No. 33/Rev.1.

(1544th meeting)—they were not specifically of a legal nature. His delegation wondered if all the customary exceptions to the application of the most-favoured-nation clause had really been covered. With regard to article 16, it also wondered whether the connexion between a most-favoured-nation clause and a national treatment clause was as clear as ILC believed. On the subject of relations with developing countries, his Government was satisfied with the general principle set forth in article 21.

37. With regard to succession of States in respect of matters other than treaties, the study on that subject would complement the one on the succession of States in respect of treaties and would help to clarify its scope.

38. His delegation welcomed the progress made in the study of the question of treaties concluded between States and international organizations or between two or more international organizations and hoped that the study would soon be completed.

39. Mr. AL-OTHTMAN (Kuwait) said that he recognized the capital importance of all the topics studied by ILC at its twenty-seventh session, but would confine himself to commenting on the question of State responsibility.

40. For international responsibility to arise, the following two conditions must be met: first, the perpetrator of the wrongful act must have international personality; secondly, the act committed must be contrary to international law. The State was not responsible for acts causing damage to third parties during an insurrection or a civil war, unless there had been negligence. A State could only be held responsible for the acts of an insurrectional movement where that State accorded the militant members of the movement the status of military personnel and where the injured State did the same. The State was responsible for wrongful acts committed by its executive, legislative and judicial authorities. It was responsible for acts committed by its officials in the performance of their functions, whether or not they had exceeded their competence. Since States could not invoke the provisions of their national law to shirk their international responsibility, they must abide by the rules of international law when drawing up their laws. A State also bore international responsibility when the decisions of its courts were incompatible with international law or when there was a denial of justice.

41. Mr. VANDERPUYE (Ghana) congratulated the Chairman of ILC on his excellent presentation of the report and commended the high quality of the work accomplished by ILC on four topics, some of which were very difficult and raised delicate political issues. In common with other delegations, his delegation felt that ILC should not be assigned any new topics for study over the next two years, so that it could complete its current programme of work. In the interim its planning group would no doubt devise methods of work which would enable ILC to save time and still perform its tasks effectively. ILC should, for example, be more precise when drafting articles and should not formulate the same principle on both negative and positive lines. Given the size of the report under consideration and the late date at which it had been distributed, he would only make some preliminary comments. On the subject of the publication of the reports of ILC, he endorsed the

remarks made by the representative of Chile at the 1547th meeting.

42. With regard to the draft articles on State responsibility, his delegation had no objection to the plan of ILC to confine itself for the time being to the study of the responsibility of States for internationally wrongful acts. It did not seem desirable, however, for ILC to take up the question of the settlement of disputes, which was a very sensitive issue. With regard to article 15, dealing with attribution to the State of the act of an insurrectional movement which became the new government of a State or which resulted in the formation of a new State, his delegation felt that a distinction should be made between insurrectional movements and national liberation movements and that movements struggling for self-determination should not be held responsible for acts committed against colonial régimes which did not grant them the right to self-determination.

43. The question of the succession of States in respect of matters other than treaties, which was very complicated, was complementary to the question of State succession in respect of treaties. Both questions should be governed by the same principles and the latter question could not be definitely settled until significant progress had been made in the study of the former. Moreover, the expression "matters other than treaties" should have a definition which was not merely theoretical but of practical use to States. His delegation was satisfied with article 9 but doubted that article 11 was indispensable, in view of articles 5 and 9, although its provisions presented no substantive difficulties for his delegation. Ghana also had no objection to the substance of article X but would not take a position on the text of the provision until the square brackets had been removed.

44. He was pleased to note that at its last session ILC had adopted articles 8 to 21 on the most-favoured-nation clause and he hoped that that draft could be completed at the following session. The importance of the subject was indisputable, especially for the countries of the third world. Article 21 was essential to ensure that the most-favoured-nation clause did not operate to the disadvantage of the developing countries. With regard to that point ILC should also take account of recent developments in international economic law when it re-examined article 21.

45. His delegation approved of the decision by ILC to continue its study of the question of treaties between States and international organizations or between two or more international organizations on the basis of the Vienna Convention on the Law of Treaties. It would submit detailed comments on the drafts at a later stage.

46. His delegation wished to express its satisfaction at the efforts made by ILC to promote co-operation between it and regional bodies such as the Asian-African Legal Consultative Committee.

47. Mr. HARDY (Observer for the European Economic Community), speaking at the invitation of the Chairman, recalled that in the statement by the representative of Italy on behalf of EEC and its member States concerning the text of ILC on the most-favoured-nation clause, it had been

mentioned that the issues raised were under study at that time by EEC. As a body engaged in regional integration, EEC had sought to remove barriers with respect to trade between its members. Besides the internal aspects of integration, EEC maintained a common external tariff and operated a common commercial policy. Therefore matters relating to the application of the most-favoured-nation clause or preferential treatment in the field of trade came within the competence of EEC.

48. The provisions of the General Agreement on Tariffs and Trade (GATT) had always been applied by EEC. It therefore applied most-favoured-nation treatment to Contracting Parties of GATT and had also entered into treaties providing for the application of most-favoured-nation or preferential treatment with a large number of States. In the case of States which were not parties to GATT with which EEC had not concluded such treaties EEC had the capacity to apply most-favoured-nation treatment on an autonomous basis, a power which it had in fact exercised.

49. Therefore, in approaching a text which envisaged the codification and progressive development of the most-favoured-nation clause and its variants, EEC was conscious that the matters under discussion were of particular concern to it.

50. With regard to the treaty practice of EEC in that field, he noted that EEC had entered into agreements providing for the grant of most-favoured-nation or preferential treatment with over 60 States. Since the treaties in question were the main instruments regulating commerce between those countries and EEC their importance was obvious.

51. By way of example he informed the members of the Committee that, on 28 February 1975, 46 African, Caribbean and Pacific countries on the one hand, and EEC and its member States on the other, had concluded the Lomé Convention³ under the terms of which EEC agreed that goods from those countries might be imported into EEC free of customs duties and charges provided that that treatment was not more favourable than that applied between the member States of EEC themselves. There was no requirement that the 46 African, Caribbean and Pacific countries should make equivalent concessions on their part. They had merely agreed to accord most-favoured-nation treatment. Moreover, trade or economic relations between the African, Caribbean and Pacific countries themselves, or between them and other developing countries, would not be taken into account in determining what was most-favoured-nation treatment; in other words, such arrangements would be exempt from normal operation of the most-favoured-nation rule. Thus the parties to the Lomé Convention had worked out an arrangement combining the according of special treatment in favour of the developing countries and the continued operation of the most-favoured-nation clause.

52. He then referred to article 21, on the generalized scheme of preferences, and recalled that according to the representative of Guatemala (1548th meeting) the present wording gave the impression that the question was one which was only of concern to States. EEC, however, was

also concerned because the individual member States of EEC were no longer in a position either to provide such a scheme or to claim (or to refrain from claiming) its benefits. The system operated by EEC was exclusive to EEC. In view of the importance of the EEC scheme for the developing countries benefiting from it, it would appear desirable that article 21 should more clearly reflect the actual situation.

53. Contemporary practice was of very considerable importance for the development of international trade. However, since it had been difficult to give a detailed description of EEC practice with regard to treaties, EEC might seek to transmit to ILC a paper containing a more complete account of its views. For the present EEC merely wished to present a preliminary standpoint, indicating why it was not persuaded that the approach taken in the draft of ILC was in fact entirely the appropriate one and to illustrate some of those elements of current practice which needed to be taken into account in that field.

54. Mr. KARUHANGA (Uganda), referring to the draft articles on the succession of States with respect to treaties, observed that the principles of interdependence, sovereignty and self-determination were gaining increasing acceptance in the international community. With regard to treaties, each State should be given an opportunity to decide by which treaties it intended to be bound. In that respect a new State was in a way an unfortunate State. More often than not it had gone through a difficult period at the hands of colonialists, and therefore the "clean-slate" principle was the only one that could make international law truly international, and no longer the customary law of European States. There was reason to presume that whatever the colonialists did was first in their own interest, secondly in the interests of their allies and lastly in the interests of the colonized people. Now the order of interests was reversed, and the *ipso jure* continuity principle derived from the *pacta sunt servanda* theory was unacceptable under existing circumstances. The "clean-slate" principle was compatible with the principle of self-determination and there was no reason to fear that the new States would abuse the advantages of those principles.

55. His delegation had doubts about the usefulness of the proposed article 12 *bis*, on multilateral treaties of universal character, which seemed to include treaties to which new States would not like to be parties for various reasons. That provision should either be eliminated or changed so that new States would not be bound by the provisions of such treaties until they had considered whether or not it was in their interest to accept them.

56. With regard to the report of ILC on its twenty-seventh session so admirably presented by its Chairman, he welcomed the decision by ILC to exclude private acts from State responsibility. He subscribed to article 11 in so far as "on behalf of the State" meant governmental authority. People who acted for companies could not be said to be acting for the State unless the company was owned by the State or unless the persons in question were entitled to claim State immunity if brought before the courts of the territorial nation. The territorial State should rightly incur international responsibility if it condoned or tacitly encouraged the internationally wrongful conduct. Generally

³ See A/AC.176/7.

speaking, a State could only be responsible for entities over which it had control.

57. As far as the most-favoured-nation clause was concerned, his delegation was not in a position to make constructive observations because it had not been able to give thorough study to the voluminous report of ILC, which had been circulated at a late stage. In the future the reports of ILC should be shorter or circulated in time. It was true that at its last session ILC had accomplished a great deal of work. In his view it had been right to establish a planning group to study the functioning of ILC.

58. Mr. MAÏGA (Mali) noted that the body of doctrine on the succession of States reflected three major schools of thought, which comprised the theory of universal succession, the theory of continuity and the theory of individual succession. Some States had adopted one or the other of those theories whereas other States had applied all three of them to similar cases at different times. ILC had taken a broad view of the problem, having regard to the accession to independence of new States whose social organization and political philosophy often differed from those of the States which had left their mark on classical international law. ILC was right to consider that the codification of the law in that field consisted in determining, within the framework of treaty law, the implications of a State succession in the light of the principles of the Charter of the United Nations. The "clean-slate" principle was the one most in keeping with the concept of the right to self-determination.

59. The application to a newly independent Territory of international treaties relating, for example, to the régime of that Territory, to territorial servitudes and to privileges in the matter of investments, would in effect jeopardize the newly acquired sovereignty. His delegation agreed, however, with ILC that the "clean-slate" principle should not affect boundary régimes and other territorial régimes. That exception, embodied in articles 11 and 12 of the draft, was based on article 62 of the Vienna Convention on the Law of Treaties, in paragraph 2 of which it was provided that "A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty" if the treaty established a boundary. That exception was also established by jurisprudence and by the practice of States and of regional and international organizations. The States members of OAU, in a resolution adopted in 1964, had also undertaken to respect the frontiers existing at the time when they had attained independence, and a similar resolution had been adopted during the same year by the Conference of Heads of State or Government of Non-Aligned Countries.

60. The deletion of articles 11 and 12 might be a source of instability and discord among States, which would pose a threat to international peace and security. On the other hand his delegation was opposed to the proposed article 12 *bis*, whereby multilateral treaties of universal character would remain in force for the new State until such time as it gave notice of the termination of the said treaties for that State. Treaties of that type often enshrined legal rules established by custom. It was maintained by some that, because of their customary nature, those rules should be imposed on all States, whatever form they took, and that a

newly independent Territory should be bound by all the international treaties concluded on its behalf by the former administering Power. That idea was contrary to current international law, which was based on the consent of the parties. That consensual basis was the very foundation of the Vienna Convention on the Law of Treaties. It was to be found in Article 38 of the Statute of the International Court of Justice which acknowledged the importance and the necessity of consent, because it provided that the Court could not only apply the normal rules of international law but could also decide a case *ex aequo et bono*.

61. The principle that a State was only bound to the extent that it accepted the binding force of a rule of law had been established by jurisprudence and in particular by the Permanent Court of International Justice in the *Lotus* case.⁴ Consequently, international treaties of a universal nature should not be automatically imposed on new States. Many such treaties contained no denunciation clause and, if they did contain one, the procedure for denunciation was often lengthy and complicated or the denunciation was simply rejected.

62. The draft articles on the succession of States in respect of treaties should not be sent back to ILC but should be submitted to a conference of plenipotentiaries.

63. After congratulating ILC on its report, and its Chairman on his excellent presentation of the report, he pointed out that the draft articles on State responsibility for internationally wrongful acts were largely based on the relevant provisions of the Charter of the United Nations and on State practice. However, it should be made clear that States were responsible in cases of aggression or of crimes perpetrated against peoples. In that respect, articles 5 and 7 should be completed, taking into account article 3 of the Definition of Aggression (General Assembly resolution 3314 (XXIX), annex).

64. With regard to the study of the most-favoured-nation clause, his delegation endorsed the opinion expressed in "the UNCTAD memorandum" to the effect that the application of that clause to all countries regardless of their level of development would satisfy the requirements of formal equality, but would in fact involve implicit discrimination against the weaker members of the international community. For the time being the most-favoured-nation clause should not apply to certain types of international trade relations. With regard to article 16, he said that the preferential treatment which the developing countries accorded to each other in order to promote the development of the least developed among them should on no account be automatically extended to third parties. He expressed the hope that ILC, when reconsidering the draft articles, would take into account the decisions taken by the General Assembly at its sixth and seventh special sessions, on the establishment of a new international economic order.

65. Mr. VERCELES (Philippines) commended ILC for the progress it had made at its latest session and said that his delegation agreed with the general scope of the articles on

⁴ Publications of the Permanent Court of International Justice, Series A, No. 10, September 7th 1927, Collection of Judgments, The Case of *S.S. Lotus*.

State responsibility. ILC had rightly attributed responsibility to a State for the conduct of its organs, even when those organs acted *ultra vires* under internal law. The stability of international relations required that once an individual or entity had been empowered to exercise the prerogatives of public power, all its acts should fall within the responsibility of the State. Consequently, his delegation supported articles 5 to 10. Article 11, which was the necessary corollary to those articles, concerned the conduct of persons not acting on behalf of the State and who could not therefore engage its responsibility. Similarly, it was only logical that the conduct of organs of an insurrectional movement should not engage the responsibility of the State on whose territory it was established, since that conduct was of the same nature as that of private persons. The only case where State responsibility could be involved, under article 14, was that of the failure of the State to fulfil its obligations of vigilance and protection required by customary international law. His delegation approved of that exception, contained in paragraph 2 of article 14, but doubted whether the provisions in paragraph 3 of that article really fell within the scope of the responsibility of States. Since insurrectional movements did not possess a true international personality, their rights and obligations were distinct from those of a State. However, his delegation supported article 15, which embodied a logical consequence of the success of an insurrectional movement, but considered that an exception should be made to the attribution to a new State of acts of the former government when those acts were directed against the establishment of the new State.

66. His delegation supported the principles underlying the draft articles on the succession of States in respect of treaties. The adoption of the draft articles by the international community would contribute to the completion of the codification of the law of treaties. The draft articles represented a fair compromise between the principle of continuity and the "clean-slate" principle. However the "clean-slate" principle should leave the new State the power to decide whether or not to be party to a treaty at the time of the succession. The Commission proposed two exceptions to that principle, in articles 11 and 12 concerning boundary régimes and other territorial régimes and also in the proposed article 12 *bis* concerning multilateral treaties of a universal character. It was possible that articles 11 and 12 might be contrary to the right to self-determination and in some cases to the interests of newly independent States which challenged a boundary on the grounds that it had been established by a treaty in which it had not

participated. However, if those matters were removed from the application of the principle of continuity, the stability of international relations could be jeopardized, so that his delegation had an open mind on articles 11 and 12. With regard to the proposed article 12 *bis*, it was bound to detract from the delicate structure of the draft for as long as the expression "multilateral treaties of universal character" was not defined. With regard to the settlement of disputes referred to in the proposed article 32, he considered that any convention concerning the codification of the law of treaties should provide for a procedure for the settlement of disputes that might arise over its application or interpretation. However, that question could be considered at a conference of plenipotentiaries or by the General Assembly and it was not necessary for ILC to deal with it. If a conference was held early in 1977, Governments would have sufficient time to study the draft articles and make further written observations.

67. With regard to the study of the most-favoured-nation clause, he stressed the need for caution. The unconditional application of that clause to all countries would involve discrimination against developing countries. The application of the clause in accordance with a generalized system of preferences should constitute an exception. Furthermore, the interests of the least developed, land-locked and island countries, which all urgently needed economic assistance and protection, should be fully taken into account. The relationship between the most-favoured-nation clause and the national treatment clause should also be taken into account, although the national treatment clause was becoming obsolete. In a world of inequality between the few rich countries and the many poor countries, the latter were at a disadvantage when they had to negotiate and conclude bilateral treaties on economic matters.

*Expression of sympathy in connexion with the death of
two Ambassadors of Turkey (concluded)*

68. Mr. GÜNEY (Turkey) thanked the delegations of the United Kingdom and France for the condolences they had offered to his delegation in connexion with the tragic events during which two outstanding Ambassadors of Turkey had died at Vienna and Paris. His delegation would transmit their condolences to the Turkish Government, as well as those that the Chairman of the Committee had expressed on behalf of all members of the Committee.

The meeting rose at 6.05 p.m.

1550th meeting

Tuesday, 28 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1550

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*)(A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. MHLANGA (Zambia) welcomed the representatives of Cape Verde, Mozambique and Sao Tome and Principe and thanked the Chairman of the International Law Commission (ILC) for his very useful and lucid introduction of its report (A/10010).

2. The draft articles on State responsibility (*ibid.*, chap. II, sect. B), he said, were generally acceptable. Article 10, however, seemed too categorical in its attribution to a state of conduct of State organs acting *ultra vires* with regard to internal law. His delegation would have preferred to have the word "presumed" replace the word "considered" in that article. Although the current text would provide for situations where the conduct in question was that of organs such as multinational enterprises, it was equally important to take into account the possibility that such multinational enterprises could be under the control of some entity other than the State concerned.

3. With regard to article 15, concerning the acts of insurrectional movements, his delegation would prefer to see a clear distinction made between acts of insurrectional movements and those of liberation movements. The latter, being legitimate, should not be subject to subsequent international responsibility. A third paragraph might be inserted in article 15, defining insurrectional movements in such a way as to exclude liberation movements specifically.

4. With regard to the draft articles on succession of States in respect of matters other than treaties (*ibid.*, chap. III, sect. B), he said that his delegation was not satisfied with the reasoning of ILC in article 11 that the passing to the successor State of debts owed to the predecessor State was not relevant to the topic. Such debts could very well be closely tied to State property as defined in article 5. Article 11 should be retained, although a reformulation of the text might be preferable.

5. With regard to the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), his delegation was pleased to know that ILC was increasingly taking cognizance of the problem which the application of the clause

created in the field of economic relations in a world consisting of States whose economic development was strikingly unequal. He was glad to note that in formulating article 21 ILC had taken into account General Principle Eight adopted at the first session of the United Nations Conference on Trade and Development (UNCTAD),¹ which stipulated, with reference to most-favoured-nation treatment, that developed countries should grant concessions to all developing countries, land-locked or not. He suggested that a similar draft article should be formulated and adopted by ILC taking into account the problems of land-locked States in relation to the exercise of the right of transit to and from the sea. It would be unsatisfactory if treatment relating to those transit facilities afforded to land-locked States were to be claimed by beneficiary States relying solely on the most-favoured-nation clause. He suggested that similar provisions be made with reference to articles 16 and 17, so as to avoid the anomaly of having national treatment granted to land-locked States relating to transit facilities to and from the sea made subject to claims by beneficiary States relying solely on the application of the most-favoured-nation clause.

6. With respect to the draft articles on treaties between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he was glad to note that ILC had largely followed the provisions of the Vienna Convention on the Law of Treaties² and not overlooked the fact that international organizations could not, at the current stage of development of international law, be assimilated to States.

7. Concerning the law on the non-navigational uses of international watercourses, his delegation looked forward to future work by ILC on that important topic.

8. With reference to the draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D), he was pleased to note that ILC had based its work on the "clean-slate" principle. He was also gratified to see that ILC had sought to give effect to the decision of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) with respect to boundaries, wherein all States members of OAU had pledged themselves to respect the borders existing on the achievement of national independence.

9. He supported the decision by ILC to establish a planning group in the Enlarged Bureau to study the

¹ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

² See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

* *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.*

functioning of ILC and formulate suggestions regarding its work. The increasing co-operation of ILC with other international legal consultative bodies was very welcome, as was the continuing series of International Law Seminars, which benefited young jurists from developing States.

10. Mr. ROSSIDES (Cyprus) noted that the work of the Committee was acquiring increasing importance in the current era of growing international insecurity and anarchy. It was vital to make effective progress towards a world legal order, without which there could never be international security or peace. In that respect the work of the Sixth Committee was vitally linked to, and as important as, the work of the First Committee. The Chairman of ILC (1534th meeting) had rightly emphasized the close relationship between ILC and the Sixth Committee, those two bodies being the main pillars of the system devised by the General Assembly for the fulfilment of its responsibility under Article 13, paragraph 1 (a), of the Charter of the United Nations to encourage the progressive development of international law and its codification. Noting the role of the Committee in guiding the work of ILC, in providing an opportunity for Governments to express their opinions on the direction and progress of that work, and in determining the final form for the codification of a topic, he reminded the Committee that it was its duty to proceed expeditiously to take the necessary decisions regarding the final stage of codification, once a final draft or report had been submitted by ILC. Final drafts submitted by ILC were the outcome of a long process of careful and balanced study in that body, combining scientific expertise with political awareness of the realities of international life. The Committee should take into account the increasing demands for international legal order in a rapidly changing and expanding world. He therefore disagreed with the suggestion that the draft articles on succession of States in respect of treaties should be sent back to ILC for further study.

11. Another equally, if not more, pertinent instance of a topic suspended in its progress towards codification by the United Nations was the draft Code of Offences against the Peace and Security of Mankind,³ to which his delegation attached the greatest importance and whose consideration had been delayed since the adoption of General Assembly resolution 1186 (XII), pending the preparation of a definition of aggression. Since the General Assembly had adopted the Definition of Aggression at the twenty-ninth session (resolution 3314 (XXIX), annex), it should now resume consideration of the draft Code of Offences without further delay in the interests of world legal order and international security. The Committee should take the initiative and make concrete suggestions with a view to completing the progressive development and codification of the subject, particularly at a time when aggression, military intervention and the use of force were becoming more and more prevalent in the life of nations, in violation of the most basic rights of sovereignty, territorial integrity and national independence. The draft Code of Offences was furthermore of relevance to the law of State responsibility, currently the highest priority topic on the agenda of ILC.

12. One of the essential questions that would arise in further work by ILC on the latter topic was whether it

would be necessary to recognize the existence of a distinction based on the importance to the international community of the obligation breached and, accordingly, whether international law should acknowledge a separate and more serious category of internationally wrongful acts which could be described as international crimes. Noting the significant distinction between "primary" and "secondary" rules on which ILC had based its work, he said his delegation agreed with the view that the study of the objective element of the internationally wrongful act would render plainly apparent the need to take into consideration the content, nature and scope of the obligations laid on the State by the "primary" rules of international law and to distinguish on that basis between different categories of international obligations. In order to be able to assess the gravity of the internationally wrongful act and determine the consequences attributable to that act, it would be necessary to take into consideration the fact that the importance attached by the international community to respect for some obligations—for example, those concerned with peace-keeping—would be of a completely different order from that attached to respect for other obligations. In that connexion, the completion of the work on the draft Code of Offences against the Peace and Security of Mankind would help to clarify the determination of the degree of gravity and the different consequences attributable to an internationally wrongful act. Such a determination was fundamental to ensure the political viability of the final draft on the topic of State responsibility.

13. He was disturbed by signs in recent discussions in the Committee of changing attitudes towards the value of and need for work on the progressive development and codification of international law. There seemed to be a certain undercurrent, in apparently harmless or even well-intentioned suggestions and initiatives, which favoured slowing down the process of development and codification, as if the modern international law being developed and codified with the participation of all newly independent States was to play a lesser role in the ordering of conduct among nations in the contemporary world and in future. That tendency was regrettable; it reflected negatively on the important work of ILC and ran counter to the ideas of the Charter. Developments such as the accession to independence of many new States, changes in traditional economic and social relations and the scientific and technological revolution had demonstrated the inadequacy of the international law created in the past and had shown that only the progressive development and codification of international law by all members of the international community could ensure the universal and strengthened application of that law as one of the most effective means of achieving international security and durable peace.

14. He welcomed the suggestion of the representative of the Philippines (1547th meeting) that the General Assembly should refer to ILC the Charter of Economic Rights and Duties of States and other related instruments for the purpose of translating their provisions into an enforceable legal convention. That appeal had been made at a time when the United Nations had become the focus of negotiation and debate aimed at the establishment of a new international economic order. The law relating to economic development was a topic which cut across traditional categories of international law and its study by ILC would

³ See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, chap. IV.

be an acknowledgement of the growing emphasis, both within the United Nations and outside, of that emerging body of law as a part of and a complement to the objectives of the United Nations as stated in the Preamble to and Article 1, paragraph 3, of the Charter.

15. He expressed his constant belief and hope that the Committee would not fall behind the march of events and would respond with renewed vigour to the great challenges of the current era, with a view to the establishment of a world legal order in the wider interests of the international community.

16. Mr. TABIBI (Chairman of the International Law Commission), speaking at the invitation of the Chairman, thanked the Committee for the illuminating debate which it had just concluded. He appreciated the words of praise that had been expressed, and felt that the criticism, such as that concerning the length of the report of ILC and its method of work, had been constructive.

17. He observed that ILC was the greatest United Nations scientific body concerned with international law, but its work also had diplomatic aspects and the contribution of the members of the Committee, who sat both as jurists and as representatives of States, was therefore greatly needed. ILC was well aware of the nature of its relations with the Committee, and each year fashioned its programme of work in line with the Committee's decisions, giving careful attention not only to the written comments submitted by Governments but also to the views expressed orally in the Committee, as reported by the Chairman of ILC and by its members who sat in the Committee and as they appeared in the summary records and the Committee's report on the item. It was the spirit of openness and co-operation between the Committee and ILC which had made possible great achievements by the United Nations in the field of international law in less than three decades.

18. Although he had no authority to speak on behalf of ILC concerning the points raised during the debate, he would try to summarize those points briefly. Members had expressed satisfaction at the progress made by ILC on various topics and had also made useful suggestions for further improvement in the methods of work employed by ILC. In that connexion, they had noted with approval the establishment of a planning group to rationalize those methods further.

19. With regard to chapter II of the report on State responsibility, several representatives had approved of the plan of work for the draft articles, which covered responsibility for the breach of any international obligation. Some representatives had stressed the importance of obligations relating to the maintenance of international peace and security, which would be taken into account by ILC in formulating the relevant rules as would the different categories of international obligations. The provisions of the draft articles had, generally speaking, received the support of many delegations, although improvements had been suggested and differing views expressed on some of the saving clauses.

20. Most representatives appeared to have considered the underlying principles of the rules in articles 10, 11, 12, 13

and 14 as basically sound. Articles 13 and 14 did not try to solve the problem of the status and legal capacity under international law of international organizations and insurrectional movements, but rather presupposed that such capacity existed in the concrete cases in which its application was called for. It was obvious that a draft devoted to State responsibility could not be over-extended so as to include the topic of "subjects of international law".

21. With regard to article 15, some had spoken of non-attribution of responsibility in respect of any act committed during the activities of a national liberation movement. The draft article specified what kind of conduct was attributable to the pre-existing and the new State when an insurrectional movement triumphed.

22. With regard to the question of damage referred to by the representative of France (1549th meeting), he wished to recall the position of principle that had been expressed by ILC in paragraph (12) of the commentary on article 3 adopted in 1973.⁴ In that commentary ILC had considered whether damage should be considered a third constituent element of an "internationally wrongful act", in addition to the elements of conduct attributable to the State and breach of an international obligation. It had concluded that the term "damage" included "moral damage" and that the "damage" inherent in any internationally wrongful act was inherent in any breach of an international obligation and was therefore already covered by the existing formulation of article 3. In reaching that conclusion, however, ILC had not overlooked the fact that "economic or patrimonial damages" caused by the State's conduct might be an important factor in determining the form and extent of reparation for an internationally wrongful act, a matter which belonged to the second phrase of the study plan (see A/10010, para. 43). It should be added in that regard that when the purpose of the international obligation concerned was to prevent injury, such as damage to a foreign embassy or to a foreigner and his property, negligent conduct of State organs did not constitute an actual breach of an international obligation unless the conduct was combined with material "damage" which the State should have prevented. Unless that occurred, the objective element of an "internationally wrongful act" was lacking. As indicated in paragraphs 45 and 49 of the report on the twenty-seventh session, ILC would examine the matter in chapter III in so far as it was relevant for purposes of the draft under preparation and would make the necessary distinctions between breach of an "obligation of conduct", an "obligation of result" and an obligation brought to light through an external event.

23. In the report on the twenty-seventh session, distinction was also made in paragraph (10) of the commentary on article 11, between the problem of non-attribution of actions of private persons to the State and the problem of determining the amount of the reparation which might be due by the State for its own conduct. That paragraph made it clear that States could be considered obliged to make reparation only as a result of breaches of international obligations attributable to them under international law. It also established that although the extent of the damage could be taken into account in fixing the amount of the

⁴ *Ibid.*, Twenty-eighth Session, Supplement No. 10, p. 21.

reparation, that amount did not necessarily have to be tied to the "economic or patrimonial damage". The fact that financial losses resulting from actions committed by private persons were sometimes used as a yardstick for calculating the indemnity to be paid by the State as a result of its own wrongful act did not mean that the State had endorsed such private acts as its own conduct.

24. Although members of the Committee had generally recognized the outstanding contribution of the Special Rapporteur for the topic of State responsibility, some had expressed uneasiness about the slowness of the pace of the work done by ILC on that topic. He too wished to see codification of that important topic achieved as soon as possible, but believed that success in that field should not be measured mainly by the number of articles adopted at each session of ILC or by the time required to complete the draft. What actually mattered was that Member States should generally support each step forward, having fully understood all its implications. Only if one realistically assessed the difficulties involved and the time required to overcome them would it be possible to codify the law on that topic. In the future, ILC might be able to approve a few more articles at each session, but no significant over-all change could reasonably be expected and such a change would in any case not be very advisable because States needed more time than usual to study the far-reaching rules and commentaries submitted to them by ILC. Indeed, a full study by States before the second reading was the best means of avoiding further total or partial readings in ILC and of facilitating general agreement in the diplomatic body entrusted with preparing a final international instrument. He was therefore glad that some delegations, including delegations which had consistently supported the idea of speeding up preparation of the draft articles, had referred to the goals of ILC as reasonable. In that regard, he observed that although State responsibility had been selected as a topic for codification as early as 1949, ILC began to consider that topic in 1963 on an entirely new basis. Because of the work on other topics, it had not begun preparation of the draft articles until 1973, but since then, work on State responsibility had proceeded systematically, and the Committee should avoid jeopardizing the important progress toward codification that had been made. It should not be forgotten that all previous attempts, both in the United Nations and the League of Nations, had not resulted in an international instrument and that failure could be repeated unless all appropriate technical diplomatic safeguards were taken.

25. With regard to chapter III of the report, on the succession of States in respect of matters other than treaties, the comments made concerning article 9 would help ILC in finalizing that important rule, which had been adopted provisionally. As to article X, the views expressed in the Committee confirmed the division of views within ILC and a careful study of the article in the light of the Committee's observations seemed to be required.

26. With regard to chapter IV of the report, on the most-favoured-nation clause, many representatives had expressed general support of the 14 additional articles on the question prepared at the twenty-seventh session. Some had agreed with the Special Rapporteur that the national treatment clause should be dealt with as well, because of its

interaction with the most-favoured-nation clause and because the two clauses often appeared together in treaties. Some delegations, on the other hand, had supported consideration of the national treatment clause only on condition that it did not prevent conclusion of the first reading during the next session of ILC, while others had stated that that question was beyond the terms of reference of ILC and should therefore be put aside.

27. A large number of representatives had considered that the rule in article 21 should be expanded by ILC in order to cover the interests of the economically weaker nations. Most members, including all representatives from the third world, had said that such expansion was part of the law of development, was supported by world public opinion, and was in line with General Assembly resolutions 3281 (XXIX) and 3362 (S-VII) and decisions of GATT and UNCTAD. In the view of those members, the rules contained in the instruments he had mentioned should be explored by ILC in the coming year in order to include appropriate provisions in the future draft convention.

28. Representatives had also declared themselves in favour of saving clauses which underlined the residual character of rules, such as that inserted at the beginning of article 16. Strong objection had been made by the supporters of customs and economic unions that the trend towards such associations should not be curtailed, but supporters of article 15 had observed that no existing rule recognized an exception for such associations and that the matter should be studied in connexion with article 7 rather than article 15. Third world representatives had stated that to apply the most-favoured-nation clause to all countries regardless of their level of economic development involved implicit discrimination against those countries and widened the gap between rich and poor countries.

29. Representatives of the land-locked States who had participated in the discussion had without exception supported article 14 in the light of paragraphs (8) to (10) of the commentary on that article. It was natural that the fundamental right of a land-locked State to free access to the sea, which was a special right derived from the principle of freedom of the high seas and belonging only to that State because of its geographical position, could not be invoked by any third State by virtue of a most-favoured-nation clause. All those points would be studied by ILC.

30. With regard to chapter V of the report on the question of treaties concluded between States and international organizations or between two or more international organizations, he noted that the members of the Committee approved of the approach taken by the Special Rapporteur and ILC that the draft should reflect, as appropriate, the provisions of the Vienna Convention on the Law of Treaties, but should also take into account the specific characteristics of those treaties.

31. With reference to the questions dealt with in chapter VI, some delegations had expressed the wish that ILC should speed up its work on the question of the law of the non-navigational uses of international watercourses, while others had stated that the priorities approved by the General Assembly in resolution 3315 (XXIX) should not be disturbed.

32. Those members of the Committee who had spoken on the question had given unanimous support to the exchange of observers between ILC and regional legal bodies such as the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the European Committee on Legal Co-operation, exchanges which enabled those bodies and ILC to benefit mutually. During the past session of ILC representatives of each of the regional bodies he had named had made useful statements and he intended, in accordance with the request of ILC, to participate in meetings of those bodies in the near future.

33. The International Law Seminar, which was closely related in purpose to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, was of great benefit to young jurists from all Member States, including the third world countries, and he was glad that some generous nations whose representatives had spoken during the debate would make further contributions towards that programme. He supported the suggestion by the Swedish representative (1545th meeting) that that programme should be included in the regular United Nations budget and hoped that members of the Committee would take the appropriate steps to carry out that proposal, since the budgetary support of the United Nations would be of great help in providing to jurists in the developing world the training that they needed in order to lay the legal foundations of their society.

34. Both the Sixth Committee and ILC could play a decisive role in preparing legal documents relating to the new international economic order, and he therefore agreed fully with those representatives, including the representative of the Philippines, who had said that there were gaps in the decisions concerning economic rights and duties of States taken by the General Assembly which made it necessary to translate those economic rights and duties into binding legal rules. That was vital in the face of the population explosion, most of which was taking place in the third world, particularly in Asia, where the dire need of the people for food, shelter and health care posed a serious problem for world peace.

35. With regard to the method of work of ILC and proposals for its improvement, he appreciated the detailed and scholarly comments made by the representatives of Norway, Australia and the United Kingdom (1540th, 1541st and 1548th meetings, respectively). Replying to the points raised, he pointed out first of all that each chapter of the report of ILC was prepared on an *ad hoc* basis, taking into account a series of factors which differed from topic to topic. Drafts based on well-established principles or rules did not require the same treatment as drafts based on an analysis of State practice. Moreover, in some fields international law was very rich in relevant precedents while in other cases such precedents were lacking or not so abundant. The procedural stage reached in the study of a given topic was also an important factor in the presentation of the corresponding chapter. Generally speaking, a chapter containing a final draft could be presented in a more consolidated manner, avoiding repetitions which were sometimes necessary during a first reading. Secondly, the task of codification was not the same in the 1970s as it had been in the 1950s, when the majority of Member States

were old States which had participated, directly or indirectly, in the formation of international law. For those States, which had rich documentation on State practice, judicial decisions and doctrine, the information included by ILC in some commentaries might appear to be superfluous. But that was not true in the case of the many newly independent States which constituted two thirds of the membership of the United Nations. For the new States, express references to precedents were very helpful, particularly in the preparation of their written and oral observations on the drafts prepared by ILC. Even if the price was high and the report voluminous, the repetition of historical background and detailed commentary was of practical importance, inasmuch as all States were entitled to know the legal background of the rules proposed by ILC. Only with the informed support of States could a given rule be codified so as to be implemented effectively in international relations. Full knowledge of precedents was, moreover, the best way of facilitating the progressive development of the law and its adjustment to current needs of the international community. Thirdly, the current needs of States called for a codification wider in scope and more detailed in content than in the past. With the increasing pressure for more precise codification, drafts had become longer and fuller, entailing much more elaborate commentaries in order to avoid misunderstanding. Lastly, the length of the report of ILC was also attributable to the increasing number of articles adopted at each session and, in particular, to the fact that ILC was working on several important topics at once.

36. The current situation was not due to any initiative of ILC but rather to the recommendations adopted by the General Assembly on the proposals of the Sixth Committee itself. For instance, during the preparation of the draft articles on the law of treaties, ILC had put aside the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations, but subsequently the General Assembly had recommended (resolution 2501 (XXIV)) that ILC should take up the study of those two topics. It was also on the recommendation of the Assembly (resolution 2669 (XXV)) that the law of the non-navigational uses of international watercourses had been referred to ILC and included in its programme of work. The Assembly had further recommended (resolution 3071 (XXVIII)) that ILC should appoint a Special Rapporteur for that topic, notwithstanding the fact that four other topics were still under active consideration. A few years before, the Assembly had recommended that the work of ILC on State responsibility should continue on a high-priority basis and that recommendation had been repeated the previous year (resolution 3315 (XXIX)), but at the same time the Assembly had asked ILC to proceed with the preparation of the draft articles on succession of States in respect of matters other than treaties on a priority basis. Finally, at the current session, a suggestion had been made in the Sixth Committee that ILC should codify the principles embodied in the Charter of Economic Rights and Duties of States on a priority basis. All of that was quite understandable in the light of the eagerness of States to make progress in areas of interest to them, but not all were interested in giving priority to the same topics. The Sixth Committee must recognize that the inevitable result was that ILC had no alternative but to divide its available time

among several topics. If it was deemed advisable to limit the number of topics under active consideration, it was incumbent upon the Sixth Committee to so indicate to the Assembly by making the necessary choices. The question of codification policy had to be decided by the Sixth Committee, which was the diplomatic body in control of the codification process. Of course, ILC would endeavour to make improvements in its future reports, where reasonable and possible, without harming the codification process. Some of the suggestions advanced in the current debate could be useful and were worthy of consideration by the planning group established by ILC. Nevertheless, if the reports of ILC were more complex than in the past, the reason was that the codification of international law as a scientific and diplomatic undertaking was currently a more complicated technical and political endeavour than in the 1950s or under the League of Nations. All the members of ILC, as well as the Sixth Committee, would have to work still harder if the *corpus juris* of codified international law was to continue to be enriched in the future as it had been since the establishment of the United Nations.

37. As to the suggestion that the report of ILC should in future be sent to Member States much earlier, he pointed out that, because of the duties of the members of ILC, particularly those with academic and professional commitments, it was impossible for ILC to change the date of the convening of its session. The draft report of ILC was always ready at the end of July or early in August, but the translation and reproduction of such a highly technical and scientific report posed difficulties if it was needed by the end of August for submission to Member States. The best way of meeting that problem might be to postpone consideration of the report to a somewhat later stage in the work of the Sixth Committee, thereby giving delegations more time to study and digest the contents of the report.

38. One other point he wished to mention was the continued underestimation of the work of ILC by the Fifth Committee and its related organs and officers. ILC had faced that difficulty ever since its establishment under the statute elaborated by the Sixth Committee and approved by the General Assembly. That statute being in force, administrative and budgetary arrangements could not be made without duly taking into account the letter and spirit of its provisions. He recalled that the previous year the Joint Inspection Unit had raised certain questions⁵ without consulting ILC, but thanks to the support of the Sixth Committee, the Assembly had endorsed by consensus the position maintained by ILC. At the current session, the Secretary-General had been kind enough to heed the request made by ILC and to propose to the Fifth Committee (see A/C.5/1677 and Corr.1) a small increase in the allowance received by Special Rapporteurs for preparing reports, which had remained unchanged since the establishment of ILC in 1949 and an even smaller increase in the allowance for members of ILC. However, the Secretary-General's proposal for an increase in those allowances had been rejected by the Advisory Committee on Administrative and Budgetary Questions (see A/10008/Add.3). He (Mr. Tabibi) had sent a letter explaining in detail the relevant factual points for the information of the Fifth Committee but had been told that that letter would

not be circulated. He had also been told that despite the consensus decision of the Sixth Committee and the General Assembly in support of the statutory provisions concerning the place of meeting of ILC (resolution 3315 (XXIX)), in the current year's report of the Committee on Conferences reference had been made (see A/10032, para. 53) to the effect that that matter might be reopened. The previous year's decision by the Sixth Committee and the General Assembly should be reconfirmed, and he requested that his letter on the honoraria, which represented the views of ILC, should be circulated as a document.

39. He expressed appreciation to the secretariat of ILC and said that he was gratified by the scholarly debate that had taken place at the current session. Both ILC and the Sixth Committee were engaged in the same noble task of establishing the rule of law and he hoped that the next 30 years would be even more productive and satisfactory in furthering the rule of law in the interests of world peace and human happiness.

40. The CHAIRMAN thanked the Chairman of ILC for his very scholarly summary of the debate on the report on the work of ILC at its twenty-seventh session. He hoped that the Chairman of ILC would convey the Committee's regards to the members of ILC and would report on the deliberations held in the Committee. Regarding the matter of honoraria, he felt that the Sixth Committee had an obligation, considering the great importance of the work of codifying and progressively developing international law, to ensure that ILC was given the tools to do its job properly, including adequate financial allocations to enable its members to perform their duties. ILC was at least entitled to due process and to have its views considered in the competent budgetary bodies. He therefore proposed that the Sixth Committee should decide to circulate the letter referred to by the Chairman of ILC as a document and to refer it to the Fifth Committee, which was competent to deal with the matter.

41. Mr. FRANCIS (Jamaica) endorsed the proposal just made by the Chairman but suggested that supplementary action should also be taken as quickly as possible to bring the views of ILC to the attention of the Fifth Committee, which was considering a draft resolution (A/C.5/L.1236/Rev.1) that would have the effect of deferring the question of allowances and honoraria for further study. The treatment accorded to the letter from the Chairman of ILC was not only an affront to him but to the whole legal fraternity in the Sixth Committee. He therefore suggested that consultations should be undertaken as expeditiously as possible with a view to achieving an amicable solution of the matter at issue.

42. Mr. VANDERPUYE (Ghana) said that the request of the Chairman of ILC would have had more weight behind it if it had been routed through the Chairman of the Sixth Committee instead of directly to the Fifth Committee. He agreed with the previous speaker that the whole situation was an affront to the legal fraternity and that fast action should be taken. To that end, he urged the members of the Sixth Committee to contact their opposite numbers on the Fifth Committee with a view to finding a way of accommodating the request made by the Chairman of ILC.

⁵ See A/9795 and Add.1 and 2.

43. The CHAIRMAN said that the Sixth Committee was obviously not competent to deal with the matter in its financial aspects but, without encroaching on the prerogatives of the Fifth Committee, it could make sure that in considering the matter the Fifth Committee would have before it the relevant facts as presented by the Chairman of ILC.

44. Mr. TODOROV (Bulgaria) said that, as he understood the situation, the Fifth Committee had taken the position that it did not wish to circulate the letter of the Chairman of ILC. Consequently, if the Sixth Committee decided to circulate the letter as an official document, an undesirable confrontation might arise between the two Committees. He therefore felt it would be best for the Chairman of the Sixth Committee to take the matter up personally with the Chairman of the Fifth Committee before a decision was taken to circulate the document in question.

45. Mr. TABIBI (Chairman of the International Law Commission) agreed with the representative of Bulgaria that

it might be appropriate for the Chairman of the Sixth Committee to make an effort to contact the Chairman of the Fifth Committee to discuss the situation.

46. Mr. FRANCIS (Jamaica) supported the idea that members of the Sixth Committee should contact their counterparts on the Fifth Committee in an effort to obtain more favourable consideration for the request made by ILC. If a few delegations were allowed to carry the day without dissent, a decision might be adopted based on false premises.

47. The CHAIRMAN said that he would enter into formal consultations with the Chairman of the Fifth Committee, as had been suggested, and hoped that in the meantime the members of the Sixth Committee would pursue parallel consultations with their respective delegations' representatives to the Fifth Committee.

The meeting rose at 1.10 p.m.

1551st meeting

Tuesday, 28 October 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1551

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (A/10139, Part I and Add.1 and Part II)

1. The CHAIRMAN recalled that it was at the request of the Government of Australia that the question of diplomatic asylum had been included in the agenda of the twenty-ninth session of the General Assembly¹ and that the latter had decided to refer it to the Sixth Committee for consideration. As a result of the Committee's consideration of the matter, the General Assembly had adopted on 14 December 1974 resolution 3321 (XXIX), in which it had invited Member States to communicate their views on the question to the Secretary-General and requested the Secretary-General to prepare a report containing an analysis of the question of diplomatic asylum.

2. Mr. LAUTERPACHT (Australia) said that since the preliminary exchange of views in the Committee in 1974, two documents had been issued on the question of diplomatic asylum. One (A/10139, Part I and Add.1) contained the views that 25 States had communicated to the Secretary-General in accordance with General Assembly resolution 3321 (XXIX). The other (*ibid.*, Part II) contained the detailed report that the Secretary-General had prepared pursuant to that resolution and gave a thorough and informative survey of the available materials on diplomatic asylum. When in 1974 his delegation had

introduced the item on diplomatic asylum in a working paper² it had referred to the utility of initiating a preliminary examination of the humanitarian, legal and other aspects of diplomatic asylum. In so doing, Australia had been motivated exclusively by a concern to foster what it regarded as a beneficial concept, namely the idea that an embassy might give sanctuary to a fugitive, on condition that, first, the person in question was not a common criminal but was being pursued for political reasons or political purposes and that, secondly, the case was urgent because the individual's life was endangered, for example in the case of political commotion or uprisings. Coupled with that concept of asylum was the idea that it was temporary and that in due course the asylee would be able to leave the embassy confident about his future safety.

3. There were a number of factors involved in the institution of diplomatic asylum, the foremost being the humanitarian element. The grant of sanctuary, which interposed a temporary physical barrier between a fugitive and a situation dominated by extra-legal characteristics, performed an immediately valuable social function. Everyone was fundamentally affronted when seeing life destroyed which could have been saved or witnessing suffering caused which could have been avoided through immediate physical protection.

4. Against that humanitarian element must be balanced the consideration of the sovereignty of the State within whose territory the issue of asylum arose. Everyone

¹ See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 105, document A/9704.

² A/C.6/L.992.

recognized that the grant of diplomatic asylum involved in most cases some subtraction from the power a State possessed within its own territory. With the exception of the case when asylum was granted to protect an individual from an uncontrolled and temporarily uncontrollable mob, in which case asylum could be seen as coming to the aid of the authority of the territorial State, diplomatic asylum, in contrast with territorial asylum, involved an opposition between the inviolability of diplomatic premises and the undoubted authority of a State within its own territory. However, such opposition did not preclude recognition of some validity in the concept of diplomatic asylum.

5. An impressive series of conventions on diplomatic asylum had been concluded between the States of Latin America, which showed that some States were willing to accept subordination of their sovereignty to the acknowledged merits of diplomatic asylum. Even short of a treaty, concordant practice of States might give rise to rules of customary international law on the subject, which necessarily entailed some limitation of the power of the host State.

6. It would be misplaced to suggest that the right of asylum was vested in the fugitive, so that he might require the mission to grant him asylum; no such right was established by the Latin American conventions, which were without a doubt the most progressive in the field. The imposition upon missions of a duty to accept fugitives would mean that they would often be placed in impossible situations. The concept of diplomatic asylum involved freedom of action for the mission.

7. However, the debates in the Committee on diplomatic asylum, the comments of Governments and the report of the Secretary-General indicated that the concept had positive elements. The grant of diplomatic asylum had not been restricted to Latin American States in their relations with one another on a treaty basis. As recalled by the Secretary-General in his report, asylum had been accorded in Latin America by States not parties to the conventions. That meant, first, that Latin American States were prepared to extend the operation of what some had seen as an essentially Latin American system and, secondly, that non-Latin American States had been prepared to assert a claim to grant asylum. It was less important to establish on what basis those States had founded that claim than to acknowledge that the claim had been made and accepted; and neither the sovereignty of the territorial State nor the suggested absence of rules of international law had been insuperable barriers.

8. There were several cases of that type. In 1973, 25 diplomatic missions, some of which were not parties to the Latin American Conventions, had granted asylum in Santiago to about 8,000 persons. Similar events were mentioned in the Secretary-General's report, in particular concerning the Rules of Lima adopted in 1865, not simply by the Latin American States but by the whole diplomatic corps accredited to the Peruvian Government (*ibid.*, para. 27). In 1898, the Rules of La Paz had been established by agreement between the heads of the legations in Bolivia of Brazil, the United States and France. There again, one Latin American State and two non-Latin American States had established on other than a treaty basis rules applicable to the grant of diplomatic asylum

(*ibid.*, para. 29). The Rules of Asuncion had been established in 1922 by the diplomatic missions in Paraguay of six Latin American States and five non-Latin American States (*ibid.*, para. 30), under the following circumstances: members of a revolutionary movement against the Paraguayan Government, fearing for their lives, had sought asylum at the legations of Germany, Argentina, Uruguay and Peru. Asylum had been granted and the Paraguayan Foreign Ministry had been informed. On 3 June 1922, the Minister of Argentina, as doyen of the diplomatic corps accredited to Paraguay, had called a meeting of members of the corps at which he had stated that he thought it might be desirable to come to some collective agreement as each member of the diplomatic corps might be requested at any moment to grant asylum to refugees who feared violence at the hands of political adversaries. It had then been decided that in the event of asylum being granted by some legations, even if the countries represented were not parties to the Treaty of Montevideo of 1889,³ advice should be given to the Government of Paraguay in the same way as was done by the parties to the Treaty, and the legations granting asylum should assert the right to appreciate the facts and conditions affecting each case. The participation in that action of the United Kingdom Minister had subsequently been approved by the Foreign Office.

9. Of the events which had occurred outside Latin America, mention should be made of the diplomatic asylum granted in Madrid in 1936. On that occasion, asylum had been granted to political refugees by the missions of 14 States, six of them European. There were, moreover, other examples of asylum being granted in diplomatic premises by States which could not justify their action on the basis of a treaty.

10. In all such cases, if the grant of diplomatic asylum could not be justified in customary international law, it must be dependent on the tolerance of the host State. In any event, the fact was that, on numerous occasions, refuge had been accorded in diplomatic premises, that it had saved lives and reduced suffering, and that it had not significantly disrupted diplomatic relations between the host State and the missions concerned.

11. Mention should also be made of the cases in which diplomatic missions had felt unable to admit a refugee to their premises or to provide for his safe-keeping once admitted. Such cases demonstrated clearly that no rules of customary international law existed and that, in law, the host State was entirely within its rights to require the exclusion or surrender of the fugitives. The Committee should ask itself whether the development of clearer rules on the subject could reduce the number of cases in which the denial of asylum was a cause for distress. Certainly, when clear standards of conduct existed, States tended to conform to them. The existence of such standards in the field of diplomatic asylum might, in some cases, discourage host States from making protestations and enable some missions to take a firmer stand in defence of their conduct. The Committee could also formulate recommendations in favour of certain practices, as was often done in other fields of international activity.

³ See Pan American Union, *Inter-American Treaties and Conventions on Asylum and Extradition*, Treaty Series 34 (OAS Official Records, OEA/Ser.X/1), p. 1.

12. If the Committee opted for collective legislative action on the matter, the difficulty would lie in agreeing on a generally acceptable definition of the content of diplomatic asylum. As was recalled in the report of the Secretary-General (*ibid.*, foot-note 155), Argentina had taken a praiseworthy initiative in 1937 in proposing before the Assembly of the League of Nations the drafting of a convention on diplomatic asylum which would be of a general rather than a merely regional character. That proposal had not succeeded. Even in current times, there was a marked variety of opinion among States with regard to both the content of the concept of diplomatic asylum and the desirability of proceeding at the current time to codification or progressive development. It appeared from the observations of Governments that even those States favourable to diplomatic asylum were not all in agreement on the circumstances in which asylum might be granted, with the exception of the Latin American States. Some emphasized the political nature of the offences, while others stressed the serious danger to the individual concerned or exceptional conditions. There was, nevertheless, unanimity on one important point: that the limitation upon the functions of the diplomatic mission as prescribed in the Vienna Convention on Diplomatic Relations⁴ was not so absolute as to prevent the grant of asylum within diplomatic premises. However, many countries considered that the current state of affairs had the advantage of authorizing a certain flexibility in practice. That was approximately the same situation that States had shown themselves prepared to accept in other areas of the law, particularly that of the law of the sea. By leaving certain rules of law unstated, the situation was avoided in which States felt themselves compelled by necessary caution to withhold their assent to solutions which they considered unacceptable as rules but which might continue to be the reflection of a generally tolerated practice.

13. Conversely, it could be argued that if no attempt was made to codify or develop the rules of law on diplomatic asylum, they would never have the character of established rules of customary international law. That was the position of the Australian Government. The striking majority by which resolution 3321 (XXIX) had been adopted was explained mainly by the desire to consider and debate the question. It did not imply a desire to codify or progressively to develop the law on the subject, nor did it mean that those advocating the formulation of some rules would agree on their precise content. Any attempt to promote the concept of diplomatic asylum should not adversely affect the practice of granting asylum in diplomatic premises, which was still relatively fragile outside Latin America. However, his delegation considered that diplomatic asylum, as a humanitarian institution, enjoyed wide support. If the subject was discussed publicly, many of the problems associated with it would be better understood. There would be less of a tendency to view the grant of asylum as a political affront to the host State, or as a denial of its territorial sovereignty.

14. The question of asylum still remained on the list of subjects to be considered by the International Law Commission (ILC). The consideration of the question of territorial asylum had already reached an advanced stage

outside ILC, but the question of diplomatic asylum still remained to be resolved. Consequently, if the current debate produced no specific results, ILC should not forget the question. Furthermore, the development of international law, at least in that sphere, did not necessarily depend on the elaboration of a multilateral treaty or a collective declaration. A State could always declare unilaterally its willingness to permit foreign diplomatic missions within its territory to accord diplomatic asylum on certain conditions. His delegation, while believing that the institution of diplomatic asylum had become recognized in international law, also acknowledged that there were differences of opinion with regard to its legality and extent. If the current debate failed to produce some collective statement on the practical utility of diplomatic asylum, each State could consider whether the development of the law could usefully be furthered by individual declarations of attitude, which could be relied upon at least between the declarant State and the foreign diplomatic missions situated in its territory.

15. He noted that in the report of the Secretary-General, it was stated that the official position of a State regarding diplomatic asylum might not necessarily coincide with its actual attitude. He expressed the hope that in approaching the current debate, Member States would not allow excessive caution to prevent them from giving free rein to their instinctive sympathy for the oppressed of all kinds.

16. Mr. GODOY (Paraguay) said that it was necessary, first of all, to identify the purpose of diplomatic asylum and its physical and geographical field of application. Consequently, it should be made clear that diplomatic asylum was simply a response to the humanitarian concern of ensuring the protection of an individual whose safety or integrity were in imminent danger for reasons or offences of a political nature. With regard to its field of application, the institution of diplomatic asylum must draw on the old legal fiction of the extraterritoriality of diplomatic premises or foreign warships anchored in waters under the jurisdiction of the territorial State, which distinguished it from territorial asylum. It was because the qualification of the nature of acts likely to bring diplomatic asylum into play was extremely subjective that most countries had difficulty in recognizing in that institution a general principle of international law and had not agreed to make it a positive rule of international law in the form of conventions of universal character. However, in Latin America the problem of qualification had taken second place to humanitarian considerations, based on the traditional right of asylum recognized under the *jus gentium* for persons being persecuted for religious reasons.

17. The fact that that institution was a Latin American institution *par excellence* did not mean that it was not recognized or practised in other regions of the world, even if generally within narrower limits.

18. His delegation found it intriguing that despite the current trend towards integration, interdependence, codification and international solidarity, some States continued to cite the principles of sovereignty and non-interference in their internal affairs for the purpose of obstructing purely humanitarian proposals while they were violating those

⁴ United Nations Treaty Series, vol. 500, No. 7310, p. 95.

same principles in an attempt to export social, political or economic ideologies.

19. The right of asylum should not be subjected to any selective or discriminatory practice or reasoning; man, as a political being, needed that institution, which all States had the obligation to recognize and respect. For that reason, his delegation wished to express its gratitude to the Australian delegation, which had been responsible for the inclusion of that item in the Sixth Committee's agenda. It also welcomed the report on the question in pursuance of General Assembly resolution 3321 (XXIX).

20. Only the Latin American countries had adopted international instruments in that field which were currently in force and consequently constituted one of the principal forces of international law in the Americas. On other continents, some countries had applied other norms (customary international law, national legislation, jurisprudence, doctrine and general principles of the law of nations). Paraguay was currently the only State party to all the treaties and conventions adopted in Latin America on the question of political or diplomatic asylum. It had always respected that institution, whether as the State granting asylum or as the territorial State. From the strictly legal point of view, the subjective qualification of the nature of the act and the respect given to the norms governing the functioning of the institution raised a problem, as did, from the human point of view, the gravity and immediacy of the risks run by the refugee or asylee. The qualification of the act and the granting of asylum lay exclusively within the competence of the heads of mission of the foreign State. That solution, assigning the power to judge to one of the parties involved in a possible conflict which seemed to threaten the principles of sovereignty and jurisdiction of the territorial State, underscored the humanitarian purposes of the institution. Concern for the safety of the asylee was so great that so long as there was the slightest doubt about what happened to him outside the mission premises, the head of the mission had the obligation to keep him on the premises until trustworthy elements enabled him to take a definitive decision concerning the asylee.

21. The responsibility of the head of mission with respect to the refugee was delicate, but his obligation to respect strictly the legal provisions of the host State and the principle of non-interference in that State's internal affairs was no less serious. For that reason, a diplomatic mission receiving a request for asylum should immediately inform the competent authorities of the territorial State, in order that they might exercise their rights and duties. In other words, both the granting and the denial of asylum involved legal consequences for the territorial State and for the State granting asylum, as well as for the asylee himself.

22. Humanitarian law had formed part of international treaty law for 100 years and was currently the subject of various items on the General Assembly's agenda and the agendas of other international organizations or specialized conferences. Asylum, which was an element of that humanitarian law, should be recognized and practised by all States and not relegated to the level of a regional institution. The values protected by that institution had no physical or metaphysical boundaries; all free men might

have need of it and should be able to take advantage of it when the need arose. Non-recognition of the institution of diplomatic asylum or territorial asylum might be regarded as a denial of the human values it was intended to protect.

23. His delegation rejected as contrary to the essence of diplomatic asylum any attempt to utilize that institution for a non-humanitarian purpose. Thus, giving refuge to an artificially large number of alleged asylees in foreign diplomatic missions for the sole purpose of discrediting the Government of the host country for internal political reasons was contrary to the purpose of that institution.

24. His delegation would support any measure or recommendation aimed at continuing the study and analysis of the question of diplomatic asylum within the context of the progressive development and codification of international law.

25. Mr. BOJILOV (Bulgaria) said that before considering the item entitled "Question of diplomatic asylum", it was desirable to draw a clear distinction between diplomatic asylum and territorial asylum. Territorial asylum was regarded as an institution of international law, in spite of some differences of opinion concerning the interpretation of the concept. That was, no doubt, why the General Assembly had unanimously adopted the Declaration on Territorial Asylum (resolution 2312 (XXII)). Territorial asylum was granted by his Government in accordance with the provisions of article 65 of the Constitution of Bulgaria and persons granted asylum enjoyed the same freedom and rights as Bulgarian citizens. However, in his delegation's view, diplomatic asylum was not an institution of international law, since there was neither treaty law nor generally recognized customary law on the subject. The report of the Secretary-General also confirmed that conclusion.

26. The recognition and granting of diplomatic asylum were essentially Latin American regional practice. That practice of Latin American States rested on a number of conventions, namely, the 1928 Havana Convention on Asylum,⁵ the 1933 Montevideo Convention on Political Asylum,⁶ and the 1954 Caracas Convention on Diplomatic Asylum.⁷ It should be noted, however, that those conventions had been designed to limit rather than to encourage the practice of granting diplomatic asylum. It was significant that under the two treaties which had been ratified by the largest number of Latin American States, namely, the Havana Convention of 1928 and the Montevideo Convention of 1933, the right to accord diplomatic asylum was dependent on a pre-existing custom, treaty or legislation in the matter. Treaties which declare diplomatic asylum as an absolute right had not received general ratification.

27. While his delegation appreciated the deep-rooted Latin American tradition and the humanitarian considerations underlying the Australian initiative, it believed that it would be imprudent to try to extend an essentially regional practice to the universal level. The granting of asylum by a

⁵ See Pan American Union, *Inter-American Treaties and Conventions on Asylum and Extradition*, Treaty Series 34 (OAS Official Records, OEA/Ser.X/1), p. 27.

⁶ *Ibid.*, p. 47.

⁷ *Ibid.*, p. 82.

diplomatic mission was a major derogation from the sovereignty of the host country and constituted a kind of interference in its internal affairs. The judgement of the International Court of Justice in the Colombian-Peruvian case⁸ also supported that view. Moreover, his delegation believed that the right to grant diplomatic asylum was incompatible with the generally recognized principles of diplomatic and consular law, in particular with article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations and with article 55, paragraph 2, of the Vienna Convention on Consular Relations.⁹

28. When ILC had taken up the question of diplomatic asylum in the context of its work on the draft articles relating to diplomatic intercourse and immunities which subsequently became the Vienna Convention on Diplomatic Relations, it had decided not to allude to the question of asylum in the article on the inviolability of premises. At the same time, it had decided to include in paragraph 3 of article 40 of the draft, which subsequently became article 41 of the Convention, a clause safeguarding the right of asylum in accordance with the special agreements in force between the sending State and the receiving State. It should be noted that in paragraph 4 of its commentary on that article,¹⁰ ILC had stated *inter alia* that "the premises of the mission shall be used only for the legitimate purposes for which they are intended. Failure to fulfil the duty laid down in this article does not render article 20 (inviolability of the mission premises) inoperative, but, on the other hand, that inviolability does not authorize a use of the premises which is incompatible with the functions of the mission." The preamble to the Convention stated that the purpose of diplomatic privileges and immunities was to guarantee the efficient performance of the functions of diplomatic missions, and article 3 stated that the functions of those missions consisted, *inter alia*, in promoting friendly relations between the sending State and the receiving State. Obviously the granting of diplomatic asylum could only harm the performance of the functions of missions, since it was likely to result in a deterioration of relations between the States concerned. Furthermore, as had been stated by S. Prakash Sinha in chapter X of his book *Asylum and International Law*,¹¹ the concept of extraterritoriality of the diplomatic premises could not serve as a basis for diplomatic asylum, since it was no longer accepted as the principle upon which diplomatic privileges were based. Diplomatic asylum had been granted and perhaps would continue to be granted in extreme cases, but the practice of States gave no reason for concluding that there existed an international custom permitting diplomatic asylum.

29. Mr. CASSESE (Italy) said that his delegation had considered with interest the report of the Secretary-General on the question of diplomatic asylum, as well as the comments made by a number of States pursuant to General Assembly resolution 3321 (XXIX). The Australian delegation was to be commended for having raised that question at the twenty-ninth session of the General Assembly, thus

allowing States to undertake a useful exchange of views on a question that was clouded by uncertainty. The documents before the Committee showed that no customary international rule of universal scope had so far evolved on diplomatic asylum, although a number of States considered that it could be granted in urgent and exceptional circumstances for humanitarian purposes. On the one hand, many States, such as the socialist States and many African and Asian States, were radically opposed to the granting of diplomatic asylum. On the other hand, even those States, other than the Latin American States, which favoured granting diplomatic asylum in exceptional cases and on humanitarian grounds were not prepared to specify the conditions to be fulfilled in order that it might be claimed or granted, but wished to retain considerable freedom of action in the matter. There was no agreement as to whether the right of qualification belonged to the granting State or the territorial State and no definite answer could be drawn from the practice of States. Thus the only possible conclusion was that diplomatic asylum could not be considered as an institution accepted in general international law. That conclusion was borne out by the fact that even States such as Canada, Denmark and France, which were inclined to acknowledge diplomatic asylum in a limited number of cases, emphasized that in their view no customary rule existed on that subject.

30. Italy was among those countries which believed that diplomatic asylum should be granted in cases of compelling urgency, when a grave and imminent danger existed to the life of persons or when basic human rights and fundamental freedoms were being grossly and blatantly violated. However, his Government believed that States should have the greatest latitude to assess in each case whether asylum should be granted. The drawing up of a general declaration or convention on the matter would therefore be inappropriate. The inclusion of the question of diplomatic asylum in the Committee's agenda had been useful in that it had facilitated clarification of the matter. Having reached that stage, it would seem inappropriate for the Committee to continue considering the item the following year. However, since very few States had so far submitted comments pursuant to General Assembly resolution 3321 (XXIX), it would be advisable to renew the invitation to Member States to submit their views to the Secretary-General. If that was the majority view, his delegation would support it, on the understanding that the sole purpose of that invitation was to obtain more information and that the subject was not suitable for international codification.

31. Mr. SADI (Jordan) thanked the Australian delegation for having taken steps to have the question of diplomatic asylum included in the agenda of the Assembly and for the explanations it had given concerning the report of the Secretary-General. His delegation considered that the question should not be left pending if disputes between States were to be avoided. Any effort to take legislative action on the question was bound to contribute to the improvement of diplomatic relations. Some felt that the question of diplomatic asylum was of interest only to the Latin American countries. His country did not agree with that view and recalled in that connexion that other countries had practised diplomatic asylum. Moreover, the Latin American countries had embassies and missions in many capitals and the question therefore concerned all States.

⁸ *Colombian-Peruvian asylum case, Judgement of November 20th, 1950: I.C.J. Reports 1950, p. 266.*

⁹ United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

¹⁰ See *Official Records of the General Assembly, Thirtieth Session, Supplement No. 9*, chap. III, sect. II.

¹¹ The Hague, Martinus Nijhoff, 1971.

32. Mr. GOBBI (Argentina) said that his country had always been very favourable to the institution of diplomatic asylum, which was designed to protect human beings in times of upheaval and violence. In that connexion, he wished to clarify the legal foundation of that institution. He recalled that in the past it had been based on the principle of extraterritoriality. When that fiction had disappeared from current international law, some Latin American countries had adopted a number of conventions and he noted in that regard that many countries which had not ratified the Caracas Convention had in fact applied its provisions in practice. The grant of asylum had consequences at the internal level, i.e., for the juridical structure of the territorial State. A problem which normally fell within the internal jurisdiction of the State could, as a result of the application of that international norm, pass into the ambit of international law. That was why it was difficult to speak of interference in the internal affairs of a State, since it was the territorial State itself which, by accepting that international norm, enabled the foreign State to intervene in matters normally falling within its own jurisdiction. Similarly, it could not be said that a violation of the Vienna Convention on Diplomatic Relations occurred, because the use of embassy premises to grant asylum was based on legal foundations as valid as in the case of the mission's own activities.

33. It had been necessary to seek a legal foundation for that institution because the State granting asylum had great power in so far as it was empowered to qualify unilaterally the act which brought the right of asylum into play. The State granting asylum faced the problem of qualifying the offence, because there were objective and political offences and it might happen that an offence under common law, when committed for political purposes, in fact acquired a political character. Moreover, other phenomena were involved. Just as in the case of the international responsibility

of the State a distinction had to be drawn between mere insurrections and liberation movements, in the current case it was necessary to draw a distinction between progressive offences and regressive offences, the latter not having the characteristics of a political offence. However, the State granting asylum faced a second, even more serious problem, in so far as it had to qualify urgency, i.e., basically it had to express a view on the situation of a country from the constitutional standpoint and on the functioning of its courts, for it was obvious that asylum would not come into play when a political offender had at his disposal all means of recourse enabling him to defend himself in the normal way. The fact that a head of mission could express an opinion on the capacity or incapacity of a country's courts to render justice could awaken the political sensitivity of the country concerned, but that problem did not arise in Latin America, where a fraternal atmosphere prevailed.

34. He was concerned by the apparently paradoxical theory advanced by some delegations, according to which the institution of asylum should be maintained but in an irregular situation. If asylum was granted without legal foundation, the Vienna Convention on Diplomatic Relations would be violated and the penal system of the territorial State contravened.

35. His delegation felt that consideration of the question should be continued because the problem would be solved not by contending that asylum violated the territorial sovereignty of the State, but by deciding whether or not norms should be established in that sphere. He did not understand the reasoning of those delegations which stressed the humanitarian character of the institution but suggested no solution that would give it a foundation acceptable in international law.

The meeting rose at 4.50 p.m.

1552nd meeting

Wednesday, 29 October 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1552

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II)

The CHAIRMAN, observing that there were no speakers on the item under consideration, said he hoped the Committee would complete its debate on diplomatic asylum by 4 November and announced that the speakers' list on the item would be closed at the end of the next meeting, which was to be held on 30 October in the afternoon.

The meeting rose at 11 a.m.

1553rd meeting

Thursday, 30 October 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1553

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II)

1. Mr. BUBEN (Byelorussian Soviet Socialist Republic) recalled that his delegation had already drawn attention at the twenty-ninth session (1510th meeting) to the complexities and internal contradictions which characterized the question of diplomatic asylum both from the political point of view and from that of international law, and had stated why it did not consider it timely to examine the question at that stage. The report of the Secretary-General (A/10139 (Part II)) had confirmed its opinion.

2. The principle of the extraterritoriality of diplomatic premises, on which the practice of diplomatic asylum had been based up to the middle of the nineteenth century, had been rejected as an infringement of the sovereignty of the receiving State. When the Council of the League of Nations had considered the question, the representative of the Soviet Union had observed that neither international law nor international practice permitted the conclusion that diplomatic asylum was a universally recognized institution. Nor was it by accident that neither the General Assembly of the United Nations nor the International Law Commission had taken a decision on the question. Unlike territorial asylum, diplomatic asylum constituted an infringement of the sovereignty of the State in whose territory it was practised and an interference in its internal affairs, and both the principle of State sovereignty and that of non-interference in the internal affairs of other States were embodied in the Charter of the United Nations and in several instruments adopted within the United Nations framework.

3. Some delegations favouring diplomatic asylum had used the argument of the inviolability of diplomatic premises. However, article 3 of the Vienna Convention on Diplomatic Relations,¹ which set forth the functions of those missions, in no way provided for the use of their premises for purposes of asylum. On the contrary, article 41, paragraph 3, of that Convention emphasized that the premises of the mission must not be used in any manner incompatible with the functions of the mission. In order to defend diplomatic asylum, some delegations had also invoked humanitarian considerations. Of course, such considerations were important in certain cases, but the decisive element, when it was a matter of determining whether they should be taken into account, remained the political one and agreement on that point was far from being reached.

4. In contemporary international relations, the practice of diplomatic asylum was recognized only on a limited

regional basis. In seeking to make that practice universal, there was a risk of pushing States into adopting rigid positions and of jeopardizing détente and the development of friendly relations among States. His delegation therefore believed that it would be right after the discussion of this problem at the previous and current sessions of the General Assembly to drop it from the agenda.

5. Mr. ENKHSАIKHAN (Mongolia) said that the report of the Secretary-General on the question of diplomatic asylum confirmed what had already been apparent during the discussion of the item at the twenty-ninth session, namely that it was an extremely controversial question and that the majority of States that had communicated their views in accordance with General Assembly resolution 3321 (XXIX) felt that codification of the matter would be premature, at least at the current stage. Most Governments believed that an international convention would restrict the flexibility of States in determining the exceptional cases in which asylum might be granted for humanitarian reasons, and one Government had expressed concern at the problems which the grant of asylum might raise in relations with neighbouring countries. Other countries had indicated that they had not concluded any international agreements on the matter and that international judicial practice relating to the matter was virtually non-existent. Even those countries that were in favour of granting diplomatic asylum in exceptional cases for humanitarian reasons had felt that there was no need to codify the circumstances. Diplomatic asylum was essentially a regional practice which was not recognized in contractual or customary contemporary international law. Moreover, that was what the International Court of Justice had concluded in substance in 1950 with respect to the right of asylum in the Colombian-Peruvian case.² Asylum constituted an infringement of the sovereignty of States which were opposed to it when it was practised in their territory and interference in their internal affairs. It should also be noted that the right of asylum was not included in the rights and duties of diplomatic missions laid down in the Vienna Convention on Diplomatic Relations and was not provided for in the Vienna Convention on Consular Relations.

6. Mongolia was not opposed to the grant of territorial asylum to persons persecuted for their defence of the interests of the working people or for their participation in a national liberation struggle, as laid down in article 83 of its Constitution. While it recognized that there was a basis for the grant of asylum in diplomatic or consular premises in exceptional cases and for humanitarian purposes, that was not a right. At the current stage, the matter was not ready for codification.

7. Mr. VILLAGRAN KRAMER (Guatemala) observed that the question of diplomatic asylum was controversial

¹ United Nations, *Treaty Series*, vol. 500, No. 731D, p. 95.

² *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950, p. 266.*

not from the humanitarian point of view, but from the political one. In the field of the protection of human rights, law was constantly developing and, at the international level, States were increasingly concerned with establishing the appropriate machinery and guarantees to protect the life and dignity of the human person. That trend had even touched areas which had been traditionally within the competence of States, but it was known that currently sovereignty was not regarded as absolute, as it had been in the past.

8. Some States were concerned about the institution of diplomatic asylum because of the political issues that it raised in practice and, above all, because it could endanger their relations with other States or might affect an area coming under their internal jurisdiction. Those reservations were understandable, but it was difficult to understand, at least from the legal point of view, why certain States which did not accept that practice in their territory nevertheless granted asylum in other countries when it was requested of them.

9. Many delegations sincerely believed that asylum was a Latin American practice, but other countries had granted temporary protection to refugees in their diplomatic premises and the territorial State had respected those measures. In that connexion, he believed it was timely to point out that the purpose of the Australian delegation, supported, among others, by his own delegation, was not to generalize the Latin American practice throughout the rest of the world, but to determine to what extent and in which cases asylum could be granted and the territorial State should respect it, and to specify the rules which should be observed in order to terminate asylum without jeopardizing normal relations between States. In that sense, the Australian initiative was realistic, because it stemmed from the idea that diplomatic asylum indeed existed and that many States could find themselves obliged to grant it for humanitarian reasons, as had recently occurred in Chile and some time previously in Spain and Hungary.

10. The lack of a general conventional text made it more difficult to solve the urgent problems which arose for States obliged, for humanitarian reasons, to grant refuge, even if only temporary, to a person whose life was in danger. Thus far, outside of Latin America, precedents took the place of general legal rules. He therefore wondered whether it would not be better to anticipate those urgent cases and seek solutions which would be acceptable to the majority of countries.

11. As to the argument that diplomatic asylum would imply interference in the internal affairs of another State or would remove a person being prosecuted from its jurisdiction, attention should be drawn to the related case of territorial asylum, in which the State granting asylum had the power to qualify the offence or the nature of the proceedings. Yet, that argument had not been invoked in the latter case, a matter which was at the very least strange. In fact, in the case of territorial asylum, the person was protected under international law, while in the case of diplomatic asylum, that protection resulted from humanitarian considerations.

12. Humanitarian considerations likewise played an important role with regard to extradition, since in that case

also a person who should legally be tried in one State was brought under the jurisdiction of another. Under the applicable international law, even in very specific cases a State was entitled to refuse to surrender the offender to the requesting State if it considered him to be a political offender. Moreover, the rule whereby capital punishment could not be imposed in the case of common criminals was of even greater interest, since it might constitute an infringement of the sovereignty of the State which was prevented from imposing the penalty provided for in its own legislation. Those restrictions had, however, been accepted and respected for humanitarian reasons. The notion that the grant of diplomatic asylum constituted interference in the internal affairs of a State could not therefore withstand a rigorous legal analysis.

13. He also drew attention to another point, namely that despite the lack of a general agreement on the subject, territorial States did not violate asylum granted to an individual in their territory by a foreign diplomatic mission. The question therefore arose as to what grounds might be used by countries outside Latin America in order to grant asylum in Latin America or in other regions. In his delegation's opinion, such countries were relying upon a discretionary power to which they might have recourse in cases of exceptional gravity and for humanitarian reasons. Such cases were qualified as temporary refuge or hospitality granted for as long as the emergency situation persisted, thereby justifying in the view of the diplomatic mission concerned, the grant of asylum. Once the danger had passed, the refugee could leave the mission. In fact, the problem arose when it was necessary to ensure the departure of a refugee from the country, it was rather the means of terminating asylum which were controversial, for asylum *per se* was respected and the authorities of a State did not have the right to enter a diplomatic mission forcibly in order to remove a refugee. In that connexion, he had in mind certain interesting aspects of the question, particularly with regard to the grant to refugees of safe conducts or passports enabling them to leave the country without having to do so under the flag of the State granting asylum. However, the territorial State was entitled to request the extradition of a refugee after his departure.

14. Thus, asylum played an important role, but only in exceptional situations. He made reference in that regard to the situation of the Rhodesians who were subjected to the application of special laws of a repressive nature and were denied the right to due process, as well as the right to defence. Year after year, the United Nations condemned the violations of human rights in that region of the world, and he wondered what the reaction of the international community would be if, for example, a diplomatic mission were to grant asylum in South Africa to a person seeking refuge on the grounds of an alleged violation of the above-mentioned special laws, when under the usual rules of criminal law his act would not constitute a crime. There was no doubt that asylum would be respected, but the lack of applicable rules at the time when need arose to terminate asylum would call for negotiations which would have to take into account the precedents attested in Latin America or the suggestions of the Institute of International Law or the International Law Association. The Secretary-General had mentioned the work of those bodies in his report; they had succeeded in drawing up clear and precise rules, taking

into account not only the existing restrictions imposed under international law but also the need to provide for rules to prevent abuses or excessive restrictions. There was no valid reason for halting the study of that subject and his delegation was of the view that work on the matter should be continued; it would support any efforts to that end, in particular the idea of submitting the matter to a group of experts.

15. Guatemala, which granted and respected diplomatic asylum in the context of the inter-American conventions and regional practice, was not endeavouring to extend the application of the institution but to clarify as much as possible the rules which other States observed in cases of emergency and, in particular, to clarify the juridical criteria to be applied in terminating asylum without adversely affecting the normal relations between States.

16. Mr. LEE (Malaysia) said that the practice of diplomatic asylum appeared to be well established in the Latin American countries, although it had been on the decline in Europe and elsewhere since the nineteenth century. Although the last convention on the matter, that signed at Caracas in 1954, had been signed by most of the Latin American countries, it should be noted that four of those countries had signed it subject to certain reservations. Although the practice of diplomatic asylum had been the subject of certain rules, it was the lack of uniformity as to the applicable rules that had created problems and had led to the Colombian-Peruvian case which had been brought before the International Court of Justice.

17. His delegation appreciated the generous spirit which had prompted the Australian Government to initiate preliminary studies on the humanitarian and other aspects of the question of diplomatic asylum and had listened with interest to the persuasive arguments advanced by the Australian representative (1551st meeting). Nevertheless, out of the 25 Member States which had expressed their views on the question in accordance with General Assembly resolution 3321 (XXIX), more than half had expressed doubts as to the usefulness of further discussions on the matter.

18. Having regard to the current political situation in South-East Asia, his delegation was of the view that the time was not opportune for a further consideration of the question of diplomatic asylum and that it was necessary to exercise great caution in the matter.

19. Mr. ALIHONOU (Congo) expressed appreciation for the excellent report by the Secretary-General on the question of diplomatic asylum and thanked those delegations which, pursuant to General Assembly resolution 3321 (XXIX), had communicated their views on that delicate question, as well as the Australian delegation for the efforts it had made to ensure the inclusion of the item in the agenda.

20. Those who advocated a general extension of diplomatic asylum made the point that it was essentially a humanitarian institution which should therefore enjoy the support of all freedom-loving nations and that asylum should be granted only to political refugees and only in cases of emergency. Anticipating the criticisms which might

be levelled concerning the restrictions imposed by that institution on State sovereignty, they argued that the solution would be to conclude a convention, thus seeking to provide a legal foundation for such infringements of sovereignty.

21. Although his delegation supported all efforts with regard to the progressive codification of international law, it regretted to state that it was not able to join those who advocated the codification of the question of diplomatic asylum. Although the validity of the humanitarian considerations involved could be accepted straight away, caution was necessary: indeed, certain crimes against humanity had been committed under the cover of humanitarian operations. Moreover, the definition of political offences and offences under the general law varied from one country to the next. The determination of an emergency was of such a subjective nature that agreement on that issue was scarcely likely to be reached. Furthermore, the successful practice of diplomatic asylum in certain regions should not be regarded as a proper basis for its generalization to the entire international community. Unlike territorial asylum, which reaffirmed the principle of State sovereignty, diplomatic asylum constituted a grave infringement of State sovereignty and interference in the internal affairs of States. If the practice of diplomatic asylum was extended to the African region, his Government feared that it might constitute a new source of conflict and be a consolation prize awarded to imperialism. While reaffirming its dedication to the humanitarian ideals underlying the practice of diplomatic asylum and its conviction that at a time when thousands of people were being persecuted for their progressive activities or their participation in the national liberation struggle it was more urgent than ever to strengthen control over the observance of human rights, his Government was of the view that the question of diplomatic asylum should not be the subject of a convention of universal character.

22. Mr. BOOH BOOH (United Republic of Cameroon) said he appreciated the humanitarian considerations invoked by the Australian delegation, but thought the time had come to decide whether it was opportune to continue consideration of the question of diplomatic asylum. Although the concept of territorial asylum was supported by many States and could be considered an expression of contemporary public international law, such was not the case with diplomatic asylum, which aroused justifiable political controversy and could not be regarded as an institution accepted by the international community. Right at the beginning of the Secretary-General's report, it was stated in paragraph 1 that "The terminology employed in this entire field lacks uniformity.", the first proof of the uncertainty and difference in views on the subject. The Secretary-General had noted, furthermore, in paragraph 23 of the report, that that institution had served to save persons "from the threat of normal prosecution" and that there was a lack of consistency in the attitude of States, in that their official position did not necessarily coincide with their actual attitude. Diplomatic asylum could, therefore, not be considered as part of customary international law and there seemed to be consensus on the institution only in Latin America. Furthermore, the International Court of Justice had stated, with regard to the Colombian-Peruvian asylum case, that it was not possible to discern "any

constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence".³ States had, moreover, given different answers to the question whether diplomatic asylum was a right of the State with regard to other States or a right of the individual himself as a subject of international law.

23. In so far as the decision to grant diplomatic asylum to an individual present in the territory of a State in which he had committed an offence involved an undeniable derogation of the sovereignty of that State and intervention in matters which were exclusively within the competence of the territorial State, diplomatic asylum was a very strange institution which could only function in a regional community where there existed a sufficiently well-established common tradition. The countries of the Americas themselves quite rightly doubted that a world body could take up the matter in the same spirit as had the States of their region. His delegation doubted that it would be opportune to codify the matter at the current stage or that a measure to that effect would serve the cause of peace and friendly relations among States. Outside of Latin America, diplomatic asylum was based essentially on considerations of courtesy, convenience and political opportunity and not on law. An essentially political concept, it did not lend itself easily to hasty juridical systematization. The humanitarian considerations and urgent circumstances invoked to justify diplomatic asylum, as well as the distinction drawn between political offences and common crimes, could lead to tendentious interpretations. "Terrorists" would thus be

excluded from the benefit of diplomatic asylum by some States, whereas they would be treated with dignity by others. African countries, for example, considered that their assistance to freedom fighters in Africa was a sacred duty which could not be limited by juridical rules to which they had not expressly agreed. Many States would find it difficult to accept the checking of their internal authority in the name of principles not defined by a convention or under the pretext of circumstances qualified as exceptional, which could be created artificially by a foreign Power to justify external intervention in the affairs of the territorial State. It would, furthermore, be a delicate problem to have a diplomatic mission assume tasks which were incompatible with its rights and duties and could lead to a deterioration in the friendly relations between the sending and the receiving State. For that reason, his delegation felt that the Committee should cease its study of the question of diplomatic asylum. An impassioned discussion on the question could lead to a radicalization of the positions of States and discredit an institution which could still render useful services to mankind. He did, however, feel it would be reasonable for the question to be studied extensively on the bilateral or regional level.

24. Since diplomatic asylum was designed to safeguard human rights the international community should rather seek to update the Geneva Conventions on humanitarian law and to solve the problems of hunger, disease, ignorance and natural disasters in the world.

³ *Ibid.*, p. 277.

The meeting rose at 4.30 p.m.

1554th meeting

Friday, 31 October 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1554

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II)

1. Mr. MITCHELL (United States of America) expressed gratitude to the Government of Australia for the manner in which it had focused concern on issues which, since they involved human rights, needed to be thought about and must never be lightly dismissed. The statement by the representative of Australia (1551st meeting), which was lucid, comprehensive and frank, was merely the most recent example of that Government's contribution to the issue. While a number of Governments, including his own, did not believe it was productive for the Sixth Committee to debate the question of diplomatic asylum any further at the present time, all had benefited from the exchange of ideas and the information so usefully brought together in the excellent report of the Secretary-General (A/10139, Part II). In his delegation's view, it would not be useful to

attempt to generalize the practice of diplomatic asylum as it had evolved over many decades in the unique circumstances of Latin America. He stated that one could not overlook the sophistication and cultural and legal homogeneity of Latin America as a critical element in the practice of diplomatic asylum. Thus even since the codification of the practice in regional conventions, its actual implementation continued to rely, in part, upon a profound and jointly shared commitment on the part of the Latin American States, a commitment which bridged the lacunae of the legal régimes on the subject. Further examination of the question might destabilize not only the Latin American institution but perhaps even the continuation of the type of *ad hoc* humanitarian assistance which the representative of Australia had so cogently summarized in his statement.

2. The position of the United States Government on the question of diplomatic asylum was well known and had most recently been set forth in his delegation's statement in the Sixth Committee at the twenty-ninth session (1510th meeting) and in the United States reply to the Secretary-

General (A/10139, Part I/Add.1). His Government did not take that view lightly. Moreover, its view did not derive from a belief that humanitarian concerns involved interference in the internal affairs of another country. In the contemporary world it was more essential than ever for States to maintain the means by which they communicated with each other. It was not conducive to peace or the civil or political rights of individuals to jeopardize the ability of States to communicate. Embassies remained one of the primary channels for such communication. Particular vigilance was required to protect the rights of individuals and to ensure political and civil liberties, including the right of due process of law and the right to leave and return to one's country of origin. The reality of an interdependent world must not be ignored.

3. His delegation thanked the Government of Australia for stimulating thinking on those matters and for the sensitive manner in which it had indicated a willingness to bring its request into line with the views that his delegation and others had expressed. For its part, the United States would continue to give the matter careful consideration.

4. Mr. GÜROL (Turkey) congratulated the representative of Australia for his thorough and lucid introduction of the question of diplomatic asylum. That enlightening exposé had contributed to a better understanding of the problem. The Secretary-General had also submitted an admirable report on the item.

5. His delegation appreciated the humanitarian considerations underlying the efforts to establish internationally acceptable norms governing diplomatic asylum. Humanitarian concerns were a basic objective of the United Nations. The views of his Government on diplomatic asylum had been submitted to the Secretary-General and were set forth in document A/10139, Part I. As explained in that document, his Government was of the opinion that the question of diplomatic asylum should be considered primarily from a restricted perspective and as applicable only in exceptional circumstances. Providing diplomatic asylum was not one of the regular functions of diplomatic missions, which should not interfere with the jurisdictional rights of the receiving country.

6. Diplomatic asylum was characteristically regional in its occurrence and Turkey had had little experience in that area. All countries could benefit from the vast experience and practice of the Latin American countries and a great deal could be learned from that source of information. In view of its regional nature and because of the complexity and importance of the subject, his delegation was convinced that efforts to transform the institution of diplomatic asylum into internationally acceptable norms might run the risk of freezing the process at a premature stage and possibly even prove to be detrimental in some ways to the persons for whom diplomatic asylum was intended. However, when the time was ripe, the question might be submitted to the International Law Commission for further study. It should be borne in mind that that question had been included in the Committee's agenda previously.

7. The document containing the views of some Member States (A/10139, Part I and Add.1) provided pertinent elements which could be used in the study of diplomatic asylum. However, very few Member States had been able to

offer their observations on that matter owing to the relatively short period of time allowed for the submission of views. It might therefore be desirable to include in the resolution to be adopted on the item a renewed invitation to States to present their views. Such a renewed invitation would promote further efforts to establish a better foundation for successful work on the topic.

8. Mr. PRANDLER (Hungary), noting the hope expressed by the representative of Australia that members of the Committee would participate in the discussion of the question of diplomatic asylum in a constructive spirit, said that his delegation was ready to contribute in a constructive manner to the discussion of that complex and contradictory problem. Although the position of his delegation on the matter had already been stated in the Committee during the twenty-ninth session (1510th meeting), he wished to emphasize that a clear distinction should be made between diplomatic and territorial asylum. The latter was a legal institution fully recognized in international practice and international law, which had been reaffirmed in General Assembly resolution 2312 (XXII) and had been firmly anchored in the domestic legislation of the vast majority of States, including his own. Diplomatic asylum, by contrast, had not become a universally recognized legal institution in either inter-State practice or general international law. Even in its restricted regional application in Latin America, the institution of diplomatic asylum was still plagued with inherent contradictions, as could be seen from a study of the 1950¹ and 1951² judgements of the International Court of Justice on the cases concerning *Haya de la Torre* which made it clear that the grant of diplomatic asylum involved a derogation from the sovereignty of the State concerned.

9. Noting that those delegations which wished to promote the wider recognition and application of diplomatic asylum were moved primarily by humanitarian considerations, his delegation could not envisage any possible way of establishing uniform criteria for such considerations. The Vienna Convention on Diplomatic Relations,³ of 1961, furthermore, set out basic rules which incontestably established the incompatibility of the grant of diplomatic asylum with the major functions of diplomatic missions. Humanitarian considerations could, furthermore, be easily exploited as a pretext for the sake of the discredited notion of "humanitarian intervention" which had been explicitly rejected by a number of important resolutions and declarations of the United Nations. The few exceptional and individual cases of the grant of diplomatic asylum in the past could not justify an attempt to establish a new legal rule, which would, in turn, only lead to conflicts among States and constitute a new source of interference in matters which were essentially within the domestic jurisdiction of States. There were, in the view of his delegation, many important subjects in connexion with which the progressive development and codification of international law were far more necessary and would bring more positive results in the interest of friendly relations and co-operation among States.

¹ *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950, p. 266.*

² *Haya de la Torre Case, Judgment of June 13th, 1951: I.C.J. Reports 1951, p. 71.*

³ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

10. Mr. URIBE (Colombia) thanked the Australian delegation for having requested discussion of the question of diplomatic asylum during the current session. Colombia had been one of the Latin American nations most closely linked with the formulation of the principles and the practical application of the institution of asylum, and since attaining independence had been concerned with defining the legal scope of diplomatic asylum. The importance attached by his country to the question of diplomatic asylum had been demonstrated in the League of Nations, the International Law Commission, the International Court of Justice and other bodies.

11. The Charter of the United Nations linked peace to the protection of human rights. The undertaking by nations to protect human rights could not be limited to the statement of principles in the Universal Declaration of Human Rights and the machinery provided for in the International Covenants on Human Rights. It was the duty of the United Nations to improve and expand the machinery for safeguarding human rights in accordance with the progressive development of interrelationships within the international community. Diplomatic asylum was one of the procedures designed to safeguard human life in exceptional circumstances, as recognized in article 14 of the Universal Declaration of Human Rights. During the debate in the General Assembly, a number of delegations had stressed that diplomatic asylum constituted a restriction of national sovereignty. That was true. However, the very existence of the United Nations and other international organizations, while it necessarily entailed a curtailment of State sovereignty in absolute terms, also opened the way for a structure based on the rule of law.

12. The views expressed by Governments and the work carried out by international bodies indicated that diplomatic asylum was regarded as a valid institution not only in the Latin American region but also by nations of various continents. Australia's position confirmed that fact. Even those initially opposed to the concept eventually agreed that, in exceptional circumstances, diplomatic premises could provide asylum to political offenders.

13. The argument that diplomatic asylum endangered friendly relations between Governments had been disproved in practice. Colombia, which had faithfully applied the principle, like other countries in the hemisphere, knew the extent to which the practice of diplomatic asylum had helped to promote solidarity between peoples. The defence of human life and the protection granted to numerous political offenders strengthened the humanitarian links between nations. The very fact that the question was being discussed in the United Nations, together with the report of the Secretary-General on the question, demonstrated clearly that diplomatic asylum was an institution of international law and that although its modalities might be discussed its existence could not be denied. Even those Governments which had demonstrated their opposition could not ignore the benefits it conferred by averting genocide.

14. In accordance with Article 13, paragraph 1 (b), of the Charter, his delegation considered that it would be desirable to draft a declaration on diplomatic asylum confirming the humanitarian character of that institution and defining

some of the basic elements which determined its scope. Diplomatic asylum could never be granted to common criminals, but must be reserved exclusively for political offences, which should be qualified unilaterally by the State granting asylum. The urgency and gravity of the circumstances should likewise be determined by the latter State, which should be under no obligation to grant asylum to anyone requesting it. The declaration of the General Assembly should also help in establishing the characteristics of the temporary nature of asylum and the issue of safe conduct.

15. Mr. AL-ADOOFI (Yemen) expressed his gratitude to the Secretary-General for his comprehensive and valuable report on diplomatic asylum and to the Australian delegation for having requested the inclusion of the item in the agenda of the General Assembly. Territorial asylum had become one of the established rules of positive international law and had been reaffirmed in General Assembly resolution 2312 (XXII); it was recognized and practised by all States, and had been incorporated in the internal legislation of many States, including his own. Diplomatic asylum, however, enjoyed no such general status in international law; despite its historical origins, it remained only a territorial practice in accordance with conventions and treaties concluded between certain States, whose admirable customs should nevertheless be respected.

16. Despite the wide range of opinions found in the views submitted by States on the matter, all States acknowledged the humanitarian aspect of diplomatic asylum; many delegations, however, had called for caution in dealing with the subject, recommending that the practice be confined to urgent and exceptional cases and restricted within narrow limits. The interest of his delegation in the subject was based, on the one hand, on the need for respect of the Universal Declaration of Human Rights, especially article 14, and, on the other hand, on Yemeni tribal traditions which required each tribe to protect anyone who sought asylum until the real motives for his seeking asylum could be established.

17. Despite the inherent interest of the subject, arising from humanitarian considerations and the need to protect human freedom, diplomatic asylum was a very complex and multifaceted problem, with ramifications and repercussions which might pose a threat to friendly relations between States. It was difficult to reconcile the need to respect humanitarian principles with the need to respect the national sovereignty of the territorial State.

18. There was also the problem of obtaining a commitment from the territorial State to grant the asylee safe conduct out of its territory.

19. In the view of his delegation, diplomatic asylum affected the sovereignty of the territorial State and was a type of interference in its internal affairs. In performing their duties, diplomatic and consular missions should not exceed the rules of the Vienna Conventions on Diplomatic Relations and on Consular Relations. They should fulfil their responsibilities without disregarding local legislation or interfering in the internal affairs of the territorial State and should make every effort to improve relations with that State.

20. There was clearly no consensus in the international community on the very complex subject of diplomatic asylum, which would require much serious study before the Committee could attempt any codification of the matter. His delegation therefore suggested that the Secretariat should continue to seek the views of States and international law experts on the subject, so as to determine those aspects on which a consensus could be reached and those on which there were differences of opinion. That would provide a clearer basis for any future work.

21. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that his delegation had studied the Secretary-General's report on the item under consideration and had carefully followed the debate in the Committee. His delegation appreciated the constructive approach to the problem taken by the Australian delegation based on the humanitarian considerations which the Australian representative had profoundly and comprehensively analysed. While sympathetic to those considerations, his delegation seriously doubted the advisability of codifying the law relative to diplomatic asylum. In that connexion, he pointed out that, of the 25 Member States, which had replied to the Secretary-General's questionnaire pursuant to General Assembly resolution 3321 (XXIX), only eight States had stated that they were in favour of elaborating an instrument of international law to deal with the subject. The rest had expressed misgivings or even found it undesirable at the current stage to study the question with a view to codification. The very concept of diplomatic asylum was debatable and uncertain. Some States such as France, while denying the existence of the right of diplomatic asylum from a juridical point of view, were prepared in exceptional circumstances to grant asylum in their embassies to persons in danger. Other States were of the view that asylum granted for purely humanitarian reasons and for a limited period of time was merely one type of diplomatic asylum. Even within a given region the practice of States was extremely varied.

22. The Ukrainian SSR recognized the right of territorial asylum, as laid down and clearly defined in article 109 of its Constitution. In recognizing that institution, it approached it from a class perspective and granted asylum to aliens being persecuted for protecting the interests of workers, for their scientific activities or for their involvement in a national liberation struggle. The Ukrainian SSR took a very cautious approach to questions relating to diplomatic asylum, holding the view that the principle of State sovereignty was incompatible with the concept of the extraterritoriality of diplomatic premises.

23. His delegation would refrain from making any detailed analysis of the question, since that had already been done by a number of speakers, in particular the representative of Bulgaria (1551st meeting), whose views were fully shared by his own delegation. The time was not ripe for a thorough discussion of the matter in the United Nations or for codification of universal rules of international law on the topic. The introduction of the practice of diplomatic asylum into regions where it had no basis in tradition and was inconsistent with their historical development might give rise to misunderstanding and even disputes between States. It would be most difficult to define typical cases of diplomatic asylum and to elaborate generally acceptable

principles and rules. Indeed, the absence of juridical rules on the question gave great flexibility to States granting asylum and to States whose nationals were seeking diplomatic asylum. Strict regulation of such matters in an instrument of international law would reduce that flexibility and deprive States of the opportunity of dealing with cases on an *ad hoc* basis. For all the foregoing reasons, his delegation believed that the General Assembly should confine itself to discussing the question, taking note of the Secretary-General's report and reverting to the item at a more suitable time.

24. Mr. FUENTES IBAÑEZ (Bolivia) said the fact that the Committee's consideration of the item had been initiated by the delegation of Australia was evidence of the importance attached by a large proportion of the international community to the institution of diplomatic asylum.

25. His Government's views on the question were contained in document A/10139, Part I. In the past, diplomatic asylum in theory and in practice had been a regional rather than a universal institution, although on more than one occasion other States in which the legal existence of diplomatic asylum was not recognized had in fact granted it for humanitarian reasons when circumstances so required.

26. The views expressed by Governments seemed to indicate that they preferred the grant of diplomatic asylum to remain optional rather than to have it made a positive legal norm. Although the existing conventions had been subjected to lengthy examination, no clear and precise set of rules had yet been devised. One of the most controversial aspects of the question was the unilateral qualification of the facts by the State granting asylum. With a view to averting the dangers inherent in such a unilateral power, a number of Latin American countries, including Bolivia, had drawn up the so-called Rules of Asunción establishing the balance which must be maintained between the request for and the granting of asylum. As could be seen from paragraph 30 of document A/10139, Part II, the recommended procedure called for the person invoking asylum to set forth the facts which had led him to ask for it, with the chief of the legation concerned to be the judge of those facts. That cautious approach was made increasingly necessary by the fact that, since diplomatic asylum was an institution designed to protect the individual from the violence and imminent danger which sometimes accompanied political events, it was also essential to establish the rules governing its proper exercise, to prevent it from being used by common criminals or by officials who had abused their authority in order to escape their just punishment. Although it might be argued that the institution of extradition existed to remedy such cases, that institution operated on a different level and applied to common criminals availing themselves of territorial asylum. The assessment of the asylee by the State granting asylum should not be influenced by considerations of that type. Furthermore, there was the reluctance of Governments to comply with requests for extradition because it was felt that the departure of the asylee had closed the case once and for all. It would therefore be desirable to make diplomatic asylum a part of universally recognized international law. One way to achieve that end would be for the representative of Australia to continue to press his proposal. As a result, the exercise of diplomatic asylum, which

had thus far been restricted in theory to those countries which had acceded to the Conventions of Caracas, Havana or Montevideo, would be governed by an international instrument applicable in any part of the world in which an individual was being subjected to persecution by reason of his ideology, religion or ethnic origin. His delegation considered that no State which faithfully and honestly observed the provisions of the Charter should oppose such an undertaking. It should be noted, furthermore, that States which did not accept the doctrine and were unaware of its rules sometimes applied it circumstantially in a manner which was massive and arbitrary and hence questionable. By so doing they were exercising a humanitarian right without assuming the concomitant obligations.

27. Although there was some logic in the argument that unilateral and subjective qualification which was not subject to specific rules could be considered as detrimental to the sovereignty of the territorial State, that consideration was adequately compensated for by the innumerable cases in which such qualification had benefited individuals being subjected to persecution on strictly political grounds, who could in no way be considered criminals.

28. Bolivia deeply respected the institution of diplomatic asylum and had consistently applied its principles and followed the agreed procedures. Experience had shown that, although the theory was unobjectionable, the machinery for its implementation still had short-comings. His delegation feared that if the practice of asylum was allowed

to remain optional in times of upheaval, when there was considerable confusion as to the qualification of an offence and the nature of the criminal, disputes might arise more frequently than was currently the case in countries which practised diplomatic asylum within the framework of rules which were binding on all the parties to an agreement.

29. As a result of the startling changes which had occurred in the world, mankind currently found itself in a moral vacuum which was difficult to fill. The Committee should therefore feel compelled to consider the question of asylum with greater urgency, with a view to achieving its broader and more rational application. The question under consideration was of deep social significance since, on one hand, it concerned the protection of the individual, whoever he might be, and, on the other, society, which was defenceless against those who sought to further a cause by violent means.

30. His delegation considered that, in principle, any draft prepared on that subject would have to be a compromise. The Committee should not be daunted by that consideration. The Latin American countries relied on a number of instruments which, despite their imperfections, performed useful functions. In addition, a new draft had been prepared by the Inter-American Juridical Committee and was awaiting the consideration of the Organization of American States.

The meeting rose at 12 noon.

1555th meeting

Monday, 3 November 1975, at 3.10 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1555

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II)

1. Mr. SETTE CÂMARA (Brazil) said he concluded from the very impressive materials in the Secretary-General's report (A/10139, Part II) that the practice of diplomatic asylum according to rules of customary or conventional international law was currently confined to Latin American States. The practice had, however, originated in customs that were common to the whole of the *jus gentium* of former times, and it was generally admitted that the right of asylum went back to the very sources of permanent diplomatic missions. Under the old doctrine of extra-territoriality, the premises of embassies and other sites became established as sanctuaries for those prosecuted by the territorial State and not protected by normal legal remedies. It could therefore be maintained that the Latin American countries had crystallized those immemorial customary practices into binding rules of law, while the rest of the world had discontinued them and replaced them by

other legal doctrines such as that of the need for independence in discharging official functions.

2. So strong were the roots of the institution of diplomatic asylum that even the States which repudiated it had not hesitated to utilize it whenever special circumstances so required, as was shown by a number of examples mentioned in the Secretary-General's report. Asylees had remained in the premises of embassies for longer than a decade and no territorial State, so far as he knew, had ever resorted to extreme measures to put an end to such a situation. In very recent times, the embassy of a country which was far from recognizing the right of asylum had become the sole haven for hundreds of refugees from a victorious insurrectional movement and the new Government had respected the diplomatic asylum granted and provided the means for evacuating the asylees to a neighbouring country.

3. Nevertheless, judging from the written comments of Governments and the current debate, difficulties arose because of the lack of unanimity as to the existence of a sound principle of general international law justifying

diplomatic asylum. Advocates of non-recognition of the practice contended that it was a derogation from sovereignty or that it was incompatible with the functions of diplomatic missions as defined in the Vienna Convention on Diplomatic Relations.¹ There was, however, a general awareness of the humanitarian aspect of the question and many States which did not accept the institution had in practice granted asylum in special circumstances, prompted by the wish to save lives. His delegation agreed with the representative of Australia (1551st meeting) that such humanitarian considerations were widely recognized and it believed that they provided a fairly ample common denominator which could be used as a starting-point for future work on the topic.

4. His country, as a member of the region which had succeeded in regulating the question of diplomatic asylum through legal norms and as a party to all the relevant conventions, appreciated every effort made with a view to a better understanding of the institution of diplomatic asylum at the global level. In that connexion, he wished to point out that his country attached great importance to two main features of the practice of diplomatic asylum in Latin America, namely the exception for common criminals and the right of the State granting asylum to qualify the nature of the offence of which the individual was accused. His delegation was happy that other Latin American representatives had had the opportunity to reaffirm their attachment to the practice.

5. He wished to praise the cautious position taken by the Australian delegation. The immediate goal of that delegation, to air the subject so as to update information on governmental attitudes towards it, had been attained and his delegation agreed that to press discussion of the subject towards the drafting of a text could be frustrating and even contrary to the interests of those who valued the institution of diplomatic asylum. The reservations of many States were such that the concessions which might have to be made in order to obtain a consensus could deform the institution and jeopardize its application, even in the countries which accepted it as a part of their international law.

6. Future work on the subject, whatever its results, would not be intended to detract from the alleged advantages of the flexibility and uncertainty that currently prevailed in many States. It was by dispelling doubts and seeking agreement on minimum standards for the operation of the right of asylum outside conventional law that mutual confidence would emerge, thus making it possible for humanitarian principles to be applied without creating political friction. His delegation would be prepared to co-operate in any future steps taken to enhance the role of diplomatic asylum.

7. Mr. AÍSSI (Dahomey) thanked the Australian delegation for having requested the inclusion in the agenda of the important question of diplomatic asylum, which was of concern to his delegation because it touched on an aspect of human rights, the promotion of which was one of the tasks of the United Nations. The concern of States to safeguard their absolute sovereignty should not lead them to sacrifice humanitarian considerations. Some States

whose policy was based on anachronistic imperialism and neo-colonialism thought that discussion by the General Assembly and, *a fortiori*, the codification of diplomatic asylum might impair their sovereignty.

8. The idea of absolute national sovereignty had been successful in the days of narrow and egotistical nationalism but United Nations membership imposed certain obligations, including those of a humanitarian nature. The fact that General Assembly resolution 3321 (XXIX) had been adopted by an overwhelming majority showed that most States had already conceded that the concept of absolute State sovereignty could be subject to some modifications. The Secretary-General in his report (see A/10139, Part II, para. 313) had quoted Ulloa's views on that point² that provided a legal foundation for diplomatic asylum.

9. Furthermore, the United Nations would make a useful contribution to removing doubt in cases where States might consider that the grant of diplomatic asylum would constitute an unfriendly act towards the other State involved.

10. His delegation hoped that the International Law Commission would follow its usual custom of drawing up draft articles codifying the established practice in the matter. That practice was recognized by a good number of States, but it was much more developed in Latin America than elsewhere and his delegation paid tribute to the Latin American States for their solid tradition of diplomatic asylum.

11. The texts collected by the Secretary-General in his report could be improved along lines acceptable to all Member States. In particular, terminological confusion must be avoided and in that connexion his delegation thought that the International Court of Justice had made a judicious distinction between diplomatic asylum and territorial asylum in its judgement on the litigation between Colombia and Peru in the asylum case.³ With regard to persons who might be granted diplomatic asylum, contemporary international history showed that there were a number of forms of struggle and consequently a number of reasons which might lead to the persecution of those fighting in a just cause. It was for that reason that the Revolutionary Military Government of Dahomey had always favoured the adoption of measures to preserve fundamental human rights. It considered that any person guilty of offences other than offences under the general law should not suffer in respect of either his person or his liberty.

12. Dahomey belonged to the continent which still knew the evils of colonialism, racism and *apartheid*. It was for that reason that he had referred to offences other than offences under the general law. The draft articles that might be prepared by the International Law Commission should take account of the fact that the beneficiary of the right of diplomatic asylum should be any person persecuted on account of political offences or of political opinions (for example on colonialism or *apartheid*) or of his race or

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

² A. Ulloa, "El asilo diplomático", *Anuario Jurídico Interamericano*, 1949, p. 40.

³ *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports, 1950, p. 266.*

religion. That would exclude mercenaries. While conceding the principle of diplomatic asylum, Dahomey wished to make it clear that it was opposed to such asylum being granted to any person convicted of collusion with a foreign Power to harm the legitimate interests of peoples struggling to free themselves from any form of alien domination. It was necessary to make that point clear because international imperialism and neo-colonialism in all their forms always operated in developing countries through reactionary individuals won over to their cause.

13. With regard to the question of urgency, that condition might be interpreted as interference in the internal affairs of a State, since urgency might be assessed differently by the territorial State and the State granting asylum. The territorial State could always claim that there was no urgency requiring the grant of diplomatic asylum. It would be the task of the International Law Commission to define reasonably objective criteria for the assessment of that urgency. It should also be remembered that in cases involving political offences, the traditional independence of judges might be influenced by circumstances or pressure or they might be replaced by specially constituted courts open to institutional or hierarchical prejudices.

14. Mr. LANG (Austria) said that his country kept its doors wide open for those seeking political asylum. That long-standing tradition was firmly rooted in the humanitarian convictions of the Austrian people and his Government had followed it even when it had proved to be a considerable burden.

15. However, his delegation wished to reiterate the hesitation which it had expressed in the debate in the Committee at the twenty-ninth session (1507th meeting) and in its written comments in document A/10139, Part I, concerning the advisability of drafting a convention on diplomatic asylum. The decision to grant diplomatic asylum could be justified only in special circumstances, when a person was in immediate serious danger or when a State persecuted a person in a manner incompatible with minimum standards of human rights. A framework for diplomatic asylum would not contribute to its improved application, but would hamper the flexibility with which the States concerned had acted thus far.

16. Australia's initiative in proposing the item had had several useful effects. It had led to the highly valuable report of the Secretary-General and had involved representatives in a consciousness-raising process in the course of which everyone had become more thoroughly aware of the humanitarian considerations underlying the legal and political issues involved. Although a universal legal solution to the problem of diplomatic asylum might come only in the distant future, the current discussion could be considered a major step in that direction.

17. Miss AGUTA (Nigeria) expressed her delegation's appreciation to the delegation of Australia for initiating the current discussion, which would help to foster the progressive development and codification of international law and was aimed at protecting human dignity and upholding the ideals of the United Nations.

18. Different principles applied to territorial and extraterritorial asylum. The power to grant territorial asylum

was an incident of territorial sovereignty, whereas the grant of extraterritorial asylum was a derogation from the sovereignty of the territorial State in so far as that State was required to acquiesce in fugitives from its authorities enjoying protection from apprehension in legations and other sites. Every State had a plenary right to grant territorial asylum, unless it had accepted some particular restriction in that regard, whereas the right to grant extraterritorial asylum was exceptional and had to be established in each case.

19. What the two types of asylum had in common was that they both involved an adjustment between the legal claims of State sovereignty and humanitarian considerations. Territorial asylum was of ancient origin and extended not only to political, social and religious refugees but to all persons from abroad, including criminal offenders. It was merely one aspect of a State's general power to admit or exclude persons from its territory.

20. A fugitive had no enforceable right in international law to enjoy asylum, the only international legal right involved being that of the State of refuge. That right could of course be cut down by treaties, extradition treaties being the commonest illustration. In principle, asylum ought not be granted to any person when there were well-founded reasons to consider that he had committed a crime against humanity.

21. As to diplomatic asylum, modern international law recognized no general right to grant asylum where its effect would be to exempt the fugitive from the regular application of the laws of the territorial State. As a temporary measure, however, asylum could be granted to individuals who were physically in danger from a mob or where the fugitive was in peril because of extreme political corruption in the local State. The justification presumably was that by the grant of asylum an urgent threat was temporarily turned aside.

22. Diplomatic asylum was based on mutual respect between the territorial State and the State granting asylum. If the territorial State acquiesced in asylum, it did so because it realized that asylum was granted on the basis of humanitarian considerations and that no affront to that State was intended. To prevent abuse of that mutual respect, each individual case had to be viewed on its own merits. Diplomatic asylum was not likely to be granted to a common criminal. Any negotiations between the two States involved should be conducted on the basis of courtesy and through the diplomatic channel. In that way, diplomatic asylum would not usually be deemed an interference in the internal affairs of the territorial State.

23. As yet, no binding general rules of international law for the protection of human rights and fundamental freedoms, with adequate enforcement machinery, had been established. Indeed, the point at issue was not whether diplomatic asylum should be universally institutionalized but whether discussion of the question should continue. Her delegation, although it did not believe that the question was ripe for codification, felt that it should be widely and exhaustively discussed. It therefore appreciated Australia's initiative in introducing the topic and the elucidating report by the Secretary-General.

24. Mr. VANDERPUYE (Ghana) noted that the practice of diplomatic asylum was alien to the legal institutions of his country. No diplomatic mission in Ghana nor any Ghanaian mission abroad (except for one isolated case) had ever been requested to grant or had actually granted asylum to any refugee from political persecution or justice. His delegation had nevertheless supported General Assembly resolution 3321 (XXIX) out of concern for the humanitarian aspects of diplomatic asylum, and, on the other hand, out of a desire for information on that intricate topic; his Government knew very little about the topic and felt that it needed preparation to cope with any problem of diplomatic asylum that might arise in the future. He expressed his gratitude to the Secretary-General for producing the thorough and informative report on the matter and the survey of replies from States and noted that they had helped his country to correct a series of misconceptions about the legal basis of diplomatic asylum and the attitudes of States on that rather controversial matter. It was clear from the report that diplomatic asylum was not an institution of international law, in the sense that there was no generally recognized customary law on the subject. Neither the obsolete concept of the extraterritoriality of diplomatic premises nor that of their inviolability could any longer serve as a basis for the institution of diplomatic asylum. The provisions of the Vienna Convention on Diplomatic Relations likewise could not serve as a legal basis for the concept. He noted that the basic difference between diplomatic asylum and territorial asylum was that the latter, granted by a State in its own territory in exercise of its sovereignty, did not impinge on that sovereignty. Diplomatic asylum, however, appeared to be an interference in the internal affairs of another State and a derogation from its authority and could, therefore, be a potential source of international conflict and contrary to the spirit and purposes of the Vienna Convention. On the basis of that reasoning, the subject of diplomatic asylum would not appear to be a suitable topic for consideration by the Committee.

25. His delegation, however, was not swayed by the weight of those arguments against the further consideration of the topic, and urged the Committee to take a careful and dispassionate look at the other side of the argument. Diplomatic asylum was an important social institution of unquestioned utility sanctioned by tradition and had rendered great humanitarian service. It had been practised by States from time immemorial, whenever the need arose, i.e. during abnormal times. The Latin American countries had established the juridical status of diplomatic asylum by convention. The initial pages of the Secretary-General's report, dealing with the history of the institution, showed that the practice of diplomatic asylum was still resorted to by States even outside Latin America. The continued likelihood of civil disturbances, internal revolt and coups d'état occurring anywhere in the world made the right of asylum essential for all nations. No country could consider itself altogether immune from civil disturbances, as the recent events in Africa and even Europe showed. In all countries subject to actual or potential civil disturbance, the institution of diplomatic asylum formally recognized by the international community might help to save the lives of future leaders who might be called upon to render invaluable services to their countries in the future. It was, furthermore, not correct to equate purely political refugees

seeking asylum with common criminals. Alleged political criminals might later be brought to power, perhaps by the very persons who had persecuted them previously. Those who considered that the Committee could not deal with diplomatic asylum because it was not a legal institution but rather an extra-legal one needed to be reminded that the compelling humanitarian considerations which justified the institution of asylum as an exception to that negative position had been generally recognized, as was noted in paragraphs 293-295 of the Secretary-General's report.

26. With regard to diplomatic asylum's supposed derogation from the sovereignty of States and its alleged interference with the internal affairs of the State, especially the State's normal judicial processes, he stressed the importance of humanitarian considerations and the fact that territorial asylum, generally accepted by States, was itself not entirely free from such derogation. Citing paragraph 295 of the Secretary-General's report, he stated that the right of asylum, in its various historical forms, constituted the defensive reaction of the supreme postulates of culture to social phenomena which, in one way or another, were a negation of culture.

27. The polarization of views in the discussion of the topic was, in his view, another demonstration of the typical reaction of the Committee and the international community to any new topic proposed for consideration. The forces interested in the maintenance of the *status quo* aligned themselves against the forces of change and progress. In that connexion, the Latin American countries should be commended for their consistent presence in the vanguard of the progressive development of international law. The question of diplomatic asylum should not be set aside on the mere pretext that the time was not ripe for its consideration. Much groundwork for future work by the Committee had already been laid in the various Latin American conventions and the drafts prepared by other non-governmental organizations concerned with international law. There were certain aspects of the question which needed more thorough study and development, on account of their compelling humanitarian significance. The practice of diplomatic asylum was more likely to increase in the future and clear definition and international regulation of the practice would be advantageous to the international community and a number of its potential leaders. He suggested, therefore, that the subject should be brought up for review within two or three years to enable the Committee to take another look at the prospects for its codification in either a declaration or a convention.

28. Mr. JACHEK (Czechoslovakia) drew attention to his country's position on the question of diplomatic asylum and on the possibility and advisability of elaborating a universal international level instrument on that institution, which was to be found in document A/10139, Part I.

29. The Vienna Convention on Diplomatic Relations, to which Czechoslovakia was a party, did not provide for diplomatic asylum. Indeed, diplomatic asylum, as that term was understood in the current discussion, not only did not belong among the rights and duties of diplomatic missions but contradicted the letter and spirit of that Convention. Unless a special agreement existed between the parties, the grant of diplomatic asylum could cause considerable dam-

age to mutual relations between the States involved since it constituted a significant infringement of the sovereignty of one of them. The purpose of the Vienna Convention, by contrast, was to strengthen and promote relations among States with different social systems.

30. As a socialist State, Czechoslovakia provided protection in its territory to foreign citizens persecuted for the defence of the interests of the working people, for participation in national liberation struggles, for creative scientific and artistic work, or for activity in the defence of peace, by granting them the right of asylum on the basis of article 33 of its Constitution. By contrast, Czechoslovak law did not recognize diplomatic asylum, which had not become a universally accepted institution of international law. However, Czechoslovakia was aware of the significance of the humanitarian aspects of that question and therefore had voiced no objection at the previous session (1510th meeting) to a further study of that question. At that time, however, it had pointed out that the problems involved were complicated and controversial and that it would be premature to draw conclusions as to their future international legal regulation.

31. Only one conclusion could be drawn from the written views of Governments and the current debate: elaboration of an international legal instrument on diplomatic asylum would at the current stage be an unrealistic task for the United Nations, since diplomatic asylum was far from being universally recognized in either theory or practice. As a practical matter, it remained limited to one region, and those States which recognized it as a matter of tradition did not base the practice on identical principles. The elaboration of universally acceptable criteria for diplomatic asylum would be very difficult because of the exceptional nature of the relevant cases. In addition, his delegation doubted whether codification of the institution of diplomatic asylum in current international conditions could influence positively the development of friendly co-operation among States.

32. Although continued efforts towards codification were currently inappropriate, the exchange of views on the topic was useful, since it clarified the approach of States and, together with the excellent report of the Secretary-General, established a broader basis for possible future work on the various problems related to the right of asylum. He wished to express his delegation's thanks to the Australian delegation, which had initiated the discussion, for its serious approach to the question and for its awareness of the complexity and political sensitivity of the issues involved.

33. Sir Vincent EVANS (United Kingdom) said that when the question of diplomatic asylum had been placed on the agenda of the twenty-ninth session of the General Assembly, his delegation had feared that the search for clarity in defining the principles governing diplomatic asylum might have the effect of limiting the possibilities of granting asylum for humanitarian reasons (1509th meeting). However, the subsequent discussion had done much to clarify the position and the Australian delegation's cautious approach was sensitive to the humanitarian considerations involved.

34. Despite the antiquity of the concept of diplomatic asylum, it had never become firmly established as an

institution of universal international law defined by a generally accepted code of rules, treaty or custom. Even in that part of the world in which it had flourished most in recent times, namely Latin America, the practice of granting diplomatic asylum had developed to meet the political and social needs of that region and by no means all of the States had accepted the conventions relating to diplomatic asylum. That demonstrated the difficulty of formulating a generally acceptable code of legal rules to govern the matter.

35. Naturally, it did not necessarily follow that except as between Latin American States there was never any legal basis for the grant of diplomatic asylum and that there were no circumstances whatever in which it might be granted as a matter of international law. The possibility of granting asylum stemmed in practice from the inviolability enjoyed by the premises in which it was sought. On the other hand, it had been clearly established that the head of the mission had no general right to grant asylum, since a decision so to do withdrew the asylee from the jurisdiction of the host State and consequently involved a derogation from its sovereignty. In principle, as the International Court had recognized in the asylum case, asylum could not be opposed to the operation of justice. It followed that asylum should be granted only in very exceptional circumstances. The problem was whether it was desirable to attempt to define such circumstances.

36. In addition to cases in which there was an applicable treaty allowing it or a local custom permitting it, some authorities took the view that it was legitimate to grant asylum in certain cases where there were extreme humanitarian grounds. Several speakers had mentioned the case of the person fleeing from mob violence. The International Court's judgement in the asylum case strongly suggested that the grant of asylum might be justified where in the guise of justice, arbitrary action was substituted for the rule of law. However, there was some uncertainty as to the precise limits of the extreme humanitarian grounds which might justify the grant of asylum and it would not be easy to define those limits legally. In addition, the grant of asylum by a diplomatic mission for humanitarian reasons might in practice also be tolerated by the host State for political or other extra-legal reasons, irrespective of its obligations under international law. That factor added a very important dimension from the humanitarian point of view.

37. As the Australian delegation had pointed out, the current legal position was uncertain; there was however, a degree of flexibility in practice which was helpful to the humanitarian cause and might be lost if a rigid code of rules for diplomatic asylum was formulated. His delegation was therefore not convinced that there would be an advantage in attempting any such formulation by means of a convention or a declaration.

38. Mr. APRIL (Canada) said that, like the majority of the international community, his country felt that diplomatic asylum was not an institution recognized by contemporary universal international law and lacked a generally recognized and accepted legal foundation. The theory that diplomatic asylum was based on the principle of the extraterritoriality of diplomatic premises was no longer

accepted, as the legal fiction of extraterritoriality had become obsolete. The principle of the inviolability of diplomatic premises was likewise not accepted, as a foundation for diplomatic asylum because inviolability was recognized only with a view to ensuring effective performance by the diplomatic mission of its functions, which did not include the grant of diplomatic asylum.

39. In Latin American law the Conventions of Havana⁴ and Montevideo⁴ referred to local custom as the foundation of the institution of asylum. However, the International Court of Justice, in its judgement in the Colombian/Peruvian asylum case, had stated that in the case of diplomatic asylum there was no custom in the legal sense of the term. The 1954 Caracas Convention⁴ therefore provided that diplomatic asylum would be respected in accordance with the provisions of that Convention. Thus, even in Latin America the supposed customary foundation of diplomatic asylum had had to be replaced by a conventional foundation. Diplomatic asylum hence had legal existence only in so far as the States concerned were willing to accede to a treaty or convention on that question. He believed that the work done since the current item had been included in the agenda and the discussion on that item showed clearly that at the world level the underlying conditions and political will necessary for the adoption of a treaty on diplomatic asylum were lacking.

40. If a draft treaty on diplomatic asylum were to materialize, the circumstances in which it would apply would be so difficult to define that its text would probably be too rigid or too vague in practice and thus remain a dead letter or become a source of disputes. However, if the draft was not adopted, that would have negative consequences for the underlying humanitarian ideals and for certain related practices, such as temporary refuge or safe haven.

41. In the view of his delegation, international law recognized that in certain exceptional circumstances an ambassador could and must provide a temporary safe haven to any person whose life was in immediate danger. Diplomatic asylum, with its marked political connotations, should not be confused with temporary safe haven, which was essentially and exclusively a humanitarian practice. It was obviously impossible to define in detail the exceptional circumstance in which temporary safe haven could and should be granted. Each case would have to be decided individually, on the basis of consultations between the parties concerned. The lack of codification on the matter should not be seen as a gap, as it provided an opportunity for flexibility and pragmatism.

42. He thanked the Secretary-General for his excellent report and said that his delegation would support any draft resolution on the question, so long as it recognized that it would be useless for the Committee to continue studying the matter at the current stage.

43. Mrs. PEREYRA (Venezuela) said she wished to reiterate her delegation's position in support of the principles underlying the institution of asylum and its application

in Latin America. In particular, her delegation wished to stress the aspects of diplomatic asylum which were relevant to the protection of fundamental human rights. The practice of diplomatic asylum, which had been established by regional agreements to which the Latin American States had become parties since the end of the nineteenth century, was a source of legitimate pride for the Latin American continent. It had resulted from special political and cultural traditions and the fact that it was so highly developed in Latin America was proof that it responded to social and political requirements.

44. Although the regional agreements on diplomatic asylum were a source of pride for Latin America, the same could not be said of the historical and political circumstances under which some of them had been signed. For example, while distinguished lawyers were reaching agreement on the Convention on Diplomatic Asylum signed at Caracas in 1954, the host Government had been engaged in persecuting its democratic opponents. That demonstrated the conflict between theory and practice which was exemplified by certain States currently granting diplomatic asylum for political reasons although they had traditionally opposed it.

45. Her delegation felt that both extremes should be guarded against, since if the legal principles underlying asylum were used for purposes of international propaganda, it might invalidate them with the result that they came to be ignored in practice.

46. Although the institution of asylum was part of Latin American international law, its application extended beyond the limits of Latin America, since many countries had granted asylum on humanitarian grounds. The Secretary-General's report recorded widely differing views on the part of States and her delegation would confine itself to stating that although it recognized Latin American international law as the source of the right of asylum, it affirmed that on the basis of practice, the universal dimensions of the institution could not be denied, since the principles on which it was based, namely the protection of fundamental human rights, could not be regarded as an exclusively Latin American heritage but were of universal character. Her delegation had been concerned at the opinion voiced by other delegations that the universalization of the institution of asylum might tend to detract from its effectiveness. As her delegation had stated at the previous session (1506th meeting), no measures regarding asylum adopted by the United Nations should diminish the Latin American principles on the subject.

47. The fact that a draft convention on diplomatic asylum had been prepared by the International Law Association three years ago showed that many international lawyers were aware of the relevance and importance of diplomatic asylum in the contemporary world. Her delegation felt that the mere recognition of that fact outside Latin American circles was a positive step not only for States but for all mankind, since the humanitarian aspects of asylum could not be ignored by civilized nations. She therefore hoped that the question of diplomatic asylum would be promptly and fruitfully considered by the International Law Commission. As long as systems of government were not based on true democratic principles, the institution of asylum

⁴ Pan American Union, *Inter-American Treaties and Conventions on Asylum and Extradition*, Treaty Series 34 (OAS Official Records, OEA/Ser.X/1).

would survive; to disregard it would constitute an attack on the principles enshrined in the Universal Declaration of Human Rights regarding respect for life and the integrity of the human being.

48. Mr. EFIMOV (Union of Soviet Socialist Republics) said that his delegation appreciated the constructive and humanitarian motives underlying the initiative taken by the Australian delegation on the extremely complicated and controversial question of diplomatic asylum. Nevertheless his delegation joined others in expressing doubts that the problem could be solved quickly. The discussion in the Committee at the current and previous sessions and the majority of the comments by Member States reproduced in the report (A/10139, Part I and Add.1) made it clear that States would find it very difficult to incorporate the institution in their internal legislation and to deal with the probable political consequences of its codification, which might therefore adversely affect the development of friendly relations and co-operation between States. International legal relations did not bear out the Australian contention concerning the solution of the problems: in fact, the positions of States on diplomatic asylum and the use of diplomatic premises for such purposes not only differed but often were mutually exclusive.

49. The Vienna Convention on Diplomatic Relations did not include the granting of diplomatic asylum among the functions of a diplomatic mission enumerated in article 3 and the use of diplomatic premises for that purpose was excluded in article 41, paragraph 3. Furthermore even in Latin America not all States were parties to conventions on the subject. Much of their practice was governed, not by conventions, but by tacit mutual understanding. Moreover, the International Court of Justice had, in its 1950 decision on the Colombian-Peruvian asylum case, ruled that the principles of international law did not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum. Instances of the granting of diplomatic asylum by Latin American countries in accordance with regional agreements, such as the 1865 Rules of Lima and others, did not, in his view, convincingly support the institution of diplomatic asylum, as the agreements had been temporary, of limited application and had been concluded with approval by their Governments. Some Governments, while denying the existence of a legal right to diplomatic asylum, were prepared to grant it in exceptional circumstances to persons in danger. Those exceptional circumstances differed widely and could not give rise to any uniform practice; a typical situation or general rule could not therefore be deduced from them.

50. Even the incomplete sampling of authoritative legal opinion on the subject carried out for the purpose of the report was indicative of a general rejection of the institution of diplomatic asylum in contemporary international law. Neither the customary practice among States nor the literature on the subject provided a sufficient basis for regarding diplomatic asylum as a generally accepted institution or as a possible subject for codification. Most States were unwilling to accept the institution and, in the view of his delegation, the prerequisite for elaborating a universal and generally acceptable international legal instrument on the question did not exist. Efforts to create any legal basis for the institution of diplomatic asylum would only serve

to complicate relations between States and adversely to influence the process of détente. For those reasons, he believed, as did many delegations, that consideration in the United Nations of the question of diplomatic asylum should be postponed.

51. Mr. BUSSE (Federal Republic of Germany) said that his delegation welcomed the debate on the question of diplomatic asylum. The thorough academic studies undertaken by Latin American jurists on the subject were most impressive; the tolerance and understanding shown by their Governments towards the granting of diplomatic asylum reflected deep humanitarian convictions.

52. The report of the Secretary-General showed very clearly that, in the view of the great majority of States outside the Latin American sphere of law, no agreement existed on whether the concept of diplomatic asylum formed part of existing international law. That situation was not a denial of the existence of diplomatic asylum as a legal institution, but simply implied that opinions on the scope and significance of the concept and on the prerequisites for its application still differed so widely that to embark on a definition of principles would be premature. The prevailing uncertainty did not, however, present any major hazard from a humanitarian point of view. Even if no norms or guidelines were established, foreign missions would not be precluded from protecting human lives in exceptional circumstances.

53. He thanked the Australian delegation for having, for humanitarian reasons, promoted the debate on the question of diplomatic asylum. The Australian representative had given a clear and convincing account of the Australian initiative, and his delegation was confident that the current debate would help to clarify the issues involved and would serve as a basis for further elaboration of the concept of diplomatic asylum.

54. Mr. MUHAMMAD (India) said that his delegation considered diplomatic asylum to be distinct from territorial asylum and to involve a derogation from the sovereignty of the territorial State and an intervention in matters exclusively within the competence of that State. For that reason his Government had, on 30 December 1967, issued a circular to all foreign and Commonwealth diplomatic missions in India stating that it did not recognize the right of such missions to give asylum within their premises to any person. That stand received further support in the views of Member States on the subject.

55. His delegation did not agree with the view that the institution of diplomatic asylum was founded on humanitarian considerations. That view was not warranted by any of the United Nations declarations or by the International Covenants on Human Rights, and previous attempts to invest the institution of diplomatic asylum with a humanitarian character had failed.

56. The legal position in Latin American States was somewhat different, since the question was regulated there by well-defined regional treaties which sought, by common consent, to accommodate the special characteristics of the regional political situation. Regional practice developed in Latin America in special circumstances could, however,

have no universal validity or application. The debate in the Committee and the studies carried out on the subject clearly established that the concept of diplomatic asylum was neither part of international law nor an emerging norm of customary international law. That view was confirmed by State practice, with the exception of a few isolated incidents not based on legal considerations.

57. The privileges, immunities and functions of diplomatic missions were clearly defined in the Vienna Convention on Diplomatic Relations. Any unilateral expansion of those functions by a diplomatic mission would be considered by a territorial State as an encroachment on its authority. However, State practice permitted a diplomatic mission to provide temporary refuge on its premises to a person in imminent danger of his life until the cessation of such danger. That practice, while it was clearly justified on humanitarian grounds, did not in any way involve withdrawal of the person concerned from the jurisdiction of the territorial State. There was a basic difference between temporary refuge given on humanitarian grounds and diplomatic asylum accorded for political reasons. It was being said that diplomatic asylum was granted only to persons exposed to victimization on political grounds, but what those political grounds were and on what basis a diplomatic mission might assess those grounds as political and not otherwise was not clear. Definitions of political offences varied from one nation to another and a diplomatic mission should not superimpose its own conceptions of law on events occurring in a receiving State.

58. The representative of Australia had said that the concept of diplomatic asylum did not imply an obligation for the mission to grant asylum or entitle the refugee to demand it, but involved the acknowledgement of a liberty or power for a diplomatic mission. One might ask, however, if humanitarian considerations underlay the institution of diplomatic asylum, how a diplomatic mission could retain discretion to give asylum to some and not to others and on what grounds it would make such a choice. The discretionary power of the mission could conceivably be used to give shelter to persons with whose political views it agreed, which would be tantamount to intervention in the internal affairs of a Member State within the meaning of Article 2, paragraph 7, of the Charter of the United Nations and to a derogation of that State's sovereignty. His delegation could not accept that situation and it was not conducive to international harmony.

59. The debate in the Committee had once again demonstrated the futility of reviewing the subject further. The question of asylum was on the agenda of the International Law Commission and his delegation hoped that that body would undertake a study of the question at an appropriate time, with particular attention to the humanitarian aspects involved.

60. Mr. RAKOTOSON (Madagascar) said that his Government's views were stated in document A/10139, Part I. There was a profound difference between territorial asylum and diplomatic asylum. In the case of territorial asylum, the refugee was outside the territorial State in which the offence had been committed and the granting of asylum did not derogate from the sovereignty of that State, whereas in the case of diplomatic asylum the refugee was in the

territory of the State in which the offence had been committed. As the fiction of the extraterritoriality of diplomatic premises had been abandoned, particularly since the relevant decision of the International Court of Justice, the decision by a diplomatic mission to grant asylum to an inhabitant of the receiving State was tantamount to withdrawing from that State's jurisdiction, thereby derogating from its sovereignty. When article 14 of the Universal Declaration of Human Rights and the Declaration on Territorial Asylum (General Assembly resolution 2312 (XXII)) were being drawn up, the extension of the régime of territorial asylum to diplomatic asylum had been rejected.

61. The purpose of diplomatic missions, as stated in article 3, paragraph 1 (e), of the Vienna Convention, was to promote friendly relations between the sending State and the receiving State, but to make diplomatic asylum a general legal right would increase the obstacles to the attainment of that objective. Furthermore, there was the danger that sending States might use the granting of diplomatic asylum as a means of protecting one of the parties to a conflict, thereby indirectly intervening in the internal affairs of the receiving State.

62. His delegation had noted the arguments in favour of having diplomatic asylum regulated by international law and had been particularly impressed by those emphasizing the humanitarian considerations underlying the granting of diplomatic asylum. Although extraordinary situations might justify exceptional measures, it would be difficult in practice to lay down general rules for determining beyond any doubt the exceptional character of each case, particularly since in some Latin American conventions on the subject that assessment was to be made unilaterally by the granting State. Although diplomatic asylum was not intended to be applied to common criminals, to allow the granting State the exclusive right to assess the nature of the offence would constitute a further derogation from the normal exercise of territorial sovereignty. Moreover, the concept of a political crime could vary from one country to another. There was also the question of whether diplomatic asylum should be granted to persons whose liberty was threatened or simply to those whose lives were threatened. It was not always easy to distinguish between the two. Furthermore, diplomatic asylum could serve its purpose only if the refugee was given a safe-conduct. In order to meet that requirement, a number of countries, including Madagascar, would have to amend their legislation and regulations.

63. For most developing countries, the codification of the law of diplomatic asylum in the form of an international convention would raise both legal and political problems. Those countries in their striving for a new and more just social and economic structure, had to contend with enemies both within and outside their borders. The institutionalization and possible abuse of diplomatic asylum in those countries would merely serve the interests of reactionary forces and thereby discredit the practice.

64. His delegation, in any event, was not convinced that diplomatic asylum lent itself to codification in the form of an international convention. A decision by the territorial State to recognize diplomatic asylum depended on con-

siderations pertaining to each individual case, in particular political considerations, and that discretionary power should not be limited. Consequently, it would be difficult to codify the practice of diplomatic asylum by pre-established rules in the form of an international convention.

65. His delegation thanked the delegation of Australia for its initiative in requesting the inclusion of the item in the agenda.

66. Mr. ŁOPUSZAŃSKI (Poland) said that the question of diplomatic asylum was very complex. His delegation therefore noted with satisfaction the circumspect and realistic manner in which the representative of Australia had re-introduced the question at the current session. His delegation had noted the views of Governments in document A/10139, Part I and Add.1, which included those of his Government. Although the existence of the humanitarian aspect of diplomatic asylum was undeniable, any objective analysis of the problem also had to take account of legal and political or pragmatic considerations.

67. Referring to the legal aspects of the question, he said that there were no norms of universal international law regarding diplomatic asylum and that no international custom, as evidence of a general practice accepted as law, existed. That view was confirmed by the decision of the International Court of Justice of 20 November 1950 on the asylum case. In order to avoid any misunderstanding, it should be remembered that there was a distinction in doctrine between custom and usage, which, as was stated in paragraph 298 of the report of the Secretary-General, was the result of practice.

68. The majority of States were opposed to the full recognition of diplomatic asylum in universal international law for three fundamental and related reasons. The first was their conviction that diplomatic asylum was incompatible with the full and free exercise of sovereignty by the territorial State. In that connexion, his delegation fully shared the view—which had been upheld by the International Court of Justice—that the decision to grant diplomatic asylum constituted a derogation from the sovereignty of the territorial State. The difference between the institutions of diplomatic asylum and of territorial asylum was particularly obvious in their respective effects on sovereignty. According to the Court, territorial asylum in no way derogated from the sovereignty of the State in which the offence had been committed.

69. Secondly, there was the growing tendency in international relations to attribute greater importance to the principle of non-intervention in the internal affairs of States. That principle had become a legal norm, set out in the Charter and reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). The third reason for States' reservations was their completely justified conviction that the institution of diplomatic asylum was incompatible with the norms of diplomatic international law, and in particular with the Vienna Convention on Diplomatic Relations.

70. Referring to the political and pragmatic aspect of diplomatic asylum, he said that it was the highly political

nature of that institution which not only accounted for its uncertainty and instability but was also its best protection, since it enabled States to act prudently with a wide margin of flexibility. As the representative of the Ukrainian SSR had stated at the twenty-ninth session (1510th meeting), there were four possible attitudes towards the institution of diplomatic asylum. Of considerable relevance to the *de lege ferenda* considerations was the attitude of those States which, while not legally recognizing the institution, found themselves in a dilemma when exceptional circumstances arose. Practice in such exceptional cases was very diverse. The report of the Secretary-General did not deal with cases which had occurred since the Second World War, but had recorded a series of cases in which temporary refuge, rather than asylum, had been granted. The former concept had been advocated by a number of delegations, and his delegation saw some merit in it. It might provide justification for State practice in exceptional cases. The observations of Mr. Lauterpacht, reproduced in paragraph 308 of the report of the Secretary-General, were of great interest in that respect.

71. Before a detailed analysis could be made of the subject a number of questions needed to be answered. It was not clear, for instance, whether the granting of asylum or temporary refuge was to be limited solely to persons threatened with uncontrolled violence. It was surely significant in that connexion that the International Court of Justice had held that the granting of diplomatic asylum violated the sovereignty of the territorial State inasmuch as the offender was withdrawn from the justice of that State and that it was the offender and not any other person that was referred to specifically. The assessment of the case might be different if it was not an offender that was involved but some other person against whom no legal proceedings were under way but who was exposed to danger from extra-judicial sources. Other questions were whether the mere prospect of a normal trial justified the granting of asylum or refuge, what the limits of the domestic jurisdiction of the territorial State were, what the meaning of "urgency" was, how the legal basis was to be established in each particular case and whether the territorial State was bound to provide a safe-conduct. The Latin American conventions gave no uniform answers to that last question.

72. The study of the problem could not be regarded as complete; many points remained to be clarified. His delegation believed that it would be desirable to allow Governments to reflect on the difficult problems involved, and would therefore support proposals by the majority of the Committee which took account of the complexity of the problem.

73. Mr. MANYANG D'AWOL (Sudan) thanked the Australian delegation for its initiative in introducing the present subject, which was of great humanitarian importance, and for its useful introductory statement.

74. His delegation believed that diplomatic asylum was very important from the humanitarian viewpoint, since it enabled individuals to escape dangers to which they were exposed for political reasons. The Committee's discussion showed that nearly everyone agreed that the practice lacked the sanction of international law and infringed on State sovereignty. International law, however, was not imposed

on the international community but came from sources within it. International agreements were among the more important of those sources and it was fitting that by virtue of such an agreement a State might embrace the principle of diplomatic asylum and make it a principle of international law, although it had not been one before. It was therefore inappropriate to oppose diplomatic asylum entirely, since that would amount to opposing political and social changes in the international community and would be incompatible with flexibility in international law, which, after all, reflected the aspirations of the international community.

75. Acceptance of the right of diplomatic asylum on humanitarian grounds would make it possible to deal with certain well-known situations such as those arising from domestic political and social disturbances. In such situations, many persons might find themselves in danger and could safeguard their lives only by taking refuge in an embassy or consulate. The grant of asylum in such cases might save the life of an innocent person and should not be interpreted as contravening the principles of international law or the competence of appropriate courts.

76. Yet it was necessary to define the term "political offence" if the principle of diplomatic asylum was to have the desired effectiveness. The existence of a definition would prevent abuses of the right of asylum in situations which fell outside the scope of the definition. Diplomatic representatives would have the authority to determine whether the refugee's situation justified the "political offence" exception on the basis of his particular circumstances. Asylum would, of course, be terminated as soon as the refugee was no longer in danger.

77. The defence of fundamental humanitarian principles, such as that of preserving the life of innocent persons, made it appropriate for the international community to give the question of diplomatic asylum its attention. However, a decision recommending the preparation of an international instrument on the question would be premature and would not serve the goals which he had described.

78. He thanked the Secretariat for its thorough report.

79. Mr. RETIVEAU (France) said that his Government's views were stated in document A/10139, Part I. He congratulated the Secretary-General on his report, which would constitute a valuable guide for States.

80. His delegation sympathized with the humanitarian considerations which had led the Australian delegation to raise the question of diplomatic asylum at the twenty-ninth session of the General Assembly and understood that it had been guided in so doing solely by the desire to explore new ways of saving threatened lives in certain cases. However, such an undertaking was unlikely to succeed in existing circumstances.

81. Diplomatic asylum, unlike territorial asylum, was not an institution of general international law, but was in practice limited essentially to the Latin American countries. That situation was explained by the fact that, whereas territorial asylum was one of the rights which could be exercised by a State within its sphere of competence, diplomatic asylum was a derogation from the sovereignty of a State, since it withdrew an offender from the justice of his country. Moreover, even without those objections, it was clear that there would be considerable difficulty in drawing up rules on the subject within the United Nations, since State practice varied widely and there was no tradition of the practice of diplomatic asylum in many areas of the world. Consequently, his delegation believed that the question of diplomatic asylum did not lend itself to the formulation of universally applicable rules. The existence of rigid rules might even work against the humanitarian concerns on which General Assembly resolution 3321 (XXIX) was based.

82. His delegation had listened with great interest to the statements made by the representative of Australia. Member States should be requested to provide further information on diplomatic asylum. Such information would be helpful in pursuing the efforts already undertaken to ensure respect for human rights.

The meeting rose at 5.55 p.m.

1556th meeting

Tuesday, 4 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1556

In the absence of the Chairman, Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (continued) (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018)

1. The CHAIRMAN announced that a draft resolution on the question of diplomatic asylum (A/C.6/L.1018) had been circulated.

2. Mr. YOKOTA (Japan) expressed appreciation to the Secretary-General for his excellent report (A/10139, Part II) and once again voiced gratitude to the Australian delegation, which, moved by humanitarian considerations,

had taken the initiative the previous year in proposing the inclusion of the item in the General Assembly's agenda for the twenty-ninth session. His delegation had listened with great interest to the statement by the representative of Australia (1551st meeting).

3. His delegation was convinced that more attention should be given to humanitarian problems in order to create a world order which honoured the dignity and value of human beings. However, it had some doubts about the advisability of institutionalizing diplomatic asylum on a global scale. As had been noted by other delegations and by various authorities on the question, the right of diplomatic missions to grant asylum had not been established as part of general international law. Although his delegation was aware that there had been many cases in which diplomatic missions had been used to shield persons either from an imminent threat caused by social disorder or from the jurisdiction of the territorial State, it felt that mere factual situations did not by themselves give rise to either rights or duties under the law. Customs or usages must be accompanied by well-established *opinio juris* in order to constitute a legal norm. That requirement was not met in the case of the institution of diplomatic asylum. In making that assertion, his delegation was not precluding the possible existence of a rule of customary law on diplomatic asylum in a region such as Latin America. He wished to point out in that connexion that the regional character of an institution did not change even if that institution was utilized by the diplomatic agent of a State situated outside the region concerned.

4. With regard to the desirability of institutionalizing diplomatic asylum as a form of progressive development of international law, his delegation wished to make two points. First of all, although it was true that the institution of diplomatic asylum imposed a serious limitation on the territorial jurisdiction of the State, that was not in itself undesirable. Indeed, the acceptance of limitations on territorial jurisdiction was the basis of international co-operation. What concerned his delegation was the nature and scope of the limitation. The key point was whether there should be acceptance, as a matter of general principle, of the limitation on the jurisdiction which had hitherto been exercised against political offenders. Secondly, with regard to the compatibility of the functions of the diplomatic mission and the institution of diplomatic asylum, he felt that the granting of political asylum could very well defeat the main purpose of the diplomatic mission, which was to promote friendly relations between States. Although it had been argued that the Vienna Convention on Diplomatic Relations¹ did not make an exhaustive enumeration of the functions of the diplomatic mission, the idea of utilizing diplomatic premises as a safe haven could not be justified, since inviolability was given to the diplomatic mission in order to ensure the effective performance of its activities.

5. In making those points, his delegation was not precluding the possible existence of the institution of diplomatic asylum in a particular region or denying the fact that exceptional circumstances might call for exceptional measures. However, it did not seem feasible to formulate a legal

rule applicable to all such cases, precisely because they were exceptional, and they must be dealt with on an individual basis.

6. Mr. GARCIA ORTIZ (Ecuador) commended the representative of Australia on his statement and the Secretary-General on his report. Ecuador had joined in sponsoring the draft resolution presented by Australia at the twenty-ninth session and adopted by the General Assembly as resolution 3321 (XXIX) and had transmitted its views (see A/10139, Part I) to the Secretary-General pursuant to that resolution.

7. It had been argued that diplomatic asylum was humanitarian in nature but lacked any legal basis. That was precisely why it was essential to prepare a convention of universal scope which would be signed and ratified by a majority of States and become part of general international law. The fact that diplomatic asylum implied a limitation on State sovereignty did not in any way detract from its practical effectiveness. Moreover, the present-day concept of sovereignty could and must be regarded as purely relative and as limited by the supremacy of international legal order. As to the argument that diplomatic asylum was in conflict with the provisions of the Vienna Convention, that would be remedied by the adoption of a new convention on asylum.

8. Diplomatic asylum was not a Latin American invention but was of European origin. What had happened was that the institution had taken root and become highly developed in Latin America, becoming one of the pillars of American international law and helping to save the lives and freedom of many persons. That alone would be justification for preserving and universalizing it.

9. In dealing with a new institution, what must be considered was whether or not it represented a part of the progressive development of international law and whether it helped to perfect the legal order. In his opinion, there was no question that diplomatic asylum met those requirements, since it involved the application of the human rights proclaimed in the Universal Declaration of Human Rights in 1948 and in similar instruments. His delegation felt that no valid arguments could be brought against asylum and that there were, at most, technical problems which could be solved. The heart of the problem of asylum was the question of the qualification of the offence and the need to define the difference between political and common crimes, the latter of which must obviously receive no protection. The State granting asylum must have sole authority to qualify the offence.

10. He wished to reaffirm the points made by his Government in the comments it had submitted to the Secretary-General and agreed with those delegations which had urged that consideration of the item should continue, that States which had not yet submitted their views and suggestions should again be asked to do so and that the item should be included in the agenda of the thirty-first session so that the Sixth Committee could consider a draft convention which would make it possible to universalize asylum and thus promote the progressive development of international law. His country would in any event continue to maintain and practise diplomatic asylum as well as territorial asylum.

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, P. 95.

11. Mr. MONTENEGRO (Nicaragua) commended the Secretary-General for his report and the Australian delegation for its constructive efforts to have the item included in the agenda of the twenty-ninth session. He felt that the question of diplomatic asylum was of great importance since it affected the interests of human beings. The present item had been widely debated and had been the subject of numerous studies relating, *inter alia*, to the qualification of the offence and the delimitation of jurisdiction. Diplomatic asylum played a part in defending the basic rights which made international peace and security possible.

12. Although diplomatic asylum was not an exclusively Latin American institution and was of European origin, it was in Latin America that it had been perfected, a consensus having been reached on the matter. His country's Constitution, for example, stated that the territory of Nicaragua was to serve as a haven for all who were persecuted for political reasons.

13. He did not believe that the institution of diplomatic asylum was a source of friction or an obstacle to friendly relations between States. Furthermore, even though it entailed a limitation of territorial jurisdiction, diplomatic asylum did not undermine either law or State sovereignty since it made a clear distinction between political and common crimes and the very fact of being a party to a convention was an act of sovereignty.

14. Nicaragua would make whatever efforts were necessary to ensure that diplomatic asylum was given a legal basis through the conclusion of a convention of universal scope. In that connexion, he supported the idea that the General Assembly should continue to consider the item and that the latter should be included in the agenda of the thirty-first session.

15. Mr. KHAN (Pakistan) said that, in his delegation's view, the right of granting diplomatic asylum was basically a matter *de lege ferenda* and not *lex lata*. Diplomatic asylum meant refuge granted in a diplomatic mission or consulate or on board a foreign ship or aircraft to avoid the jurisdictional process of the State which a person was attempting to leave. As a legal concept, asylum was based on the theory of "extraterritoriality" of a diplomatic mission or warship. In the opinion of many experts, the granting of diplomatic asylum was a notable derogation from the territorial sovereignty of the host State. His delegation was of the view that that sensitive and important subject should receive the fullest consideration before the Committee took any decision on it.

16. Diplomatic asylum should be granted only if there was an imminent danger to the life of the intending asylee, who must not be a common criminal. However, what constituted "imminent danger" should be defined clearly and unequivocally.

17. Diplomatic asylum differed from territorial asylum in that the former was of a temporary nature. The State granting asylum was bound to surrender the asylee as soon as the imminent danger had been removed and it also had a duty to ensure that during the period of asylum the asylee did not carry on any political activities detrimental to the interests of the parent State.

18. His delegation reaffirmed the views of his Government, as set forth in document A/10139, (Part I). In its opinion, future study of the subject should be based on the following principles: (a) diplomatic asylum should be granted in cases of political, racial and religious persecution where there was an imminent danger to life, but that right should not be extended to cover danger to liberty; (b) diplomatic asylum should not be converted into territorial asylum by removing the asylee to the territory of the granting State; and (c) when normal procedural guarantees were assured, the asylee should be handed over to the authority of the State where the offence had taken place.

19. Mr. AL-ADHAMI (Iraq) said that his delegation was convinced that there was no rule that obligated States to recognize the right of diplomatic asylum except for such States as had accepted it. The question was whether it was desirable to extend a regional institution to the international community as a whole. His delegation did not feel that that should be done. One problem was the difficulty of elaborating satisfactory texts and defining political crimes. Another was determining whether asylum was a right of the individual or of the State and what were its consequences for relations between States. Furthermore, the question of diplomatic asylum could not be studied apart from the realities of the contemporary world. Modern history, especially since the end of the Second World War, taught that certain States had used the most varied pretexts for attacking the sovereignty of other States and intervening in their internal affairs. Was it not legitimate, therefore, to ask whether diplomatic asylum might not become a weapon for attacking State sovereignty in internal affairs? While it was, of course, appropriate to bear in mind the successful experience of diplomatic asylum in Latin America, one should not lose sight of the historical, political and geographical circumstances under which the institution had developed in that area. For that reason, he was of the view that it would be premature to elaborate any instrument on the matter.

20. Mr. PRIETO (Chile) said that his Government had not submitted its views on the question of diplomatic asylum to the Secretary-General because it preferred to state them during the general debate in the hope that its advocacy of the institutionalization of diplomatic asylum at a global level would be more effective and thus contribute to the decision which the Committee would finally take on the matter.

21. Chile had valuable practical experience in the matter of diplomatic asylum and the continuous tradition in his country in that regard was linked with the history of a people firmly convinced of the fundamental importance of essential human values.

22. Chile had not only strictly complied with the various conventions it had ratified on the subject of diplomatic asylum but had even allowed, for purely humanitarian considerations, the invoking of the institution of asylum by other States which had no right whatsoever to do so. Chile had never objected to diplomatic asylum.

23. His Government was firmly convinced that the more uncertainty there was with regard to the principles applicable to diplomatic asylum, the greater would be the

adverse consequences for the friendly relations which should exist between States.

24. It was a fundamental duty of the United Nations to create basic institutions for safeguarding essential human rights. The Charter itself gave the Organization a mandate for the progressive development of international law in the most diverse fields, and that was all the more urgent in the field of diplomatic asylum.

25. Nearly all of Latin America had provided a constant example of respect for diplomatic asylum. In reply to the assertions of theoreticians who held that diplomatic asylum had been institutionalized in Latin America as a result of the upheaval which had followed upon the achievement of independence in the States of the region, it should be asked whether the same kind of upheaval might not occur in any part of the world today, for very different reasons. Mr. Yepes, in submitting a specific proposal regarding diplomatic asylum to the International Law Commission on 5 May 1949, had stated that although the Latin American States were not alone in recognizing the right of granting asylum to political refugees, they had practised that right most often and by making frequent use of the right of asylum, those countries had enabled political leaders, who would otherwise have been sacrificed to the hatred and revenge of their opponents, to render their countries valuable service.²

26. One of the major objections which had been raised to counter the proposal that diplomatic asylum should be institutionalized on a global basis was the assertion that diplomatic asylum would entail a derogation from the sovereignty of the territorial State. That argument was fallacious, however, since the same could be said with regard to all the emerging rules of customary international law and also with regard to any treaty which placed a specific obligation upon States. Irrespective of the terms in which it was expressed, that discussion could not be regarded as other than trivial when one considered the fact that the victims would be not the academics holding forth on the matter but rather the persons to whom such an important safeguard as diplomatic asylum was being denied.

27. Latin American States, for purely humanitarian reasons, had preferred to accept restrictions on their own sovereignty because it was human rights that were of the most fundamental importance.

28. It had been maintained that the granting of diplomatic asylum to a person under the jurisdiction of the receiving State clearly represented interference in the internal affairs of that State; on the contrary, however, it was evidence of political maturity to permit another Government to evaluate dispassionately a matter which those concerned would be judging in the heat of passion and to recognize that such an evaluation was not an unfriendly act but rather the exercise of a power recognized by international law.

29. Other delegations had said that granting diplomatic asylum was incompatible with article 41, paragraph 3, of the Vienna Convention on Diplomatic Relations and that it

was not one of the functions of diplomatic missions as defined in article 3 of that Convention. However, it was essential to recall that article 3 of that Convention did not give an exhaustive list of the functions of a diplomatic mission. Accordingly, there were no sound juridical reasons for concluding that it was not possible to universalize the institution of diplomatic asylum.

30. Law was a science which should be used in the service of mankind and the Sixth Committee should adopt measures to ensure that diplomatic asylum would be made universal in due course. There were various ways to do that and Chile was prepared to support any initiative to achieve that end, which was as noble as it was essential.

31. Mr. CRUCHO DE ALMEIDA (Portugal) said that the Committee was currently debating a question of true humanitarian significance and his delegation considered it its duty to respond to the call of the Australian delegation and of others that had stimulated the debate. The United Nations, like the League of Nations, had not forgotten the plight of refugees. In that regard, he wished to mention the work of the Office of the United Nations High Commissioner for Refugees, the adoption by the General Assembly of resolution 2312 (XXII) and the adoption by the United Nations Conference of Plenipotentiaries of the Convention relating to the Status of Refugees,³ in 1951, and the adoption of the 1967 Protocol,⁴ to which Portugal was about to accede.

32. Definition of the right of diplomatic asylum was but a small part of the vast refugee question. It would be unacceptable for the Committee to take lightly the question of diplomatic asylum, which had the same roots as the general problem of refugees.

33. His delegation would discuss the question from a pragmatic, not a theoretical, point of view. The first fact to be reckoned with was the uncertainty which prevailed regarding the legal aspects of diplomatic asylum. That fact pointed to the need for further study of the question and eventually for some clarification, for instance through the formulation of recommended practices.

34. However, any further study of the matter would make it necessary to take a position at least with respect to two decisive and very delicate subjects: the distinction between a common crime and a political offence, and the question of when the granting of diplomatic asylum became a matter of urgency in the face of an internal political upheaval.

35. No one had yet been able to give a precise or satisfactory answer to the first question, while the second, by its nature, lay outside any legal framework and belonged to the realm of discretion and prudence.

36. Thus, one could understand the hesitancy of States to adopt an official position on the matter. The Latin American States, however, had taken official positions in several treaties. To understand that fact, one had to bear in mind that those countries had a strong feeling of fraternity and deeply shared common values. That common heritage

² See *Yearbook of the International Law Commission, 1949*, 16th meeting, para. 69.

³ United Nations, *Treaty Series*, vol. 819, No. 2545, p. 137.

⁴ *Ibid.*, vol. 606, No. 8791, p. 267.

had proved more durable than transitory divergences. Could the same be said of the world community in the present state of affairs? If not, one should not try to imitate the legal forms of a community whose standards of international conduct one was not yet in general prepared to accept and respect consistently.

37. Another basic question was whether denial of the right of asylum affected the humanitarian outcome of the case in which it was denied. In many cases in which the right of diplomatic asylum was not recognized in general, the interested parties had agreed to it, either through tolerance of the territorial State or on the basis of *ad hoc* arrangements. In that regard, he wished to point to article 41, paragraph 3 of the Vienna Convention on Diplomatic Relations.

38. If an embassy received a refugee, although it did not have the right to grant asylum, the right of inviolability of the premises nevertheless would ensure *in extremis* the protection of the refugee until negotiations could solve the dispute between the interested parties.

39. None of the cases of denial of asylum that were mentioned in the report of the Secretary-General would qualify for the granting of asylum, even if the right of diplomatic asylum were recognized in general.

40. Those last considerations did not make it urgent to reconsider the legal aspects of diplomatic asylum, but at the same time they did not leave one with a clear conscience. As in the field of criminality, one could speak of the gloomy statistics of diplomatic asylum. Only those crimes which were reported to the police were known. He wondered in how many more cases asylum would have been requested and granted if the right of diplomatic asylum had been recognized in general.

41. In the face of several conflicting factors, his delegation was prepared to accept the opinion of the majority of the Committee but hoped that, at a minimum, States would give further consideration to the matter and would communicate their views on it to the General Assembly.

42. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that although the negative reaction of many Member States concerning the current item had been expected, it had not been thought that representatives would go to the extreme of proposing that discussion of the matter should not be continued, especially when one considered that that opinion had been expressed before representatives had learned the contents of the Secretary-General's report or heard the opinions of other States, in particular the observations of the Australian Government (see A/10139, Part I), and the statement by the representative of Australia (1551st meeting). Those who had applauded the Australian Government at the previous session for its initiative in requesting inclusion of the item should express their intellectual respect for the views and erudition displayed at both sessions. His delegation, which was proud that Latin America had long ago established, *de facto* and *de jure*, an institution aimed at protecting humanity's most cherished possessions, life and liberty, felt obliged to join Australia in its noble effort.

43. In order to dispel the doubts which had—unjustifiably, in his delegation's view—been raised about diplomatic asylum, he wished to remind the Committee that the reference by some delegations, to begin with, to lack of a legal basis for diplomatic asylum was a criticism not of diplomatic asylum as an institution, but of the attitude taken by many States which practised it without calling it by name and without having recognized it previously as a part of international law. That showed the correctness of the Australian proposal, the only purpose of which was to make the practice part of general international law.

44. In answer to the argument that diplomatic asylum lacked a basis because the theory of extraterritoriality of diplomatic premises had been abandoned, he quoted Reale, who believed that the practice was justified by considerations which were more humanitarian than legal, although it should be regulated in order to avoid abuses, and Cabral de Moncada, who had said that diplomatic asylum was a humanitarian institution based on international protection of the minimum rights of human beings. According to Accioly, diplomatic asylum, provided that it was duly regulated, restricted to political cases and used with discretion, still performed a real service and was not incompatible with the principles governing the granting of privileges and immunities. The Uruguayan writer Vieira had stated that the modern tendency was to focus not only on the State but on man as a subject of international law and to consider States as merely his servants. Hugo Gobbi, in an article entitled "Eusayo de una crítica del asilo diplomático", published in 1962 in *Revista Española de Derecho Internacional*, had written that non-surrender of an offender was made lawful solely and exclusively by the contractual or customary norm establishing asylum, and, recognizing that the doctrine of extraterritoriality did not serve in modern times as a basis for asylum, he had stated that the only legal basis for the practice was provided by the rules of asylum itself.

45. The argument that diplomatic asylum involved interference in the internal affairs of another State had lost all validity. In that connexion, he quoted Gobbi, according to whom it was evident that the existence of an international norm, whether customary or contractual, which limited the punitive capacity of a State and made possible action by another State, in the current case as the grantor of asylum, meant that there had developed a kind of lawful narrowing of the scope of the reserved domain or the domestic jurisdiction of a State. He also quoted Charles Rousseau, who, in his *Droit international public*, distinguished between lawful and unlawful interventions,⁵ the latter being cases in which the intervening State acted without adequate legal authority, and stated that intervention was lawful when the State acted by virtue of a legitimate right, which occurred, among other circumstances, whenever a special treaty or an abstract norm could be invoked and in certain situations in which the State acted for the general benefit of the international community, as in the case of international police action and, in particular, intervention on humanitarian grounds, a practice aimed particularly at preventing acts of cruelty and atrocities. Those authorities demonstrated that juridical regulation of diplomatic asylum in and of itself took away the force of criticisms of the

⁵ Paris, Recueil Sirey, 1953, pp. 322 and 324.

practice based on the idea of limitation of sovereignty or interference in the internal affairs of another State.

46. He said that the achievement of the Latin American countries was to have established, by a sovereign act, the legal basis for the waiver of rights by invoking the cherished principles which diplomatic asylum represented and defended, as in the case of the waiver of rights provided for in the Vienna Convention on Diplomatic Relations. What was being discussed was the advisability of achieving universal legal recognition of diplomatic asylum, which would be based on two elements, namely the attitude to be seen in the actions and in the words of those who still opposed diplomatic asylum and the general recognition which had been achieved by territorial asylum. In that connexion, he drew attention to the examples referred to by the writer, Rousseau, in the work already mentioned, those referred to by the Australian delegation, the case of the Spanish Civil War, and, more recently, that of Chile, and the cases of Cardinal Mindszenty and the Hungarian Prime Minister, Imre Nagy, in Hungary in 1956. Those examples supported the nearly unanimous view that the humanitarian basis for diplomatic asylum should be recognized, although the sovereign rights of the territorial State might be seriously infringed if diplomatic asylum was practised before the rules by which its exercise was to be regulated were defined and implemented. That was the main argument in favour of the need to continue the studies on the question and try to direct them towards the universal recognition of that right.

47. The States which rejected diplomatic asylum nevertheless accepted territorial asylum, which had also been recognized in Latin America since the end of the nineteenth century. Nevertheless, his delegation did not dare make such a cut-and-dried affirmation. It was stated that the Universal Declaration of Human Rights referred only to territorial asylum, but, in that connexion, he recalled that the Bolivian delegation and his own had tried unsuccessfully to extend the provisions on territorial asylum to diplomatic asylum and that the amendments submitted by those delegations in documents A/C.3/227 and A/C.3/268 had been withdrawn at the 122nd meeting of the Third Committee in order to prevent an opposing vote from setting an inappropriate precedent and thus weakening the principle.

48. As the representative of Guatemala had stated (1553rd meeting), territorial asylum could, according to the interpretation of those who criticized diplomatic asylum, mean interference in the internal affairs of another State. The Uruguayan writer, Quintín Alfonsín, criticizing the basic assumption of the Universal Declaration of Human Rights, had said that, at first glance, he saw no reason whatever for the Declaration to recognize one type of asylum and not the other. He (Mr. Fernandez) also noted that the first Spanish- and Portuguese-American Congress of International Law had formulated a declaration providing that the right of diplomatic asylum was an inherent right of the human person.

49. Referring to the judgement of the International Court of Justice in the Haya de la Torre case,⁶ he said that it was

a judgement in which there was a contradiction and that the juridical basis of discussion had been the 1928 Havana Convention,⁷ which had been improved upon by the 1954 Caracas Convention⁸ to such an extent that, at present, if an identical case arose, there would be no reason to have recourse to the Court because what had, in fact, been discussed had been the right of qualification of the State granting asylum, which, for Colombia, had been implicitly provided for in the Havana Convention. That judgement of the International Court of Justice had given rise to a reaction in the Americas whose consequence had been the drafting and signature of the 1954 Caracas Convention, article 4 of which stated that "It shall rest with the State granting asylum to determine the nature of the offence or the motives for the persecution". Consequently, the judgement of the International Court of Justice in the Haya de la Torre case now had only historical value as a reflection of particular circumstances in the evolution of the right of asylum in the Americas, but it must be considered as a dead letter in so far as it referred to the basis and principle of diplomatic asylum.

50. With regard to terrorism, the criticism concerned only one aspect of diplomatic asylum, which it was not appropriate to analyse when the legal and humanitarian validity of its foundations and the advisability of continuing to study it were still being discussed.

51. His delegation considered that it was unrealistic to consider that Latin American practice could not serve as a basis for the work of the Committee, since diplomatic asylum had originated, evolved and acquired full legal maturity in Latin America. He also stated that he would not accept the slightest weakening of the principles it had taken so many years to elaborate and that he therefore supported the procedure proposed by the delegation of Guatemala.

52. His delegation considered that diplomatic asylum was a necessary instrument for the protection, in certain circumstances, of the human rights which had been so highly praised and, at the same time, so carelessly trampled in recent times. Of course, it was currently an imperfect solution, but it was better to have an imperfect solution than no remedy at all for the oppression to which the individual, who was the main concern of law, was subjected. At the current stage it was a matter of improving the machinery of diplomatic asylum and to that end, of using the rules of international law both to prevent any lack of due respect for the human personality by Governments and to prevent abuses committed in the exercise of diplomatic asylum.

53. Mr. PEDAUYE (Spain) thanked the Government of Australia for the initiative it had taken at the twenty-ninth session in drawing the attention of the General Assembly of the United Nations to the question of diplomatic asylum. That initiative had already produced important results, such as the statements by various delegations, the replies of 25 States and the objective, well-prepared and very valuable

⁷ Pan American Union, *Inter-American Treaties and Conventions on Asylum and Extradition*, Treaty Series No. 34 (OAS Official Records, OEA/Ser.X/1), p. 27.

⁸ *Ibid.*, p. 82.

⁶ *Haya de la Torre Case, Judgment of June 13th, 1951: I. C. J. Reports 1951*, p. 71.

report of the Secretary-General. Asylum was an age-old legal institution, which had been applied in Europe in the Middle Ages in holy places and had been secularized in the fifteenth and sixteenth centuries with the development of the modern State. Diplomatic asylum was an institution of international law peculiar to Spanish America which was regulated by various international treaties, whose main principles were the following: (a) asylum protected only persons persecuted for political reasons or crimes; (b) it was for the State granting asylum to qualify the offence and the urgency of the request for asylum; (c) the State was free to grant or refuse diplomatic asylum and (d) the territorial State was obligated to grant a safe-conduct whenever the State granting asylum requested it. Since the institution of asylum in Spanish America was based on treaties, the problem which had hampered its evolution on other continents, namely the presumed derogation from the principle of the territorial sovereignty of States, did not arise.

54. Nevertheless, as stated by the representative of Australia, many non-Latin American States had, on various occasions and in various cases, exercised the right of asylum, as for example, in Madrid in 1936 and, more recently, in Santiago, Chile. Everything seemed to indicate that diplomatic asylum could be effective in such cases due to the tolerance of the territorial State, which had respected the inviolability of diplomatic premises in cases where specific States granting asylum, which had formally stated and continued to state that they were not bound by the institution, had been obligated, for serious reasons, to grant refuge to certain persons. The decisive factor for the granting of refuge would, in his delegation's opinion, be that of the existence of emergency circumstances of a serious political nature requiring States to defend the human person against unjustifiable violence. In such cases, moreover, there did not seem to be any attempt to prevent the normal exercise by the territorial State of its jurisdiction when the State granting asylum went to the aid of an individual who could not be protected by the territorial State when it was not exercising control in its own territory. Consequently, the element of interference in the internal affairs of other States also seemed to be ruled out and the grant of asylum for humanitarian reasons could not be considered as an unfriendly act towards another State.

55. His delegation considered that the institution of diplomatic asylum was more complex than it seemed at first glance and that it involved highly positive elements which meant that it was exercised in specific circumstances, even by those States which had formally stated that they did not accept it. For those reasons, his delegation joined previous speakers in stressing the need to continue the study of that question and was prepared, provided that consensus existed in the Committee, to support the establishment of a group of experts which would continue to study the subject of diplomatic asylum so that its principles might be made universal. His delegation would support any initiative of that kind because it considered that it would be important for the development of international humanitarian law and, at the same time, would rule out the double standard which some States applied in that respect.

56. Mr. HAGARD (Sweden) said that there had been no change in the opinions expressed by his delegation at the twenty-ninth session (1506th meeting) and transmitted by his Government to the Secretary-General (A/10139, Part I). Thus, his delegation still held the view that, except in Latin America, diplomatic asylum was not recognized as a legal institution in itself, although it agreed that, in certain exceptional cases, humanitarian considerations and the need to protect fundamental human rights were of decisive importance. He did not think that it was immediately necessary to elaborate an international instrument in a field where humanitarian, rather than strictly legal considerations, determined the action of States.

57. He said that his delegation could support draft resolution A/C.6/L.1018 and expressed his appreciation to the Australian delegation for its interesting introduction and for the very constructive position it had adopted. Although his delegation was somewhat skeptical about the necessity or advisability of codifying the question of diplomatic asylum, it considered that the discussion in the Committee and the opinions of Governments were interesting and valuable.

58. The CHAIRMAN said that Dahomey, Ecuador and Nicaragua had become sponsors of draft resolution A/C.6/L.1018.

The meeting rose at 1 p.m.

1557th meeting

Tuesday, 4 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018)

1. Mr. HAFIZ (Bangladesh) congratulated the Australian delegation for having proposed that a preliminary study be

made of the very delicate question of diplomatic asylum and commended the Secretary-General for his admirable report (A/10139, Part II) on the subject. A distinction must be drawn between territorial asylum, in respect of which there was some uniformity of practice, and diplomatic asylum, a controversial institution concerning which there was no uniform practice and that some Member States did not regard as part of general international law. The

A/C.6/SR.1557

institution of diplomatic asylum, although not widely known in South-East Asia, was important to that region because of the political instability in the area. Political instability existed in small developing countries because of their rapidly changing economic, social and political conditions; the unethical economic disparity between classes led to constant violent clashes between political groups in those States, resulting in governmental instability and danger to the lives of the heads of State and government. The institution of diplomatic asylum was therefore relevant to those countries. Indeed, the question had universal appeal and it was widely held among the smaller States in general, and not only the Latin American countries, that it should be studied further with a view to reaching a general international agreement on the principles governing that institution.

2. The institution of diplomatic asylum was as old as civilization; it was based on humanitarian considerations and therefore fell within the scope of Article 1, paragraph 3, of the Charter of the United Nations and article 14 of the Universal Declaration of Human Rights. It was needed for the protection of supporters of racial, cultural, religious and linguistic minorities and of leaders facing immediate annihilation for holding particular political views or for struggling for economic or national liberation. Persons pursued by violent mobs beyond the control of the territorial State, members of a legal government whose lives were in imminent danger during violent insurrections and leaders of ethnic groups should be able to claim the protection of their lives as a basic human right. He cited, in that regard, the granting of asylum in 1973 to 8,000 people by 25 diplomatic missions in Santiago, Chile.

3. In view of the growing interdependence of nations, it was necessary to frame universally accepted rules setting minimum standards for the grant of diplomatic asylum, despite the well-known differences of opinion regarding the legality and scope of the right to such asylum. The view that the grant of diplomatic asylum was in conflict with the provisions of the Vienna Convention on Diplomatic Relations was not based on a sound interpretation of international law. The grant of diplomatic asylum in grave and urgent cases for the protection of the lives of persons seeking asylum for political and other recognized reasons was, in his view, one of the functions of diplomatic missions. Strictly speaking, the very grant of privileges to diplomatic missions under the Vienna Convention was itself a derogation from the sovereignty of the territorial State. Furthermore, the consent of Member States to respect the provisions of the Universal Declaration of Human Rights provided a basis for the protection of human life in a diplomatic mission under certain agreed conditions. His Government was committed to the full observance and implementation of the Charter of the United Nations and the Universal Declaration of Human Rights and would, therefore, support all initiatives and measures taken by the United Nations with a view to the progressive development and codification of international law within that framework.

4. He suggested that, in formulating international legislation on the question of diplomatic asylum, the following broad guidelines should be taken into consideration: the basis for diplomatic asylum might be sought in the higher

principles of human rights and human dignity; the question of diplomatic asylum was complex and sensitive and should be approached with the utmost caution and realism; the same noble principles underlying the grant of territorial asylum should be extended to diplomatic asylum; the matter should be considered purely for humanitarian reasons and on defined grounds; and the territorial State should be informed immediately when the right to grant diplomatic asylum was exercised.

5. Mr. ABUL-KHEIR (Egypt) said that his delegation admired the Latin American countries for having offered the international community an example of how to reconcile the requirements of national sovereignty and humanitarianism, at a time when human rights were a central concern of the international community and had become the corner-stone of international relations. That concern was manifested not only by the Universal Declaration of Human Rights but also by efforts to develop humanitarian laws concerning armed struggles, multilateral treaties concerning human rights and General Assembly resolutions affirming respect for human rights and fundamental freedoms and condemning violations of human rights and crimes against mankind.

6. Diplomatic asylum, an aspect of the defence of human rights, was even more urgent than territorial asylum in situations where an individual was unable to defend himself against a threat to his life. The considerations which underlay article 14 of the Universal Declaration of Human Rights, affirming the right of the individual to seek asylum in other countries, also justified diplomatic asylum.

7. The Australian delegation had done well to remind the international community of the need to develop international legal principles relative to the practice of diplomatic asylum. As his delegation had emphasized at the twenty-ninth session (1509th meeting), there were differences of view between those who considered that the practice was based on principles of customary international law and those who feared that it infringed on the sovereignty of the territorial State and conflicted with the principle of diplomatic immunity. Nevertheless, his delegation shared the Australian view that the subject, and the humanitarian considerations underlying it, deserved serious study with a view to the preparation of a draft that would reconcile the requirements of national sovereignty and humanitarian considerations. In that connexion, he thanked the Secretary-General for his excellent report, which had convinced his delegation of the need to establish principles that would end existing differences of view on the question and fill the existing gap in the law.

8. Although it had been stated during the debate that diplomatic asylum was confined to Latin America, his delegation believed that all regional legal systems had positive aspects which could be relied upon in establishing relevant broadly applicable legal rules. He wondered whether diplomatic asylum had been practised in regions other than Latin America, and if so, what the underlying legal principles were, and why national sovereignty and diplomatic immunity had not impeded the grant of asylum. As a matter of fact, States other than Latin American States had practised diplomatic asylum, as shown by the States which had participated in the establishment of the Rules of La Paz and the Rules of Asunción.

9. Leaving each State free to grant diplomatic asylum without any restrictions to prevent its abuse could only damage friendly relations among States and his delegation therefore establishing well-defined principles, in order to achieve friendly international relations based on law, justice and humanitarianism. There were a number of principles which should underlie legal rules on the subject. Diplomatic asylum was granted for political reasons, and common crimes, even if they had political aspects, should be excluded. It was therefore necessary to arrive at a clear and limited definition of a "political offence". That term, in the view of legal scholars, included organized political activity, activity with predominantly political characteristics, or activity aimed at avoiding political oppression. In his delegation's view, it also included sustained individual activity in pursuit of self-determination, human rights, peace, or justice, or against imperialism, foreign occupation, or racial discrimination. It did not include activity directed against international peace and security, acts of treason or espionage, crimes against humanity or war crimes, since the perpetrators of such acts could not be protected by humanitarian doctrine.

10. Diplomatic asylum was granted because of conditions of urgency, i.e., threats to the life of the asylee arising during a domestic disturbance or civil war in which the local authorities were unable to provide protection, or were unwilling to do so because the asylee had committed a political offence, as he had already defined that term. Asylum should be terminated if it appeared to the diplomatic mission that there was no basis for it or that the mission had erred in its assessment of the facts or the magnitude of the threat to the asylee. Likewise, asylum could be temporary if the threat to the asylee ended. Finally, it was incumbent on the territorial State to provide a safe-conduct for the asylee if the diplomatic mission so requested and the asylee could not be delivered to that State if the conditions he had described prevailed.

11. It would not be difficult to establish clear and definite principles such as those he had described if States were convinced of the need to do so. The debate in the Committee had shown that the time was perhaps not yet ripe for the conclusion of an international agreement on diplomatic asylum, but it had also demonstrated the need to clarify the subject and to reaffirm the humanitarian bases of friendly relations among States. The debate was perhaps a step towards the establishment of a code of conduct governing State practice with regard to diplomatic asylum which would fill a gap in international law.

12. His delegation announced that it had become a sponsor of draft resolution A/C.6/L.1018.

13. Mr. VAN BRUSSELEN (Belgium) said that his delegation agreed with the definition of diplomatic asylum given by the Argentine Government in document A/10139, Part I, namely that it was "an old-established humanitarian institution, the essential purpose of which is to protect individuals from persecution in times of internal upheaval within States". Diplomatic asylum was not a right and the granting of such asylum could be envisaged only on purely humanitarian grounds. It should be noted that the authors of General Assembly resolution 3321 (XXIX) had avoided qualifying diplomatic asylum as a right.

14. He thanked the delegation of Australia for having sought the inclusion of the question on the General Assembly's agenda. That initiative had served as a reminder that much remained to be done in the field of humanitarian law, both with regard to the identification and codification of the rights of the individual and in obtaining the State acceptance of the need to respect those fundamental rights.

15. The excellent report of the Secretary-General illustrated the extreme difficulty, if not the impossibility, at the current time of any attempt at codification in connexion with diplomatic asylum, at least if it was to be universally acceptable. The report also showed that the grant of diplomatic asylum was linked with the appearance of permanent diplomacy. It was therefore not surprising that the first instances of the grant of diplomatic asylum had occurred in Europe and that the institution had developed there. Currently, however, it was evolving to an unprecedented degree in Latin America. The reasons for that evolution had been made clear in the memorial submitted to the International Court of Justice by the Colombian Government in connexion with the Colombian-Peruvian asylum case of 1950.¹

16. The right of asylum was in reality a practice rather than an institution. Diplomatic asylum should not be confused with the grant of strictly temporary refuge. The report of the Secretary-General and the discussion within the Committee at the twenty-ninth session and at the current session showed quite clearly that State practice was very diverse. It was therefore not surprising that the International Court of Justice had found it impossible to discern a constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence. That conclusion could be extended to the other problems raised by the granting of diplomatic asylum.

17. It did not appear possible to codify the so-called right of diplomatic asylum on a world scale. Nor, in fact, was it necessary to codify the circumstances surrounding obvious humanitarian obligations. It was not even desirable to proceed with such codification, since the institutionalization of diplomatic asylum would deprive it of the flexibility on which it was founded and which enabled it to function in a balanced way.

18. Although the General Assembly could, at the current stage, do little more than reaffirm the humanitarian considerations involved, it was useful for the Assembly to consider the question at regular intervals. State practice could evolve; new regional groupings could be formed within which the codification of certain aspects of the practice of diplomatic asylum might be conceivable. Legal theory, too, evolved, and it would be useful for the Sixth Committee not only to take note of but also to discuss proposals such as that formulated by the International Law Association.

19. Mr. BA-SALEH (Democratic Yemen) thanked the Australian delegation for having proposed the inclusion of the item in the General Assembly's agenda, commended the representative of Australia for his excellent introductory

¹ International Court of Justice, *Pleadings, Oral Arguments, Documents, Asylum Case (Colombia/Peru)*, vol. I, p. 13.

remarks, and expressed his appreciation to the Secretary-General for his objective and thorough report, which had facilitated the study of the question of diplomatic asylum.

20. A distinction must be drawn between territorial and diplomatic asylum. Territorial asylum had taken on an international character by virtue of widespread practice, article 14 of the Universal Declaration of Human Rights and General Assembly resolution 2312 (XXII), all of which had made it an undisputed right for persons persecuted for their political or religious beliefs or their race. Territorial asylum involved no infringement of sovereignty or interference in the domestic affairs of another State.

21. Diplomatic asylum, however, was not yet recognized in international law. It had arisen with the beginnings of permanent diplomatic representation in Europe and had developed as a recognized legal principle in Latin America, fostered by conditions peculiar to the Latin American States, to the point where the practice was regional in nature, as pointed out by a number of States in their replies to the Secretary-General and during the general debate. Although his delegation understood and sympathized with the humanitarian considerations which had prompted the Australian delegation to propose the inclusion of the question of diplomatic asylum in the agenda, it agreed with the representative of Poland (1555th meeting) and others, that diplomatic asylum also involved legal and political considerations.

22. There was no doubt that to allow a diplomatic mission to grant diplomatic asylum purely on the basis of the mission's evaluation of whether the asylee had committed a political crime infringed on the territorial sovereignty of the host State and on the competence of its legal authorities. The functions of diplomatic missions, as made clear in the Vienna Conventions on Diplomatic Relations and on Consular Relations and in modern international law, were limited to strengthening friendly relations among States, and it was the duty of such missions to respect local laws and not to use their status for purposes incompatible with their functions. Modern law had also abolished the principle of extraterritoriality, which had prevailed in the past.

23. Democratic Yemen recognized and practised territorial asylum. Article 93 of its Constitution of 30 November 1970 gave the Chairman of the Council of Ministers the authority to grant territorial asylum, in accordance with modern practice and with the Declaration on Territorial Asylum (General Assembly resolution 2312 (XXII)).

24. While the dimensions of diplomatic asylum had not been clearly defined, it appeared from the written replies of States and from the debate at the current and past sessions that many States tended not to support further consideration of that subject, or its codification, at the current time. Furthermore, those States which had favoured codification had done so subject to prior conditions which led his delegation to wonder whether codification was appropriate. In his delegation's view the discussion just concluded was sufficient. States were free to conclude bilateral or regional agreements on diplomatic asylum, as the Latin American countries had demonstrated.

25. Mr. SHAMS (Bahrain) said his delegation was grateful to the Australian Government for having proposed the

inclusion of the current item in the agenda, and wished to thank the Secretary-General for his incisive report.

26. Diplomatic and consular relations were a basic tool by which Governments and peoples sought to establish international co-operation, strengthen their relations and solve their problems, and such relations were therefore of great concern to all States. His delegation agreed with those who had said that diplomatic asylum was not a clearly recognized principle of international law, nor an established customary practice, and was not yet ripe for codification. The views expressed in his Government's reply to the Secretary-General (A/10139, Part I), continued to form the basis of his Government's policy on the question.

27. His delegation had listened with particular interest to the views expressed by the Latin American countries which had concluded agreements on diplomatic asylum as a result of conditions prevailing in their region. However, conditions in Bahrain's region were different and an agreement on diplomatic asylum would be unsuitable there. The question of political asylum was covered by article 21 of Bahrain's Constitution, which prohibited the extradition of political refugees. That provision was based on purely humanitarian considerations and was in accordance with the Universal Declaration of Human Rights and international custom and the International Covenants on Human Rights.

28. Bahrain had not yet concluded any bilateral or multilateral agreements concerning diplomatic asylum. His delegation believed that any international agreement on that subject should take into account Article 13, paragraph 1 (a), of the Charter, which provided for the development and codification of international law. The agreement should not be a source of conflict but should promote stable and friendly relations and co-operation among States. His delegation supported the traditional view and did not approve of granting diplomatic asylum unconditionally.

29. Mr. KRISHNADASAN (Swaziland) expressed his appreciation for the welcome initiative of the delegation of Australia in placing the question of diplomatic asylum on the agenda of the twenty-ninth session. In his excellent introduction to the debate, the representative of Australia had put the complex and controversial question of diplomatic asylum in its proper perspective. The discussion in the Committee had led to greater awareness and understanding of the problems associated with diplomatic asylum.

30. The fundamental problem was to balance the all-important humanitarian element, which was the reason for the existence of diplomatic asylum, with the sovereignty of the State within whose territory the issues of asylum arose. The International Court of Justice had stated that the granting of diplomatic asylum involved a derogation from the sovereignty of the territorial State and that such a derogation could not be recognized unless its legal basis was established in each particular case. The question was under what circumstances and conditions a legal basis could be established and recognized for such a derogation from sovereignty. The Vienna Convention on Diplomatic Relations appeared to constitute no obstacle as far as the granting of diplomatic asylum was concerned. However,

although the institution of diplomatic asylum was recognized and did exist in Latin America, it was clear that such an institution did not form part of customary international law. Even in Latin America, the various reservations regarding the Convention on Diplomatic Asylum signed at Caracas in 1954 indicated that there was no uniformity in interpretation of the concept. Furthermore, the conclusions drawn by speakers in the debate in the Committee after a study of the Secretary-General's report appeared to be varied and to some extent contradictory. The legal basis for such an institution could be established only if the international community felt that the time was ripe for a further examination of the concept, so that it could be made applicable internationally. It was questionable, however, whether the international community could agree on the main elements of the concept of diplomatic asylum. It might be necessary to have reasonably homogeneous political and legal systems before States could agree on those elements. Currently, the existence of conflicting ideologies, the resurgence of nationalism and the jealously guarded sovereignty of States would preclude any successful collective attempts at codification. At best, the question could be kept under review and a further examination made at a future session of the General Assembly.

31. As the practice of granting diplomatic asylum could currently be defended only on the grounds of the consent of the States in whose jurisdiction it was sought, his delegation agreed with the representative of Australia that it was always possible for a State to declare unilaterally its willingness to permit foreign diplomatic missions in its territory to accord diplomatic asylum on such conditions as it might choose to indicate. That method was particularly appropriate in a region or State which had a long-established tradition of recognizing the institution of asylum.

32. Mr. BAVAND (Iran) said that his delegation attached special importance to the right of asylum, one of the noblest creations of customary international law, which was deeply rooted in the social traditions of his country. Noting the humanitarian aspect of diplomatic asylum, he said that the problem before the Committee was to determine the limits within which, and the conditions under which, such asylum might be granted. To that end, it was necessary to study and resolve the fundamental question of the legal basis of the diplomatic asylum, a complex and delicate matter which also had important political aspects. He believed that diplomatic asylum should not be viewed as an over-extension of the concept of extraterritoriality or as a derogation from the sovereignty of the territorial State, but rather in the context of the growing need for further elasticity of the concept of sovereignty, in consonance with the vigorous development of humanitarian international law. The difficulty lay in reconciling humanitarian considerations with certain recognized standards of international

law, such as the rules laid down in the Vienna Convention on Diplomatic Relations and the principles of the sovereignty of States and non-interference in their internal affairs.

33. Bearing those principles in mind, he believed that, before any attempt was made to codify the rules regulating diplomatic asylum, there should be wide agreement on the following basic principles: diplomatic asylum must be viewed from the standpoint of purely humanitarian considerations; it must not be viewed as an inherent function of diplomatic missions; persons convicted of non-political offences ought in no way to benefit from diplomatic asylum; persons granted asylum should be prohibited from engaging in acts jeopardizing public peace and from interfering in the internal politics of the territorial State.

34. The task of studying and possibly codifying principles and rules relating to diplomatic asylum should be entrusted to the International Law Commission. Before the Commission undertook that task, however, the humanitarian aspect of diplomatic asylum should be thoroughly and comprehensively studied, possibly by the Commission on Human Rights or the Third Committee.

35. His delegation supported the modest and objective resolution on the question of diplomatic asylum (A/C.6/L.1018) and was certain that it would gain the Committee's unanimous support.

36. Mr. LAUTERPACHT (Australia), introducing draft resolution A/C.6/L.1018, said that the discussion of the question of diplomatic asylum in the Committee had been both instructive and encouraging. The debate in the Committee would be seen as a landmark in the evolution of the law relating to diplomatic asylum. The Committee had expressed its concern with the question and had avoided adopting extreme positions.

37. He expressed the hope that the draft resolution, in its current form, would be seen as beyond controversy. The date 31 December 1976 referred to in operative paragraph 2 had been selected in order to provide States with a reasonable period in which to communicate their views, while at the same time not prolonging the process excessively. No specific date had been given for further consideration of the question by the General Assembly, since it was felt that any real progress must necessarily be gradual. Precipitate action could be retrogressive. He expressed the hope that when the item was replaced on the agenda of the General Assembly it would be on the basis of a realistic assessment of the prospects for further progress.

The meeting rose at 4.50 p.m.

1558th meeting

Wednesday, 5 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1558

AGENDA ITEM 112

Report of the Committee on Relations with the Host Country (A/10026)

1. Mr. ROSSIDES (Cyprus), speaking as the Chairman of the Committee on Relations with the Host Country said that, in accordance with General Assembly resolution 3320 (XXIX), the Committee had continued its work in 1975 and had submitted a report on the progress of that work (A/10026). The Committee had been concerned mainly with complaints about specific acts of violence and harassment directed against missions and with the delicate question of the indebtedness of missions and of their personnel.

2. Three acts of violence considered by the Committee in the current year had been especially serious. They had involved the firing of shots into the buildings housing the Missions of the Byelorussian SSR, the Ukrainian SSR and the Soviet Union, the fire-bombing of the Mission of Iraq and the bombing of the Yugoslav Mission.

3. The Committee had condemned those acts and had asked the host country to intensify its efforts to ensure the safety of missions. The host country had replied that it would do all it could to find and punish the perpetrators. The Committee's general comments on that subject were to be found in paragraphs 9 to 15 of the report.

4. The Committee had devoted considerable attention to the report of its Working Group on the question of the

obligations of permanent missions to the United Nations and individuals protected by diplomatic immunity (*ibid.*, annex I). The representative of the host country in the Working Group had noted that, although the majority of missions scrupulously fulfilled their financial obligations, a limited number of missions had debts which had remained unpaid for a long time. The divergent opinions within the Committee on that matter were set out in Section IV of its report. The Committee had decided that the Working Group should continue to consider the question with a view to facilitating its solution.

5. The Committee had taken note of the report of the Working Group on the questions of health insurance for staff of missions to the United Nations and the exemption of diplomatic premises from real estate taxes (*ibid.*, annex II). It had also considered the questions of parking, the organization of its work and the public relations of the United Nations community in the host city. The relevant recommendations of the Committee were to be found in paragraph 66 of its report.

6. With regard to its future work, the Committee recommended that it should continue to consider problems within its terms of reference, pursuant to General Assembly resolutions 2819 (XXVI), 3033 (XXVII), 3107 (XXVIII) and 3320 (XXIX).

The meeting rose at 11.05 a.m.

1559th meeting

Thursday, 6 November 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1559

AGENDA ITEM 112

Report of the Committee on Relations with the Host Country (*continued*) (A/10026)

1. Mr. POVZHIK (Ukrainian Soviet Socialist Republic) said that the Committee on Relations with the Host Country had worked hard during the past year and had had many matters to deal with, the most important of which was the question of the security of diplomatic missions accredited to the United Nations and the safety of their personnel. During that time, there had been six attacks on

diplomatic missions of socialist, Arab and other States, including the Mission of the Ukrainian SSR. On 19 January 1975, shots had been fired at the premises of the missions of the Soviet Union, the Ukrainian SSR and the Byelorussian SSR. In the case of the Ukrainian mission, two shots had struck the mission's living quarters but fortunately no one had been hurt. The Mission of the Ukrainian SSR had filed a vigorous protest with the authorities of the host country, calling for an investigation of the shots and punishment of the authors and instigators of the crime. That was the second time that the Mission had been fired upon; the first incident in 1971, had also fortunately

caused no injuries and had also resulted in a vigorous protest, but, just as in the most recent case, those responsible had not been found and punished.

2. The Mission of the Ukrainian SSR had also been the object of telephone and mail threats. In spite of all those occurrences, the host country was not known to have taken any steps to prevent a recurrence of such criminal attacks, even though the Mission had immediately notified the New York City police and authorities.

3. Although there was a Federal law designed to protect the missions of foreign States, it had obviously not been fully enforced by the authorities of the host country, so that there was no guarantee that such attacks would not occur again and that future incidents would not result in injuries. In addition to the high crime rate in New York, diplomatic missions accredited to the United Nations by the socialist, Arab and other States were subjected to provocations by Zionist organizations, émigrés and other groups which sought to poison the atmosphere of co-operation and trust created by the relaxation of international tension. The so-called Jewish Defense League was particularly active in that regard and the communications media gave extensive publicity to all their activities, which were especially directed against the missions of the socialist and Arab States. The local authorities and the police took an attitude of indifference towards the hostile activities of the Jewish Defense League. The Mission of the Ukrainian SSR, for its part, was convinced that the League did not reflect the feelings of the American people, who were in favour of détente. The failure to impose penalties for the activities of such groups was particularly incomprehensible because of the fact that they damaged relations between States and the absence of punishment was the best means of encouraging them. His delegation therefore called for appropriate measures to be taken for the protection of foreign missions accredited to the United Nations.

4. Missions also had to contend with parking problems. The imposition of arbitrary fines on diplomatic vehicles and the exaggerated publicity which was given to such cases tended to reflect undeserved discredit on the diplomatic corps. His delegation supported the recommendations of the Committee on Relations with the Host Country contained in paragraph 66 of its report (A/10026). The Committee had done effective work and his delegation felt that the General Assembly should renew its mandate for 1976.

5. Mr. GODOY (Paraguay) said that the complex question of the functioning of permanent missions in New York should be considered in the light not only of the basic bilateral agreements between the United Nations and the host country but also of all existing multilateral and bilateral instruments relating to international agencies and bilateral diplomatic relations. The question of the security of missions and the safety of their personnel was perhaps the most important item which had come before the Committee on Relations with the Host Country. Although security was a highly abstract notion, it must be guaranteed in its broadest sense so as to permit and facilitate the exercise of the official functions of diplomatic missions. Nevertheless, the effort to achieve that aim could in practice come up against situations which were often

impossible to control even when the authorities responsible for maintaining security acted with the utmost diligence.

6. The difficulty was particularly great when security had to be maintained in large urban centres whose residents enjoyed in virtually unrestricted form all the fundamental freedoms and rights accorded to human beings by the Charter of the United Nations and by all the declarations and principles to which the Organization subscribed. It must be said, in all objectivity and honesty, that that was the situation confronting the diplomatic community in New York. His delegation deeply regretted and condemned all acts which impaired the security and dignity to which foreign officials were entitled in any part of the world and it rejected all pretexts advanced as justification for the commission of such acts against diplomatic agents, the premises of missions, residences and property of any kind belonging to missions. On the other hand, everyone was aware of the unavoidable problems with which the police and judicial authorities of New York normally had to contend in investigating criminal offences. In the great majority of cases, the injured parties had done no more than simply report the offences, sometimes very belatedly, and had refused to give the authorities any further co-operation, even in merely identifying suspects. Although the immunity enjoyed by diplomatic officials did indeed exempt them from the obligation to submit to the jurisdiction of any local authority and, hence, to become parties in any judicial proceeding, it was perhaps the invocation of that very immunity that had prevented or impeded the adoption of more effective measures and the trial and punishment of the guilty parties. If what was truly sought was to bring those who committed such offences to justice and thus guarantee the security of missions and the safety of their personnel more effectively, it was essential to find a formula which, without waiving the immunities which the rules of positive and customary international law conferred on all diplomatic agents, would permit missions to co-operate with the New York City authorities, which were responsible for ensuring the security of missions and the safety of their personnel.

7. His delegation had condemned all acts affecting the dignity of diplomats, but it likewise considered that the allegations of connivance or collusion between the New York police authorities and the perpetrators of such reprehensible acts were neither fair nor appropriate. On the contrary, despite the alarming financial problems currently facing New York City, the latter had maintained at an acceptable and sometimes even laudable level the regular arrangements, especially security arrangements, which ensured that diplomats and the many foreign dignitaries who often visited United Nations Headquarters would be able to discharge their responsibilities. He believed that in order to ensure greater security for missions and more safety for their personnel and for the many other innocent accidental victims it was the international community itself, through the many forums and effective mechanisms available to it, which should assume an active, determined and responsible role with a view to reducing and if possible eliminating the unfortunate episodes in which diplomats had lost their lives, perhaps largely because of the continued existence of sanctuaries and the complete immunity which some of the perpetrators continued to enjoy. In that connexion, his delegation differed from those who considered that New

York was the place in which the most acts of vandalism and terrorism directed against diplomatic missions and their personnel occurred; that was clearly an exaggeration.

8. Another of the problems afflicting big cities was parking. Although that item was perhaps the most superficial and least worthy of consideration in the current forum, it constituted an eternal source of friction between the diplomatic community on the one hand and the municipal traffic authorities and the local community on the other. The origin of the problem was simple: there were 1,330 vehicles with DPL licence plates and 550 vehicles with FC licence plates, but the City had been able to make available only 550 special parking spaces for the vehicles of all missions and consular offices. The situation was aggravated by the fact that almost a third of those parking spaces were occupied, albeit only temporarily, by unauthorized vehicles of all kinds and the number of parking spaces was reduced even further by demolition or construction work. His delegation appealed to the sense of seriousness and responsibility of delegations, so that they would refrain from intentional and systematic non-compliance with traffic regulations, especially in the case of parking spaces which were to be used in emergencies. It was precisely such faults which had provoked a marked reaction in various sectors of the local population and had caused the entire diplomatic community to suffer the negative effects of the adverse publicity caused by such abuses. He also called for greater understanding on the part of the New York City Traffic Department regarding the issue of summonses for parking violations. The officials responsible for the issue of such summonses should know how to evaluate each situation and reduce ticketing to the minimum essential for the maintenance of traffic safety standards and the protection of persons and property. Apart from the psychological effect, his delegation considered that the repeated indiscriminate and unnecessary issue of summonses would in the long run be counterproductive.

9. With regard to the obligations of permanent missions to the United Nations and of individuals protected by diplomatic immunity, the good reputation of the United Nations community made it necessary to find, as a matter of urgency, solutions satisfactory to the persons affected by the faults or omissions of any of its members. The intentional commission of acts prejudicial to persons or institutions that in good faith had conducted lawful commercial transactions with members of the diplomatic community could not be condoned.

10. With regard to the public relations of the United Nations community in New York, it was regrettable that that matter had not always received the attention it merited, on the necessary scale and with the requisite objectivity, with a view to ensuring better understanding and co-operation among all parties concerned. Noteworthy efforts were being made to that end by certain officials and private institutions in New York. His delegation considered that the relations in question could be improved and that both the local community, especially the communication media, and the diplomatic and consular community should make a greater effort to create the necessary conditions. His delegation would like the Committee on Relations with the Host Country to continue studying the question of health insurance for the staff of missions to the United Nations,

which deserved priority attention because of its direct and immediate impact on the well-being and safety of the diplomatic community. It also supported continuation of the studies and contacts concerning exemption of diplomatic premises from real estate taxes and exemption from taxes imposed by other States of the host country.

11. Mr. APRIL (Canada) said that his delegation had considered the report of the Committee on Relations with the Host Country from the standpoint of both the sending State and the receiving State, since Canada was the seat of a specialized agency. That enabled it to understand the situation fully and in that connexion he expressed solidarity with the missions that had been victims of acts of violence, which were and would always be deplorable. The host country, too, would be fully familiar with both sides of the situation, since some of its own diplomats had been the victims of attacks abroad.

12. Generally speaking, the Canadian mission was satisfied with the protection it received and supposed that that opinion was shared by the countries occupying the same building and the majority of permanent missions accredited to the United Nations. However, that did not imply any downgrading of the seriousness of the problems some missions had had to face. Consequently, effective measures should be adopted to avoid any repetition of those acts.

13. The Committee on Relations with the Host Country had already begun studying some of the delicate problems within its terms of reference. His delegation considered that no matter how delicate those problems might be it should continue studying them energetically, with a view to improving the atmosphere in which the diplomatic community functioned. It was regrettable that the term "diplomat" was acquiring a pejorative connotation in New York, but that was due solely to a number of abuses of privileges and immunities, such as the violation of traffic regulations and the failure to discharge debts and obligations. In addition to the information programme designed to acquaint the public with the grounds for diplomatic privileges and immunities, the Committee on Relations with the Host Country should launch an information campaign for the diplomats themselves, especially those who were not lawyers, so as to make them aware of the obligations incumbent upon them under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (General Assembly resolution 169 (II)). Those who enjoyed privileges and immunities must also comply with the local laws and regulations.

14. The Committee on Relations with the Host Country was undoubtedly the most appropriate forum for the consideration of the serious problems facing missions and it should continue its work with a view to creating conditions more conducive to the effective functioning of permanent missions. Moreover, it should consider with due attention complaints by New York City neighbours against persons enjoying diplomatic privileges.

15. Mr. BOJILOV (Bulgaria) said that his delegation attached importance to the work of the Committee on Relations with the Host Country. In accordance with General Assembly resolution 2819 (XXVI), the question of

security of missions and safety of their personnel was given high priority in the list of problems to be discussed by that Committee.

16. Although it was true that the host country had taken some measures relating to that question, they had proved to be insufficient and incomplete. As a matter of fact, criminal acts had been committed against six missions, some of them very dangerous, such as the firing of shots against the Mission of the Ukrainian SSR and the bombing of the Missions of Iraq and Yugoslavia. On two occasions the Committee on Relations with the Host Country had condemned the acts of terrorism and had urged the host country to intensify measures aimed at ensuring the protection and security of missions accredited to the United Nations and their personnel.

17. It was difficult to understand the conflict between local and federal law which impeded the effective implementation of the rules relating to the protection of foreign officials and official guests of the United States; a State should not invoke its legislation as an excuse not to comply with its obligations under international law. That principle had been embodied in various international legal instruments, especially articles 23 and 28 of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.¹ He therefore felt that the host country had not exhausted all the legal and practical possibilities available to it for offering effective protection.

18. In the current year the Committee on Relations with the Host Country had discussed the questions of obligations of permanent missions to the United Nations and of individuals protected by diplomatic immunity, health insurance for the staff of missions accredited to the United Nations and exemption of diplomatic premises from real estate taxes. With regard to the first question, his delegation felt that the Committee on Relations with the Host Country had taken a wise decision in recommending that

¹ See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations* (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

the Working Group should continue considering the question of indebtedness of missions or diplomats for goods and services with a view to facilitating its solution. He also wished to thank the Permanent Mission of the United States for the assistance provided in solving a real estate problem of the Bulgarian Mission.

19. He stressed the importance of some of the recommendations adopted by consensus by the Committee on Relations with the Host Country, especially the firm condemnation of acts of violence and other criminal acts against any mission, its personnel and property; the need to take measures to punish persons guilty of committing such acts and the possibility of taking legal measures against organizations and individuals that publicly admitted their responsibility for the commission of such acts of violence. He also noted the hope expressed by the Committee on Relations with the Host Country that the latter country would again review the measures adopted with regard to the parking of diplomatic vehicles, in order to meet more adequately the needs of the diplomatic community.

20. His delegation associated itself with those who had expressed appreciation for the work of the New York City Commission for the United Nations and for the Consular Corps in promoting mutual understanding between the diplomatic community and the people of New York City. His delegation commended for adoption the report under consideration and supported the recommendation that the Committee on Relations with the Host Country should continue to consider the problems within its terms of reference.

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018)

21. The CHAIRMAN announced that Bangladesh and Uganda had asked to be included in the list of sponsors of draft resolution A/C.6/L.1018.

The meeting rose at 11.50 a.m.

1560th meeting

Friday, 7 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1560

Congratulations on the occasion of the anniversary of the October Revolution

1. The CHAIRMAN, speaking on behalf of the Committee, congratulated the delegation of the Soviet Union and through it the Government and people of the Soviet Union on the occasion of the anniversary of the Great October Socialist Revolution.

AGENDA ITEM 112

Report of the Committee on Relations with the Host Country (*continued*) (A/10026)

2. Mr. DONORABAYE (Chad) welcomed the delegations of Cape Verde, Sao Tome and Principe, Mozambique and Papua New Guinea, which would strengthen the ranks of

the third world countries, thus promoting the progressive development and codification of a new international law.

3. His delegation had had occasion to complain recently about treatment received from the New York authorities. On 11 October 1975, the Permanent Representative of Chad to the United Nations had held a reception at his residence in honour of the Minister for Foreign Affairs and Co-operation, who had come to New York to attend the seventh special session and the thirtieth session of the General Assembly. Although under no obligation to do so, the representative of Chad had informed his immediate neighbours of the holding of the reception some days beforehand. However, at the instigation of some ill-intentioned individuals, the police had made several attempts to break into the Ambassador's residence on the false pretext that too much noise was being made. With the complicity of the police, the New York news media had engaged in a denigratory and slanderous campaign against Chad and, thereby, against Africa as a whole. Highly offensive anonymous letters had been sent to the Chad Mission containing threats of physical violence and death against the Ambassador. When the United States Ambassador to Chad organized a reception, every measure was taken to ensure the safety and protection of the diplomats. Those receptions were undoubtedly no less noisy and the local population in Chad also wished for peace and quiet.

4. The gratuitous and slanderous campaign against Chad curiously came at a time when relations between Chad and France, a natural ally of the United States, were at their lowest ebb. His Government's attitude towards France had been dictated by the higher interests of the people of Chad. The total evacuation of French troops stationed on Chad soil was only one of the consequences of the impermissible excesses of France. That act of sovereignty would enable his country to concentrate seriously and totally on its development. The methods used by France were grossly imperialist and neo-colonialist, and his delegation opposed them vigorously. The Permanent Mission of the United States had been kept well informed of developments in the situation.

5. The responsibilities of the host country were clearly set out in General Assembly resolution 3320 (XXIX). The Committee on Relations with the Host Country had dealt with all the urgent problems of concern to permanent missions to the United Nations and his delegation supported whole-heartedly the recommendations contained in the Committee's report (A/10026). Until the host country took those recommendations seriously and implemented to the letter the relevant General Assembly resolutions, the permanent missions to the United Nations would never be able to carry out their tasks in peace and safety. The progress made in that respect had been almost insignificant. The host country should make greater efforts to ensure that permanent missions no longer worked in an atmosphere of insecurity, fear and hatred.

6. Mr. KOLESNIK (Union of Soviet Socialist Republics) thanked the Chairman and the Committee for the congratulations extended to his delegation and the Government and people of the USSR on the occasion of the anniversary of the Great October Socialist Revolution.

7. In the view of his delegation, the most important topic before the Committee on Relations with the Host Country had been the problem of the security of diplomatic missions and the safety of their personnel. The situation with respect to such security remained unsatisfactory, despite the passage in 1972 of the United States Federal Act for the Protection of Foreign Officials and Official Guests of the United States. The report under consideration showed that there had been new incidents during the past year involving acts of terrorism, violence and vandalism committed, in particular, by Zionist hooligan elements against the missions of socialist and other countries. His delegation was particularly concerned over the fact that none of the perpetrators of the violent criminal acts had been apprehended and brought to trial. Since the publication of the Committee's report, there had been new provocative acts committed against the Soviet Mission and its personnel, which was proof of a systematic and organized campaign of hostility.

8. Despite repeated General Assembly resolutions and recommendations by the Committee on Relations with the Host Country appealing to the host country to take all necessary preventive measures for the security of missions and their personnel, the United States representatives had confined themselves to mere expressions of regret in connexion with the criminal incidents and promises to take all necessary measures to prevent the commission of such acts in the future. The host country authorities would have to bear complete responsibility for any serious consequences of such criminal acts, if they were to continue. Despite the 1972 Federal Act, whose language was very precise as to the criminal nature of the acts in question, the host country authorities persisted, in the face of continuing incidents, in saying that no laws were being broken. That was proof that the officials of the host country were not taking effective measures to fulfil their international obligations and implement the 1972 Act.

9. The criminal acts committed by the notorious extremist Zionist organization calling itself the "Jewish Defense League" did not represent the views of the American people, who desired an improvement in relations between the Soviet Union and the United States of America. It was therefore all the more abnormal that the host country authorities had not yet taken the necessary measures to suppress the criminal activity of that so-called organization. The host country should, finally and with all seriousness, take active measures to prevent and suppress any kind of criminal terrorist acts directed against the diplomatic community in New York City and to prosecute and punish the perpetrators, inciters and organizers of such activities.

10. His delegation supported the recommendations of the Committee on Relations with the Host Country and urged that the General Assembly extend the Committee's mandate for the following year.

11. Mr. MONTENEGRO (Nicaragua) said that acts directed against diplomatic missions and their personnel constituted international terrorism and crimes against the international community. Such acts should be investigated and punished wherever they occurred. His delegation regretted the attacks on the Missions of the Byelorussian SSR, the Ukrainian SSR, the USSR, Iraq, Egypt and

Yugoslavia and considered that the host country had a duty to ensure that the local authorities prosecuted and punished severely the perpetrators of such crimes. In small countries such as Nicaragua, every measure was taken to protect diplomatic missions and their personnel. The New York police, on the other hand, did not demonstrate sufficient respect for the privileges and immunities of the personnel of diplomatic missions. In a number of cases, for example, diplomats had been issued with parking tickets by local authorities, in total disregard for diplomatic immunity. In that connexion, he deplored the reduction of the number of parking spaces reserved for diplomats.

12. The Committee on Relations with the Host Country had made laudable efforts to make the population of New York more aware of the importance of the work of diplomats. However, the news media often waged denigratory campaigns against the diplomatic community.

13. His delegation hoped that the General Assembly would extend the mandate of the Committee on Relations with the Host Country.

14. Mr. BAULIN (Byelorussian Soviet Socialist Republic), said that his delegation had studied the report of the Committee on Relations with the Host Country with great care. The central problem remained the security of diplomatic missions and the safety of their personnel. The measures taken by the host country to suppress crimes against diplomatic missions and their personnel thus far had failed to achieve the desired result of ensuring normal conditions for the performance of normal diplomatic functions. The diplomatic corps accredited to the United Nations was being subjected to organized, hostile and provocative acts committed by Zionist organizations and groups who had set themselves the goal of creating conditions which made it difficult for diplomatic missions from socialist, Arab and other countries to perform their functions.

15. Citing an incident of 19 January 1975 the details of which had been brought to the attention of the United States Mission in a letter reproduced in document A/AC.154/73, he said that the authorities of the host country, in defiance of General Assembly resolution 3320 (XXIX), had failed to take all necessary effective measures to guarantee the security of missions and their personnel and establish normal conditions for the functioning of those missions. They had, furthermore, failed to apprehend, prosecute and punish the perpetrators of those criminal acts. There had been no significant improvement in the situation since the adoption in 1972 of the Federal Act. Only a small number of the persons arrested for the commission of such criminal acts against missions and their personnel had been sentenced, despite the very serious nature of the crimes concerned. In that connexion it would be helpful if the United States were to subscribe to the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

16. His delegation supported the appeal of the Committee on Relations with the Host Country in paragraph 24 of its report that intensified measures be taken to ensure the security of missions and their personnel and that the United

States Act of 1972 be fully implemented, thereby ensuring normal conditions for the performance of diplomatic functions.

17. His delegation supported the Committee's recommendation in subparagraph (5) of paragraph 66 of the report that the host country, the Secretariat and other organizations concerned should vigorously seek the promotion of mutual understanding between the diplomatic community and the local population. Efforts should be undertaken to implement information programmes to acquaint the population of New York City and its boroughs with the privileges and immunities of the personnel of missions accredited to the United Nations and with the importance of the international functions performed by them. He hoped that such measures would influence public opinion and create a spirit of mutual understanding and co-operation in the relations between the diplomatic community and the United Nations on the one hand and United States society and the population of New York on the other.

18. His delegation supported the other recommendations in paragraph 66 of its report, condemning criminal acts of violence directed against the premises, personnel and property of missions, and expressed the hope that the host country would review the measures adopted with regard to the parking of diplomatic vehicles and the ticketing and towing away of such vehicles.

19. His delegation expressed its gratitude to the New York City Commission for the United Nations and for the Consular Corps for its attention to the needs and interests of the diplomatic community. It also urged the General Assembly to extend the mandate of the Committee on Relations with the Host Country for the following year.

20. Mr. KAPETANOVIĆ (Yugoslavia) said his delegation was pleased that the Committee on Relations with the Host Country had examined problems of great importance for the functioning of diplomatic missions in New York. Experience had shown how important it was to examine and solve those problems and his delegation therefore believed that that Committee should continue its activity.

21. A whole series of cases mentioned in the report under consideration made it apparent that no due attention had yet been paid to the security and protection of missions and their personnel, or to other measures indispensable for preventing criminal acts. Investigations of such acts and punishment of their perpetrators had not been adequate and could therefore induce more such acts in the future. For instance, the Yugoslav Mission and its members had several times been the object of criminal acts perpetrated by members of Fascist extremist organizations and the inadequate reaction of the host country authorities to warnings given by the Yugoslav Mission had undoubtedly facilitated their perpetration.

22. He gave details concerning several such acts, including attacks on the Yugoslav Mission and its members on 2 November 1974, 14 May 1975 and 23 June 1975, and an anti-Yugoslav incident provoked by Fascist emigré elements during the seventh special session of the General Assembly, on 10 September 1975. In connexion with those incidents, the Yugoslav Mission had lodged official protests with the

United States Mission on 4 November 1974, 26 November 1974, 15 May 1975 and 23 June 1975, but the results of the investigations, if any, had never been communicated to the Yugoslav Mission and not a single perpetrator of those terrorist acts had been brought to court or punished.

23. The Yugoslav Mission had also informed the Secretary-General about the incidents in a note dated 3 July 1975, circulated as document A/AC.154/86, and in an aide-mémoire submitted to the Secretary-General on 11 September 1975.

24. Those incidents, viewed in the light of existing host country regulations and international conventions, made it necessary to take energetic measures to prevent criminal acts against diplomatic missions and their staff, to punish severely the perpetrators of such acts, and to protect the physical integrity of diplomatic representatives who lived and worked in New York. His delegation fully supported the recommendations in paragraph 66 of the report and was certain that endorsement of those recommendations by the Sixth Committee would enable the Committee on Relations with the Host Country to continue work on their implementation.

25. Miss WILMSHURST (United Kingdom) said that her delegation noted with concern the incidents of violence described in section II of the report under consideration. No mission was exempt from such attacks; the British Mission had itself been a victim in the past. Such attacks were not peculiar to New York but represented a general trend towards increasing violence and lawlessness throughout the world. The problem of how to prevent such violence was one which must concern every country which acted as host to a diplomatic community. In a State such as the United States, which had a strong tradition of individual freedom for its citizens, the problem of protecting diplomats was particularly difficult, since the State must continually attempt to strike a balance between the principle of freedom of expression and the consideration that one man's freedom should not be exercised at the expense of another man's rights or interfere with the legitimate and necessary functions of the diplomatic community. Her delegation could not agree that the United States officially tolerated, still less encouraged, criminal acts.

26. Her delegation unreservedly condemned the incidents described during the debate. The United States Government had a duty under international law to take all necessary and reasonable steps to prevent the commission of such acts and to secure the arrest and prosecution of the offenders. Her delegation was confident that the United States Government was fulfilling and would continue to fulfil that duty. There was, of course, a reciprocal obligation on the part of diplomats to co-operate with the authorities in the enforcement of the law, so far as that was not inconsistent with their immunities under international law. Her delegation noted with regret that certain missions continued to prevent members of their personnel from appearing in court for the purpose of giving evidence or from co-operating in other ways with the United States authorities. It was the standing policy of the United Kingdom Mission to be willing to make formal complaints and give evidence in the local courts whenever reasonably required in the interests

of justice and where the real interests of the United Kingdom Government were not likely to be prejudiced by such action.

27. Referring to the question of obligations of missions to the United Nations and of individuals protected by diplomatic immunity, she said that her delegation believed that the Committee on Relations with the Host Country had reached a satisfactory conclusion in deciding to have the Working Group continue its work on the question of indebtedness of individual diplomats or missions. The diplomatic community must be very wary of creating unnecessary resentment among the inhabitants of New York by failing to meet its obligations in any way. Her delegation expressed the hope that the Working Group would be of assistance in providing solutions for individual cases brought before it.

28. Her delegation, which was a member of the Committee on Relations with the Host Country, expressed the hope that the General Assembly would authorize the continuation of the Committee's work for the following year.

29. Mr. SIAGE (Syrian Arab Republic) said that, despite the laudable efforts by the Committee on Relations with the Host Country to ensure that permanent missions accredited to the United Nations were able to carry out their functions, the Zionist band known as the Jewish Defense League had multiplied its attacks on such missions. Although his delegation had continuously requested measures to put an end to such criminal acts, there had been no response on the part of the host country. He reiterated the appeal to the host country to institute criminal proceedings against those responsible for such criminal acts and to implement fully the 1972 Federal Act, as recommended by the Committee on Relations with the Host Country in its report.

30. His delegation supported all the proposals and recommendations of the Committee, the mandate of which should be extended.

31. Mrs. HERNANDEZ CARMONA (Cuba) said that her delegation had expressed its views on the question of relations with the host country on previous occasions. Many acts had been perpetrated against the Cuban Mission and had been condemned by her delegation both in the Committee on Relations with the Host Country and in the Sixth Committee. Nevertheless, the perpetrators of those crimes had not been prosecuted. Such acts prejudiced the proper functioning of diplomatic missions in New York and the impassive attitude of the United States authorities was unjustifiable. The argument that diplomatic officials caused problems for the United States authorities and involved them in considerable expense was unacceptable. The United States derived an annual profit of approximately \$1 billion from the expenditures of the United Nations, diplomatic missions and delegations. There was also a multiplier effect on the United States economy from the investments of the United Nations Staff Pension Fund and the United Nations Development Programme.

32. Given the many advantages derived by the United States from the establishment of United Nations Head-

quarters in New York, there was no justification for the attitude of the United States authorities in tolerating acts which violated not only international law, but also the internal law of the United States.

33. Her delegation agreed that the mandate of the Committee on Relations with the Host Country should be extended and had no objection to anything contained in that Committee's report.

34. Mr. AL-SAMMAK (Kuwait) said his Government had condemned all violent acts, threats and insults committed against missions and their personnel and property; such acts endangered the safety and security of missions and were a breach of international security and his delegation looked forward to more appropriate preventive measures to discourage them in the future.

35. Referring to section VI of the report of the Committee on Relations with the Host Country he emphasized that all diplomats working with missions accredited to the United Nations had, in addition to their rights, the duty to respect the laws and relations of the host city and to co-operate as fully as possible with federal and local United States authorities. On the other hand, the host country should seek the promotion of mutual understanding between the diplomatic community and the local population in order to ensure friendly relations among all parties concerned.

36. His delegation would like the Committee on Relations with the Host Country to continue its study of the question of parking difficulties and to explore more possibilities for increasing the number of parking spaces for diplomatic vehicles. That problem was an important one for representatives of his country and, he believed, for others.

37. Mr. VILLAGRAN KRAMER (Guatemala) said that the report under consideration was of special interest to his country because it had general implications for all countries which were hosts to international bodies. Guatemala was host to several regional and other international organizations and was therefore specially interested in seeing appropriate action taken on the recommendations of the Committee on Relations with the Host Country. That would serve as a guide for his own country in its relations with missions in Guatemala and in the relations of its own missions abroad.

38. The problem of host country relations was not confined to relations between host country authorities and accredited missions, but also involved mission staffs and the local population. Such relations were two-sided and called for mutual respect. The incidents described in the report, particularly those referred to as terrorist acts, were very regrettable and it was very important that the host country should act with due diligence in that regard. However, members of diplomatic missions should co-operate appropriately with local authorities.

39. The local authorities should take not only punitive but also preventive action. The local population should be informed of the duty of these authorities to protect representatives and should be aware of the applicable penalties.

40. The Vienna Convention on Diplomatic Relations did not go to the extreme of providing that missions should resort to diplomatic immunity, if the result was lack of co-operation with host country authorities. If local police witnessed an incident in which the dignity of a member of a mission was abused, then there was no need for the representative to appear in court to confirm the police testimony. But in extreme situations, when neither the police nor the press were present, co-operation by diplomatic representatives was important.

41. His delegation welcomed the recommendations in the report and considered that the Committee on Relations with the Host Country should continue its work. His delegation also supported the views expressed by the United Kingdom representative.

42. Ms. WHITE (United States of America) said that the United States continued to desire to be the best possible host to the United Nations. It regarded its position as host country as a privilege and an honour and was well aware of the responsibilities involved. It had listened with attention to the comments and suggestions made, and would give due attention to them.

43. Since delegations which did not have problems normally did not speak on the current item, or even appear at meetings of the Committee on Relations with the Host Country, the discussion gave an unbalanced picture of host country relations. Even though some of the problems mentioned were experienced by only a small number of delegations, she believed the record was clear evidence that the United States took them seriously.

44. Thus, her delegation recognized that problems relating to the security of missions were of serious concern to some and it would continue to do its best to prevent such incidents. The record in that regard, she believed, had been a good one. It was satisfying that New York had been free of the horrifying atrocities that had been perpetrated against diplomats in cities around the world, including tragic events in recent weeks. Indeed, the situation in New York had to be viewed as one of relative security in an all too violent world. The United States would not provide the sombre security of a police State and believed most delegations did not wish it to do so. Rather, it sought to provide security within the vibrant and constantly changing free and open society of which it was proud. In response to those who had charged laxness in apprehending and punishing perpetrators, she wished to point out that under the United States system of justice it was not possible to obtain a conviction unless the evidence on which such a conviction could be based was presented in open court. In those cases in which the only witness was a diplomat, the latter's co-operation was needed to obtain the convictions. That did not go beyond the obligations of all diplomats under existing law. In that connexion, she quoted article 4, section 14, of the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)), which provided for waiver of diplomatic immunity in certain circumstances.

45. As to the question of automobiles, some had even suggested that diplomats had a right under international law to reserved parking spaces. There was surely no convention

from which such a right could be deduced. Such parking spaces were not provided in a number of major capitals, including the other city in which the United Nations had a significant secretariat, permanent missions and conferences. So no usage, much less any custom, was involved. While authorities in the United States were pleased to try to meet needs by providing as many reserved spaces as possible, they asked the respect of the diplomatic community for the New York laws and regulations, in conformity with international law and out of courtesy to the host city.

46. Her delegation was aware of the problem of illegally parked cars in reserved DPL parking spaces and New York authorities continued to take steps to keep those spaces free exclusively for diplomatic parking. In September 1975, the Department of Traffic had ticketed almost 400 vehicles illegally parked in diplomatic spaces, and the Police Department had towed over 50 vehicles from such spaces. Non-diplomatic violators were not immune to payment of the \$25 fine for each ticket and \$50 for towing. In that regard she wished to remind the Sixth Committee that violations by diplomats of New York parking laws and regulations were a constant source of friction in the city. While diplomats were immune from penalties, they were not free from the obligation to respect the laws of the country.

47. It was appropriate for the Sixth Committee to take note of the many acts of hospitality afforded by the New York City community, of the services—not paralleled in any other city in the world—provided by the New York City Commission for the United Nations and for the Consular Corps, of the friendliness and generosity of the United Nations Hospitality Committee and of the trips offered by the Travel Program for Diplomats. While the United States delegation had not sponsored those activities, it was very proud of them and hoped they would contribute to making the stay of guests of the United States interesting and

pleasant and to acquainting the United States public with United Nations representatives.

48. She referred to other activities designed to improve relations and foster a spirit of better understanding between the diplomatic community and the City of New York. They included a series of seminars held at the Ralph Bunche Institute of the United Nations; a report on the United Nations shown on television during prime time on channel 7; a booklet being distributed by the United Nations Association of the United States of America called "The 'you' in the UN", which her delegation had asked the Secretariat to distribute to each mission; and a poster called "What's in it for you?" which would be placed in trains and buses and seen by millions of people.

49. The United States and New York would continue to co-operate with the diplomatic community in solving its problems, and asked the co-operation of the diplomatic community in the interest of everyone.

50. Mr. MUSEUX (France), speaking in exercise of the right of reply, said he regretted that he was forced to comment on the insinuation by the representative of Chad that there was a link between an incident in New York and the bilateral relations between France and Chad. It went without saying that there was no basis whatever for that charge and that it deserved no further consideration.

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*continued*) (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018, A/C.6/L.1020)

51. The CHAIRMAN announced that the Sudan had become a sponsor of draft resolution A/C.6/L.1018.

The meeting rose at 5.05 p.m.

1561st meeting

Monday, 10 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (*concluded*) (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018, A/C.6/L.1020)

1. Mr. GOBBI (Argentina) said that in a spirit of consensus, which the Latin American Group had always favoured, the delegations of Panama, Paraguay and Uruguay, having judged that the Committee did not unanimously support the prevailing sentiment in the Latin American Group, had decided to withdraw the amendment to draft resolution

A/C.6/L.1018 contained in document A/C.6/L.1020. That laudable step had caused the Latin American Group disappointment. A large majority of the delegations which had spoken on the subject had recognized the humanitarian basis of diplomatic asylum and had viewed the practice as a recognized one of regional scope. In the United Nations, which should be concerned about protecting human rights, opposition to a modest and objective amendment to the preamble of a draft resolution, such as that contained in document A/C.6/L.1020, was unjustified. If such rigidity continued, it could destroy the consensus in the Sixth Committee and that would be a step backward.

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2. The Latin American Group reserved the right to request continued consideration of the item after the responses requested in draft resolution A/C.6/L.1018, operative paragraph 2, had been received.

3. The CHAIRMAN said he had no doubt that he was speaking for the whole Committee in expressing deep appreciation to the Latin American Group. Their amendment had doubtless been a reflection of the existing situation and of the debate on diplomatic asylum in the Committee. Nevertheless, it had caused concern on the part of some delegations, based upon real or imagined fears.

4. Withdrawal of the amendment would perhaps enable the Committee to adopt the draft resolution by consensus and set the pace for the adoption of other resolutions by the Committee at the present session.

5. Mr. LAUTERPACHT (Australia) said that the Chairman had expressed the sentiments of many delegations in expressing appreciation for the generous gesture by the sponsors of the amendment. Their approach reflected an honourable and advanced tradition which the Committee would do well to take into account.

6. The CHAIRMAN suggested that draft resolution A/C.6/L.1018 should be adopted by consensus, without a vote.

7. Mr. AL-ADHAMI (Iraq) said that, before the Committee adopted the draft resolution, he would like a clarification on the meaning of the words "*plus avant*" in operative paragraph 3 of the French text.

8. Mr. LAUTERPACHT (Australia) said that the word "further" in the English text was intended to indicate that any future consideration of the question of diplomatic asylum would be a continuation of its consideration at previous sessions of the General Assembly.

9. Mr. MAÏGA (Mali) said that the question put by the representative of Iraq was an apt one. The words "*plus avant*" added little to the text and he suggested their deletion.

10. The CHAIRMAN noted that the English text appeared to cause no problem. He suggested that it should be left to the Translation Division of the Secretariat to produce a text in French, and if necessary in other languages, which would be more in harmony with the English version.

It was so decided.

Draft resolution A/C.6/L.1018 was adopted.

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of

international law in relations between States: reports of the Secretary-General (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

11. Mr. BAJA (Philippines), Rapporteur of the *Ad Hoc* Committee on the Charter of the United Nations, introduced the report of the *Ad Hoc* Committee (A/10033).

12. After describing the organization of the report, he noted that paragraphs 1-8 had been adopted by the *Ad Hoc* Committee without any difficulty. Paragraph 9, however, had taken the Committee three days of negotiation and its adoption by consensus had been due largely to the leadership, patience and quiet diplomacy of its Chairman.

13. He recommended that the Sixth Committee should address itself to the statement in the second sub-paragraph of paragraph 9 that there was a "fundamental divergence of opinion on the necessity of carrying out a review of the Charter". Debate on that question was as important as, if not more important than, discussion on the renewal of the mandate of the *Ad Hoc* Committee. The polarized positions in the *Ad Hoc* Committee, which had reflected the division in the General Assembly during the twenty-ninth session, could hardly be over-emphasized. If the *Ad Hoc* Committee was authorized to continue, the Sixth Committee should, as a matter of priority and necessity, adopt a resolution under which divergence could be replaced by co-operative efforts. He was optimistic that a consensus on a generally acceptable course of action could be reached. If delegations could avoid the cost-benefit ratio approach to Charter review and if the subject was not equated with Charter amendment, the foundation for a closer working relationship was assured.

14. The "areas of activities" referred to in the third subparagraph of paragraph 9 included the decision-making process in the General Assembly and the Security Council; peace-keeping operations; peaceful settlement of disputes, including the role of the International Court of Justice; the functioning of the United Nations in the economic and social fields; and the amendment or deletion of so-called anachronistic provisions of the Charter.

15. Since formal textual proposals had not been made during the session of the *Ad Hoc* Committee and since suggestions made in individual statements had not been widely discussed, the *Ad Hoc* Committee had been unable to enumerate proposals pursuant to General Assembly resolution 3349 (XXIX), paragraph 1 (d). It would of course have been inconceivable for the *Ad Hoc* Committee, in the time available to it, to have worked out the details of proposals concerning the Charter and the strengthening of the United Nations.

16. However, the session had afforded members of the *Ad Hoc* Committee the opportunity to exchange ideas and suggestions as to how the Charter and the role and functioning of the United Nations could be strengthened. In that connexion, it might be useful if the Sixth Committee devoted efforts towards formulating a generally acceptable statement of the *Ad Hoc* Committee's mandate and a time-table for its work, as well as an indication of guidelines, possible areas for negotiation and certain broad negotiating principles. A restatement of known positions at

the present time might be not only counter-productive but retrogressive. Delegations should instead direct their efforts towards creating an atmosphere conducive to acceptance of the reality of the *Ad Hoc* Committee.

17. The fact that the *Ad Hoc* Committee had been unable to enumerate proposals should not suggest that no specific ideas had been put before it. In that regard, it might be of some assistance if members of the Sixth Committee could address themselves to the specific suggestions contained in annex I of the report. For example, Sierra Leone, Zambia, Nigeria, Rwanda and Mexico had expressed definite views on decision-making and on the question of the veto in the Security Council, and Indonesia, New Zealand, Spain and Colombia had expressed views on Article 27, paragraph 3, of the Charter. Assignment of new roles to the Trusteeship Council had been mentioned by the Philippines, Colombia and Guyana. Some delegations had termed Articles 53 and 107 of the Charter "anachronistic". In the peace-keeping field, Guyana envisaged an international peace observation machinery, Colombia an international peace-keeping force, the Philippines international peace-keeping by interposition and Indonesia a standing commission to provide a choice of procedures for settling disputes. New Zealand had made a very thought-provoking proposal regarding Article 4, paragraph 2, of the Charter on admission of new States to the United Nations. Those examples were not intended to be exhaustive, but merely illustrative.

18. He also wished to mention in that connexion the significant views held by the socialist countries and most countries in the Group of Western European and Other States that the United Nations had stood the test of time

and that the best ways of strengthening it further were fuller utilization of existing provisions of the Charter and more faithful implementation of its decisions by Member States.

19. Members of the *Ad Hoc* Committee, especially during the first week of its meetings, had all known what they wanted but had hardly known how to begin their work. He therefore suggested that, if the *Ad Hoc* Committee's mandate was continued, the Sixth Committee should address itself to recommendations and guidelines concerning its methods of work. In that connexion, he drew attention to annex II of the report, containing proposals by Mexico on the method of work. The *Ad Hoc* Committee had not had the opportunity to discuss those proposals.

20. He expressed the hope that the report, even if it fell short of depicting the *Ad Hoc* Committee's work with total accuracy, would at least help the Sixth Committee to guide that work.

21. The CHAIRMAN reminded the Committee that only seven meetings were scheduled for consideration of the report of the *Ad Hoc* Committee and five meetings for the agenda item concerning the strengthening of the role of the United Nations. It had been agreed that delegations could speak on the two items together if they wished, and he urged representatives to submit any draft resolutions as soon as possible in order to avoid more than one statement per delegation. He intended to close the list of speakers on both items some time during the current week.

The meeting rose at 3.50 p.m.

1562nd meeting

Tuesday, 11 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1562

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (continued) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (continued) (A/10218, A/10219, A/10255, A/10289, A/C.6/437).

1. Mr. BAQIR (Pakistan) said that his Government's views on the question of a review of the Charter of the United Nations had been expressed at the 2059th plenary meeting during the twenty-seventh session of the General Assembly.

2. Consultations and discussions thus far indicated that opinion was sharply divided. Some States strongly held the view that the Charter had stood the test of time, had helped to avert a number of international conflicts and had succeeded in halting many others. Those States had argued that the validity and inherent strength of the Charter had been amply demonstrated over the past 30 years and that it had promoted co-operation between States at different levels of economic development. Other Member States were equally persuasive, however, in arguing for a revision of the Charter to take account of current realities; the membership of the United Nations had almost tripled since its establishment and the Charter should adapt to the concerns expressed by many of the new Members, most of whom were developing countries.

3. Still other States favoured procedural changes and amendments, since they felt that the Charter's essential

purpose—the maintenance of international peace and security—had been well served. A detailed study of the views of Member States indicated that the majority favoured a gradual process of examination of different provisions of the Charter and of their validity in the current situation, with a view to enhancing the effectiveness of the United Nations in maintaining international peace and security. His delegation was of the opinion that, despite its failures, of which Pakistan had had some tragic experience, the United Nations had also achieved some noteworthy results. Although it had not always lived up to its primary responsibility, the failure to do so could be attributed to the overriding pulls of national interests of some Member States, rather than to any inadequacies of the Charter. There had also been instances where some Member States had flouted either the Charter or the will of the international community and where the United Nations had failed to take even such action as allowed or called for by the Charter. Such instances were attributable not to the Charter, but to the lack of political will on the part of some Member States to respect the letter and spirit of the Charter.

4. Referring to the principle of unanimity of the five permanent members of the Security Council, he said that much of the disenchantment in that regard was due to instances when the veto had been used to thwart not only the nearly unanimous will of the international community but also the provisions of the Charter itself. The suggestions made concerning the scope or future of the veto could be attributed more to those instances of misuse than to any senseless obduracy on the part of the majority of Member States.

5. The Charter must be adapted to the changes which had taken place in the world political scene since 1945. His delegation was acutely aware of the very delicate nature of the problem, but was convinced that such changes, when agreed upon after detailed examination, would strengthen the basic principles of the Charter. Provision for such changes had been made in Article 108 of the Charter. The

changes that had already occurred in response to changing realities, such as the enlargement of the membership of the Security Council and the Economic and Social Council, had not eroded, let alone demolished, the balance achieved in the Charter. Nor would similar changes in the future lead to such a catastrophe.

6. While recognizing that proposals for changes in the existing balance among various organs of the United Nations must undergo serious scrutiny, his delegation felt that none of those changes should be rejected out of hand. It had carefully studied the views of the recent deliberations of the sixth and seventh special sessions of the General Assembly which reflected general concerns of the international community and in particular of the developing countries. Existing economic disparities generated much of the dissension and dissatisfaction, subjecting international relations to stress and strain. An attitude of understanding and co-operation with the countries of the third world, particularly in the economic field, would in the opinion of his delegation allay some of the concerns which inspired suggestions for changes in the existing order. That aspect was of increasing relevance to the Charter. There appeared to be a growing area of agreement regarding changes in the provisions relating to the economic structure.

7. His delegation suggested that, while the basic political structure of the Charter should be allowed to function without change for the time being, the *Ad Hoc* Committee on the Charter of the United Nations should be asked to continue its deliberations in 1976 with special emphasis on areas of possible general agreement regarding revision or review.

8. The CHAIRMAN suggested that the list of speakers on items 113 and 29 should be closed at 6 p.m. on Wednesday, 12 November.

It was so agreed.

The meeting rose at 3.40 p.m.

1563rd meeting

Wednesday, 12 November 1975, at 10.40 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1563

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. DATCU (Romania) said that his country attached particular importance to the items under consideration, as it believed that the United Nations was an important instrument, available to mankind, for solving international problems and promoting the ideals which had inspired the establishment of the Organization. Since the founding of the United Nations, the world had undergone vast changes, new socialist countries had appeared which exerted a positive influence in the contemporary world, the colonial system had collapsed and dozens of new independent States had emerged. All those developments had introduced new characteristic features in contemporary international life,

such as the increasing participation by all States in finding solutions through negotiation and in adopting measures to promote détente and co-operation between States with different systems. In that connexion, he noted the positive achievements of the Conference on Security and Co-operation in Europe, the Final Act of which inaugurated a new era for the countries and peoples of that continent.

2. Nevertheless, acute problems persisted in international life which were of the gravest concern to humanity—in particular, the problem of establishing a new economic and political order, replacing the old relationships based on domination and oppression by new relationships based on equality and equity.

3. Throughout its history, the United Nations had played a positive role in the world, but at the same time its activities had revealed certain short-comings and weaknesses. Serious conflicts in various parts of the world, as well as economic and social events with global implications, had been dealt with not within the United Nations but outside it. In other cases, actions alien to the spirit and purposes of its Charter had been undertaken under the auspices of the Organization. The activity of the United Nations had not become adjusted to the rhythm of change and its structure did not fully reflect the new social and political realities.

4. In his delegation's view, it was necessary to create the conditions necessary for greater participation by all Member States, on the basis of complete equality, since that was the only way the United Nations would be able to increase its contribution to the solution of the problems confronting humanity and become a more effective international instrument.

5. Guided by those considerations, his Government had submitted document A/C.6/437, which reflected its position on the items under consideration. Romania believed that the United Nations and its fundamental documents should be in perfect harmony with the realities and trends of the contemporary world. Owing to the historical circumstances at the time it had been drafted, the Charter contained provisions implying *de facto* acceptance and recognition of colonialism, the maintenance of which would be tantamount to perpetuating tyrannical relationships and intervention in the affairs of other States. The Charter must clearly proclaim the full and final abolition of colonialism, neo-colonialism and racism and the determination to eliminate all practices engendered by those systems. The Charter must forcefully proclaim the fundamental right of peoples to decide their own destiny and to exercise permanent sovereignty over their natural resources and it must provide for the equalization of levels of economic development of all States as a real basis for making international life more democratic. The time had therefore come to review such Charter provisions with a view to eliminating the existing contradictions.

6. The retention in the Charter of provisions referring to the concept of an "enemy State" was not only an anachronism but also an obstacle in the way of détente and the establishment of relations of full equality. The Charter must ensure the co-operation of all States in order to usher in a new era in the history of humanity.

7. The Charter should not in any way be interpreted as signifying that there might be different categories of Member States. It must clearly admit the equality of all Member States and uphold their right and duty to participate in efforts to prevent and extinguish conflicts.

8. Convinced of the need to strengthen the role of the United Nations in international life, Romania felt that it was necessary to persevere in efforts to develop, define and adapt the standards and principles governing relations between States. The documents produced thus far by the United Nations were important steps in the right direction. To that end, his delegation proposed that the United Nations should prepare and adopt a universal code of conduct covering the fundamental rights and duties of States. Such a code would be of incalculable significance in promoting international security and the independence and progress of nations.

9. Romania also felt that the United Nations had an important role in the establishment of a new international economic order on which true détente and real peace was dependent. The General Assembly should acquire the necessary organizational structures in order to obtain practical results in that regard. Romania's position and proposals on that subject had been submitted on 5 September 1975.¹

10. The fundamental objective in creating the United Nations had been to save succeeding generations from the scourge of war and to ensure the solution of all international disputes by peaceful means. However, that noble endeavour had not been fulfilled satisfactorily for there continued to be cases involving the threat or use of force. To achieve that objective, the United Nations could and must take the initiative and play a more active role in preventing or settling disputes. To that end, Romania proposed (see A/C.6/437) the establishment of a permanent commission of the General Assembly to fulfil the functions of mediation, good offices and conciliation. The commission would have a preventive role and all interested States, including those which were not parties to the dispute in question, could take part in its work. The commission would also be able to prepare the way for the adoption by the United Nations of an international instrument aimed at establishing specific procedures for the peaceful settlement of disputes. Moreover, universal participation would strengthen the faith of States in the capacity of the United Nations in that respect.

11. General disarmament—and primarily nuclear disarmament—constituted one of the fundamental tasks of the United Nations. His delegation had stated its views and submitted its proposals in that regard in the First Committee during the current session.²

12. The strengthening of the prestige of the United Nations was indissolubly linked with the achievement of universality and with improvement of its structure, organization and operation; those points had been emphasized not long ago by the President of Romania. The strengthening of the democratic character of the United Nations

¹ See A/AC.176/3.

² See A/C.1/1066.

activities required a broadening of the powers and competence of the General Assembly so as to improve its operation and ensure that the resolutions adopted received the unanimous support of Member States. Thus, the United Nations should extend the practice of convening special sessions for the purpose of analysing major problems and drawing up programmes for the solution of such problems. In that connexion, the General Assembly should utilize all the provisions of the Charter to strengthen its relations with the Security Council with regard to problems of international peace and security, an area in which it would no doubt be useful to provide for a consensus procedure in the Charter. The consensus rule should be defined in such a way as to facilitate the solution of problems through negotiations with the participation of all interested parties, without implying that the current procedures would be discarded in cases where it was impossible to reach a consensus. Provisions should also be included in the Charter stipulating that the resolutions adopted by consensus or by a unanimous vote constituted firm commitments for all Member States. Moreover, the Charter should include provisions reaffirming the practice of the General Assembly and the Security Council to establish procedures, machinery and organizations responsible for ensuring the full implementation of the resolutions adopted by those organs.

13. The improvement of the structures of the bodies and organs of the United Nations and the democratization of their activities would greatly help to increase the Organization's effectiveness. In that regard, it would first be necessary to adopt measures to permit greater participation by the small and medium-sized countries in the system of collective security, which would require an increase in the number of members of the Security Council in proportion to the number of Member States and to the changes made in the structure of the United Nations. Secondly, each geographical region should have one or two representatives who, by means of annual rotation, would enjoy the same rights as the permanent members of the Council with regard to the adoption of substantive decisions. The principle of equitable geographical distribution should be applied broadly in all the activities of the Organization, including the selection of headquarters of agencies. The practice of holding meetings in various Member States should also be extended. Lastly, Romania considered it appropriate to improve the Secretariat's methods of work to ensure an adequate representation of all States.

14. Concerned like other States with the strengthening of the capacity of the United Nations, Romania submitted its proposals relating to the matter in an awareness of the fact that humanity was now on the threshold of a new era and that the Charter should incorporate the most advanced forms and principles of international law. The Romanian Government would continue to collaborate closely with all States in the development and reaffirmation of the role of the United Nations in international life, since it was in the interest of all nations that the Organization should perform in accordance with the provisions of the Charter and the resolutions adopted by it.

15. Agenda item 29 had its origin in resolutions 2925 (XXVII), 3073 (XXVIII) and 3282 (XXIX), adopted unanimously by the General Assembly, and there were three reports of the Secretary-General which contained the

observations and proposals of some 40 Member States on the question. Concurrently, and prompted by the same concern, a debate had been initiated on ways in which to improve the Charter; the *Ad Hoc* Committee on the Charter of the United Nations, the report of which (A/10033) had been published in connexion with agenda item 113, had been created the previous year. Romania considered it appropriate to examine the two items jointly, since they dealt with the same question and complemented each other.

16. His country had expressed, at the outset, its desire to be a member of the *Ad Hoc* Committee, a desire which had not been fulfilled for well-known reasons. His delegation was firmly in favour of the extension of the *Ad Hoc* Committee's mandate and proposed the enlargement of its membership in order to permit the participation of countries wishing to contribute to its work. In that spirit of co-operation, his delegation was prepared to hold consultations for the purpose of preparing a draft resolution on the continuation of the work.

17. Mr. URIBE (Colombia) said that the daily changes in the balance of world power and the emergence of new developments in international relations made it necessary to reflect on measures to improve the operational machinery of the United Nations. Failure to accept the changing situation in the international community was tantamount to ignoring the evidence of the factors which delimited and determined its pattern. Yet accepting that the legal order must keep pace with the new circumstances strengthened, rather than weakened, the international Organization.

18. The legal order collapsed if it ceased to reflect new social and political facts. The political situation had changed substantially in the 30 years since 1945. Such changes were mainly due to the proper exercising of the functions assigned to the bodies of the United Nations; in that respect, decolonization was an excellent example of that phenomenon.

19. It was essential to update the United Nations at the present time, but the question was whether the indispensable changes should originate solely from a privileged group of States or whether, on the contrary, all Governments, including medium-sized and small States, should have the possibility of co-operating in the major undertaking of the operational development of the United Nations.

20. The idea behind the establishment of the *Ad Hoc* Committee had been to give Members of the United Nations, and in particular the members of the Sixth Committee, an opportunity to make a direct contribution to the difficult but essential task of updating the machinery of the international Organization. There could be no doubt that the consideration of the suggestions made with respect to the revision of the Charter could not be accomplished in a short period of time without running the risk of improvisation. In any case, it was undeniable that the task of bringing the Charter of the United Nations up to date was under way and that all States were confidently awaiting the promising fruits of that effort.

21. The desire to participate in world decision-making was characteristic of small and medium-sized States, which were

traditionally placed in a marginal position vis-à-vis the great Powers. However, in addition to the spirit of participation, perhaps the sole task which no State was prepared to relinquish was that of discussing and co-operating with respect to the changes to be made to the structure of the United Nations, a body which represented the best symbol of a world of harmony and constructive co-operation.

22. The proposal to extend the mandate of the *Ad Hoc* Committee sought to make the work of that body more effective. Members of the Organization were fully aware of the need to update the machinery of the United Nations. The desire to ensure that all Member States collaborated in the performance of the tasks entrusted to the *Ad Hoc* Committee was complemented by the prudent appeal to extend the life of that study group since the commitment undertaken by the signatories of the San Francisco Charter for the maintenance of peace also included collaboration in any initiative designed to make the United Nations more effective, without allowing new developments in the world to remain outside its competence or allowing the responsibility for peace to be limited to a single group of States excluding the new States, whose freedom was perhaps the greatest achievement of the Organization's 30 years of existence.

23. Miss VEGA (Peru), recalling the Secretary-General's remarks, said that the United Nations had evolved from the 51-nation association closely linked with the circumstances of the Second World War to the world Organization which with over 140 Members, was approaching universality. In the aftermath of a global conflict, it had been natural that the founders of the United Nations should be primarily concerned with devising a system of keeping the peace which would avoid a repetition of the events which had led to the Second World War. However, the evolution of the post-war world had created a new geopolitical structure in the past 30 years. Thus the basis of political and economic power in the world as a whole had changed radically in a way which could not have been foreseen at San Francisco.

24. Of the provisions contained in one of the last chapters of the San Francisco Charter, one related to the possibility of introducing amendments (Article 108) and another concerned the possibility of revising the Charter (Article 109). There was a vast difference of substance and scope between the terms "amendment" and "revision". When the aim was to maintain the fundamental principles underlying an instrument and to modify only certain provisions, one could speak of amendment. However, revision involved an attempt to alter those principles. The problem of the revision of the Charter had therefore been raised at the very moment when it had entered into force, perhaps because of

certain short-comings which had become apparent in the Organization at the very outset.

25. On the one hand, Article 108 empowered the General Assembly to amend the Charter; to do that, it was sufficient for a State to include the proposed amendment in the provisional agenda. If the Assembly decided to consider it and approved it, it was submitted to the States Members of the United Nations for ratification; if it was ratified by two thirds of those States, including the five permanent members of the Security Council, it was incorporated in the Charter.

26. On the other hand, Article 109 conferred on a General Conference of the Members of the United Nations the power to revise the Charter, in other words, it provided for a new body, a kind of constituent or *ad hoc* assembly entrusted with the revision of the Charter.

27. With regard to the question of the revision of the Charter, three main groups had emerged in the Sixth Committee, namely: those which were frankly opposed to any revision of the Charter and who maintained a conservative position; those which were firmly in favour of a revision of the Charter; and those which had expressed opposition to a revision of the Charter in general, but which did not rule out specific amendments.

28. In view of the existence of those three groups, the report of the Group of Experts on the Structure of the United Nations System³ might constitute a compromise formula with respect to that delicate question. The report, which had been submitted to the Secretary-General in the framework of a general structural plan for consideration by the Preparatory Committee for the Special Session of the General Assembly, was intended to help to correct certain shortcomings in the structure of the United Nations which were preventing the Organization from becoming a more effective instrument. In view of those considerations, it could be concluded that there was an urgent need in the United Nations family for a restructuring of the system and for adaptation to the latest new international changes.

29. Whatever method was chosen for revitalizing the Organization would be welcome; whether through the *Ad Hoc* Committee or through the work of the Group of Experts. The important point was to become aware of the situation and to take the first steps in that direction.

The meeting rose at 11.55 a.m.

³ E/AC.62/9.

1564th meeting

Thursday, 13 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1564

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. SEIDEL (German Democratic Republic) said that his delegation, as it had stated during the discussion in the *Ad Hoc* Committee on the Charter of the United Nations and on other occasions, energetically rejected a revision of the Charter. During the 30 years of its existence, the Charter, as the fundamental document of current international law, had proved to be flexible enough, even for the future, to guide all States in their international relations.

2. It was especially important to speak out on the question in the year which marked the thirtieth anniversary of the Charter, which, because of a close historical connexion, was also the thirtieth anniversary of the victory of the anti-Hitler coalition over fascist Germany and its allies and thus of the end of the Second World War. The Charter contained the lessons of the developments which had led to that war and of the common struggle and victory of the anti-Hitler coalition over fascism. Those lessons were, above all, that it was necessary to establish an international organization to ensure strict observance of the principles for which the peoples of the world had made so great a sacrifice, particularly international peace and security and peaceful co-operation among States, regardless of their social order. Those principles still had the same importance as when they had been embodied in the Charter. Together with the Charter provisions on the structure and procedure of the United Nations, they made it possible for the Organization to perform its tasks increasingly well in a permanently changing world.

3. Important historical changes, such as the almost completed process of decolonization, had taken place on the basis of the Charter and the liberation struggle of numerous colonially-oppressed peoples had been promoted by the fact that the Charter, as the first generally binding instrument of international law, obliged States to recognize the right of peoples to self-determination. The Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), which was based on that principle of the Charter, was another important political and legal weapon for those peoples in their just struggle for national independence.

4. Because of the principle of sovereign equality embodied in the Charter, the States which had emerged from the decolonization process were actively participating in the United Nations on an equal footing with all other States, regardless of their social structure or size. The results of the seventh special session of the General Assembly and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)) showed that the United Nations was implementing its Charter and was in a position to take effective decisions which corresponded to the special requirements of the developing countries, particularly in the economic field. Thus, the Charter had not impeded but had promoted progressive development and his delegation was firmly convinced that it would live up to future requirements.

5. His delegation was aware that United Nations activities had not always been in accordance with the fundamental provisions of the Charter, that there had been violations of the Charter, and that the possibilities afforded by the Charter had by no means always been exhausted. That was not because of the Charter itself but because certain Member States insufficiently fulfilled their Charter obligations. Practice showed that the United Nations had successfully implemented its purposes and principles only when its Members had been guided by the Charter. His delegation therefore wished to repeat energetically the appeal contained in General Assembly resolution 2677 (XXV) for strict observance and full application of the Charter. That, and not a revision of the Charter, or attempts to make it legally perfect, was the key to strengthening the role of the United Nations, just as violations of national laws were combated primarily not by modifying the law but by urging the violators to comply. Efforts to replace the necessary struggle for full implementation of the Charter by discussions on revision would only obstruct United Nations activities. Nothing could be done about the fact that there were States with differing systems. They could and would live together only if the principles of peaceful coexistence were observed. To deny that fact meant, willingly or unwillingly, undermining the foundations of the United Nations.

6. The Charter was a well-balanced system of democratic principles and rules which fully corresponded to contemporary requirements, i.e. to the policy of peaceful coexistence of States with different social systems and to the birth of numerous liberated States and their ever-growing influence. The provisions on the composition, functions and powers of the Security Council, to which all Member States, exercising their sovereign rights, had agreed on the occasion of their admission to membership, were neither out-of-date nor undemocratic, but adequately reflected the current balance of power in the world. Therefore, they should not be modified or amended. That included the principle of unanimity in the Security Council. His delega-

tion supported the position taken by the Union of Soviet Socialist Republics in the Security Council, which had consistently been aimed at safeguarding peace and supporting the colonial liberation struggle and the interests of the developing countries.

7. Any interference with the Charter would also cause insecurity for United Nations organs and specialized agencies and, because of the comprehensive and complex character of the Charter, would have a bearing on the relations between States and, inevitably, a negative influence on the international situation. Thus, the demand for Charter revision was closely linked with the question of the continued viability of the United Nations.

8. Modification of the Charter would also have a far-reaching impact on the legal status of many agreements concluded outside the framework of the United Nations but based on the rules of the Charter, or referring to them. That applied to regional agreements on the co-operation of States in political and other fields, to the statutes of international organizations and to numerous bilateral agreements on co-operation in the political, economic and military fields. Likewise, the Final Act of the Conference on Security and Co-operation in Europe had expressed the adherence of the participating States to the Charter and, like many other documents of international law, had made the rules of the Charter the highest standard for the policy of States and viewed them as unchangeable guidelines for their activities.

9. The views of States contained in the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033) confirmed his delegation's view. They showed clearly that there was no basis whatsoever for any agreement on the problem. He therefore doubted whether it would be useful to have further meetings of the *Ad Hoc* Committee in the forthcoming year.

10. In conclusion, he quoted and reaffirmed the position of his Government as set forth in the last paragraph of its observations in document A/10113/Add.1.

11. Mr. ROMULO (Philippines) said that the seventh special session of the General Assembly had demonstrated that the world community was moving rapidly and irreversibly towards the adoption of measures for the development of a more equitable world economic order. In a relatively short period of time, the first steps had been taken to allow common and co-operative approaches to the challenges, dangers and opportunities which lay ahead. If the United Nations was to assume a central role in world affairs in an era of interdependence, it must be made adequate to the task. On the occasion of the twenty-fifth anniversary of the United Nations, his delegation had noted (1878th plenary meeting) that, although the Organization had proved to be remarkably adaptable and its principles beyond question, it was not in all respects adequate to the new demands being made of it. Those observations had gained weight with the passage of time.

12. His delegation was gratified that a number of initiatives had been taken with regard to the updating and improvement of United Nations procedures and structure and that a large majority of Members had agreed that a

review of the structure of the United Nations and of its Charter were no longer defensible. The action of the General Assembly in adopting resolution 3349 (XXIX) had proved to be so popular that the membership of the *Ad Hoc* Committee had had to be increased. The task of that Committee had only just begun. In general, its members were approaching the historic undertaking with the prudence and seriousness necessary to ensure the confidence and support of the United Nations membership as a whole.

13. Although many constructive and helpful contributions had been made during the general discussion in the *Ad Hoc* Committee, the attitude of some of its members had remained obstructive, negative and obdurate. That obstructionism had tended to delay the organization of its work. Nevertheless, the *Ad Hoc* Committee had begun to proceed according to the precise terms of its mandate. The Members of the United Nations had a clear constitutional right to have their recommendations and suggestions heard and duly considered. Any attempt to foreclose the exercise of that right could be regarded only as an attempt to impose the rigid will of a few on the clearly expressed wish and fundamental right of the majority.

14. There appeared to be some reluctance on the part of the Secretariat to provide assistance to the *Ad Hoc* Committee. The members of that Committee had been magnanimous in only gently suggesting that the materials with which they had been provided were neither adequate nor in conformity with any reasonable interpretation of General Assembly resolution 3349 (XXIX). It was difficult to understand how the report submitted by the Secretary-General (A/10113 and Corr.1 and Add.1-3) pursuant to paragraph 4 of that resolution could be properly termed "analytical". What the *Ad Hoc* Committee might have expected, at the very least, was a document giving in concise terms and ordered according to subject the views of Governments on the major topics raised during the debates of the past several years. If the directions provided to the Secretariat had been inadequate, efforts must be made to ensure that any such deficiency was corrected in any resolution to be adopted at the current session. He was sure that the mandate of the *Ad Hoc* Committee would be renewed.

15. A number of practical suggestions had been put forward as to how the *Ad Hoc* Committee should proceed during 1976. Those suggestions should be considered as a first order of business. Furthermore, the Committee session in 1976 should be scheduled at a more propitious time than in 1975.

16. The task and mandate of the *Ad Hoc* Committee were very clear and strictly limited. Any proposals made by the *Ad Hoc* Committee and involving amendments to the Charter were subject to approval by the General Assembly and to the principle of unanimity in the Security Council. There was therefore no threat to the interests of the major Powers. His Government's proposals on the revision of the Charter were to be found in its reply to the Secretary-General¹ in accordance with General Assembly resolution 2697 (XXV).

¹ See A/9739.

17. To make up for the deficiencies in the report of the *Ad Hoc* Committee, the sponsors of General Assembly resolution 3349 (XXIX) would shortly submit a draft resolution for positive action by the Assembly extending the mandate of the *Ad Hoc* Committee with adequate funding and an appropriate schedule until its work was completed, subject to review by the General Assembly. He had no doubt whatsoever that that draft resolution would be adopted by an even stronger majority than that which had supported the establishment of the *Ad Hoc* Committee in 1974. A world organization with maximum effectiveness and prestige would increase the likelihood of responsible action by its Members and remove excuses for non-reliance on the United Nations, thus making it more accessible and attractive as the major instrument for world problem-solving.

18. Mr. NYAMDO (Mongolia) said that his delegation was not surprised to see that the report of the *Ad Hoc* Committee reflected a fundamental divergence of opinion as to the need for Charter revision and as to how the *Ad Hoc* Committee should proceed with its work. Because of that divergence, the *Ad Hoc* Committee had been unable to draw any concrete conclusions in compliance with General Assembly resolution 3349 (XXIX) and his delegation was inclined to feel that serious thought should be given as to whether it was advisable for the *Ad Hoc* Committee to be convened every year.

19. His Government's position on the issue under consideration was basically determined by the main principles of its foreign policy, which was dedicated to the maintenance of international peace and security. That was also the central task of the United Nations and embodied as such in its Charter, to which Mongolia fully subscribed. The Charter was the most important and valuable legal instrument in the contemporary world, and incorporated such fundamental principles of international law as peaceful coexistence of States with different social systems, self-determination, sovereign equality, non-interference in internal affairs, peaceful settlement of international disputes and co-operation on the basis of equality and reciprocity. He mentioned a number of other documents of historic importance which had been adopted on the basis of the Charter, including, most recently, the Charter of Economic Rights and Duties of States and the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)). The basic provisions of the Charter had also been reflected in most bilateral and multilateral treaties which had been concluded and similar documents, the most recent example being the Final Act of the Conference on Security and Co-operation in Europe. All those facts demonstrated clearly that important efforts towards implementation of the basic provisions of the Charter could take place without any revision of that instrument.

20. The considerable accomplishments of the United Nations during its 30 years of existence, including the fact that mankind had been spared a world war and the Organization's significant role in supporting the struggle for national independence and against colonialism, neo-colonialism and racism showed that the United Nations had withstood the test of time and that its Charter had proved sufficiently flexible to accommodate changes in the world.

21. Although many United Nations resolutions remained unimplemented, the fault lay not in the Charter but in violations of the Charter by Member States. Implementation of the Charter depended primarily on the political will of Member States, not on its revision. Merely opening up the question of Charter revision would inevitably lead to controversies which could weaken the Organization.

22. Although some who favoured revision of the Charter had tried to find fault with the principle of unanimity of the permanent members of the Security Council, that principle was vital to the realization of the main purposes of the United Nations and was a reliable guarantee against any attempt to use the Security Council for purposes detrimental to the basic aims of the Charter or the cause of strengthening international peace and security. Furthermore, the principle embodied the equality of the two social and economic systems and experience had confirmed that it played an important role in such matters as protection of the just cause of peoples fighting for freedom and national independence and advancement of the interests of the newly independent States. The entire United Nations structure rested on that rule and any attempt to revise it would endanger the very existence of the Organization. However, by advocating the principle of unanimity, his delegation in no way condoned use of the veto for selfish reasons or for the furtherance of unjust causes.

23. Many had argued that the Charter should be brought into harmony with modern times. It was true that important changes had taken place since the adoption of the Charter, including the appearance of many newly independent States and the consequent increases in membership in the principal United Nations organs. Mongolia had always welcomed admission of newly independent States and greatly appreciated their active participation in United Nations affairs. The Charter still offered many possibilities to all Members, including the developing countries, for active participation.

24. Strict implementation of the provisions of the Charter and of documents adopted on the basis of the Charter would have brought a just solution to many pressing problems such as the questions of Namibia, Cyprus, the Middle East and *apartheid* and others.

25. The fact that no general trend had emerged from the discussions on the Charter showed clearly that a majority of members felt that the Charter fully met the needs of contemporary international needs. Therefore, the current form and content of the Charter must be maintained. The Charter contained many unused possibilities which could and should be used to enhance the effectiveness of the United Nations.

26. His country had always been in favour of increasing the effectiveness of the United Nations, as was shown by the letter addressed to the Secretary-General by the Mongolian Minister for Foreign Affairs, contained in document A/10113/Add.1.

27. Mr. SETTE CÂMARA (Brazil) said that the adoption of General Assembly resolution 3349 (XXIX) establishing the *Ad Hoc* Committee on the Charter of the United Nations had been a first step towards enforcement of

Chapter XVIII of the Charter, which had thus far been preserved in mothballs by certain cautious Powers. That measure had been simply a return to the ideals of the founding fathers of the United Nations, who had made provision for periodic revisions of the Charter in Article 108.

28. The results thus far achieved by the *Ad Hoc* Committee represented only a beginning. No concrete measures or amendments had been agreed upon. However, the meagreness of the *Ad Hoc* Committee's report, far from discouraging those who believed in the need for a change, testified to the general awareness of the seriousness, complexity and difficulty of the task. The results embodied in that report were a good answer to those who had feared precipitate and thoughtless action, or had warned against tampering with the provisions of the Charter. Although an appreciable majority within the *Ad Hoc* Committee had favoured openly tackling the problem of the revision of some provisions of the Charter, no attempt had been made to stampede those who held opposing views.

29. Since the San Francisco Conference, his delegation had consistently advocated that a review of the Charter should be conducted every five years, irrespective of veto. The implementation of Article 108, far from being a threat to the United Nations, represented a necessary corollary to the fulfillment of the Charter's purposes and principles. To that end, his delegation had participated actively in the work of the *Ad Hoc* Committee, and its statement was recorded on pages 8 and 9 of the report (A/10033). As a sponsor of resolution 3349 (XXIX), his delegation wished to congratulate the *Ad Hoc* Committee on the work it had accomplished in such a short time and in such difficult circumstances. Although many important suggestions had been presented by a number of delegations, no decision had been arrived at on any of them, for lack of time. The *Ad Hoc* Committee had not succeeded in organizing its future work in an efficient manner. A very interesting working paper on that specific point, submitted by the delegation of Mexico, appeared in annex II to the report.

30. Those delegations that had fought for many years to undertake the revision of the Charter, and particularly those which had sponsored resolution 3349 (XXIX), could not accept that their endeavours should end with the exchange of views which had taken place in the *Ad Hoc* Committee. The results achieved during the meetings of that Committee were only a beginning. The most important by-product of those meetings was the evidence that the work of the *Ad Hoc* Committee should proceed until it had achieved positive and concrete results. Consequently, his delegation was ready to co-sponsor any draft resolution aimed at prolonging the life of the *Ad Hoc* Committee to enable it to reach at least a few important and concrete decisions. The *Ad Hoc* Committee's terms of reference should follow the broad lines laid down in General Assembly resolution 3349 (XXIX), to permit discussion of each suggestion made with regard to the whole question of the review of the Charter. His delegation welcomed the decision to consider items 113 and 29 together. The statement made by the representative of Romania at the preceeding meeting had demonstrated the importance of that exercise and provided legitimate hopes of very fruitful results.

31. As far as the efficiency of the future work of the *Ad Hoc* Committee was concerned, there would be advantages in having the Secretary-General's study supplemented by an analytical and topical presentation of the views expressed by Governments with respect to the various provisions of the Charter. Such a document could be most useful for the *Ad Hoc* Committee's members, who would be in a better position to organize a rational programme of work according to the main areas of interest. Furthermore, considering the importance and significance of the *Ad Hoc* Committee's work, the provision of summary records was only a normal requisite and would not entail appreciable expenses, since the transcription of statements by delegations contained in annex 1 to the current report would be dispensed with.

32. His delegation hoped that the current debate would be conducted in full awareness of the benefit to all Member States of a serious and meticulous examination of the question and that many more delegations would join those which had supported General Assembly resolution 3349 (XXIX) in the common endeavour to strengthen the exercise of the Charter review.

33. Mr. GROZEV (Bulgaria), said that his Government's position regarding the review of the Charter of the United Nations was set out in its letters to the Secretary-General during the twenty-seventh session² and the thirtieth (A/10113/Add.3). The United Nations had been born in the ashes of the Second World War, with the victory of the anti-Hitler coalition which had initiated profound and irreversible changes in the social and political structure of the world. Since then the United Nations had played an important role in preventing a third world war. The Charter had stood the test of time and had demonstrated its viability in times of dynamic change. The Charter had been sufficiently flexible to allow the Organization to contribute to the solution of a wide range of current world problems and there was now virtually no major international event or question which remained outside of the scope of the United Nations. A complete system of extremely important international legal principles and declarations had been developed on the basis of the Charter. The superstructure of contemporary international relations could, however, be severely damaged, if not destroyed, if its foundation, the Charter, were undermined.

34. His delegation was of course aware of failures by the United Nations to act effectively in the past, but to emphasize those failures would be to confuse the picture and to deny the successes. Those failures were in fact not due to any deficiencies in the Charter, but were the direct result of failure to observe its principles. Conditions for the peaceful and just solution of international problems, crises and conflicts and the ability of the United Nations to act effectively depended directly on the political will of its Member States.

35. The *Ad Hoc* Committee's report, short and formal in character, showed that there had been a fundamental divergence of opinion among Member States regarding the need to carry out a review of the Charter. The principal argument put forward in support of such a review was that

² See A/8746/Add.1.

the majority of States Members of the United Nations had not taken part in its establishment at the San Francisco Conference, and that, as a result, the form of the Organization was such that they were unable to exert sufficient influence in its activities. He found it surprising to hear the claim that, at a time when the United Nations stood on the threshold of universality, the increase in its membership would require a re-examination of its structure. He rejected the idea that the developing and newly liberated countries, the main force in the group of non-aligned States, were unable to play their proper role in United Nations activities. No resolution of the General Assembly or of the Economic and Social Council could be adopted without their agreement. There were only a handful of Security Council resolutions which had not been sponsored by the non-aligned States or non-permanent members of the Council. Underlying the claim that developing countries were deprived of the opportunity to play a proper role in United Nations activities was, in his view, the displeasure of certain Member States at the relationship established by the Charter between the powers and functions of the General Assembly and those of the Security Council. Yet it was precisely that crucial link between Article 11 and Article 27 of the Charter which enabled the United Nations to avoid taking decisions which were unrealistic or impossible to implement or which threatened international peace and security.

36. In a world of different social and political systems the Charter allowed for maximum protection of the interests of all parties concerned. It provided that no one State or group of States had the right to use the United Nations in order to force its political will on another State or group of States and that the United Nations could take measures to maintain international peace and security, including the use of armed force, only on the basis of unanimity among the permanent members of the Security Council. It could not be doubted that the relationship established by the Charter between the powers and functions of the General Assembly and those of the Security Council in the area of maintaining international peace and security was the backbone of the Organization. It was absurd to think that that backbone could be broken without paralysing the activity of the Organization and threatening its very existence.

37. His delegation was convinced that continued discussion of the question of Charter review would not contribute to the creation of a favourable atmosphere for finding acceptable solutions to current complex problems. From an objective point of view, the work of the *Ad Hoc* Committee reflected the existence of centrifugal forces which would not strengthen the role of the United Nations as the most important instrument of multilateral international co-operation.

38. It was clearly not the Charter which was preventing Member States from taking action on a number of important issues. The development of contemporary international relations required a positive and constructive approach to the Charter, not a negative or nihilistic one. The process of détente continued to develop, allowing greater freedom of action for members of the international community. The role of developing countries in international relations, as well as in the United Nations, continued to increase. The current favourable political situation

opened up new possibilities and perspectives for the United Nations in all spheres of its activity. There were many important tasks before the United Nations, in the areas of maintaining international peace, strengthening international security and developing co-operation between States; the solution required the unstinting efforts of Member States and could best be achieved by strict observation of the principles and norms of the Charter.

39. Mr. NICOL (Sierra Leone) said that because of his delegation's ardent belief in the United Nations, it had manifested tremendous interest in the effort to review the Charter, taking into consideration the diverse opinions and ideologies currently represented in the United Nations. His delegation associated itself with the view that the *Ad Hoc* Committee should submit concrete proposals generally considered necessary for the revision of the Charter to the General Assembly on the basis of Article 108. It was furthermore not convinced that a General Conference as provided for in Article 109 should be convened for that purpose.

40. The review of the Charter was closely linked to the restructuring of the United Nations system. His delegation found acceptable the contents of the report of the Group of Experts on the Structure of the United Nations System;³ the ideas contained in that report could be used to improve the functioning of United Nations organs.

41. Almost all those who were against a review of the Charter had said that, while perhaps not perfect, it had stood the test of time. However, if the Charter was not perfect, then there was definitely room for improvement and updating to take into account the changed international situation in the contemporary world. Certain articles, such as Articles 53 and 107, had become irrelevant and should be deleted and others would have to be revised in order to be consistent with current international opinion. In answer to those delegations which had taken the extreme position that even a discussion of a review of the Charter was harmful and dangerous, he noted that the drafters of the Charter 30 years ago had made provision in Article 108 for a periodic review, because they had realized that international relations could not and would not remain static. The Charter must be made consistent with the current political aspirations of all States Members of the Organization. With regard to the concern expressed by some delegations that any review of the Charter would have a destabilizing effect and eventually jeopardize the existence of the Organization, he observed that every delegation present was mature enough to know that caution had to be exercised in so delicate an undertaking. No wholesale comprehensive revision of the existing Charter or substitution of a new Charter was intended. His delegation welcomed the position of those delegations which had an open mind towards the Charter review and were ready to study concrete proposals for a revision that would eventually enhance the effectiveness of the Organization, and expressed the hope that the General Assembly would renew the mandate of the *Ad Hoc* Committee so that it could continue its work in 1976.

42. Turning to one of the very controversial areas of the Charter, namely Article 23, he noted that the composition

³ E/AC.62/9.

and voting system of the Security Council were unsatisfactory to his delegation. He urged the *Ad Hoc* Committee to undertake the very delicate task of making recommendations to the Sixth Committee at a subsequent session on a revised version acceptable to all parties concerned of that Article and any other Articles which the *Ad Hoc* Committee felt needed revision. His delegation felt, furthermore, that the International Court of Justice should be made to play a more significant role, particularly in the process of peace-keeping and détente.

43. Mr. AL-OTHMAN (Kuwait), affirmed his delegation's adherence to the purposes and principles of the Charter and said that it was incumbent on the United Nations to take into account, without interfering with the basic features of United Nations work, the changes that had occurred in international society during the past 30 years.

44. A review of the Charter should be undertaken with great caution so as not to be detrimental to States. There was, however, no reason not to consider limited and clear modifications of the Charter and his delegation would agree to any which promoted the interests of the international community and world peace.

45. His delegation supported modifications intended to increase the effectiveness of recommendations and resolutions of the General Assembly and other principal United Nations organs, particularly the Security Council, and it therefore also supported study of the question of the application of sanctions to States which refused to bend to the will of the overwhelming majority of States.

46. It was prepared to consider any other concrete and limited suggestion concerning the Charter, bearing in mind the interests of the international community.

47. His delegation favoured changes which facilitated the work of the International Court of Justice, encouraged States to resort to it for the solution of world problems, or reduced the formalities involved in bringing cases before the Court.

48. His delegation favoured amendment of Article 111 to include Arabic as a sixth official language, since an Arabic Translation Service had been established and the decision had been taken to use Arabic as a working language in a number of specialized agencies.

The meeting rose at 5.05 p.m.

1565th meeting

Friday, 14 November 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1565 and Corr.1

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033; A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/467)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/467)

1. Miss RANA (Nepal) said that three decades had rolled by since the last world conflict, of unprecedented magnitude in human history, had made it imperative to create the United Nations, with justified hopes of saving "succeeding generations from the scourge of war". Since its inception, the United Nations had made significant contributions to the maintenance of international peace and security, although regrettably it had not always lived up to the expectations in that field. However, the weakness on the part of the United Nations was not due solely to short-comings inherent in its Charter—which was certainly not perfect—but to the attitude of certain Member States which refused to abide by it and showed utter disregard for the decisions of the United Nations.

2. Another disconcerting development in the United Nations had been the emergence of group interests which conflicted with the common interest. It was regrettable to note that, after 30 years of existence, the United Nations, instead of becoming a harmonious whole, had become a forum in which nations felt obliged to divide themselves into groups and to confront one another in order to secure their group interests rather than to attain the common purposes of the Charter.

3. In its current form, the Charter possessed the requisite qualities for a viable and effective United Nations. If at times it had been unable to cope with a given situation, that was due not to the inherent weakness of the Charter, but to the lack of political will on the part of the Member States of the United Nations to abide by its provisions. In that regard, a special responsibility lay on the permanent members of the Security Council.

4. Since 1945, many far-reaching changes had taken place in the world which needed to be correctly reflected in the Charter. However, the review of the Charter was the most delicate question facing the United Nations and called for an extremely careful and cautious approach in making the necessary changes.

5. Nepal's position had been reflected clearly in the statement made by her delegation in the Sixth Committee

at the twenty-seventh session (1380th meeting), in which it had asserted that, while it had always maintained strong support for the Charter and its underlying principles, it considered that its adaptation could only enhance the effective role of the United Nations in the field of international peace and security.

6. Guided by those considerations, her delegation would be willing to consider the merits of any specific proposals designed to strengthen and enhance the role and effectiveness of the United Nations so that it might be capable of discharging its onerous responsibilities far more effectively and with greater speed.

7. Mr. LEIGH (United States of America) said that the items currently before the Committee were the most important with which it had to deal at the current session.

8. His delegation continued to view the question of Charter review with scepticism and concern. That scepticism was not based on any belief that the United Nations was functioning perfectly. Far from it, the United Nations could and must do a better job. However, to attain that goal, it was necessary to avoid hasty and ill-considered actions. Impediments to the greater effectiveness of the United Nations were found in the political will of the States which interpreted and applied the Charter's provisions. His delegation's doubts about the advisability of reviewing the Charter were based on the concern that the United Nations might lose even that degree of consensus which currently existed. The reopening of questions on matters on which all had freely agreed on various occasions in the past was hardly likely to widen areas of agreement. On the contrary, it was far more likely to lead to a hardening of positions and thus become the enemy of that evolutionary development which had been one of the strengths of the institution.

9. Attempts to meet particular problems of the current moment in history by Charter amendment were likely to restrict its ability to continue flexibly to meet the needs of the future. Tinkering with the constitutional structure of the United Nations involved the great risk of diverting attention and concern from the urgent problems with which the Organization could and must deal.

10. The United States had repeatedly expressed its willingness to consider measures for the improvement of the functioning of the United Nations and of its ability to fulfil its obligations under the Charter. However, that exercise could be usefully undertaken only with the broad agreement of all concerned, principally because any improvements, by definition, would require that broad agreement if they were to be effective. The complete lack of success of the *Ad Hoc* Committee on the Charter of the United Nations during the past summer demonstrated that circumstances had not been ripe at that time for serious work. No useful purpose could be served by repeating that experience. Consequently, his delegation was not convinced that it was the appropriate time for the *Ad Hoc* Committee to meet again, particularly in the light of the very busy schedule in the international legal field.

11. It could be of some use to establish a committee to examine the wealth of governmental comments already

submitted in the context of strengthening the role of the United Nations. In that context, a major area of concern to all Members of the United Nations was the strengthening and development of measures for the peaceful settlement of disputes. There was no doubt that that could be done wholly within the existing language of the Charter and the Statute of the Court. It would be necessary to look very closely at the many and varied opportunities which the Court machinery provided for the peaceful settlement of disputes and to ensure that all States in the international community were fully aware of those possibilities. At the same time, it should also be recognized that there were some disputes which could best be settled, or at least initially ameliorated, by other means. Consequently, the many other existing possibilities for the settlement of disputes, including negotiation between the parties, good offices, mediation and conciliation, must also be fully examined. Consideration must be given to means of perfecting that machinery in order to make the United Nations system more effective. Efforts must be made to do everything humanly possible in that direction, within the framework of the Charter, rather than endeavouring to undertake more ambitious and less likely schemes involving the revision of the Charter.

12. Mr. LAUTERPACHT (Australia) said that, at the twenty-ninth session of the General Assembly, his delegation had sponsored resolution 3283 (XXIX) on the peaceful settlement of international disputes, pursuant to which the Secretary-General had submitted a report (A/10289) which was a model of conciseness. The Secretary-General had interpreted the request made to him as excluding any review of the machinery for the settlement of disputes provided in the Charter itself. He had also excluded the various types of machinery of an *ad hoc* nature established by United Nations bodies to perform functions of dispute settlement in relation to particular situations. To some extent the work of the Secretary-General had been supplemented by studies recently published by the United Nations Institute for Training and Research. Nevertheless, the report of the Secretary-General was a salutary reminder of the limitations which the General Assembly had encountered in 30 years of general concern with peaceful settlement of disputes. However, those limitations must not be reviewed in isolation, but in conjunction with the existence and achievement of other machinery. Thus, within the Charter framework, it was necessary to recall the primary role of the Security Council in the maintenance of international peace and security. Also to be remembered was the functioning of specific mediators, conciliators, good offices commissions and special representatives appointed by the Security Council or by the Secretary-General at the request of the Council. Nor should the functioning of the International Court of Justice be overlooked.

13. Yet that was not all. The peaceful settlement of disputes could not be looked at exclusively through the optic of the United Nations. Many of those activities took place in other international bodies like the International Labour Organisation, the General Agreement on Tariffs and Trade, international fishery commissions.

14. The real question before the Committee was whether it was prepared to leave the problem of disputes in the

international community at the stage at which it currently stood, or whether it should consider also the associated question of preventing or avoiding disputes; whether it should view matters only in terms of machinery, or whether it should be thinking in terms of using new methods within existing machinery. There was perhaps too much attachment to certain traditional notions relating to the compulsory settlement of disputes or the binding quality of decisions handed down by third parties. One should ask whether every effective device was being used in the negotiating process to procure a reconciliation of differing views or, in short, whether it could be said that collectively or individually, those concerned were well enough informed to be able to deploy, in rapidly developing situations, enough knowledge to reduce or eliminate the prospect of true dispute and to apply to the settlement of a dispute the type of approach best suited to its special characteristics.

15. Those were the questions the Committee must answer and consequently the fundamental problem before it was whether the subject of avoidance and settlement of disputes should be taken separately or as part of the work on the Charter. There were a number of advantages in separating those questions and perhaps the most important was that if the subject of the settlement of disputes was left as part of the study on the operation of the Charter, there was a real danger that each element might come to obscure the other, to the disadvantage of both. In addition, there seemed to be merit in a clear and separate identification of the subject of settlement of disputes as a distinct General Assembly agenda item. If, however, that view was not generally shared in the Committee, his delegation would not press it to take a decision which could be reached only by a divisive vote. If the Committee as a whole was in favour of making the avoidance and settlement of disputes a separate item, his delegation would be glad to propose or to join in sponsoring a draft resolution to that effect. However, unless a clear consensus developed in that direction, it would respect the opinion that avoidance and settlement of disputes should be dealt with as part of the *Ad Hoc* Committee's work.

16. Miss AGUTA (Nigeria) felt that the proposal for revision of the Charter did not spring from the fact that there was something wrong with that instrument, but was designed merely to keep it abreast of the times. The Charter, which was the Constitution of the United Nations, was open to revision and amendment, and the founding Members had already envisaged the possible need to make changes, hence Articles 108 and 109.

17. She considered that a distinction should be made between a review and a revision of the Charter. While the first was merely the process of appraising a situation with a view to making the necessary changes and need not be justified by cogent reasons, a revision, on the other hand, implied a new edition, required a painstaking consideration of the implicit questions and had to be based on very strong reasons.

18. Her delegation, which had been a sponsor of General Assembly resolution 3349 (XXIX) as well as a member of the *Ad Hoc* Committee, while supporting the view that the purposes and principles laid down 30 years before remained valid, recommended that a review of the Charter should be

undertaken, in view of the lapse of time since its adoption, the universal character of the Organization, manifested in the increase in its membership, and the likelihood of any tilt in the balance of powers. As far as the revision of the Charter was concerned, she felt, first, that the *Ad Hoc* Committee should continue its work of collecting information in order to recommend to the Committee whether it should or should not undertake a review of the Charter. If the answer was in the affirmative, there would be a need to constitute a review panel which, in turn, would collect information with a view to recommending whether a revision was necessary, in whole or in part. Only then would positive proposals for revision be made. Her delegation felt that such revision should consist of an expansion of the existing structure in order to accommodate Member States equitably and to guarantee the proper functioning of the Organization.

19. She wished to stress the need for review. Only in that way would it be possible to determine the extent to which the ideals of the Charter had been attained and the goal of the Organization achieved, namely to maintain international peace and security and to save succeeding generations from the scourge of war. Similarly, only a review would make it possible to determine how to achieve a new balance between the Powers, since so many new independent States had emerged. Consequently, her delegation wished the *Ad Hoc* Committee to continue its work in order to find solutions to problems which constituted an obstacle to international peace and security.

20. She felt that the question of strengthening the role of the United Nations was closely related to that concerning the *Ad Hoc* Committee and considered that the two items should be discussed together and that, apart from the specific provisions of the Charter, other provisions should be laid down for the strengthening of the role and activities of the Organization.

21. Mr. MONTENEGRO (Nicaragua) reiterated his country's support for the purposes and principles of the United Nations proclaimed in the Charter. Nicaragua, which had been present at the San Francisco Conference, had welcomed the successes achieved by the United Nations in maintaining international peace and security. He recalled that some years previously there had been a violent and intemperate reaction to the revision of the Charter on the part of a number of Powers which had affirmed that it would mean the end of the United Nations. He therefore noted with satisfaction that the opposition had diminished and a dialogue had been opened and that the *Ad Hoc* Committee, the report of which (A/10033) was before the Committee, had been established by an overwhelming majority.

22. His delegation believed that, while the purposes and principles of the United Nations were immutable, its organs should be revitalized. If that was not done, certain situations would continue to recur in the international sphere which would be in violation of the Organization's legal status. He pointed out that those responsible for such situations were precisely those who were most strongly opposed to a revision. The report indicated that there were three attitudes with regard to the revision of the Charter. Some States were openly opposed to it, others favoured the

strengthening of the role of the United Nations without amending the Charter, while, finally, others including Nicaragua, were in favour of a revision.

23. Nicaragua believed that it would be advisable to revise a number of Articles of the Charter, but did not reject a frank and open dialogue. In any case, it felt that it would be necessary for the General Assembly to extend the mandate of the *Ad Hoc* Committee so that it could continue to collect information from Governments and submit its findings the following year.

24. Mr. PI CHI-LUNG (China) referred to the tremendous changes which had taken place in the international situation and in the United Nations in the past three decades. The revolutionary struggle by the oppressed peoples to achieve independence and liberation had formed a powerful current in contemporary history. The third world had grown in strength to become the main force in the struggle against colonialism, imperialism and hegemonism. On the other hand, social-imperialism had emerged and, together with the other super-Power, was pursuing a policy of aggression and expansion and sought to control the United Nations and utilize it for its purposes. The Charter, formulated 30 years previously, contained a number of provisions which greatly restricted the role of the countries of the third world and neither reflected their aspirations, nor met contemporary needs. The small and medium countries considered a revision of the Charter to be necessary so that the United Nations could meet the needs of the objective situation and play its due role.

25. He then referred to the attacks and slanders by both super-Powers against the countries which favoured a revision of the Charter. One of them had described some of the resolutions adopted by the United Nations in recent years as the tyranny of the majority. That attack was in essence directed against the principle of the equality of all countries, big and small. The other super-Power asserted that those who advocated the revision of the Charter were undermining the United Nations and were reactionary forces. He cited a number of instances which, in his view, were the result of the obstruction and opposition by the super-Powers protected by the privileges granted to them by the Charter. It was necessary to review the Charter and make the requisite changes precisely to rectify the situation and to safeguard the United Nations. With regard to the argument that the revision of the Charter would lead to world war, the real danger of war came from the acts of the super-Powers and in particular the ambition of the social-imperialists. In the interests of world peace and security, the small and medium countries must strengthen their own defensive capabilities and unite in order to expose and combat resolutely the policy of aggression, expansion and hegemonism of the super-Powers. It was, accordingly, absolutely vital to undertake a serious review and timely revision of the Charter so that the United Nations could meet needs as the current situation developed.

26. It was entirely lawful to review and amend the Charter. That was the right and duty of every Member State, recognized by the Charter itself. Furthermore, since the increase in the membership of the United Nations meant that most of the Members had not participated in the San Francisco Conference, the time had come to enable

them to make their contribution. Refusal to permit a review and revision of the Charter would be tantamount to depriving the great majority of Members of a right which they possessed. The strong opposition to any alteration of the Charter being displayed by the super-Power which claimed to be concerned about the interests of small countries was counter to a just demand of those countries and violated the relevant provisions of the Charter.

27. The arguments of the super-Powers for opposing the review of the Charter were mere excuses. They were afraid of losing their privileges. It could not be denied that the Charter had short-comings. The super-Powers knew that any review was bound to lead to amendment of the Charter. In order to avoid such a review, since truth was not on their side, they resorted to slander and adamant opposition. Yet the revision of the Charter represented a general trend that could not be checked.

28. His delegation reiterated its support for a review of the Charter and for the incorporation of the necessary amendments. All views regarding Charter revision could be put forward. Many countries had advanced views in principle on the revision of certain Charter provisions, such as expanding the power of the General Assembly, restricting the power of the Security Council, changing the composition of the Security Council, limiting or abolishing the veto rights of the States which were permanent members of the Council. Those views deserved serious consideration. He was convinced that, if consultations and discussions were held on the basis of the principle of equality of all countries, it would be possible to find a rational solution acceptable to all.

29. He said that the General Assembly should extend the mandate of the *Ad Hoc* Committee.

30. Mr. DE CEGLIE (Italy) said that the task of the Sixth Committee was to make an assessment of the report submitted by the *Ad Hoc* Committee on the Charter of the United Nations and to decide whether to extend its mandate. In that connexion, it should bear in mind the formidable task entrusted to the *Ad Hoc* Committee and should not consider only the results obtained so far.

31. As had been stated by the Italian Minister for Foreign Affairs in his statement to the General Assembly at the 2357th plenary meeting, the Italian Government was following with the keenest interest the efforts being made to rationalize and make more efficient the activities and machinery of the United Nations. There were numerous questions which deserved attentive consideration. With respect to the maintenance of international peace and security, the basic separation of powers established by the Charter was still a wise one, although that did not mean that the Organization could not become more effective in that field. On the contrary, it was desirable to examine all possible ways of improving the system, without removing it from the authority of the Security Council. In that connexion, he reiterated the view that the International Court of Justice should play a leading role and that efforts should therefore be made to enhance the functions of the Court. With regard to economic development, international economic co-operation and, in particular, assistance to the developing countries, Italy considered it necessary to adopt

measures to enhance the role of the United Nations. It had therefore advocated that careful attention be given to all proposals aimed at the restructuring of the economic and social sectors of the Organization.

32. Another aspect requiring urgent attention was the area of social affairs and human rights. That aspect had been mentioned by the Italian Minister for Foreign Affairs in his statement, when he had said that the civilized conscience of mankind required a more decisive effort by the United Nations in defence of human rights. In that spirit, Italy had suggested that the Commission on Human Rights be given the status of a principal organ of the United Nations within the meaning of Article 7 of the Charter. That new organ, which might be called the "Council for Human Rights", would relieve the Economic and Social Council of the functions which it currently performed in that area.

33. It was true that not all the desired improvements could be achieved through amendments to the Charter. On the contrary, the alternative method was preferable, whenever proper results could be achieved without amending the Charter. Much could be done by improving the rules of procedure of the various organs and by reassessing the general practice of the Organization. That naturally did not imply that any possibility of amending the Charter should be excluded *a priori*. With regard to the evaluation of the work done by the *Ad Hoc* Committee and the decision about the extension of its mandate, he was not surprised that the *Ad Hoc* Committee's first session had not produced more results, in view of the comments made, the importance of the delicate task entrusted to that Committee and the time available to it. He therefore felt that those results should not be considered as a ground for not extending the Committee's mandate; on the contrary, they indicated a need for an extension.

34. It was to be hoped that the Sixth Committee would decide by consensus or by a vast majority to renew the mandate of the *Ad Hoc* Committee and also to provide as clear guidelines as possible for its future work. In that connexion, he suggested that the *Ad Hoc* Committee should concentrate on each of the functions or competences assigned to the United Nations and that it should then single out the most appropriate measures to ensure their correct and complete implementation. Those measures might consist of amendments to the Charter or simply of modifications to the rules of procedure or practice of the United Nations organs.

35. In addition, he believed that any innovations should be worked out gradually and studied with the greatest care and prudence, in order to ensure that they were the subject of a generalized consensus. Otherwise, the exercise would be useless, if not dangerous. Lastly, in order to ensure the full success of the work of the *Ad Hoc* Committee, the Secretariat should be requested to provide it with the maximum assistance and to prepare a supplementary study giving an analytical presentation of the views expressed by Governments concerning the various spheres of competence of the United Nations as well as the various provisions of the Charter.

36. Mr. BOOH BOOH (United Republic of Cameroon) said that his delegation believed that the purposes and

principles embodied in the Charter were still valid and was convinced that a simple technical and legal review of the Charter would be of no benefit to the United Nations.

37. The Cameroonian Head of State had noted at the twenty-fifth session of the General Assembly (1845th plenary meeting) that the ineffectiveness of the United Nations was due primarily to the national egotism of its Members when their individual interests were at stake. It was necessary to combat the non-implementation of United Nations resolutions, the failure by many States to fulfil their obligations as Member States, the persistence of the policy of force and intrigue in international relations and the unfair economic relations between nations. In that connexion, his delegation recalled the proposal, made in three draft resolutions submitted at the previous session,¹ that the General Assembly should urge all States strictly to observe the spirit and letter of the provisions of the United Nations Charter. The Cameroonian delegation would support any proposal designed to create suitable machinery for finding solutions to the serious problem of the failure to implement the resolutions and decisions of the United Nations.

38. Despite the caution with which it approached a review of the Charter, his delegation was aware of the radical changes which had occurred in the world and had voted in favour of General Assembly resolution 3349 (XXIX) concerning the establishment of the *Ad Hoc* Committee on the Charter of the United Nations.

39. It was impossible to ignore the legitimate indignation of the newer countries at the abuse by certain Powers of the veto and of other privileges conferred upon them by the Charter. While such privileges were justified by the need to enable capitalism and socialism to coexist, it had to be admitted that the dignity and interests of other non-capitalist and non-socialist countries, which rejected that classification, were being slighted.

40. General Assembly resolution 3349 (XXIX) was flexible and was not detrimental to any Member State. Moreover, the mandate of the *Ad Hoc* Committee was not to review the Charter but to collect information and make appropriate proposals. Its conclusions did not prejudice the final decision to be taken by the Sixth Committee.

41. In the view of his delegation, the *Ad Hoc* Committee would therefore simply submit proposals designed to strengthen the activities of the United Nations, without it being necessary to alter the Charter, since it offered broad scope for adaptation. Proposals involving amendment of the Charter could also be made, since the preliminary exchange of views indicated that there was broad agreement on the elimination of certain terms contained in the Charter and on the reorientation of the activities of certain organs.

42. His delegation hoped that, if it were given a little more time, the *Ad Hoc* Committee would be able to clarify the scope of its task and to fulfil the mandate entrusted to it. In any case, the dialogue which the General Assembly had

¹ See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 95, document A/9950, paras. 4, 6 and 7.

commenced with the establishment of the *Ad Hoc* Committee would not be interrupted at a time when it was attracting growing interest. Motivated by that spirit of dialogue and aware of the delicate mission of the members of the *Ad Hoc* Committee, his delegation was prepared to

support any draft resolution proposing the extension of the *Ad Hoc* Committee's mandate and urging Member States fully to respect the Charter of the United Nations.

The meeting rose at 12.40 p.m.

1566th meeting

Tuesday, 18 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1566

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. SHARAF (Jordan) thanked the *Ad Hoc* Committee on the Charter of the United Nations for its enlightening report (A/10033) and the Romanian Government for its dedicated effort in pursuing its initiative regarding the strengthening of the role of the United Nations (A/C.6/437). The contemporary international environment, which was radically different from that in which the United Nations had been established, must be reflected in the spirit, direction and scope of the Organization's activity. The modern world was no longer a small club of nations which were predominantly European in background and outlook but was made up of a much larger number of nations representing different civilizations, cultural backgrounds and philosophies. The work of the United Nations had come to focus on questions of international development and economic co-operation with a view toward restructuring economic relations among nations on the basis of their changed political relations. The United Nations, and indeed the whole world, had to deal with the acute problems of mass poverty, the widening international economic gap, the depletion of the earth's resources, the erosion of the environment, outer space and nuclear technology.

2. The broadening representation in the United Nations had led to the increasing democratization of the Organization. The hopes and agonies of the majority of the population of the world must now acquire priority in the concerns of the United Nations, which was not only an organization for peace and security but also an organization for change and human emancipation. Now more than ever the dynamic, rather than the static, elements of the Charter must be emphasized. Currently, international peace and

security were threatened as much by colonial practices, *apartheid*, racial discrimination and the suppression of national self-determination as by the conventional threats envisioned by the founders of the Organization. The efforts of the smaller and weaker nations to ensure international social justice as well as international political justice must be channelled through the United Nations. The survival of the Organization would depend on its ability to assimilate the changes which had taken place.

3. International development had now become a new dimension of the Organization and in the past decade the United Nations had found a new important and rewarding role in that area. The international community now felt that it was necessary, in fact inevitable, that the developing and developed nations enter into a healthy and co-operative partnership based on equity and mutual benefit. New machinery and organizational structures must be set up in order to cope with the vastly increased number of complex problems facing the world.

4. Like any modern constitution, the Charter was a basic document which allowed reasonable evolution and was open to reasonable *ad hoc* revisions without the need for a fundamental reconsideration which might threaten stability and progress. The purposes and principles of the Charter were universal and timeless and its procedures were relatively flexible. It was therefore too early and unnecessary to initiate a radical reconsideration of its fundamental structure.

5. The Charter was not an obstacle to the necessary evolution of the United Nations so as to better reflect the changed world and deal with its changing responsibilities. The many grave problems facing the United Nations would be solved by changing the relationships of power among States and the attitudes of States rather than by changing texts.

6. His delegation felt that limited changes should be made in the Charter itself, to reflect the process of international democratization. The General Assembly must be endowed with a certain measure of authority which would help to balance the power of the veto in the Security Council. Certain other amendments should be introduced to make the Charter more up to date and freer from the bias of the mental climate of the war in which it had been conceived.

7. Turning to other measures needed to strengthen the United Nations, he said that, while structural and organizational innovations could be envisaged to fill certain gaps in the structure of the United Nations, the real change needed in order for the United Nations to become a more effective instrument of peace, security and human emancipation lay in the political, mental and psychological area. The United Nations could become a stronger and more effective organization when its Members decided to make it so. That was the responsibility of all its Members, large and small, but it was rather the big Members who must change their attitudes and mental habits to fit the new international realities, needs and ideals. The small countries, which constituted the majority, but were less powerful than the bigger countries, must protect the Organization by acting with responsibility and restraint. The big countries must not think and behave as if the *status quo* were permanent and sacred. The current age was one of economic and political interdependence and equality and of a new world economic order. The former power élite must learn to live with the times, if international co-operation and the survival and growth of the United Nations were to be achieved.

8. Mr. ALTING VON GEUSAU (Netherlands) said that the Charter of the United Nations, whatever its shortcomings, was the most outstanding result of an exceptional period, if not a turning-point, in human history. With its basic principles and purposes it had enabled the Organization to reach near universality in membership and it supplied the framework for the emergence of many new States and many new forms of international co-operation. However, the Organization's effectiveness as an instrument for maintaining peace and harmonizing the action of Member States had not improved. The current session of the General Assembly provided renewed evidence of the profoundly different concepts nations had of the United Nations and its tasks. The problem of the Organization's diminishing value was rooted not in the deficiency or obsolescence of the Charter but in the unwillingness of Member States to use the Charter and the Organization fully for the purpose of promoting peace. His delegation therefore considered it imprudent to embark upon a comprehensive review of the Charter, although it had already expressed its willingness to co-operate in incidental revisions of Articles of the Charter, as the need arose and was widely felt by Member States.

9. The report of the *Ad Hoc* Committee confirmed his delegation's fears about the imprudence of creating a separate committee with so unlimited a mandate as that established in General Assembly resolution 3349 (XXIX) and showed that the *Ad Hoc* Committee had failed to carry out any of the tasks assigned to it in that resolution.

10. Two basic arguments in favour of Charter revision seemed to emerge from the written and oral comments made thus far. The first was that the Charter no longer reflected the new realities of the world and that obsolete provisions should therefore be deleted and new principles and rules elaborated. The second argument was that some Charter provisions, particularly those giving a privileged position to the great Powers as permanent members of the Security Council, had always been objectionable to certain Member States and that the situation should therefore be

redressed, using the provisions of Articles 108 and 109 of the Charter. The two arguments had, in his view, been consistently confused with each other in much of the discussion and as a consequence some Member States had tended to equate specific proposals for Charter revision with efforts to undermine the Charter itself.

11. The necessity of revision of the Charter did not depend primarily on political changes which had occurred since its entry into force but on the flexibility of the instrument itself to cope with those changes. The Charter had, in his view, proved to be flexible and had shown itself able to afford the Members of the Organization the means of elaborating declarations and conventions reflecting the changes which had taken place. A comprehensive review of the Charter ran the risk of being a hazardous, if not harmful, exercise and was unnecessary. The Charter could be interpreted more dynamically so as to reflect political changes and enable the Organization to enter new fields of activity. Many examples of new forms of economic and political co-operation, achieved when Member States were willing to use the Organization and the Charter as dynamic instruments, could be found. The failures of some of those efforts were due not so much to the provisions of the Charter as to the unwillingness of certain Member States to strengthen the role of the United Nations.

12. One area where success could be achieved, provided Member States were willing to make better use of the available instruments, was the peaceful settlement of international disputes. His delegation associated itself with the opinions expressed by the representatives of the United States and Australia at the previous meeting concerning the need for an in-depth examination of methods and machinery for the prevention and peaceful settlement of disputes. The *Ad Hoc* Committee, if its mandate was renewed, ought to study that important matter. The report of the Secretary-General on the peaceful settlement of international disputes (A/10289) indicated that Member States had not availed themselves of the services of the new bodies set up since 1945, such as the International Court of Justice, for the purposes of the settlement of disputes.

13. The *Ad Hoc* Committee might also examine the proposals aimed at making the functioning of the United Nations more efficient, including improved procedures for international legislation and the rationalization of debates and decision making in the Assembly. He urged that the *Ad Hoc* Committee be reminded of its aims as stated in paragraphs 1 (b) and (c) of resolution 3349 (XXIX) and that it refrain from dealing with subjects being discussed in other special bodies. The Charter was a unique instrument for maintaining peace, practising tolerance, fostering co-operation and promoting human rights. It was the attitudes of Member States towards peace and interdependence, rather than the rules of the Charter, which were in need of a comprehensive review. It was the national and ideological self-righteousness of States and their tendency to consider the refusal to compromise as the virtue of orthodoxy that needed to be overhauled and updated.

14. Mr. VILLAGRAN KRAMER (Guatemala) said that the report of the *Ad Hoc* Committee showed clearly that obstacles would be encountered in attempting to revise the Charter. Nevertheless, the subject was attracting increased

interest in the light of the problems with which the world community was concerned, the necessary readjustments of institutional machinery and the need for the institutionalization in a normative context of certain trends or practices which had developed gradually but lacked a universally binding character, since they had not been embodied in a treaty of universal character. It was understandable that certain Member States had expressed misgivings with regard to the revision of the Charter, since the limits of such an exercise and the institutions affected thereby had not been clearly defined. It was necessary to lay down clearly and precisely the rules to be followed both in the process of study and discussion and in the actual process of revision. 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 Definition of Aggression (General Assembly resolutions 2625 (XXV) and 3314 (XXIX), annexes) showed that efforts of that nature were difficult initially but that once the limits and scope of the exercise in question had been clearly defined, with a reasonable margin of security for those States concerned with that aspect, the substance of the problem could be approached and results produced by consensus rather than confrontation.

15. His delegation welcomed the initiatives taken by certain Governments, including those of Romania and Colombia, with a view to specifying clearly the subjects to be considered. There was no doubt that the structure of the United Nations needed to be readjusted to meet contemporary requirements. The Trusteeship Council would soon have no *raison d'être* and the Economic and Social Council needed to be brought into conformity with current trends so that it would not be necessary for economic and social problems of concern to the international community to be taken up in other forums. In some cases, however, such alternative forums seemed to offer a more appropriate framework for the discussion of economic and social problems, particularly those of interest to producer and consumer countries. His delegation thought it was essential to adopt an open-minded but realistic approach in considering the problems of structural reform within the United Nations. Realistically, the permanent members of the Security Council could not be expected to accept any revision of the Charter which would affect their rights as permanent members.

16. Rules adopted by an Organization which had initially had only 50 Members or so might have become inadequate, as time went by, to govern relations between a number of Members which had nearly tripled in 30 years. What had formerly been known as a "select club" of States which laid down the rules of conduct for themselves and others had disappeared now that 143 States enjoyed the privilege of membership of the United Nations on an equal footing. The controls which the Members of that select group used to accept had undergone changes in the course of time. Accordingly, it was essential, on the one hand, to include in the Charter precise indications as to the rights and duties of States and, on the other, to lay down as clearly as possible the controls which safeguarded legality within the United Nations. In that regard, his delegation associated itself with the suggestions made by the Australian delegation at the preceding meeting to the effect that the dispute-settlement machinery should be made more dynamic and flexible. It

was to be hoped that all States would find the Australian suggestion acceptable.

17. Conflict situations might also result from an arbitrary exercise of power by the majority in the General Assembly in opposition to one State or a group of States. The General Assembly was certainly capable of abusing its power or acting in excess of its authority, which was known under English law as acting *ultra vires*. It must also be recognized that there would always be a margin for possible illegality when the Charter, as a primary instrument of law, was opposed to a resolution running counter to the rules laid down in the Charter. The General Assembly could, of course, overrule its previous decisions, but that required a two-thirds majority. If such a majority could not be mustered, a decision which might be invalid vis-à-vis the Charter could be upheld. That was a subject of concern to his delegation, since the increasing membership of the United Nations carried with it a greater danger of legal and political mistakes. It was therefore necessary to have machinery to safeguard the legality of decisions taken by the United Nations. One such safeguard was the veto power of the permanent members of the Security Council, which was a means of reducing the possible margin of illegality. At the level of the General Assembly the right of review was another form of control, but the two-thirds majority required to revise previous decisions ran the risk of creating serious political conflicts which might bring the Security Council into play.

18. A State or group of States wishing to question the legality of a decision currently did so on a unilateral basis by not accepting and refusing to comply with it. For many years the developed countries had abused their decision-making power by resorting to economic or political pressure or invoking the veto, thus imposing their decisions on other States. The process of decolonization, in some cases, and of economic and political emancipation in others, had brought about a drastic change in the situation and currently the swing of the pendulum had gone even further, affecting in some cases the interests of the developed countries and in others those of the countries of the third world. The possibility of consensual illegality should be eliminated from the United Nations system and replaced by concern for world peace, legality and the rule of law. In the past, it had been helpful to resort to the International Court of Justice for advisory opinions in order to counteract illegal actions and decisions. However, that machinery could take effect only by virtue of a majority decision. It might be useful to adopt a rule which would enable the General Assembly through an affirmative vote of, say, one third of the membership to request an advisory opinion. The present Statute of the Court did not make it possible for a single State to question the Security Council or the General Assembly. Thus, introducing new procedures to contest decisions would help to reduce the area in which conflict might arise as a result of decisions affecting the rights of Members of the United Nations.

19. Another problem which should be clarified in the context of the Charter was the possibility of a Member State voluntarily withdrawing from the Organization. That possibility was being discussed in the United States of America and in other countries among certain segments of public opinion. In his country as well, there were segments

of public opinion which advocated withdrawing from the United Nations and that question had been widely debated in the press. It had been argued that a State could not legally withdraw at all. Some authorities maintained that even if a State did withdraw voluntarily from the United Nations, the Charter was still binding upon it. Others had taken the view that, since the Charter was an international treaty, it could be denounced like any other instrument of its kind. A discussion of that whole question would be helpful. Clearly, a procedure needed to be worked out to provide for the possibility of States wishing to withdraw from the Organization.

20. His delegation expressed satisfaction with the progress made by the *Ad Hoc* Committee and endorsed the idea that it should continue its work.

21. Mr. AL-ADOOFI (Yemen) said that after 30 years the United Nations had entered a mature phase in which it would be called upon to play a greater and more effective role in the international community. It had been the most successful means of preserving international peace and security and the international community was indebted to it not only on that account but also on account of its promotion of co-operation among States in the economic and social fields and of self-determination.

22. That did not mean, however, that the United Nations was free of short-comings or had been able to cope with all situations. It had sometimes failed to implement its purposes and principles, particularly with regard to the promotion of international peace and security and of economic co-operation. Regrettably, some Members of the United Nations still viewed the Organization as a domain for rivalry and the exertion of influence. They looked at the world as they had a quarter of a century before, when most of the newly independent States were still subject to imperialism and foreign occupation. They stubbornly refused to recognize the major changes which had occurred in the world or to respect the principle of equality of rights of all nations large and small, and of co-operation based on democratic principles. General Assembly resolution 3282 (XXIX) was a first step towards diagnosing that problem and eventually solving it.

23. His delegation unreservedly supported the strengthening of the role of the United Nations. The most effective way of achieving that goal was full adherence to the letter and spirit of the Charter, which set forth clear and well-defined means for co-operation among States. All States must shun the threat or use of force and must respect national integrity, political independence and the right of all States to full sovereignty over their territories. Likewise, they should solve their differences by peaceful means, contain the arms race, prohibit the production of weapons of mass destruction and support the Committee on Disarmament.

24. Because third world countries were occupied with the development of their economic resources and the building of a better society, it was important to apply speedily the decisions of the sixth and seventh special sessions of the General Assembly, to establish a new international economic order, to strengthen the economies of the developing countries and to distribute the resources of the world

equitably. It was also necessary to promote work in the area of human rights and fundamental freedoms.

25. If the United Nations were capable of better fulfilling its functions, its role would of course be strengthened. Efforts should be concentrated on increasing the effectiveness of the General Assembly, the Economic and Social Council and the International Court of Justice by applying their decisions. Likewise, the Secretariat should be democratic and fully reflect the aspirations of the United Nations. His delegation, which respected the Charter and believed fully in its purposes and principles, supported all such efforts.

26. The Charter had already been amended several times, pursuant to Article 108. Because the membership of the United Nations had increased beyond the imagination of the drafters of the Charter and General Assembly resolution 3349 (XXIX) had been adopted, the time had come for certain other Articles to be revised in order to ensure implementation of the democratic principles of the Organization. Some States abused the advantages accorded to them in the Charter, to the detriment of the rights and the wishes of smaller countries. Instead, those States should bear their burden of preserving international peace and security by co-operating with the other Members of the United Nations in the interests of mankind as a whole.

27. The Articles of the Charter which had been drafted as a direct result of the Second World War should be eliminated, since there was no need to retain them.

28. His delegation's support for the revision of certain Articles did not mean that it supported abolition of the whole Charter or its replacement by a new one. Most provisions of the Charter retained their relevance, responded to the aspirations of all peoples and furthered implementation of the purposes and principles of the United Nations. The problem lay basically in lack of respect for the Charter on the part of some States which preferred their own special interests to those of the world as a whole.

29. His delegation supported any recommendation for extension of the mandate of the *Ad Hoc* Committee and believed that that Committee was the appropriate forum for continued work on Charter revision. The *Ad Hoc* Committee should analyse the views of States on the matter in order to facilitate the work of the Sixth Committee. In order to further its work, the Secretariat should provide it with all possible assistance. In his delegation's view, there was no harm in delaying for some time a decision on any amendments of the Charter, since the Charter should be beyond criticism, compatible with modern concepts, realistic and democratic.

30. Mr. BARODY (Saudi Arabia) said there was no doubt that some representatives who sought revision of the Charter felt that the United Nations was not discharging its obligations, especially towards smaller States. His long experience in the United Nations, however, had taught him that no constitution, national or international, was perfect. Often, tampering with an instrument such as the Charter could not only weaken it but also set a precedent for further changes which might later be regretted. He was therefore opposed to any radical revision of the Charter.

The real problem lay not in the Charter itself but in Governments or in the public. Governments were made up more often of politicians than of statesmen, and based their policies on expediency or on personal considerations.

31. It was in that connexion that he wished to emphasize the pitfalls of tampering with the Charter. He had been in San Francisco when the Charter was signed and had had misgivings about it, especially concerning the veto in the Security Council. Later, however, he had realized that a State which had great power, if it lacked the veto, might act rashly. The advantage of the veto was that it made the positions of States, unjust as they sometimes were, quite clear to everyone.

32. When the modern idea of consensus had supplanted the veto, he had wished the veto would be revived. A consensus often served the national interests of States with the veto power at the expense of those who brought questions before the Security Council. That applied not only to the major Powers but also to smaller Powers who hid behind them. The result was that justice was sacrificed. That was why many problems had not been solved by consensus, whereas with the veto, at least one knew where delegations stood.

33. He had focused his remarks on the veto because he believed it was the target of those who wished to amend the Charter. There were also a few countries which wished to become permanent members of the Security Council themselves or even to exercise veto power. While he would welcome adding additional permanent members, those who did not in fact wield world power but who were simply ambitious for privilege and power should, instead, work with humility towards peace, as most States did. People became decadent if they were too rich, and tyrannical if they were too powerful. They should exercise more self-restraint.

34. If the veto in the Security Council were abolished, change in the world could only be brought about by revolution. He leaned more towards moderation, or accelerated evolution.

35. The preamble of the Charter was a masterpiece of exposition of the purposes and principles of the United Nations. Structural changes in the body of the Charter, such as the expansion of the Security Council and of the Economic and Social Council, were sometimes appropriate, but he opposed tampering with anything that could not be improved upon, and particularly with anything that involved the purposes and principles of the Charter.

36. He read out in full, and reaffirmed, the text of the letter addressed by his Government to the Secretary-

General on the subject of a review of the Charter, which was reproduced in document A/10113.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*)* (A/10198 and Add.1-5, A/9610/Rev.1, A/C.6/L.1019)**

37. Sir Vincent EVANS (United Kingdom) introduced draft resolution A/C.6/L.1019 on behalf of its sponsors.

38. After summarizing the major trends that had emerged in the Committee's debate on the item, he read out the four preambular paragraphs, which were of a purely formal nature. Turning to the operative part, he noted that paragraph 1 took account of the view expressed by many delegations that the item should be referred back to the International Law Commission for further consideration of the proposals referred to in paragraph 75 of the report of the Commission on the work of its twenty-sixth session (A/9610/Rev.1) and the procedures by which a successor State might be enabled to apply the régime embodied in the articles to its own situation. The Commission would submit its report, taking into account the comments and observations of Member States and the debates in the General Assembly, to the General Assembly at its thirty-first session, at which time it should be possible to decide on the procedure by which and the form in which work on the draft articles should be completed. To that end, paragraph 2 urged Member States which had not yet been able to do so to submit to the Secretary-General as soon as possible their written comments and observations on the draft articles. Paragraph 3 requested the Secretary-General to forward to the International Law Commission the records of the discussion of the item at the thirtieth session of the General Assembly and the comments and observations submitted by Member States in accordance with paragraph 2. Paragraph 4 requested the Secretary-General to circulate the report submitted by the International Law Commission under paragraph 1 and the comments and observations submitted by Member States in accordance with paragraph 2. Finally, paragraph 5 placed the item on the provisional agenda of the General Assembly at its thirty-first session.

The meeting rose at 1.05 p.m.

* Resumed from the 1550th meeting.

** Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

1567th meeting

Tuesday, 18 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1567

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (continued) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (continued) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. MAHMUD (Pakistan) emphasized the continuing interest of the Government and people of Pakistan in the question of the strengthening of the role of the United Nations and recalled that the views of his country on the question were contained in document A/AC.175/L.2 (Part II). His delegation was convinced that the role of the United Nations could be strengthened only through strict observance of its Charter by all Member States. As in the past, Pakistan would continue to uphold the principles and purposes of the Charter so as to ensure a just and durable peace everywhere, particularly in southern Asia and the Middle East. The question of Palestine and of the rights of the Palestinian people, to which the General Assembly was according special attention at the current session, had been responsible for the convening of the Second Islamic Summit Conference at Lahore in February 1974. The concerns expressed in the Lahore Declaration were the same as those voiced by the majority of Member States at the current session of the General Assembly. It was indisputable that the United Nations had had only limited success in the field of peace-keeping and that much still remained to be done in other connected fields such as disarmament, nuclear non-proliferation and the creation of nuclear-weapon-free zones.

2. His delegation felt that it could be useful to set up machinery to examine and appraise the observance by Member States of the various resolutions and decisions of the United Nations and the specialized agencies. That would help to focus attention on cases of violation or disregard of the provisions of the Charter and would give greater weight to any measures that might be taken in order to establish peace.

3. At its sixth and seventh special sessions, the General Assembly had highlighted some of the most pressing economic problems which faced the international community and which called for urgent solutions, since the developing countries, such as Pakistan, were becoming increasingly vulnerable to economic recession and inflationary pressures. His delegation was convinced that active promotion by the United Nations of the rule of law was

essential in order to foster friendly relations between States. It was only when Member States were aware of their duties and assured of their rights that peace would take on a new dimension. Greater financial and intellectual resources should be devoted to the task of making States more aware of the purposes of the Charter and its potential for creating a better world. It was also important to take urgent measures against those that flagrantly and persistently violated the principles of the Charter. However, there should be no illusions: although, during the coming years, some problems might perhaps be solved, others would appear. His delegation recalled, therefore, a suggestion made by a number of delegations that machinery or modalities should be established for the peaceful settlement of disputes.

4. The fact that the United Nations was nearing universality naturally had an impact on the patterns of the past. The increasingly important role played by the third world countries both inside and outside the United Nations showed that those countries were motivated by the desire to strengthen the effectiveness of the world organization. Any strengthening of the role of the United Nations with regard to international peace and security would be inconceivable without recognition of the importance of the Charter. The establishment of the *Ad Hoc* Committee on the Charter of the United Nations reflected the desire to take a fresh look at the Charter, which faithfully reflected the world political situation of 1945 but not the current situation. The position of his delegation on that subject was well known. In a world which was becoming increasingly interdependent, the world community was beginning to look at certain problems from an international angle and to weigh advantages and disadvantages at the global level, be it in the field of food, population, environment or disarmament. The United Nations provided a forum in which States could air their concerns and express their opinions on such issues so as to evolve generally acceptable solutions. The mistakes of the past must inspire them to concert their efforts in order to avoid a repetition of them. His delegation would support any initiative designed to strengthen the role of the United Nations in order to establish a more just and equitable world order.

5. Mr. JAROSZEK (Poland) said that the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033) contained nothing new and confirmed his delegation in its conviction that there had been no justification for creating that organ. The arguments advanced in the *Ad Hoc* Committee were exactly the same as those contained in the records of the Sixth Committee. The *Ad Hoc* Committee had reached no new conclusion. On the one hand, it had failed to comply with its mandate, for it had been doomed to fail from the very outset, and, on the other hand, it had exceeded its terms of reference by preparing a voluminous report which constituted almost a

verbatim record of its debates, whereas the General Assembly had not even authorized it to be provided with summary records. The deliberations of the *Ad Hoc* Committee had confirmed that it was dangerous to take up so controversial a matter as the revision of the Charter. His Government had always given serious consideration to sound proposals designed to enhance the effectiveness of the Charter, to rationalize the mechanisms of the functioning of the United Nations and to translate the purposes and principles of the Charter into day-to-day practice. However, his Government viewed with concern proposals to revise the Charter. Although a revision of the Charter had already been recommended on a number of occasions, the advocates of such a revision did not appear to have the interests of the United Nations at heart, but to be guided either by considerations of expediency or by their own interests. In view of the results achieved by the United Nations during its 30 years of existence, Poland, as a founding Member, was compelled to oppose those who wished to “revise for revision’s sake”. His delegation felt that the very discussion of the need for a revision of the Charter introduced a dangerous element of controversy and division among Member States.

6. The Polish Government had already expressed its point of view on a number of occasions, e.g. in the observations submitted to the Secretary-General in 1972,¹ in the statement of the Polish delegation in the Sixth Committee during the twenty-ninth session (1512th meeting) and at the meetings of the *Ad Hoc* Committee. Furthermore, at the current session, the Polish Minister for Foreign Affairs had stated (2361st plenary meeting) that, in order to make the work of the United Nations more effective, it was necessary, not to revise the Charter, but to observe strictly its principles and provisions in the practice of international relations and to make better use of all the possibilities which it offered. The President of the General Assembly himself had stated (2351st plenary meeting) that, during its 30 years of existence, the United Nations had found constant inspiration and effective guidelines in its basic texts and that all Member States had acceded to the Charter freely and in full knowledge of the facts and that the Charter must continue to guide the actions of Member States.

7. For Poland, the Charter was not simply a multilateral treaty, but a set of principles sanctioned by the will of States. The paramount objective of the United Nations, which had been established following the victory over fascism, was “to save succeeding generations from the scourge of war” and to promote the maintenance of international peace and security. Although the United Nations had not always lived up to expectations, it was *inter alia* because of its Charter that for the first time in 30 years nowhere in the World was there open armed conflicts between States.

8. The principles and purposes of the United Nations constituted the foundation for a new international order under which the threat or use of force was prohibited, the maintenance of international peace and security was the duty of each State and relations among States were

governed by principles of peaceful coexistence. That was why his Government had resolutely supported the Final Act of the Helsinki Conference as well as other documents which constituted sources of international law, since they were based on the Charter of the United Nations in its current form. It was not possible to visualize what would become of hundreds of bilateral and multilateral agreements and treaties which were based on or made direct reference to the Charter if it was suddenly shattered owing to a revision. Even those who currently advocated its revision would scarcely continue to have confidence in it. A revision might even seriously undermine the international legal system which had been so painstakingly worked out over the previous 30 years. The fact that the membership of the Organization had greatly increased in no way diminished the significance of the Charter as a source of rules governing the comity of nations. On the contrary, many former colonies and dependent Territories owed their independence and current role in the United Nations to the Charter. Every State newly admitted to the United Nations offered its full support for the Charter and undertook to respect it strictly. That was a *sine qua non* in accordance with Article 4 of the Charter. However, certain delegations seemed to consider that, in becoming Members of the United Nations and solemnly undertaking to respect the Charter, their respective countries intended in actual fact to bring about a revision of the Charter and to undermine the United Nations from within. His delegation was resolutely opposed to such attempts and believed that the effectiveness of the United Nations and its role in the international community depended first and foremost on the way in which the provisions of the Charter were applied and not on the frequency with which they were revised. What was needed was that all States should implement the provisions of the Charter fully, regardless of their size, level of development or socio-political system. Attempts to revise the Charter must not divert attention from the main current of the political activity of the United Nations and must not influence the achievement of important objectives, including those of the new economic order.

9. In its current form, the Charter still offered numerous possibilities and mapped out guidelines for action which had been neither explored nor exhausted. No one denied the need to improve the capacity of the United Nations. At the political level, it would always be dependent on the extent to which Member States were prepared to grant the Organization the necessary authority and to support and respect its decisions. On the economic and social side, there could be no question that some restructuring of the system was essential if current needs were to be met. The usefulness of a restructuring, which was very different from a revision of the Charter, was demonstrated by the work of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly and the Group of Experts on the Structure of the United Nations System and by resolution 3362 (S-VII) adopted by the General Assembly at its seventh special session to establish an *Ad Hoc* Committee on the Restructuring of the Economic and Social Sectors of the United Nations System. At a time when that restructuring work was beginning, it would be of little value to initiate a parallel process which would exclude any rationalization or improvement of the work of the Organization within its Charter.

¹ See A/8746.

10. There were no grounds for the *Ad Hoc* Committee to continue its work or for its mandate to be renewed. In terms of international relations, to initiate a revision of the Charter would be tantamount to opening up a Pandora's box. The best service that the Sixth Committee could perform would be to take note of the report of the *Ad Hoc* Committee and to take the question off the agenda.

11. Mr. OMAR (Libyan Arab Republic) recalled that on several occasions the General Assembly had had to take note of the position of Member States on the question of the review of the Charter and that, at its twenty-ninth session, it had adopted resolution 3349 (XXIX), by which it had established an *Ad Hoc* Committee on the Charter of the United Nations to give priority consideration to the observations received from Governments, the proposals that they might make with a view to enhancing the effectiveness of the United Nations and also other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. Governments had expressed divergent opinions on the question of the review of the Charter. Some were opposed to it, others supported the idea of a review, while still others were midway between those two positions, as indicated by the report of the *Ad Hoc* Committee. It appeared that, 30 years after the adoption of the Charter, it was necessary to mark a pause and to consider the work done by the United Nations.

12. A number of important events and radical changes had taken place in international relations, for example, the liberation of many countries from the yoke of colonialism and the progress made in various fields. However, the United Nations had not been able to accomplish its ideal, that of maintaining peace and security in the world, and the veto right of certain Powers had impeded the functioning of the Security Council. The United Nations had been unable to find solutions to a great number of problems, certain of which had arisen at the very time of its establishment. His delegation was therefore inclined to give thought to the need to review the Charter in order to adapt it to the modern world. The authors of the Charter had devoted a special Article to that question.

13. Convinced that the world could not do without the United Nations, his delegation supported the idea of reviewing the Charter in order to strengthen the principle of democracy at the international level, to abolish the privileges of some big Powers—which were abused by certain of them—to guarantee an equitable distribution of wealth and to impose certain restrictions in order to ensure international peace and security, for example, by adopting measures in the area of disarmament and eliminating stocks of weapons of mass destruction. That being the case, his delegation's position was that the *Ad Hoc* Committee should be invited to continue its work.

14. Mr. LEE (Malaysia) recalled that his delegation had voted in favour of resolution 3349 (XXIX), by which the General Assembly had established the *Ad Hoc* Committee, since it considered that it would be a good idea to examine the proposals relating to a review of the Charter in the light of the position of the non-aligned and developing countries, which felt that a reform and rationalization of the United Nations would enable it to achieve its objectives more

effectively. Such a study would have the advantage of giving all Members of the United Nations, particularly those which had not participated in its establishment, an opportunity to voice their opinions and could result in bringing some of the provisions of the Charter into line with the contemporary world.

15. His delegation did not envisage a wholesale revision of the Charter. It did not believe that the review of the Charter was designed to limit the powers currently enjoyed by certain countries and it regretted the reticence of some Member States, since all that was involved was improving the Organization to make it the centre for harmonizing the actions of nations.

16. His delegation did not currently intend to make any suggestions regarding the provisions of the Charter that should be deleted, amended or modified, but was prepared to consider suggestions along those lines. The areas which should be looked into included the use of the veto by the permanent members of the Security Council, the question of whether the Council's membership should be enlarged, strengthening the powers of the United Nations in dealing with recalcitrant Member States and increasing the effectiveness and enlarging the scope of peace-keeping operations.

17. In its report, the *Ad Hoc* Committee had drawn attention to the fact that there had been a fundamental divergence of opinion on the necessity of carrying out a review of the Charter. It was obvious, in his delegation's view, that there must be further discussion to harmonize that divergence before the *Ad Hoc* Committee enumerated the proposals which had aroused particular interest. As many representatives had pointed out, a major factor in the effectiveness of the United Nations depended on the willingness of Members to comply fully with the provisions of the Charter. Before beginning the work of reviewing the Charter, States should reach a consensus on that point and his delegation therefore supported the extension of the mandate of the *Ad Hoc* Committee.

18. Mr. JANKOWITSCH (Austria) said that since the foundation of the United Nations, the world had radically changed and the new nations had never been in a position to make their contribution to the textual setting of the Charter. It was therefore highly desirable and indeed necessary to undertake certain adaptations, and he congratulated the Romanian delegation on presenting in its working paper (see A/C.6/437) constructive ideas which aimed at the solution of some of the complex problems facing the Organization. His delegation also attached importance to the statement made by the Australian delegation (1565th meeting) which had focused on the problem of prevention and peaceful settlement of international disputes and had suggested the more effective exploitation of the machinery available within the framework of the United Nations and of other international bodies for the settlement of disputes, while also considering arbitration agreements.

19. In the past, his delegation had adopted a cautious attitude with regard to the question of Charter review, not out of lack of interest but because the Austrian Government had endeavoured to weigh the advantages and

disadvantages of taking up a problem which could be solved only on a very long-term basis.

20. His delegation regretted that the *Ad Hoc* Committee's report consisted mainly of an annex which reproduced *in extenso* the statements of its members. However, like the Philippine delegation (1564th meeting), his delegation considered that States should not allow themselves to be discouraged by the indifferent results so far achieved and that accordingly the *Ad Hoc* Committee should be invited to continue its work. The *Ad Hoc* Committee should go beyond the question of the review of the Charter and concentrate for the time being on improvements which would not touch the main structure of the United Nations. Thus, the possibility of a dynamic interpretation of the Charter should not be overlooked and, in fact, several speakers had stressed the flexibility of its existing provisions. His delegation wondered whether all the possibilities inherent in Chapter XI of the Charter had been explored and it suggested that the *Ad Hoc* Committee might take up that question, which would certainly be much less controversial than a review of the Charter in the strict sense.

21. Austria's position as a Member of the United Nations and as a neutral State afforded an example of the Charter's flexibility. Whereas the status of permanent neutrality was not a concept particularly welcomed by the authors of the Charter, Austria, in its 20 years of existence as a neutral State, had amply proved that it could contribute like any other State to the accomplishment of the tasks assigned to the Organization because the *raison d'être* of its status was exactly the same as the purpose of the United Nations, namely the maintenance of international peace and security. Furthermore, Austria remained firmly convinced that the competent organs of the United Nations would take

that status into account if the need arose. In that respect, he wished to refer to the statement made by the Austrian Government concerning mandatory sanctions against Southern Rhodesia published in document S/7795,² and the remarks of the Austrian representative at the 1000th meeting, during the twenty-second session. He also drew attention to the relevant resolution adopted by the Institute of International Law in August 1975.

22. His delegation wished the *Ad Hoc* Committee to continue its work and welcomed the efforts made by a number of delegations of differing views to work out the text of a single draft resolution which the Committee could adopt by consensus.

23. Since the *Ad Hoc* Committee had undertaken a long-term task, there should be some way to enable countries which were not members to participate in its deliberations.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-5, A/C.6/L.1019)

24. The CHAIRMAN announced that the Ukrainian SSR had joined the sponsors of draft resolution A/C.6/L.1019.

The meeting rose at 4.30 p.m.

² Mimeographed. For an extract of the most important parts of the statement, see *Official Records of the Security Council, Twenty-second Year, Supplement for January, February and March 1967*, document S/7781/Add.2, annex.

1568th meeting

Wednesday, 19 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1568

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. BRUCE (Canada) said that, over the past 30 years, the successes of the United Nations had outnumbered its failures. Through a process of evolution, the United

Nations, still acting largely under the terms of its original Charter, had proved sufficiently adaptable to provide the almost 100 States which had become Members since 1945 with a vehicle for promoting their objectives, while still accommodating the changing interests of the original Members. However, that did not mean that the United Nations and its work, and perhaps even the Charter itself, were not in need of improvement. To a large degree, the committees and other subsidiary bodies of the United Nations were those established under the Charter of 30 years earlier. In the interim, conditions had changed in ways which could not have been foreseen in 1945 and the values and priorities of all Members had been adjusted accordingly. The demands currently being made on all parts of the United Nations system reflected not only the virtual tripling of the membership, but also the broadening range of world concerns.

2. Canada had sought to work actively to make the United Nations a more effective instrument for international co-operation and had been prepared to consider all proposals—including those involving possible amendment of the Charter—which would enhance the effective functioning of the United Nations. It was somewhat disappointing that the *Ad Hoc* Committee on the Charter of the United Nations had not been able to make greater progress in fulfilling its mandate. There could be little doubt that there were problems affecting the functioning of the United Nations, such as a proliferation of intergovernmental bodies and secretariats, insufficient emphasis on the search for true consensus in decision-making and inefficient methods of work.

3. Furthermore, a potentially serious confusion seemed to be developing between, on the one hand, the authority and competence of the Security Council and the General Assembly in those political fields prescribed by the Charter and, on the other, the competence and authority of technical conferences in their respective fields. In that respect, the work of the Group of Experts on the Structure of the United Nations System was particularly noteworthy. It was encouraging that the Group of Experts had found it possible to recommend a series of concrete, far-reaching reforms which might enhance significantly the work of the United Nations, without necessarily resorting to amendment of the Charter. His delegation intended to participate actively in the debate on those recommendations and hoped that the discussion might lead to a streamlining and strengthening of that part of the United Nations work concerned with economic co-operation among States.

4. It was possible that the difficulties encountered by the *Ad Hoc* Committee arose from the fact that its mandate was not sufficiently precise. There might, for example, be scope for further procedural reform.

5. Although the Charter contained certain anachronisms, it had proved remarkably resilient over the past 30 years and what were sometimes described as failings of the United Nations machinery were in fact often failures on the part of Members themselves. Consequently, every effort should be made to ensure that the organizational tools already at hand were being utilized to the best possible advantage.

6. His delegation would follow any further consideration of proposals for changes in other areas of United Nations work, including suggestions which might arise from a further review of the Charter. In the immediate future, the most likely prospect for agreement on practical improvements lay in directions not requiring amendments to the Charter and therefore greater emphasis should be placed on those areas. If the Committee decided to renew the mandate of the *Ad Hoc* Committee for another year, it was to be hoped that that mandate would be more precise.

7. With regard to the prevention and peaceful settlement of international disputes, his delegation agreed wholeheartedly with the view expressed by the representative of Australia (1565th meeting). The report of the Secretary-General (A/10289) was somewhat depressing, since it did not reveal a paramount concern on the part of Member States with the crucial problem of providing the parties

involved with acceptable means for the peaceful settlement or prevention of disputes. His delegation acknowledged the primary responsibility of the Security Council in the maintenance of international peace and security and the central role of the International Court of Justice in the existing United Nations machinery for the peaceful settlement of disputes. However, a new look into situations in which disputes developed could bring forth additional techniques and methods of settlement applied in other fields of human endeavour. The increasing interdependence of societies had brought peoples closer together and had also increased the possibilities of frictions which might develop into dangerous confrontations. Those fundamental changes called for a realistic in-depth review of existing machinery for the settlement of international disputes. His delegation would accept the judgement of the Committee as a whole as to the context in which further work on the matter might be conducted, but hoped that the discussion in the Committee would reveal a genuine concern on the part of all States Members with the vital search for alternatives to confrontation.

8. Mr. BRUNA (Chile) said that the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033) showed that it had not been able to complete its work because of the complexity of the issue, lack of time and inadequate administrative support. Consequently, the General Assembly should allow the *Ad Hoc* Committee to continue its work in 1976 and its next session should be sufficiently long and should be provided at least with summary records. His delegation would support any draft resolution reflecting those views.

9. The United Nations, like any human institution, suffered from a number of defects and it was the obligation of its Members to endeavour to correct them. Consequently, the *Ad Hoc* Committee should consider the observations of Governments and any proposal designed to enhance the capacity or functioning of the United Nations, whether it required a review of the Charter or not. His delegation could not accept the malicious assertion that those who proposed a study of the review of the Charter were enemies of the United Nations. In reality, those who opposed any reform simply wished to avoid being stripped of their unfair privileges.

10. Many problems had arisen which had not been foreseen in 1945 and it was still not known how they could be solved. There was the psychological aggression of new empires which had arisen since the Second World War; although there was a general absence of war, no genuine respect existed for the independence of States and the self-determination of peoples; some of the Powers which had been victorious in the Second World War had been stripped of their colonies and territories, while others had continued to spread their ideologies and their economic and military influence to a degree previously unknown. That situation could not be regarded as a success on the part of the United Nations. Furthermore, not all States Members of the United Nations received equal treatment. Some appeared to enjoy certain immunities or the protection of other States. In the economic and social fields, much remained to be done and the Charter did not appear to have been an adequate instrument. It had been unable to prevent certain States from impeding the Organization's analysis of

certain problems such as human rights. The law on that question should be strengthened and a procedure sought to ensure the respect of such rights throughout the world, without political motivation.

11. At a time of increasing interdependence among States, the United Nations took on special importance as the only body in which almost all States were represented. The United Nations required a Charter which could accommodate both its needs and the new realities. Law was not static but dynamic, so that there was no defence for the argument that a constitution or Charter should not be reviewed. Any review conducted with a view to improvement was useful. His delegation felt, therefore, that consideration should be given to whether the Charter should be revised to ensure that the United Nations was better able to pursue its purposes. He had confidence in the judgement of the members of the *Ad Hoc* Committee.

12. The admission of new States to the United Nations had given rise to new situations. His delegation did not share the view that States which had recently joined the Organization had accepted the Charter and therefore should not wish to revise it. All States, whether founder Members or not, had the same rights and permanent acceptance of a text had never been made a condition of entry. If the United Nations was to continue and to pursue its aims, a formula must be found whereby the interests of all States could be reconciled.

13. Constitutions or charters, however perfect, served no purpose if those who were to implement them did not believe in them or sincerely adhere to their aims. His Government believed in the United Nations and adhered to its aims and it appealed for observance of both the letter and spirit of the Charter.

14. For the moment, a study of the need for a review of the Charter was the best way in which to strengthen the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation between all nations and the promotion of the roles of international law in relations between States. In particular, as his Government had stated in document A/10255, the United Nations should become a more effective instrument for safeguarding and strengthening the independence and sovereign equality of all States, and the inalienable right of all peoples to decide their own future without any outside interference.

15. Mr. ALIHONOU (Congo) said that his delegation welcomed the Comoros to the United Nations and looked forward to the forthcoming admission of Angola.

16. The review of the Charter would solve the problems presented under agenda item 29 and his delegation, which was a member of the *Ad Hoc* Committee, attached special importance to the question. The Charter should be updated in order to democratize United Nations activities with a view to better international co-operation. The mandate of the *Ad Hoc* Committee should be not only extended but strengthened, since areas of agreement must sooner or later emerge.

17. The Charter had been devised 30 years earlier and was a compromise between the great Powers of that period. His

country, in acceding to international sovereignty, had adhered to the principles proclaimed in the Charter. However, progress had often been hindered by provisions which had become outdated and which were used unjustly by certain countries. In effect, the universal and egalitarian nature of the United Nations was often at odds with certain provisions of the Charter. While new States were sworn to pacifism, original Members conducted a murderous and unjust war thousands of miles from their own territory. Conditions had completely changed and the maintenance of the United Nations within the framework of outdated, unfair and incomplete rules would simply destroy its credibility.

18. His delegation did not agree with those who opposed any review of the Charter on the grounds that any amendment would bring about the collapse of the whole structure. Furthermore, to make only cautious marginal changes would entail amending the Charter every two or three years. His delegation believed that a general review should be conducted of United Nations activities in the light of the Charter and that there should be no hesitation in eliminating all anachronistic and unjust provisions. Although all the ills of the United Nations were not caused by the Charter, its review would constitute an important step towards peace and mutual understanding. That goal was far from being reached if the Charter continued to provide a minority of countries with the means of halting any action. There was nothing sacred about the Charter, as was demonstrated by the constant violations of it under the benevolent gaze of a number of those countries which predicted that to amend it would spell disaster. His delegation believed that the way to prevent disaster was to review the Charter, making it an instrument for democracy and spelling out clearly the rights and duties of each State in the new international economic order.

19. Mr. MALIK (Union of Soviet Socialist Republics) said that the position of his country on the two closely interconnected and complementary agenda items currently before the Committee was absolutely clear and consistent. The Soviet Union defended the permanence of the principles and purposes of the Charter and rejected all attempts to revise it under current conditions. At the same time his country actively supported the strengthening of the role of the United Nations and the effectiveness of its activities on the basis of the strict and scrupulous observance of the purposes and principles of the Charter.

20. His country had spoken at the twenty-ninth session (1514th meeting) against the review of the Charter and against the establishment of a committee on its review. In confirmation of his country's position, the report of the *Ad Hoc* Committee had revealed a fundamental divergence of opinion on the necessity of carrying out a review of the Charter and it was clear that the *Ad Hoc* Committee had embarked on a useless and wasteful task. Such attempts to undermine the foundations of the Organization should stop and the advocates of revision of the Charter should recognize the complete lack of any prospect for success of their attempts to break up the universal mechanism of international co-operation which had been created with such difficulty in the period following the Second World War.

21. Advocates of the revision of the Charter had often cited the 30 years which had elapsed and the changes which had taken place in the world since the foundation of the United Nations. They should remember that 20 of those years had been the years of the "cold war". Despite the difficulties of that time, the United Nations, acting within the framework of its Charter, had nevertheless been able to make a substantial contribution to the cause of the maintenance and consolidation of peace and international security and to the solution of a number of complex international problems. For 30 years already mankind had been saved from the horrors of a world war and, with the lessening of tensions, numerous documents of historical importance had been adopted. Criticism of the United Nations and its Charter was not new, but those who had defended them had nevertheless been able to achieve many positive results for the consolidation of international peace and security and the development of international co-operation.

22. During the general debate at the current session of the General Assembly, a majority of speakers had expressed their countries' firm adherence to the purposes and principles of the Charter. Others had, unfortunately, spoken in favour of the revision of the Charter, voicing demands to break up its main provisions and principles and in particular attacking its basic principle of the unanimity of the permanent members of the Security Council. He reminded the members of the Committee that for the Soviet Union, a socialist country, the right of veto was not a privilege but a historical necessity, without which the principle of the equality in the Security Council of socialism and capitalism—the main foundation of the Charter—would have been violated a thousand times during the past 30 years and the existence of a great many countries would have been endangered. For that reason the existence of the United Nations was unthinkable and impossible without the right of veto for the Soviet Union. The division of responsibilities between the General Assembly and the Security Council was based on the reality of the two socio-political systems existing in the contemporary world. In the letter it had addressed to the Secretary-General on the question of the Charter (see A/10102), his Government had pointed out that the cardinal principle of the unanimity of the permanent members of the Security Council had served and continued to serve as a strong barrier to the use of the Security Council for purposes contrary to the maintenance of international peace and security, and that his country had repeatedly used its power as a permanent member of the Security Council in support of national liberation movements and in defence of the just cause of peoples struggling against colonial and racist domination.

23. It was not difficult to understand that it was impossible in current conditions to settle the important questions of the maintenance of international peace and security by the usual majority vote procedure. Attempts by some permanent members of the Security Council to resort to coercion or even to force against other permanent members in the name of the United Nations, even relying on a majority vote, would lead to the unleashing of a world thermonuclear war with its disastrous consequences for all mankind.

24. Furthermore, after the expansion of the membership of the Security Council to 15, the number of non-

permanent members had increased to such an extent that it now constituted a sort of "collective veto", and no decision of the Security Council could be adopted without the consent and votes of the non-permanent members. His delegation completely rejected all other devious schemes to deprive permanent members of the Security Council of their special responsibility for the maintenance of peace and security by, for instance, increasing the number of permanent members; transferring primary responsibility for the maintenance of peace and security to the General Assembly, or making General Assembly decisions legally binding, instead of being recommendations as currently provided in the Charter.

25. Some speakers had criticized the retention in the Charter of the terms "original Members" and "enemy states". However, those terms reflected unquestionable historical facts; in particular, the latter term was not an anachronism but a reminder of the events of the Second World War, in which 20 million citizens of his country had perished in the heroic struggle for freedom. To delete the references to "enemy states" would mean burying nazism, fascism and militarism in oblivion and encouraging those who disregarded the lessons of history. The presence of the Articles of the Charter on "enemy states" had not prevented the development of the United Nations or the admission to membership of the two present German States and Japan, which should not be identified with those "enemy states". Similarly, Chapter XII, on Trust Territories, should remain in the Charter as a reminder to succeeding generations of the unequal situation of a certain group of States and their peoples in the past and proof of the fact that those countries and peoples had gained their inalienable right to independence and sovereignty with United Nations support.

26. In the current atmosphere of relaxation of tension the untapped possibilities of the Charter should be used more fully. The Charter's potential was demonstrated by the numerous decisions of historic importance in the economic field recently worked out in full compliance with its provisions, principles and purposes, without the right of veto in the Security Council preventing their adoption. In that regard, the developing countries had received the full understanding and support of the Soviet Union and all other socialist countries, which would continue to join forces with the developing and non-aligned countries in order to promote jointly the solution of international problems and defeat encroachments by the forces of aggression and reaction.

27. The central task of the United Nations under the Charter was the maintenance of peace and security. The effective promotion of the solution of major international problems in the interest of peace, international security and the development of equitable and friendly co-operation among States must always be at the centre of the Organization's activities. A good example of the creative application of the provisions of the Charter, without any violation of its purposes and principles, was the recent Conference on Security and Co-operation in Europe.

28. His delegation supported constructive criticism and proposals concerning the improvement of the work of the United Nations, but wished to draw attention to certain

dangerous trends whereby, under the guise of measures allegedly aimed at increasing the effectiveness of United Nations activities, attempts were being made to force through proposals having nothing to do with and indeed damaging to the purposes and principles of the Charter. Proposals that all States should undertake to submit their disputes to the United Nations for consideration or that a permanent commission of the Assembly on conciliation and mediation should be set up were valueless and could not be justified by the Charter. They directly violated the sovereign right of every State to determine, in accordance with the Charter, its own means for the peaceful settlement of disputes.

29. The United Nations would be made more effective not by breaking down the existing structure of the Organization and the Charter, but by using the Charter's potential to the full in the interest of peace and ensuring that all States complied with their Charter obligations. The written comments submitted by Governments and the statements made during the debate showed that a majority of States agreed that the effectiveness of the United Nations depended primarily on the political will of Member States to achieve the consistent implementation of its purposes and principles. Currently and in the foreseeable future the solution of any important international problem would be possible only on the basis of the co-ordination of the positions of States belonging to different social systems. The United Nations could only function successfully if it was in keeping with political realities. The attempts being made to review the Organization's basic structure with a view to giving the General Assembly the right to take decisions binding on States were Utopian.

30. In the current period of relaxation of international tension, a genuine reconstruction of international relations on the basis of the principles of the Charter could begin. The real duty of all States was, therefore, to make the process of détente irreversible and to apply the provisions of the Charter, through the appropriate political and legal instruments, to specific situations and to the solution of functional problems affecting the interests of mankind. Serious attempts to strengthen the role of the United Nations would require that maximum attention be paid to such unresolved key problems as freeing mankind from the escalation of the arms race, strengthening international security and peace, eliminating armed conflicts and outlawing war. The collective security system, firmly embodied in the Charter, must be put into action. His country was prepared to co-operate most closely with other Members in order to utilize more fully the great possibilities inherent in the Charter. Measures which could contribute to strengthening the role of the United Nations and to increasing its prestige and authority included disarmament, particularly nuclear disarmament and the convocation of a world disarmament conference; the non-use of force in international relations and the prohibition for all time of the use of nuclear weapons; the mandatory acceptance of the Definition of Aggression; the final and complete elimination of colonialism, racism and all forms of racial discrimination; and the further development of equal economic, commercial, scientific, technical and cultural relations among States.

31. He said that, in reply to the slanderous lies of the representative of China, his country had never used and

would never use the principle of the unanimity of permanent members of the Security Council in the service of injustice or "hegemony". China, on the contrary, had abused its right of veto immediately upon becoming a Member of the United Nations by voting against the admission of Bangladesh to membership. The Soviet Union, for its part, had always used its right of veto exclusively in the interests of socialist countries in their struggle for admittance to membership in the United Nations, in the interest of the oppressed and non-self-governing peoples with a view to freeing them from the colonial yoke and against attempts by the capitalist majority to impose its will and arbitrary decisions. There had been one instructive and sad case in the history of the United Nations when the Soviet Union had not implemented its right of veto for the defence of the interests of a socialist State and, as a consequence, imperialist forces under the United Nations flag had committed aggression against the Democratic People's Republic of Korea, the disastrous consequences of which had still not been overcome. The principle of the unanimity of the members of the Security Council was for the Soviet Union not a privilege nor a means to achieve hegemony but a historical necessity as a vital international political means of defending the interests of socialism against the threats and attacks of capitalism.

32. He pointed out to the representative of China that, despite its talks of strengthening the role of the United Nations and its effectiveness, China was one of the main disrupters of the normal activity of the United Nations. The representatives of China were continuously negative, had not made a single constructive proposal and seemed especially irritated by the peaceful initiatives of the Soviet Union. The overwhelming majority of Member States, who stood for peace and peaceful coexistence, especially the socialist countries and the third world countries, not only made fun of but were indignant at the position of China in the United Nations. China's abstention in the vote on 14 November in the Second Committee on draft resolution A/C.2/L.1442/Rev.2, which had been adopted by 100 votes with none against, proved its lack of solidarity with the cause of peace and peaceful coexistence. China talked loudly about the inevitability of war and thereby shamed its position as a permanent member of the Security Council, bearing a special responsibility for the maintenance of peace and security.

33. Out of transparent and dishonest demagoguery China called, louder than anyone else, for the review of the Charter but did not itself renounce its right of veto. The Chinese delegation, in an effort to hide its unseemly position, had as usual resorted to anti-Soviet slander as a smoke-screen.

34. Mr. KASHAMA (Zaire) said it was evident from the overwhelming majority by which General Assembly resolution 3349 (XXIX) had been adopted and from the large number of replies received from Member States pursuant to that resolution, that there was great interest in the question of Charter review. Nevertheless, his delegation was not satisfied with the report of the *Ad Hoc* Committee and believed that it had not fully complied with its mandate as set forth in the resolution. It should continue its work pursuant to resolution 3349 (XXIX) and to any other General Assembly directives adopted during the current session.

35. He observed that the United Nations had taken a number of important steps relating to the maintenance of peace during its 30-year history, including the adoption of certain significant declarations. Zaire would never forget the efforts made by the United Nations to restore peace in that country, at a time when it was undergoing serious domestic disturbances. Because of that impressive record, some delegations believed that the United Nations could now be allowed to follow its own course and that the many changes which had occurred in the world since the adoption of the Charter, including transformations brought about by the United Nations itself could be ignored. Current realities could not be disregarded, however, and in a statement to the General Assembly on 4 October 1973 (2140th plenary meeting) the President of Zaire had suggested that the Charter should be revised so as to adapt it to the existing world situation—taking into account in particular the representation of the African continent and the fact that formerly conquered countries had become great Powers—and ensure that United Nations decisions were applied by all Members.

36. The opponents of Charter revision maintained that revision would lead to a new world war. The drafters of the Charter had been idealistic about avoiding the horror of another war, but it was doubtful whether States which balked at disarmament and traded in weapons of mass destruction could really preserve future generations from the scourge of war. That was not the only purpose of the Charter, however. The drafters of that instrument had also anticipated that the Charter would promote the raising of levels of living standards, full employment and conditions of progress and development in the economic and social spheres thereby ensuring peaceful and friendly relations among States, based on respect for the principles of equal rights and self-determination of peoples. Their optimism had evidently been replaced by selfishness, since some States now considered the Charter of Economic Rights and Duties of States and the resolutions of the seventh special session of the General Assembly as contrary to their wishes.

37. Although it could be argued that that situation showed that it was the attitudes of Member States rather than the Charter which should be changed, his delegation felt that by strengthening certain Charter machinery the role of the United Nations could be strengthened. It supported all the specific proposals which had been made to that effect.

38. Opponents of Charter revision also argued that the principle of unanimity of the permanent members of the Security Council, and its corollary, the veto, were an expression of equality in international relations of the two existing social systems, socialism and capitalism. In his delegation's view the veto contradicted the principle of sovereign equality of States and was based on antiquated relations of domination and oppression characteristic of a world where some States made all the decisions.

39. In sum, his delegation believed that the Charter was not sacrosanct and that some of its provisions were outmoded. Articles 108 and 109 were sufficient indication that the drafters of the Charter had not thought they were producing an immutable instrument. When certain States, lacking real arguments, stated that the prerequisites for

Charter revision had not been fulfilled, they no doubt did so because revision was being proposed by an allegedly "tyrannical" majority instead of the "enlightened" minority. Since it was becoming more and more evident that that majority would remain firm, he wondered if the opponents of Charter revision would accept a revision based on the deletion of Articles 108 and 109.

40. Mr. KRISPIS (Greece) observed that although the Charter, perhaps the most important international instrument in the whole history of diplomacy, was aimed at avoiding war, its text characteristically used the word "war" only once, in the preamble. That was because the prohibition in the Charter was broader and extended to the threat and use of force.

41. The text of the Charter was well-balanced, concise, broad and flexible. It was also general and even vague to the point where it could be called a *loi-cadre*. As such, it had functioned vigorously for 30 years and after all that time it was advisable to think carefully about whether there was a need to revise it. Certainly it could not be claimed that the Charter functioned perfectly and there was no harm in examining, pursuant to General Assembly resolution 3349 (XXIX), how it had met the needs of a quickly changing world. However, the task of revising such an instrument, on which the serious aspects of world politics had been based for almost a third of a century, had to be undertaken with caution as well as courage. Those had been the attitudes of his country as a member of the *Ad Hoc* Committee. The need for modification, not to speak of revision, must be extremely pressing in order to justify amendments. Yet, there was a need to supplement the Charter by special conventions and appropriate declarations by United Nations bodies.

42. His delegation was currently sceptical about the existence of a pressing need for amendment. Some provisions of the Charter could have been better drafted, but that applied to any legal text. The provisions of the Charter, particularly the more general ones, had proved strong enough to cope with unprecedented world situations. The Charter had also undergone growth and evolution during its 30-year history, as shown by the attribution to the General Assembly, in the Paris Peace Treaties of 1947, of powers which the letter of the Charter did not easily cover and the construing of Article 27, paragraph 3, to mean that abstention or non-participation of a permanent member of the Security Council did not constitute a veto.

43. In short, complaints about the letter and the spirit of the Charter did not seem to be fully justified. Problems concerning the application of the Charter had arisen because of the unwillingness of some States to use United Nations organs or to comply with decisions or resolutions of those organs, especially the Security Council and the General Assembly. Moreover, the International Court of Justice was not used as it ought to be to resolve the many disputes which existed among States.

44. Procedurally, the work of Charter review—and he emphasized the word "review"—was very complex. Examining the Charter article by article would be futile, yet one could not reasonably speak about deficiencies in the

Charter without looking critically at many provisions. On the other hand, a general reappraisal of the Charter could not be avoided. The question to be considered was whether anything had been wrong with the Charter either at the outset or during its existence, i.e. whether the existing machinery of the Charter, as distinct from its methods, had been unfit to deal with the specific necessities of international life. Endurance and much time were required to answer that question, and specific situations of the past would have to be thoroughly examined. If machinery or methods had failed, it would be necessary to examine to what degree that had occurred, the reasons for such failure, and how different machinery or methods would have succeeded. The functions and powers of each of the principal United Nations organs would have to be evaluated, having regard to both the past and the future. Suggestions and proposals for setting up new principal organs should be made only after the fullest possible consideration and only after establishing with certainty the failure and unfitness of existing organs. Subsidiary organs, on the other hand, could be established pursuant to Article 7, paragraph 2.

45. His delegation, at the current stage of the debate, remained open-minded. It believed that mandate of the *Ad Hoc* Committee, as set forth in General Assembly resolution 3349 (XXIX), should be extended.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-5, A/C.6/L.1019)

46. The CHAIRMAN informed the Committee that Cuba had become a sponsor of draft resolution A/C.6/L.1019.

47. Mr. MANGAL (Afghanistan) said he wished to propose several amendments¹ to draft resolution A/C.6/L.1019.

48. The first amendment was designed to avoid misinterpretation since the third preambular paragraphs spoke of the "comments and observations submitted by Member States" while operative paragraph 2 urged further Member States to submit comments and observations. The purpose of the second amendment was to reflect the fact that the work of the International Law Commission on the draft articles was not yet complete. The object of the third amendment was to add a new subparagraph (a) to paragraph 1 in which specific reference was made to the draft articles on succession of States in respect of treaties. The aim of the fourth amendment was to avoid contradiction between operative paragraphs 1 and 5 by making it clear that the latter did not prejudice the action which might be taken by the General Assembly.

49. He regretted that he had not yet been able to hold consultations with the sponsors of the draft resolution and hoped he would be able to do so in order to find a solution acceptable to all.

50. Mr. MAIGA (Mali) said he was in the process of consulting with other delegations concerning certain parts of the draft resolution. He inquired whether the Committee could defer its decision on that document.

51. The CHAIRMAN suggested that the Committee should comply with that request, in order to allow time for further consultations.

It was so decided.

The meeting rose at 1 p.m.

¹ Subsequently distributed as document A/C.6/L.1022.

1569th meeting

Wednesday, 19 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1569

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. GARCIA ORTIZ (Ecuador) said that he had not intended to take the floor since his delegation had already

made known its position on the question of the review of the Charter in the *Ad Hoc* Committee on the Charter of the United Nations (see A/10033, p. 25). However, in view of the observations made by a number of representatives, it might be useful to recall a number of points. First, it was obvious that no legal statute could be immutable, since its rules were designed to govern constantly evolving human relations. Furthermore, consideration must be given to the possibility of revising certain provisions in order to improve the functioning of the United Nations, a task which must be tackled without prejudices and for which the documents already issued, particularly the report of the *Ad Hoc* Committee (A/10033), would be most useful. The document submitted by the Romanian delegation (A/C.6/437) also contained data which should be taken into consideration. The only possible procedure seemed therefore to be to

renew the mandate of the *Ad Hoc* Committee and his delegation was prepared to sponsor any draft resolution to that effect and to support any other realistic proposal.

2. Mr. JACHEK (Czechoslovakia) recalled, as the Minister of Foreign Affairs of Czechoslovakia had done in his statement to the 2371st plenary meeting of the General Assembly, that although during the 30 years of the United Nations existence relations between States had evolved in the direction of détente, those relations were still not such as to guarantee lasting international peace and security. It was therefore necessary to enhance the effectiveness of the United Nations in the struggle for peace and security on the basis of strict respect for the purposes and principles of the Charter. Anything which stood to weaken the Organization must be condemned, including attempts to start a process of revision of the Charter, as well as the proposals made in that connexion, which were designed to undermine the very foundations of the United Nations.

3. Czechoslovakia, being one of the first victims of nazism, was fully aware of the enormous sacrifices made by the States of the anti-Hitlerite coalition, in particular the Soviet Union, which were at the origin of the Charter. It was true that, during the past 30 years, the world had undergone radical changes, but those changes had simply brought the international community still closer to the aims and purposes of the Charter, the validity of which was currently generally acknowledged. To those who used the considerable growth in the membership of the United Nations as an argument for revision of the Charter, it could be answered that that very Charter had played a significant role in the struggle of nations against colonialism and had assisted in their liberation. Those nations which were currently much more numerous than the founding Members of the United Nations, had adopted the Charter in its current form freely and without reservation. It could not be said that, during its 30 years of existence, the United Nations had enjoyed only success. However, an over-all evaluation of the role played by the United Nations would speak in its favour and in favour of the Charter, the vitality and resilience of which needed no further proof. The Charter had shown itself to be a useful instrument in preserving world peace and security and also in supporting the struggle against colonialism, racism and oppression. Positive results had also been achieved in other spheres, such as the economic and social fields. The Charter could not be held responsible for the weaknesses of the United Nations, which actually were attributable to non-observance of its provisions.

4. From a strictly legal point of view, the Charter was a multilateral treaty which could be reviewed in accordance with the procedure provided in Article 109. However, it was also the basis of the international community. It codified the principles of peaceful coexistence and co-operation among all States, regardless of whether or not they were Members of the United Nations. Almost all general norm-creating treaties and statutes of specialized agencies proceeded from the Charter. It served as a basis for the progressive development of international law, and numerous international instruments of paramount importance were based on the principles which it proclaimed. Any proposal to begin a process of review of the basic provisions of the Charter could only affect the whole structure built upon it and undermine the very basis of peaceful coexistence and co-operation among all States.

5. The session of the *Ad Hoc* Committee had proved that the conditions justifying a review of the Charter had not been fulfilled and the proposals submitted in that respect lacked unity. Furthermore, the States which declared themselves to be in favour of review were far from being a majority. General Assembly resolution 3349 (XXIX) confirmed the aims and principles of the Charter and drew no conclusions regarding the necessity of reviewing it. The *Ad Hoc* Committee had also been requested to consider all proposals for the more effective functioning of the United Nations that might not require amendments to the Charter. The results of the *Ad Hoc* Committee's work were unsatisfactory, which was not surprising considering the divergences of opinion expressed with regard to the direction that its work should take. In the view of his delegation, all proposals designed to rationalize the activities of the United Nations and to increase its effectiveness should be considered without embarking on a review of the Charter. The Charter offered considerable possibilities which were far from being fully exploited.

6. Mr. RAKOTOSON (Madagascar) said that his delegation had from the outset supported the proposals to consider the possibility of improving the Charter and strengthening the role of the United Nations and wished to reaffirm its interest in any measures aimed at increasing the Organization's efficiency. His Government had stated its position on the matter in 1972¹ and in 1975 (see A/10255). He also recalled that his delegation had been one of those originally responsible for resolution 3349 (XXIX), which had established the *Ad Hoc* Committee on the Charter of the United Nations. It had carefully studied the Secretary-General's report (A/10113 and Corr.1 and Add.1-3) on the work of that Committee, which had resulted in a profitable exchange of views. However, it would have been better if the *Ad Hoc* Committee, instead of delving at length into theoretical matters, had immediately tackled the tasks assigned to it in paragraph 1 of resolution 3349 (XXIX). The *Ad Hoc* Committee was not supposed to discuss the advisability of revising the Charter but rather to carry out the mandate given it by the General Assembly. It was the Assembly which would assess the advisability of taking measures on the basis of the specific proposals made by the *Ad Hoc* Committee.

7. His delegation had supported, *inter alia*, proposals to: (a) democratize the international community; in that connexion, it would be necessary to re-examine the membership and functioning of the Security Council; (b) ensure effective implementation of the decisions of United Nations bodies: a standing committee could be established for that purpose; (c) ensure peaceful settlement within the United Nations of disputes submitted to the General Assembly and to the Security Council, which could be done by establishing a standing committee for conciliation and mediation; (d) strengthen the United Nations role in economic matters and in development: a development commission grouping certain committees and various Secretariat units should be established. With respect to the distribution of functions, it would be useful for the *Ad Hoc* Committee to study the proposal of the Mexican delegation contained in annex II to the *Ad Hoc* Committee's report, recommending the establishment of two subcommittees, one to study possible

¹ See A/8746.

amendments to the Charter and the other to study suggestions for increasing the efficiency of the Organization without amending the Charter. Nevertheless, the distinction between those two types of functions might lead to pointless controversy. It might be better to undertake a systematic review of all chapters and articles of the Charter while seeking to co-ordinate those different activities.

8. Although the purposes and principles set forth in the Charter must be regarded as sacrosanct, the provisions concerning the structure and functioning of the Organization should be reviewed in detail so as to confer greater responsibilities on the United Nations. The Organization had to settle increasingly varied and urgent problems in a growing number of fields. The international community had the right to call for a new charter based on the existing one but adapted to current needs. His delegation was aware, that such an undertaking was not easy and required political will on the part of Governments. However, there were grounds for hope, since a democratic will had become evident at the United Nations as a result of the victory of the progressive and revolutionary ideas, which had been clearly reflected in the Definition of Aggression and at the sixth special session of the General Assembly. That will should permit more lasting co-operation, which would better serve the cause of all the peoples of the world. The international community, in conferring upon the *Ad Hoc* Committee a mandate to review the statute of the Organization and ways of increasing its efficiency, wished only to seek such co-operation, in the interests of peace, development and justice.

9. Mr. RAMPHUL (Mauritius) said that he wished to stress once again the importance which his Government attached to the United Nations and its commitment to the purposes and principles enshrined in Chapter I of the Charter. Of course, no change in the Charter or in the structure of the United Nations could replace the goodwill of States to comply in good faith with the basic obligations they assumed under the Charter. However, it should not be forgotten that the world situation had changed radically since the Charter had been drafted. Former enemy States were now part of the community of nations. The German Democratic Republic, for instance, was carrying out a policy which by no means could be compared with that of Fascist Germany. That new situation should be adequately reflected in the Charter. In 1945 a large part of the globe had been subjected to colonial domination and the Charter reflected that reality, implying the acceptance of the right of a State to have colonies. However, former colonies were today equal members of the community of nations and colonialism in all of its forms was rejected. That was another new situation which should be adequately reflected in the Charter. Furthermore, while the nations were trying to build a new, more just world order, it was essential that the Charter and its machinery not impede that endeavour. The technical and scientific revolution had reduced the dimensions of the world and accentuated the interdependence of all nations. The Charter, by eliminating the phantom of the Second World War, should become an instrument of co-operation providing the means to solve current and new problems. It was essential to adjust to new realities.

10. Many privileges had been abolished in the course of history in spite of the fierce opposition of their beneficia-

ries. Those who were currently preoccupied with maintaining their privileges were aware of that. The League of Nations, for example, had known great Powers, whose greatness had been measured by their military might. In 1975, it had become imperative to measure the greatness of a country by something more relevant to the common aspirations of the international community. One representative had invoked as an argument against any change in the Charter the fact that the 50 original Members of the United Nations had paid for the victory over fascism. In that connexion he wished to recall that the former colonies had also contributed to the victory of the allied forces over fascism, yet they had not been invited to participate in the drafting of the Charter. There was therefore no reason to maintain the distinction between founding and non-founding Members of the Organization.

11. The Charter had in fact already been changed, as shown, for example, by the enlargement of the membership of the Security Council. In that connexion he failed to understand the representative who, in opposing changes in the Charter, had argued that the enlargement of the Security Council and of the Economic and Social Council had been a response to the influx of new Members into the Organization, especially since his country had not supported such an enlargement.

12. It was essential to update the Charter and there was no reason to fear that the current generation was less rational than the generation of 1945. Any reference to the possibility of *de jure* or *de facto* recognition of the right of one State to dominate another should be eliminated. The Charter should consecrate the equality in rights of all States. The rights and obligations of States should be formulated in the light of the requirements of the new economic and political order. The Charter should approach the problems of the world in their current context, that of interdependence between international security and economic and social development. Finally, emphasis should be placed on co-operation among all States and the Charter should take into account the ability of small- and medium-sized countries to contribute to the solution of international problems.

13. He therefore intended to make some suggestions. The membership of the Security Council should be enlarged to include more non-aligned and developing nations. The principle of unanimity in the Security Council should mean the unanimity not only of the present five permanent members but also of several non-permanent members designated for the purpose by the General Assembly from among the countries of various regional groups. The Organization should strive to adopt decisions by consensus; to that end, all States should undertake intensive negotiations, in a spirit of mutual respect and accommodation, and only after all other possibilities had been exhausted should the General Assembly resort to a vote. The decisions adopted should be binding. A sufficiently large, representative body should be established for the peaceful settlement of international disputes and to deal also with peace-keeping activities of the United Nations. The General Assembly should be enabled to discuss and make decisions on questions where the Security Council failed to act. In view of the present arms race, there should be a disarmament organ of the United Nations; it could be a reactivated

Disarmament Commission or a similar body to be set up. Channels of communications with world public opinion should be created to ensure an efficient exchange of information between the peoples and the Organization. The Secretariat should loyally and faithfully serve the Organization; it should be restructured so that all geographical regions were equitably represented at all levels, which was obviously not the case at present.

14. His delegation was of the opinion that the *Ad Hoc* Committee should be enlarged and continue to work and deal with both views and proposals for strengthening the United Nations and amending the Charter, as well as proposals not requiring such changes.

15. Mr. BA-HADOUD (Qatar) said that his delegation attached a great deal of importance to strengthening the role of the United Nations, the only Organization which was capable of regulating co-operation among States and dealing with the perennial problems of the international community. In accordance with Article 1 of the Charter, the chief purpose of the United Nations was to maintain international peace and security and to develop friendly relations among nations. The United Nations had an important role to play in the world, in such fields as decolonization and the safeguarding of human rights. It should take effective measures to put an end to the arms race, colonialism, the discriminatory policy practised in South Africa and the machinations with regard to the Arab people of Palestine of which Israel was guilty. In disregarding the decisions of the United Nations, South Africa and Israel were inviting international coercive measures carried out in accordance with the Charter. It was time that the United Nations adopted sanctions against countries which respected neither the Charter nor the Organization's decisions. In that regard, a system should be developed for monitoring the implementation of resolutions in order to strengthen the role of the United Nations and bring about co-operation and goodwill in international relations.

16. Mr. HELLNERS (Sweden) said that in the course of the 30 years during which the United Nations had been in existence the Charter had been criticized for various reasons and that from time to time the partisans of a review had let their voices be heard. Up to the present, the Charter had never been reviewed in accordance with Article 109 but amendments had been made under Article 108; the need for those amendments had been unanimously recognized by the Member States. In its observations to the Secretary-General in 1972² concerning the advisability of reviewing the Charter, his Government had stated that it was not convinced that a review would contribute to strengthening the role of the United Nations, since such a step did not seem to have broad support among Member States. It had also pointed out that the Charter in its present form contained principles which, if strictly observed, would make it possible to achieve the objectives of the United Nations. In the view of the Swedish Government, the efficient functioning of the United Nations depended essentially upon the extent to which Member States were prepared to make use of the Organization and adhere to its principles. Moreover, there was ample room for improvements and reforms within the framework of the present

Charter. Nevertheless, his Government was prepared to consider amendments to the Charter if they would improve the functioning of the United Nations.

17. While some States supported a thorough review of the Charter, other States favoured changes which, although partial, could nevertheless radically change the balance and distribution of powers within the Organization. The latter States had, in particular, drawn up proposals relating to the composition and functions of the Security Council as well as the veto power of its permanent members. His delegation did not consider that such reforms could be envisaged at the moment since they lacked sufficiently general support.

18. When the Charter had been drawn up, the rapid developments that were to take place in certain fields could not be precisely foreseen. The provisions concerning economic and social development, the Trusteeship Council and human rights could be considered not fully in keeping with the present situation. However, it could also be argued that, despite a number of inadequacies, the Charter had proved to be so well conceived that it had been possible to deal with the changes occurring in many fields either by interpretation of its articles, adaptation of practice or alterations of a procedural nature. Moreover, certain subjects which were not dealt with in the Charter had become extremely important in the work of the United Nations, for example, peace-keeping operations, the environment, outer space and the sea. It would not be easy to modify the Charter to incorporate provisions concerning those questions.

19. In some quarters, criticism had also been levelled against the maintenance in the Charter of some provisions which had never been put into effect, such as Article 45 and the following articles concerning the Military Staff Committee and the armed forces placed at its disposal. In the opinion of many States, other provisions of the Charter, in particular Articles 53, 106 and 107, which were based on the situation prevailing at the end of the Second World War, no longer served any practical purpose and should be deleted.

20. His Government considered that it would not be advisable to embark now on any review of the Charter in areas where broad agreement was not to be found. It seemed obvious that no such agreement existed with respect to any of the structural changes which had been proposed. However, the General Assembly had decided at the previous session to establish an *Ad Hoc* Committee on the Charter of the United Nations with the aim of examining proposals to enhance the effectiveness of the United Nations whether or not they required amendment of the Charter. Although the *Ad Hoc* Committee had not yet reached a consensus on any specific points, his delegation felt that the Committee should continue its efforts to define points of common interest concerning either individual articles of the Charter or the effective functioning of the United Nations. For the moment, the Committee should leave aside all areas where disagreements existed.

21. As to the strengthening of the role of the United Nations, his delegation drew particular attention to the proposals by the Romanian delegation in document A/

² *Ibid.*

C.6/437; that document indicated that review or amendment of the Charter was one possible way, but not the only or even the predominant means, of strengthening the role of the United Nations. There was clearly a link between the question of the review of the Charter and that of strengthening the role of the United Nations: those who proposed a review of the Charter genuinely desired to strengthen the Organization. As he had already pointed out in connexion with the review of the Charter, strengthening the role and enhancing the efficiency of the Organization should be the main concern of Member States. Various means were possible, depending upon the function or organ of the United Nations on which attention was focused. The deliberations of the *Ad Hoc* Committee might show that certain articles of the Charter should be amended. However, even for such amendments, broad agreement would have to exist among the Members of the Organization. The *Ad Hoc* Committee seemed to be a viable forum for exploring and possibly developing common views; his delegation therefore favoured merging the two items under consideration, which would naturally entail a change in the name of the *Ad Hoc* Committee.

22. Mr. PEDAUYE (Spain) recalled that his delegation had not only always voted for the draft resolutions on the need for reviewing the Charter but had also been a sponsor of the original drafts of the two most recent resolutions, namely, General Assembly resolutions 2968 (XXVII) and 3349 (XXIX). In resolution 992 (X), the General Assembly had expressed the belief that it was already at that time desirable to review the Charter in the light of experience gained in its operation, but since then even greater changes had taken place in the sphere of international relations, changes due not only to the fact that many States had become independent, but also to the fact that the cold war had been superseded by peaceful coexistence.

23. Although it had been drawn up at a time when the structure of the international community was very different from what it was to become, the Charter had not prevented United Nations bodies from achieving important results, initially unforeseen, by applying the technique of progressive interpretation. In that connexion he observed that a review of the Charter might have as its first fruit the consolidation of the results already achieved. But it was not enough to consider only those achievements which the Charter had made possible. It was also necessary to consider what could be achieved if the Charter was revised not only with respect to the maintenance of peace and security but also with respect to such fields as development and international economic co-operation and the peaceful settlement of disputes.

24. The Charter was the most important of all multilateral treaties and it was also the constituent instrument of the international community, containing a whole series of provisions for the establishment of institutional mechanisms and bodies to meet a very specific need. Consequently, if the Organization was to carry out its role, it was not enough to say that Member States should fulfil their obligations. It was also necessary to modify structures which, in the general opinion of Member States, were not longer in tune with reality.

25. His delegation was satisfied with the work carried out by the *Ad Hoc* Committee, of which it was a member.

During the general debate approximately 10 delegations, which had not until then taken a position on the substance of the question, had declared themselves in favour of a review of the Charter and had made specific proposals to that end. But the work done by the *Ad Hoc* Committee would be seen to be even more remarkable if the unfavourable circumstances in which it was accomplished were taken into account. On the one hand, the date on which it had had to meet had not been very satisfactory and, on the other, the Secretariat had limited itself to providing the *Ad Hoc* Committee with a document which reproduced many documents published previously and whose publication, given its size, had certainly involved high costs, without thereby meeting the requirements of General Assembly resolution 3349 (XXIX). Moreover, the *Ad Hoc* Committee had not had summary reports at its disposal and it had had to overcome the obstructionism of certain delegations. However, despite those obstacles the *Ad Hoc* Committee had carried out its mandate, an achievement which would not have been possible had not the question been of such interest to the vast majority of Members of the United Nations. His delegation expressed the hope that, in future, a climate of collaboration would prevail. In conclusion, he stated that it was in any case necessary to extend the mandate of the *Ad Hoc* Committee, which had carried out its tasks in a manner conducive to the realization of the purposes and principles of the Charter of San Francisco.

26. Mr. FIFOOT (United Kingdom) recalled that in his introduction to the report of the *Ad Hoc* Committee on the Charter of the United Nations at the 1561st meeting, the Rapporteur had noted that there was a fundamental divergence of opinion on the necessity of carrying out a review of the Charter. It was impossible to ignore the fact that in addition to those delegations which were committed to the course of reviewing the Charter, there was a significant number which were strongly opposed to that course and many more which had misgivings about it. Furthermore, many of those delegations which had voted for the establishment of the *Ad Hoc* Committee had also expressed doubts and had limited their interest to matters that would not involve amendments to the Charter and had urged caution in venturing into that field. In those circumstances, it was not helpful to describe those who were not in favour of a review of the Charter as obstructive. The purpose of the discussions which had taken place in the Sixth Committee at the preceding session and the purpose of the mandate of the *Ad Hoc* Committee were both limited to consideration of the possibility of revising the Charter. The divergence of opinion on that issue had not been resolved, either in the Sixth Committee or in the *Ad Hoc* Committee and it remained appropriate to canvass the arguments against a review of the Charter during the current session.

27. His delegation considered such a revision unnecessary. Many speakers, including some of those who had supported the establishment of the *Ad Hoc* Committee, had emphasized the remarkable adaptability of the Charter, as demonstrated in the past 30 years. Not only did his delegation consider a review of the Charter unnecessary, it also feared that it would lead to confrontation, animosity and frustration. At a time when there were many causes of concern in the world, the United Nations itself should not

generate further dissension. The course of events since the twenty-ninth session of the General Assembly had only confirmed his delegation's misgivings. Until the meeting of the *Ad Hoc* Committee, proponents of a review of the Charter had stated that the purposes and principles of the Charter were not impugned. However, an amendment to Article 1 of the Charter had been proposed in the *Ad Hoc* Committee and had just been repeated at the previous meeting of the Sixth Committee. His delegation's fears were now being realized: there had been proposals to amend the Charter which went beyond the structure of the Organization and sought to institutionalize in the Charter matters that were essentially questions of policy. The Charter itself was largely a matter of structure, and the stability of the structure was an end in itself. Policy was not part of the structure of the Organization but of its activities. It would therefore be dangerous to reflect policies in the Charter.

28. His delegation felt that the necessary conclusions had to be drawn concerning the ineffectiveness of the *Ad Hoc* Committee, which resulted from the fact that it had been set up in discord rather than in an attempt to conciliate interests.

29. There was little prospect of a review of the Charter producing results which would be fruitful. Some delegations no doubt wished to discuss various issues involving a review of the Charter, while others wished to discuss ways and means of enhancing the ability of the Organization to fulfil its role in a manner which would not lead to confrontation and frustration. Unless an attempt was made to conciliate those diverging views, further discussion could only be a repetition of the sterile debates of the *Ad Hoc* Committee.

30. If the *Ad Hoc* Committee was to pursue its activities, it would perhaps be appropriate for it to consider also the question of strengthening the role of the United Nations. His Government's views on that subject had been sent to the Secretary-General on 29 April 1974.³

31. The peaceful settlement of international disputes, the history of which was recorded in document A/10289, must be a central area of endeavour for the Organization. Rather than acquiescing in past failure, the United Nations should undertake discussions in an atmosphere of mutual confidence and co-operation under the two agenda items being considered.

32. Mrs. HO Li-liang (China), exercising her right of reply, said that the statement made by the Soviet representative at the previous meeting had shown him to be an out-and-out hegemonist. As soon as the Soviet delegation had heard the words "review of the Charter", it had launched into a tirade against China and the small- and medium-sized countries which demanded respect for the principle of the equality of all countries. Her delegation supported those just demands, which reflected the aspirations of the majority of States Members of the United Nations, but the Soviet delegation did everything it could to block a review of the Charter. The Soviet delegation's position on review of the Charter was at variance with that of many third world countries. She asked who it was that was right and who wrong, and

who it was that promoted progress in the United Nations and who that did his best to turn back the natural course of history. The answer to those questions was obvious. The Soviet representative had heaped abuse on the countries which defended justice. According to the Soviet delegation, to consider the question of a review of the Charter would be tantamount to shaking the whole edifice, but in fact it labelled any initiative that might threaten its privileges as a super-Power as a crime aimed at undermining the United Nations and the Charter. In her own delegation's opinion, the corner-stone upon which the Organization rested was the principle of equal rights for all countries. The United Nations was not a fief where the super-Powers could pursue a policy of coercion and world affairs should be managed by all States in the world. The Soviet delegation had also asserted that Charter revision would put an end to "peaceful coexistence of the two systems and upset the balance of power". It was obvious that since the emergence of social-imperialism, the socialist camp no longer existed. The Soviet Union and the United States belonged to the first world which stood in opposition to the third world comprising the developing countries which had been suffering from the bullying, control and intervention by the two super-Powers. Those two super-Powers were trying to impose their hegemony in the world and the USSR, while boasting that it protected the interests of the small countries, had nothing but contempt for them.

33. While the Soviet delegation did nothing but sing the praises of détente and disarmament, the Soviet Union was in fact pursuing a policy of aggression and expansion of social imperialism. Whenever tensions made themselves felt anywhere in the world, the tentacles of the two super-Powers, which were overtly or covertly in competition, would reach out. In fact détente was merely a sham. According to the Soviet delegation, to point out the inevitability of war was to make propaganda, but that was vicious slander designed to distract the members of the Committee and such efforts were a waste of energy. Currently, the two super-Powers were engaged in an arms race and some day their contention would lead to war against each other. In the past 10 years, the Soviet Union had spent 100 billion dollars for defence and its armed forces were in excess of its needs.

34. The Chinese people, for their part needed a more favourable international climate so that they could dedicate themselves to the task of national construction. However, they had to increase their vigilance and show that they were aware of the danger by denouncing false declarations of détente and combating the hegemony of the super-Powers.

35. The Soviet delegation had stated that the Chinese delegation was anti-Soviet. Everyone knew, however, that the Chinese people were friends of the Soviet people but that the Soviet ruling clique had long since betrayed Leninism and socialism. Her delegation would continue to raise its voice against the hegemony of the Soviet Union because it supported the just demands and reasonable proposals of the small countries.

36. It was pointless to deny that the Soviet delegation had abused its veto power in the Security Council. She enquired whether it had not, for example, in August 1968 prevented the adoption of a draft resolution in which a majority of

³ See A/9695.

the members of the Council condemned the USSR for sending its armed forces into the territory of one of its allies, as the records of the Security Council showed.

37. Her delegation was sincere and serious on the question of Charter review and revision. She stated that suggestions such as expanding the power of the General Assembly, restricting the power of the Security Council, changing the composition of the Security Council and limiting or abolishing the veto right deserved serious consideration. The Soviet delegation, however, did not dare to face up to the reality and the just demands of the great majority of Member States.

38. Mr. KOLESNIK (Union of Soviet Socialist Republics) observed that lies and slander aimed at the world's first socialist country had formerly been an expression of the importance of the bourgeoisie and its desire to recapture power from the workers. In the present case, slander was nothing new and served as a weapon of the clique in Peking, which was hypocritically trying to rank itself among the countries of the third world—a pretense that was both comical and repulsive. Those who wished to know where the truth lay should recall the words Cervantes gave to one

of his heroes: "If a dog barks, that means we are on the right track."

39. Mrs. HO Li-liang (China) said that the Soviet representative had had to resort to slander, which showed that the Soviet delegation was aware of its guilt and afraid of the truth. A review of the Charter was in keeping with the aspirations of the people, and the establishment of the *Ad Hoc* Committee was a first step. However the Soviet delegation might attempt to oppose the just demands of a large group of countries, it would not succeed, and the hegemony of the great Powers, which ran counter to history, was doomed to failure.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (continued) (A/10198 and Add.1-5, A/C.6/L.1019, A/C.6/L.1022)

40. The CHAIRMAN informed the Committee that Liberia should be added to the list of sponsors of draft resolution A/C.6/L.1019.

The meeting rose at 5.15 p.m.

1570th meeting

Thursday, 20 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1570

Tribute to the memory of Generalissimo Francisco Franco, Head of State of Spain

1. The CHAIRMAN expressed regret at the death of Generalissimo Francisco Franco, Head of the Spanish State, who had passed away the previous night after a long illness. On behalf of the Sixth Committee and himself, he requested the Spanish delegation to convey the Committee's deepest regrets and condolences to the immediate family of Generalissimo Franco and to the Government and people of Spain.

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Generalissimo Franco, Head of State of Spain.

2. Mr. FUENTES IBAÑEZ (Bolivia), speaking on behalf of the Latin American Group by delegation of its Chairman, expressed the Group's deep regret on the sad occasion of the death of Generalissimo Franco, who would be recorded in the history of the last 50 years as one of the great leaders in international politics. He hoped that the Spanish representative would convey his delegation's deepest regrets and condolences to the people and Government of Spain.

3. Mr. PEDAUYE (Spain) thanked the Chairman of the Committee and the Chairman of the Latin American group

for their expressions of sympathy on the death of Generalissimo Franco.

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (continued) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (continued) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

4. Mr. MANYANG D'AWOL (Sudan) said that, as the Charter of the United Nations reflected the highest ideals and aspirations of the international community, any attempt to review that instrument should be made with a view to avoiding any weakening of its fundamental principles and purposes, in which his delegation strongly believed. Yet, institutions, like men, grew and became obsolete and change was imperative if there was to be a new international order based on justice. What was to be challenged was not the weighted power of some States, which was

inherent in the Charter, so much as the wanton exercise of such power.

5. His country was dissatisfied with the deplorable abuses perpetrated by some States in exercising the veto. It was intolerable for the veto to be used to support suppression and racial discrimination, as had been done the previous year when some Powers had exercised the veto in favour of South Africa. While not wishing to remove the veto, which was a historical fact, the majority of the Members of the United Nations today would have had something different to say had they participated in the San Francisco Conference of 1945. Other countries had not been heard because they were under colonial domination, but that did not mean that their views should now remain unheard. To check and balance the use of the veto in the Security Council, more weight should be given to the General Assembly resolutions, which should be effectively applied by Member States. Some provisions of the Charter had become out-dated: for example, the Articles dealing with the Trusteeship Council should be restructured and the reference to an "enemy state" in Article 53 should not be retained. In addition, the International Court of Justice should be given more influence and States should resort to it more frequently for the settlement of disputes. States might gain greater confidence in the Court if it had more power or if its very slow procedures were changed. The maintenance of international peace and security was of paramount importance and the concept of peace should be broadened to provide universal solutions in keeping with the demands of the international community. The new structure of the Charter should also take into account the economic restructuring necessary to meet world economic needs.

6. His delegation believed that the *Ad Hoc* Committee on the Charter of the United Nations had a serious function to fulfil and would therefore support the extension of its mandate.

7. Mr. HOLLAI (Hungary) said that his delegation had carefully studied the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033), as well as the observations received by the Secretary-General from Governments pursuant to General Assembly resolution 3349 (XXIX). The Hungarian Government's observations were to be found in document A/10113/Add.1, which brought up to date its previous position on the subject submitted to the twenty-seventh session.¹

8. The report of the *Ad Hoc* Committee and the discussion in the Sixth Committee during the current session had clearly revealed a fundamental divergence of opinion on the necessity of carrying out a review of the Charter. That was the most important argument against, and an insurmountable obstacle to the realization of, a revision of the Charter. His delegation had attentively studied all the arguments put forward by various Member States in favour of reviewing the Charter and was still ready to listen to any argument prompted by a desire to strengthen the role of the United Nations in fulfilling the lofty purposes enshrined in the Charter. At the same time, however, it sincerely hoped that its own arguments would be listened to.

9. The Charter was not perfect, being a work of man and reflecting the historical circumstances surrounding its adoption. The contradictions of international relations were the product of objective conditions determining the development of the international situation or sometimes the product of subjective decision-making by the individual States concerned. There were a number of contradictions within the framework of inter-State relations and inevitable imperfections in certain social or economic systems or in the domestic policies of a number of countries. One could not expect to eliminate the evils of international life or even substantially limit their effects by including new provisions in the Charter or deleting some of the existing ones. For centuries proposals had been put forward for the establishment of lasting peace in the world, but they had not been adopted because of the lack of consent by the States concerned. Instead of devising new provisions for the Charter, States ought to do their best, if necessary by using radical and unorthodox methods, to fulfil the aims and purposes already embodied in the Charter.

10. The ability of the United Nations to adapt itself to changing conditions and requirements was acknowledged by the majority of its Members. That adaptation had largely been the result of evolving practice and not formal revision of the Charter. His delegation admitted that in the course of the evolution of practice and the constant interpretation of the provisions of the Charter by various organs, there had been several cases in which the solution had not corresponded to the letter and spirit of the Charter. The blame lay not with the Charter, however, but with those Members of the Organization responsible for the adoption of a given decision. His delegation was convinced that despite the changes that had taken place in the world, the Charter unquestionably allowed the United Nations to perform its noble tasks. Moreover, the Charter was flexible enough to allow for a progressive development of United Nations activities. That was shown by the rapid expansion of United Nations activities in the economic field and in the field of decolonization. It could not be denied that the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples had contributed substantially to the elimination of colonial domination.

11. No particular difficulty had arisen from the desuetude of certain obsolete provisions of the Charter. As the United Kingdom representative had rightly pointed out, in the *Ad Hoc* Committee, disuse had its own constitutional effect (*ibid.*, p. 96). Any attempt to remove from the Charter those provisions which had fallen into disuse might prove dangerous in setting off a possible chain reaction of other substantial amendments.

12. His delegation had been gratified to witness in recent years the emergence of the policy of détente and the sincere efforts of various groups of States to foster friendly relations and co-operation. However, détente and co-operation were not irreversible and, while some of the old contradictions were about to disappear, new ones had emerged. In 1945 the unanimity of the great Powers had been the major driving force behind the creation of the United Nations; in 1975 such unanimity was no longer present. Owing to the exceptional circumstances of the Second World War, the other original Members of the United Nations had been compelled to exercise a remark-

¹ See A/8746/Add.1.

able degree of restraint in spelling out their respective national positions, but that restraint had now yielded to a vigorous assertion of national interests and to the proliferation of various proposals which were at times diametrically opposed to one another. Accordingly, his delegation believed that the time was not ripe to undertake a general review of the Charter.

13. Those who were against the review of the Charter were often accused of taking an allegedly conservative position of defending the *status quo* of a so-called bygone era. It would be wrong to consider his own delegation and many others having similar views to be wedded to conservatism and the *status quo*. The truth was quite the opposite. His delegation was in favour of making the United Nations a more effective instrument for the maintenance of international peace and security. The United Nations could play an important role in building a universal collective security system closely interdependent and interacting with regional organizations and in expanding bilateral relations and co-operation among States in the political, economic, social and cultural fields. His delegation also advocated the principle of unanimity of the permanent members of the Security Council, which bore the greatest responsibility for the maintenance of world peace and the avoidance of thermonuclear war. Progress in the field of disarmament was of vital importance. The United Nations had a role to play in that regard, together with other bilateral and multilateral forums. Both old and new hotbeds of international tension should be eliminated, and the existing framework of the Charter provided ample scope for asserting the role of the United Nations in that field. Within the framework of the existing Charter provisions, the United Nations could and should contribute more effectively to the economic advancement of the developing countries and the establishment of international economic relations on new and more equitable foundations. Colonialism, racism, *apartheid* and all other forms of racial discrimination must be finally and completely eliminated. His delegation favoured streamlining the United Nations, updating its methods and combating bureaucratic inefficiency. Proposals such as those set forth in the report of the Group of Experts on the Structure of the United Nations System² should be studied carefully. Last but not least, the progressive development and codification of international law would have an important impact on inter-State relations and on United Nations activities.

14. As his Government had stated in paragraph 6 of its reply to the Secretary-General, it was firmly convinced that the attention of the United Nations should not be focused on a review of the Charter but on the elimination of existing hotbeds of international tension, on furthering the policy of détente and on efforts to make détente irreversible, and his country had faith in the provisions of the Charter and it was convinced that efforts aimed at reviewing it would only weaken the role played by the Organization in the maintenance of peace and security.

15. Mr. SANDERS (Guyana) observed that the question of the need for Charter review was not part of the mandate of the *Ad Hoc* Committee. In establishing the *Ad Hoc* Committee, the General Assembly had already decided, in

resolution 3349 (XXIX), that there was such a need and had, in paragraphs 1 and 5 of the resolution, established certain tasks for the *Ad Hoc* Committee. The first session of the *Ad Hoc* Committee had been taken up with a general exchange of views and the *Ad Hoc* Committee had ultimately been unable to fulfil its mandate. There were numerous reasons for that failure: August was perhaps not the best month for meetings; a general atmosphere of confrontation and suspicion had prevailed; and representatives had shown extreme caution and uncertainty as to how to proceed at that early stage. Too large a part of the general debate had been taken up by an irrelevant discussion on the question whether it was necessary to review the Charter, despite the fact that the General Assembly had already decided that question in the affirmative.

16. In the view of his delegation, it was far too early to decide whether the *Ad Hoc* Committee had been successful or not. Many other committees had had slow beginnings but had been able, with patience and goodwill, to reach generally acceptable solutions, even on problems where the starting positions seemed quite irreconcilable. His delegation urged that the Sixth Committee should recommend the renewal by the General Assembly of the mandate of the *Ad Hoc* Committee so that it would be able to meet for at least one more session.

17. It was important for the *Ad Hoc* Committee to find a way of escaping from stalemate and confrontation. It could, for instance, concentrate its initial efforts on common ground, such as proposals and suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. Such suggestions could be found in the written observations of States, in the statements in the general debate and in the letter recently submitted by Romania (A/C.6/437).

18. With regard to possible recommendations and guidelines on methods of work for the *Ad Hoc* Committee, he found merit in the suggestions of Mexico contained in annex II to the *Ad Hoc* Committee's report. Another method of work had been suggested by the representative of Madagascar at the previous meeting, namely that the *Ad Hoc* Committee examine the Charter and review it article by article, without proceeding to any revision.

19. His delegation did not share the fears of those delegations which felt that a review of the Charter was undesirable and dangerous. He did not believe that the majority of Members of the Organization, the smaller States, would "cut the bough on which they were standing". His delegation would support any resolution recommending that the *Ad Hoc* Committee meet again at a convenient time for at least another session and that its mandate be broadened to encompass a study of proposals for the strengthening of the role and functions of the United Nations. It would likewise not object to any increase in the membership of the *Ad Hoc* Committee.

20. Mr. PHUMAPHI (Botswana) said that the controversial question of the review of the Charter was a very delicate one that had to be handled with the greatest care. An answer could however be found in the Charter itself by reading its provisions to establish the intention of the founders of the Organization. His delegation was of the

² See A/AC.62/9.

view that, when the Charter had been drafted, it had been expected that there would some day be a need for change in its provisions, as could be confirmed by Articles 108 and 109. Review of the Charter should not be undertaken just for its own sake but should be a response to the existence of conditions militating in favour of change. His delegation felt that certain considerations which had been valid in 1945 and were responsible for the original form of the Charter were no longer applicable. Certain Members had for instance been designated as permanent members of the Security Council and given veto power on the basis of their contribution to victory in the Second World War; that criterion had been appropriate in its time but now a more appropriate formula should be developed which better reflected current realities and the aspirations of the world community. The permanent members of the Security Council had become polarized into power blocs which tended to agree on very few occasions. Their veto power had been abused to frustrate the realization of the very objectives which the United Nations had set itself to achieve, such as international peace. The non-aligned countries were concerned that the United Nations should not be allowed to degenerate into a forum for quarrels between power blocs while international peace was being violated.

21. The fears of those opposing review of the Charter were unfounded and reflected largely a fear of the unknown. Review of the Charter was not being advocated because the document had proved to be completely useless. Much had been achieved under the Charter in its existing form. A review was being sought in an effort at least to identify the defects preventing the maximum achievement of the objectives envisaged by the Charter. Everyone admitted that the Charter was not perfect, but some States refused to co-operate with advocates of improvement of the Charter, apparently because they were afraid that removal of the Charter's imperfections might reduce their power and place them on an equal footing with other Members of the Organization. That lack of co-operation was an example of the refusal of States to co-operate or compromise referred to by many representatives and was another of the many reasons why the Charter should be reviewed. It was also important to keep in mind that, while review of the Charter would be a major step towards strengthening the role of the United Nations, Member States would still, of course, be expected to abide by the provisions of the Charter.

22. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation emphatically rejected any attempt to revise the Charter under any pretext and affirmed, as stated in his Government's letter to the Secretary-General (see A/10108), that only by following the principles and purposes of the Charter could the noble goals of the United Nations and the strengthening of peace and security be achieved. There had previously been two exhaustive reports on the question of Charter review³ and the current report of the *Ad Hoc* Committee showed again that there was a fundamental divergence of opinion on the necessity of carrying out a review of the Charter and that, as a consequence, the *Ad Hoc* Committee had achieved nothing useful. The majority of States, in their written

comments on the matter, had expressed opposition or uncertainty on the question of review. The lack of a general desire on the part of States for a review gave the *Ad Hoc* Committee no basis for undertaking any such action and confirmed that its creation had been a hasty and an unconsidered decision, contrary to the interests of the United Nations.

23. Some members of the *Ad Hoc* Committee had tried to create an artificial atmosphere of urgency, attempting to guide that Committee into areas beyond its competence. He welcomed the statement by the representative of Italy to the *Ad Hoc* Committee (see A/10033, p. 48) warning against hasty and unconsidered measures. It should be remembered that the fact that some States had advanced proposals for reviewing the Charter was not of itself proof of the need for a review.

24. Some representatives favouring review had referred to the passage of time since the founding of the United Nations, the lack of Charter review in that 30-year period and the increase in United Nations membership. They should recall that the changes in the world during the past 30 years had taken place through the mediation of the Charter, which confirmed its viability and effectiveness. The increase in membership was proof of the worth of the Charter to which all Members had pledged their adherence upon admission. It was not true that the interests of developing countries were insufficiently represented in the existing structure of the United Nations, for those countries were members of all main bodies of the Organization and played a major role in its decision-making process. With the active participation of developing and socialist countries, the United Nations had taken a significant number of useful decisions in recent years.

25. Some proponents of Charter review had objected to the principle of unanimity of the permanent members of the Security Council. His delegation felt that that principle was a vital instrument for the maintenance of peace and security and the adoption of decisions, based on agreement of Member States, with respect to the main problems of the contemporary world. It was necessary to understand that the United Nations was unthinkable without that principle under the existing conditions of two coexisting differing social systems. The principle of unanimity had many times allowed the United Nations to avoid taking hasty decisions which could have led to serious consequences for the cause of peace. That principle was the foundation of the whole Organization and prevented the possible use of the Security Council in the narrow interests of Governments or groups of Governments or in the cause of disunity and non-cooperation. The Soviet Union, as a permanent member of the Security Council, had many times used the right of veto in the interests of peoples struggling for their freedom and national independence and in defence of national liberation movements and the legal interests and rights of small States. The revision of that principle would destroy the Organization.

26. His country, like all socialist countries, had always stood for the improvement of the effectiveness of the United Nations but wished to draw attention to the danger of proposals which allegedly sought to increase the effectiveness and strengthen the role of the Organization. The

³ A/AC.175/L.2 and Corr.1 and A/AC.175/L.3 and Corr.1 and Add.1.

Organization and its Charter possessed great strength and authority, as was shown by the numerous important documents on vital social, economic and political questions which had been adopted. In the Final Act of the Conference on Security and Co-operation in Europe the signatory States had reaffirmed their adherence to the principles and purposes of the Charter and declared their active support of the Organization.

27. Under existing conditions, when a clear trend towards the reduction of international tensions could be seen and the United Nations had begun to solve the problems foreseen by the Charter more effectively, the principles and purposes of the Charter should be reaffirmed, not attacked, and States should rededicate themselves to carrying out their Charter obligations. It was not the fault of the Charter that certain useful United Nations decisions had remained unimplemented. The fault was rather that some Member States had failed to carry out their Charter obligations and were in effect violating its principles and purposes.

28. His delegation most emphatically opposed the review of the Charter, convinced that such a review posed a serious threat to the existence of the United Nations, and for that reason opposed the renewal of the mandate of the *Ad Hoc* Committee, whose activities would adversely affect the climate of trust between States and hinder the normal activities of the United Nations.

29. Mr. DONORABAYE (Chad) said that because of profound changes in the life of the people of Chad, his country had been unable to make a timely response to the invitation of the General Assembly in resolution 3349 (XXIX), paragraph 2. It adhered, however, to the position of principle on the important question of Charter review which had been expanded by the Minister for Foreign Affairs and Co-operation of Chad in his statement at the 2359th plenary meeting of the General Assembly on 24 September 1975.

30. Like many other delegations, his delegation believed that certain outmoded provisions of the Charter should be replaced by new provisions which were consistent with the realities of contemporary international life. The fundamental purpose of the United Nations was the maintenance of international peace and security in order to avoid the horrors of war and work in that area should not be monopolized by the great Powers. Solutions to international problems of general interest, whether economic or social, should be sought by all countries, regardless of their size. That was the only way in which the United Nations could correct certain past errors and become an effective instrument for maintaining and consolidating international peace and security, development and co-operation among States. His delegation would undertake as a matter of urgency to make known in detail, to the Secretary-General at a later time its observations and proposals.

31. The *Ad Hoc* Committee had done useful work despite the divergences which had emerged at its first session. His delegation was glad to see the interest which the question of Charter review had aroused and would support a draft resolution extending the mandate of the *Ad Hoc* Committee.

32. Mr. ANWAR SANI (Indonesia) said it was highly significant that the item on the report of the *Ad Hoc* Committee was being considered during the thirtieth anniversary session of the United Nations, since during those 30 years the international setting in which the Charter had been drafted had undergone fundamental changes. They included the emergence of newly independent States, which had created greater awareness of the need for a more democratic decision-making process in the United Nations, based on the principle of sovereign equality recognized in the Charter; important changes in the political field; an ever-widening gap between rich and poor; and the growing scarcity of resources, which had created greater interdependence in international relations and an increasing need for global solutions. It was also noteworthy that the main concern of the international community was no longer merely international peace and security, as in the immediate post-war era, but extended to international justice and welfare.

33. Because of those changes, he agreed with those who believed that in certain areas the Charter was no longer able to meet the needs of the international community. At the same time, his delegation adhered to the purposes and principles of the Charter, which had served and would continue to serve as the basis for international relations.

34. It was gratifying to see that at the twenty-ninth session of the General Assembly the views of Members on the Charter had taken the form of positive action with the adoption of resolution 3349 (XXIX). The fact that that resolution had had the support of the majority of Member States indicated the need to take concrete steps towards Charter review.

35. However, the *Ad Hoc* Committee had been established over the strong objection of some State Members, for well-known reasons, and it was regrettable that that negative attitude had continued in the work of the *Ad Hoc* Committee itself. That had, in a way, hampered its effectiveness. But the *Ad Hoc* Committee had not failed. Its mandate had been complex and politically controversial and it had had to work in an unjustified atmosphere of mistrust and suspicion, which had delayed the start of a meaningful exchange of views, even though many State Members that were in favour of Charter review had taken the initiative of promoting such an exchange. In those circumstances, it was unrealistic to expect that the *Ad Hoc* Committee could complete its work in a single short session and the past session should therefore be regarded as a first useful step towards realization of its mandate.

36. The *Ad Hoc* Committee had been a useful forum for Member States to make specific proposals, as indicated in annex I to the report. His delegation had submitted to the *Ad Hoc* Committee, in general terms, some proposals for limiting application of the principle of unanimity in the Security Council, institutionalizing peace-keeping operations by interposition and increasing the attractiveness of procedures for the peaceful settlement of disputes by broadening the options available under Article 33 of the Charter.

37. The positive aspects of the *Ad Hoc* Committee's work should not be overlooked, and that Committee's mandate

should be renewed, with a more realistic time-table which would enable it to pursue its work. It was unrealistic to expect it to complete its work in one or two more sessions. The first order of business of the *Ad Hoc* Committee should be the establishment of an efficient method of work so that more "dialogues of the deaf" could be avoided. It would be useful if unrealistic arguments that a review of the Charter was not desirable were replaced by frank and useful discussions exploring the least controversial areas with a view to reaching an understanding, if not a consensus, on ways of making necessary improvements. That could be done more effectively if the *Ad Hoc* Committee set up one or more working groups. In that regard, it would be appropriate for it to consider seriously the proposals made by Mexico, as they appeared in annex II to the report. Because of the importance of the work of the *Ad Hoc* Committee and the need for consistency, that Committee should prepare for the General Assembly another substantive report reflecting the major trends of its discussions.

38. His delegation hoped that understanding and co-operation in the *Ad Hoc* Committee would start immediately. The current serious effort in that direction should be noted with appreciation and encouragement. He wished to remind the Committee, in conclusion, that Charter review did not necessarily imply Charter revision.

39. Mr. ALVAREZ PIFANO (Venezuela) said that his delegation wished to reiterate that it was interested in studying the possibility of amending the Charter, for two reasons. First, complex changes had occurred since the adoption of the Charter, including the emergence of third world countries as significant participants in the search for peace and security and social changes which led those countries to seek active participation in international political decisions. Those changes made it necessary to adapt earlier legal instruments and serious consideration should therefore be given to the possibility of revising the Charter so that it would meet the needs of modern times.

40. Secondly, many countries considered the question of Charter review highly important and wished to have the opportunity to express their opinions on that subject, either with a view to increasing the ability of the United Nations to achieve its goals or to drafting a revised instrument which would permit the attainment of more ambitious goals. The United Nations had to face important restructuring problems for its tasks were becoming ever more complex and would require more and more dynamism and creativity. There was a need for new solutions to settle conflicts and for firm definitions to guide the conduct of States large and small in areas of major interest which exceeded the scope of the normal internal political order.

41. However, the review of the Charter could not be undertaken as if it were an inoperative instrument. It would be a very serious error to underestimate how much the United Nations had done in 30 years for world peace and a no less serious error to ask the United Nations for more than it could feasibly give. His delegation was therefore prepared to co-operate in making revisions of the Charter which would improve the functioning of the Organization and would win the widest possible acceptance.

42. A profound restructuring of the United Nations system was needed as soon as possible, with a view to

making it better organized and more responsive. As a third world country, Venezuela attached particular importance to instruments for effective action in favour of developing countries, such as the United Nations Conference on Trade and Development. Any reform in that area should be aimed at strengthening and perfecting such instruments so that they could more effectively meet the needs of the new international economic order. That was the only way of achieving a proper balance among all parties concerned.

43. His delegation, which had supported the establishment of the *Ad Hoc* Committee, noted with satisfaction that that Committee had begun its work with a clear concept of the importance of its mandate. The prudent way in which it had conducted its debate showed that many of the fears caused by its establishment had been unfounded. It had in no way damaged the prestige of the United Nations or discredited any provisions of the Charter. Indeed, there had been no more of a political confrontation than would be aroused by a debate on any other important item.

44. The *Ad Hoc* Committee should therefore continue its work in the forthcoming year, in a session of appropriate length, and should establish general guidelines for its work. His delegation consequently supported the Mexican proposal (see A/10033, annex II) that two subcommittees should be established, one to examine proposals for amending the Charter and the other to examine proposals for increasing the ability of the United Nations without amending the Charter.

45. He mentioned a number of important steps taken by the United Nations in the field of international peace and security which constituted the basis for the desired world structure. The co-operation of the large countries was indispensable in that area, as was absolute respect for the sovereignty of the developing countries over their renewable and non-renewable natural resources. Third world countries were convinced that any action which infringed upon that principle of sovereignty would also endanger international security.

46. He also mentioned a number of activities undertaken in the Latin American region, which showed that international security was an idea to which all countries were committed and which would guarantee the rights of all. Venezuela, which had always fought for its sovereignty and respect of the sovereignty of other countries, firmly believed that the United Nations during its 30-year history had made very fruitful efforts to harmonize relations in an increasingly interdependent world.

47. Mr. SIMANI (Kenya) said that his delegation, as a member of the *Ad Hoc* Committee, regretted that owing to polarization of positions the Committee had been unable to accomplish any of its tasks. Nevertheless, given goodwill and understanding the *Ad Hoc* Committee could succeed and he therefore appealed to the Sixth Committee to consider seriously the need to extend the *Ad Hoc* Committee's mandate.

48. His delegation's position concerning Charter review had been fully set forth at the twenty-ninth session⁴ and in

⁴ See A/9739.

the statement made by the Kenyan Minister of Foreign Affairs at the 2362nd plenary meeting of the General Assembly on 25 September 1975. For the reasons given in that statement, his delegation believed a review of the Charter was not only timely but imperative and it totally rejected the argument advanced by some that the Charter was a sacrosanct document which had stood the test of time and could not be reviewed without jeopardizing the existence of the Organization. That argument was disproved by the fact that there had already been far-reaching amendments of the Charter which had not disrupted the smooth functioning of the Organization, namely the enlargement of the Security Council and the Economic and Social Council.

49. Even if the Charter had been a perfect instrument when it was drafted, it could not, in view of the radical transformation of the international scene, remain immutable and still meet the interests of Member States. That had been foreseen by the founders of the Organization, who had provided for Charter review in Article 109. His delegation had therefore strongly supported the establishment of the *Ad Hoc* Committee. It did not advocate wholesale revision of the Charter, but a review of its working methods, which could only be done systematically if the work was entrusted to such a committee. It would therefore continue to support the *Ad Hoc* Committee in the hope that all States would adopt a realistic attitude which would help to make the Charter more responsive to the interests of the international community as a whole.

50. Because any amendment to the Charter required the support of two thirds of the members of the General Assembly and of all permanent members of the Security Council, the fears that Charter review would lead to the majority imposing its will on a minority, compromising the vital interests of some, were grossly exaggerated. In any case, those arguments could equally well be reversed.

51. His delegation would support all efforts to facilitate the work of the *Ad Hoc* Committee and believed that its mandate should be extended. It had noted with interest the proposals and suggestions made in connexion with agenda item 29, which had the effect of facilitating the *Ad Hoc* Committee's work. To the extent that those proposals and suggestions came within that Committee's mandate, his delegation would support referring them to that Committee for consideration. It would not object to the possibility of enlarging the membership of the *Ad Hoc* Committee by a small number of States, including Romania.

52. Mr. BENITEZ (Uruguay) said that his delegation attached particular importance to agenda item 113. As a peace-loving country, Uruguay had closely followed the progress of international law, aware that only if its norms and principles were respected could future generations be guaranteed peace and security. Although not a member of the *Ad Hoc* Committee, Uruguay had followed its work closely and had sponsored resolutions on the item.

53. The Charter was the work of man, and therefore not perfect. For that reason its drafters had included Chapter XVIII, setting up formal machinery for its amendment.

54. Those who systematically opposed revision often spoke of a political agreement embodied in the Charter which they feared could not be touched without altering the balance which had given rise to that instrument. It was indeed essential to preserve the political agreement, but the substance of that agreement was the purposes and principles of the Charter, not the institutional structure or organs created by the Charter. As stated by Mr. Eduardo Jiménez de Aréchaga, the Uruguayan jurist who was currently a member of the International Court of Justice, the Charter, like the constitutions of States, contained a dogmatic and an organic part, one embodying basic purposes and principles and the other dealing with the organs which served to accomplish those purposes. It was the dogmatic part of the Charter, setting forth basic principles and purposes, which was the subject of true political agreement, and those principles and purposes should be maintained. However, no such immutable political agreement existed as to the organic part of the Charter. Great changes had occurred in the past 30 years and amendments to the organic part might help the United Nations perform its duties more effectively. In particular, the references in the Charter to historical conditions which no longer existed were meaningless. The realities of the current world could not be ignored and if they were not included in the machinery of the United Nations, or if there was no earnest attempt to include them, the United Nations would become obsolete. As the Uruguayan Minister for External Affairs had observed in his statement to the 2360th plenary meeting of the General Assembly on 24 September 1975, institutional reforms were needed to co-ordinate efforts in favour of the neediest countries. It was in that spirit that his delegation intended to sponsor draft resolutions extending the mandate of the *Ad Hoc* Committee, so that it could continue its highly important work.

The meeting rose at 1 p.m.

1571st meeting

Friday, 21 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1571

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. MAKEKA (Lesotho) said that his delegation failed to appreciate the reasoning of those who were opposed to a review of the Charter. That question had been before the General Assembly for many years and his delegation had voted in favour of resolution 3349 (XXIX) on the understanding that the procedural debate on the matter had been concluded. It was most regrettable that the *Ad Hoc* Committee on the Charter of the United Nations had not been able to go beyond the stage of procedural debate and that a fundamental divergence of opinion on the necessity of carrying out a review of the Charter still persisted. His Government supported the review of the Charter as the most appropriate method of strengthening the effectiveness of the United Nations as a whole and reaffirming confidence in the Charter.

2. His Government had not yet responded to the Secretary-General's invitation, pursuant to General Assembly resolution 3349 (XXIX), to submit its views on the question of Charter review because that issue was a highly complex and delicate one which needed to be looked into more thoroughly. His Government was currently studying the matter with a view to making specific observations.

3. In reviewing the comments submitted by other Governments, it was interesting to note that the majority of those opposed to the review were founding Members of the United Nations. They did not seem to realize that the proposed review would not necessarily lead to amendments to the Charter. At the San Francisco Conference, the founding Members had accepted the idea of reviewing the Charter and had included Article 109 in the Charter for that purpose. The formation of the *Ad Hoc* Committee was a step forward towards the implementation of that Article. The work of the *Ad Hoc* Committee was not irreversible nor binding on any country; its mandate was merely to submit a report.

4. The purpose of the review was not to provoke conflict or confrontation among the Members of the United Nations. However, profound transformations had taken place in the United Nations, particularly in the past 15

years. A vast majority of the present membership of the Organization had not participated in the formulation of the Charter.

5. While not overlooking the outstanding contributions made by the United Nations in maintaining international peace and promoting the process of decolonization, it must not be forgotten that détente was a game from which the developing world had been excluded. The small countries looked to the Charter to protect their sovereign independence, territorial integrity and security, which were constantly being threatened and trampled upon. Cyprus was one case in point, and another bloody tragedy was taking place in Angola. Since the establishment of the United Nations, black Africans had been and were being subjected to the most inhuman forms of racial discrimination and slavery by a minority of Europeans in their own country.

6. It had been said that the ineffectiveness of the United Nations in dealing with localized conflicts was due to lack of political will on the part of Member States which did not comply strictly with the Charter. A review of the Charter might expose the roots of that lack of political will. His delegation noted with appreciation that the USSR seemed to have made constructive suggestions in that regard which could be of great use to the *Ad Hoc* Committee. Other States, in particular Mexico, had submitted to the *Ad Hoc* Committee constructive proposals which deserved further study. His delegation would support any resolution that would give the *Ad Hoc* Committee more time to carry out its mandate.

7. He congratulated the Rapporteur of the *Ad Hoc* Committee on his concise and lucid introduction of the Committee's report (A/10033).

8. Mr. YOKOTA (Japan) congratulated the Rapporteur of the *Ad Hoc* Committee for his lucid and well-balanced introduction of the report, which had fulfilled well the difficult task of reflecting the divergences of opinion in that Committee.

9. As was well known, his delegation considered it appropriate to undertake a review of the Charter, first, because in 30 years tremendous changes had taken place in the international situation, in the nature and scope of the tasks facing the United Nations and in its membership, and, secondly, because the majority of Member States considered it timely to undertake such a review.

10. However, if members of the Sixth Committee continued to emphasize and thereby deepen the fundamental divergences of opinion mentioned in the report of the *Ad Hoc* Committee, frustrations could only be aggravated, and there would surely be no meaningful results in the current year. That would be unfortunate, to say the least. Rather

than repeating their positions of principle, members of the Committee would do better to deal directly with the problem by finding a way to bridge the gap between seemingly diametrically opposed views concerning the need for Charter review. He hoped that the Sixth Committee would give serious reflection to the possible damage to the United Nations which could result if that were not done.

11. The fact that the Sixth Committee had in the past successfully accomplished tasks of similar difficulty, such as drafting the Definition of Aggression and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, led his delegation to hope that divergences could be overcome if they were approached with an open mind and in a spirit of accommodation. His delegation was ready to go a long way to meet the opponents of Charter review and work out a mutually acceptable approach, but if they continued flatly to reject the spontaneous and legitimate desire of a considerable number of Member States for review of the Charter, there seemed to be no alternative to putting formally on record that the fundamental divergence was due to a small number of Member States which stubbornly opposed the desires of the overwhelming majority.

12. The General Assembly continued to need a special forum to deal with Charter review, whether the *Ad Hoc* Committee or some other forum to be agreed upon, since the views of Member States appeared to require in-depth study with a reasonable concentration of effort. His delegation was open-minded about the formulation of the assignment to be given that special forum but found it inconceivable that it would not study the material compiled by the Secretariat (A/10113 and Corr.1 and Add.1-3) pursuant to General Assembly resolution 3349 (XXIX), paragraph 4.

13. The *Ad Hoc* Committee, because it had held only general debates, had barely begun its work and would need some years to complete it. Review of the Charter, the fundamental document of the United Nations, was a serious task that required the utmost care. His delegation did not share the desire for hasty conclusions, nor did it blame the *Ad Hoc* Committee for not producing results in so short a session.

14. Furthermore, the General Assembly must provide the *Ad Hoc* Committee, or another body which replaced it, with adequate facilities for its work. In particular, as that Committee approached the advanced stage of its work, summary records would be essential to facilitate deliberations. Also, many members of the *Ad Hoc* Committee had felt that the report furnished by the Secretariat pursuant to resolution 3349 (XXIX), paragraph 4, was not sufficiently analytical. Because of the difficulty of preparing an analytical report on such a politically delicate question, it was necessary to make a more specific request to the Secretary-General for an analytical report so as to reduce the difficulty the Secretariat would have in preparing it.

15. His delegation did not view the two agenda items under discussion as diametrically opposed. There was considerable overlap between them in such areas as the role of the United Nations in the peaceful settlement of

disputes. Discussion of the item on the strengthening of the role of the United Nations need not be confined to the existing framework of the Charter and could also encompass the question of Charter review. In that case, it would be necessary to identify the areas of United Nations activities that needed to be strengthened, to decide on the remedies and to see whether or not those remedies required a Charter amendment.

16. The two items did not entirely overlap, however. An obvious example was the two clauses concerning "enemy States" in the Charter, which some delegations wished to delete as anachronistic. That could not be considered within the framework of strengthening the role of the United Nations. He wondered whether the statement by the Soviet representative at the 1568th meeting meant that post-war Japan and the two Germanys could no longer be identified with enemy States mentioned in Article 53 and that therefore there was no possibility of the application of those clauses either to Japan or to Germany. If so, it would indeed be difficult for the Soviet representative to deny the anachronistic nature of the clause. In order to clarify the situation and to dispel any doubts concerning the position of the Japanese Government on that issue, his delegation wished to state that, although Article 53 of the Charter identified enemy States, the developments after the Second World War, in particular the admission of those so-called enemy States to the United Nations as peace-loving States, had made the two clauses in question anachronistic and as a rule obsolete.

17. Mr. SHAMS (Bahrain) said that his delegation welcomed the efforts that had been made to strengthen the role of the United Nations and believed the item worthy of the attention of all Member States. In support of the Romanian initiative, thanks to which the item had been included in the agenda of the twenty-seventh session,¹ it had participated in the discussions on the item and it adhered to the views expressed by its Government in a memorandum to the Secretary-General dated 17 May 1974.²

18. As stated in that memorandum, discussion of the strengthening of the role of the United Nations was aimed at reinforcing peace and the principles of international law concerning relations among States. It was incumbent upon all States to live up to their commitment to respect the purposes and principles of the Charter and unless Member States complied with the decisions of the Organization there could be no progress.

19. An outstanding feature of the United Nations was its emphasis on the need for States to seek peace through open dialogue. The Organization had taken a great stride forward by increasing its membership until it was now nearly universal. States had made considerable accomplishments through co-operation and close contacts in the United Nations. They had strengthened the principle of respect for the political independence and national sovereignty of all States, repudiated the threat or use of force, guaranteed the legitimate rights of all peoples, particularly the right to

¹ See *Official Records of the General Assembly, Twenty-seventh Session, Annexes, agenda item 24, document A/8792.*

² See A/9695.

choose how to develop their natural resources without any outside interference, supported efforts to eliminate imperialism, *apartheid* and all forms of racial discrimination, and promoted the economic development of developing countries and the establishment of international relations based on equality and co-operation. During the past three decades, the United Nations had not only preserved international peace and security by encouraging peaceful dialogue, but had also proved to be an instrument for economic and social development. It had supported work towards achievement of the common goals of Member States and had played an effective role in eliminating the causes of international tension and in bringing peoples in many regions of the world together. All that had added to its political importance and made it an active organization of central importance.

20. The role of the United Nations had also been made more effective by adherence to its purposes and principles, faith in diplomatic relations as a means of solving international disputes peacefully, rejection of the use of force anywhere in the world and opposition to intervention in the domestic affairs of other States. The United Nations had also reinforced international economic co-operation, participation in efforts to establish a new economic order that would narrow the gap between developing and developed countries, supported the right of self-determination for all peoples still subjected to imperialism and foreign domination, backed liberation movements and condemned all forms of racial discrimination.

21. The strength of the United Nations in all those areas depended on co-operation by all States, democratically, in accordance with the spirit of the Charter. Inability of the United Nations to apply its decisions occurred because some States did not attach importance to those decisions and still believed in the logic of force. Force regrettably still prevailed in some areas of the world, despite the principles of justice enshrined in the Charter. Nevertheless, the role of the United Nations would have to be given special importance, since the Organization had proved on many occasions that it could overcome attempts to make force prevail. Moral support expressed in the United Nations and in its decisions could contribute to solving the problems he had described.

22. The strength and unity of the developing countries and their participation in the success of the Organization were important and inevitable. Because of the awakened consciousness and solidarity of those countries, coercion, practised in the past by certain great Powers in order to polarize those countries, was no longer acceptable. Other Members of the United Nations must try to understand the aspirations and interests of the developing countries and implement them fully, instead of making unfounded and unrealistic accusations. The United Nations would have to adapt itself to modern political developments. The decisions adopted by a majority of its Members would have to be applied in accordance with the provisions of the Charter and without discrimination if the Charter were not to remain a dead letter. He was referring in particular to decisions involving threats to international peace and security. A basic prerequisite for reorganization of the United Nations was strengthening the Organization and making its decisions more effective.

23. His Government had placed great confidence in the United Nations as the only forum which could fully understand the world situation. Negotiations in the United Nations, notably those held during the seventh special session of the General Assembly, had shown a new spirit of agreement and solidarity, to replace past confrontation and recriminations between developed and developing countries. If that spirit continued, the United Nations would achieve its purposes and principles.

24. Mr. GÜNEY (Turkey) said that his delegation's position on the question of Charter review was well known, having been stated on several occasions in the Sixth Committee. His Government's comments on the subject were reproduced in document A/10113/Add.1. While not unreceptive to the arguments put forward by those advocating a review of the Charter, his delegation believed that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations had made a formal and general review of the Charter unnecessary for the time being. The results of the work of the *Ad Hoc* Committee had not been encouraging and his Government doubted whether current international circumstances were any more auspicious for a general review than they had been at the time of the adoption of General Assembly resolution 992 (X) in 1955.

25. As a member of the *Ad Hoc* Committee, Turkey had observed that there was a fundamental difference of opinion with regard to the need to review the Charter. In its future work, the *Ad Hoc* Committee should consider proposals which would not have the effect of amending or formally revising the Charter. The *Ad Hoc* Committee would be well advised to consider ways and means of improving the ability of the Organization to achieve its purposes without resorting to revision of the Charter and its terms of reference should be reformulated accordingly. His delegation had no objection to Romania's suggestion that the membership of the *Ad Hoc* Committee should be enlarged without removing any of the present members, provided that it was acceptable to a majority of the members of the Sixth Committee.

26. His delegation was grateful to the Romanian delegation for introducing the item on the strengthening of the role of the United Nations at the twenty-seventh session and for the efforts it had made since then to improve the functioning and effectiveness of the General Assembly in carrying out its responsibilities under the Charter. The Secretary-General's report on that subject³ contained a number of constructive suggestions and proposals by Member States which should be taken into consideration by the principal organs of the United Nations with a view to improving their work. The study of ways of strengthening the role of the United Nations and enhancing its effectiveness should be continued.

27. Mr. MUHAMMAD (India) observed that the two items under consideration were closely interrelated; their proponents were requesting the General Assembly to reassess the role of the United Nations and to review the Charter in the light of the changed context of international relations. The

³ *Ibid.*

non-aligned countries had always welcomed all initiatives for the strengthening of the United Nations and expressed their full support for the purposes and principles of the Charter.

28. His Government had stated its position on the subject of Charter review in both the Sixth Committee and the *Ad Hoc* Committee. While his delegation was not against Charter review *per se*, it was not convinced that the time was ripe for undertaking a full-scale review and revision. The Charter was certainly not a perfect instrument, but at the same time it should not be blamed for the shortcomings and frustrations of an imperfect world community. It had demonstrated its flexibility in responding to the expectations of a changing world. A number of areas covered by the Charter had been reviewed and elaborated by means of covenants, declarations and definitions, including 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 Definition of Aggression.

29. The United Nations was facing many complex and difficult problems today, including economic co-operation and development, racial and colonial problems in southern Africa, threats to the peace in Cyprus and the Middle East, environmental protection, the energy crisis, disarmament, the law of the sea, uses of outer space and promotion of international trade. The slow rate of progress in those and related areas clearly could not be ascribed to deficiencies in the Charter. Complicating the inherent difficulties of those problems was the unwillingness of some Members of the United Nations to abide by the purposes and principles laid down in the Charter. Merely changing the Charter would not solve the problems. Review or revision of the Charter could not, therefore, be an end in itself. The primary emphasis should be placed on utilizing the latent potential of the Charter to enhance the ability of the United Nations to achieve its purposes.

30. His delegation was willing to consider any proposals or amendments designed to ensure the effective functioning of the United Nations in the economic, social and humanitarian fields. So far as political questions were concerned, however, a realistic approach must be adopted. While the veto system was obviously discriminatory, without it there might not be any United Nations at all.

31. It was obvious that a clear majority of the Members of the United Nations supported a review of the structure of the Organization and a reappraisal of certain provisions of the Charter. There was no harm in acceding to that request and a general discussion of the relevant suggestions and proposals could lead to a better appreciation of the realities of today, the relative practical importance of those provisions of the Charter that seemed objectionable and the essentiality or otherwise of amending such provisions as might have become obsolete.

32. Mr. SIAGE (Syrian Arab Republic) said that his country, which now had the great honour of being represented on the International Court of Justice, would continue to work towards strengthening the principles of international law in order that peace and justice might prevail for all peoples equally. The two items under

discussion were perhaps the most important with which the Sixth Committee had to deal and, although he would speak on them separately, they were intimately related, since a strengthening of the role of the United Nations was the logical result of improvement of the Charter.

33. Radical changes had occurred in the world in the 30 years since the end of the Second World War and the victory over fascism. They included a tripling of the membership of the United Nations and a change in the nature of the Organization brought about by the representation of Africa and Asia. The Charter and the terms of reference of United Nations organs must reflect that new reality, since the continued vitality of any international instrument depended on how well it reflected modern conditions.

34. That did not mean that the purposes and principles of the Charter should be infringed upon. On the contrary, the aim of any amendment or revision was to strengthen those purposes and principles in order to make the United Nations an effective instrument for the maintenance of peace and the halting of aggression. That should be done through the imposition of general sanctions designed to ensure respect for the Charter and for United Nations resolutions.

35. Short-comings in the United Nations were the result of misunderstanding and erroneous interpretation of the functions of the Security Council and the General Assembly as set forth in the Charter. The Security Council was an executive organ which had a particular responsibility for the maintenance of international peace and security. Its authority in the Organization could not be supreme, nor could its powers be broader than those of the General Assembly, so long as it represented only about 10 per cent of the membership of the United Nations. The supreme authority in the United Nations should be entrusted to the General Assembly.

36. Another erroneous application of the spirit of the Charter was the abuse by some large States of the right of veto. It was still possible for one State to oppose the nearly unanimous will of other Member States. Thus, Charter review should include broadening the authority of the General Assembly so that it would occupy first place in United Nations affairs. The veto power had been created because the victorious Powers of the Second World War had had special responsibility for resolving problems which had arisen as a result of the war. That situation had changed, now that the States which had been enemies during the war had become allies, and there was no justification for giving some States unrestricted veto power. Severe limitations should therefore be placed on the right of veto, which would prevent its abuse in contravention of the spirit of the Charter and the purposes of the United Nations, particularly with regard to self-determination and the prevention of aggression. In that regard, full equality should be achieved in the permanent membership, by replacing the present system by one which ensured the nearly continuous presence of the States which had particular responsibilities, not as a matter of absolute right but on the basis of agreement among geographical groups. The permanent members of the Security Council were no longer the only forces or groups in the world, as they had been when the

United Nations was founded, and a way must be found to ensure the permanent or nearly permanent presence of representatives of other groups and forces which had become an undeniable reality in the modern world.

37. It was also appropriate to amend the Charter with regard to the admission of new Members to the United Nations, which should be the responsibility of the General Assembly. The authority of the Security Council in that regard should derive from that of the General Assembly and not be binding on the latter. The same considerations applied to Chapter VII of the Charter; the General Assembly should have the authority to impose sanctions and the role of the Security Council in that area should be limited.

38. The matters to which he had referred were very sensitive. Necessary changes in the Charter should be made extremely carefully, after thorough study and the achievement of the greatest possible measure of agreement, provided that the need for such agreement was not used as a pretext for obstructing Charter reform.

39. Turning to the item on the strengthening of the role of the United Nations, he said that such strengthening could come about only through the "lawful majority" of the United Nations, since that majority alone could defend the right of peoples to self-determination and condemn racism, *apartheid* and *zionism*. A strengthening of the role of the United Nations could become a reality only if the "obstinate minority" desisted from its efforts to divide the lawful majority. That minority, which no longer found parliamentary traditions palatable, was threatening to destroy the United Nations if decisions were not in accordance with its wishes. When it had been the majority in the 1950s, it had not spoken as it did today of the "tyranny of the majority" but had instead acted against the wishes and the interests of peoples. The lawful majority would use its numbers only to apply the principles and the spirit of the Charter in order to preserve peace based on justice, to enable all peoples of the world to determine their fate and to free the world from racism, hegemony and aggression.

40. Mr. MREMA (United Republic of Tanzania) said that his delegation's position on the question of Charter review was the same as at the preceding session. The authors of the Charter had provided a specific procedure for amending it in Articles 108 and 109, but those same Members were now opposed to even a discussion of the application of those provisions. On the two past occasions when the Charter had been amended, the delegations in question had not had such misgivings. His delegation failed to understand why the time was not ripe for serious work on a review of the Charter. Even if it was the intention of some Members to tamper in a radical manner with the provisions of the Charter, that would be impossible to achieve without the consent of the permanent members of the Security Council.

41. It had been said that the "right of veto" for one socialist country was not a privilege but a historical necessity. His delegation would not dispute that, but it failed to see why there was no historical necessity for the new States, and indeed the third world, to have the same right of veto. It would be unfair to fail to show gratitude to those States which had repeatedly used their powers as

permanent members of the Security Council in support of the national liberation movements and in defence of the just cause of peoples struggling against colonial and racist domination. It would, however, be contradictory for those same States which had so admirably and consistently upheld the rights of colonial peoples to take up a position which opposed even discussing the extension of the rights of those peoples.

42. While those who argued that the Charter had successfully stood the test of time emphasized the fact that the world had thus far been saved from the scourge of a world war, they overlooked the fact that during the last 30 years hundreds of thousands of tons of bombs had been dropped on innocent human beings in many parts of the world.

43. Its delegation was not labouring under the illusion that all the problems facing the international community were a result of the Charter. It noted with great concern that many times a number of countries, in order to achieve their own short-term interests, had decided to disregard the obligation to comply strictly with the provisions of the Charter. Such violations of the Charter should, therefore, be dealt with and that could not be done successfully without at the same time entering into some discussion of the provisions of the Charter. Those were two aspects of the problem with which the *Ad Hoc* Committee had to deal. If it could be proposed that that Committee should deal with the former aspect—which was the riskier—he did not see any risk involved in reviewing the Charter itself. Review of the Charter did not in any way imply a weakening of it, as had been intimated.

44. In extending the mandate of the *Ad Hoc* Committee, every effort must be made to ensure a meaningful dialogue. Consideration should be given to the suggestions made by the representative of Romania (1563rd meeting) for improving the activities of the United Nations and strengthening its role, without, however, detracting from the important functions of the *Ad Hoc* Committee. In that connexion, he noted with favour the remarks made by the Mexican delegation in the *Ad Hoc* Committee (see A/10033, p. 57). His delegation shared the concern of the representative of Australia expressed at the 1565th meeting with regard to the prevention and settlement of international disputes and hoped that consideration would also be given to the causes of those disputes.

45. His delegation believed that the mandate of the *Ad Hoc* Committee should be extended until general agreement was reached as to what provisions of the Charter needed reviewing.

46. Mr. ABDALLAH (Tunisia) said that, while the United Nations had been created 30 years previously to be the instrument of world peace and security, it was now faced with new problems such as the new economic order which must be achieved, economic, social and cultural development in the overwhelming majority of Member States, the struggle against poverty, hunger, disease and ignorance, international co-operation in all those areas and the establishment of new relations between States. All that required adaptation of the Organization to those new problems, especially since its ability to resolve conflicts was limited by the fact that most of its decisions could not be enforced.

47. The membership of the United Nations had nearly tripled and the Organization had become universal. Universality naturally required equality among all Members and democracy in the procedures of the Organization. The equality of States was affirmed in Article 2, paragraph 1, and Article 18, paragraph 1, of the Charter and was respected in all United Nations organs except the Security Council. The Security Council belied the principle of equality and often failed to carry out its role as a prime mover of the Organization. It was even said by some to have become a brake on the activities of the Organization. Article 23, paragraph 1, on the composition of the Security Council was obsolete, because a number of States which were not permanent members of the Council did carry out special responsibilities in their respective regions and considered themselves also vested with the delicate mission of maintaining peace and security.

48. In the framework of equality affirmed by the Charter, how could one justify the submission of sovereign States to a tutelage maintained by a small group of countries? The responsibility of each State, based on the principles of democracy and equality, formed the collective responsibility of the membership of the Organization. No Member State was more qualified than another in the joint decision-making process arising from that collective responsibility.

49. The universality of the Organization ought to be clearly reaffirmed and every new State ought to become a Member, whatever régime and economic system it might have chosen. Membership was not a right often contested by one or more permanent members of the Security Council but a prime duty of any new State. The use of the veto to block the admission of a new Member very often showed the purely selfish and opportunistic interest of the State which abused a privilege that had been granted to it in the general interest. The admission procedure for new Members should be simplified. It was the duty of Member States to assist the new State in fulfilling its obligations and in becoming a Member of the Organization as quickly as possible. Admission might, for instance, be considered only by the General Assembly, which would admit the new Member by a two-thirds majority.

50. The main problem, however, lay not in finding new formulae or correctives, but rather in changing the thinking of those who opposed even partial revision of the Charter and thus exposed their ignorance of the provisions of the Charter itself, turning their back on progress and evolution and rejecting the principles to which they themselves had subscribed.

51. He wished to remind the representative who had recently categorically rejected any modification of the "inviolable" Charter that he had himself subscribed to two revisions of the Charter in the not very distant past. A text must, after all, be adapted to the community to which it applied. Another representative, taking a similar view, had accused those in favour of revision of the Charter of wanting to destroy the structure of the United Nations. Exactly the opposite was true; the proponents of revision wished to strengthen the structure. Like every work of human hands, the Charter was susceptible of improvement and should be improved whenever it became necessary;

moreover, like every constitution, the Charter included provisions for its revision.

52. His delegation would support any considered and reasoned initiative for modernization of the Charter and would like the mandate of the *Ad Hoc* Committee to be renewed so that it could undertake a serious study of the matter.

Mr. Klafkowski (Poland), Vice-Chairman, took the Chair.

53. Mr. HAFIZ (Bangladesh) suggested that one reason for the divergence of opinion on the question of Charter review was confusion between the concept of review or revision of the Charter, provided for in Article 109, and the concept of amendment of the Charter, provided for in Article 108. The Charter had thus provided two distinct procedures, both ultimately subject to the right of veto of the permanent members of the Security Council, but had not defined the scope of either. In the view of his delegation, those Articles provided for basic and fundamental changes in the Charter, although by different methods and procedures. The Charter could be considered, technically speaking, a multinational treaty, which according to the practice of international law, could be reviewed by examining it as a whole with a view to making changes as deemed necessary, or could be amended by modifying one or more of its provisions. An amendment would preserve the fundamental principles of the document, whereas review might even affect those fundamental principles. The Charter itself had not put any limit on the sort of change to which it could be subjected. In his view, the difference between the concept of amendment and that of review was not basic, being only a matter of phraseology and not of substance.

54. A mere examination of the comments and views of Member States on the subject did not itself constitute review or amendment. There was therefore no basis for the apprehension voiced by some that the mere expression of views by States on the question of review of the Charter would adversely affect friendly relations between Member States. On the contrary, frank discussion and consultation among Member States might remove many misgivings and promote international understanding and was, furthermore, a democratic process. Review or amendment of the Charter could not be said to run counter to the purposes and principles of the Charter, as the framers had themselves provided for such change and had made the Charter flexible so as to accommodate future developments and provide for the filling in of any lacunae. There had, furthermore, already been several amendments to the Charter which had not jeopardized the existence of the Organization but had rather strengthened its role and made it more dynamic and effective.

55. The special privilege or prerogative granted to permanent members of the Security Council was undemocratic, did not reflect the changed situation in the world and in the Organization since 1945 and was retarding the growth and development of friendly international relations and the achievement of the purposes and principles of the Charter.

56. His delegation would support such amendments or revisions as were necessary for strengthening the role of the

United Nations, for enhancing its activities or for furthering the purposes and principles of the Charter. It advocated the idea of consultations among Member States to that end. The relevant questions were: was the time for amendment or review appropriate or ripe; what specific amendments were essential to strengthen the role of the United Nations or to further its purposes and principles; what were the lacunae in the Charter; did the right of veto need to be abolished, and did it actually retard development of international relations or stand in the way of the maintenance of international peace and security?

57. One defect in the United Nations was that there was no machinery for the peaceful settlement of disputes or for the implementation of decisions and resolutions of the Organization. The effectiveness of the International Court of Justice should be increased and it should be made to play a more active role in the process of peace-making. His delegation declared its firm adherence to the purposes and principles of the Charter and would welcome any initiative to reinforce the role of the United Nations and to increase the effectiveness of the Charter. It was not, however, in favour of hasty action and recommended a gradual process of examination of the provisions of the Charter for appropriate amendments. His delegation felt that the strengths of the United Nations were vital for the strength and security of smaller States and would therefore welcome and support any measure to strengthen the Organization's role and to make it more effective. Smaller States were in constant fear for their existence and were not free from the threat or use of force against their territorial integrity and political independence. His delegation felt, furthermore, that a feeling of participation in the affairs of the United Nations would be enhanced by giving adequate representation in the Secretariat to all Member States, particularly the newly independent States.

58. Mr. VANDERPUYE (Ghana) said that the views of his delegation on the question of the review of the Charter had

already been recorded in document A/AC.175/L.2 and Corr.1 (Part II). He reminded the Committee that the issue before it was not whether the Charter should be reviewed; that question had been decided positively by the adoption of General Assembly resolution 3349 (XXIX), which had established the *Ad Hoc* Committee and given it its mandate. The duty of the Sixth Committee was to consider the report of the *Ad Hoc* Committee and plan further action, such as whether to renew the mandate of the *Ad Hoc* Committee so as to enable it to complete its task. In the view of his delegation, such an important task relating to the Charter should not be allowed to lapse and the mandate of the *Ad Hoc* Committee should be renewed. It might also be necessary to renew the invitation to Governments in resolution 3349 (XXIX), paragraph 2.

59. The mandate of the *Ad Hoc* Committee went beyond a mere review of the Charter; it also included consideration of other suggestions for the more effective functioning of the United Nations that might or might not require amendments to the Charter. It was for that reason that the Romanian proposal (A/C.6/437) had recently been submitted to the Sixth Committee. Given the wide scope of functions of the *Ad Hoc* Committee, the name "*Ad Hoc* Committee on the Charter of the United Nations" seemed, in the view of his delegation, to be rather restrictive. That was a matter of some substance and should be considered by the Sixth Committee. It was not clear what would be the relationship between the *Ad Hoc* Committee and other *ad hoc* committees performing similar functions of considering aspects of the strengthening of the role of the United Nations. The *Ad Hoc* Committee on the Charter might, for instance, play a co-ordinating role with respect to the other committees. It might be necessary, in order to avoid duplication, to establish machinery for consultations between those *ad hoc* committees.

The meeting rose at 12.55 p.m.

1572nd meeting

Monday, 24 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1572

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Miss RANA (Nepal) noted that, despite the achievement of near-universality of membership in the United

Nations and the emergence of some forms of international co-operation, little progress had been made towards increasing the Organization's effectiveness as an instrument for maintaining peace and as a centre for harmonizing the actions of Member States. That was due not so much to any inherent defect in the Charter as to the lack of political will on the part of Member States to implement the purposes and principles set forth in it. None the less, her delegation would consider any proposal aimed at strengthening the role and effectiveness of the Organization. In that connexion, it fully concurred with the view that the United Nations should prepare and adopt a universal code of conduct covering the fundamental rights and duties of States. The United Nations could be truly effective only when it could contribute more to the introduction of new

relations based upon the principles of equality, respect for independence and national sovereignty, non-interference in the internal affairs of other States, mutual advantage, renunciation of the use or threat of force and respect for the right of every people freely to choose its own way to economic, social and political development.

2. Mr. GOBBI (Argentina) recalled that his delegation had stated its position on Charter review at length in the *Ad Hoc* Committee on the Charter of the United Nations (see (A/10033, p. 7). The differences of opinion between the advocates of review and those who favoured the *status quo* were understandable, and indeed essential if a balance was to be maintained within the Organization. The differences were by no means irreconcilable; basically, the advocates of review were not proposing any radical change but merely wished to adapt the Charter to the realities of the modern world. It was significant that the large majority of countries which were in favour of reviewing the Charter owed their own emergence as sovereign States to the principles set forth in it and that they were the ones which had not had an opportunity to participate in its formulation.

3. His delegation believed that the *Ad Hoc* Committee was an essential tool and that specific proposals for reform, the item on the strengthening of the role of the United Nations and other suggestions such as that of the Australian delegation (1565th meeting) concerning peaceful settlement should be studied in a special forum. Refusal to consider the proposed topics was intellectually indefensible, since ignoring a problem was the least appropriate manner of dealing with it. The discussions in the Sixth Committee had opened avenues of communication which would make it possible to avoid forcing decision through and creating insurmountable antagonisms. Caution was essential if the undertaking was to be successful. However, his delegation was convinced that the Charter should not be the expression of the preferences only of the most powerful but should reflect the predominant aspirations of contemporary society as a whole.

4. Mr. JEANNEL (France) asked the Chairman to convey to the Governments whose nationals had recently been elected Judges of the International Court of Justice the congratulations of the French Government.

5. As the position of his Government on the items under consideration was well known, he would make only a few comments on points which he considered particularly worthy of attention.

6. France did not maintain a static attitude in the face of a changing world but sought to adapt its behaviour with respect to important problems, which did not imply changes in the institutional framework. That framework represented a valuable balance with which it would be dangerous to tamper. The Charter had been able to fulfil its role as an instrument of international peace and security because it was flexible. He asked how it could be claimed that the Organization did not meet the purposes and aspirations of its newer Members, when special sessions in the General Assembly had been held to discuss the new economic and social problems of concern to those Members. Moreover, those States played a decisive role in the Organization's activities; without their support, nothing useful could be done.

7. Under those circumstances, his delegation was concerned at the trend of thought in favour of amendment of the Charter, even though it was convinced that the advocates of such change were motivated by a sincere desire to improve the operation of the United Nations. Owing to the strong reservations which it inspired, that trend could only add yet another subject of disagreement to those which the Organization was called on to resolve. Moreover, the fundamental objective of the United Nations continued to be the maintenance of peace and it was primarily because the Charter assigned special competence in matters of peace and security to the organ in which unanimity among the Powers having the heaviest responsibilities was required that real, if incomplete, results had been achieved. There was, of course, always room for improvement and constant efforts should be made to improve the operation of the various organs, particularly the General Assembly, with the resources assigned to them by the Charter. It was clear that the effectiveness of the General Assembly depended upon the support that its resolutions could muster. Rather than pushing things through by majority vote, it would be better to proceed by consensus. Accordingly, draft resolutions should reflect the fundamental concerns of the States involved and should be elaborated in a climate of close collaboration and mutual concession.

8. Generally speaking, the French Government felt that the United Nations could be strengthened by rationalizing the structures of each of its main organs and adapting their rules of procedure. In that connexion, the suggestions made in 1971 during the discussions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly could be resurrected. The proposals and suggestions made in response to the General Assembly's request for the opinions of Governments on the agenda item concerning strengthening of the role of the United Nations Organization could also be used. States should take into consideration the report of the Group of Experts on the Structure of the United Nations System¹ established under General Assembly resolution 3343 (XXIX).

9. Those measures were more likely to increase the effectiveness of the Organization than any amendment of texts; for, although the United Nations had not always fully succeeded in doing what it had undertaken, that was due more to a lack of political will than to any inadequacy of the texts.

10. Mr. RESHETNYAK (Ukrainian Soviet Socialist Republic) said that the position of his Government on the question of Charter review, as set forth in document A/10113/Add.1, was based on unwavering adherence to the purposes and principles of the Charter. Firmly believing in the special character, role and significance of the Charter and its viability in contemporary international relations, his delegation was convinced that what was needed in order to increase the effectiveness of the Organization was not a review of the Charter but strict observance of its principles and maximum use of its possibilities.

11. The question before the Committee was whether it would be advantageous at the present time to continue the study of proposals for the review or amendment of the

¹ E/AC.62/9.

Charter and whether the continued existence of the *Ad Hoc* Committee was justifiable. The special significance of the Charter lay in the fact that, as a universal international agreement of a special kind, it had established a firm legal basis for the maintenance of international peace and the development of contemporary international relations under conditions of peaceful coexistence and co-operation between States having different social systems. In times of profound political, economic and social changes, the Charter had shown its viability and its importance for the maintenance of peace and co-operation among Governments and the strengthening of basic progressive principles of contemporary international relations and international law. The principles established in the Charter served, furthermore, as the basis for a wide range of bilateral and multilateral agreements on international co-operation at the regional level, both within and outside the Organization.

12. The importance of the Charter in contemporary international relations made it vital to consider with the utmost seriousness the consequences which might ensue either from deliberate attempts to tamper with or revise the Charter or from ill-considered proposals for its review or amendment which their sponsors imprudently thought might increase the effectiveness of the Organization. In view of the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033) and the Secretary-General's report on the matter (A/10113 and Corr.1 and Add.1-3), his delegation wished to bring several points to the attention of the Committee.

13. First, it could objectively be seen that it would serve no purpose for the *Ad Hoc* Committee to continue its work. The *Ad Hoc* Committee had been sharply divided on the question of the need to revise the Charter, and of the relatively small number of Governments which had responded to the Secretary-General's invitations to submit their opinions—only 43 in the last five years—the majority had not felt that a review of the Charter was necessary. Most speakers at the current General Assembly session who had mentioned the question of Charter review had emphasized, first and foremost, the adherence of their Governments to the purposes and principles of the Charter. So important a question as the review of the Charter required a general conviction on the part of a majority of the membership that such a review was necessary. Without that general conviction and agreement there was no justification for the *Ad Hoc* Committee's continuing its work.

14. Secondly, those Governments which had expressed their support for Charter review had attacked the principle of unanimity of the five permanent members of the Security Council, arguing that that principle should be adapted to the realities of the current situation. They were forgetting, however, that that principle of unanimity was one of the basic and central principles of the Charter. There existed a very close link and interdependence between the basic principles and purposes of the United Nations and the realization of those principles in the provisions of the Charter which established the machinery for the functioning of the Organization. The principle of unanimity of the five permanent members was of crucial importance in establishing the relation between the powers of the Security Council and those of the General Assembly and it most

adequately reflected the existing real situation of the coexistence of States having two differing social and economic systems. In accordance with the Charter, the Security Council had primary responsibility for the maintenance of international peace, and the principle of unanimity of its permanent members prevented the use of the Council or of the United Nations for purposes contrary to the maintenance of peace. There were no grounds for asserting that that principle did not allow the interests of the third world countries to be taken into account. In practice, and in accordance with the provisions of the Charter, those countries exercised their own sort of "collective veto". The present structure of the principle organs of the United Nations, including the Security Council, enabled the developing countries to participate on a broad and active scale in all activities of the Organization and in its decision-making process.

15. Thirdly, all Governments had agreed that there were significant unexplored possibilities in the Charter and that the increased effectiveness of the United Nations depended to a significant degree on the determination and will of States to observe the provisions of the Charter strictly and to unite their efforts for the achievement of the goals of the Organization. The only proper and logical course was to turn from examination of the Charter and concentrate all efforts towards a maximum exploitation of the great possibilities in the Charter so as to increase the effectiveness of the Organization and strengthen its role.

16. While his delegation was opposed to attempts to revise or destroy the Charter, it did not reject constructive criticism of the Organization motivated by a genuine desire to eradicate deficiencies, nor did it deny the need for joint efforts by Governments to find effective ways to increase the effectiveness of the Organization. However, his delegation must reject all proposals for strengthening the United Nations which ran counter to the Charter or were aimed at undoing or tampering with its basic provisions. Under present conditions, genuine means for enhancing the role and effectiveness of the Organization could be found and realized only within the framework of the Charter and by strictly observing its provisions.

17. Mr. BUSSE (Federal Republic of Germany) congratulated the delegations of Japan, Nigeria, Poland and the Syrian Arab Republic on the election of nationals of their countries as Judges of the International Court of Justice.

18. The opinion of his Government on the subject of strengthening the role of the United Nations had been expressed in the written statement sent to the Secretary-General on 15 July 1974² and in the statements made by his delegation at the twenty-eighth (2104th plenary meeting) and twenty-ninth (2307th plenary meeting) sessions of the General Assembly. The purposes of the Charter—to maintain peace, to ensure respect for human rights and to promote economic and social progress—had not lessened in significance after 30 years. Developments during the past few years had demonstrated the growing interdependence of States; indeed, an increasing number of problems could be solved only through world-wide co-operation. The Organization would be able to meet the growing expecta-

² See A/9695.

tions it was called on to fulfil only if there was a general determination to use it as a forum for reasoned discussion and an instrument for the achievement of an equitable balance of interests. One means of strengthening the role of the United Nations was by reviewing its efficiency and examining its functioning with a view to streamlining and simplifying it. The possibilities offered in that respect by the Charter and the rules of procedure should be more fully utilized. The same applied to the procedures envisaged in the Charter for the peaceful settlement of disputes between States. The International Court of Justice, as the main judicial body of the United Nations, played a significant role in that connexion. The interrelationship between the peaceful settlement of disputes and the strengthening of the effectiveness of the United Nations should be taken into account in the further planning of the Committee's programme of work.

19. With regard to the review of the Charter, he said that the purposes and principles of the Charter must continue to be the basis for peaceful coexistence among States and the fundamental Charter principles must, therefore, remain intact. However, the question how to make allowances for profoundly changed circumstances should be examined and in that connexion it would also be possible to discuss on a rational basis provisions which had become obsolete. In view of the difficulty of the task before it, the *Ad Hoc* Committee should proceed very carefully in considering possible amendments. At the present stage, that Committee's mandate should be extended for another year and be defined more clearly. It would also be useful to provide the Secretary-General with more details concerning the papers to be prepared for the *Ad Hoc* Committee.

20. Mr. JAZIĆ (Yugoslavia) noted that the increase in the membership of the United Nations confirmed the Organization's vitality and helped to strengthen it. Indeed, the United Nations had contributed greatly to maintaining world peace and solving important international problems, particularly through the expansion of co-operation in a number of fields far beyond those that had been of interest when the Organization was established. While it was true that the United Nations had not always been successful in its efforts and had frequently been paralysed in situations involving aggression and foreign military intervention, the Organization could only be what the Member States made it. The behaviour of States, rather than the short-comings of the Charter or any organizational weaknesses, was the decisive factor that determined the Organization's role.

21. Many difficulties were due to the refusal of certain Member States to bring their behaviour into conformity with the obligations they had assumed under the Charter. While the result of the achievement of the principle of universality should be to bring the main international problems before the United Nations, certain international elements tended to bypass the United Nations machinery and to seek accommodations in closed groupings. In the past, efforts to impose sanctions on countries that persistently violated the decisions of the United Nations had been prevented, despite the will of the majority of Members. More recently, efforts had been made to discredit the Organization because of some decisions which had been adopted by large majorities, even though the adoption of decisions by majority vote had not previously been opposed.

22. Another unacceptable practice was the labelling of countries participating in certain decisions and the threat to withhold regular or voluntary contributions. His delegation could not accept attempts by any country to prescribe norms of behaviour to others, for all countries must be free to express their views, and decisions should be taken in a democratic manner. Accordingly, his delegation could not agree to solving problems without the direct participation on an equal footing of the countries involved.

23. Experience had shown that progress could not be arrested and that persistent and concerted efforts in a just cause could make what had once been considered unacceptable eventually acceptable to all. The adoption of correct decisions did not in itself, of course, amount to a solution of problems. Accordingly, the aim should be to adopt joint decisions through a system of timely consultations among Member States. One of the pre-conditions for the proper functioning of the Organization was greater co-operation between the General Assembly and the Security Council and abstention by the permanent members of the Council from abusing their right of veto. While many Member States had pointed out that the Charter offered broad possibilities for solving disputes peacefully under Chapter VI, the calling for the application of measures under that Chapter should not be used as a pretext to oppose application of sanctions and other measures under Chapter VII. Efforts to strengthen the role of the United Nations were related to the activity of the Organization in solving economic problems. In that connexion, the practice of convening special sessions of the General Assembly should be continued and should also be extended to other fields such as disarmament.

24. The question of review and revision of the Charter depended on the extent to which changes were really essential to strengthen the role of the United Nations. Consideration should be given to every possibility of enhancing the effectiveness of the Organization. In that connexion, a certain restructuring of the system would be necessary. The importance of new fields of international co-operation had increased since the Charter was adopted; accordingly, periodic reviews of conditions and of the possibility of amending the Charter would seem justified. In any event, the review of the Charter should be undertaken only on the basis of the broadest possible consensus.

25. Mr. BROMS (Finland) said that the views of his Government on the question of Charter review had been sent to the Secretary-General on 26 September 1972.³ His delegation had, furthermore, participated in the 1975 session of the *Ad Hoc* Committee on the Charter of the United Nations and had found the exchange of views fruitful. No delegation had insisted on a rapid and revolutionary general review of the Charter and it had often been stressed that it was essential to try to reach consensus on any given problem. Several members of the *Ad Hoc* Committee had presented ideas concerning provisions of the Charter which, in their opinion, most needed to be amended. No textual proposals had been presented, which could be interpreted as indicating an awareness of the lack of consensus among members at the present stage. In accordance with the mandate of the *Ad Hoc* Committee,

³ See A/8746/Add.3.

ideas had also been presented on ways and means for the more effective functioning of the Organization which did not require amendments to the Charter.

26. As to the future of the *Ad Hoc* Committee, the current debate showed a strengthening of the trend which had prevailed at the preceding session. A clear majority of statements seemed to favour the continuation of the work of the *Ad Hoc* Committee. If the General Assembly decided to renew the mandate of the *Ad Hoc* Committee, the latter need not engage in as extensive a general debate as had taken place during its first session. It was also to be hoped that all members of the *Ad Hoc* Committee would be prepared to agree on a programme for its continued work and on the working methods to be adopted. The Mexican proposal in annex II to the report of the *Ad Hoc* Committee advocated the setting up of two sub-committees, one to study proposals for strengthening the United Nations which would seem to require amendments to the Charter and the other to consider suggestions and proposals which did not require amendments to the Charter. His delegation did not favour that criterion, which was likely to stress unduly the proposals which seemed to require Charter amendments. His delegation felt that subject-matter provided a better criterion for assigning proposals to sub-committees.

27. Miss DAHLERUP (Denmark) stated that her Government fully adhered to the Charter of the United Nations, which had shown itself to be a flexible and unique instrument for the furtherance of the ultimate purposes of the Organization. The Charter was not perfect and several of its provisions had become obsolete, but that did not detract from its usefulness when it was loyally adhered to and used in a proper, fair and conciliatory manner. The Charter had foreseen the possibility of amendment in Article 108 and of review in Article 109. At the twenty-ninth session of the General Assembly, her delegation had had serious doubts as to whether the time was ripe for Charter review, although part of the *Ad Hoc* Committee's mandate seemed very useful and realistic, especially the request to the Committee to consider suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. Her Government, in its reply of 19 July 1972 to the invitation in General Assembly resolution 2697 (XXV) to express its views and suggestions on review of the Charter, had stated that it felt that a general review would serve no useful purpose at the present time, as there seemed to be no substantial measure of agreement among Members on the matter and the initiation of a process of review would therefore be unlikely to lead to a strengthening of the United Nations.⁴ That view had, unfortunately, been confirmed by the report of the *Ad Hoc* Committee, which seemed to indicate that the gap between the different points of view of members had widened. However, the *Ad Hoc* Committee should not abandon its efforts to find ways of strengthening the role of the United Nations. It should be possible to find areas where the members could find common solutions in a pragmatic way.

28. Her delegation agreed with the Australian delegation that methods and machinery for the peaceful settlement of international disputes, as described in the Secretary-

General's report (A/10289), deserved further examination. The Committee might also usefully take advantage of ideas and suggestions contained in the report of the Group of Experts on the structure of the United Nations System.

29. Mr. VAN BRUSSELEN (Belgium) said that his delegation, when it had abstained from voting on General Assembly resolution 3349 (XXIX), had had very serious doubts about undertaking a complete revision of the Charter and about establishing a committee for that purpose. After one year, during which he had personally attended almost all of the meetings of the *Ad Hoc* Committee, he could only say that his delegation's doubts had been very considerably reinforced. As stated by the Belgian Minister for Foreign Affairs, who had set forth his Government's position on that question during the general debate in the General Assembly on 25 September 1975 (2361st plenary meeting), his delegation had not wished to vote against examining how to improve the functioning of the United Nations or possible necessary changes in the Charter. He believed that that stand had been correct, but events had now proved that it was impossible to reach agreement on even the principle of a broad review of the Charter. The *Ad Hoc* Committee's report showed such deep differences of opinion and lack of understanding that one could hardly hope for a solution.

30. The Rapporteur of the *Ad Hoc* Committee, in his excellent introduction of the report at the 1561st meeting, had properly drawn the Committee's attention to paragraph 9, the only paragraph with substantive content, and had rightly pointed out the need for a resolution in which differences would be replaced by efforts at co-operation. His delegation fully joined in that appeal, since it believed that co-operation was possible.

31. Although his delegation certainly did not share all the ideas or subscribe to all the proposals by Romania put forward in document A/C.6/437, it shared the concern of the Romanian delegation, subscribed to the general philosophy underlying that document and accepted the basic idea that it was desirable and even necessary to strengthen the role of the United Nations and improve its functioning. Indeed, in previous years his delegation had sponsored draft resolutions introduced by Romania on that subject.

32. The United Nations had been created as the result of an exceptional historical period, by a handful of leaders who had sought certain well-defined goals but who had not thought of creating a world government. As emphasized by the representative of the Netherlands (1566th meeting), they had also differed as to the means of achieving their goals. Belgium, for example, had strongly opposed at the San Francisco Conference the right of veto. Yet the founders of the United Nations had at least been united about their goals and the present debate showed that that was certainly no longer the case for the moment.

33. The Charter had strong and weak points, like all constitutions, and it contained some ideas which had been very advanced for their time but lacked others which had since emerged and become very important. Since 1945 the world had undergone rapid changes and some seemed to regard the Charter as having only a historical character. He wondered, however, whether those changes were sufficient

⁴ See A/8746.

reason to discard an instrument which had served so well and which still had so much service to render. The Belgian constitution had not been amended until nearly 100 years after its original promulgation in 1830, and that was the constitution of a State, not of an organization whose purpose was to promote understanding and co-operation among sovereign and independent States.

34. Although some speakers had taken it as axiomatic that, since circumstances had changed, the Charter also must change, the debates in the *Ad Hoc* Committee and the Sixth Committee showed little substantive criticism of the Charter. Many supporters of Charter revision had expressed views that came close to an ideal: that which the Charter could be if only some countries would voluntarily agree to apply certain carefully chosen principles. Those views were either insufficiently realistic or intended to construct an organization entirely different from what the United Nations currently was.

35. However, many opponents of Charter revision had given the impression of being content, perhaps too easily, with what had been accomplished, without wishing to look towards the future, as if they rejected the notion that what the Soviet representative had called the history of the United Nations could be different from its pre-history. Even during its pre-history, the Charter had undergone several amendments dictated by necessity. Hardly anyone, in 1945, could have foreseen the speed with which the decolonization process would go forward and the decisive role of the United Nations in that process, or the fact that the Trusteeship Council would have virtually lost its *raison d'être*. Few could now maintain that inadequacies in the Charter had halted the working out of a new economic order, or that a different wording of certain Chapters of the Charter could have accelerated that process.

36. If there was one lesson to be learnt from the *Ad Hoc* Committee's report, and one matter on which all could agree, it was that the subject under discussion was exclusively a political one. With that as a starting-point, much could be done if there existed the necessary political willingness at all levels. The very text of the Charter would then become secondary, since the Charter would no longer be anything other than what it should be—a body of principles and mechanisms to guide that political will towards the realization of goals accepted by all. The Charter would not have to undergo a complete revision as there were no advantages to its doing so, and many dangers. That did not mean that the functioning of the United Nations should not be changed at all, but it was essential to agree on an order of priority. In that regard, he was sceptical about the assertion of some speakers that review of the Charter did not necessarily mean amendment of the Charter.

37. Many delegations who favoured a rewording of the Charter had spoken of the need to introduce more equality and more democracy into the United Nations. More equality meant that the veto should either be abolished or be given to all Member States. He would point out in reply that, although his delegation had fought against the veto, the veto had never since 1945 prevented it playing the role which it had believed it should or could play in the United Nations. Furthermore, the veto, although perhaps a privi-

lege, was more certainly a burden of obligations and heavy responsibilities which few would be willing to assume.

38. However desirable the elimination of the veto might appear in the abstract, one had to be realistic. In that connexion, he quoted from a statement made in the *Ad Hoc* Committee by the representative of India, who had observed that elimination of the veto would not necessarily make the world better, nor would its extension to other Members necessarily improve the international situation, since it was not voting procedures that corrected situations but willingness scrupulously to respect the provisions, principles and purposes of the Charter (see A/10033, p. 40).

39. Making the United Nations more democratic meant, if he had correctly understood that idea, basically two things: putting the General Assembly and the Security Council on an equal footing, and giving decisions of the General Assembly a binding character. In his view, however, there was a democracy in the General Assembly if each State had one vote and resolutions were adopted by simple majority. In most bicameral national legislatures, one house had broader powers than the other. Making General Assembly decisions binding would mean creating an organization entirely different from the present one and would inevitably lead to the withdrawal of many of its present Members, since few countries would be prepared to belong to an organization which had the character of a world government.

40. Since the arguments to which he had referred looked toward the ideal of an organization which had little in common with the United Nations, they were not likely to help the United Nations to function more effectively. It was therefore natural that they should give rise to disagreement. On the other hand, he had been surprised to note that all the delegations in the Sixth Committee were in agreement on the need to strengthen the role of the United Nations and to make it function more effectively. There was thus hope that the majority of the Committee could take that as their common ground and reach agreement on what should and could be undertaken.

41. A number of suggestions made in the *Ad Hoc* Committee should be studied in greater depth. As examples, he mentioned the Colombian proposal to change the Trusteeship Council into a Human Rights and Trusteeship Council (*ibid.*, p. 15), the proposals made by many delegations for strengthening the role of the International Court of Justice, and the calls for revision of the procedures of the United Nations. There was also the report of the Group of Experts on the Structure of the United Nations System.

42. He agreed with the representatives of Australia and the United States and others on the need to study in greater depth ways and means for the prevention and peaceful settlement of disputes.

43. Some of those suggestions might lead to proposals for amending the Charter and, as in the case of the enlargement of the Security Council, such proposals would have a good chance of being adopted. All of the suggestions, for that matter, might lead to a strengthening of the role of the United Nations and to improvements in its functioning.

44. His delegation remained convinced that the Charter could continue to render valuable service in the future if its provisions continued to be interpreted consistently and dynamically. Broad revision, however, would deepen existing disagreements, create new ones and no doubt lead to failure. Agreement on ways of strengthening the role of the United Nations, which he believed was possible, would serve the United Nations and all its Member States well.

45. Mr. MANSFIELD (New Zealand) said that his delegation, in deciding to support General Assembly resolution 3349 (XXIX), had taken due account of the fact that, in the light of major changes in the composition of the United Nations and in the political, economic and social realities with which it was confronted, a large proportion of the membership clearly favoured consideration of how the Charter might be updated. At the same time, it had been conscious that the proponents of that resolution were not seeking a wholesale rewriting of the Charter and were well aware that Charter review was a sensitive and delicate task which must be approached in a moderate and responsible way, without expecting early results or resorting to majority voting and other pressure tactics.

46. New Zealand, as a member of the *Ad Hoc* Committee, had been under no illusion that that Committee would be able to fulfil its broad mandate at its first session. Everyone, including those who had been most committed to Charter review, were well aware of the boundaries of the possible in that field. Aside from the obvious fact that the unanimity rule in the Security Council extended to the process of Charter amendment, it was widely recognized that if progress was to be made it was necessary to build the confidence of all the Members of the Organization that no precipitate action would be taken and that no one wished to tear up the Charter.

47. It was therefore unreasonable to suggest that the lack of concrete results at the first session of the *Ad Hoc* Committee was a ground for declining to renew its mandate. The *Ad Hoc* Committee had accomplished about as much as could legitimately have been expected in the circumstances. The preliminary exchange of views it had held had undoubtedly been useful, as it had made possible closer understanding of the positions of delegations and provided an opportunity to air new ideas and clarify or develop ideas previously expressed.

48. He would mention briefly some of the more important substantive views of his Government, which were set out more fully on pages 61-65 of the *Ad Hoc* Committee's report.

49. On the question of membership in the United Nations, his Government believed that the condition in Article 4, paragraph 1, of the Charter that an applicant for membership must be "peace-loving" introduced an unnecessarily subjective criterion. The principle of universality and the widely shared view that membership should be regarded primarily as a duty suggested that membership should be open to any entity which met the criteria of statehood generally accepted in international law. That being so, there was no particular justification for subjecting applications for membership to the unanimity rule, and it would be

preferable to require only a two-thirds majority vote in the Security Council and the General Assembly.

50. Secondly, his Government believed that there was room for some change in the provisions concerning actions which could be taken against an erring Member State. Again, the philosophy of universality and the belief that membership was not so much a privilege as an obligation pointed up the undesirability of invoking the expulsion provision of Article 6 and thus relieving a violating State of its obligations under the Charter. At present, however, the Charter provided in Article 5 that a Member could be suspended rather than expelled only if it had had enforcement action taken against it by the Security Council. Surely it would be better to provide for a variety of sanctions against a Member which violated the Charter, up to and including suspension from the exercise of some or all of the rights and privileges of membership, but not from the obligations of membership. The decision to apply those sanctions, unlike decisions regarding expulsion, would not seem to require the application of the unanimity rule, although perhaps some qualified majority would be appropriate, perhaps again two thirds in both the Security Council and the General Assembly.

51. Other areas in respect of which his country had expressed itself willing to consider proposals for change, not all of them involving Charter amendment, were peace-keeping operations, the terms of Chapter XI of the Charter and structural reform in the field of economic and social co-operation. There were also, of course, Charter provisions which were now out of date or inappropriate, such as the references to "enemy States" in Article 53. Those references should be deleted.

52. The *Ad Hoc* Committee's first session might not have produced results in the narrow sense, but it had prepared the ground for future work. It was obvious that the Committee should be allowed to continue its work and such was the clear wish of the great majority in the Sixth Committee.

53. In order for that work to be constructive, however, two important and related conditions must be met. First, the level of opposition to the work of the *Ad Hoc* Committee from those opposed to Charter review must be moderated. To that end, it appeared that some way must be found to modify what the report described as the "fundamental divergence of opinion on the necessity of carrying out a review of the Charter". Secondly, the *Ad Hoc* Committee must establish appropriate methods of work. Some progress towards meeting those conditions could be made if it was borne in mind that no delegation had yet insisted that amendment of the Charter was the only method by which the functioning of the United Nations could be enhanced. For example, the New Zealand representative in the *Ad Hoc* Committee had explicitly said that the New Zealand Government did not consider it necessary to press for amendments to the Charter where a reform or improvement could be achieved equally well by another, and perhaps less cumbersome, means. He had added that New Zealand attached as much importance to General Assembly resolution 3349 (XXIX), paragraph 1 (c), which directed the *Ad Hoc* Committee to consider suggestions for the more effective functioning of the United Nations that

might not require Charter amendments, as to the other part of the Committee's mandate (*ibid.*, pp. 61 and 65).

54. However, it was very clear that many believed it to be both desirable and necessary to consider aspects of the functioning of the United Nations and its Charter which might lead to amendment of that instrument. Delegations which took that view were obviously primarily concerned with enhancing the functioning or strengthening the role of the United Nations, but they were not prepared to accept that a critical re-examination of the functioning of the United Nations should artificially rule out Charter amendment. It had, of course, also been pointed out that some proposed amendments to the Charter, such as those relating to the deletion of outdated or no longer relevant clauses, were not strictly speaking encompassed in the notion of strengthening the role of the United Nations.

55. The *Ad Hoc* Committee might therefore expect to make early progress more easily in the realm of proposals which did not involve Charter amendment and it should take due account of that possibility in organizing its work. At the same time, there should be no attempt to set aside or postpone discussion of suggestions which would involve amendments.

56. His delegation firmly hoped that with some understanding of the points he had raised, and with a degree of goodwill on all sides, the path of confrontation could be avoided and that, with full support and assistance from the Secretariat, the *Ad Hoc* Committee could look forward to useful and constructive future sessions.

Organization of work

57. The CHAIRMAN said that, since the Committee was eight meetings behind schedule, he would request delegations wishing to speak on agenda items concerning human rights in armed conflicts, implementation by States of the Vienna Convention on Diplomatic Relations and the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law to be prepared to do so at any time during the current week so that those items could be completed by the end of the week. That was highly important if the Committee was to complete its programme of work on time, as it had always done in the past. The items he had mentioned would be taken up one after the other.

58. If there was no objection, he would take it the Committee agreed to organize its work in that manner.

It was so decided.

AGENDA ITEMS 114 AND 70

Respect for human rights in armed conflicts: report of the Secretary-General (A/10195 and Corr.1 and Add.1)

Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflicts (A/10147)

59. The CHAIRMAN suggested that the Committee, as it had regularly done in past years when considering the question of respect for human rights in armed conflicts, should accede to the request of the Swiss Government, which played a significant role in that field, to participate in the debate without the right to vote.

60. If there was no objection, he would take it the Committee authorized him to make the necessary arrangements for that purpose.

It was so decided.

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*)* (A/10017, A/C.6/L.1016, A/C.6/L.1017, A/C.6/L.1021)

61. The CHAIRMAN announced that Afghanistan and Gabon had become sponsors of draft resolution A/C.6/L.1021.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*)** (A/10198 and Add.1-5, A/C.6/L.1019, A/C.6/L.1022, A/C.6/L.1023)

62. Mr. RASHID (Afghanistan) said he wished to correct his delegation's amendment (A/C.6/L.1022) to draft resolution A/C.6/L.1019. The intention of his delegation's third amendment was not to replace operative paragraph 1 (a) but to insert in operative paragraph 1 a new subparagraph (a) and to reletter the present subparagraphs (a) and (b) as (b) and (c) respectively.

The meeting rose at 1.10 p.m.

* Resumed from the 1533rd meeting.

** Resumed from the 1569th meeting.

1573rd meeting

Tuesday, 25 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1573

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. BAVAND (Iran) said that the item on the strengthening of the role of the United Nations related to an important question which should be the subject of special and continuing attention by the General Assembly.

2. The United Nations system, which had been established to promote the security of the nation-state system in an interdependent world, had not always been successful. However, it still maintained its adaptability and a modest capacity to deal effectively with existing international problems.

3. Some proponents of the constitutional *status quo* believed that the United Nations should be strengthened and kept abreast of the times solely through improvement and development of its existing machinery, without any change in its Charter. Their suggestions had included reinterpretation of the Charter through legal and political instruments provided for in the Charter itself, fuller exploration of the possibilities afforded by Chapters VI and VII, intensification and institutionalization of the system of jurisprudence which had grown up within the United Nations and continued development of international law. At the other end of the spectrum were those who believed that such measures, while imperative, were not necessarily enough and should be coupled with thorough review and examination of the Charter, to bring it into line with modern realities.

4. Between those two extreme groups was a third group of States which took a reformist attitude towards the Charter. They did not in principle challenge the legal basis of the review of proponents of revision, but questioned the political advisability of such a comprehensive approach. They did not rule out the possibility of amending specific provisions of the Charter under appropriate circumstances.

5. The United Nations should be considered not static, except for its basic purposes and principles, but evolutionary, open-ended and responsive to the constantly changing requirements of the international community and the rising expectations of mankind. The strengthening of its

role depended mainly on the political will of its Members. The United Nations itself, however, could be an important factor in mobilizing that will and in doing so it would have to take into account modern realities, including the trend towards relaxation of tensions and universality of participation in the international community, the growing interdependence of Member States, the active discontent of a substantial segment of mankind with the present status of international economic relations, the division between developed countries and developing countries, with differing levels of development and differing social systems within each of those groups, and the ever-growing desire of the international community for rational management and utilization of the resources of the sea-bed and outer space for the benefit of all mankind.

6. The Charter, as could be seen from the very first paragraph of Article 1, was a security-oriented document and gave a peripheral place to economic matters. It was only since the mid-point of the twentieth century that the relationship between international economic well-being and international peace had been recognized and an attempt had been made to establish machinery to promote, in the words of Article 55, "the creation of conditions of stability and well-being . . . among nations". That relationship was now clearer than ever.

7. At the time of the adoption of the Charter, issues such as the economic and political application of nuclear energy, peace-keeping operations, the human environment, peaceful or military uses of the sea-bed and outer space and the role of transnational corporations in international affairs had not been foreseeable, and the application of the Charter to such matters had thus been difficult if not impossible. Consequently, in some cases recourse to interpretation of the Charter did not provide the necessary answers and substantive improvement seemed to be required. Suggestions for such improvement should therefore not be reviewed as heretical. Indeed, from the legal standpoint, the founders of the Charter had contemplated such possibilities by making special provision for amendment and for review by a general conference. Several changes had already been made in order to accommodate the structure of various organs to the increased membership of the United Nations. However, priorities must be set. In that connexion, his delegation believed that the root of the existing international crisis lay in the structural maladjustment of the international economic system and that the complete revision of the existing order and the establishment of a new set of international economic relations based on the equality and common interest of all countries were the most important and urgent tasks to be accomplished. A comprehensive assessment of Chapters IX and X of the Charter, with a view to incorporating the new basic economic principles and bringing about appropriate changes in the structure of the Economic and Social Council

commensurate with its new responsibilities, would be a positive step in that direction and should be given priority.

8. His delegation was not wedded to any particular course of action for the improvement of the Charter and revitalization of the United Nations. Whatever means were chosen for achieving those ends, whether through the *Ad Hoc* Committee on the Charter of the United Nations or any other similar body, would have its full support. But the necessity of such action must be recognized and the first step must be taken.

9. The work of the *Ad Hoc* Committee so far should be viewed as a beginning. It was logical, in view of the complexity and difficulty of the task which lay ahead, that its mandate should be renewed.

10. Mr. BOUCHOUAREB (Algeria) said that Algeria, as had been stated most recently by the Chairman of its delegation at the opening of the thirtieth session of the General Assembly, maintained its faith in the United Nations. The remarkable work of the Organization could not be denied or underestimated. Its role in the maintenance and consolidation of peace and security had been relatively positive. It did, however, have short-comings, as was evidenced by its impotence with regard to problems such as the Palestinian question, or other problems of a kind which might at any time jeopardize the precarious balance devised after the defeat of nazism and fascism. The best means of guaranteeing peace and peaceful coexistence was to review and reinforce the mechanisms provided for in the Charter, bearing in mind the failures of the United Nations in the area of peace-keeping, the causes of these failures and possible political or legal improvements. To be sure, peace had been maintained for 30 years, but only for the founding Members. What had occurred in Viet-Nam, a genocide reminiscent of that of the Second World War, had not been felt by those countries; nor could the United Nations take pride in what was happening in occupied Palestine, or consider it favourable to peace. Thus, despite any praise of the United Nations, one could not maintain that it had attained its basic objective.

11. The idea of peace and security as conceived after the victory over nazism had involved a limited number of nations. The small countries did not view the ideas so narrowly, but believed that they too should play an active role in the maintenance of peace based on justice and on respect for their sovereignty. The aspirations of the formerly colonized countries were legitimate and did not contradict the spirit of the Charter; on the contrary, these countries sought to preserve their future by demanding the right to take an active part in international affairs, particularly by strengthening the role of the United Nations in the maintenance of peace. That right could not be denied them, particularly since it was a right granted to them by the Charter. Only by giving them that right could the United Nations contribute to solving those problems and become the universal instrument which the founders, as colonialists, had been unable to create. His delegation did not share the view that the Charter had fostered the liberation and decolonization of third world countries. It was the struggle of the peoples concerned that had led the colonial Powers to end their domination, and it was at the initiative of those peoples that the United Nations had been

enriched by a number of declarations whose moral value should now be reflected in the Charter.

12. The General Assembly, at its sixth and seventh special sessions, had highlighted problems which were so important that Member States should go beyond the stage of pressure and intimidation and seek solutions based only on the interdependence of the interests of each country. The United Nations and its basic documents should be in complete harmony with the new situation created by the emergence of the third world. The Charter should unambiguously proclaim the final abolition of colonialism and racism and should affirm the basic right of every people to self-determination and to complete and permanent sovereignty over its natural resources. There must also be provision for action against countries which flagrantly violated the Charter.

13. Furthermore, his delegation believed that there should be within the United Nations an effective organ to supervise respect for and implementation of the rules of conduct established at the initiative of the non-aligned group of countries and to promote the establishment of a new international economic order to guarantee stability in international relations.

14. The application of those principles should be ensured through new Charter provisions, relating in particular to the interpretation of the right of veto, the role of the Economic and Social Council, the regulation of peace-keeping operations and the broadening of the role of the General Assembly. As to the veto, his delegation did not share the view that all the holders of that privilege were equally culpable; it would point out, in particular, that some permanent members of the Security Council had used the veto only to defend causes which had been condemned by General Assembly resolutions and in flagrant violation of the principles of the Charter. Algeria had repeatedly proclaimed its concern with regard to the maintenance of peace and security by the United Nations. Furthermore, after its long struggle for self-determination, it regarded that as a basic principle which could not be bargained away.

15. It could be argued that the ineffectiveness of the United Nations resulted from failure to implement its resolutions and lack of respect for the Charter. His delegation therefore believed that research should be undertaken on how the United Nations could ensure the implementation of its decisions. While he would not make specific suggestions in that regard, he believed that the *Ad Hoc* Committee could, if given the time and the means, study that question in the light of the opinions of the Member States. If the Sixth Committee decided against extending the mandate of the *Ad Hoc* Committee, the problem would still be of great concern to those Governments which favoured Charter revision. For that reason, his delegation believed that the Sixth Committee should look only to the importance of the *Ad Hoc* Committee's work and not to the results of its first session. His delegation intended to support any suggestion for extending the *Ad Hoc* Committee's mandate and in so doing it would be fulfilling a firm commitment Algeria had made within the framework of the activities of the non-aligned countries, which had already come out in favour of adapting the Charter to new realities. Those countries were not posing

any threat to the major principles of the Charter, nor were they motivated by a philosophical ideal; rather, experience had shown them that decolonization, which had been an ideal during their struggle, was not enough to guarantee their peace and progress. It was neither illogical nor ambitious for them to wish to correct the inadequacies of the United Nations and the oversights of the Charter. In that regard, the document submitted by the Romanian delegation (A/C.6/437) deserved careful attention, as the suggestions it contained reflected the concerns of the majority of Member States with regard to the strengthening of the United Nations.

16. Mr. FRANCIS (Jamaica) said that there was nothing new which his delegation could usefully add to what had already been said by the many delegations that advocated review of the Charter. His delegation did not subscribe to the view that the progress of the *Ad Hoc* Committee, whether until then or in the future, ought to be measured solely by the length of its report. That Committee was newly constituted and its members must be allowed time to adjust to one another and to understand each other's preoccupations before they could reach the stage of constructive compromise and accommodation. It should be recalled how frustrating and disappointing had been the early reports of the Special Committees on the Question of Defining Aggression and on Principles of International Law concerning Friendly Relations and Co-operation among States; yet both had been able to find generally acceptable solutions after several years. His delegation was not at all convinced that the Sixth Committee, which more than any other Main Committee in the United Nations system had been able to find ways of achieving consensus, would not rise to the level of achievement of which it was capable in the case of the present item.

17. The views of the members of the *Ad Hoc* Committee, whether they favoured or opposed Charter review, had been expressed with deep conviction. So those who favoured Charter review would therefore have to make good use of the tolerance, and indeed the salesmanship, with which they were well endowed. That would require careful stock-taking and then a realistic choice of options.

18. The representative of Guyana in the *Ad Hoc* Committee had rightly pointed out that the veto could be neither wished away nor argued away (see A/10033, p. 37), since it was as permanent as the permanent members of the Security Council. For good reason, the representative of Guyana also did not favour giving the veto to other States; he favoured a situation in which the use of the veto by the permanent members would not frustrate the effectiveness of the Security Council or of the United Nations generally. In that regard, the representative of New Zealand had made a very interesting suggestion involving the removal of the veto in connexion with the admission of new Members to the United Nations (*ibid.*, p. 62). He (Mr. Francis) had mentioned those views not only because the question of the veto was central to the complaint of many delegations about the Charter, but also to emphasize that there was much to commend the approach suggested by Guyana and New Zealand to that very delicate issue.

19. The working paper submitted by Mexico (A/10033, annex II) was a very constructive one. However, his

delegation believed that the deliberations on whether to review the Charter might well prove to be protracted and that the *Ad Hoc* Committee should therefore first consider means for the more effective functioning of the United Nations which would not require Charter amendment.

20. As one of the aims of the *Ad Hoc* Committee was to discuss in detail the observations received from Governments, every effort should be made to solicit such responses. The *Ad Hoc* Committee must be given the additional tools to accomplish that task and, accordingly, his delegation was prepared to support an extension of its mandate.

21. Mr. AÏSSI (Dahomey) said it was obvious that the Organization needed to be reviewed with regard to the basic texts which governed it. His delegation welcomed the establishment of the *Ad Hoc* Committee and hoped that its mandate would be extended.

22. There had been many changes in international relations in the 30 years since the founding of the United Nations. Through the Security Council, the permanent members had been able to impose their scale of values on the entire world. His delegation felt that a new international political order should be established alongside the new economic order called for at the seventh special session of the General Assembly. His delegation had not been convinced by the statements of certain States in favour of maintaining the *status quo*. It did not think that it was necessary to wait for another world war before adapting the Charter to current realities. The Charter in its present form reinforced a flagrant contradiction between the legal equality of all Member States and the privilege of the veto which certain Powers had arrogated to themselves in 1945. International relations should be democratized. His delegation did not seek the abolition of the veto, because that might cause the Security Council to lose all its importance. The right of veto might be modified so that the affirmative vote of three permanent members would suffice for the adoption of a decision.

23. There was also the problem of the geographical distribution of power in the Security Council, the only principal organ of the United Nations which did not observe the rule of equitable geographical distribution. All five of the geographic regions created in 1945 for the United Nations system should be able to participate in developing fair and just solutions for the many crises touched off and maintained in the third world by those Powers that were the inveterate practitioners of imperialism, colonialism, neo-colonialism, racism and *apartheid*. His delegation therefore proposed an increase in the number of permanent seats in the Security Council on the basis of the five geographical regions and the replacement of the rule of unanimity by one of a comfortable majority of the permanent members. The powers of the General Assembly in the field of peace-keeping should also be increased.

24. His delegation shared the view that the spirit and letter of the Charter and the decisions and resolutions of the United Nations must be scrupulously observed. It was unfortunate that some States defied those decisions and resolutions, particularly in the areas of disarmament, the struggle against colonialism, racism and *apartheid* and the

development of international trade. With regard to disarmament, the nuclear Powers had not seen fit to slow down the proliferation of destructive weapons. They had resorted primarily to bilateral consultations, thus avoiding the control which the international community ought to exercise in that field. Where the struggle against racism and *apartheid* was concerned, certain Powers had chosen to violate the economic sanctions imposed against the racist minorities of southern Africa for the sale of South African gold and Rhodesian chrome.

25. His delegation felt that the results of the sixth and seventh special sessions of the General Assembly should be fully implemented in the interest of the international community. Some States seemed to feel that the results of those two sessions should not be taken into consideration at a regular session of the General Assembly. For instance, during the preparation of draft resolution A/C.6/L.1021 on the report of the United Nations Commission on International Trade Law, those States had fiercely opposed the efforts of the Group of 77 to include a reference to the relevant resolutions of the sixth and seventh special sessions. There should be continuity in the implementation of United Nations resolutions, whether they had been adopted at a regular or a special session.

26. In the economic field, the deterioration of the terms of trade continued. The United Nations, through the United Nations Industrial Development Organization, should help developing countries to industrialize, since assistance in the diversification of raw materials could be only a short-term solution which would ultimately impoverish the third world countries even more. His delegation would like to see much closer co-operation between the economic and social subsidiary bodies which had been established by the United Nations and whose objectives were complementary.

27. Mr. BA-SALEH (Democratic Yemen) said that, although his Government had not previously spoken in the Sixth Committee on the two important and closely related items under consideration and had not submitted written observations pursuant to General Assembly resolution 3349 (XXIX), paragraph 2, it adhered to the purposes and principles of the Charter and had on many occasions expressed the wish that the role of the United Nations should be continually strengthened and its effectiveness enhanced in order to meet the challenges faced by the international community.

28. The Charter, a reflection of humanity's aspiration to avoid the disastrous losses of another world war, had laid down principles of relations among States based on equal sovereignty, non-intervention in internal affairs and renunciation of the threat or use of force. It was the focal point for efforts to co-operate and to increase the economic and social well-being of all peoples. However, it had been the work of the nations represented at the San Francisco Conference and since then other newly independent or sovereign nations had joined the United Nations.

29. The United Nations had achieved much in its 30-year history and had more than once proved its ability to cope with world events, as could be seen from the rapprochement and international co-operation which had contributed

to easing international tension to some extent. Furthermore, the role of the United Nations in bringing about the independence of many nations and peoples and its battle against all forms of racial discrimination could not be forgotten. However, that positive side of the history of the United Nations should not make one forget its weaknesses and failures, which could be blamed not so much on defects in the Charter as on the positions taken by certain States and the unwillingness of those States to abide by the Charter and to implement United Nations decisions. Some Member States had committed aggression, wrought havoc in the world, driven people from their homes and violated human rights, thus flouting the decisions of the Security Council and the General Assembly. The veto had also been used to frustrate the will of the near-totality of Member States.

30. It would not be feasible to strengthen the role of the United Nations or enhance its effectiveness unless there was a genuine willingness on the part of all States, regardless of their size, their strength or their social, economic and political system, to adhere to the purposes and principles of the Charter and to comply with the decisions of the United Nations and the principle that the minority must defer to the wishes of the majority.

31. The *Ad Hoc* Committee had not accomplished the tasks for which it had been created because of differences among its members, which reflected differences expressed in the past in the Sixth Committee and in the written observations of Governments. Some had seen a need to revise and update the Charter to bring it into line with modern reality and the spirit of the times, whereas others had sought to preserve the Charter as a historical document. A third group had welcomed changes in the Charter which did not infringe upon its principles. There was no doubt that the world had changed since the Charter had been drafted. Not only had the membership of the United Nations changed both in size and in nature, but the challenges facing the Organization had become more numerous and more complex. Despite its successes, the Charter, like any work of mankind, contained ambiguities and defects and its drafters had therefore provided for the possibility of amending it, in Articles 108 and 109.

32. The *Ad Hoc* Committee had been formed in the hope that its work would indicate whether there was a need for review of the Charter or whether the role of the United Nations could be strengthened without affecting the Charter. However, since the *Ad Hoc* Committee had not achieved the desired results at its first session, his delegation supported the continuation of its work.

33. Mr. ABUL-KHEIR (Egypt) said that his country firmly believed in and respected the Charter. During the past 30 years the United Nations had made an effective contribution to decolonization and had been instrumental in helping many peoples to attain independence. Egypt had been a founding Member of the United Nations in 1945 and had viewed with satisfaction the advance made since then in the progressive development of international law and the establishment of relations of equality, justice and co-operation among nations. It had always supported any initiatives designed to increase the ability of the United Nations to discharge its responsibilities under the Charter and to

strengthen its role in the maintenance of international peace and security.

34. Although the Charter had proved to be a flexible instrument capable of being adapted to changing conditions in the world, a number of instruments of international law had been adopted in the last 30 years which had strengthened and amplified the provisions of the Charter. They included the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Declaration and Programme of Action on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States, to name only a few. In his delegation's view, there was no need to incorporate the provisions of such declarations of principle in the Charter itself, inasmuch as they had legal and moral force in their own right. The real need was not so much to revise the Charter as to modify the behaviour of certain States which were wilfully violating its provisions and refusing to comply with resolutions adopted by the United Nations. Despite the prohibition of the use of force spelt out in the Charter, it was no secret that certain States were not above resorting to force to occupy the territory of other States and trample on human rights. Egypt and other Arab States had been victims of armed aggression; some of Egypt's territory was still occupied by the armed forces of an expansionist State which not only refused to withdraw its occupying forces but was even establishing settlements in the occupied territories. That State had flouted numerous United Nations resolutions and had refused to grant the right of self-determination to the peoples of the occupied territories.

35. The right of veto enjoyed by the permanent members of the Security Council was not harmful *per se*, provided that it was used to promote the purposes and principles of the Charter. Some States, however, had abused that right and had prevented the Security Council from taking action in certain situations. To cite but one example, he noted that three permanent members of the Security Council had used their veto power to prevent the adoption of measures against the racist régime of South Africa which had been designed to put an end to the illegal occupation of Namibia.

36. While not opposing the idea of amending the Charter, provided that a majority of States thought it necessary, he emphasized that the essence of the problem was to modify the behaviour of States. Those States which were adamantly opposed even to considering the possibility of reviewing the Charter were taking an unnecessarily rigid approach.

37. He advocated extending the mandate of the *Ad Hoc* Committee and endorsed the idea that its membership should be expanded so that all States wishing to do so could take part in its work. The *Ad Hoc* Committee should make every effort to avoid confrontation and to establish a constructive dialogue between the opposing schools of thought on the question of Charter review.

38. Mr. RENNER-THOMAS (Sierra Leone) said that his delegation fully supported any attempt to find new ways

and means to enable the United Nations to perform its role with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law. The United Nations was the most important machinery of the present day for achieving the aims of international peace and economic and social development of all peoples. Despite the many successes of the United Nations and its specialized agencies, there could be no talk of securing world peace until there was a determined effort to do away with the gaps between States and to guarantee the harmonious development of all peoples.

39. Despite all its short-comings, the solutions to the problems facing the world could best be found within the framework of the United Nations. His delegation agreed with the Romanian delegation that it was time to consider the interests of all States and to create the conditions necessary for broader and more active participation on the basis of complete equality in the activities of the United Nations and its organs by all Member States, irrespective of their size. Suitable machinery should be set up to make an in-depth study of the Romanian and other proposals with a view to achieving a consensus that would ensure maximum co-operation by all Member States in a new programme for international peace and security and economic and social development.

40. There were two main areas in which the role of the United Nations needed strengthening. The first was that of settlement of international disputes by peaceful means. The International Court of Justice should be enabled to play a more effective part in that regard and more use should be made of other forms of judicial settlement such as mediation, conciliation and arbitration. To this end, the Romanian proposal for the establishment of a permanent commission of the General Assembly to fulfil those functions should be given closer study. The second and equally important area was that of economic and social development, where emphasis should be placed on the establishment of a new international economic order, including a just and more equitable code of conduct in international economic relations. The importance he attached to those two areas did not mean that such issues as disarmament, decolonization, human rights, racism and *apartheid* should be overlooked.

41. His delegation urged the establishment of machinery to explore ways of removing all impediments to the greater effectiveness of the United Nations, whether or not they lay in restrictions imposed by the Charter.

42. Mr. GONZALEZ GALVEZ (Mexico) said that, as his delegation had pointed out on many occasions, the major problem of the United Nations was the lack of political will to implement the Organization's decisions. A disturbing trend had developed towards dealing with major problems outside the framework of the United Nations. However, many positive steps had been taken to ensure peace and security in Europe, to defuse the situation in the Middle East, to recognize the rights of the Palestinian people and to further the process of decolonization in the former Portuguese colonies in Africa.

43. Charter review was an important question, but not one of the highest priority. It must be remembered that the Charter had been drafted in unique circumstances at the close of the Second World War and it was doubtful whether conditions at present were conducive to achieving as broad a measure of agreement as had been reached in 1945. Those who advocated revision of the Charter did so for various reasons—some because they believed that they might improve the position of their own countries within the Organization; others because they were genuinely interested in giving the Organization a new orientation towards the problems of paramount concern to the third world. Amendment of the Charter, however, was a very delicate business and would have to proceed gradually. His delegation had offered its observations on that subject in a statement during the general debate in the *Ad Hoc* Committee, which was reproduced on pages 57-60 of the *Ad Hoc* Committee's report. It had advocated (*ibid.*) that two sub-committees should be set up, one responsible for the structural changes which did not call for amendments to the Charter and the other responsible for a very preliminary analysis of those specific amendments to the Charter suggested by individual countries. His delegation was grateful that a number of others had endorsed that idea.

44. The Australian delegation (1565th meeting) had made a very interesting proposal, namely, that special attention should be given to the question of the pacific settlements of disputes as a separate item. Mexico endorsed that proposal and urged that such an item should be included in the agenda of the next session of the General Assembly with a view to elaborating a draft convention on the pacific settlement of disputes.

45. The Romanian delegation had also made a number of interesting proposals which deserved careful consideration. His delegation could not, however, accept the proposal that the concept of "enemy States" should be deleted from the Charter, in view of the widespread opposition to that proposal by certain permanent members of the Security Council. The proposal for the establishment of a new international economic order should be incorporated in the Charter, as well as the provisions of the Charter of Economic Rights and Duties of States.

46. His delegation supported the idea that the mandate of the *Ad Hoc* Committee should be renewed.

47. Mr. ROSSIDES (Cyprus) said that it was proper, and provided for in the Charter, that the functioning of the United Nations should be reviewed periodically. Review of the Charter during the current thirtieth anniversary year of the United Nations acquired an even greater significance. Since the framing of the Charter there had been 30 years of changes and technological developments which had given rise to many new problems. The central problem envisaged by the framers of the Charter had been that of preventing a new world war. The possibility of other equally menacing global dangers could not have been envisaged by them at that time.

48. It was, then, quite natural that there should be a review of the Charter and the question was how to proceed. The Charter had originally represented a move towards the

unification of a suffering world torn by the ravages of war. The aim had been to bring sanity into the conduct of world affairs and to establish unity. The same aims should underlie any action to review the Charter in the contemporary world characterized by an increasing interdependence of States and a need for co-operation among them. The United Nations, however, still tended to emphasize the national and sovereign aspects of States; it did not, consequently, have enough authority to achieve co-operation and progress towards the maintenance of peace and international security.

49. The Organization had been functioning abnormally owing to a deep-seated ailment, namely, its failure to perform its fundamental and primary responsibility for the maintenance of international peace and security. There were many reasons for the continuous failure of the United Nations in that regard; the cold war and other political and narrow-minded considerations had intervened. In their self-seeking and antagonistic approach to international relations States had not been complying with the Charter and its main tenet, which was the maintenance of peace and international security. Chapter VII of the Charter provided for the maintenance of peace and international security through the decisions and actions of the Security Council, but those decisions had not been implemented and had lost all significance. The required enforcement actions had been lamentably and grossly ignored. There had, it was true, been no new world war, but that was due rather to a dread of nuclear catastrophe than to a genuine interest in peace.

50. The absence of international security had had dire consequences. The continued armaments race was an intolerable burden on States and consumed resources which could have been spent on helping developing countries to develop. The solution of the problems of disarmament and the armaments race required provisions for the security of States by other means than force. It was futile to attempt to solve the problem with conferences and committees without first establishing international peace and security. It was a basic fact that there was no international security in the anarchical contemporary world. The Security Council took decisions without providing for their implementation and States refused to comply with the provisions of the Charter. The danger of nuclear catastrophe had eliminated the possibility of wars of any considerable scope or length. States must, therefore, have alternative peaceful means for solving disputes in accordance with the provisions of the Charter and the principles of international justice. The festering problems of the world continued because of the actions of those who imposed injustice on the world by the use of force. It was therefore absolutely necessary to bring about the implementation of Security Council decisions.

51. It was in that context that review of the Charter should be considered. The present means of implementing decisions were inadequate and should be studied, amended and updated as necessary. The capacity of the United Nations to maintain peace and international security would be increased by the establishment of a United Nations peace force which could be interposed between belligerents, even before the onset of hostilities. That would serve as a kind of intermediate measure between the practice of peace-keeping by invitation and the more severe enforce-

ment action against aggressors provided for in Chapter VII of the Charter.

Charter so as to establish legal order and international security.

52. The current period of détente and near-universality of the United Nations gave new reasons for moving towards the implementation of the provisions of the Charter. His delegation was against any changes in the United Nations which would affect the careful balance established by the Charter, including the right of veto. The number of States possessing that right should not be increased. His delegation merely wanted the Organization to function better, in the interests of legal order. In that connexion, the International Law Commission should turn its entire attention toward the development and codification of the principles of the

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-5, A/C.6/L.1019, A/C.6/L.1022/Rev.1, A/C.6/L.1023)

53. The CHAIRMAN announced that Kenya had become a sponsor of the amendments contained in document A/C.6/L.1023.

The meeting rose at 1 p.m.

1574th meeting

Tuesday, 25 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1574

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10101, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437)

1. Mr. DIENG (Senegal) said he regarded the two questions being discussed as particularly important because his country, since acceding to full sovereignty, had believed firmly in the United Nations, which played a vital role in the struggle of all peoples to make the world more just and more humane. Accordingly, Senegal had always actively supported the universality of the Organization, the improvement of its procedures and working methods and its democratization through the genuine participation of all its Members in the taking and effective execution of decisions, in accordance with the principle of the sovereign equality of States. It was logical, therefore, to consider agenda items 113 and 29 together, since the ultimate purpose of the proposals submitted with a view to making certain amendments to the Charter of the United Nations was the strengthening of the role of the Organization.

2. He regretted that not all the Members of the Organization had yet understood the legitimate demands of the international community for the establishment of a more just and humanitarian society. However, the reasons militating in favour of a restructuring of the United Nations system were obvious, for they were based on common sense. First, since its establishment, the United Nations had

admitted to membership a large number of new States whose interests could not have been taken into consideration 30 years before. Furthermore, the political, economic and social changes which had taken place during the past 30 years must be institutionalized. In particular, the solution of problems relating to development, a more equitable distribution of wealth, the full development of mankind within a more balanced environment and the prevention or resolution of serious situations, could not remain the sole responsibility of the great Powers. The Arab-Israel conflict, the situation in Cyprus and the troubles in Angola provided ample proof of the mistakes which could be made by the great Powers which took decisions contrary to the interests of the peoples concerned.

3. His delegation had studied with care the arguments put forward by those Member States which thought that the United Nations system could be made more effective without a review of the Charter. In particular, it had studied the suggestions contained in the report of the Secretary-General on the peaceful settlement of international disputes (A/10289) and in the report of the Group of Experts on the structure of the United Nations System¹ and had noted the observations of the States concerned. The proposals aimed at strengthening the role of the General Assembly and the Economic and Social Council, reorganizing the Secretariat, consolidating operational activities and funds, strengthening regional structures and revising procedures for settling disputes and the procedures of the Security Council were very interesting, but would not suffice to bring the United Nations to the desired level of effectiveness, for the functioning of certain United Nations organs could never be improved if certain States which put narrow national considerations before everything else refused to comply with United Nations resolutions, if the wealthy nations continued to block the establishment

¹ E/AC.62/9.

of a new international economic order and if the major Powers continued to abuse the right of veto.

4. In studying the report of the *Ad Hoc* Committee on the Charter of the United Nations (A/10033), his delegation had been struck by the fact that a majority of States were in favour of a review of the Charter. In addition to the arguments he had just put forward, the States in favour of reviewing the Charter had made concrete proposals aimed, not at destroying the achievements of the United Nations, but at consolidating them. Even if sceptical, those States which opposed a review of the Charter ought to keep an open mind and not systematically oppose all legitimate desire for change. The *Ad Hoc* Committee ought to study the relevant proposals of a number of delegations, particularly those of Mexico (*ibid.*, p. 57) and Romania (A/C.6/437), aimed at amending certain specific Articles of the Charter. Such a study would no doubt make it possible to find functional solutions, taking into account the views of a large number of Member States.

5. In reply to the main arguments against a review of the Charter, he said the United Nations could not be improved without such a review: first, because it was necessary to incorporate into the Charter provisions on economic relations; secondly, because a majority of States were in favour of a review of the Charter; thirdly, because the danger of upsetting the equilibrium was non-existent, because it had long been upset; and because the Charter contained specific provisions concerning its review. According to certain States, the principle of the sovereign equality of States was unrealistic, because it was necessary to take into account the responsibilities and privileges of the great Powers, but that was precisely the cause of the imbalance which had to be corrected. Furthermore, it had been clear for more than 10 years that a large number of States which professed neither capitalist nor communist beliefs were seeking to set their own course and wished to preserve their identity. It was therefore legitimate for the third world States to request that they too be given the right of veto. In fact, his delegation thought that it would be unrealistic to seek to regulate the use of that right, and even more so to call for its abolition, but felt that the third world countries ought to have greater negotiating power.

6. He said that his delegation would support any proposal aimed at strengthening the United Nations system by means of a review of the Charter.

7. Mr. SABEL (Israel), speaking in exercise of the right of reply, said he regretted that certain Arab delegations had made it a practice to use every possible United Nations forum and project for their own nefarious purposes and that they had succeeded, in the Third Committee, in clear violation of the principles and purposes of the Charter, in wrecking United Nations action against racism and racial discrimination. During the debate on review of the Charter, they had even said that the aim of the United Nations should be to conduct a campaign against the Jewish State.

8. On the thirtieth anniversary of an Organization created against the background of the Second World War, it was a sinister irony that representatives should be calmly discussing the review of the Charter in order to tailor it to the requirements of their pernicious campaign against the State

of Israel. It would be a grievous blow to the United Nations if the Sixth Committee was allowed to join those United Nations organs manipulated to suit the objective of certain Arab representatives, but he earnestly trusted that would not come about. He reminded the representatives concerned of those fundamental principles of the Charter which called for respect of sovereignty and peaceful settlement of disputes between States and said that the blatant and gross violations of those principles was perhaps the most grievous fault that the United Nations had seen.

9. Mr. ABUL-KHEIR (Egypt) recalled that at the previous meeting he had said that the question of strengthening the role of the United Nations was linked, not to a review of the Charter, but to the behaviour of States, and he had given a certain number of examples. Who violated the Charter of the United Nations? Who had occupied territories by force? Who did not respect the resolutions of the United Nations? Who violated human rights within occupied territories? Who refused to grant the right of self-determination to the Palestinian people? Who tore up resolutions in front of the General Assembly? History would answer such questions.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (A/10332, A/C.6/438)

10. Mr. SUY (Under-Secretary-General, The Legal Counsel) introducing, on behalf of the Secretary-General, his report on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/10332), recalled that the Programme had been established in 1965 by General Assembly resolution 2099 (XX), and had been continued under resolutions adopted annually until 1971, when the Assembly had decided, in its resolution 2838 (XXVI), that the Programme should be based on a biennial resolution. Thus, the last report on the subject had been submitted to the Sixth Committee in 1973.² In the report currently before the Committee, the Secretary-General described the activities carried out during the following two years and made recommendations for the continuation of the Programme in 1976 and 1977.

11. Chapter II of the report gave an account of the activities carried out in 1974 and 1975 by the three principal bodies participating in the execution of the Programme, namely the United Nations, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Institute for Training and Research (UNITAR). Those activities did not differ greatly from those conducted in previous years. However, he wished to point out that in 1975, the United Nations Commission on International Trade Law (UNCITRAL) had for the first time held a symposium on the role of universities and research centres with respect to international trade law. It was also gratifying to note that UNESCO had been expanding its activities relating to the study of international law and that UNITAR had once

² A/9242 and Corr.1.

again made a considerable contribution to the Programme, in particular by providing administrative and financial assistance for the United Nations-UNITAR Fellowship Programme and by organizing regional training courses in Sierra Leone and Zaire. The Secretary-General wished to express his deep gratitude to UNESCO and UNITAR, and joined the Executive Director of UNITAR in expressing appreciation to the Governments of Sierra Leone and Zaire.

12. Chapter III contained the Secretary-General's recommendations concerning the execution of the Programme in 1976 and 1977. As described in paragraphs 64 and 65, the Secretary-General recommended no substantive change in the activities of the United Nations. However, UNESCO was expected to commence in 1977 a considerably expanded programme for the medium-term period 1977-1982, as described in paragraph 66. UNITAR would continue its cycle of regional meetings and in 1976 was expected to organize two training and refresher courses in Asia, one for West Asia and the other for other parts of Asia.

13. Chapter IV dealt with the administrative and financial implications of United Nations participation in the Programme, relevant information for 1974 and 1975 being given in paragraphs 71 to 74. In that connexion, he wished to thank the Governments which in those years had helped to finance the Programme by making voluntary contributions. The Governments of Argentina, Austria, Iran and Yugoslavia had contributed for both 1974 and 1975, while the Governments of Australia, Cambodia, Cyprus, Iraq, Kenya, the Philippines, Thailand and Togo had contributed for either 1974 or 1975. In addition, several Governments had made contributions to the financing of the International Law Seminar held at Geneva, and the UNCITRAL symposium on the role of universities and research centres with respect to international trade law. Contributions to the Seminar had been received from the Governments of Denmark, Finland, the Federal Republic of Germany, Israel, Norway, the Netherlands and Sweden, and contributions to the symposium had been received from the Governments of Austria, the Federal Republic of Germany, Norway and Sweden. The Secretary-General wished to express his sincere thanks to all those Governments.

14. For the biennium 1976-1977, a sum of \$176,000 was included in the proposed programme budget to pay for fellowships and travel costs for participants in the regional training courses to be organized by UNITAR during that period. The high cost was a result of increased costs and the estimated high rate of inflation.

15. Chapter V gave an account of the meetings of the Advisory Committee on the Programme held in 1974 and 1975. The Secretary-General was most grateful to that Committee for its assistance. The Advisory Committee had endorsed the Secretary-General's recommendations regarding the execution of the Programme in 1976-1977, and those recommendations were now submitted to the General Assembly for its approval. He recalled that the term of office of the current members of the Advisory Committee expired at the end of 1975 and drew the attention of the members of the Committee to the note by the Secretary-General (A/C.6/438).

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*)* (A/10017, A/C.6/L.1016, A/C.6/L.1017, A/C.6/L.1021)

16. The CHAIRMAN announced that Bulgaria and Lesotho had become sponsors of draft resolution A/C.6/L.1021.

17. Mr. ABUL-KHEIR (Egypt), introducing draft resolution A/C.6/L.1021 on behalf of the sponsors, said that they attached particular importance to paragraph 8. They thought it essential for UNCITRAL to take account of developments in international economic relations and considered that if United Nations organs did not participate in the implementation of the resolutions of the sixth and seventh special sessions of the General Assembly those resolutions would remain a dead letter. He hoped that the Sixth Committee would adopt the draft resolution by consensus.

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (*continued*)** (A/10010, A/C.6/L.1024)

18. The CHAIRMAN announced that El Salvador had become a sponsor of draft resolution A/C.6/L.1024.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-5, A/9610/Rev.1***, A/C.6/L.1019, A/C.6/L.1022/Rev.1, A/C.6/L.1023/Rev.1)

19. The CHAIRMAN invited the representative of Mali to introduce the amendments to draft resolution A/C.6/L.1019 contained in document A/C.6/L.1023/Rev.1.

20. Mr. MAÏGA (Mali) explained that the sponsors of the amendments wished to delete the last part of the second preambular paragraph, following the words "including comments and observations...", because they considered that the International Law Commission (ILC) had finished its work on the draft articles on the succession of States in respect of treaties and that another body, for example a conference of plenipotentiaries, should now deal with the question. For the same reason, they wished to delete those paragraphs in the operative part of the draft resolution, which provided that the draft articles should be referred back to ILC. Furthermore, on reading chapter II of the report of ILC (see A/9610/Rev.1), they had felt that ILC had not taken a decision on the proposals mentioned in paragraph 75 of its report, not because of lack of time, but because no common position had emerged within ILC which would have enabled it to accept the proposals. It would be for the conference of plenipotentiaries to solve

* Resumed from 1572nd meeting.

** Resumed from the 1550th meeting.

*** Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

the problem. After reading out the new operative part which was being proposed, he stressed that following consultations the sponsors of the original amendments (A/C.6/L.1023) had decided to revise them by adding to the end of paragraph 3 the words "and to embody the results of its work in an international convention and such other instruments as it may deem appropriate".

21. He expressed the hope that at the thirty-first session, the Sixth Committee would decide on the date and venue for a conference of plenipotentiaries to examine and adopt an appropriate legal instrument concerning succession of States in respect of treaties.

The meeting rose at 4.30 p.m.

1575th meeting

Wednesday, 26 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1575

AGENDA ITEMS 114 AND 70

Respect for human rights in armed conflicts: report of the Secretary-General (*continued*)* (A/10195 and Corr.1 and Add.1, A/C.6/L.1025)

Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict (*continued*)* (A/10147, A/C.6/L.1025)

1. Mr. MAÏGA (Mali), introducing draft resolution A/C.6/L.1025 on behalf of the sponsors, said it was a follow-up to the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which had been held at Geneva from 3 February to 18 April 1975 and was the subject of a report of the Secretary-General (A/10195 and Corr.1 and Add.1). The preamble to the draft resolution stressed the basic progress made at the second session. Whereas the Diplomatic Conference had adopted only five articles at its first session, it had adopted almost 70 at its second session, i.e. almost half of the articles submitted to it. In the last preambular paragraph the General Assembly took note of a resolution recently submitted to it in draft form by the First Committee with the symbol A/C.1/L.728, which invited the Diplomatic Conference to continue its consideration of the use of specific conventional weapons in its search for agreement for humanitarian reasons on possible rules prohibiting or restricting the use of such weapons.

2. Reviewing the operative part of the draft resolution, he stressed the need for measures to promote on a universal basis the dissemination of and instruction in the rules of international humanitarian law applicable in armed conflicts, to which operative paragraph 2 called attention. Because of the complexity of the rules applicable in that field, it would be necessary, as some representatives had pointed out at the Diplomatic Conference, for each soldier to be also a lawyer. The question of the protection of journalists engaged in dangerous professional missions in areas of armed conflict had first been studied by the Third Committee, then referred to the Diplomatic Conference by the General Assembly by its resolution 3058 (XXVIII); it

was only at its second session that the Diplomatic Conference had considered the question and adopted a number of provisions. As indicated in operative paragraph 4 of the draft resolution, the Conference intended to complete its work on the subject during its next session.

3. He expressed the hope that the spirit of co-operation and solidarity which had prevailed thus far during the deliberations of the Diplomatic Conference would be maintained.

4. Mr. HAGARD (Sweden) stressed the substantive progress made by the Diplomatic Conference at its second session, especially with respect to the rules on the protection of the civilian population against the effects of hostilities. His Government considered it particularly important to prohibit area bombardment and attacks on crops and food, essential to the survival of the civilian population, or on works and installations containing dangerous forces, such as nuclear generating stations. His Government appreciated the results obtained with regard to the protection of wounded, sick and shipwrecked persons. The agreement reached on the appointment of "Protecting Powers" and their "substitute" should prove to be an important instrument for the better implementation of humanitarian law.

5. At the second session of the Diplomatic Conference, long negotiations had been devoted to the problem of the field of application of the draft of Protocol II relating to non-international armed conflicts. The consensus text that had finally emerged (see A/10195 and Corr.1, annex I) was a proof of the prevailing spirit of compromise and co-operation among delegations. In fact, the protection of victims of non-international conflicts was as important as the protection of victims of international conflicts.

6. However, various substantive questions remained to be solved at the third session of the Diplomatic Conference which would also require co-operation among delegations. In that connexion, he mentioned the extension of prisoner of war status to guerilla fighters, criminal liability for breaches of the Protocol and the establishment of an impartial inquiry commission to examine violations of the Conventions and the Protocol. In that regard, efforts must be made to induce compliance with obligations under international humanitarian instruments. The International

* Resumed from the 1572nd meeting.

Committee of the Red Cross (ICRC) and the League of Red Cross Societies could play an important role in that regard.

7. His delegation had already expressed, at the 2091st meeting of the First Committee, its views on the prohibition or restriction of the use of particularly cruel conventional weapons. He wished to thank ICRC for having convened the second Conference of Government Experts on that question and expressed the hope that the results of that meeting would facilitate the work of the Diplomatic Conference.

8. He expressed the hope that the third session of the Diplomatic Conference, convened by the Swiss Federal Council, would be successful and that the application of the future Protocols by all parties to an armed conflict would reduce somewhat the suffering such conflicts inflicted on mankind and the injury they caused to the environment.

9. Mr. SABEL (Israel) said that his country had been represented both at the various conferences of government experts which had preceded the Diplomatic Conference and at the two sessions of the Diplomatic Conference itself. He considered that the Sixth Committee should not hold a substantive discussion on the subject. It was necessary to maintain a clear distinction between human rights law, with its clear status in the world and the United Nations system, and the international humanitarian law applicable in armed conflicts. International humanitarian law had its own historical sources and legal practice which had crystallized into customary international law; it had unique ties with ICRC in Geneva and had remained one of the pillars of international law despite the clashes and vicissitudes which had marked changing world faiths, ideologies and political and social beliefs. In the efforts within the United Nations system to improve or maintain human rights, care must be taken not to impair or disturb the existing separate structure of international humanitarian law. It was for that reason that his delegation had refrained from commenting on the substance of the issues before the Diplomatic Conference. He wished, however, to observe that the report of the Secretary-General did not mention amendment CDDH/1/286, submitted by the Israeli delegation at the second session of the Diplomatic Conference, concerning the addition of a new article 2 *bis* to part I of the draft of Protocol I, under which, where the Red Shield of David on a white ground was already used as a distinctive emblem, that emblem would also be recognized by the terms of the Conventions and Protocol I. Since its establishment Israel had used the Red Shield of David as the distinctive emblem of the medical services of its armed forces, while respecting the inviolability of the distinctive signs and emblems of the 1949 Geneva Conventions. The shield of David was universally known and recognized as an emblem signifying Judaism; it had a long history which antedated the establishment of the State of Israel. The 1949 Conference had, moreover, recognized that that emblem was well known and respected in those parts of the world where it was used. His delegation had explained itself fully on that question at the twenty-eighth and twenty-ninth sessions (1453rd and 1519th meetings respectively) and hoped that the Diplomatic Conference would give final legal acknowledgement to Israel's right to protect itself in that way.

10. Mr. KUSSBACH (Austria) recalled that the negotiations concerning the reaffirmation and development of

international humanitarian law applicable in armed conflicts had begun in 1971, at the first Conference of Government Experts at Geneva; those negotiations had continued in 1974 and 1975 at the Diplomatic Conference and were to be completed in the near future. Although it was too early to draw any conclusions as to the final outcome of the negotiations, there was no doubt that the Diplomatic Conference had made important progress at its second session. As indicated in the report of the Secretary-General on the subject, more than half of the draft articles submitted to the Diplomatic Conference for approval had been adopted, and some of them had been particularly important. At the committee level, the Diplomatic Conference had also succeeded in adopting at its second session a draft article on the protection of journalists engaged in dangerous missions (see A/10195, annex I, P.9). His Government particularly welcomed that result because for several years it had striven with other Governments within the United Nations to obtain better protection for journalists on mission in dangerous areas. The debate on the prohibition or restriction of the use of certain conventional weapons had contributed to a more comprehensive assessment of the subject and to further clarification of some controversial issues.

11. Despite its remarkable achievements and the considerable length of its second session, the Diplomatic Conference had been unable to finish its work on time. Before the third session, at which complex and delicate questions would still have to be discussed, a second Conference of Government Experts was to meet in Lugano from 28 January to 26 February 1976, under the auspices of ICRC, with a view to presenting formal proposals on the prohibition or restriction of the use of specific conventional weapons. His Government feared that a fourth session of the Diplomatic Conference would be necessary, since after being adopted in committee the draft articles would still have to be considered by the Drafting Committee before being finally submitted to the plenary Conference. The work of the Drafting Committee might take some time.

12. His Government attached particular importance to the draft of Protocol II and considered that the Diplomatic Conference would not fulfil its purpose if it did not agree on rules governing the humanitarian aspects of non-international armed conflicts. It considered that the importance of the problem of the prohibition or restriction of the use of certain conventional weapons should not be underestimated and that basic rules should be adopted on that subject. In view of the financial burden which the Diplomatic Conference imposed on the host country, the delegations participating in the Conference should strive to avoid any unnecessary prolongation of its work.

13. He expressed his Government's gratitude to the Swiss Federal Council and ICRC for the excellent organization of the work of the Diplomatic Conference, and also expressed the hope that draft resolution A/C.6/L.1025, of which his delegation was a sponsor, would be adopted by consensus.

14. Mr. BUSSE (Federal Republic of Germany) said that his Government had always actively supported the efforts of ICRC and of the Swiss Federal Council to reaffirm and develop the international humanitarian law applicable in armed conflicts. At the second session of the Diplomatic

Conference about half of the articles contained in the draft additional protocols had been adopted and it was to be hoped that the Conference would be able to complete its work at its next session.

15. The Secretary-General's excellent report on the second session of the Diplomatic Conference was particularly concise. His delegation attached special importance to the provisions concerning the appointment of Protecting Powers, which were an improvement over those contained in the Geneva Conventions of 1949, to the agreement reached on the protection of journalists engaged in dangerous missions, to the provisions adopted by consensus concerning methods and means of combat and concerning the protection of the civilian population against dangers arising from military operations, and, lastly, to the important decisions taken on the field of application of the draft of Protocol II and on fundamental guarantees for the individual.

16. As was indicated in chapter VI of the Secretary-General's report at the second session of the Diplomatic Conference, the *Ad Hoc* Committee on conventional weapons had examined in depth the results of the Conference of Government Experts on the Use of Certain Conventional Weapons which had been held at Lucerne in the autumn of 1974; it had come to the conclusion that the question required further examination and, therefore, another conference of government experts was to take place at Lugano before the third session of the Diplomatic Conference.

17. The Diplomatic Conference still had a good deal to do at its third session in order to complete the two additional protocols, which were intended to ensure better protection of the individual, combatant or non-combatant, in time of war. Protection should be assured irrespective of the origin of the individual concerned and of the social system and aims of the State of which he was a national. Only that kind of protection would be in conformity with the principles advocated by ICRC and with the rules governing international humanitarian law. In view of the fact that 40 of the 50 armed conflicts which had occurred during the past decades had not been of an international character, his delegation felt that the adoption of Protocol II, which was to apply in non-international armed conflicts, was a matter of particular urgency. Protocol II would fill a gap since in the field of humanitarian law there were only a few universally accepted rules which applied to non-international conflicts. It would in all those cases establish a minimum standard of humanitarian protection on a level with that provided for in the International Covenants on Human Rights in time of peace.

18. He expressed the hope that the Diplomatic Conference would be able to complete its work at its next session and said that his delegation would support draft resolution A/C.6/L.1025.

19. Mr. JEANNEL (France) said that his delegation endorsed draft resolution A/C.6/L.1025, and particularly the seven operative paragraphs, although the last preambular paragraph gave it some difficulty. In that paragraph, the General Assembly noted a resolution which had not yet been adopted, the draft of which would be submitted to it

by the First Committee at the current session, which invited the Diplomatic Conference to continue its consideration of the use of specific conventional weapons and its search for agreement on possible rules prohibiting or restricting the use of such weapons. His delegation felt that the Diplomatic Conference was not called upon to deal with disarmament and that the consideration of that question could only impede its work. Nevertheless, if the idea expressed in the last preambular paragraph was accepted by consensus, his delegation would not oppose it. As matters now stood, it was, however, impossible for the Sixth Committee to propose that the General Assembly should take note of a document the precise contents of which were not even familiar to the Sixth Committee. The contents of the draft resolution of the First Committee, once it was adopted by the General Assembly, might differ from the description given in the paragraph in question.

20. It should also be noted that the Sixth Committee, like all the Main Committees, adopted only draft resolutions, which were submitted to the General Assembly. Until such time as the Assembly adopted a draft resolution, there was, properly speaking, no resolution. His delegation therefore felt that the paragraph in question did not belong in the draft resolution under consideration. That did not mean that it would oppose in plenary a reference to a resolution adopted by the General Assembly on the basis of a draft resolution submitted by a Main Committee if there was a consensus concerning such a reference. However, the Sixth Committee could not at that time prejudge the decision to be taken by the General Assembly on the draft resolution to be submitted to it by the First Committee. Once it had the draft resolutions of its Main Committees before it, the General Assembly would have to undertake a task of co-ordination; it was then that any delegations wishing to refer to the resolution that might be adopted on the basis of the First Committee's draft could make known their views.

21. He therefore proposed that the last preambular paragraph of draft resolution A/C.6/L.1025 should be deleted.

22. Mr. MELESCANU (Romania) said that his country, which had taken part in the conferences organized on the initiative of ICRC and the Swiss Federal Council, regarded the questions dealt with by those conferences as forming an integral part of its foreign policy. Desiring to strengthen international peace and security and to bring about new relations between States, his country felt that the questions relating to international humanitarian law applicable in armed conflicts should be approached in the light of the need to put an end to war and remove the sources of tension and conflict.

23. Humanitarian law could only develop within the larger framework of the general protection of peoples and nations based on respect for the rules and principles of present-day international law. It must be directed towards affording better protection to the civilian population and the civilian economy and must be based on a clear distinction between combatants and the civilian population; it was therefore essential that weapons of mass destruction and indiscriminate weapons, reprisals, the taking of hostages and all acts of terror should be prohibited for ever.

24. The question of armed conflicts of a non-international character must be approached in the light of the need to respect the right of every people to choose, develop freely and defend its political, economic, social and cultural system and of the obligation of every State to refrain from any act aimed at overthrowing the régime of another State. His delegation therefore felt that to apply in domestic conflicts a set of rules which were valid in the case of international conflicts might have negative consequences and entail violations of international law.

25. The United Nations could not remain indifferent to the desire of the international community to ensure the rule of humanitarian law and to make justice prevail and it must encourage efforts to develop humanitarian law. The drafts adopted at the second session of the Diplomatic Conference demonstrated the importance of the work done in preparing future additional protocols to the Geneva Conventions—a first step towards the reaffirmation and development of humanitarian law, which must be accomplished within the framework of present-day international law.

26. In the case of all the peoples which had attained independence at the cost of a prolonged struggle and great sacrifice, the development of humanitarian law must serve to consolidate their sovereignty and strengthen their protection against aggression. Humanitarian law would thus also contribute to the stricter implementation of general international law. His delegation was convinced that the third session of the Conference, to which it would make a contribution, would be of decisive importance to the reaffirmation and development of humanitarian law.

27. Mr. GONZALEZ GALVEZ (Mexico) urged the members of the Committee to adopt draft resolution A/C.6/L.1025 by consensus. He recalled in that connexion that the Sixth Committee had traditionally considered the results of conferences of plenipotentiaries. Although the question before the Committee was under consideration in other bodies, the United Nations would be failing in one of its duties, namely that of ensuring international peace and security, if it did not take a position on questions which were connected with the purpose it was pursuing.

28. As to the problem referred to by the representative of France, he realized that it was difficult to endorse the draft resolution under consideration before the First Committee took a decision on the draft referred to in the last preambular paragraph; however, he could not agree to the deletion of the paragraph in question, which contained a concept that was fundamental to the development and codification of humanitarian law. At least in the view of his delegation, one of the most important problems before the Diplomatic Conference was that of prohibiting and restricting certain types of weapons, whereas the representative of France felt that that problem should be dealt with separately within the framework of disarmament. He expressed regret, in that connexion, that France was not taking part in the disarmament negotiations which were currently taking place. To refer that question to the Conference of the Committee on Disarmament would in fact mean postponing its consideration for a decade, for the representative of France was surely aware that the Conference of the Committee on Disarmament had a heavy

agenda. His delegation had, moreover, emphasized at the Diplomatic Conference that if that Conference did not establish rules restricting or prohibiting conventional weapons, Mexico would neither sign nor ratify any protocols which that Conference might adopt. It was for those reasons that his delegation opposed the deletion of the last preambular paragraph and had introduced in the First Committee, together with other delegations, a proposal (A/C.1/L.728) concerning napalm and other incendiary weapons and all aspects of their possible use.

29. With regard to the fourth preambular paragraph of the draft resolution, he noted that, during the discussions in the Third Committee and at the Diplomatic Conference, some representatives had questioned the advisability of granting special protection to journalists engaged in dangerous missions in areas of armed conflicts for fear that, if the definition of the expression "non-international armed conflict" was not sufficiently precise, a State might be compelled to grant special protection to journalists in cases of domestic conflict. The problem seemed to have been solved by the definition which had been adopted, but, since it was not certain that the draft of Protocol II would command the support of the international community, Mexico was reconsidering its position regarding that instrument. His delegation felt that the United Nations had not only the right but the duty to state its views on the matter.

30. With regard to the prohibition of incendiary weapons, he pointed out that paragraph 100 of the report of the Secretary-General set forth the substance of a proposal which involved a whole series of prohibitions against the use of such weapons. That proposal should be given priority consideration at the following session of the Conference. He deplored the negative attitude of certain Powers which were endeavouring to delay consideration of that question. Despite the prohibition against the threat or use of force which had been enshrined in the Charter since 1945, more than 100 armed conflicts had broken out in the world, although none had taken place in a developed country. His delegation therefore felt particularly strongly that that question should be given priority.

31. Mr. SIEV (Ireland) said that his delegation had noted with satisfaction the progress made, at the second session of the Diplomatic Conference, since his Government was of the opinion that the conclusion of new international instruments concerning humanitarian law applicable in armed conflicts was becoming increasingly urgent in the present period of world insecurity and tension. Referring to paragraph 10 of the Secretary-General's report, he emphasized that until 1974 the number of delegations participating in work on humanitarian law had increased, but that the number of States participating in the Conference had fallen from 126 in 1974 to 121 in 1975, probably because of the proliferation of diplomatic conferences, to which small States could not always send representatives. However, his delegation appealed to all delegations, particularly to those of new Member States, to consider the question of their attendance at the third session of the Diplomatic Conference.

32. Mr. ROSENSTOCK (United States of America) said that for the reasons given by the representative of France, the last preambular paragraph of draft resolution A/C.6/

L.1025 definitely posed a problem which could not be overcome by sarcasm. He did not necessarily maintain that that paragraph was substantively unacceptable, but believed that if the Committee adopted it in its present clearly improper form it would not be demonstrating the seriousness that was to be expected of it.

33. Mr. JEANNEL (France), in reply to the representative of Mexico, said that he had no wish to engage in either polemics or haggling. He had referred to his own position only because it had been difficult for him not to do so. He had also made it clear that his delegation would not oppose a consensus if one could be found on the subject. The problem was a legal one. Since it was the General Assembly which adopted resolutions, only that body could include in a resolution a reference to another resolution which had not yet been adopted. One solution would be for the Sixth Committee to adopt the draft resolution without the last preambular paragraph and for the Chairman of the Sixth Committee to draw the attention of the General Assembly to the fact that a certain number of delegations favoured making reference in the Sixth Committee's draft to the resolution which was to be adopted on the basis of the draft resolution of the First Committee.

34. Mr. HAGARD (Sweden) proposed changing the wording of the last preambular paragraph to read: "*Noting that the Diplomatic Conference should continue to consider...*". That would avoid a reference to a draft resolution which had not yet been adopted by another Committee.

35. Mr. MAÏGA (Mali) supported the proposal of the Swedish representative, subject to a minor modification. He proposed replacing the words "should continue its consideration" by the words "will continue its consideration".

36. Mr. JEANNEL (France), supported by Mr. ROSENSTOCK (United States of America), said he was grateful to the representatives of Sweden and Mali for their proposal and was prepared to accept the proposal of the representative of Mali if it could be agreed upon by consensus.

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session (concluded) (A/10010, A/C.6/L.1024)

37. The CHAIRMAN announced that the delegations of Canada, Hungary, Nigeria, Poland and Turkey had joined the sponsors of draft resolution A/C.6/L.1024.

38. Mr. GOBBI (Argentina), introducing draft resolution A/C.6/L.1024, said that that document reflected the spirit of conciliation which prevailed in the Sixth Committee. He expressed the hope that it would be adopted unanimously.

39. The CHAIRMAN said that if he heard no objection he would take it that the Sixth Committee wished to adopt draft resolution A/C.6/L.1024 without a vote.

Draft resolution A/C.6/L.1024 was adopted.

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (concluded) (A/10017, A/C.6/L.1016, A/C.6/L.1017, A/C.6/L.1021)

40. The CHAIRMAN announced that Ghana and Nigeria had joined the sponsors of draft resolution A/C.6/L.1021. He invited the members of the Sixth Committee to vote on the draft resolution. He announced that one delegation had asked for a separate vote on operative paragraph 8 of that document.

41. Mr. STARČEVIĆ (Yugoslavia) asked that the delegation concerned make a request for division.

42. Mr. ROSENSTOCK (United States of America) said that in order to save time his delegation had asked in advance for a separate vote on operative paragraph 8, but it had no objection to having that request included in the summary record.

43. Mr. ABUL-KHEIR (Egypt) objected to the request for division and asked the Chairman to apply rule 129 of the General Assembly rules of procedure.

44. The CHAIRMAN said he intended, in accordance with the provisions of rule 129, to give the floor to two speakers in favour of the request for division and one more speaker against.

45. Mr. STEEL (United Kingdom) said he deplored the tendency to prevent divergent opinions from being expressed, a practice which so far had not prevailed in the Sixth Committee. He strongly supported the request for division.

46. Mr. BOUCHOUAREB (Algeria) said that the draft resolution concerned the fields of trade and economics, to which the decisions adopted at the two special sessions of the General Assembly had related, and that operative paragraph 8 was in perfect harmony with the rest of the draft resolution. His delegation opposed a separate vote.

47. Mr. WANG (Canada) said he fully shared the position of the United Kingdom representative. The draft resolution dealt not only with trade and economic matters, but also with legal matters on which the members of the Sixth Committee, as jurists, could have differing points of view.

A non-recorded vote was taken on the motion for division.

The motion for division was rejected by 67 votes to 24, with 12 abstentions.

At the request of the representative of Yugoslavia, a recorded vote was taken on draft resolution A/C.6/L.1021.

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Colombia, Congo, Cuba, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon,

German Democratic Republic, Ghana, Greece, Guatemala, Guyana, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Laos, Lesotho, Libyan Arab Republic, Madagascar, Malaysia, Mali, Mexico, Mongolia, Mozambique, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire, Zambia.

Against: None.

Abstaining: Germany (Federal Republic of), Swaziland, United Kingdom of Great Britain and Northern Ireland, United States of America.

The draft resolution was adopted by 98 votes to none, with 4 abstentions.

48. Mr. ROSENSTOCK (United States of America) said he regretted that the Committee had been deprived of the possibility of voting separately on operative paragraph 8. The reservations of his delegation concerning the results of the work of the sixth special session and certain aspects of that of the seventh special session were well known. It was doubtful whether the recommendations made at those two sessions or those included in resolution 3281 (XXIX) had been the subject of sufficiently mature reflection to warrant mention in a legal context. His delegation had endeavoured to seek a common basis which would have made it possible to adopt the draft resolution by consensus. In that regard, his delegation wished to thank the Rapporteur, who had presided over the informal consultations. It also wished to express its gratitude to the entire Latin American group and to the large number of African and Asian delegations which had demonstrated a spirit of conciliation. He expressed regret that the wilful and irresponsible conduct of one delegation which came neither from Africa nor Asia had been largely responsible for the failure to achieve consensus. It regretted that for the first time the Sixth Committee had not been able to adopt by consensus a draft resolution concerning the work of the United Nations Commission on International Trade Law (UNCITRAL).

49. Mr. BUSSE (Federal Republic of Germany) noted his Government's interest in the work of UNCITRAL, as demonstrated by its contributions to financing the most recent symposium organized by UNCITRAL for jurists from developing countries. His delegation therefore regretted that it had had to abstain in the voting on the draft resolution. It had been unable, however, to accept either the references in the third preambular paragraph to General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) or operative paragraph 8. UNCITRAL, the efforts of which were aimed at establishing uniform rules in the field of international trade law, must be wary of any political intent aimed at favouring certain States.

50. Mr. GODOY (Paraguay) said that his delegation had voted for the motion for a separate vote submitted by the

United States delegation because it was convinced that every delegation had the unconditional right to refuse to participate in a "forced" consensus, a right which the Sixth Committee must preserve for every one of its members. Nevertheless, his delegation had voted for the draft resolution as a whole.

51. Mr. KRISHNADASAN (Swaziland) said that his delegation had abstained by error in the voting on the draft resolution but in fact fully endorsed that text, in particular operative paragraph 8.

52. Mr. SIBLESZ (Netherlands) regretted that the Committee had rejected the request for a separate vote on operative paragraph 8 of the draft resolution, but said that his delegation would have voted for retaining paragraph 8 in spite of certain reservations with respect to the resolutions to which it referred. He noted that at the twenty-ninth session of the General Assembly his delegation had abstained in the voting on the Charter of the Economic Rights and Duties of States and added that it questioned the advisability of asking UNCITRAL to take into consideration the provisions of the resolutions adopted at the sixth and seventh special sessions of the General Assembly.

53. Mr. BOSCO (Italy) said that he had voted for the draft resolution but was sorry that the Committee had been unable to vote separately on operative paragraph 8, which, like the third preambular paragraph, referred to certain resolutions with regard to which his delegation had serious reservations. It was inappropriate to bring to the attention of UNCITRAL, a legal and technical body, resolutions dealing with questions of economic policy.

54. Mr. SHIGETA (Japan) had voted for the request for a separate vote because it felt that delegations ought to have an opportunity to express their opinion by voting. His delegation had voted for the draft resolution as a whole but found it rather hard to accept operative paragraph 8 and would have abstained if that paragraph had been put to a separate vote.

55. Mr. STEEL (United Kingdom) stated that his delegation had been one of those which had wanted a separate vote on operative paragraph 8 and he regretted the Committee's refusal to give delegations a chance to express a divergent opinion. If that paragraph had been put to a vote his delegation would have voted against it. That was why it had no choice but to abstain in the voting on the draft resolution as a whole. His delegation was customarily among the sponsors of the draft resolution adopted each year on the report of UNCITRAL and, but for the offending paragraph, would have been willing to sponsor it at the current session. It was only the insistence of a very few delegations on the inclusion of the extraneous and provocative material that had prevented such a result and had frustrated long and patient attempts by delegations from all regional groups to find a less confrontational formula. It was not the fault of those delegations nor of the United Kingdom delegation if those efforts had failed. His delegation regarded the draft resolution as unacceptable for several reasons. It could not join in recommending that UNCITRAL should take into consideration resolutions to parts of which it had expressed and continued to maintain explicit reservations. Furthermore, whereas the sixth special

session of the General Assembly had taken place in an atmosphere of confrontation, the seventh special session had raised hopes for a dialogue. The latter session was the appropriate starting point for a constructive dialogue in the future. It was therefore unhelpful to give such treatment to the resolutions of the sixth special session. Finally, to address such a recommendation to UNCITRAL would be to divert it from its proper task and to imperil its capacity to continue to produce beneficial results.

56. Mr. WANG (Canada) said that he had voted for the draft resolution as a whole but that if operative paragraph 8 had been put to a separate vote his delegation would have been unable to support it. He wished to emphasize, moreover, that his delegation's vote for the draft resolution in no way implied any change in attitude on its part with regard to the resolutions mentioned in operative paragraph 8, its reservations with regard to which it had stated.

57. Mr. VAN BRUSSELEN (Belgium) associated himself with the representatives who had expressed their regret at not having obtained permission to express their opinion freely. His delegation had voted for the draft resolution as a whole but still had reservations with regard to the results of the sixth special session of the General Assembly. If the motion for a separate vote had not been rejected it would not have voted for operative paragraph 8.

58. Mr. BRUNA (Chile) said that he had voted for the motion for division because all delegations ought to be given the opportunity to express an opinion. However, his delegation would have voted for operative paragraph 8 if it had been put to a separate vote and it had voted for the draft resolution as a whole.

59. Mr. GÜNEY (Turkey) said that he had voted for the request for a separate vote for the reasons stated by the representative of Paraguay. Nevertheless, he would have voted for operative paragraph 8 if it had been put to a separate vote and he had voted for the draft resolution as a whole.

60. Mr. STARČEVIĆ (Yugoslavia) wished to make it clear that the intention of the sponsors of the draft resolution had been to co-ordinate the efforts of UNCITRAL and the decisions taken by the United Nations in the economic field, which was quite natural, especially in view of the last preambular paragraph of resolution 3362 (S-VII). Also, UNCITRAL was obviously concerned with legal problems which were related to the questions raised at the seventh special session. He was therefore surprised at the opposition of certain representatives to a reference to the natural connexion between the work of UNCITRAL and that of the General Assembly.

61. Furthermore, the importance of the achievements of the sixth special session should not be underestimated and the impression should not be created that they had been superseded by those of the seventh special session. In the view of his delegation, the resolutions adopted at the sixth special session embodied the principles on the basis of which countries must work in promoting economic development. The sponsors of the draft resolution had done their utmost to reach a consensus and the final version of operative paragraph 8 was far more carefully worded than

the original one. To yield on that matter of principle would amount to denying the achievements of the past two special sessions of the General Assembly. A consensus reached at the expense of the developing countries and their interests would not further the efforts of the United Nations.

62. Mr. BRACKLO (Federal Republic of Germany), Rapporteur, recalled that in resolution 2292 (XXII) the General Assembly had recommended that the Main Committees should include summaries of their debates in their reports only in exceptional circumstances. The Sixth Committee's report on the reports of the International Law Commission (ILC) and UNCITRAL had always contained not only the texts of proposals, amendments and decisions taken, but also a summary of debates. If the Committee wished, the draft report of the Sixth Committee would be drawn up along the same lines and would include a summary of its debates on the ILC report, amounting to approximately 65 pages, at a cost estimated at \$16,240, and on the report of UNCITRAL, amounting to approximately 10 pages, at a cost estimated at \$2,500.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (*continued*) (A/10332, A/C.6/438)

63. Mr. BAQIR (Pakistan) noted with satisfaction that the United Nations had adopted a variety of measures which were aimed at the progressive development of international law, especially the harmonization of international trade law, and was sure that the symposium organized on the role of universities and research centres with respect to international trade law would have provided a valuable opportunity to scholars to focus their attention on that important branch of law. His delegation was not surprised that the Secretariat had received many requests for organizing similar symposia in other parts of the world. He emphasized the need for holding such seminars in the developing countries because the developed countries had to share their knowledge with the countries of the third world, which were engaged in the struggle to eliminate the traces of past exploitation and were striving to shape a new and more equitable economic order. The scholarship programme was also useful. Pakistan appreciated the efforts made by the United Nations Institute for Training and Research (UNITAR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in organizing training and refresher courses in international law and looked forward to participating in that study programme.

64. Mr. STARČEVIĆ (Yugoslavia) said that his delegation had always attached considerable importance to the United Nations Programme of Assistance which contributed to the promotion of the rule of law in international relations and therefore deserved the full support of States. The importance of that Programme could not be over-estimated, since it provided the means for training lawyers from developing countries in questions that were of special importance for their countries. During the past two years, the Programme had been conducted in accordance with the relevant General Assembly resolutions and, given the existing

possibilities and resources, it had been successfully executed. His delegation wondered whether it would be possible to increase the publicity given to the legal activities of the United Nations and it welcomed the development of activities concerning international trade law. With reference to the United Nations-UNITAR Fellowship Programme in International Law, his delegation approved its aims as well as the criteria used in the selection of candidates, but did not quite understand the practice of awarding fellowships to nationals of countries that were not Members of the United Nations and would appreciate a clarification of that point.

65. His delegation supported the Secretary-General's recommendations for 1976-1977, made in his report (see A/10332, chap. III), and hoped that Member States would increase their support to the Programme in order to facilitate its expansion.

66. Mr. KASHAMA (Zaire) recalled that his country had had the honour to act as host from 16 to 29 January 1975 to the participants in the regional training and refresher courses in international law organized by UNITAR for French-speaking African lawyers. Those courses had been successful. It appeared, however, that the programme had been too heavy, since it had not been possible to give sufficient time to discussions after the theoretical exposition. Zaire had always considered that it was better to teach a person to work than provide for his needs. That was the aim of the new regional training and refresher courses in international law organized by UNITAR for Africa, Asia and Latin America. His delegation wished to thank UNITAR and all the teachers and experts who were helping to arrange the courses as well as the Governments which contributed towards financing the activities of the Programme.

67. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that his delegation had studied with interest the Secretary-General's report on the Programme. International law was currently of increasing importance and a better understanding of legal principles benefited the good-neighbourly relations among countries with different economic and social systems. In that respect, the Programme established by General Assembly resolution 2099 (XX) played an important role. It emerged from the Secretary-General's report that substantial progress had been made over the past two years in the implementation of the Programme.

Thus, seminars had been organized during the twenty-sixth and twenty-seventh sessions of the International Law Commission and a symposium on the role of universities and research centres with respect to international trade law had been held on the occasion of UNCITRAL's eighth session. Furthermore, advisory services had been provided by experts and legal publications had been disseminated in the developing countries. Account should also be taken of the useful role played by UNESCO and UNITAR. It would be good to invite lawyers from socialist countries to participate in the activities of the Programme so that the lawyers of the developing countries might familiarize themselves with all the concepts of international law.

68. His Government attached the greatest importance to the study of international law, as attested by the courses organized in several higher educational establishments in his country. It furnished bilateral aid for the training of specialists in international law: during recent years, the Ukrainian SSR had trained over 200 specialists from developing countries. Bilateral aid in that field in no way reduced the usefulness of the Programme, but it should be taken into account when the estimates for the Programme were being prepared. Considering the critical financial situation of the United Nations, the implementation of the Programme in 1976 and 1977 should not give rise to additional expenditure from the United Nations budget.

69. Mr. ROSENSTOCK (United States of America) expressed his satisfaction with regard to the excellent work carried out under the Programme, which provided a useful complement to bilateral assistance activities. He also stressed that the principle of universality was particularly appropriate considering that the item involved among other things the wider dissemination of international law.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (*continued*) (A/10198 and Add.1-5, A/C.6/L.1019, A/C.6/L.1022/Rev.1, A/C.6/L.1023/Rev.1)

70. The CHAIRMAN announced that Nigeria had joined the sponsors of the amendments contained in document A/C.6/L.1023/Rev.1.

The meeting rose at 6 p.m.

1576th meeting

Friday, 28 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1576

AGENDA ITEMS 114 AND 70

Respect for human rights in armed conflicts: report of the Secretary-General (*continued*) (A/10195 and Corr.1 and Add.1, A/C.6/L.1025/Rev.1)

Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict (*continued*) (A/10147, A/C.6/L.1025/Rev.1)

1. The CHAIRMAN announced that Norway had become a sponsor of draft resolution A/C.6/L.1025/Rev.1.

2. Mr. HAGARD (Sweden), speaking on behalf of the sponsors of draft resolution A/C.6/L.1025/Rev.1, said that the revised text involved no changes of substance but only improvements in the text of the English version.

3. Mr. BAQIR (Pakistan) noted with satisfaction that his country had been able to make some modest but positive contributions to the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. He believed it was necessary to establish a distinction between liberation movements striving for the right of self-determination and groups attempting internal subversion and secession aimed at the disintegration of a State. Persons engaged in the latter reprehensible activity did not and should not fall within the definition of prisoners of war. Any rebel engaged in disrupting law and order remained subject to national law and was therefore liable to be prosecuted and punished, if found guilty. His country had submitted an amendment at the second session of the Diplomatic Conference to the effect that only those liberation movements which satisfied certain criteria could invoke the protection accorded under draft Protocol I, whereas a rebellion could not avail itself of such protection and rebels should be treated as ordinary criminals.

4. With regard to the articles dealing with the limitation and prohibition of such weapons as were considered by their very nature and effect to be harmful to civilians and combatants alike, his delegation had also proposed an amendment to the effect that the High Contracting Parties should meet periodically to discuss the weapons which were likely to produce such widespread results. His delegation continued to oppose area bombing which might cause civilian casualties. The civilian population and civilian objects must be given absolute protection against any attack. However, if certain objects were used in direct support of military objects, they should be considered as having lost their civilian character. Moreover, any attack on such crucial works and installations as dams and power stations should be prohibited as potentially endangering the civilian population.

5. His country would have no objections to the establishment of an impartial body to verify whether a locality was defended or not. The use of prisoners of war to achieve a political advantage should also be forbidden.

6. With regard to the draft Convention for the Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict referred to in the Secretary-General's note (A/10147), his delegation proposed the following addition as paragraph 3 of article 6:

"A journalist who is not a national of a State party to the Convention may nevertheless apply for the issuance of an identification card to a State party which is engaged in or on whose territory armed conflict is taking place. The State party may issue a card to him, if in the view of a competent authority of the State party he has satisfied the norms and conditions established for the issuance of the card."

His delegation considered that the early finalization of the Convention was vital and expressed its appreciation to the Working Group of Committee I of the Diplomatic Conference for its preparation of a model identity card for journalists engaged in dangerous missions.

At the invitation of the Chairman, Mr. Marcuard (Observer for Switzerland) took a place at the Committee table.

7. Mr. MARCUARD (Observer for Switzerland) said that respect for human rights in armed conflicts had always been one of the major concerns of his Government. He congratulated the Secretary-General on his report (A/10195 and Corr.1 and Add.1), which faithfully and objectively reflected the work of the second session of the Diplomatic Conference. The fact that the United Nations had participated at the Conference as an observer, together with the United Nations deliberations on the issue, was clear proof of the co-operation which had existed for a number of years between the United Nations, the International Committee of the Red Cross (ICRC) and the Swiss Government in the field of international humanitarian law. The Swiss Government was particularly gratified that the General Assembly had reiterated its appeal to all participants in the Diplomatic Conference to do their utmost to reach agreement on additional rules which might help to alleviate the suffering brought about by armed conflicts and to respect and protect non-combatants and civilian objects in such conflicts.

8. For the second time, the Federal Council had been pleased to welcome to Geneva a remarkably large number of delegations. The high level of participation in the Conference had been most gratifying and had demonstrated the importance attached by the world community to the

tasks assigned to the Conference. It also demonstrated the universality of humanitarian law which must be maintained to enable the drafting of clear, simple texts that could be ratified by all the participating States.

9. The second session of the Diplomatic Conference had been able to make substantial progress, because about half the articles contained in the two draft Protocols had been adopted in Committee.

10. The Federal Council hoped that all delegations invited would meet in Geneva the following year for the third session of the Conference and that the plenipotentiaries would reach complete agreement on unanimously recognized principles and on concrete improvements in the situation of victims of armed conflicts.

11. Mr. NOLAN (Australia) commended the willingness which had existed at the second session of the Diplomatic Conference to proceed with constructive consideration of the draft Protocols. The progress made on the substance of those drafts had been in refreshing contrast to the first session. Committee I had succeeded in adopting article 1 of draft Protocol II and article 5 of draft Protocol I. For its part, Committee II had agreed on the increased protection to be afforded to medical personnel, to units and transports and to persons deprived of liberty. That development should be considered a major extension of humanitarian law. In addition, important work on draft Protocol I had ensured that all the advantages of modern air transport would in future be made available to assist in the evacuation of wounded, sick and shipwrecked persons. Substantial progress had also been made by Committee III and the *Ad Hoc* Committee on Conventional Weapons.

12. While the general progress made at the second session was encouraging, a number of major problems still remained to be solved. However, his delegation was hopeful that the businesslike atmosphere would continue to prevail at the third session so that the Conference would be able to conclude its work. The Australian delegation attending the third session would work towards that goal and he wished to express appreciation to the Swiss Federal Council for convening that session.

13. With regard to the question of the protection of journalists engaged in dangerous missions, his delegation had played an active part in the development of that important question since its introduction at the twenty-fifth session of the General Assembly and had submitted a draft convention which had been amalgamated with a French draft to form the basis of the working draft Convention considered at the Diplomatic Conference. The complexity of the issue was demonstrated by the fact that it had been under consideration for five years. The right to seek, receive and impart information and ideas through any media regardless of frontiers, as set out in article 19 of the Universal Declaration of Human Rights, could hardly be exercised unless journalists were granted special protection when carrying out their functions in dangerous situations. His delegation strongly believed in the importance of the role played by journalists in the unfortunate event of armed conflict, as had been demonstrated by its activity on the question, and was aware of the important humanitarian considerations involved. Although progress on the matter

had not been rapid, the results of the second session of the Diplomatic Conference had been acceptable. At that session, it had been agreed that, if conclusive progress was to be made, it would be necessary to discard the idea of a separate convention. His delegation considered that the ideal result would have been the adoption of a convention. Nevertheless, in view of the urgency and the importance of the issue, his delegation appreciated the need for the adoption of an instrument which would be widely accepted. His delegation would support draft resolution A/C.6/L.1025/Rev.1.

14. Mr. SZELEI (Hungary) said that his delegation, while welcoming the substantial progress made at the second session of the Diplomatic Conference, deeply regretted that the idea of universal participation had been rejected.

15. His Government continued to attach great significance to its participation in the elaboration of two draft Protocols aimed at supplementing the 1949 Geneva Conventions. Both draft Protocols were equally essential to the development of international humanitarian law in general and to the protection of victims of war in particular.

16. The most fruitful and promising work had been done in respect of draft Protocol I, particularly in Committee III of the Conference. His delegation noted with satisfaction paragraphs 76, 77 and 91 of the Secretary-General's report since, at the Conference of Governmental Experts held in 1972, the Hungarian representative had drawn attention to the need for regulations concerning the restriction of damage to the natural environment in armed conflicts.

17. As paragraph 75 of the report showed, a large number of countries had made a proposal of great significance concerning the need for a new article in draft Protocol I devoted to the recognition of the importance of the Definition of Aggression as adopted by the General Assembly at its twenty-ninth session (resolution 3314 (XXIX), annex). That proposal deserved the most careful attention.

18. As far as the work of the *Ad Hoc* Committee on Conventional Weapons was concerned, his delegation was of the opinion that it would be preferable for the Conference of the Committee on Disarmament and/or other disarmament forums to be given the opportunity to study the question and take action as appropriate.

19. His delegation associated itself with paragraphs 143 and 145 of the report and looked forward to the convening of the third session of the Diplomatic Conference. The successful elaboration of the two draft Protocols would contribute substantially to the reaffirmation and development of international humanitarian law.

20. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation attached great significance to the item on respect for human rights in armed conflicts and was generally satisfied with the work of the Diplomatic Conference, which had conducted its business in a spirit of constructive co-operation and consensus. He felt, furthermore, that the provisions of the draft article on the protection of journalists, prepared by the Working Group of Committee I (see A/10195 and Corr.1, annex I, p. 9) of

which his country had been a member, corresponded to the spirit of General Assembly resolution 3058 (XXVIII) and represented a further advance in the development of norms of international humanitarian law. He deplored, however, the discriminatory exclusion of the representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam from the first and second sessions of the Conference.

21. The question of the prohibition or restriction of the use of specific conventional weapons which could be deemed excessively injurious or to have indiscriminate effects had important humanitarian considerations but should be considered within the general framework of disarmament problems.

22. His delegation felt that the drafts of Protocol I and Protocol II should not be combined into one because it was useful and necessary to treat international and domestic armed conflicts separately. The need for separate Protocols was further demonstrated by the section on shipwrecked persons. The most important function of the Protocols was to strengthen the international legal protection of the civilian population during armed conflicts.

23. His delegation attached great importance to measures for securing the effective legal prosecution of persons who had violated generally accepted humanitarian laws such as those set forth in General Assembly resolution 3074 (XXVIII) on principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity. There was a very close link between those principles and the norms of the Geneva Conventions of 1949, which ought to be taken into account during the final consideration of the corresponding articles of the additional Protocols.

24. Miss WILMSHURST (United Kingdom) congratulated the participants in the Diplomatic Conference on the progress made during the second session. The development of rules and procedures to mitigate the horror of war was an imperative task, and much progress had been made over the past 100 years. Much greater progress could be made if there was universal acceptance and implementation of the great humanitarian legislation on which the Diplomatic Conference was seeking to build. Given the fundamental realities with which the Conference was faced, the participants should be congratulated, in particular, for having approached their task in so workmanlike and practical a fashion, for seeking solutions with the object of conciliating differences among delegations and for endeavouring to elaborate provisions with the object of attracting a wide measure of acceptability. Her delegation was confident that the third session of the Diplomatic Conference would be imbued with the same spirit.

25. Referring to draft resolution A/C.6/L.1025/Rev.1, she said that the second preambular paragraph reiterated the second preambular paragraph of General Assembly resolution 3319 (XXIX). Consequently, she referred the Committee to her delegation's remarks on that paragraph at the twenty-ninth session of the General Assembly.

26. With regard to the last preambular paragraph of draft resolution A/C.6/L.1025/Rev.1, her delegation welcomed

the work accomplished at the first session of the Conference of Government Experts on the Use of Certain Conventional Weapons. Although there might be some differences in the Committee as to the appropriateness of including the final preambular paragraph, those differences were concerned with phraseology and procedure rather than substance. With regard to the substance, her delegation shared the deep concern voiced by other delegations. At the following session of the Conference of Government Experts, the British delegation would seek a practicable and realistic basis for prohibitions and restrictions on the use of certain types of conventional weapons.

27. Mr. ŁOPUSZAŃSKI (Poland) said that his country, which had been the first victim of the Second World War and had been so tragically afflicted by the atrocities of that war, attached special importance to contributing to the process of the reaffirmation and development of international humanitarian law applicable in armed conflicts. Consequently, his Government was gratified at the results achieved at the second session of the Diplomatic Conference. The progress made at that session had been due to the efforts of all delegations attaching importance to international humanitarian law and to the workmanlike atmosphere and mutual understanding which had prevailed. That atmosphere had produced tangible results, as demonstrated by the number of articles adopted by the Committees of the Conference. Thanks were due to the Swiss Federal Government and to ICRC for the way in which the Conference had been organized. The work of the second session of the Diplomatic Conference had been faithfully reflected in the report of the Secretary-General. The Conference had been concerned with the reaffirmation rather than the development of international humanitarian law. That tendency was demonstrated clearly by the fact that the two draft Protocols contained no totally new fundamental legal principles of international humanitarian law, but simply corroborated or reaffirmed those which already existed. Its work on the development of humanitarian law took the form of a number of highly practical provisions concerning various fields.

28. Although almost half of the articles of the draft Protocols had been adopted, much remained to be done during the third session of the Diplomatic Conference in 1976. One question which remained to be answered was whether one or two Protocols should be drafted, one dealing with international conflicts and the other with non-international conflicts. His delegation favoured the drafting of two Protocols. Another question to be resolved was that of the relationships between proposals concerning the prohibition of certain weapons and work on disarmament being conducted by other organs and at international negotiations. Furthermore, the compromise solution found to the problem of the protection of journalists might not be considered as adequate by a number of delegations, or might be criticized by others on the grounds that journalists should not be treated differently simply because of their occupation. He expressed the hope that the Diplomatic Conference would be a complete success and that its codification work would be ratified by many, if not all, Governments.

29. Mr. EFIMOV (Union of Soviet Socialist Republics) said that the question of respect for human rights in armed

conflicts was of great importance, not only theoretically as a further development of the norms of international humanitarian law, but also practically as a move towards the realization of the most humane and ancient norms of international law. Armed conflicts raised enormous problems for the protection of human rights, involving massive and monstrous crimes against peoples and the imposition of boundless suffering.

30. Peace-loving forces had recently achieved significant progress in the struggle for the preservation and strengthening of peace and the relaxation of international tension. However, much injustice and cruelty continued to exist in the world: armed conflicts and upheavals, colonialism, racism and *apartheid*. For millions of people there was still no peace; they were forced to resort to armed struggle against imperialist aggressors and their accomplices for the elementary right to be masters in their own house. Such injustice and cruelty were the greatest enemies of peoples and led to the grossest violations of elementary human rights and freedoms. He deplored the mass violation of human rights and fundamental freedoms by the racist régimes of southern Africa and the military fascist junta in Chile and the repeated war crimes committed by Israeli aggressors against the population of the occupied Arab territories.

31. Mr. PRIETO (Chile), speaking on a point of order, said that the representative of the Soviet Union often abused the Government of Chile but never explained his terms. He requested that the representative of the Soviet Union define fascism. He wondered, furthermore, whether the Government of the Soviet Union was not in fact a form of red fascism.

32. Mr. EFIMOV (Union of Soviet Socialist Republics) said that he would reply to the statement by the representative of Chile later.

33. It was also important to consider the question of the observance of international agreements on the limitations of methods and means of combat and the protection of human rights in armed conflicts. The existing conventions had stood the test of time and the present sufferings of the world were not a result of deficiencies in those agreements but were due rather to the systematic failure of imperialist States and racist régimes to observe the generally accepted norms of humanitarian law. His delegation was decidedly opposed to any disruption or revision of those conventions but would support the formulation of new international legal instruments on the specification and implementation of the existing duties of States with regard to the protection of human rights in armed conflicts. His delegation was actively participating in the work of the Diplomatic Conference and supported the efforts of Governments to formulate the provision of the additional Protocols to the 1949 Geneva Conventions.

34. His delegation was generally in agreement with the results of the second session of the Diplomatic Conference as described in document A/10195 and Corr.1 and Add.1 and welcomed the participation of the nine delegations representing national liberation movements. He deplored the discrimination exercised against participation in the work of the Conference by the Provisional Revolutionary Government of South Viet-Nam. He regretted the continu-

ing tendency on the part of some States to slow down the work of the Conference by attempting to combine the two draft Protocols into one document. The results of previous sessions of the Conference had convincingly shown the need for two separate Protocols: Protocol I, dealing with the protection of the victims of international armed conflicts, and Protocol II on the protection of victims of non-international armed conflicts. Furthermore, he opposed attempts to have the Diplomatic Conference consider the question of prohibiting various forms of conventional weapons. The Conference was not called upon to consider such matters, which should be considered in the framework of general disarmament problems by appropriate competent international bodies.

35. His delegation attached special importance to the question of ensuring the effective prosecution of persons violating generally accepted norms of humanitarian law. The relevant provisions of the 1949 Geneva Conventions should be extended to the new Protocols.

36. He recalled that the General Assembly had in various decisions condemned the use of mercenaries in the service of colonialist forces and national independence movements. Such mercenaries should be considered as criminals and the mercenaries from South Africa now fighting in the new State of Angola should be viewed in that light.

37. His delegation felt that draft resolution A/C.6/L.1025/Rev.1 formed a basis for general agreement on the problem of the protection of journalists engaged in dangerous missions in areas of armed conflict.

38. Mr. STARČEVIĆ (Yugoslavia) expressed his satisfaction with the results achieved at the second session of the Diplomatic Conference and said he hoped that that extremely important work would soon be completed. To that end it was necessary to take into account the views of the greatest number of States possible without allowing military and particularly political interests to interfere with maximum respect for humanitarian considerations. Full respect for the principles of the sovereignty and territorial integrity of States and non-interference in the internal affairs of States must be fully reflected in the elaboration of the articles of draft Protocol II. His delegation attached great importance to the efforts made to reach agreement on possible rules prohibiting or restricting the use of specific conventional weapons, including any which might be deemed to be excessively injurious or have indiscriminate effects. In that regard, his delegation hoped that the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons to be convened in Lugano from 28 January to 26 February 1976, would be able to provide a basis for the further consideration of the question by the Diplomatic Conference and that working document CCDH/IV/201, of which his delegation was a sponsor, would be given close attention by the Conference of Experts.

39. Mr. BENNETT (United States of America) said that his Government's interest in improving existing rules with regard to respect for human rights in armed conflicts and in seeing that both new and existing rules were effectively implemented continued unabated. That position had been reaffirmed by the United States Secretary of State in August 1975, in a speech delivered in Montreal.

40. The report of the Secretary-General in general gave a thorough and accurate review of the work of the Diplomatic Conference. The report also performed a very important function in reproducing in annex I the text of the articles adopted at the Committee level of the Conference.

41. The progress achieved at the second session of the Diplomatic Conference gave reason to believe that the new draft Protocols would be adopted within a reasonable period of time. Unlike the first session, the second session had not been preoccupied with divisive political issues and work had generally been carried out in a co-operative spirit. In that connexion, his delegation regretted that, during the current debate, some delegations had seen fit to make charges of a political nature. More rapid progress would be made by adopting a humanitarian and objective approach to the question.

42. In the view of his delegation the question of whether the *Ad Hoc* Committee on Conventional Weapons would be able to function as a main Committee of the Conference and consider articles and amendments depended primarily on the progress achieved at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons to be held in January and February 1976, in which his Government would participate.

43. Among the most significant articles adopted at the second session of the Diplomatic Conference were article 5 of draft Protocol I, designed to strengthen the "Protecting Power" system, and those dealing with the protection of medical aircraft and designed to promote more expeditious and safer battlefield evacuation of wounded. Committee II had also considered the important proposal on accounting for the missing and dead in armed conflicts, which had been based on General Assembly resolution 3220 (XXIX). The proposed article on that subject had been accepted in principle and referred to a working group. Although more work remained to be done on that article, his delegation noted with satisfaction that Committee II had been united in its readiness to deal with the problem. There continued to be large numbers of missing persons who remained unaccounted for in the aftermath of conflict situations in many parts of the world. Special concern was also felt for journalists missing in the aftermath of armed conflict and his delegation believed that action taken with regard to the missing and dead in armed conflicts would also assist in connexion with missing journalists.

44. Committee III had made exceptional progress in adopting its articles for the most part by consensus. Those articles should provide important and beneficial protection to the civilian population caught up in armed conflicts, while not unreasonably restricting military operations. Among the most important of the articles adopted were those which codified the rule that the civilian population, as well as individual civilians, should not be made the object of attack; provided rules relating to indiscriminate attacks and bombardments in populated areas; provided special protection for dams, dykes and nuclear power stations; and codified in international law, for the first time, the rule of proportionality. The United States would continue working to strengthen such protection for the civilian population, while keeping in mind the fact that overly complex and

burdensome restrictions were prone to be ignored under the stress of battlefield conditions, to the detriment of international humanitarian law.

45. His Government was less optimistic with regard to the work of the second session on draft Protocol II. His delegation, while remaining convinced of the urgent need for the adoption of new rules to establish standards of humane conduct and to strengthen the protection of victims of civil wars, was disappointed that the key article dealing with the field of application of the draft Protocol required a relatively high threshold of violence, dependent in part on the ability of the rebels to apply the new provisions.

46. One area in which the Diplomatic Conference had made impressive progress concerned the protection of journalists engaged in dangerous professional missions in areas of armed conflict. The Conference had given a new sense of urgency to the question, and a new spirit of flexibility and co-operation had prevailed. A working group, consisting of representatives of all regional groups and including the sponsors of agenda item 70, had been able to arrive at a consensus which had subsequently been adopted by Committee I. Final action could be anticipated from the plenary Conference in 1976.

47. The new article for draft Protocol I replacing the proposed separate convention accomplished the primary intention of the drafters of the convention by establishing a universally recognized identity card for journalists engaged in dangerous missions in areas of armed conflict and by defining clearly the protection to which they were entitled. The Diplomatic Conference was to be commended for having found such an imaginative solution to the problem.

48. There was every reason to hope that the third session of the Diplomatic Conference would be as productive and non-political as the second. With almost two thirds of the work of the Conference completed, and with some of the most difficult articles disposed of, there was a reasonable chance that the substantive work would be concluded at the third session. The United States would make every effort to achieve that end, and hoped and expected that other Governments would do the same.

49. He thanked the Swiss Government and ICRC for their invaluable support in seeking to achieve those objectives.

50. Mr. PLAMONDON (Canada) said that, as the report of the Secretary-General had shown, the Diplomatic Conference had made remarkable progress. His delegation was particularly gratified at the consensus that had been reached in Committee I on the draft article relating to the protection of journalists on dangerous missions in areas of armed conflict. It was the first time that such a special status had been recognized under international humanitarian law.

51. The participation of 121 States and nine national liberation movements in the Diplomatic Conference had demonstrated the importance attached by the international community to its success and to the adoption of the two draft Protocols.

52. It was in order to ensure humanitarian protection to as many victims of armed conflicts as possible that his Government continued to support the adoption of a separate Protocol for non-international armed conflicts. The progress achieved in the consideration of draft Protocol II during the second session of the Diplomatic Conference and the adoption in Committee of four of the six essential parts of the Protocol were most encouraging in that regard. His Government's views with regard to the content of that draft Protocol had been made clear at the second session of the Conference. The draft Protocol must be conceived as a whole in terms of the victims of armed conflict and oriented towards the protection of those victims rather than towards the parties responsible for armed conflicts. It must therefore be realistic and applicable by all parties involved in any armed conflict and offer advantages for all parties. Accordingly, it must be based on simple, clear and fundamental rules which any responsible Government would be not only able but eager to apply in full exercise of its sovereignty. The adoption of article 1 of draft Protocol II was an important step in that direction since the conditions which it set forth were reasonably objective and could be applied without great difficulty. That article was rather exceptional in international law in that the discharge of the obligations contained in the draft Protocol were made dependent upon the ability of the dissident armed forces of organized armed groups to implement it in the territory controlled by them. Consequently, the draft Protocol would be useless if the obligations which it contained were so detailed and restrictive as to be inapplicable by the parties concerned.

53. The positive results of the second session of the Diplomatic Conference were due largely to the spirit of mutual understanding and the sincere efforts of all concerned to find compromises acceptable to all delegations. His delegation sincerely hoped that that spirit would continue to prevail at the third session of the Conference and at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons to be held in 1976.

54. He thanked the Swiss Government for its invitation to attend the third session of the Diplomatic Conference. The Canadian Government was highly appreciative of the whole-hearted support of the Swiss Government for the preparatory meetings and for the work of the Conference itself. Thanks were also due to ICRC for its role in the organization of the Conference.

55. His delegation supported draft resolution A/C.6/L.1025/Rev.1, of which it wished to become a sponsor, since the recommendations which it contained were an encouragement for the continuation of the important work of the Conference in 1976.

56. Mr. EFIMOV (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said he had to respond to the scandalous attack on his country by the representative of Chile. That representative had asked for a definition of fascism. All he needed to do was to look at the situation in his own country: the facts were well known to all Members of the United Nations and to the representative of Chile also. The United Nations had adopted resolutions demanding that the gross violations of human

rights currently occurring in Chile be terminated, for example, General Assembly resolution 3219 (XXIX) and draft resolution A/C.3/L.2172 which had just been adopted by the Third Committee, with 88 members voting in favour. He would not take up the Committee's time by giving examples of all the types of torture and violations of human rights that were being carried out in Chile, since the matter was already well documented. Such inhuman treatment as the refined varieties of torture that currently existed in Chile had been used previously only by the Fascist régimes of the Second World War. It was very appropriate to ask the representative of Chile to tell the Committee when the Chilean authorities intended to begin implementing General Assembly resolutions and the decisions of other international organizations rather than posing as an injured party.

57. Mr. PRIETO (Chile) said that he had only requested the Soviet delegation to define what it meant by fascism and wondered why it had not yet been able to do so. Fascism, nazism and Soviet totalitarianism were all the same and bore no similarity to what was happening in Chile. Since the Soviet representative had been unable to define fascism, he had linked it to nazism. His delegation wanted to point out, however, that the infamous attack which had signalled the beginning of the Second World War had been celebrated with champagne in Moscow. The Soviet representative had said that all countries which violated human rights were fascist. His delegation would have no objection to studying the problem of human rights in the Soviet Union and recommended that the Soviet representative read *The Gulag Archipelago*, the history of purges in the Soviet Union and the writings of Sakharov, a Nobel prize winner, who had stated that the Soviet Union had developed an even more perfect system for suppressing human rights than the Nazis. He also recalled the statements made by Nikita Khrushchev at the Twentieth Congress of the Communist Party of the Soviet Union. The Soviet Union professed to favour the freedom of other peoples. Why then had 30 divisions of the Red Army been sent to Czechoslovakia and why had 50,000 people been killed in Hungary? The Soviet representative had referred to General Assembly resolutions concerning Chile. Why had the Soviet Government itself not complied with United Nations decisions concerning Czechoslovakia and Hungary? His country felt quite innocent of the crimes the Soviet Union attributed to it and asked why the Soviet Union had been the first country to oppose a proposal in the Third Committee that a commission be allowed to investigate alleged violations of human rights in all countries.

58. Mr. EFIMOV (Union of Soviet Socialist Republics) said that the statement just made by the representative of Chile had been prepared long ago and was repeated like a broken record every time anyone mentioned human rights in Chile. However, the Chilean representative had not been able to refute the substance of the General Assembly resolutions concerning the situation in Chile. It was impossible to whitewash what was black and the Chilean representative's attempts to defend the Chilean régime had not been successful.

59. Mr. MAÏGA (Mali), speaking on a point of order, said that at its previous session the Committee had tried to discourage members from using the right of reply to engage

in political polemics. He appealed to the representatives of the Soviet Union and Chile to allow the Committee to continue with its work.

60. Mr. JACHEK (Czechoslovakia) said that he must protest strongly against the remarks made by the representative of the Chilean junta concerning events in Czechoslovakia in 1968. As had been explained by his delegation in various United Nations bodies, the fraternal assistance of other socialist countries to socialist Czechoslovakia had prevented fascist developments in Czechoslovakia.

61. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said he was not sure whether the current discussion was a wholly gratuitous exercise in polemics or whether it corresponded in a way with his delegation's view that the debate should be broadened to cover non-international violations of human rights. He could not agree with the manner in which the discussion was being carried on but the subject was perhaps relevant.

62. Mr. PRANDLER (Hungary) said he must refute the slanderous attack by the Chilean representative against his country. Since the Chilean delegation had not been able to give any facts concerning the situation in Chile, it had instead referred to the distant past and distorted the facts in attacking Hungary. The Chilean representative's comments concerning Hungary were unfounded, but the situation in Chile was one which could be considered by the Committee.

63. Mr. PRIETO (Chile) said that those who had "slandered" the Soviet Union included Khrushchev, an ex-leader, and Sakharov and Solzhenitsyn, who were both Nobel prize winners. He understood the uncomfortable position that Hungary and Czechoslovakia were in since those countries were not able to express their opinions concerning the Soviet Union. He did not think that the events he had referred to had taken place all that long ago and was not aware of any statute of limitations that applied to crimes against mankind.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (continued) (A/10332, A/C.6/438)

64. Mr. EFIMOV (Union of Soviet Socialist Republics), referring to paragraphs 71-74 of the Secretary-General's report (A/10332), concerning the administrative and financial implications of United Nations participation in the Programme, said that it had always been the view of his delegation that additional expenses resulting from inflation and currency fluctuations should be covered by savings in other sections of the budget, redistribution of funds and the elimination of out-dated programmes.

AGENDA ITEMS 113 AND 29

Report of the Ad Hoc Committee on the Charter of the United Nations (continued)* (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437, A/C.6/L.1028)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (continued)* (A/10218, A/10219, A/10255, A/10289, A/C.6/437, A/C.6/L.1028)

65. The CHAIRMAN announced that Bangladesh, Bolivia, Kenya, Mali, Mexico, Tunisia, Uruguay and Yugoslavia should be added to the list of sponsors of draft resolution A/C.6/L.1028.

66. Mr. ROMULO (Philippines) said it was clear from the deliberations on the two items under consideration that no Member objected to improving the United Nations. There might be differences as to the approach to be followed but there was genuine consensus on the desirability of equipping the Organization to play an increasingly effective role in the affairs of mankind. The draft resolution which he wished to introduce (A/C.6/L.1028) was the result of an admirable co-operative effort among many countries, whose intention had from the outset been to provide a forum in which the suggestions of Members for improving any aspects of the structure, functioning, procedures or mandate of the United Nations could be carefully examined, whether or not they implied changes in the constitution of the Organization.

67. Notions that the sponsors of the draft resolution had intended a wholesale review or revision of the Charter or that the efforts of the body previously known as the *Ad Hoc* Committee on the Charter of the United Nations, which would, under the draft resolution, become the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, should not include suggestions for improvements not involving the Charter had been shown to be unfounded. What the Members of the Organization had before them was an opportunity to take account of various new developments in international life and the usefulness of combining the two items under consideration had become most apparent. The draft resolution wedded the two items in a manner which optimized the possibilities inherent in both.

68. The need for the kind of opportunity resident in the *Ad Hoc* Committee had been further demonstrated by the range of interests and concerns which had been voiced during the deliberations of the Sixth Committee. Among the most interesting and crucial to the effectiveness of the United Nations were the observations concerning the improvement of the capacity of the United Nations with regard to the peaceful settlement of disputes and increasing the willingness of Members to utilize the avenues already open to them. Those two key aspects of the problem of the

* Resumed from the 1574th meeting.

peaceful settlement of disputes should form one major item on the Special Committee's agenda for the following year.

69. Another clear reason for continuing and strengthening that body's mandate lay in the narrowness in which related efforts had necessarily been cast. Thus, while the *Ad Hoc* Committee on the Restructuring of the Economic and Social Sectors of the United Nations System was responsive to a particular and acknowledged need, it necessarily omitted all other aspects of the structure, functioning and mandate of the United Nations, in particular, those relating to the maintenance of international peace and security.

70. In the draft resolution, the discussion during the current session had been carefully taken into account. It had not been possible to contact all the sponsors of resolution 3349 (XXIX) to join again in the present draft resolution. All the sponsors, however, saw the need to do away with the confrontation and polarization which had handicapped the *Ad Hoc* Committee at its first session and had fully endorsed the efforts to achieve a consensus resolution if possible. He was confident that they too would join in sponsoring the present draft resolution. He also welcomed like-minded delegations wishing to sponsor a draft resolution which was aimed at enhancing the ability of the United Nations to achieve its goals and purposes.

71. An effort had been made to do away with any vestiges of ambiguity with regard to the scope of the Special Committee's work and to provide a clear and broadened mandate which took account of the concerns of all groups and creatively and harmoniously combined the intent of the two items before the Committee. In addition, more specific guidance and direction had been provided to the Secretariat so that its supportive work for the Special Committee could be more productive. In extending the mandate of that Committee, it had been made clear that the Special Committee's work could not be expected to be completed in any specific or foreordained time-span. There was a considerable range of subjects which had been awaiting consideration for years and which must now be adequately and carefully dealt with.

72. In operative paragraph 1 of the draft resolution, the Committee was appropriately renamed to take account of the combining of the two items and a second area for detailed examination was added embodying the substance of the item on the strengthening of the role of the Organization. The Australian initiative on the prevention and settlement of international disputes (1565th meeting) could properly be considered under operative paragraph 1 (a). In other respects, the mandate of the Committee remained essentially unchanged, although the question of priority in subject matter was attended to.

73. Operative paragraph 3 recommended that five additional members be added to the Special Committee, in response to the urgent wishes of additional States to take part in the Committee's deliberations, which attested to the importance attached to the Committee's work.

74. In other operative paragraphs, the invitation to Governments to submit or to update their proposals was routinely reiterated, the more specific request to the Secretary-General was spelt out and the Special Committee

was requested to submit a report to the next session of the General Assembly, which would decide to include the new, combined item in its provisional agenda for that session.

75. Looking beyond the adoption of the draft resolution, which he hoped would be approved by consensus, he considered it urgent to provide some guidance for the timing of meetings in 1976, since the meetings in the current year had been particularly ill-timed for effective work and the Special Committee would wish to avoid a repetition of such a handicap.

76. He was confident that the Members of the Sixth Committee, committed by training and inclination to sequential and many-faceted examination of questions, in an unhurried and deliberative atmosphere, would overwhelmingly approve the continuation of the opportunity to consider the efficiency of the Organization in just such a manner.

77. Mr. DATCU (Romania) paid a special tribute to the eloquent manner in which the representative of the Philippines had introduced draft resolution A/C.6/L.1028 and stressed the tireless efforts made by that country's representatives to arrive at the text in question, which he himself hoped would be adopted by consensus. The draft resolution was the result of the Committee's debates on the two items under consideration and of painstaking negotiations in which a large number of delegations had participated in an understanding and conciliatory spirit. His delegation was pleased that it had been possible to draft a generally acceptable text concerning the two items. That confirmed the hope expressed by many delegations that joint consideration of the two items, which in essence dealt with questions having the same objectives, would make it possible to find the most appropriate practical means of concerting the efforts of all those who wished to make a contribution. The adoption of the draft resolution in question would create an appropriate framework for the Special Committee to begin its work in a spirit of co-operation. He hoped that the Special Committee would succeed in agreeing on solutions acceptable to all Member States which would strengthen the capacity of the Organization and increase its prestige and authority. His delegation would continue to work jointly with other delegations in the same spirit of co-operation.

78. He thanked all delegations which had spoken favourably of his Government's proposals (A/C.6/437), which were based on a sincere desire jointly to seek ways of improving the work of the United Nations and enhancing its role in international life.

79. Mr. URIBE (Colombia) said he was pleased that draft resolution A/C.6/L.1028 dealt with both the Charter and the strengthening of the role of the United Nations. No attempt was being made to hamper the Organization. The aim was rather to make it more effective, give it a wider scope of action and ensure that all Member States without distinction as to size or importance could participate in efforts to restructure it. The spirit of co-operation shown in preparing the draft resolution was a step forward in efforts to improve the United Nations and its functioning. The Romanian proposals would make it possible for the Special Committee to become a forum for formulating measures to

strengthen the role of the United Nations, which was still the best hope for peace. He was pleased to see that there was now a greater degree of agreement concerning the importance of the two agenda items under consideration.

80. Mr. BAROODY (Saudi Arabia) said that the statement by the representative of the Philippines made it very clear that the review of the Charter did not necessarily mean tampering with the purposes and principles of the United Nations but rather ascertaining whether there was any possibility of amplifying the Charter by adding provisions to cover new developments in international life. He

cautioned against abolishing the veto without being sure that it would not be replaced by something worse.

81. He suggested that the sponsors of the draft resolution should consider rewording its operative paragraph 5 so that the Secretary-General was asked not to analyse the views expressed by Governments but merely to consolidate them in one document. Member States would have to reach a decision on the matter among themselves and should not ask the Secretary-General to express views of his own.

The meeting rose at 1.30 p.m.

1577th meeting

Monday, 1 December 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1577

AGENDA ITEMS 114 AND 70

Respect for human rights in armed conflicts: report of the Secretary-General (concluded) (A/10195 and Corr.1 and Add.1, A/C.6/L.1025/Rev.1)

Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict (concluded) (A/10147, A/C.6/L.1025/Rev.1)

1. Mr. KRISPIS (Greece) thanked the Secretary-General for his fine report on the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (A/10195 and Corr.1 and Add.1). As it would serve no practical purpose to enter into a discussion of the substantive work of the Conference, his delegation would confine itself to expressing its satisfaction with the progress made by the Conference thus far and its hope that the Conference would successfully complete its task at its next session. His delegation was particularly pleased with the careful consideration the Conference had given to the question of protecting journalists engaged in dangerous missions in areas of armed conflict. Journalists must be vigorously protected while exercising their professional activities in areas of armed conflict, not only for their own sake but more importantly for the sake of the public they served, which must be kept informed of developments concerning armed conflicts.

2. Since the end of the Second World War the world had unfortunately experienced many armed conflicts; hence the need to have rules of humanitarian law applicable to such conflicts. Accordingly, the first task of the Conference had been, correctly, to reaffirm the various rules of humanitarian law in that regard. The second and no less important task had been to develop those rules. In so doing, it was necessary, *inter alia*, to take into account the experience of armed conflicts since the adoption of the 1949 Geneva Conventions in order to both modify and supplement the relevant rules of international legislation. The final text which the Conference would elaborate must contain sound

and practical principles in keeping with the technological conditions of modern warfare.

3. His delegation supported draft resolution A/C.6/L.1025/Rev.1 and hoped that it would be adopted by consensus. The modification of the last preambular paragraph, as suggested by the French delegation, was most welcome.

4. On behalf of his Government, he expressed appreciation to Switzerland for its role with regard to the Conference and also thanked the International Committee of the Red Cross (ICRC) for its valuable contribution in connexion with the Conference.

5. The CHAIRMAN announced that Canada and Zambia should be added to the list of sponsors of draft resolution A/C.6/L.1025/Rev.1.

6. Mr. BAVAND (Iran) said that the reaffirmation and progressive development of international humanitarian law, particularly in the area of armed conflicts, should be given priority attention. In principle, there was international recognition that the means and methods of warfare were restricted by the *mores* of civilized behaviour. Yet modern means of warfare largely regarded as contrary to the spirit—if not the letter—of international law were widely employed in the interest of “military necessity”. In the past 40 years certain means and methods of warfare had been used which contravened two fundamental principles of international law, namely that weapons should not cause unnecessary suffering and that they should not be indiscriminate in their effects. There was an urgent need to reaffirm the primacy of humanitarian considerations over the demands of political and military expediency.

7. The first step towards the achievement of that noble objective was for all States to acknowledge and strictly comply with the existing international humanitarian legal instruments, such as the Geneva Protocol of 1925, the Geneva Conventions of 1949 and relevant resolutions adopted by various international forums, for example,

resolution XXVIII of the XXth International Conference of the Red Cross held in Vienna in 1965, resolution XXIII of the International Conference on Human Rights held at Teheran in 1968 and General Assembly resolution 2444 (XXIII). His delegation appreciated the inclusion of that important concept in the first paragraph of draft resolution A/C.6/L.1025/Rev.1.

8. In view of the ever-growing indiscriminate nature and incapacitating effects of modern conventional weapons, it was more urgent than ever to reaffirm and develop the rules of international law for the protection of victims of armed conflicts. For that reason, his delegation attached special importance to the work of the Diplomatic Conference. His delegation had studied with special interest the Secretary-General's report on the second session of the Conference, which had made substantial progress, due largely to the co-operative spirit displayed by the participants in their willingness to compromise on many controversial issues. It was to be hoped that all participants in the Conference would continue in the same spirit of co-operation with a view to reaching agreement on the remaining articles and additional rules which would help to alleviate the suffering brought about by armed conflicts.

9. Without entering into a discussion of the substance of the subject, his delegation welcomed the progress made by the Conference in the matter of protecting journalists engaged in dangerous professional missions in areas of armed conflict. That progress constituted a significant advance in the progressive development of international humanitarian law, and his delegation hoped that the Conference would be able to complete its work on that subject during its next session.

10. With regard to the work of Committee III of the Conference concerning international armed conflicts, two important achievements should be singled out for special attention. First of all, the important question taken up in article 33 of draft Protocol I concerning the legal restraints on methods of warfare had been solved in a way acceptable to all. The abstract and general norms set forth in article 33 laid the groundwork for a future treaty prohibiting specific classes of weapons or certain uses of weapons. It was also noteworthy that article 44 of draft Protocol I had for the first time extended the rules of war in a comprehensive way to cover air warfare. That was particularly important because incendiary weapons were mostly dropped from the air. The most indiscriminate uses of such weapons were those where civilian populations were bombarded from the air and it was that which had given rise to the greatest international concern. The need for rules governing air warfare was more pressing today than ever before and article 44 constituted a significant advance in the progressive development of international humanitarian law in that field.

11. Mr. HAFIZ (Bangladesh) said that his delegation attached great importance to the question of respect for human rights in armed conflicts and would support any measure designed to develop international humanitarian law in that field and to modernize the existing international rules applicable in armed conflicts. Though theoretically armed conflicts were condemned, it appeared to be impossible to eliminate them in present-day circumstances.

It was therefore incumbent upon the international community to endeavour to eliminate the most inhuman effects of armed conflicts and to keep human suffering to the utmost minimum.

12. The existing international humanitarian rules were not sufficient to protect civilian populations against the horrifying technological developments of modern warfare. Nevertheless, it was necessary not only to reaffirm the existing humanitarian laws and ensure their strict application but also to take more positive steps for their progressive development to meet the changing conditions of modern warfare.

13. His Government had therefore welcomed the initiative of the Swiss Federal Council in convening the two sessions of the Diplomatic Conference in 1974 and 1975 to modernize the existing humanitarian laws applicable in armed conflicts and the organization of the first Conference of Government Experts by ICRC. Bangladesh had actively participated in the two sessions of the Diplomatic Conference and had had the privilege of serving as Chairman of the Drafting Committee at the second session of the Conference. A great deal of valuable work had been accomplished at the second session and his delegation hoped that additional rules to reduce the sufferings of non-combatants and civilians in armed conflicts and to protect journalists engaged in dangerous missions in areas of armed conflict would be agreed upon and finalized at the next session of the Conference.

14. His Government was most grateful to the Swiss Federal Council for offering to host the third session of the Conference and to ICRC for planning to convene the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons.

15. His delegation wished to place on record his Government's deep appreciation for the outstanding humanitarian services rendered by ICRC in Bangladesh during the 1971 armed conflict and thereafter. ICRC was still engaged in various humanitarian activities in Bangladesh. His delegation also appreciated the excellent survey made by the Secretariat on the existing rules of international law concerning humanitarian problems in armed conflicts. The report of the Secretary-General was a valuable and helpful document for the deliberations of the Sixth Committee.

16. His delegation had noted with great satisfaction the constructive co-operation established between the United Nations and other humanitarian organizations, particularly ICRC, concerned with the progressive development and reform of international humanitarian law. His delegation supported draft resolution A/C.6/L.1025/Rev.1 and would like the name of Bangladesh to be added as one of the sponsors. He hoped that the draft resolution would be adopted by consensus.

17. Mr. JACHEK (Czechoslovakia) said that the best guarantee for the protection of human rights would be the elimination of all armed conflicts and their causes. The efforts of all States should therefore be directed primarily to the achievement of that goal. Realistically, however, it must be recognized that a number of armed conflicts continued to take place as a result of the aggressive policy

of the imperialist and colonial Powers. Human rights and the fundamental principles of international law were being grossly violated in those conflicts and civilian populations were subjected to particularly severe suffering. The most tragic example of such a conflict had been the aggressive war in Viet-Nam, which had ended earlier in 1975 with the victory of the heroic Viet-Name people. His delegation greatly regretted the fact that the representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam had been prevented from participating in the first two sessions of the Conference.

18. It was of the utmost importance to ensure compliance with the existing international legal instruments in the field of international humanitarian law, particularly the four Geneva Conventions of 1949. Czechoslovakia welcomed the commencement of work on the two draft Additional Protocols to the Geneva Conventions, which were designed to provide more effective protection of human rights under present-day conditions. A Czechoslovak delegation had participated in the work of both sessions of the Diplomatic Conference and continued to attach great importance and urgency to that work.

19. The second session of the Diplomatic Conference had achieved important results in the codification of international humanitarian law applicable in armed conflicts. The articles formulated at that session represented a compromise acceptable to all States. It was to be hoped that the third session of the Conference, in 1976, would be able to complete the codification work and that the Additional Protocols would make a significant contribution to the development of that important field of international law. A commendable spirit of understanding and business-like procedure had prevailed at the second session of the Conference, and his delegation hoped that the third session would continue to work in the same spirit. His delegation would support the adoption of draft resolution A/C.6/L.1025/Rev.1.

20. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) observed that the second session of the Diplomatic Conference had made significant progress in its work on the elaboration of two draft Additional Protocols to the Geneva Conventions of 1949. Agreement had been reached on several articles which had posed serious problems, and the work of the Conference had proceeded in a constructive and business-like atmosphere. In particular, new rules had been formulated to protect the civilian population and civilian objects from dangers arising from military operations and to prohibit some methods of combat causing unnecessary suffering to the civilian population. Most of the participants in the Conference had correctly proceeded on the basis of the fundamental rules laid down in the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949. A number of drafting points would have to be refined further, but it should be emphasized that such drafting changes must not affect the substance of the decisions taken at the two sessions of the Conference concerning the contents of individual articles of the draft Additional Protocols.

21. One of the most important accomplishments of the Diplomatic Conference was the extension of the field of application of the Geneva Conventions of 1949 and draft

Protocol I to armed conflicts of national liberation movements directed against colonial domination, foreign occupation and racist régimes.

22. Of particular importance were provisions of article 42 of draft Additional Protocol I concerning new categories of prisoners of war. That article dealt specifically with the rights of combatants engaged in national liberation movements. During the discussion it had been correctly observed that such rights should not be enjoyed by colonial mercenaries being used to attempt to suppress the just struggle of peoples against colonialism. Instances of the cruelties and violence perpetrated by such soldiers of fortune were amply illustrated in the conflicts in the former Belgian Congo, Biafra and other parts of Africa. Mercenaries were once again plying their bloody trade in Angola under the direction of the racist régime of South Africa. According to press reports, they were recruited in the United States of America and in other Western countries which had taken part in the aggression in Indo-China and other colonial wars. That situation was intolerable. Those soldiers of fortune must realize that they would be treated as criminals if they took part in suppressing national liberation movements and served the cause of neo-colonialism, racism and *apartheid*. The General Assembly had condemned mercenaries as criminals and outlaws and had appealed at its twenty-fifth session (resolution 2708 (XXV)) to all States not to permit the recruitment, financing or training of mercenaries in their territories and to prohibit their nationals from serving as mercenaries. That condemnation was forcefully reaffirmed in General Assembly resolution 3103 (XXVIII). His delegation was confident that a similar condemnation would be incorporated in the relevant articles of draft Protocol I.

23. His delegation hoped that the Diplomatic Conference would successfully conclude its work on the Additional Protocols at its third session, in 1976. The prospects for the success of the Conference would be greatly enhanced if it refrained from considering extraneous issues, such as disarmament questions and, in particular, the question of prohibiting the use of specific categories of so-called conventional weapons. That question was not within the competence of the Diplomatic Conference and his delegation could not accept the provisions of draft resolution A/C.6/L.1025/Rev.1 in that regard.

24. Mr. OLMOS (Argentina) expressed appreciation to the Secretary-General for his excellent reports on the items under consideration and satisfaction with the results achieved thus far at the two sessions of the Diplomatic Conference. Important progress had been made in protecting the rights of non-combatants, in particular journalists engaged in dangerous missions in areas of armed conflicts. His delegation supported draft resolution A/C.6/L.1025/Rev.1 and requested that its name should be added to the list of sponsors.

25. Mr. TODOROV (Bulgaria) said that his delegation attached great importance to the item on respect for human rights in armed conflicts, a subject which was of great significance and urgency in the contemporary world. The second session of the Diplomatic Conference had produced encouraging results; a number of generally acceptable formulations had been adopted, due to the spirit of

constructive co-operation that had prevailed at the Conference. There was every reason to believe that the third session would successfully complete its work on the draft articles for the two Additional Protocols.

26. His delegation wished to reiterate its view that two separate Protocols should be worked out, one dealing with the protection of victims in international armed conflicts and another concerning the protection of victims in non-international armed conflicts.

27. His delegation welcomed the decision to include in draft Protocol I an article on the protection of journalists engaged in dangerous missions in areas of armed conflict instead of preparing a separate convention on that question.

28. With regard to the future work of the Conference, his delegation recommended that the question of the possible prohibition or limitation of specific conventional weapons should be left for decision by the First Committee of the General Assembly, which was currently considering a draft resolution on that subject. It would also be useful to include in the two draft Protocols a reference to the Definition of Aggression. Similarly, his delegation would suggest that the draft Protocols should include a reference to the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes or of crimes against humanity, as defined in General Assembly resolution 3074 (XXVIII).

29. Mr. ALVAREZ PIFANO (Venezuela) said that his country attached great importance to the question of respect for human rights in armed conflicts and was satisfied with the results of the second session of the Diplomatic Conference. The Conference should continue its efforts with a view to the formulation of new provisions to protect non-combatants and civilian property, to prohibit the use of weapons having indiscriminate effects and, most importantly to prohibit and restrict the use of certain conventional weapons of a nature to cause superfluous injury or unnecessary suffering. His delegation was confident that the Diplomatic Conference would continue its work of reaffirming and developing humanitarian law, without regard for particular interests and political and ideological differences. His delegation paid tribute to the humanitarian efforts of ICRC and expressed its gratitude to the Swiss Government for convening the various sessions of the Diplomatic Conference.

30. His delegation supported the efforts to formulate international instruments to ensure the protection of journalists engaged in dangerous missions in areas of armed conflict, based on respect for the sovereignty of States and the realistic character of the means of protection foreseen. It hoped that the Conference at its next session would complete its work on that topic, which was of great concern to the international community.

31. His delegation felt that draft resolution A/C.6/L.1025/Rev.1 took satisfactory account of opinions expressed in the Committee. It was clear that no one was opposed to improved application of the rules of humanitarian law in armed conflicts and no one had denied the need to formulate new rules to mitigate the suffering caused by such conflicts.

32. His delegation attached particular importance to the last preambular paragraph of the draft resolution, which reflected the political, military and technological aspects of recent international and non-international conflicts. The inclusion of that paragraph and its approval by the Committee should be understood as an expression of the wish of the international community to find a constructive and humanitarian solution to the problems raised by the existence and increasing development of conventional weapons which were excessively injurious or had indiscriminate effects. His delegation agreed fully with the humanitarian spirit of that paragraph and hoped that the draft resolution would be approved by acclamation.

33. Mr. ROSENSTOCK (United States of America), speaking in exercise of the right of reply, said that with regard to the remarks made about mercenaries in Angola, the Committee had just heard an example of the big lie technique resorted to by totalitarian régimes. Those who intervened in Africa could not hide the nature of their acts by accusing the innocent. Photographs in the press had identified the new would-be colonizers of Africa, one of which had been a colony itself. Big lies could not hide the facts.

34. The CHAIRMAN suggested that the Committee should adopt draft resolution A/C.6/L.1025/Rev.1 without a vote.

The draft resolution was adopted.

35. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation had not objected to draft resolution A/C.6/L.1025/Rev.1 in that, as his delegation had stated at the 1575th meeting, it provided a solid basis for wide agreement. However, not all of its provisions fully satisfied his delegation, in particular the last preambular paragraph. As his delegation had also stated at that meeting, the Diplomatic Conference was not competent to consider the question of prohibiting the use of certain types of weapons. That matter was a disarmament question which should be considered by the appropriate bodies.

36. Mr. GOERNER (German Democratic Republic) said that his delegation had supported draft resolution A/C.6/L.1025/Rev.1 but was dissatisfied with the last preambular paragraph. The Diplomatic Conference was not the competent organ to consider the use of specific conventional weapons and their eventual prohibition or restriction. The matter should be left to the consideration of the appropriate United Nations bodies.

37. Mr. JEANNEL (France) said that his delegation had not wanted to oppose the adoption of draft resolution A/C.6/L.1025/Rev.1 by consensus, as France attached particular importance to the question of human rights. He did, however, regret the inclusion at the last moment of an extraneous element, more properly dealt with under the question of disarmament. The introduction of such a political element into the discussion, which thus far had been calm and oriented towards the issues, could not fail to detract from the discussion. He disagreed with those who said that the draft resolution adequately expressed the view of the Committee, and referred to the obvious difficulties

that many delegations had had in accepting the last preambular paragraph. If the General Assembly adopted the draft resolution as it stood, it would interfere with the activity of a sovereign conference.

38. Mr. ENKHTSAIKHAN (Mongolia) expressed his delegation's general satisfaction that draft resolution A/C.6/L.1025/Rev.1 had been adopted by consensus, but said he regretted that the last preambular paragraph had been included. The matter referred to in that paragraph was already under consideration in other bodies, notably the First Committee.

39. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) said his delegation could not agree with the reference in the draft resolution just adopted to the consideration by the Diplomatic Conference of the prohibition of certain types of conventional weapons.

40. Noting that a representative had reacted to his reference to the fact that mercenaries fighting in Angola were being recruited in the United States of America, he referred to articles in the United States press in June 1975 saying that an agency in the United States had begun recruiting mercenaries to fight in Angola. It had been announced that an investigation of the matter was to be carried out by the State Department and he would be interested to know the results of that investigation.

41. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation had supported draft resolution A/C.6/L.1025/Rev.1, although not all of its provisions were satisfactory to his delegation. It was especially difficult to accept the last preambular paragraph, as the Diplomatic Conference was not competent to consider the question of the use of conventional weapons. That matter should be considered separately within the framework of a disarmament conference.

AGENDA ITEM 112

Report of the Committee on Relations with the Host Country (*concluded*)* (A/10026, A/C.6/L.1027)

42. The CHAIRMAN announced that Cyprus had become a sponsor of draft resolution A/C.6/L.1027.

43. Mr. ROSSIDES (Cyprus), introducing draft resolution A/C.6/L.1027 on behalf of the sponsors, said that the first part of operative paragraph 10 should be revised to read: "*Urges* the host country, the Secretariat, the diplomatic community and organizations concerned to seek in every way the improvement . . .".

44. He noted with deep regret that the bulk of the work done in 1975 by the Committee on Relations with the Host Country had been concerned with further incidents of violence and other unlawful acts of harassment against missions and their property. The most serious of those incidents had involved the firing of shots at mission premises and the placement of bombs.

45. The preamble of the draft resolution expressed concern over the unlawful acts committed against missions and

recalled the responsibility of the host country in that regard. The operative part of the draft resolution further expressed the Assembly's deep concern at the acts of violence, harassment and vandalism perpetrated against missions and condemned all such acts as fundamentally incompatible with the status of missions under international law. Various appeals were addressed to the host country, urging it to do its utmost to ensure the security of missions and their personnel, including taking all measures to apprehend and punish the perpetrators of such acts.

46. The draft resolution further stressed the need to improve relations between the diplomatic community and the local population, noting with appreciation the efforts of the host country, the local community and the New York City Commission for the United Nations and for the Consular Corps to promote understanding in that regard and to provide hospitality as well as services to diplomats. Both the preamble and the operative part of the draft resolution made reference to the obligations of missions to respect local laws and regulations, specifying that that was without prejudice to the privileges and immunities enjoyed by diplomats under international law. The draft resolution further provided for the continuation of the work carried out by the Committee on Relations with the Host Country since 1971 in accordance with its mandate.

47. He commended the draft resolution to the Sixth Committee in the belief that it struck a fair balance between the rights of missions accredited to the United Nations and the corresponding duties of those missions. He expressed the hope that the draft resolution, which was the fruit of extensive consultations and took into account the recommendation of the Committee on Relations with the Host Country, would command the unanimous support of the members of the Sixth Committee.

48. Mr. ROBERTSON (Canada) said that his country agreed with the general thrust of the draft resolution but could not whole-heartedly support it. His delegation could not accept the final phrase of operative paragraph 7 dealing with the ticketing of diplomatic vehicles, as it was Canadian practice to serve summonses to diplomats in such situations.

Draft resolution A/C.6/L.1027, as orally revised, was adopted unanimously.

49. Mr. ROSENSTOCK (United States of America) said that his delegation had raised no formal objection to the adoption of the draft resolution because its paragraphs were for the most part not in themselves particularly objectionable, although there had been some changes from the generally agreed text. It was perhaps somewhat in the nature of the item itself and characteristic of much of the work of the Committee on Relations with the Host Country thus far that the focus of the discussion and the draft resolution had been so largely on the problems and complaints of a few, without giving adequate recognition to the positive aspects of life in a great metropolitan centre and the efforts undertaken by Federal, State and local authorities and citizens to provide the basics and even the amenities for the adequate functioning of missions. He hoped that those New Yorkers who had so generously contributed their efforts towards extending hospitality

* Resumed from the 1560th meeting.

would not be discouraged by the tone of the draft resolution which reflected, at great length and in questionable language, the problems of a few missions.

50. The citizens of New York were expected to recognize that the occasional diplomat who parked by a fire hydrant, refused to pay his bills or conducted himself in an anti-social manner was the exception; so too the diplomatic community should recognize that the occasional reprehensible incident involving a mission was the exception. The difficult aspects of life in a major metropolis such as New York were one of the unavoidable consequences of those factors which made life in the city interesting and stimulating.

51. His delegation condemned acts of violence and harassment against diplomatic missions and their personnel. He wondered, however, whether the sponsors of the draft resolution who so strongly condemned acts against diplomats had for instance ever signed the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Some delegations seemed to expect the host country to maintain higher standards than they themselves attempted to maintain.

52. A serious problem with the draft resolution was that a reader who was not fully aware of the background could conclude that missions were in a situation of virtual siege in New York City, that diplomats were people who focused on the negative aspects of a situation in an unrealistic and one-sided manner and had no interest or concern for their own responsibilities to the host community or the problems they created. Such one-sided resolutions made little contribution to the type of understanding called for in operative paragraph 10 of the draft resolution.

53. Mr. STEEL (United Kingdom) expressed agreement with the statement by the United States representative; his country too was a host country and could see the problem in perspective. Although his delegation was in fundamental agreement with the tenor of the draft resolution, he felt it necessary to make some detailed criticism of its provisions. Whereas most of the provisions were similar to those in previous resolutions on the matter, some were new and out of balance and he regretted their inclusion.

54. He felt the fourth and fifth preambular paragraphs placed excessive emphasis on certain isolated instances which were themselves deplorable but should not be allowed to distort the general picture of friendship, hospitality and assistance which all delegations enjoyed in all save exceptional instances. Moreover, he had serious doubts as to whether two of the paragraphs were accurate as propositions of law. With regard to the seventh preambular paragraph, he had doubted whether it was correct to say that the duty of diplomatic missions to respect the laws of the host country was in any way subordinate to the enjoyment of their privileges and immunities under international law. The duties and privileges of diplomatic missions were equal concepts and there was no hierarchy between them. Referring to operative paragraph 2, he doubted whether it was right to suggest that "any acts of violence and other criminal acts against the premises of missions and their personnel" must necessarily be regarded

as incompatible with the status of diplomatic missions under international law. Many such acts might be incompatible, others no doubt were, but the matter was far from clear. He regretted that such exaggerated language had disfigured the draft resolution.

55. Mr. JEANNEL (France) said that his delegation had associated itself with the consensus by which the draft resolution was adopted. While he appreciated the general moderation in the language, he felt that some provisions were ambiguous and excessive. Any country which acted as host to international organizations was confronted with difficulties, especially in so far as that country allowed freedom of thought and expression. He was not convinced that some of the provisions were absolutely essential or that they did not go beyond what a host country could promise. He felt that in general the Committee and the General Assembly should avoid subjects giving rise to polemics and excesses of language.

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (continued) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (continued) (A/10218, A/10219, A/10255, A/10289, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

56. The CHAIRMAN announced that the delegations of Chile, Iran, Yemen and Zambia had become sponsors of draft resolution A/C.6/L.1028.

57. Mr. KRISPIS (Greece) said that his delegation also wished to become a sponsor of draft resolution A/C.6/L.1028.

58. Mr. ABDALLAH (Tunisia) suggested that the words "the review of" should be inserted after the word "regarding" in operative paragraph 1 (a) (i) of draft resolution A/C.6/L.1028, thereby retaining the wording used in previous General Assembly resolutions. Referring to paragraph 3 of document A/C.6/L.1030, he asked for some clarification with regard to the 15 interpreters to be recruited in Geneva. If the Special Committee was to meet at Headquarters, how could such expenditure be justified?

59. Mr. ABUL-KHEIR (Egypt) noted that the five additional Member States referred to in operative paragraph 3 of draft resolution A/C.6/L.1028 were not named. It might be preferable, therefore, to insert the words "according to equitable geographical distribution" after the words "Member States" in that paragraph.

60. Mr. BAJA (Philippines) said it was the intention of the sponsors of the draft resolution that one additional State from each regional group should be appointed before the draft resolution was submitted to the plenary meeting. The

Chairmen of the regional groups had already been contacted in that connexion.

61. Mr. ABUL-KHEIR (Egypt) pointed out that, at the twenty-eighth session, nominations had followed the adoption of the relevant resolution in the plenary meeting.

62. Mr. MAKEKA (Lesotho) said that some clarification was needed as to the precise meaning of the word "awakened" in operative paragraph 1 (c) of the draft resolution. Furthermore, since paragraph 1 (a) (i) was not clear as it stood, the Committee should perhaps take account of the suggestion of the representative of Tunisia.

63. Mr. BAJA (Philippines), referring to operative paragraph 1 (a) (i) of the draft resolution, said that the drafters had considered that no suggestion or proposal could be made without a review of the Charter.

64. Mr. EFIMOV (Union of Soviet Socialist Republics) said that the wording of the draft resolution had been arrived at after long and delicate consultations. Consequently, any further amendment of the draft was inconceivable.

65. Mr. JEANNEL (France) said that any attempt by the Committee to amend the draft resolution at the current stage could reopen a possibly difficult subject. Consequently, the existing wording should be retained.

66. Mrs. DUQUE DE OSPINA (Colombia) said that, in view of the lengthy discussions which had been necessary to arrive at the existing wording, the text of the draft resolution should remain as it stood.

67. Mr. PEDAUYE (Spain) agreed that the existing wording of the draft resolution should be retained.

68. Mr. DATCU (Romania) said that his delegation, which had been involved in the drafting of the draft resolution, hoped that the draft resolution would be adopted as it stood.

69. Mr. BOSCO (Italy) associated himself with the views expressed by previous speakers that the wording of the draft resolution should not be changed.

70. Mr. VANDERPUE (Ghana) associated himself with the view that the draft resolution should be left as it stood. He proposed that the Committee should adopt the draft resolution by consensus.

71. Mr. ABDALLAH (Tunisia) reaffirmed that his delegation understood operative paragraph 1 (a) (i) to refer to a review or updating of the Charter. On that understanding, he would not oppose the consensus within the Committee.

72. Mr. RYBAKOV (Secretary of the Committee), replying to the question put by the representative of Tunisia concerning document A/C.6/L.1030, said that, in preparing the statement of the financial implications of draft resolution A/C.6/L.1028, the Department of Conference Services, while it would endeavour to provide the necessary services using staff available in New York, had taken account of the possibility that it might be obliged to hire a

number of staff from Europe and had made financial provision for that possibility.

73. Mr. EFIMOV (Union of Soviet Socialist Republics) said that the Committee should wait until a number of technical details such as the names of the additional Member States referred to in operative paragraph 3 had been finalized, before adopting the draft resolution. Furthermore, his delegation was still awaiting instructions with regard to the draft resolution and would therefore be unable to take part in any consensus at the current meeting.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (*continued*) (A/10332, A/C.6/438, A/C.6/L.1029)

74. Mr. VANDERPUE (Ghana), introducing draft resolution A/C.6/L.1029, said that the draft resolution followed the pattern of previous resolutions on the subject and was self-explanatory. Referring to operative paragraph 9, he pointed out that the membership of the Advisory Committee on the Programme of Assistance was unchanged except for the inclusion of Italy and the Philippines to replace Belgium and Iraq. It was not necessary to refer the resolution to the Advisory Committee on Administrative and Budgetary Questions under rule 153 of the rules of procedure of the General Assembly as the appropriations for the activities which it involved were already provided for in the regular budget for 1975-1976 and had been approved by the Fifth Committee.

75. He informed the Committee that the delegations of Sierra Leone and Zaire had become sponsors of the draft resolution.

76. Mr. KRISPIS (Greece) said that the report of the Secretary-General (A/10332) presented an impressive picture of the success of the Programme. The Seminar on International Law for advanced students and young government officials was on the way to becoming a world institution for the teaching and advancement of international law and the activities concerning the symposia on international trade law were also highly promising. The latter programme had made a very good start in 1975 with the symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. At its latest session, the United Nations Commission on International Trade Law had invited the participants in the symposium to take part, unofficially, in its debate on an item on its agenda. The performance of the participants had been excellent and the experiment had been a success.

77. Equally successful had been the activities of the United Nations Institute for Training and Research (UNITAR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1974 and 1975. His delegation, which enthusiastically supported the Programme as a whole, was in favour of the recommendations of the Secretary-General contained in paragraphs 63-70 of his report and believed that the Committee would adopt draft resolution A/C.6/L.1029 by consensus.

78. Mr. HAFIZ (Bangladesh) expressed great satisfaction with the report of the Secretary-General. The impressive activities carried out during 1974 and 1975 were a significant contribution to the progressive development of international law and deserved the support of Member States, as did the recommendations contained in the report.

79. His delegation believed that the study of international law promoted not only the development of international law itself, but also international understanding and friendship. The continuation of the Seminar on International Law and other parts of the Programme was of vital importance to the progressive development of international law and to the developing countries. The Programme should therefore be not only continued but expanded. The scope of teaching and dissemination of knowledge of international law in the third world was very limited. The teaching of international law, including international trade law and international humanitarian law as applicable in armed conflicts and the dissemination of knowledge of international instruments such as the Charter of the United Nations and the Universal Declaration of Human Rights, was essential. Centres for research and training in international law should be established under the Programme in the developing countries to enable the third world to benefit from the knowledge acquired by the developed countries in that field. The Seminar on International Law should also be continued. His country had benefited from the Seminar in 1973 through the participation of a Bangladesh national. In that connexion, his delegation expressed the highest appreciation for the generous and constructive contributions made by the Ukrainian SSR in providing facilities for the study and teaching of international law to students from 50 countries of Asia, Africa and Latin America at Kiev University. He expressed the hope that other developed countries would provide similar facilities.

80. His delegation was happy to note that the cycle of regional training and refresher courses was to be continued. It was gratifying to note that UNITAR had planned two such courses for Asia to deal with current problems of international law relating to the economic and social development of developing countries, with particular reference to the Asian context. He expressed the hope that UNITAR would select Bangladesh to host the course to be organized for Member States of the Economic and Social Commission for Asia and the Pacific.

81. He expressed satisfaction that one of the 20 fellowships for 1975 had been awarded to a national of Bangladesh.

82. Bangladesh, although a small developing country, was contributing fruitfully to the promotion and development of international law. The Bangladesh Institute of Law and International Affairs, a non-governmental organization, had hosted the Third International Criminal Law Conference in December 1974 in Dacca. Furthermore, the Bangladesh Islamic Academy conducted research and study on Islamic law, with particular reference to the Islamic conception of international law and international relations. As a non-governmental organization, it deserved assistance from the United Nations, UNESCO and UNITAR, like that received by the Austrian Centre of Chinese Studies in 1973. The two institutions would co-operate actively with UNITAR,

UNESCO and the United Nations in the organization of any seminar or conference in Bangladesh on any subject of international law within the framework of the Programme.

83. His delegation also expressed gratitude to the United Nations for continuing to provide the Bangladesh Institute of Law and International Affairs with copies of United Nations legal publications issued during 1974 and 1975, in accordance with paragraph 1 of General Assembly resolution 2838 (XXVI).

84. Mr. BROMS (Finland) said that the report of the Secretary-General showed that once again the Programme had achieved positive results.

85. His delegation was pleased to announce that the Government of Finland had decided to grant a fellowship of \$2,000 to participants from developing countries in the seminar to be held during the next session of the International Law Commission in Geneva in 1976.

86. Mr. GÜNEY (Turkey) expressed his appreciation for the efforts made by the Secretary-General within the framework of the Programme. The activities of UNESCO and UNITAR were also to be commended. With regard to the Fellowship Programme, his delegation was gratified to note the continuation of the practice of giving preference to candidates from countries whose nationals had not been awarded a fellowship in recent years. It was also gratifying to note that the United Nations would continue to provide copies of its legal publications and those of the International Court of Justice to institutions in developing countries.

87. His delegation supported the recommendations of the Secretary-General regarding the execution of the Programme in 1976-1977 (see A/10332, chap. III).

88. Referring to draft resolution A/C.6/L.1029, he wondered whether the Chairmen of the regional groups had consulted their respective groups with regard to the appointment of the 13 members of the Advisory Committee on the Programme of Assistance.

89. The CHAIRMAN announced that the delegations of Liberia and Uganda had become sponsors of draft resolution A/C.6/L.1029.

90. Mr. RYBAKOV (Secretary of the Committee), replying to a question put by the representative of Yugoslavia at the 1575th meeting of the Committee concerning the award of a fellowship to a national of a country which was not a Member of the United Nations, recalled that paragraph 1(a) of General Assembly resolution 3106 (XXVIII) authorized the Secretary-General to provide a minimum of 15 fellowships in 1974 and 1975 at the request of Governments of developing countries. As pointed out in paragraph 26 of the Secretary-General's report, for the purpose of the Fellowship Programme a country was regarded as "developing" if it was in receipt of United Nations technical assistance. The country in question had received such assistance. Consequently, the Office of Legal Affairs believed that the Secretary-General's action

had been in accordance with the General Assembly resolution.

91. Mr. STARČEVIĆ (Yugoslavia) said that the Secretary's explanation was not entirely satisfactory. The Fellowship Programme was organized under United Nations auspices and preference should therefore be given to nationals of Member States, from which there was no shortage of applicants. Furthermore, the country in question was not in the process of decolonization, which the United Nations was obligated to help.

92. Mr. RYBAKOV (Secretary of the Committee) said that the Office of Legal Affairs would take the statement of the representative of Yugoslavia into account.

93. Mr. ROSENSTOCK (United States of America) said that he was confident that the Office of Legal Affairs would take account of all statements made in connexion with the item under discussion.

The meeting rose at 5.55 p.m.

1578th meeting

Tuesday, 2 December 1975, at 3.25 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1578

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (*continued*) (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (*continued*) (A/10218, A/10219, A/10255, A/10289, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

1. The CHAIRMAN said that if there was no objection he would take it that the Committee wished to adopt draft resolution A/C.6/L.1028 by consensus.

The draft resolution was adopted by consensus.

2. Mr. DIENG (Senegal), speaking in explanation of vote, said that his delegation had joined in the consensus on draft resolution A/C.6/L.1028 in view of the considerable effort which had been required in order to arrive at the current wording. However, his delegation, which had stated clearly that it was in favour of the review of the Charter, was not entirely satisfied with the provisions of the draft resolution. He welcomed the fact that the *Ad Hoc* Committee was to be reconvened as a Special Committee, with an enlarged membership. He was convinced that, if the matter was considered further at the thirty-first session of the General Assembly, considerable progress would be made and an appropriate solution found.

3. Mr. TIEN Chin (China), speaking in explanation of vote, recalled that, during the discussion in the Sixth Committee, the majority of countries had advocated a review of the Charter. They had clearly pointed out that the purpose of reviewing and making necessary amendments to the Charter was to implement effectively the

purposes and principles of the Charter, namely to ensure that the United Nations conformed to the tremendous changes which had occurred in the international situation and in the membership of the United Nations in the 30 years since its establishment, in order that the numerous small and medium-sized countries which currently constituted the vast majority of Member States could enjoy corresponding rights to speak and to make decisions in the main organs of the United Nations, thereby ensuring that the Organization played its due role. Quite a number of representatives had put forward specific views and proposals on necessary amendments to the Charter. It could be seen that an increasing number of countries had joined the ranks of those advocating Charter review. The debate had once again convincingly demonstrated that the review and revision of the Charter was a manifestation of the general trend and of the aspirations of peoples.

4. As a result of the struggle of third world countries, the original *Ad Hoc* Committee would become a Special Committee which would have more permanency. It was evident that the main task of the Special Committee in the future should be the discussion of questions relating to Charter review. His delegation considered that, whether in the Special Committee or in the Sixth Committee, stress should be laid on considering proposals with regard to the Charter and on patient consultations.

5. It was inadmissible for the super-Powers to try to distort the spirit of the resolution once it was adopted and to use various pretexts to refuse to engage in consultations on the question of Charter review. During the discussions in the Sixth Committee, the attitude of the super-Powers had been that of opposition to a review and revision of the Charter. That super-Power which claimed to defend the interests of small countries had gone so far as to intimidate and hurl abuse at those countries which advocated a review and revision of the Charter. Even though they had a guilty conscience and were becoming increasingly isolated, it was predictable that they would still resort to various schemes

to continue to obstruct and sabotage a review and revision of the Charter. It was necessary to increase vigilance in that respect.

6. The work of review and revision of the Charter could continuously move forward and achieve results only if the numerous third world countries engaged in repeated trials of strength with the super-Powers. The struggle would be a protracted and complicated one. However, truth was on the side of the countries which were in favour of a review and revision of the Charter. His delegation believed that, as long as the numerous third world countries closely united and persisted in their struggle, their just cause would ultimately triumph.

7. Mr. ROSENSTOCK (United States of America) said that his delegation had joined the consensus largely out of respect and appreciation for the spirit of moderation and co-operation shown by the sponsors of the draft resolution. However, in doing so, his delegation had not abandoned its firmly held and well known views on the lack of wisdom in tinkering with Charter provisions. His delegation agreed with the view expressed by the representative of the Philippines in the debate on the item (1576th meeting) that no Member State objected to improving the United Nations, or wished to see the purposes of the Charter unfulfilled, and that no Member felt that the United Nations was beyond improvement or that efforts toward that end should not be made as often and as continually as necessary. That attitude seemed more relevant than exhortations to engage in trials of strength.

8. Referring to the preamble of the draft resolution, he said that the recalling of past resolutions did not indicate any diminution of his delegation's opposition to those against which it had voted. Furthermore, in calling for further study of proposals, his delegation was not in any way endorsing any of them.

9. Referring to operative paragraph 1, he said that his delegation, while agreeing to examine observations received from Governments, was not in any way endorsing any of them and, while not objecting to suggestions and proposals regarding the Charter, his delegation was preserving its right to suggest that no changes should be made and was not waiving its objections to proposals made thus far.

10. Referring to operative paragraph 1 (c), he said that he did not believe that the Special Committee was under the obligation to create lists of proposals unless the discussion indicated that such lists accorded with the views of the representative of the Philippines just referred to by his delegation and with the priority tasks of that Committee.

11. In the view of his delegation, operative paragraph 2, like the statement of the representative of the Philippines, was a concrete example of the spirit of caution, moderation and responsibility of the sponsors. Any approach on a basis other than that of general agreement could only weaken the United Nations.

12. Referring to operative paragraph 5, he said that the precise formulation and legislative history of that paragraph should be carefully considered by the Secretariat in preparing the study requested.

13. His delegation, while firmly committed to strengthening the United Nations, did not favour amendment of the Charter as the way of achieving that goal. If work continued on the basis of consensus, all parties stood to benefit. However, by deviating from that basis, all parties stood to lose.

14. Mr. FIFOOT (United Kingdom), speaking in explanation of vote, said that he had expressed his view in his intervention in the general debate (1569th meeting) that any further discussion should be based on a recognition of the considerable diversity of opinion that had been expressed on the subject. The painstaking and lengthy negotiations which had resulted in the draft resolution just adopted were evidence of the will of those involved to put the work of the Special Committee on a less confrontational footing. His delegation, which had taken part in those negotiations, wished to express its appreciation to those whose views it did not share for their constructive attitude and will to work towards a generally acceptable text.

15. The adoption of the draft resolution did not mean the end of controversy. His delegation had in no way modified its view. His delegation remained of the opinion that a review of the Charter was unlikely to produce fruitful results and was potentially and inherently dangerous and stultifying. However, it was to be hoped that the way in which the Committee had adopted the draft resolution would diminish the prospects of discord. Operative paragraph 2 should enable the Special Committee to make a hopeful start, particularly if the same spirit of co-operation prevailed. It was the terms of the resolution, including the terms of the Committee's mandate and the terms in which priority was expressed, and not any interpretation that had been placed on them, that had enabled his delegation to join in the consensus.

16. Mr. JEANNEL (France), speaking in explanation of vote, said that his delegation joined the United States delegation in expressing appreciation to the sponsors of the draft resolution for their spirit of co-operation and their patience. His delegation welcomed the consensus as being in the best traditions of the Sixth Committee. His delegation's participation in the consensus did not mean that it had abandoned its views with regard to ways of attaining the common objectives of Member States. The strengthening of the United Nations and the enhancement of its effectiveness could not be achieved through revisions of the Charter, but only by improved methods of work and the utilization of all possibilities offered by the Charter.

17. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation's position on the item had been stated clearly during the debate in the Committee (1568th meeting). The Soviet Union had consistently opposed any attempt to revise the Charter, since it believed that, in its current form, it provided adequately for the maintenance and strengthening of international peace, which continued to be the main task of the United Nations. Although his delegation had joined the consensus on the draft resolution, its position remained unchanged. If a vote had been taken on the draft resolution, his delegation would have abstained. The enhancement of the effectiveness of the United Nations could

and must be carried out through strict implementation of the Charter.

18. The draft resolution did, however, have a number of positive aspects. First, the Special Committee would now be able to focus its activities, not on changing the Charter, but on preparing measures designed to enhance the role of the Charter in maintaining and strengthening international peace and security and developing co-operation between all peoples. Furthermore, the provisions of operative paragraph 2 would make it possible to consider the question in a spirit of co-operation. The Special Committee should concentrate on specific areas where constructive solutions could strengthen the role and effectiveness of the United Nations, thus increasing the prestige and authority of the Organization without necessitating any change in the Charter. However, a number of delegations still felt compelled to give their own unilateral interpretation of the draft resolution in order to channel the activities of the Special Committee towards a revision of the Charter. His delegation did not consider itself bound by any such interpretation and was therefore not fully satisfied with the draft resolution.

19. Referring to the observations made by the representative of China, he said that that delegation's slanderous statement was further evidence of its constant attempts to introduce dissension into the work of the United Nations and the Sixth Committee and was yet another example of the arbitrary use of the United Nations for purposes inconsistent with its goals and with the aims of the Charter.

20. Mr. TIEN Chin (China), speaking in exercise of the right of reply, said that the representative of the Soviet Union had attempted to deny having intimidated and hurled abuse at countries which advocated review and revision of the Charter. That was completely futile. It was not necessary to go too far back—both in 1974 and in 1975, the Soviet representatives had used that kind of despicable tactic. Those tactics were still fresh in the minds of representatives participating in the meetings of the Committee. The records were also irrefutable.

21. There was a very simple reason why the Soviet delegation opposed the review and the revision of the Charter. It opposed the implementation in the United Nations of the principle of equality of all States, large or small, and attempted to maintain its position of abusing privileges in order to push hegemonism.

22. However, intimidation and tirades could not in any way be helpful to the Soviet delegation. They served only to reveal its guilty conscience and to further expose its hegemonic behaviour. At the current time, whoever tried to wave the big stick in the United Nations would definitely not succeed. When faced with the ever-awakening third-world countries, big-Power hegemonism was doomed to failure.

23. Mr. GOERNER (German Democratic Republic), speaking in explanation of vote, said that, in a spirit of compromise, his delegation had not opposed the consensus on the draft resolution. The position of his delegation was explained in document A/10113/Add.1 and had been expressed clearly in the debate in the Committee (1564th

meeting). That position continued to be that the Charter was sufficiently flexible to guide all States in their relations. Consequently, his delegation would continue to oppose any attempts to revise the Charter.

24. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic), speaking in explanation of vote, said that his delegation's position with regard to the Special Committee had already been stated in the debate (1572nd meeting). His Government was opposed to any attempt to revise the Charter, which had stood the test of time and continued to meet the needs of the international community. His delegation would have abstained if the draft resolution had been put to the vote. The Special Committee should concentrate on enhancing the effectiveness of the United Nations rather than a review of the Charter.

25. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic), speaking in explanation of vote, said that the fact that his delegation had joined the consensus on the draft resolution did not mean that it approved entirely of the provisions of the draft resolution. As it had stated clearly in the debate (1570th meeting) on the items, his delegation had always favoured enhancing the effectiveness of the United Nations in maintaining international peace and security and it had stressed the need to implement the provisions of the Charter rather than to change them. If the draft resolution had been put to the vote, his delegation would have abstained.

26. The CHAIRMAN thanked all delegations for their spirit of co-operation on a difficult issue. The adoption of the draft resolution was a very significant starting point for the Special Committee and it was to be hoped that the same constructive atmosphere would prevail at the meetings of that Committee.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (*continued*)
(A/10332, A/C.6/438, A/C.6/L.1029)

27. Mr. VANDERPUYE (Ghana), speaking on behalf of the sponsors of draft resolution A/C.6/L.1029, said that in the course of informal consultations held among the sponsors it had been agreed that the Syrian Arab Republic should replace the Philippines among the States listed as a member of the Advisory Committee in operative paragraph 9. He also announced that Lesotho should be added to the list of sponsors of the draft resolution.

28. Mr. GÜNEY (Turkey), supported by Mr. MAKEKA (Lesotho), Mr. ABDALLAH (Tunisia) and Mr. ACOLATSE (Liberia) referred to his statement made at the 1577th meeting and objected to the procedure that had been followed in the designation of the members of the Advisory Committee. The normal and correct procedure would have been to refer such questions for decision by the geographical group concerned, thus following well established procedure.

29. Mr. MAÏGA (Mali) said that he believed that that procedure had been followed in the present instance.

30. Mr. ROSENSTOCK (United States of America), supported by Mr. ACOLATSE (Liberia), proposed that the decision on the composition of the Advisory Committee should be postponed until the following meeting so that the regional groups concerned would have an opportunity to hold informal consultations and to follow the established procedure in nominating members of the Advisory Committee.

31. The CHAIRMAN said that, if there was no objection, he would take it that the Committee was agreeable to the proposal made by the United States and seconded by Liberia.

It was so decided.

32. Mr. GODOY (Paraguay), supported by Mr. PEDAUYE (Spain), drew attention to a translation error in the Spanish version of draft resolution A/C.6/L.1029, operative paragraph 1 (b): the term "travel grant" should be rendered "*subsidio de viaje*" instead of "*bolsa de viaje*".

33. The CHAIRMAN said that the Translation Division would make the necessary correction.

AGENDA ITEM 115

Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention (A/C.6/L.1031)

34. Mr. KOLESNIK (Union of Soviet Socialist Republics) recalled that his delegation had already spoken on the item under consideration at the preceding session (1519th meeting) but that the item had not been considered in detail owing to lack of time. He noted that in recent years, due to the efforts of peace-loving States, significant positive changes had taken place in favour of the relaxation of international tension. Accordingly, particular importance was attached to the question of strengthening international legality, which was the sole basis on which relations between States with different social systems could be developed. Of great significance in that connexion were international conventions and agreements of a universal character, especially those relating to diplomatic relations, such as the Vienna Convention on Diplomatic Relations of 1961.¹ That Convention incorporated the generally recognized rules regulating diplomatic relations, which were designed to maintain and strengthen political, economic and cultural ties between States. Observance of the provisions of the Convention had become an essential condition for the preservation and development of normal, good-neighbourly relations between States.

35. The effectiveness of instruments of international law, however, depended upon the number of States acceding to them. Although more than 100 States had acceded to the Convention, it had not been universally accepted. Some 40 States Members of the United Nations were still not parties to it.

36. The Convention had not only codified and strengthened the generally recognized rules of diplomatic law but

had also served to further the development of diplomatic relations between States, a matter of particular importance for the developing countries of Asia, Africa and Latin America. The Convention provided a uniform and regular basis for diplomatic relations between States, thus representing a great advance over the situation which had prevailed until 1961, when diplomatic relations had been governed by more than 3,000 bilateral agreements.

37. The Convention had clearly stood the test of time and there was no need to review it. What was necessary now was to ensure its strict implementation, inasmuch as the failure of certain States to comply with its provisions had on occasion led to dangerous frictions and disagreements. Regrettably, there were still instances of violations of the provisions of the Convention, to which his delegation and several others had drawn attention at the preceding session of the General Assembly. Since then, further shameful incidents had taken place, including the murder of two Turkish diplomats, shots fired at the premises of the Soviet Mission to the United Nations and anti-Soviet demonstrations in New York in the vicinity of the Mission, as well as the infringement of the inviolability of the Soviet Embassy in Tokyo and other incidents which had been condemned by the United Nations and world public opinion. All such violations were intolerable and the necessary steps should be taken, also within the framework of the United Nations, to ensure strict compliance by States with the provisions of the Convention.

38. While there was no need to amend the Convention, there were certain questions relating to diplomatic law where further elaboration of the pertinent rules would be desirable. In particular, that was necessary in the case of the status and rights of diplomatic couriers, a subject which had not been adequately covered in the Convention. Instances where diplomatic couriers had been hindered in the normal performance of their duties had frequently given rise to misunderstandings and difficult situations. In dealing with the subject of diplomatic couriers, special attention should be given to the regulation of questions concerning communication by diplomatic couriers, the definition of their functions, the delivery of diplomatic mail, the exemption of diplomatic couriers and their personal baggage from customs inspection, including the use of new technological devices, the duty of States to take measures to ensure the protection of premises used by diplomatic couriers, the privileges and immunities of diplomatic couriers, the inviolability of diplomatic mail in cases where diplomatic relations had been broken off and several other provisions designed to ensure the normal functioning of the diplomatic service. The aforementioned questions could be regulated by means of an additional protocol to the Convention which, while not changing the Convention itself, would add a new and important international instrument governing matters pertaining to diplomatic couriers.

39. With a view to ensuring the implementation by States of the provisions of the Convention and increasing the number of parties to the Convention, his delegation, together with those of Argentina, Bulgaria, Cyprus, Czechoslovakia, the German Democratic Republic, Hungary and Mali, had submitted draft resolution A/C.6/L.1031, which reaffirmed the need for strict implementation by States of

¹ United Nations, *Treaty Series*, vol. 502, No. 7310, p. 95.

the provisions of the Convention, deplored the instances of violations of those provisions, called upon States which had not yet done so to become parties to the Convention, requested the Secretary-General to prepare a report on ways and means of ensuring the implementation by States of its provisions and to submit it to the General Assembly at its next session, invited the International Law Commission to study the question of rules concerning the status of the diplomatic courier and decided to include the item in the agenda of the thirty-first session. The draft resolution had been prepared in consultation with representatives of nearly all the geographical groups and he hoped that it would meet with the Committee's approval.

40. Mr. GOERNER (German Democratic Republic) said that the establishment and maintenance of normal diplomatic relations between States constituted a prerequisite for the implementation of the purposes and principles of the United Nations Charter. The fact that some States had not been willing to establish diplomatic relations with his country for more than two decades had been a serious obstacle to the relaxation of international tensions. The overcoming of that blockade and the establishment of normal relations under international law between the European States on the basis of the Vienna Convention on Diplomatic Relations were an indication of the changed relationship of forces and served to accelerate the process of détente. Currently, the Convention, to which more than 100 States had acceded, constituted the binding minimum standard for the maintenance of diplomatic relations between States and served as the framework for all further codification of international diplomatic law. That had become obvious in the debates at the 1975 United Nations Conference on the Representation of States in Their Relations with International Organizations. An overwhelming majority of the participating States had voted for the inclusion of norms in line with the principles of the Convention with a view to promoting the unhindered exercise of the functions of the representatives of States in a spirit of peaceful co-operation and equality.

41. The principles of the Convention had served well for more than 10 years, but it had become obvious that some provisions needed to be developed further and made more precise. In particular, article 27, dealing with the status of the diplomatic courier, was insufficiently precise, especially with regard to the inadmissibility of any personal inspection or control, including the use of remote technical inspection devices. The inviolability of the living premises used by the diplomatic courier during his stay in the receiving State also needed to be established by regulation.

42. His delegation therefore felt that the International Law Commission should elaborate an additional protocol to the Convention on the status of the diplomatic courier. It would be in the interest of diplomatic co-operation among all peace-loving States on the basis of international law for more States to become parties to the Convention.

43. Mr. PRANDLER (Hungary) said that the Vienna Convention on Diplomatic Relations, being a widely accepted general multilateral treaty, had become one of the cornerstones of the progressive development and codification of international law. There was, nevertheless, a need to review the implementation by States of the provisions of

the Convention and to promote its wider acceptance. Many States had not yet seen fit to accede to the Convention, which gave rise to uncertainties and conflicts in diplomatic relations. Despite the over-all adherence to the provisions of the Convention, there were instances when the generally recognized rules of international law applicable in the field were violated as a result of wilful acts or negligence. Furthermore, there were provisions of the Convention which could be developed further and made more precise, such as those relating to the status of the diplomatic courier. Despite the provisions of article 27, which dealt with that matter, there had been instances of harassment of diplomatic couriers, hindering them in the implementation of their duties in accordance with the Convention. Certain reservations had, furthermore, been formulated by some States concerning article 27, paragraph 3, dealing with the inviolability of the diplomatic bag. His Government could not accept reservations which were contrary to the role contained in that paragraph.

44. He welcomed the initiative taken by the representative of the Soviet Union during the previous session to draw the attention of the General Assembly to the important matter of the implementation by States of the provisions of the Convention. It would, in his view, be useful for the Secretary-General to prepare a comprehensive report on State practice concerning the provisions of the Convention. He also suggested that an additional protocol on the status of the diplomatic courier be elaborated by the International Law Commission, with a view to developing and making more concrete the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions and the 1975 Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

45. Mr. ENKHSAIKHAN (Mongolia) said that the item under discussion was of great importance to the international community because normal diplomatic intercourse contributed to the development of friendly relations among nations irrespective of their size, population, level of economic development or social order. The Vienna Convention on Diplomatic Relations was a convention of universal character and the principle that a treaty could not impose obligations or confer rights on a third State was not applicable to such treaties or conventions, whose objectives and aims were of vital interest to the international community as a whole. The Convention contained peremptory norms, i.e. norms that were accepted and recognized by the world community and derogation from which could complicate relations among nations. In the current period of détente the general principles of international relations and those of the Vienna Convention had found further confirmation and development in many recent bilateral and multilateral instruments, such as the Final Act of the Conference on Security and Co-operation in Europe, of 1975.

46. It should be noted, however, that a number of countries had not yet acceded to the Convention, a fact which showed the timeliness of the Soviet proposal to consider the implementation by States of its provisions and measures to increase the number of States party to it.

47. Some recent unpleasant and deplorable experiences in Mongolia's relations with one of its neighbours made it especially aware of situations in which the immunities of diplomatic missions were violated or the privileges of diplomatic agents were used to interfere in the internal affairs of the receiving State. His country had been happy to learn a few days previously that that neighbour had finally acceded to the Convention and hoped that henceforth the spirit and letter of the Convention would be strictly observed. All States should be called upon to become parties to the Convention with a view to promoting universal strict observance of the generally recognized rules of international diplomatic law and provisions of the Convention. In the interest of strengthening international peace and security and developing international co-operation, he supported the idea of requesting the International Law Commission to examine the question of the status of the diplomatic courier with a view to developing the provisions of the Vienna Convention on the matter.

48. Mr. TODOROV (Bulgaria), noting that the main aim of diplomatic relations between States was to establish friendly relations and mutual understanding and to develop economic, scientific and cultural exchanges, said that the Convention was of particular importance in the current era of speedy change, relaxation of international tensions and the rapid progressive development of international law. Some States which were parties to the Convention had violated that Convention in certain instances and other States, not formally parties to the Convention, allowed actions with respect to diplomatic missions of other countries which were incompatible with the generally accepted rules of international diplomatic law. Such gross violations included taxes on diplomatic premises, violence against foreign diplomats, arbitrary treatment of diplomatic representatives by airport services and the search of diplomats in some cases.

49. Participation in the Convention was not yet universal and it was in the interest of the international community that all States accede to the Convention and recognize the legal norms it embodied. For that reason his delegation welcomed the appeal made to all States to become parties to the Convention and the proposal to consider the text of some of its articles in the light of certain articles of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of Universal Character, especially those articles dealing with the inviolability of premises, exemption of premises from taxation, freedom of communication and the status of the diplomatic courier.

50. Mr. IŁOPUSZAŃSKI (Poland) said that the initiative of the Soviet delegation in introducing the item deserved

general support. The two elements of the item were closely linked.

51. With regard to the implementation of the provisions of the Vienna Convention, some progress in the strict observation of its provisions by all parties was desirable. Such strict observation was necessary in order to increase the effectiveness of international co-operation, which was an important aspect of efforts to strengthen world peace. Each violation of the provisions of the Convention had a harmful effect on relations between the countries concerned. The degree of implementation of the Convention by States might be considered a measure of their intentions towards other States. Diplomatic relations remained the cornerstone of relations between States, in that the actions of diplomatic representatives were considered as actions of their respective Governments. Consequently, it was very important that diplomatic representatives should be able to perform their functions under legally guaranteed conditions. Such legal guarantees were contained in the provisions of the Convention.

52. His Government had ratified that Convention, and the Polish delegation had participated in the drafting of it at the Vienna Conference. The provisions of the Convention corresponded to the current status of international relations and to the needs of States. However, one field which required further consideration, as pointed out by the Soviet representative, was that of the status of the diplomatic courier. In that connexion, his delegation shared the views of the sponsors of the draft resolution. The form of a protocol seemed to be the most reasonable, after consideration by the International Law Commission.

53. Unfortunately, however, participation in the Convention was not universal. A number of States had not yet ratified it—a situation which was not favourable for the international community as a whole. The reasons for that attitude had not been fully explained. Naturally, each State had a sovereign right to participate or not to participate in international treaties but, given the importance of the Convention, the international community might hope that its appeals for universal participation would be heeded and valid reasons for such a negative attitude explained.

54. His delegation expressed the hope that work on the codification of international diplomatic law would be completed and ratified by all Member States. His delegation would vote for draft resolution A/C.6/L.1031.

The meeting rose at 5.45 p.m.

1579th meeting

Wednesday, 3 December 1975, at 11 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1579

AGENDA ITEM 115

Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention (continued) (A/C.6/L.1031)

1. Mr. JACHEK (Czechoslovakia) said that, despite the large number of ratifications of or accessions to the Vienna Convention on Diplomatic Relations of 1961, there were still many countries which had not become parties to the Convention. It was known that instances of violations of the Convention occurred, either because diplomatic representatives misused it for purposes which did not promote the development of friendly relations among States or because there were other violations of the provisions of the Convention—for example, those concerning freedom of communication of diplomatic missions and inviolability of diplomatic couriers and diplomatic correspondence. Numerous examples had been given at the preceding session of the General Assembly and at the current session. His delegation considered it extremely important and urgent to achieve universal participation in general multilateral agreements of the type of the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the Convention on Special Missions and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. Those norms, together with the Charter, created the political and legal basis for international co-operation and its development in all areas of the life of the international community.

2. The United Nations should evaluate the experience acquired so far in the application of the Vienna Convention on Diplomatic Relations and adopt measures effectively to ensure the implementation of all its provisions. In that connexion, special attention should be paid to the question of diplomatic courier service, as well as the status and rights of diplomatic couriers and principles for the transport of diplomatic mail and baggage. In that regard, the Convention embodied correct principles, such as freedom of communication of the mission of the sending State for all official purposes, the right to use all means of communication, including diplomatic couriers and coded messages, the principle of the inviolability of diplomatic correspondence and its protection by the receiving State. Nevertheless, the Convention provided only the framework of regulations in that area of diplomatic activity and it was therefore necessary to have a detailed elaboration of those principles, for example in the form of a supplementary protocol to the Convention. The need for more detailed regulations was also illustrated by the fact that in the matter of courier services there were frequent violations of the Convention.

3. For those reasons, the Czechoslovak Government had welcomed the proposal made by the Soviet Union in

November 1974¹ that the United Nations should deal with the problems of the implementation of the provisions of the Convention and his delegation was sponsoring the draft resolution (A/C.6/L.1031) on the subject, which was designed to achieve a more detailed elaboration of the provisions of the Convention in the sphere where the existing provisions were rather too general and the practice of States indicated the need for more detailed work. His delegation expressed the hope that the draft resolution, which had been submitted in the interest of the strengthening of friendly co-operation among States and was designed to achieve a solution to the urgent problems which represented obstacles to that co-operation, would meet with wide support among Member States.

4. Mr. STEEL (United Kingdom) said that, although his delegation agreed with the general drift of the draft resolution that had been submitted, it had reservations on some of its provisions. For example, the second preambular paragraph appeared to make a distinction between the universally recognized principles and rules of international law and other principles and rules of international law. His delegation could not accept that distinction, since any principles and rules which were in fact principles and rules of international law should be observed. The third preambular paragraph gave rise to difficulty because of its reference to "the instances" of violations of the rules of diplomatic law. That seemed to imply that the sponsors of the draft resolution were referring to particular cases. These had not been identified, but in any case his delegation thought it would be better not to refer to particular instances. The word "the" should therefore be deleted. The fifth preambular paragraph contained an affirmation which the Sixth Committee was perhaps not in a position to accept without further study. It might be preferable to use a more tentative wording and refer to the advisability of studying the possibility of developing the provisions of the Vienna Convention. The United Kingdom Government, for its part, saw no need for further elaboration of the rules contained in article 27 of the Vienna Convention.

5. The comment which he had made on the second preambular paragraph also applied to operative paragraph 1. Operative paragraph 2 again suggested that there were specific instances of violations—a suggestion which his delegation considered to be unfortunate. With regard to operative paragraph 4, his delegation was puzzled about the contents of the report which the Secretary-General of the United Nations was requested to prepare. One obvious way to ensure the implementation of the provisions of the Vienna Convention that the report might recommend was accession to the Optional Protocol concerning the Compulsory Settlement of Disputes. But it was difficult to think

¹ See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 122, document A/9745.

what other matters the report might cover. In any case, it would be more consistent with the practice of the Committee to invite comments from Member States before asking the Secretary-General to produce a report. With regard to operative paragraph 5, it was premature to invite the International Law Commission to study the elaboration of specific rules concerning the status of the diplomatic courier. Once again, it was not the usual practice to adopt such a procedure without first obtaining the comments of Member States. Although exceptions had been made to that practice, they had occurred in very special cases which were not analogous to the one under consideration.

6. His delegation was in sympathy with the general tenor of the draft resolution and of the statements made in support of it and suggested that further informal consultations should be held at the end of the general debate with a view to redrafting the text so as to facilitate acceptance of its provisions.

7. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the principles of peaceful coexistence in relations between States with different social systems were reflected in the present state of relations between countries and in the conclusion of agreements of various types, as well as in détente. Those agreements included the Vienna Convention on Diplomatic Relations of 1961, which was clear proof that the codification and progressive development of international law was one of the most important activities of the United Nations. But it was not enough to formulate rules of international law; it was also essential to ensure that their provisions were strictly observed by all States. Although 114 States had become parties to the Convention, it could not yet be described as universal, although there were currently no obstacles standing in the way of its universality. He could not help but express concern at the violations of the provisions of that Convention committed by States which were not parties to it. For those reasons, the General Assembly should affirm in a resolution the need for States to comply strictly with the provisions of instruments which promoted the normalization of relations between States.

8. The 1961 Vienna Convention, like other instruments, failed to settle the status of the diplomatic courier. It was essential to draft a document on that subject, which in form and content could be an additional protocol to the 1961 Vienna Convention and should be based on its provisions at the same time that it should provide for the full range of privileges and immunities of diplomatic couriers and rationalize the procedures governing diplomatic correspondence. The drafting of such a document could be entrusted to the International Law Commission, which had the necessary experience. He felt that consideration of that matter should not be postponed and that the fears expressed by the United Kingdom representative were not justified. His delegation fully supported draft resolution A/C.6/L.1031, which could, he felt, be adopted by the Sixth Committee.

9. Mr. TIEN Chin (China) said that there were quite a number of international conventions regarding relations between countries and that the question of whether countries, particularly those which had recently achieved their liberation and independence, became parties to such

conventions was entirely a matter of their own sovereignty. Facts proved that whether a country respected the general norms of relations between States did not depend on its verbal assertions or on whether or not it had become a party to a given international convention; a judgement should rather be made on the basis of actions. If a country tried to make propaganda out of an international convention because of ulterior motives, that was, to say the least, not a proper attitude.

10. As for calling upon other countries with great fanfare to abide by an international convention while the country itself was committing acts which seriously violated that same international convention, that was even more an attitude of utter hypocrisy. Everyone remembered that, halfway through the previous session of the General Assembly, a certain country had submitted an item entitled "Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention" as an important and urgent matter. It was clear to all that that kind of tactic had an ulterior motive. The country in question had thought that its purpose had been achieved, but its plan had not succeeded. Why was that country trying to make use of that item again at the present session? The reason was that in recent years the country concerned had been singing the praises of the "development of friendly and co-operative relations between countries" on the one hand while on the other hand, guided by its policy of expansion and aggression, some of its diplomatic personnel stationed in foreign countries were making flagrant use of diplomatic privileges to commit innumerable acts which violated the sovereignty and endangered the security of the receiving State. Many countries not only were fully aware of those acts but had publicly exposed them and had at the same time adopted forceful measures to defend their sovereignty and security. In those circumstances, the country in question was attempting in vain to make use of the item on diplomatic relations to whitewash its own inglorious acts. The result was that the more it tried to hide, the more it was exposed.

11. People could not help asking if that country, whose thinking was completely different from its verbal assertions, had the effrontery to talk about what it called "implementation of the Convention on Diplomatic Relations". Was that not making a mockery of the Convention and of the more than 100 countries represented in the Sixth Committee? His delegation felt that Governments should observe the general norms of relations between States but that the country to which he had just referred had no right to ask other countries to abide by the Convention on Diplomatic Relations. That country itself should be the first to observe the Convention.

12. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said he thought that the inclusion of the present item in the agenda of the thirtieth session was very timely and commended the Soviet delegation for taking the initiative in that regard. The Vienna Convention, which was one of the most important instruments of present-day international law, stated in its preamble that its purpose was to contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems. Observance of the Convention was

essential to the maintenance of normal relations between States. It was therefore unfortunate that, although more than 110 States were already parties to the Convention, the latter was not yet universal. In view of the importance of the Convention, his delegation felt that the General Assembly should urge those States which had not yet done so to accede to the Convention as soon as possible.

13. The Ukrainian SSR, which helped to draft the Convention and was a party to it, was concerned at the violations of the Convention being committed by some States which were parties to it. The development of relations between States would be better served if national norms reflecting the principles and norms of present-day diplomatic law were adopted and if favourable conditions were created for the exercise of the rights of foreign diplomats and the promotion of trade relations. His Government had done that in 1966 by enacting new legislation concerning diplomatic and consular missions.

14. The Vienna Convention, which had stood the test of time, did not require any changes other than those necessitated by the actual development of diplomatic law. His delegation supported the institution of the diplomatic courier and regretted the fact that it had not been recognized in the relevant conventions. Practical experience showed how important the courier was to the functioning of diplomatic missions. It was therefore time to regulate that institution and exempt couriers from customs inspections and personal searches. His delegation supported the proposal that the legal status of the diplomatic courier should be regulated by an additional protocol and felt that the International Law Commission was the body best suited to the task of drafting such a protocol. His delegation also agreed that the Secretary-General should prepare a report on ways and means to ensure the implementation by States of the provisions of the Convention and should submit it to the General Assembly at its thirty-first session.

15. He said that his delegation supported draft resolution A/C.6/L.1031.

16. Mr. ROSENSTOCK (United States of America) expressed high appreciation of the Vienna Convention for its exemplary codification of international diplomatic law and took the opportunity to praise once again the work of the International Law Commission. Since the Convention codified existing diplomatic law, it was not necessary for a State to be a party to it in order to be bound by it, but he nevertheless wished to emphasize the importance of obtaining ratification or accession by the largest possible number of States and urged those States which had not yet done so to submit their instruments of accession as soon as possible. He also appealed to States parties to the Convention to become parties to the Optional Protocol concerning the Compulsory Settlement of Disputes and stressed that this was the best way of ensuring application of the rules contained in the Convention.

17. He noted that privileges and immunities were granted not in order to benefit individuals but in order to ensure the efficient performance of the functions of diplomatic missions. Privileges and immunities were not intended to facilitate breaking the laws and regulations of host States. It would also seem reasonable for diplomatic representatives

to accommodate themselves to the greatest possible extent to rules, regulations and customs of the host country which were designed to provide needed security for foreign nationals. The body of law codified in the Vienna Convention included provisions which established clear obligations on the part of the receiving State with regard to diplomatic couriers and the diplomatic bag. His delegation did not believe that new texts were needed on those matters.

18. He expressed his delegation's belief that, with some modifications, the draft resolution could be adopted by consensus.

19. Mr. HAFIZ (Bangladesh) congratulated the delegation of the USSR for requesting the inclusion in the agenda of the item under discussion, which was of vital importance for the development of co-operation and friendly relations among States.

20. His delegation regretted that certain States which were parties to the Convention were violating its provisions and that others which were not parties to it were allowing activities in their countries which were incompatible with the functions of diplomatic missions. In order to avoid those violations it would be desirable that the greatest possible number of States should adhere to the Convention. Diplomatic privileges and immunities were awarded not for the benefit of individuals but to ensure the efficient functioning of diplomatic missions. He trusted that the latter would not use their premises in any way which was incompatible with their functions as enumerated in article 3 of the Convention.

21. His country adhered faithfully to the provisions of the Vienna Convention and accorded all representatives accredited to Bangladesh the privileges and immunities stipulated in the Convention. However, because of certain procedural questions it was not formally a party to the Convention. Since Pakistan was a party, the participation of Bangladesh would raise the broader question of State succession, which had been under consideration by the International Law Commission until 1974. Now that the Commission had adopted the final texts with regard to the matter, the requisite steps were being taken to enable Bangladesh to participate in all important multilateral treaties, including the Vienna Convention. His delegation would support any measure to ensure strict observance of the Vienna Convention and other universally recognized rules of international diplomatic law.

22. Mr. KRISPIS (Greece) said that the view of his delegation with respect to the item and the draft resolution under consideration coincided in principle with that expressed by the representative of the United Kingdom.

23. With reference to the second preambular paragraph and operative paragraph 1, he thought it should be sufficient to say that it was necessary to implement the rules of international law and the provisions of the Vienna Convention without any need to refer explicitly to the specific reasons for saying so. The third preambular paragraph and operative paragraph 2 should refer to "any violation" instead of "the instances of violations", since the latter would require clarifications. In operative paragraph 4, the request made to the Secretary-General would have to be

further clarified. As to operative paragraph 5, although he agreed that the International Law Commission was the appropriate body, he thought the invitation was premature.

24. He congratulated the Soviet delegation on its initiative in requesting the inclusion of the item in the agenda and said that he hoped it would be easy to find a text which could be adopted by consensus.

25. Mr. GODOY (Paraguay) said that while his delegation appreciated the importance of the diplomatic courier, it thought that the problem might not be a cause of special concern for the majority of countries and that perhaps the relevant provisions in article 27, paragraph 5, of the Vienna Convention were enough for the present. Therefore, he thought the preparation of a new document on the question was unnecessary. Furthermore, if the International Law Commission was given that task, it would be obliged to delay consideration of other more important questions.

26. With regard to operative paragraph 2 of the draft resolution, it seemed to him that if there was real concern over the instances of violations, the wording used was weak. He said that his delegation would be prepared to support the draft resolution if certain changes making it more realistic were introduced.

27. Mr. ENKHSАIKHAN (Mongolia), speaking in exercise of the right of reply, said that he wished to cite some examples of instances of violations of international diplomatic law experienced by his country:

28. The main function of diplomatic missions was to promote friendly relations between States. Without prejudice to their privileges and immunities, all diplomats had the obligation to respect the laws of the receiving State. Nevertheless, the Embassy of China in Ulan Bator was trying to make use of the 7,000 Chinese citizens living in Mongolia in its anti-Mongolian activities. Thus, the Second Secretary of that Embassy, addressing them in a meeting, had said that they should not be afraid to fight for their leaders' ideas and that the Mongolian and Soviet revisionists would be defeated. Similarly, the Chargé d'affaires of that same Embassy had said at a reception for 200 guests that they must not fear the Mongolians and must fight to disseminate the ideas of Chairman Mao.

29. According to contemporary international law, the premises of missions were inviolable, as were their means of transport. Nevertheless, in 1967 the Embassy of Mongolia in Peking had been besieged and assaulted by mobs and several Embassy cars with diplomatic licence plates had been damaged. The Ambassador's car had even been set afire and burned.

30. One of the main principles of contemporary international law was that of non-interference in the internal affairs of States. The strict observance of that principle was an essential condition for peaceful coexistence and any violation of it gave rise to situations that threatened international peace and security. Yet in 1967-1968 the Embassy of China in Ulan Bator had distributed more than 20,000 copies of 70 anti-Mongolian subversive pamphlets in Mongolia. In 1969 the number had risen to 30,000. As to

radio broadcasts, which constituted another means of ideological subversion and interference in the internal affairs of States, during the years of the "cultural revolution" six radio stations had broadcast slanderous propaganda in the Mongolian language. Currently, broadcasts in Mongolian, Kazakh, Russian and Chinese totalled more than 40 hours a day.

31. He recalled that in 1936 Mao had told Edgar Snow that with the victory of the Chinese revolution Mongolia would "of its own free will" become part of the Chinese federation. In February 1949 and in 1954, on the occasion of the fifth anniversary of the victory of the Chinese revolution, Mao had wanted to discuss with the Soviet leaders the question of the annexation of Mongolia. The Soviet representatives had replied that they did not think Mongolia would agree to give up its independence and that in any case the question must be decided by Mongolia. He thought it was not a coincidence that Chiang Kai-shek and Mao shared the same view on most territorial issues. Along the border the Chinese had built various strategic military installations and had stationed large army units. Between 1969 and July 1973 Chinese troops had conducted 151 military exercises in the frontier zone and there had been some 8,000 instances of explosions and artillery fire. Despite Mongolia's protests, Chinese soldiers and officers deliberately crossed into Mongolian territory on various occasions and minor provocations had become frequent occurrences. In order to defend its borders Mongolia was obliged to divert a considerable amount of resources as well as labour from material production. The Soviet Union and the other socialist countries were helping Mongolia overcome the difficulties caused by the deterioration of its relations with China.

32. He said that if he had cited some examples it was because he wished to demonstrate the need for a more universal legal guarantee that diplomats would be able to discharge their functions in accordance with the principles of international law.

33. Mr. TIEN Chin (China), speaking in exercise of the right of reply, said that he had made no reference to Mongolia in his statement, yet the representative of Mongolia went so far as to utter nonsense and make slanderous attacks against China. The Mongolian representative's calumnious attacks were completely irrelevant to the item under discussion. Others could understand the deplorable position in which that representative had found himself. However, the representative of Mongolia could in no way be helpful to those he was trying to defend.

34. Mr. ENKHSАIKHAN (Mongolia), speaking in exercise of the right of reply, said that first of all, even if the representative of China had not expressly referred to his country, he had done so implicitly and, secondly, the examples he had cited were related to the matter under consideration.

35. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation was prepared to enter into informal negotiations with a view to seeking broad support for draft resolution A/C.6/L.1031 so that it could be adopted by consensus.

AGENDA ITEM 117

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General (concluded) (A/10332, A/C.6/468, A/C.6/L.1029)

36. The CHAIRMAN announced that, on the proposal of the representative of Ghana, the Syrian Arab Republic had replaced the Philippines as a member of the Advisory Committee referred to in operative paragraph 9 of draft resolution A/C.6/L.1029. In addition, the representative of Paraguay, referring to the Spanish text of operative paragraph 1 (b) of the same resolution, had requested that the expression "*bolsa de viaje*" should be replaced by "*subsidio de viaje*".

37. Mr. MAHMUD (Pakistan), speaking as Chairman of the Asian Group, welcomed the inclusion of Cyprus and the Syrian Arab Republic as members of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. He pointed out, however, that the principle of equitable geographical distribution had not been properly observed in deciding on the composition of the Advisory Committee. That question should be viewed in the light of the increased membership of the African, Asian and Latin American Groups with the accession to independence of the territories formerly under colonial domination. The Asian Group would not insist that such a review should be undertaken at present, but that should be done in connexion with the next renewal of the mandate of the Advisory Committee.

38. Mr. SIBLESZ (Netherlands) informed the Committee that, as in previous years, his country had offered a fellowship of 5,000 florins for students from developing countries to attend the seminar to be held in Geneva in 1976 in connexion with the work of the International Law Commission.

39. The CHAIRMAN said that, if there was no objection, the Committee would adopt without a vote the draft resolution contained in document A/C.6/L.1029, as orally revised at the 1578th meeting.

It was so decided.

The draft resolution, as revised, was adopted.

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General (continued)* (A/10198 and Add.1-5, A/9610/Rev.1, A/C.6/L.1019/Rev.1, A/C.6/L.1022/Rev.1, A/C.6/L.1023/Rev.1, A/C.6/L.1026)**

40. The CHAIRMAN announced that Sudan and Uganda had joined the sponsors of the revised amendments to draft resolution A/C.6/L.1019 as contained in document A/C.6/L.1023/Rev.1.

* Resumed from the 1575th meeting.

** Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

41. Mr. STEEL (United Kingdom), speaking on behalf of the sponsors of draft resolution A/C.6/L.1019/Rev.1, announced that the following changes had been made in the draft: in the last phrase of operative paragraph 1 the words "without fail" should be added after the word "thereon" and in operative paragraph 6 the title of the item to be included in the provisional agenda of the General Assembly at its thirty-first session should be "Conference of Plenipotentiaries on Succession of States in respect of Treaties", instead of "Succession of States in respect of treaties".

42. He submitted that the amendments contained in document A/C.6/L.1023/Rev.1 were not genuine amendments but were in the nature of separate proposals. He sought the ruling of the Chair on that point.

43. After a procedural debate in which Mr. ABDUL-KHEIR (Egypt), Mr. ROSENSTOCK (United States of America), Mr. JEANNEL (France), Mr. MAÏGA (Mali), Mr. RASHID (Afghanistan), Mr. DIENG (Senegal), Mr. GOBBI (Argentina) and Mr. GODOY (Paraguay) took part, Mr. Sette CÂMARA (Brazil), speaking in explanation of vote, said that his delegation could not accept the idea of referring part of the draft articles on succession of States in respect of treaties back to the International Law Commission, since that would be contrary to the practice of the Sixth Committee. Any problems which might arise in connexion with the draft would be duly considered by the Conference of Plenipotentiaries. His delegation was therefore opposed to draft resolution A/C.6/L.1019/Rev.1, since that would give rise to an unprecedented third reading of the draft articles. On the other hand, he welcomed the amendments proposed in document A/C.6/L.1023/Rev.1 but was not able to support the amendments put forward in document A/C.6/L.1022/Rev.1 for the reasons he had stated previously.

44. Mr. FRANCIS (Jamaica), explaining his vote before the vote, said that it would be preferable to refer the draft convention on succession of States in respect of treaties back to the International Law Commission. He also felt that the proceedings of the Conference on the Law of the Sea would make it difficult to hold a Conference of Plenipotentiaries in 1977. Accordingly, his delegation would vote against the draft amendments in document A/C.6/L.1023/Rev.1.

45. The CHAIRMAN, ruling on the point of order raised by the United Kingdom representative, said that since the draft contained in document A/C.6/L.1023/Rev.1 would have the effect of deleting certain provisions of draft resolution A/C.6/L.1019/Rev.1 and amending others, he was of the view that it constituted an amendment within the meaning of article 130 of the rules of procedure of the General Assembly.

46. He proceeded to call for a vote on the third and fourth amendments submitted by Afghanistan (A/C.6/L.1022/Rev.1) stating that it was not necessary to vote on the first two amendments as they had been incorporated in the revised draft resolution.

The amendments were rejected by 68 votes to 8, with 22 abstentions.

47. The CHAIRMAN called for a vote on the revised amendments to draft resolution A/C.6/L.1019/Rev.1 as contained in document A/C.6/L.1023/Rev.1.

The amendments were adopted by 58 votes to 26, with 15 abstentions.

48. The CHAIRMAN put to the vote draft resolution A/C.6/L.1019/Rev.1, as amended.

The draft resolution, as amended, was adopted by 70 votes to 1, with 28 abstentions.

49. Mr. RASHID (Afghanistan) requested that his delegation should be recorded as having voted in the negative.

The meeting rose at 1.30 p.m.

1580th meeting

Thursday, 4 December 1975, at 11 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1580

AGENDA 109

Succession of States in respect of treaties: report of the Secretary-General (concluded) (A/10198 and Add.1-5, A/9610/Rev.1, A/C.6/L.1019/Rev.1, A/C.6/L.1022/Rev.1, A/C.6/L.1023/Rev.1, A/C.6/L.1026)

1. Mr. VAN BRUSSELEN (Belgium) said that his delegation had voted against the amendments in document A/C.6/L.1022/Rev.1 because it felt that the draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D) represented a compromise that would be hard to improve on, and that therefore there was no need for the International Law Commission to consider them further, and also because they left the question of the convening of a conference of plenipotentiaries, which Belgium favoured, completely open.

2. As for the amendments in document A/C.6/L.1023/Rev.1, his delegation had abstained from voting on them, while agreeing with some of the ideas they embodied, because no provision was made for referring to the Commission for further study the proposals mentioned in paragraph 75 of its report (A/9610/Rev.1), although the Commission itself had stated that it had had insufficient time to study them. Moreover, according to operative paragraph 3 proposed in the amendment, it would be decided that the conference of plenipotentiaries should embody the results of its work in an international convention and Belgium considered that it was too soon to take a decision at the present stage on the final form of the articles. Nor did it believe that a convention would be the best formula and, in any case, it felt that the conference itself should take the necessary decision. In view of the adoption of the amendments contained in document A/C.6/L.1023/Rev.1, his delegation had been obliged to abstain from voting on draft resolution A/C.6/L.1019/Rev.1 as amended.

3. Mr. KUSSBACH (Austria) said that his delegation had voted against the amendments in document A/C.6/L.1023/

Rev.1 because it had been under the impression that a vote was being taken on the last paragraph of document A/C.6/L.1022/Rev.1. Actually, his delegation had intended to vote in favour of the amendments in document A/C.6/L.1023/Rev.1 because they fully reflected its point of view. Consequently, his delegation had then voted in favour of the draft resolution in document A/C.6/L.1019/Rev.1, as amended.

4. Mr. MAKEKA (Lesotho) said that, unfortunately, his delegation had been absent when the vote had been taken. Otherwise it would have voted in favour of the amendments contained in document A/C.6/L.1023/Rev.1 and draft resolution A/C.6/L.1019/Rev.1, as amended.

5. Mr. BOSCO (Italy) said that his delegation had voted against the amendments in document A/C.6/L.1023/Rev.1 because, although it did not disagree with the proposed operative paragraphs 1 and 2, it had found operative paragraphs 3 and 4 unacceptable, as it would be premature to decide on the convening of a conference of plenipotentiaries in 1977 before knowing the comments and observations of more member States. For the same reasons, his delegation had been unable to vote for draft resolution A/C.6/L.1019/Rev.1, as amended.

6. Mr. JEANNEL (France) said that his delegation had voted against the amendments contained in document A/C.6/L.1022/Rev.1 because it felt that, if they were adopted, it would mean indefinitely delaying a decision on the draft articles. His delegation had also voted against the amendments in document A/C.6/L.1023/Rev.1 because it believed that a convention was not the most appropriate and effective form for the draft articles and because the text still contained certain points which, as the International Law Commission itself had acknowledged, had not been given sufficient study.

7. With regard to draft resolution A/C.6/L.1019/Rev.1, as amended, his delegation, which had been a sponsor of the original draft resolution and had included in it the decision to convene a conference of plenipotentiaries, regretted that it had not been possible to agree on an acceptable wording. It therefore abstained in the vote.

8. Mr. RASHID (Afghanistan) considered that, although the set of draft articles prepared by the International Law Commission was at a fairly advanced stage, it still needed to be studied in greater depth in the light of the comments made in the Sixth Committee, not only with regard to paragraph 75 of the Commission's report, but also with regard to paragraph 84 of that report. Since some delegations had made pertinent comments on the supposedly finalized articles, his delegation thought that the study of the question could not be considered at an end.

9. As for the organ responsible for finalizing the draft articles, he had noted that some delegations were in favour of referring the question back to the International Law Commission, while others felt that the Sixth Committee should study the draft. There were also differences of opinion regarding the form or title to be given to the draft articles. Some States were in favour of a convention whereas others felt that the articles should be embodied in a General Assembly resolution or in a declaration. Many States had not expressed an opinion on the matter.

10. On the subject of the conference of plenipotentiaries, opinion had been divided up to the time of the vote. Consequently, far from there being a consensus, one could not even say that there had been a majority in favour of a particular approach to the question as a whole. Meanwhile, the view had been gaining ground that, before taking a final decision, the Sixth Committee should await the completion of the Commission's work on another aspect of the question—namely, succession of States in respect of matters other than treaties, so as to have a unified text.

11. Those differences were reflected in the amendments proposed. Draft resolution A/C.6/L.1019/Rev.1 confined the questions to be referred to the International Law Commission exclusively to paragraph 75 of its report, and said nothing about the procedures and methods to be applied for the completion of the work on the draft articles. For example, according to one of the amendments contained in document A/C.6/L.1023/Rev.1, the Secretary-General would be requested to circulate, before the thirty-first session of the General Assembly, the comments and observations submitted by member States, and by another it would be decided that the Assembly should deal with the question of the conference of plenipotentiaries, to be held in 1977. However, the amendments submitted by his own delegation provided that, in view of the opinions expressed in the course of the discussion, observations of States relating not only to paragraph 75 of the report but also to other questions should be referred to the International Law Commission for consideration and that, at its next session, the General Assembly should consider the various aspects of the question with a view to taking a decision on the future of the articles. The reason for those amendments was that, in his delegation's opinion, matters had not progressed sufficiently to warrant closing the discussion of the draft articles and other procedural points. He felt that, in view of the importance of the draft articles, every precaution should be taken to ensure positive results and he feared that, if the convening of a conference of plenipotentiaries were forced by means of a majority vote, the draft articles might run into difficulties at a later stage. Even if the conference of plenipotentiaries adopted the articles of a convention by a small majority, States might

find themselves obliged to refrain from signing or ratifying it or to enter reservations concerning the articles.

12. For all those reasons, his delegation had been unable to vote in favour of the amendments contained in document A/C.6/L.1023/Rev.1 and had voted against draft resolution A/C.6/L.1019/Rev.1, as amended. However, if draft resolution A/C.6/L.1019/Rev.1 had not been amended, it would have abstained, and it would have voted in favour if its own amendments had been adopted.

13. He wished to point out that, as he had stated at the time (1579th meeting), because of the hasty manner in which the voting had taken place, there had not been an opportunity to record his vote against draft resolution A/C.6/L.1019/Rev.1 as amended. In that connexion, he asked the Secretary of the Committee to ensure that the fact was reported in the relevant document and reflected in the summary record of the meeting. He was surprised that the Chairman should have rushed through the vote on that very important and sensitive matter.

14. He thanked the delegations which had voted in favour of his delegation's amendments.

15. Mr. ROSENSTOCK (United States of America) said that his delegation had agreed that certain matters might not be referred to the International Law Commission because it felt that the Commission should not be overburdened with work. It still felt, however, that the draft convention would be incomplete unless it contained some provisions regarding the settlement of disputes. Although he was sure that the International Law Commission would bear that in mind in its future work, he felt that the matter should be properly settled at the conference of plenipotentiaries. His delegation also agreed with the implicit suggestion that ways and means should be found of ensuring that the Convention could be applied in the widest possible range of circumstances and believed that that point could also be clarified at the conference.

AGENDA ITEM 115

Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention (continued) (A/C.6/L.1031/Rev.1)

16. Mr. JEANNEL (France) said that the establishment of good bilateral relations was a fundamental element of international co-operation and that the Vienna Convention on Diplomatic Relations¹ was therefore extremely useful since it codified the rules governing diplomatic relations. Although no one could deny its effectiveness, some delegations had pointed to the problems presented by the Convention. Judging from the comments that had been made, he believed that those problems fell into two categories, namely, problems relating to the diplomatic courier and problems relating to the treatment of diplomats themselves. As to the former category, he believed that criticism centred more on the manner in which the provisions of the Vienna Convention were applied than on

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

the provisions themselves, since article 27 of the Convention was sufficiently clear and comprehensive. The same could be said of the second category: although deplorable incidents involving searching and detention had been cited, they were the result of improper application of the Convention since the relevant article affirmed the inviolability of mission personnel, forbade their arrest or detention in any form and stipulated that it was the duty of host States to prevent any attack on the dignity and integrity of their person. He thought that a survey should be made to ascertain how the provisions of the Vienna Convention were being applied in practice, particularly with regard to the two areas mentioned. A resolution should therefore be adopted requesting the Secretary-General to seek the comments and suggestions of Governments on the matter, to prepare a report and submit it to the General Assembly at its thirty-first session for consideration and a decision. Similarly, an appeal should be made to Governments that had not yet done so to accede to the Convention.

AGENDA ITEM 116

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism (A/9028*)

17. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that the General Assembly's various postponements of the discussion of the item, necessitated by lack of time, made it necessary to revert to the status of the question as it had been three years earlier. However, it soon became clear that the circumstances which had led to its inclusion had not changed and that during the interval acts of international terrorism had continued and had daily reinforced the reasons that had prompted the Secretary-General to seek the General Assembly's assistance in dealing with the tangible threat that the world was beginning to face and to request the inclusion in the agenda of the twenty-seventh session, as an additional item of an important and urgent character, of an item entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms".² In response to that request, the General Assembly had adopted on 18 December 1972, resolution 3034 (XXVII) in which the title initially proposed was expanded and whereby the *Ad Hoc* Committee on International Terrorism was established.

18. Uruguay had heeded the Secretary-General's appeal and that of the General Assembly and had wholeheartedly prepared to make the required commitment, hoping to find allies in all the peoples that had espoused the cause of the United Nations, in the enemies of violence, in the advocates

of humanitarian law, in short, in all peace-loving peoples. Uruguay's readiness had been expressed in all areas and in all circumstances. Uruguay had raised its voice not only when the lives cut short by terrorism were those of its own sons, as in the case of the brutal and cold-blooded murder of the military attaché in Paris, Colonel Ramón Tróbal, but also when victims had been claimed by terrorism at the mission of the Federal Republic of Germany at Stockholm, at which time the Uruguayan Government had expressed its strong condemnation to the Chancellor of the Federal Republic of Germany.

19. He recalled what the Secretary-General had said to the effect that those acts of violence had created a climate of fear throughout the world from which no one was immune, and he said that his country provided the best example of the truth of that assertion because Uruguay, which had been swept by the most violent wave of terror in its history—which now, fortunately, had been totally eliminated—was the very country which for so long had been known as "the Switzerland of the Americas". Uruguay, which from 1908 to 1972 had been able to boast that it had had no deaths due to direct or indirect political causes, had been taken by surprise and caught off guard by the terrorist attack. It was essential to know those details in order to understand that Uruguay's position was both objective and serious as well as sincere.

20. It was no secret that the item under consideration had become somewhat taboo for some of the States represented in the Committee. That was because it was feared that a condemnation by the General Assembly might jeopardize the legitimate struggle of certain peoples or movements against colonialism or for self-determination. Furthermore, those who took a position on terrorism could be identified with one or another faction in the conflict regarding the Middle East. In that connexion, he recalled the statement made at the previous session by the Minister for Foreign Affairs of Uruguay (2240th plenary meeting), who had said that, while continuing to support the immediate measures which the United Nations was taking to alleviate the sad plight of the Palestinian people, the Government of Uruguay advocated more far-reaching formulas that would take account of and meet the legitimate aspirations of that people, thus facing up to the real, political, social and, ultimately, human essence of the problem, all within the framework of global negotiations for peace.

21. The report of the *Ad Hoc* Committee on International Terrorism (A/9028) did not give a clear idea of the difficulties encountered in reaching some kind of compromise for the organization of its work. The obstinacy of some delegations, and in particular the intransigent attitude of others, had made it impossible to achieve the consensus which had seemed within reach, and the session had been closed with a mere account of the meetings held by the Committee which, while it might serve as a basis for subsequent work, had not provided the necessary clarification of the issue which had been the purpose of the Committee's establishment; nor had it made it easier for the General Assembly to adopt recommendations on the matter.

22. That report obliged his delegation to reiterate the views it had expressed on the subject in the Committee and

* Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 28.

² See Official Records of the General Assembly, Twenty-seventh Session, Annexes, agenda item 92, document A/8791 and Add.1.

which were not reflected in the report. Uruguay had stated, and stated again most categorically, that it repudiated the acts of international terrorism which had been recurring to an increasing extent in recent years and which were not confined to particular geographical regions or political-ideological systems but were, on the contrary, indiscriminately perpetrated for no other reason than barbarism and complete ruthlessness on the part of the criminals that committed them.

23. It was obvious that no system of preventive measures, and no procedure for international co-operation for the punishment of those crimes, however strong or co-ordinated it might be, could ever eliminate that type of crime altogether unless the root causes were attacked. Governments must therefore assist each other not only in fighting that kind of crime, but also in the heroic and formidable task of putting an end to the inequities in old and obsolete socio-economic structures. That, however, did not mean that, given the existence of terrorist crimes of various kinds, States should not attempt to deal with such offences in their respective laws, or co-operate with one another to prevent and curb that kind of crime by ensuring, through appropriate agreements, that the perpetrators of such crimes did not escape punishment by the simple expedient of taking refuge in the territory of a country other than the one in which their crimes had been committed.

24. Terrorism could not be sanctioned by any institution of international law, since that would mean legitimizing the Machiavellian principle that the end justified the means. In that connexion, his delegation wished to state that it attributed a profound moral content to the genuine national liberation movements and therefore was unwilling to concede that those movements were characterized by the use of terrorist methods.

25. Uruguay believed that the organized international community should be especially diligent about taking prompt action on the matter, in view of world public opinion which was becoming increasingly concerned at acts of terrorism perpetrated everywhere and calling for the immediate implementation of effective measures to put an end to such acts. Perhaps the only viable course would be to strengthen national legislation, which often lacked adequate legal instruments to combat the virulence of that relatively new phenomenon, and to ensure, through bilateral agreements, that there was an effective international defensive network. Furthermore, the signing and ratification of multilateral conventions such as those of Montreal, The Hague and Tokyo, on air hijacking, and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents was an absolute necessity and his delegation appealed to all States Members of the United Nations to take such action.

26. Uruguay would support the adoption of specific measures that would permit the prevention and condemnation of that growing violence, the inhuman methods of which created a climate of insecurity and danger and caused the loss of innocent lives.

27. Mr. GÜNEY (Turkey) said that his Government, which was deeply concerned over the alarming increase in

acts of terrorism which not only endangered innocent lives, but also jeopardized the fundamental rights of States, supported the initiative of the Secretary-General in including in the agenda of the twenty-seventh session of the General Assembly an additional item on measures to prevent terrorism and other forms of violence. It was distressing and disconcerting for the United Nations and the international community as a whole that to date the purpose of the Secretary-General's initiative had not been achieved and that the *Ad Hoc* Committee on International Terrorism had not been able to conclude its work and formulate certain conclusions.

28. In recent years, there had been a series of violent acts that had resulted in an increase in the number of innocent victims. No country, community or region could be considered safe from that wave of violence. It should be emphasized that there were very few States represented in the Sixth Committee whose citizens had not suffered seriously as a result of a steady increase in acts of terrorism. In that connexion, Turkey's own experience might be recalled: two young Turkish diplomats had been assassinated only three years earlier in the United States; Turkish aircraft had been hijacked to foreign countries and foreign aircraft hijacked to Turkey; the Turkish Ambassadors in Vienna and Paris had been assassinated within the space of two days, on 22 and 24 October 1975 respectively. That short catalogue of the experiences of a single country, in the recent past, should serve to demonstrate how acts of violence tended to become part of the way of life and to show that no region in the world was immune from that phenomenon.

29. Terrorism was not a recent phenomenon but, with technical progress and the development of means of communication, it had been transformed since the end of the First World War into an international problem with increasingly serious consequences. Acts of terrorism took various forms, the most frequent and individual form at the present time being that in which diplomats were victims. That was a form of international terrorism which had replaced diplomatic privileges and immunities by constant risk and had created a feeling of insecurity for all diplomats, particularly ambassadors, which seriously threatened the very machinery of international co-operation. In that connexion, he outlined the events that had taken place between 22 and 24 October 1975, which highlighted the recrudescence of acts of violence against diplomats and other innocent persons and the feeling of insecurity which such violence aroused within the international community. Yet the measures adopted thus far by the international community had been insufficient. They included the conventions signed at Tokyo in 1963, at The Hague in 1970 and at Montreal in 1971, as well as the more recent international instrument adopted by the General Assembly, namely the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (resolution 3166 (XXVIII), annex), which, owing to the lack of the requisite number of ratifications or accessions, had not yet entered into force.

30. With regard to the causes of international terrorism, there was nothing to add to the conclusions of the study prepared by the Secretariat,³ and he wished also to

³ A/C.6/418/Rev.1.

mention the statement made by the Secretary-General when the item had been included in the agenda, in which he had declared that acts of violence arising from international terrorism were contrary to international law and morality, that they also constituted violations of the fundamental purposes and principles of the Charter and that they were contrary to the declarations and resolutions in which those principles had been developed and confirmed.

31. The United Nations could not remain a passive witness of acts of violence; the time had come to put into practice the principles embodied in the Charter and to take appropriate measures while taking full account of practical objectives, which might be the following: it was necessary to act with objectivity, leaving aside considerations of a political nature, which should be examined in their respective fields and dealt with appropriately; no attack must be made on the fundamental right of peoples to self-determination or the liberation struggle against colonialism; although it would be useful to define the concept of international terrorism, that concept was imprecise and did not lend itself to exact definition, and it might therefore be sufficient to define the concept in provisions formulated to that end; it was necessary to undertake simultaneously the study of the causes of terrorism, which were varied and complex, but without delaying the measures to be taken in order to prevent and suppress international terrorism, which urgently required concerted action; international terrorism could not be combated effectively without international co-operation; the latter could be carried out only through a convention, which should embody provisions relating to co-operation in the prevention and suppression of acts of international terrorism, as well as provisions relating to the trial, punishment and extradition of their perpetrators.

32. The General Assembly must act with speed and firmness if it wished to avoid new acts of violence which would claim more innocent victims. Therefore, it should, on the one hand, condemn international terrorism; encourage States to become parties to existing conventions and to reinforce anti-terrorist measures already taken at the national level; stimulate the exchange of information concerning effective precautions and techniques already implemented or being elaborated within countries; and appeal to States to increase bilateral or regional co-operation with a view to better combating international terrorism; and, on the other hand, it should renew the mandate of the *Ad Hoc* Committee so that the latter could continue its work and make every effort to attain the practical objectives already mentioned. The international community must put an end to the increase in brutality, of which international terrorism was one of the most serious forms arising in society; if society's limit of tolerance was reached or surpassed, there might ensue an irreversible and fatal collapse of international relations.

33. Mr. SABEL (Israel) said that, as in previous years, it was regrettable that the Sixth Committee had once again failed to take any definitive step towards ensuring international legal action against the scourge of international terrorism. The choice was clear: whether there were certain acts by individuals which the international community felt to be so reprehensible, so despicable and so contrary to the basic ideals of humanity that different countries of widely

differing political systems should rise together to denounce them and take clear unequivocal action against them. Acts of terrorism could never be justified on political grounds.

34. The report submitted at the twenty-eighth session by the *Ad Hoc* Committee on International Terrorism must be one of the most arid and sterile ever submitted by a committee working under a directive of the General Assembly; the inability of the *Ad Hoc* Committee to make progress in facing that evil merely completed the vicious circle of failure which had been the lot of all United Nations action against international terrorism, from the so-called consensus in the Security Council in 1970 and 1972 through the various debates in the General Assembly on the hijacking of aircraft. His delegation had approached all those discussions in a constructive spirit, attempting to set forth some basic considerations and practical proposals in the least controversial form, as in the case of the observations which Israel had submitted in response to General Assembly resolution 3034 (XXVII) of 1972 in document A/AC.160/1/Add.1. But irrelevant political considerations which had intruded throughout, virtually wrecking the Secretary-General's initiative in 1972, had combined to transform the *Ad Hoc* Committee and its report, as well as the Sixth Committee's discussions on the item, into a parody and a bitter pill for all those innocent or potential victims of international terrorism who had hoped that the United Nations effort would give rise to concrete and serious steps to rid the world of that scourge.

35. There was an obvious and pressing need for an international instrument to ensure that persons committing such acts did not escape punishment. The principle of such an instrument would be that a State must either extradite the offender or submit his case for prosecution. That was the principle underlying the civil aviation conventions of The Hague and Montreal, both ratified by Israel. The distressing element of the *Ad Hoc* Committee's report was the effort made by certain delegations to prevent any concrete steps being taken towards the drafting of such an instrument. The obstruction appeared to have been in two main directions. First, the issue of the causes of international terrorism had been raised, based on the unacceptable thesis that there might be some political cause which might justify or extenuate terror. His delegation felt it essential for the Committee to state categorically and clearly that terror was universally, absolutely and unconditionally an evil to be countered. The other diversionary tactic had been that of the issue of State responsibility or so-called State terrorism. For many years, Israel had argued that where a State was directly or indirectly involved in acts of terror, direct State responsibility was involved. That was laid down clearly in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). Those who brought the issue up in connexion with the current agenda item could only be attempting to blur the clear principle of State responsibility or detract from the responsibility of the individuals involved. Either of those objectives was to be regretted, for they involved a clear attempt to prevent the Committee from pursuing the task of proposing legal measures to ensure that those carrying out such acts were either prosecuted or extradited. International law, when in a far

more primitive state than at present, had managed to secure international action against the scourges of piracy and the slave trade, and it would be to the lasting discredit of the Sixth Committee if it failed to take similar action against the current scourge of international terrorism.

36. Mr. FUENTES IBÁÑEZ (Bolivia) said that when the Secretary-General had proposed an exhaustive in-depth study of international terrorism, he had merely taken up a general outcry which the United Nations had been unable to ignore. Following a debate in the course of which principles had succumbed for explainable political reasons, the item had been retained on the agenda through the perseverance of some delegations, but no progress had been made. Although terrorist violence had not diminished, the international community appeared to be in a state of paralization with regard to the subject. For example, the World Conference of the International Women's Year had made no mention of terrorism in its resolutions.

37. Although three years had passed since the item had been introduced and new developments had occurred, it was still imperative for the international community to study terrorism, establish its causes, consider measures for dealing with it in the most appropriate way and the legal

framework within which society could eradicate it or protect itself from criminal acts which distorted and tarnished the most just claims. His delegation wished to reiterate its most sincere and absolute repudiation of the use of terrorist violence, whatever the motive.

38. It was well known that the item was difficult and likely to be controversial, but he wondered whether there was any item on the agenda which did not involve such a risk. Everyone should muster sufficient determination to avoid the difficult aspects of the item and focus, not on the most controversial points, but on those on which there was likely to be agreement. His delegation considered that the Sixth Committee was prepared to take advantage of the four meetings set aside for the item and take action to fulfil, at least partially, the hopes placed in it by the General Assembly, which was shared, although with visible discouragement, by the general public. His delegation was ready to support any initiative aimed at keeping the item on the agenda and promoting the adoption of the measures necessary to ensure a prompt and exhaustive study of the item, without evading the responsibility incumbent upon the Sixth Committee.

The meeting rose at 12.55 p.m.

1581st meeting

Thursday, 4 December 1975, at 3.30 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1581

AGENDA ITEM 116

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism (concluded) (A/9028*).

1. Mr. ROSENSTOCK (United States of America) deplored the fact that acts of terrorism continued to plague the international community and cited various incidents of terrorism against citizens of the United States and other countries. Little action had been taken by the international community to deal with the problem and the United States had not pressed as hard as it might for action, because it recognized that members of the Sixth Committee were not yet prepared to accept their responsibility to face up to the problem of terrorism. He hoped that with the passage of time a sufficient number of other members would be

prepared to join in action not only to condemn such acts but also to combat them with legal measures. He realized that to press Governments to take action before they were ready could result in actions which were worse than inaction and could lead to the creation of unnecessary barriers to constructive action. However, there came a time when forbearance ceased to be understandable prudence and became itself a part of the pattern of irresponsible unwillingness to deal with difficult problems.

2. The item on terrorism had again been moved to the end of the agenda of the current session, reflecting tacit acceptance of the fact that the Committee was unwilling to take action at the current session. He urged the Committee, nevertheless, to refresh its recollection of the problem and to begin to rethink some of the prejudices which had hitherto prevented meaningful action. Such a discussion might prepare the Committee to take meaningful action in 1976 and thus begin to free the United Nations of the stigma of being an institution which was unwilling even to try to deal with a scourge which every year maimed the minds and bodies and took the lives of countless innocent people. He recalled some of the history of the item, since it was first included in the agenda of the twenty-seventh session of the General Assembly. The Secretariat had prepared for consideration at that session an excellent

* Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 28.

study on the problem¹, which he urged the members of the Committee to reread, in particular paragraph 10.

3. In spite of the clear basis for action and the important progress being made in connexion with the laws of war, the Sixth Committee had made little progress in its consideration of international terrorism. Some members had stated the Committee should concern itself rather with the causes of terrorism. He hoped that those who stressed the study of the causes did in fact wish to eliminate the phenomenon and were not merely attempting to justify acts of terrorism. He felt that the question of causes should not bar the Committee from examining legal measures. The General Assembly, the Security Council and other United Nations bodies were already dealing in one form or other with the causes, such as the Middle East question, the denial of equal rights and self-determination, and economic and social problems. It would be a mockery of the particular responsibilities of the Committee to insist that it duplicate that work before dealing with the question of legal measures. Another reason for dealing with the question of legal measures to combat acts of terrorism was that all countries had passed laws against murder, kidnapping and assault, despite the fact that the causes of those forms of anti-social behaviour had not been fully understood, much less eliminated. Others had sought to blur the nature of the problem by broadening it to include all manner of State action which involved violence or injury to innocent persons. Such an approach had to be rejected, because it mixed two distinct problems in such a manner as to ensure that no meaningful action would be taken with regard to either. Furthermore, the law relating to State action was being dealt with in other contexts and was in a far more advanced state, as was shown by international instruments such as the Charter of the United Nations, the charters and decisions of the Nürnberg and Tokyo Tribunals, the 1949 Geneva Conventions, 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 Definition of Aggression. There was a growing and increasingly terrifying problem of terrorism which the Committee could not responsibly refuse to deal with by saying that it was not the only problem relating to violence. Others had asserted that there was a conflict of some sort between a decent respect for equal rights and self-determination, on the one hand, and a desire to take legal measures to deal with terrorism, on the other. He reminded those speakers that none of the many States which had won their independence through struggle had engaged in the type of international violence with which he was now concerned. There was, furthermore, an even more fundamental right than the right to equality and self-determination, namely the right to life. He reminded members of the Committee that not even nation States were allowed, in the exercise of their inherent right of self-defence, to resort to any and all means. Even a State whose very existence was threatened was not entitled to ignore the laws of war. For all the momentary broad support their cause might enjoy, individuals, no less than States, must be bound by limits on their conduct in support of that cause.

4. He recognized that no time remained at the current session to come to grips with the details of the problem,

but urged the Committee to consider the draft convention submitted by his delegation during the twenty-seventh session² which was still before the Committee and was formulated so as to deal only with the most serious criminal threats; each of four separate conditions as indicated in paragraph 1 of article 1 of the draft convention must be met before the terms of the draft convention would apply. He urged the Committee to take some time before the next session to reflect further on the problem of international terrorism, to consider the United States proposal, to reflect on alternative or complementary concrete steps, to sign and ratify the Tokyo, Montreal and Hague Conventions on interference with civil aviation, and to sign and ratify the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

5. Mr. HAMMAD (United Arab Emirates) said that his delegation had wished the item on international terrorism to be concluded at the twenty-ninth session, but had deferred to the majority desire to defer consideration of the item until the current session. He hoped that the item would be comprehensively discussed at the current session and reminded the Committee that a study of terrorism and measures for combating it required a full study of the reasons which drove certain individuals to commit coercive acts against others for the achievement of national goals pertaining to the liberation of their people from colonialism, foreign domination and occupation and racial discrimination.

6. However, State terrorism was more dangerous than terrorism by individuals. The means available to States to commit terrorism were far greater than those available to individuals and national liberation movements and State terrorism consequently involved a greater loss of life and destruction of property and the culprit was more likely to escape punishment. Despite all of the international instruments cited by the representative of the United States of America, State international terrorism still existed and measures were needed to apply sanctions against States committing terrorism and against their agents, including secret agents and pilots. There could be no excuse for such individuals even if they claimed that they were performing their task under the orders of their superiors. The Nürnberg trial had laid down the law on that aspect of the question, stating that such agents were international criminals subject to international punishment. The starkest example of State terrorism was that committed by Israel, whose secret agents committed acts of murder and destruction in many cities of the world and whose bombers murdered innocent women and children in the Palestinian refugee camps. Israel's agents and pilots were international terrorists and should be punished.

7. Mr. SIAGE (Syrian Arab Republic) said that the last person who could speak about terrorism was the representative of the racist Israeli régime whose hands were still covered with the blood of the victims of the latest barbarous attack by Israeli aircraft against civilian targets and refugee camps in Lebanon. Those refugees had previously been expelled from their homes by that same régime whose long history of continued terrorist acts showed that

¹ A/C.6/418/Rev.1.

² A/C.6/L.850.

it was based on terrorism and the massacre of the innocent. Even Israel's envoy was a terrorist known to combatants on the West Bank who continued to suffer Israeli torture.

8. No international jurisdiction could call a legitimate struggle waged by people for their liberation terrorism. Their struggle was legitimate and based on the Charter and the resolutions of the United Nations. They were attempting to combat a criminal aggressor. He called on the Committee to condemn real terrorism, i.e. State terrorism. When a Member State attacked another Member State, that was terrorism. The desperate struggle waged by victims with no other recourse to express their desire for self-determination could not be called terrorism.

9. Mr. FIFOOT (United Kingdom) said that he approached the item with a great sense of despondency, not so much because of its subject-matter but because of the evidence it afforded of the international community's lack of effort and will. The Committee had failed to make progress on the item which, he feared, included too many different fields of study. The item was too broad and represented a deplorable dissipation of effort. There was no need to list terrorist acts which only evoked explanations and even excuses. The international community had failed to concentrate, as it should, on the victim and had allowed itself to be distracted by other aspects of the problem, such as politics, matters of policy or blame. He noted that the concept of just or unjust war was no longer relevant in humanitarian law and he regretted the return of such a concept, namely just or unjust terrorist acts, to the discussion on the current item. There was more than enough evidence of the need for the international community to take whatever action it could to deal with the problem; his Government would join with others in seeking measures to achieve that end.

10. Mr. HELLNERS (Sweden) said that international terrorism was still a serious problem. Some years previously world attention had been focused mainly on actions directed against civil aviation, and the Hague and Montreal Conventions were important instruments in the struggle for the suppression of those crimes. More recently, the taking of hostages to induce Governments to make concessions had become prevalent. It should be completely unacceptable to all States that irresponsible or criminal groups should attack private individuals in that way and interfere with the exercise of public authority. He hoped, furthermore, that a sufficient number of States would soon ratify the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, so that that Convention could enter into force.

11. It was important that efforts to combat terrorism continue and that special attention be devoted to the causes of terrorist activities, the motives of which were often dim or even incomprehensible. In some cases certain understandable motives might be found, although they did not suffice to excuse the methods used by terrorists. Furthermore, terrorist activity often affected completely innocent persons and States not involved in the original conflict. Any country might become the victim of terrorist acts, as the recent experience of his own country had shown. It was in

the common interest of all to explore all possibilities and means of combating international terrorism.

12. Mr. BUSSE (Federal Republic of Germany) said that his Government was deeply concerned about the acts of terrorism which continued to be perpetrated throughout the world. Some of the most hideous incidents had either occurred in his country or affected his countrymen. His country, which had repeatedly advocated world-wide co-ordinated measures for effective prevention of terrorism and was prepared to accede to agreements providing for meaningful action, had initiated the legislative procedure for the ratification of the various conventions against terrorism involving civil aviation as well as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and urged all Governments seriously to consider acceding to the existing agreements so as to ensure their world-wide recognition and implementation. However, those agreements applied only to specific sectors and a comprehensive agreement on the prevention and combating of terrorist acts should be sought. It might be useful to establish a world-wide ban on the admission and harbouring of terrorists and persons released from prisons as a result of terrorist activities. All States should undertake to refuse protection or refuge to terrorists, thereby making them subject to prosecution.

13. It would be useful to study and eliminate the underlying causes of crimes but it was essential that the debate in the Committee focus on the question of direct measures of prevention. There should be a clear condemnation of all insidious acts of violence against the innocent, the defenceless and the unprotected. It was a hopeful sign that there was a growing reluctance to grant refuge to terrorists in recent cases involving the taking of hostages.

14. He hoped that the atmosphere at the thirty-first session of the General Assembly would be more propitious to a fruitful consideration of the item.

15. Mr. GARCIA ORTIZ (Ecuador) recalled that the item had been on the agenda for the past four sessions and had never been dealt with properly. Although there were now several international instruments aimed at preventing and punishing acts of international terrorism, those acts continued to multiply. The United Nations must be concerned with the situation and put an end to, or at least reduce the frequency of, such acts, which were an affront to the legal and moral conscience of mankind.

16. The matter was complex and delicate, as could be seen from the report of the *Ad Hoc* Committee on International Terrorism (A/9028). There had been the initial question of how to define terrorism. In his view, such definitions were difficult and did not embody the essence of the problem; the discussion should rather focus on effective measures to prevent and punish acts of terrorism. The report of the *Ad Hoc* Committee was good, and that Committee's mandate should be renewed so that by the thirty-first session an instrument could be drafted that would clarify the various elements of the problem. In that regard, he felt that the suggestion of the representative of Turkey made at the previous meeting was acceptable. Since the matter was quite technical, that Committee might also consider setting

up a small group of experts to elaborate a draft convention or draft resolution on the matter. The matter could not be left at the mercy of events or the policies of States.

17. Mr. JEANNEL (France) said that many innocent lives had been lost as a result of acts of terrorism which were political in origin and served political goals. For that reason it was important to study not only the tragic effects but also the underlying causes of terrorism. The careful student of the events in question could see that the phenomenon was linked with the feeling which minorities rightly or wrongly had of being excluded from society, seeing themselves as being denied the right to exist and having no possibility of asserting their identity. That same feeling led them to express themselves violently by placing explosives in public places, taking hostages, hijacking aircraft or making attempts on the lives of diplomats.

18. In that connexion, he wished to assure the representative of Turkey that France deplored and vigorously condemned the recent assassination of the Turkish Ambassador to France and was taking all measures to discover and punish the guilty parties.

19. The United Nations was obliged by its humanitarian vocation and democratic ideals to attempt to solve the complex problem of the pitiless onslaught of blind violence and its causes. The solution to the problem would have to be acceptable to all States, for otherwise the result would be formulas devoid of any real practical scope. Such solutions should, of course, be compatible with efforts to strengthen the international protection of human rights and fundamental freedoms and take into account the provisions of recent international agreements, such as those affecting civil aviation. States should furthermore be invited to re-examine their national legislation and their bilateral and multilateral agreements with respect to terrorism. He cited in that regard recent French legislation concerning the prevention and punishment of hijacking of aircraft, which reflected his Government's desire to combat barbarous acts which all peoples condemned, however noble the cause for which they might have been committed.

20. Mr. KUSSBACH (Austria) said that his Government had always condemned acts of violence committed against innocent persons and its position with regard to terrorism was well known. He wished to assure the representative of Turkey once again that his Government deeply deplored and condemned the crime committed at the Turkish Embassy in Vienna on 22 October 1975. The Austrian authorities would exert every effort in conducting their investigations, with a view to bringing to justice the criminals responsible.

21. Mr. TERZI (Palestine Liberation Organization), speaking at the invitation of the Chairman, drew attention to paragraphs 1 and 4 of General Assembly resolution 3034 (XXVII) expressing deep concern over increasing acts of violence and condemning the continuation of repressive and terrorist acts by colonialists, racist and alien régimes. He also noted that paragraph 38 of the report of the *Ad Hoc* Committee on International Terrorism stated that particular stress had been laid by several representatives on the importance of State terrorism, which they had considered as the most dangerous form of international

terrorism. State terrorism was being practised in Palestine by the forces of occupation, as was shown clearly in document A/10272. Those who escaped such acts of terrorism in their own countries were pursued to the camps which they currently occupied in neighbouring countries. A glaring example of State terrorism had been the savage air attacks carried out by Israel against refugee camps in southern Lebanon two days previously. Ironically, the Zionist so-called State had been so proclaimed as a result of the terrorism carried out by the Hitlerites against innocent Jews, among others, and the terrorism of the racist Zionists capitalizing on the tragedy and misery of the victims of racist Nazis. Terrorism had always been a characteristic of Zionism, as had been demonstrated by, among other things, the bombing of the King David Hotel and of marketplaces in cities and towns throughout Palestine.

22. Paragraph 66 of the report stated that efforts to remedy violence-provoking situations were too often thwarted by Member States of the United Nations. In that connexion, the acts of terrorism committed by the Zionists must be linked to the supplies of lethal weapons provided by the United States of America. It was American-made planes using American-made bombs that had carried out the recent attacks against refugee camps.

23. His organization believed that all States should respect the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples, resolutions concerning the occupation of foreign territories, the International Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

24. Mr. AL-ADHAMI (Iraq) associated himself with the observations made by the representatives of other Arab States and the Palestine Liberation Organization.

25. Referring to an article contained in the 3 December issue of *Le Monde*, concerning the situation in the Middle East two years after the war of October 1973, he appealed to those who had been subjected to the aggression of the Hitlerite forces to remember the theory that frontiers were movable and followed population movements, even to the detriment of other peoples. Other articles in the same issue also described the attacks on the refugee camps and the plan to establish four more villages in the Golan heights. The situation of the Palestinian people struggling for their freedom deserved serious consideration by the Committee.

26. Mr. ROSSIDES (Cyprus) said that all members of the Committee were opposed to terrorism and believed that all possible means should be used to put an end to it. To achieve that end, it was necessary to seek the causes of terrorism. Those causes were related to the current world disorder in which the provisions of the Charter were not applied, injustice was rife and international security was based on the outmoded concept of the use of force. Disregard for or active violation of Security Council resolutions was greeted with indifference by the international community and the United Nations. His delegation had always opposed all forms of terrorism.

27. Mr. ABUL-KHEIR (Egypt), speaking in exercise of the right of reply, said that his delegation had been surprised that the representative of Israel had dared to speak at the previous meeting on the question of State terrorism when meetings of the Security Council had been prompted by acts of terrorism carried out by Israel itself. The reasons underlying the violence in the Middle East were linked with the occupation of the Arab territories and the refusal of Israel to grant the Arab peoples their right to self-determination. The Palestinian people were struggling with every means at their disposal to achieve the exercise of their legitimate rights, just as the peoples of Europe had done against the forces of fascism and nazism during the Second World War and just as the peoples of Africa and Asia had done.

28. Mr. SABEL (Israel), speaking in exercise of the right of reply, said that, in his statement, he had not referred to the Government of Egypt or of any Arab State, but simply to those supporting terrorism. However, the representative of Egypt seemed to have felt it appropriate to reply to those remarks.

29. The Arab States' support for terrorism constituted one of the most ghastly episodes in modern history. In providing such support, they had on their hands the blood of innocent children, airline passengers, businessmen, athletes, diplomats, and all those Arabs of the west bank and Gaza who had refused to follow the instructions of the Palestine Liberation Organization. Those Arab States were personified by Colonel Qadaffi, who had awarded a \$5 million prize to those who had murdered the athletes in Munich. Arab States openly bragged about the exploits of the *fedayeen* terrorists who used refugee camps in Lebanon as bases for their attacks against Israeli civilians. The Government of Lebanon appeared unwilling or unable to take any action against the terrorists. The Arab States publicly gloated over each case of murder, showing signs of anguish only when Israel struck back, not at civilians and women and children, but at the terrorists themselves. The accuracy of those attacks had been attested to by the terrorists themselves in their own weekly magazine *Ila El Amam*. "State terrorism", if such a thing existed, consisted of aiding, abetting, openly supporting and gloating over acts of terror. It did not mean striking back at terrorists.

30. Mr. ABDALLAH (Tunisia), said that the list of Israeli crimes was too long to be dealt with in the time at the Committee's disposal. Consequently, he would not reply to the Israeli accusations, which had already been answered by world public opinion.

31. Since the item could not be given the detailed consideration it deserved in the time left to the Committee at the current session, his delegation, which had often condemned terrorism, proposed that debate on the item should be adjourned in accordance with rule 116 of the rules of procedure of the General Assembly, and taken up again at the thirty-first session.

32. The CHAIRMAN suggested that the proposal to adjourn the debate could be taken up after all delegations wishing to do so had had an opportunity to exercise their right of reply.

33. Mr. OMAR (Libyan Arab Republic), speaking in exercise of the right of reply, said he had not been surprised to hear the representative of the racist and Zionist régime speak on the subject of terrorism. The ideas of war and force were inextricably linked with zionism and formed an integral part of the thinking of its leaders.

34. Referring to the Israeli representative's observations concerning Colonel Qadaffi, he said that his country was proud to provide assistance to the Palestinian people in their legitimate struggle to return to their lands and homes, and to assist peoples struggling for their rights throughout the world. His Government would continue to support its Palestinian brothers until the Palestinian flag was once again raised over Palestine.

35. Mr. VANDERPUE (Ghana), speaking on a point of order, said that the Tunisian motion should be given due consideration under rule 116 of the rules of procedure. The Committee ignored those rules to its own disadvantage. It was sickening for the Committee to have to listen to a long list of accusations and counter-accusations when it should be concerned with finding solutions to the problems involved. The cause of terrorism was the state of undeclared war existing in a large number of areas of the world. He therefore supported the Tunisian motion.

36. Mr. JEANNEL (France) said that he shared the concern expressed by the representative of Ghana. The dialogue taking place in the Committee was a dialogue of the deaf. Consequently, debate on the item should be adjourned until the thirty-first session, when the question could be considered more objectively. His delegation supported the Tunisian motion.

37. Mr. HAMMAD (United Arab Emirates), supported by Mr. AL-ADHAMI (Iraq), opposed the Tunisian motion. Since there had been no opposition to the procedure suggested by the Chairman, that suggestion constituted a decision by the Committee which, under rule 123 of the rules of procedure, could only be overruled by a two-thirds majority. Furthermore, he deplored the fact that the representative of Ghana had seen fit to lecture other delegations while interrupting the exercise of the right of reply on a point of order.

38. The CHAIRMAN said that no formal decision had been taken by the Committee and, consequently, rule 123 of the rules of procedure did not apply. The motion of the representative of Tunisia had been to adjourn the debate on the item until the thirty-first session. Even if that motion was adopted, those delegations wishing to do so would still be able to exercise their right of reply afterwards.

The motion to adjourn the debate on the item until the thirty-first session of the General Assembly was adopted.

39. Mr. HAMMAD (United Arab Emirates), speaking in exercise of the right of reply with regard to the Israeli representative's assertion that Israel merely defended itself against attacks, said he wondered whether the Israeli secret agents who had attacked the Libyan Embassy in Rome and killed a well-known Arab poet and musician had been acting in self-defence and whether self-defence had been the motive for the killing of a Moroccan labourer in Stockholm

and a Syrian public-relations man. Agents of the Israeli Government had sent a letter bomb which had seriously maimed the head of a research centre in Beirut, and Israeli soldiers attacking Beirut had killed a well-known Arab poet. Could those murders and the deaths of scores of women and children in Palestinian refugee camps in Lebanon and elsewhere be regarded as acts of self-defence?

40. His delegation was in full agreement with the statement made by the United Kingdom representative to the effect that the concern of the international community should be primarily for the victims of terrorism. However, in his delegation's view, State terrorism carried out by agents of the army and secret police was much more reprehensible than acts of individual terrorism by freedom fighters.

41. Mr. TERZI (Palestine Liberation Organization) said that the Palestinians had embarked on a course of armed struggle to liberate their country and were forced to operate from refugee camps because they had been expelled from their homes and denied the right to return to their country by the occupying forces. Just as the partisans in various countries fighting against Nazi occupation during the Second World War had been obliged to go underground and live among their own people, similarly the Palestinian freedom fighters were obliged to live among their people in the refugee camps.

42. As to the bombing which had taken place two days previously, he had just received a cable confirming that 52 persons, primarily women and children, had died as a result of that savage racist Zionist attack. Not a single young man capable of serving as a freedom fighter had been included in the list of those murdered.

43. Mr. SABEL (Israel) said that his delegation had not objected to the consensus decision to adjourn the debate on the item under consideration until the thirty-first session as the discussions had turned into an avid debate but was disappointed that the Committee had not produced any constructive plan to take legal action to combat terrorism. Replying to the remarks made by certain Arab delegations, he wished to inform the Committee of one case which truly illustrated terrorism. At the end of October the Israel Defence Forces had captured a terrorist who had penetrated Israeli territory. He had subsequently been interviewed on television and had been asked why his equipment had included an axe. He had replied that the axe was to chop off the heads of inhabitants of Israeli settlements, the purpose being to take the severed heads to the Syrian Arab Republic to prove that the terrorist group of which he was a member had successfully entered the village, killed their victims and pulled back safely. That would have had the effect of terrorizing the civilian population and inducing them to leave Israel and go to any other country that would accept them. That, he respectfully submitted, was terrorism.

44. The CHAIRMAN observed that there were a number of speakers still wishing to take the floor on the item but, in view of the Committee's decision to adjourn the debate, they would have to do so at the thirty-first session.

AGENDA ITEM 115

Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention (concluded) (A/C.6/L.1031/Rev.1)

45. Mr. KOLESNIK (Union of Soviet Socialist Republics) drew attention to draft resolution A/C.6/L.1031/Rev.1, which included certain substantive changes in relation to the original draft resolution. In the preambular part of the revised draft resolution, the only substantive change was in the fifth paragraph, which advocated a study of the question of the status of the diplomatic courier in the light of the Vienna Convention on Diplomatic Relations³ of 1961. In the operative part of the revised draft, substantive changes had been made in paragraphs 4 and 5. In particular, paragraph 5 no longer invited the International Law Commission to begin a study of the question of the status of the diplomatic courier but rather requested the Secretary-General to submit a report on the comments and observations of Member States on that subject in accordance with the invitation extended to Member States in paragraph 4 of the revised draft resolution. The changes introduced in paragraphs 4 and 5 represented an attempt by the sponsors to accommodate the views expressed by certain delegations to the effect that it would be premature at the current stage to entrust the International Law Commission with the task of studying the question of the status of the diplomatic courier. Before taking such a step, it had been thought advisable to request the views of Member States on the matter. He hoped that the changes had made the draft more generally acceptable and that it would be adopted by consensus.

46. The CHAIRMAN thanked the sponsors of the draft resolution for their efforts to accommodate the observations made by other delegations and the spirit of goodwill they had demonstrated.

47. Mr. FIFOOT (United Kingdom) thanked the USSR representative and the other sponsors of the revised draft resolution for the understanding they had shown in introducing the changes which removed the difficulties his delegation had expressed in regard to it at the preceding meeting.

48. Mr. ABUL-KHEIR (Egypt) observed that there were several translation errors in the Arabic text of the revised draft resolution, particularly in operative paragraph 5.

49. The CHAIRMAN said that the Translation Division would make the necessary corrections.

50. Mr. JEANNEL (France) joined the United Kingdom representative in expressing appreciation to the sponsors of the draft resolution for the changes they had made in the draft, which was now entirely acceptable to his delegation. Like the Arabic text, the French translation of the revised draft contained several translation errors to which his delegation drew attention.

51. The CHAIRMAN said that the translations of the revised draft resolution, which had been produced under

³ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

considerable time pressure, would be brought into conformity with each other.

52. Mr. KRISPIS (Greece) recalled that his delegation had objected to certain points in the original version of the draft resolution but was completely satisfied with the revised version and hoped that it would be adopted by consensus.

53. After a brief drafting discussion in which Mr. JEANNEL (France), Mr. FIFOOT (United Kingdom), Mr. KOLESNIK (Union of Soviet Socialist Republics), Mr. VANDERPUYE (Ghana), Mr. ROSENSTOCK (United States of America) and Mr. FRANCIS (Jamaica) took part, it was agreed that the English text of the revised draft resolution was substantially accurate.

54. Mr. GODOY (Paraguay), referring to the Spanish text of the revised draft resolution said that it would be more correct to use the word "*Reafirma*" in operative paragraph 1 instead of "*Confirma*".

55. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/L.1031/Rev.1 without a vote, on the understanding that the English and Russian texts were correct and the other language versions would be brought into line with them.

It was so decided.

56. Mr. ROSENSTOCK (United States of America) expressed appreciation for the spirit of co-operation displayed by the sponsors of the revised draft resolution in making the changes requested by several delegations. The present version enabled his delegation to retain its view that the text of the Vienna Convention on Diplomatic Relations, and in particular article 27 thereof, should not be changed. His delegation endorsed the appeal to States which had not yet done so to become parties to the Convention.

57. Mr. SIBLESZ (Netherlands) said that his delegation had been able to join in the adoption of the revised draft resolution by consensus, although it had certain reservations with regard to the advisability of studying the question of the diplomatic courier. His delegation was not convinced that the alleged instances of violations of the provisions of the Vienna Convention should be considered as a separate agenda item. In connexion with operative paragraph 3 of the revised draft resolution, his delegation was happy to announce that the Netherlands Government would shortly present a bill to Parliament which would enable his country to ratify the Vienna Convention.

AGENDA ITEM 118

Resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations:

- (a) Resolution relating to the observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States;
- (b) Resolution relating to the application of the convention in future activities of international organizations (A/10141)

58. The CHAIRMAN said that, having held consultations on the matter with many interested delegations, he believed there was a general consensus that for lack of time consideration of agenda item 118 should be deferred until the thirty-first session of the General Assembly. If there was no objection, he would take it that the Committee agreed to defer consideration of the item.

It was so decided.

The meeting rose at 6.05 p.m.

1582nd meeting

Friday, 5 December 1975, at 11.05 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1582

AGENDA ITEMS 113 AND 29

Report of the *Ad Hoc* Committee on the Charter of the United Nations (concluded)* (A/10033, A/10102, A/10108, A/10113 and Corr.1 and Add.1-3, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General (concluded)* (A/10218, A/10219, A/10255, A/10289, A/C.6/437, A/C.6/L.1028, A/C.6/L.1030)

* Resumed from the 1578th meeting.

1. Mrs. LOPEZ (Philippines), referring to document A/C.6/L.1030 setting out the financial implications of draft resolution A/C.6/L.1028, which the Committee had adopted by consensus said that her delegation understood that the members of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization were holding consultations on alternative dates on which that Committee could meet. The members of the Special Committee considered February 1976 too early and the great majority preferred that the meetings should be held at a later date, even if they were not held at Headquarters. Her delegation asked the Secretariat to inform the Committee of other possible dates for the meeting of the Special Committee, which she hoped could be approved by consensus. She also asked the Chairman to appeal to the chairmen of the regional groups

to transmit to the Rapporteur the names of additional Member States in accordance with operative paragraph 3 of draft resolution A/C.6/L.1028.

2. The CHAIRMAN acceding to the request of the representative of the Philippines, said that he would make such an appeal to the chairmen of the regional groups since the matter was urgent.

3. Mr. RYBAKOV (Secretary of the Committee) said that the other possible date for the meetings of the Special Committee, apart from that envisaged in document A/C.6/L.1030, was from 5 to 30 July 1976, at Geneva. If the meetings were held at Geneva, the total cost of servicing the Special Committee would be \$373,300, in other words some \$37,000 more than if the meetings were held at Headquarters. That figure, however, did not reflect the additional appropriation which the Secretary-General would have to request for the corresponding budget for the biennium 1976-1977. If the meetings were held at Geneva, whether or not additional appropriations would be required would depend not only on those meetings but on any other meetings which might be held at the same time. It was probable that at least part of the requirements for servicing the Special Committee would have to be met by obtaining additional staff, which would result in additional expenditure. However, having regard to the totality of the resources available at Geneva, the Secretary-General would not request additional appropriations for the holding of the meetings at Geneva, but would report to the General Assembly on the extent to which an additional appropriation might be required, having regard to the pattern of meetings at Geneva. With respect to the travel costs of substantive staff of the Office of Legal Affairs to Geneva, however, the Secretary-General would have to request an additional appropriation in the amount of \$9,200. That figure was lower than it might have been since some members of the substantive staff would be available in Geneva during the month of July in connexion with the meetings of another legal body.

4. Miss AGUTA (Nigeria) said that draft resolution A/C.6/L.1028 had been adopted by consensus and that if changes were to be made in it she hoped that consultations would be held in that connexion.

5. Mr. SANDERS (Guyana) said that in the second paragraph of the letter dated 19 May 1975 from the President of the Third United Nations Conference on the Law of the Sea to the President of the General Assembly¹ provision was made for the possibility of holding a fifth session of the United Nations Conference on the Law of the Sea, and that smaller delegations, such as his own, would have difficulties in participating in meetings of the Special Committee and of the Conference if they were held at the same time.

6. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the calendar of conferences for 1976 was already very full and it would therefore be preferable for the Special Committee to meet in 1977. In any event, if the meeting was held in 1976, his delegation would prefer to stick to the dates originally proposed, not only for the

financial considerations indicated by the Secretary of the Committee, but also because there was a risk that it might not be possible to provide adequate services for the Committee since the Conference on the Law of the Sea would very probably not conclude its work at its fourth session and would need to convene a fifth session. That session would coincide precisely with the new date suggested for the meeting of the Special Committee and would have to have priority.

7. Mr. ROSENSTOCK (United States of America) said that it was difficult for his delegation, at such short notice, to adopt a decision to change the date and place of the Special Committee's meeting. It would be preferable for that question to be decided when the financial implications of draft resolution A/C.6/L.1028 were considered in the Fifth Committee.

8. Mr. VAN BRUSSELEN (Belgium) appealed for the problems which small delegations would encounter in sending representatives to the meetings of the Special Committee and of the Conference on the Law of the Sea at the same time to be taken into account. Although his country was not a member of the Special Committee, it would be interested in attending its meetings as an observer and it would have difficulties in doing so if those meetings were held at the same time as the Conference on the Law of the Sea.

9. Mrs. LOPEZ (Philippines) said that her delegation had merely requested other possible dates for the holding of the meetings of the Special Committee, but had not proposed any date. Her delegation accepted the United States suggestion that that question should be decided in the Fifth Committee.

10. Mr. ABDALLAH (Tunisia) said that it did not seem to him that there would be any serious problem in holding the meetings of the Special Committee at Headquarters in February 1976. In that connexion, he supported the observations of the representative of the USSR and said that the decision of principle regarding the place and date of those meetings should be taken by the Sixth Committee.

11. Mr. STARČEVIĆ (Yugoslavia) said that the adoption of draft resolution A/C.6/L.1028 did not prejudice the decision regarding the place and date for the holding of the meetings of the Special Committee. In that connexion, he agreed with the representative of Tunisia that the decision on that point should be taken by the Sixth Committee.

12. Mr. RYBAKOV (Secretary of the Committee) said that the Secretariat had considered very carefully the possible dates for the meetings of the Special Committee and that the only alternatives were: from the middle of February to the middle of March 1976 at Headquarters, or July 1976 at Geneva. As for the decision relating to the place for the meetings, that was an integral part of the draft resolution and could not be adopted subsequently.

13. Mr. JEANNEL (France) said that there were advantages and disadvantages to both proposed dates for the meetings and that none of them weighed the balance in favour of one or the other. There seemed, however, to be a feeling emerging in the Committee in favour of holding the

¹ A/10121.

meetings of the Special Committee in February 1976 at Headquarters, and his delegation was prepared to go along with that. Moreover, he wished to draw attention to a very disturbing question, namely that, in all the statements on financial implications of draft resolutions, meetings held at Geneva appeared to be more costly than those held at Headquarters. He understood that that should be so when an important conference requiring various interpretation and translation teams was held at Geneva, since the services at Geneva were more limited than those in New York and would have to be reinforced by staff sent from Headquarters. He did not think, however, that it was necessary to send staff from Headquarters for meetings of an organ such as the Special Committee and, in any event, there was no reason for it to be more expensive to hire local personnel in Geneva than in New York. His delegation hoped that financial considerations would not be systematically used to oppose the holding of meetings at Geneva.

14. The CHAIRMAN suggested that the decision regarding the place and date of the meetings of the Special Committee should be taken in the Fifth Committee when it

debated the financial implications of draft resolution A/C.6/L.1028.

It was so decided.

Conclusion of the Committee's work

15. After the usual exchange of courtesies, in which Mr. CEAUSU (Romania) on behalf of the Group of Eastern European States, Mr. ROSENSTOCK (United States of America), on behalf of the Group of Western European and other States, Mr. MANGONGO-NZAMBI (Gabon), on behalf of the Group of African States, Mr. BAQIR (Pakistan), on behalf of the Group of Asian States, Mr. OLMOS (Argentina), on behalf of the Group of Latin American States, Mr. SUY (Under-Secretary-General for Legal Affairs, the Legal Counsel) and the CHAIRMAN took part, the CHAIRMAN announced that the Committee had concluded its work for the thirtieth session.

The meeting rose at 12.10 p.m.

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