of the Legal Counsel and considered that the item should not be taken up until after the International Conference of the Red Cross, to be held in the first half of November, 1973, when the Sixth Committee would have been apprised of its findings. While an adequate number of meetings had been allowed for the consideration of some items—such as item 97, which was at a fairly advanced stage, and item 99—he was of the opinion, although he was not making a formal proposal, that it would be desirable to set aside one or two extra meetings for the consideration of item 96.

31. Mr. NJENGA (Kenya) said that he would not insist on delaying consideration of the report of the International Law Commission. In the light of the Swedish representative's comments, which he had found convincing, he would agree to consider item 96 on the dates suggested and, if necessary, assigning one or two additional meetings to it.

32. Mr. ROSENSTOCK (United States of America) agreed with the representative of Kenya that it would not be easy to study the report of the International Law Commission in the short time before the item was due to be taken up. However, it would be advisable for the Committee to continue to examine that item at the start of its proceedings, and the Secretariat should be requested to arrange for the Commission's future reports to be issued not later than the third week of August.

33. Mr. YASSEEN (Iraq) said he was of the same opinion as the Chairman, namely that the consideration of the Commission's report was not a routine matter but a very important activity which kept the Committee in touch with the task of the codification and development of international law and made it possible in turn for the Commission to re-examine its work in the light of the Committee's comments. In view of the importance of the topics expounded in the report, the number of meetings set aside for the consideration of the item was quite inadequate and the possibility of allocating additional meetings should be considered. Moreover, the representative of Kenya had been perfectly right to point out that delegations did not have sufficient time to study the Commission's report, and in the future it would be desirable to issue that document earlier.

34. Mr. FEDOROV (Union of Soviet Socialist Republics) welcomed as a victory for the socialist countries, peace-loving and opposed to any form of discrimination as they were, the admission of the German Democratic Republic, the Federal Republic of Germany and the Commonwealth of the Bahamas to membership in the United Nations. He wished to join in the congratulations which had been addressed to the new Members, whose contribution would be extremely helpful to the Committee in its work.

35. With regard to the organization of work, he felt that the Committee should continue to consider the report of the International Law Commission at the beginning of each session. As to the order in which the Secretariat had proposed that the various items should be taken up, however, he thought it would be desirable to consider items 95 and 99 in fifth and sixth place respectively. Item 97, on the other hand, could be taken up last. Like the Legal Counsel and the Swedish representative, he felt that there was good reason for considering item 96 on the date indicated and after the International Conference of the Red Cross.

36. Mr. SAM (Ghana) said that his delegation had no definite views on the suggestion of the USSR representative. Moreover, since experience had shown that the essential factor to take into account was time, it considered that items 91 and 93, which were not controversial, should be put towards the end of the list, immediately before item 98. It was also of the opinion that it might be necessary to consider devoting more than three meetings to the consideration of item 97.

37. The CHAIRMAN said that there were several questions which should not give rise to controversy: the two items mentioned by the delegation of Ghana —differences concerning which could be settled through negotiation by the delegations concerned—and the report of the United Nations Commission on International Trade Law. He therefore suggested that the Committee should approve the order proposed in the note by the Secretariat, unless there were compelling reasons to justify a change.

38. Mr. STAVROPOULOS (Legal Counsel) observed that it would be preferable not to change the order of items 92 and 93, since after the consideration of item 93 invitations would have to be sent to the Conference in question.

39. Mr. STEEL (United Kingdom) said that he thought the time-table of work suggested by the Secretariat was rational and balanced and that the Committee should approve it.

40. The CHAIRMAN asked delegations with suggestions concerning the organization of work to communicate with him so that it would be possible to draw up a definitive time-table.

The meeting rose at 12.50 p.m.

1396th meeting

Tuesday, 25 September 1973, at 3.25 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1396

Organization of work (A/C.6/419, A/C.6/L.899)

1. The CHAIRMAN suggested that, in the light of comments made at the preceding meeting, a minimum number of meetings should be allocated for consideration of each item on the Committee's agenda for the

present session. Some flexibility would, however, be necessary and, when a particular item required additional meetings, every effort would be made to provide them. He considered, for example, that the report of the International Law Commission, to which nine meetings had been allocated, was a basic subject of discussion and would therefore be prepared to devote more meetings to it.

2. With regard to the informal suggestion made at the preceding meeting, he saw no difficulty in reversing the order of items 9 and 10 in the list in paragraph 8 of document A/C.6/L.899.

3. If that suggestion was acceptable to all members, he took it that the Committee agreed to adopt its programme of work.

The programme of work of the Committee was adopted.

4. The CHAIRMAN noted the comment made by the representative of Kenya at the preceding meeting to the effect that, at future sessions, when priority was granted to agenda items, account should be taken of the time delegations had had available to them to study the report of the International Law Commission. Delegations should have at least one month to study that report. If that was not possible, the report should be made the second or third item on the agenda, not the first.

5. There had been no change in the situation with regard to the election of the Vice-Chairmen and of the Rapporteur of the Committee. If no changes had occurred by the following day, it would be necessary to decide how to break the stalemate. He hoped that the Committee would not have to take a vote on those elections because he did not want a precedent to be set. He also hoped that the chairmen of the regional groups would make suggestions as to how to solve that problem.

AGENDA ITEM 89
Report of the International Law Commission on the work of its twenty-fifth session (A/9010)

6. The CHAIRMAN requested the Chairman of the International Law Commission to present the report of the Commission on the work of its twenty-fifth session (A/9010).

7. Mr. CASTAÑEDA (Chairman of the International Law Commission)* congratulated Mr. Gonzalez Galvez on his election as Chairman of the Sixth Committee, an honour which he interpreted as a recognition of his merits as a jurist, of his assiduous work and of his proven competence as representative of Mexico in the Committee.

8. To congratulate the Chairman bore special significance for him because of their many years of close co-operation in Mexico's international law service and their long-standing friendship. He was therefore extremely pleased that it had fallen to him to represent the International Law Commission in the Sixth Committee in the year when Mr. Gonzalez Galvez was its Chairman.

9. He associated himself with the condolences the Chairman had expressed at the death of Mr. Gonzalo Alcivar, who had distinguished himself as a diligent and capable member of the Commission, always able to defend his ideas convincingly and forcefully. The Commission had missed his presence.

10. The entry of the Federal Republic of Germany and the German Democratic Republic into the United Nations was especially significant for the Commission. Anyone who had made even a superficial study of the creation of international law over the past century and more would be familiar with the very important contribution the German nation had made to international law, which undoubtedly constituted one of the major schools of legal thought. The Commission awaited with interest the contribution the representatives of the two Germanys could make to the report on its work.

11. The Commission had been in existence for 25 years. That was a long time, and afforded the necessary historical perspective for an evaluation of its work. Now might perhaps be an appropriate occasion for the General Assembly to reflect on the whole process of the creation of international law in modern times, on the methods of work used and, in particular, on the results achieved. After a quarter of a century of codification under United Nations auspices, it was proper to look back over the road travelled and to consider what remained to be travelled to achieve the goal the Commission had set itself at its first session, that of codifying the whole body of modern international law.

12. Nothing would have been better than for the Commission itself to have undertaken that broad and far-reaching review of the codification of international law. At its last session, unfortunately, it had for the nth time not had time to do so. As on so many occasions in the past, the pressure of specifics had prevented it from pausing to consider its over-all long-term task. The Committee would recall that at its first session, the Commission had discussed the question whether it would be appropriate to draft a general plan of codification embracing the entirety of international law, or in other words a plan of a complete code of public international law. While the Commission had then recognized that codification of international law as a whole was the ultimate objective, it had agreed for the time being to begin work on the codification of a few of the topics, rather than to discuss a general systematic plan which might be left to later elaboration[1].

13. As everyone knew, over the past years no suitable occasion had arisen for the Commission to draft such a systematic plan of codification. That was perhaps because its members had with time come to the belief that in an era of more rapid evolution and profound change, the vision of an over-all code of international law was nothing but an unattainable illusion, or because the task was not an appropriate one for a collective body such as the Commission, or simply because there had in fact been no time to draft it. Certainly, in any event, the Commission had so far continued working

* The full text of Mr. Castañeda's statement appears in this summary record in accordance with the decision taken by the Committee at the meeting (see para. 62 below).

[1] See *Official Records of the General Assembly, Fourth Session, Supplement No. 10*, para. 14.

on the basis of the preliminary study prepared by Lauterpacht in 1948, or rather on the pragmatic basis of the 14 priority topics which the Commission had selected in 1949 from among the 25[2] proposed in that study.

14. At its last session, nevertheless, the Commission had at least been able for a week to study its future programme of work more closely. Simultaneously with that study, the Commission had considered the work accomplished, analysed the relationship between its own work and the international law-making activities of other United Nations organs and, in addition, had broadened the horizons of its study to reflect on the great forces which contributed to shaping modern international law. Despite the short amount of time the Committee had been able to devote to those subjects, the relevant part of the report (A/9010), which was in paragraphs 151-159, was particularly interesting and important, and he earnestly recommended a careful reading of it. Originally, the Commission had thought that that part, perhaps somewhat expanded, would be issued as an appendix to the report, as the Commission's own contribution to the commemoration of its 25 years of existence. The Rapporteur of the Commission for the current year, the distinguished Netherlands jurist Professor Tammes, had been entrusted with the task of preparing the first version of that chapter. Finally, the Commission had decided that the chapter would be linked with the more concrete question of its future programme of work.

15. The Commission indicated in paragraph 156 of the report that over those 25 years it had completed —or was well on the way to completing—the process of codification of most of the major topics selected in 1949. The Commission had undertaken the codification of the law of treaties, the law of the sea, State succession, nationality, State responsibility and the whole of diplomatic law, in other words, diplomatic and consular relations, as well as multilateral diplomacy. The one important topic found on the initial list which had not yet been systematically dealt with by the Commission was the treatment of aliens.

16. As the Commission rightly said in the same paragraph, now that it had a certain historical perspective on the basis of which it could assess the work accomplished, what was striking was not so much the fact that the Commission had renounced the codification of the whole of international law, but that in practice it had come so close to that ultimate aim outlined in the original long-term programme.

17. The current situation was very different from that prevailing in 1948, due in large measure to the very work of codification the Commission had accomplished during that period. What remained to be done to complete the codification of the whole of international law was much less than it had been then. In addition, however, the Commission drew attention in its report to certain factors or forces which had arisen in recent years and had had a strong impact on modern international law. Decolonization, the considerable increase in the number of members of the international community, the profound changes which had taken place in the geography of international law and the spectacular advances of science and technology had contributed to shaping the new international law, and had also influenced the formulation of new international legal concepts, such as that of the common heritage of mankind, or the emergence of whole new branches of the discipline, such as the law of outer space. Naturally, those changes had also had a marked impact on the methods whereby international law was made.

18. The Commission's report indicated that some of those new branches were being dealt with and codified under United Nations auspices, but outside the framework of the Commission. For example, the whole law of international economic co-operation, in other words what certain French authors termed the law of development, was being dealt with by continuing broad and patient negotiation with a view to harmonizing and reconciling the specific and frequently opposing economic interests of States. That task required specialized forums such as the United Nations Conference on Trade and Development and participation by State representatives expert in various aspects of economics. With regard to the legal régime for outer space the need to promote agreement between the two major space Powers, a prerequisite for the establishment of such a régime, as well as the close relationship between the subject and disarmament, had justified entrusting the task of formulating it to an organ composed of States, and not to the Commission.

19. The case of the new law of the sea was even more revealing. In the 1950s, when the Commission had produced the excellent *travaux préparatoires* for the 1958 Geneva Conference, the main task had consisted of codification of the law of the sea—using the term in its technical sense, namely, the more precise formulation of rules in an area where ample practice and a degree of uniformity already existed, both in judicial precedents and in legal theory. The situation now was entirely different. For a number of reasons which he need not go into, including notably the considerable advances in technology, it had been considered essential to revise many of the rules of the law of the sea. Consequently, the main task of the forthcoming conference on the law of the sea would relate more to the progressive development of international law than to its codification. A new body of law, based on the present and future needs of the international community rather than on precedent, would have to be created. That was a highly political undertaking, requiring intensive negotiations in order to reconcile opposing national interests, and it was therefore understandable that the General Assembly had entrusted the preparatory work to a Committee of representatives of States and not to a body composed of individual experts, like the Commission. He recalled that the codification of principles of peaceful coexistence—or, as they were officially styled, principles of international law concerning friendly relations and co-operation among States—had also been carried out by a Committee of representatives of States, again, no doubt, because of the highly political nature of the task.

[2] *Ibid.*, paras. 15 and 16.

20. Owing to the fact that that kind of work had been entrusted to *ad hoc* bodies composed of representatives of States, the Commission has had to concentrate in recent times on the traditional—or, one might say, the more characteristic—areas of international law, such as State responsibility, succession of States and some remaining aspects of the law of treaties. It might be timely for the General Assembly now to consider whether or not that kind of spontaneous division of labour which had evolved in practice was appropriate and whether it would not be possible and desirable to utilize the experience, technical competence and creative potential of an organ like the Commission in connexion with topics which were new or had new aspects but were not outside its statutory sphere of activity, although they might have certain technical or political facets.

21. The reasons why the new aspects of the law of the sea had not been referred to the Commission were understandable and valid, even though the experience, over the past three years, of the committee preparing for the proposed conference, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean floor beyond the Limits of National Jurisdiction, showed how tremendously difficult it was for a large group of representatives of States to draw up a working document that could serve as the basis for a conference of plenipotentiaries, as the draft prepared by the Commission for the United Nations Conference on the Law of the Sea of 1958 had done. Nor had it been demonstrated that the Commission was, in principle, less capable of proposing new rules of law than a committee of representatives of States. After all, the Commission had very much taken into account the new trends of the 1950s and had not been insensitive to the aspirations of the new States; it had formulated at least one important convention, the Convention on the Continental Shelf, and also perhaps the Convention on Fishing and Conservation of the Living Resources of the High Seas, which in those years had represented new law. He therefore felt that the distinction between codification and progressive development of international law should not, perhaps, be exaggerated; nor should it be accepted as a general thesis that the Commission was, *ab initio,* barred from any activity involving the creation and formulation of new international law.

22. As noted in paragraph 166 of the report, one advantage of codification machinery such as the Commission was "the continuous interaction, throughout the development of a codification draft, between professional expertise and governmental responsibility, between independent vision and the realities of international life". The Commission pointed out that that element, which had been absent from all attempts at codification before the time of the United Nations, had proved to be one of the most important reasons for the success of modern codification conferences.

23. Those considerations would remain relevant whenever the need arose to formulate legal rules relating to certain new fields which might have similar characteristics, such as the environment or the emerging area of international law that was already being termed environmental law. The more specialized and technical aspects of that new field were, and would continue to be, a subject for special conventions and specific regulations in various technical forums, but it might at any time be felt that there was a need to identify and formulate, as legal rules, the essential guiding principles of the new law.

24. The various sessions of the Commission had had different characteristics. At some sessions, efforts had been concentrated on completing the codification of a single topic, in which case the final result of the session could be in especially tangible form, such as a code of law, a convention or a draft convention. However, the last session had, as in the earliest days of the Commission, been devoted to a first consideration of treaty articles on a number of different topics. At that session, the Commission had begun in earnest the process of codifying three of the most important topics on its programme of work: State responsibility, succession of States in respect of matters other than treaties, and the most-favoured-nation clause. In addition, as he had already noted, the Commission had at last been able to devote a week to a systematic review of its future programme of work. Thus, the session had been especially fruitful.

25. The Commission had spent three weeks on the topic of State responsibility, consideration of which by the Commission had had a long and complicated history, as outlined in paragraphs 12-33 of the report. The topic had been on the Commission's work programme since its establishment, but not until the last session, after fully 25 years, had the Commission been able to consider and give initial approval to a number of actual articles, in accordance with the new approach to the topic which would probably lead to its successful codification.

26. Initially, until approximately 1961 or 1962, the Commission had approached and dealt with the topic of State responsibility in its traditional and customary aspect, namely, the responsibility of States for injuries to the person or property of aliens. That was probably how the General Assembly itself had viewed the topic when it had requested the Commission to give it urgent consideration. In time, however, it had become apparent that that approach had inevitably led to an impasse. From 1962 or 1963 onwards, under the impetus of the new Special Rapporteur, Mr. Ago, the Commission had refined its conception of the topic. It had decided to concentrate on determining the rules governing actual State responsibility for internationally wrongful acts, maintaining a strict distinction between that task and the other task of defining the international rules imposing on States obligations the violation of which might entail responsibility. The latter substantive rules, which had been termed "primary" rules by the Special Rapporteur and by the Commission, were rules imposing obligations on States with respect not only to the treatment of aliens but also to any other aspect of international relations.

27. Between 1963 and 1973, the Commission had been unable to hold an extensive discussion on the item and to make progress in adopting articles, because of the need first to advance and later complete its work on other important items which had reached a more advanced stage in the codification process, such as the

law of treaties, and, subsequently, the various aspects of diplomatic law and succession of States in respect of treaties. For that reason, and despite the repeated requests of the Assembly, in-depth consideration of that item had to be postponed on a number of occasions.

28. The Special Rapporteur, Mr. Ago, had already submitted four reports to the Commission. The third[3] and the fourth[4] contained 13 draft articles on "the internationally wrongful act of the State, source of international responsibility". At its last session, the Commission had examined articles 1 to 6 of the draft (*ibid.*, para. 58) with particular attention and dedication and had adopted them on first reading. Articles 1 to 4 dealt with general principles of State responsibility. Chapter II of the Special Rapporteur's third report, which dealt with "the 'act of the State' according to international law", was devoted to the so-called subjective element of the internationally wrongful act—in other words, to the determination of the conditions in which a particular type of conduct by State organs must be considered as an "act of the State" according to international law. The Commission had only had time to consider and adopt the first two articles in chapter II—namely, articles 5 and 6.

29. In broad outline, the draft envisaged two distinct and successive phases: the first relating to the origin of international responsibility and the second to the content of that responsibility. The first phase would determine on what basis and in what circumstances the existence of an internationally wrongful act as a source of international responsibility could be imputed to a State. The second phase would determine the consequences attached by international law to an internationally wrongful act in the various cases, so as to enable the content, form and degree of the international responsibility to be defined. Once those two essential tasks had been accomplished, the Commission might add a third section to the draft dealing with certain problems relating to the application of the international responsibility of the State—the so-called "implementation"—and other questions concerning, for instance, the peaceful settlement of disputes arising out of the application of the rules relating to responsibility.

30. The question of the type of instrument into which the draft on State responsibility should be incorporated was a matter which should be settled by the Assembly at a later stage, after the Commission had completed its study. However, without prejudging that question, the Commission had decided to give to its study the form of a set of draft articles, as expressly recommended by the General Assembly in resolutions 2780 (XXVI) and 2926 (XXVII). For the time being, the Commission's study would be limited to State responsibility. Without underrating the importance of studying questions relating to the responsibility of subjects of international law other than States—for instance, international organizations—the Commission had deemed it preferable to focus its efforts initially on the essential question of the responsibility of States for internationally wrongful acts. The Commission had recognized the great importance, not only of questions relating to such responsibility, but also of those concerning liability for possible damage arising from the performance of certain lawful activities, or activities which had not yet been expressly prohibited by international law, or activities which were still in a twilight zone between the lawful and the unlawful. Such activities were occurring with increasing frequency in such areas as the sea, the atmosphere, space and nuclear matters and, particularly, in connexion with the protection of the environment. However, the Commission had felt that those questions in the latter category should not be dealt with jointly with those in the first. As was stated in paragraph 39 of the Commission's report, the Commission should not deal in one and the same draft with two matters which, though possessing certain common features and characteristics, were quite distinct. Mr. Ago placed great emphasis on that opinion. If it was thought desirable—and views to that effect had already been expressed in the past both in the Commission and in the Sixth Committee—the Commission could undertake the study of the so-called responsibility for risk after its study on responsibility for wrongful acts had been completed, or it could do so simultaneously but separately. As Mr. Ago had emphasized, in view of the entirely different legal basis of the so-called responsibility for risk and the different nature of the legal rules governing it, as well as its content and the forms it might assume, a joint examination of the two subjects could only make both of them more difficult to grasp.

31. He wished to emphasize a point to which Mr. Ago rightly attached great importance: namely, that the provisions of his draft formed an integrated whole and that, consequently, it was difficult fully to understand the scope of certain articles without bearing in mind succeeding articles. That was particularly true in the case of chapter II of the third report, which dealt with the subjective element of State responsibility. Articles 5 and 6 laid down general rules which were complemented further on in the draft by more specific and concrete provisions. He suggested that, in order to acquire an over-all picture of chapter II and to understand better the scope of articles 5 and 6, members should study the following articles of that chapter.

32. The question of succession of States in respect of matters other than treaties was an item which had been on the agenda of the Commission since its inception in 1949. In 1963, the Commission had given that item priority, and in 1967 had decided to divide it into three parts: succession in respect of treaties; succession in respect of rights and duties resulting from sources other than treaties; and succession in respect of membership of international organizations. The Commission had eventually decided to leave the third subitem aside for the time being, and was therefore left with the other two.

33. The Commission had appointed Sir Humphrey Waldock Special Rapporteur for succession in respect of treaties and Mr. Mohammed Bedjaoui Special Rapporteur for succession in respect of rights and duties resulting from sources other than treaties.

[3] See *Yearbook of the International Law Commission, 1971*, vol. II, part one (United Nations publication, Sales No. E.72.V.6 (Part I)), document A/CN.4/246 and Add. 1.3.

[4] A/CN.4/264 and Add. 1.

Sir Humphrey Waldock had submitted to the Commission five reports on succession in respect of treaties. In 1972, the Commission had finally, on the basis of those reports, adopted a set of 31 draft articles on succession of States in respect of treaties,[5] which had been transmitted to Member States for their comments and would probably be given a second reading and finally adopted by the Commission at its twenty-sixth session.

34. The history of the codification of succession of States in respect of matters other than treaties appeared in paragraphs 60 to 70 of the Commission's report. At its recent session, the Commission had begun the preparation of draft articles on the topic, on the basis of the last of six reports submitted by the Special Rapporteur.[6] Articles 1 to 7 proposed by the Special Rapporteur had been adopted on first reading, as had a new article 9 which the Special Rapporteur had submitted during the session to replace articles 8 and 9 of his draft. The first three articles corresponded to a general introduction and the next five articles, to part I, relating to succession of States in respect of State property.

35. At the present stage of its work, the Commission intended to divide the item into an introduction and a number of specific chapters. The introduction would contain those provisions which applied to the draft as a whole, and the various chapters would refer to individual categories of matters relating to succession: public property, public debts, nationality, status of aliens, acquired rights, etc.

36. The sixth report of the Special Rapporteur contained a series of draft articles relating to public property in general. Such property could be classified in a number of categories: State property as such, the property of territorial authorities other than States, the property of public enterprises or public bodies and the property of the territory affected by the State succession. After completing its study of State property, the Commission proposed to consider the other two categories of public property listed by the Special Rapporteur.

37. He drew the Committee's attention to paragraph 91 of the report, which indicated that the Commission had deemed it necessary, with a view to clarifying the matter, to begin the draft articles with a number of general provisions defining the meaning of the expressions "succession of States" and "State property", i.e., the question of defining State property, which had given rise to serious difficulties. Nevertheless, as the Commission indicated in that paragraph, the final content of those provisions would depend in large measure on the results reached later on. The Commission therefore intended during the first reading of the draft, which was by nature a provisional exercise, to reconsider the text of certain articles adopted at the recent session, with a view to making any amendments which might be found to be necessary in the future.

38. The eight articles which had been adopted on the succession of States in respect of matters other than treaties appeared in paragraph 92 of the report, together with the relevant commentaries. He presumed that in the course of the debate on the Commission's report comments would be made on the various articles, and in replying to those remarks, he would as far as possible clarify the scope and meaning of the articles adopted by the Commission.

39. The Commission had devoted one week to consideration of the most-favoured-nation clause. The item had been included in the Commission's programme in 1967. Thus far, the Special Rapporteur, Mr. Endre Ustor of Hungary, had submitted four reports. The fourth[7] contained a history of the most-favoured-nation clause up to the time of the Second World War; an analysis of the views held by the parties and the judges on the nature, scope and function of the clause in the three cases submitted to the International Court of Justice pertaining to the subject; and eight draft articles relating to terminology, the meaning of the clause, most-favoured-nation treatment and the legal basis of such treatment.

40. At its recent session, the Commission had adopted on first reading seven articles (*ibid.*, para. 123) on the basis of the Special Rapporteur's third report.[8] Owing to lack of time, the Commission had been unable to consider three important articles which the Special Rapporteur proposed in his fourth report.

41. He drew attention to paragraph 119 of the Commission's report, in which the Commission observed the close relationship which existed between the most-favoured-nation clause and the general principle of non-discrimination, as well as the differences between the two notions.

42. Paragraph 120 was also of special interest, particularly for the developing countries, as it referred to the application of the most-favoured-nation clause in relation to different levels of economic development. Reference was made in the commentaries to the draft articles to the famous chapter IV of the General Agreement on Tariffs and Trade, which had aroused such great interest.

43. Chapter V of the report dealt with treaties concluded between States and international organizations or between two or more international organizations. The Commission had included the item in its programme in 1970, on the basis of recommendations by the General Assembly and the United Nations Conference on the Law of Treaties.

44. After establishing a sub-committee of 13 members to study the preliminary questions relating to the subject, the Commission had appointed Mr. Paul Reuter of France as Special Rapporteur in 1971. The Special Rapporteur had addressed an initial questionnaire to the principal international organizations for the purpose of obtaining information on their practice in respect of treaties. In 1972, Mr. Reuter had submitted a first report[9] containing a carefully documented history. At the recent session, the Special Rapporteur had submitted a second report[10] as a supplement to

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

[6] A/CN.4/267.

[7] A/CN.4/266.

[8] A/CN.4/257 and Add. 1.

[9] A/CN.4/258.

[10] A/CN.4/271.

the previous one, based on the substantial information submitted by the various international organizations. That background information illustrated clearly the great care which the Commission devoted to the codification of the various topics.

45. The Special Rapporteur's second report dealt with various questions of method: the form of the final draft, adherence to the framework of the Vienna Convention on the Law of Treaties of 1969, and, in particular, the question of principle, namely, to what extent the codification of the subject, by introducing the elements of stability and generality into the régime of the agreements of international organizations, ran the risk of affecting the spontaneous elaboration of a corpus of solutions adopted to the individual needs and character of each of the international organizations. That was a preliminary question of broad scope, on which the views of the members of the Sixth Committee would be particularly useful to the Commission.

46. Turning again to the future programme of work of the Commission, he wished to supplement the information already presented concerning the topics currently contained in its programme and the possibility of the Commission taking up new topics in the coming years. The Commission's work had been based on an excellent and extensive document which the Secretariat had published in 1971, entitled "Survey of International Law"[11]. The document contained a thorough analysis of the Commission's work during its 25 sessions. He particularly urged representatives to read that important document.

47. On the basis of directives from the General Assembly over the preceding years, the Commission would in the coming years have to complete the codification of the five topics which constituted what had come to be called its current programme of work (as distinct from its long-term programme of work): succession of States in respect of treaties, State responsibility, succession of States in 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.

48. As he had already observed, considerable progress had already been made on the first topic, succession of States in respect of treaties. The Commission had adopted in the first reading 31 draft articles on the subject. It was customary—as had been the Commission's constant practice in the past—two years after the Commission had approved a draft in first reading and had forwarded it to Governments, for it to re-examine the draft in second reading. In accordance with that practice, it would be according priority to the draft at its forthcoming session in 1974, with a view to concluding its consideration of the document.

49. Four other topics remained on the current programme of the Commission—or would remain once the topic of succession of States in respect of treaties had been completed. None of the four was very advanced. Experience showed that the Commission took between five and seven years—and closer to seven than five—to complete the codification of a topic when it was not confronted with circumstances such as those he had earlier described in relation to State responsibility in the Commission's early years. As codification of a topic normally took between five and seven years, the Commission could be expected to be fully occupied for several years ahead with the active examination of the four topics he had mentioned.

50. However, while the Commission acknowledged that an in-depth examination of new topics threatened to delay the final stages of the process of codification of topics already included in its programme, several members of the Commission had pointed out the desirability of setting in motion the mechanisms for a future codification of new topics concurrently with the work on the topics already begun. As was well known, several years usually elapsed before a special rapporteur formulated and proposed draft articles. Normally, the rapporteur's work was preceded by useful studies prepared by the Secretariat on State practice and judicial precedents. Once appointed, the rapporteur usually gave a preliminary outline of the topic for the purpose of obtaining general indications from the Commission, and not until he had received them did he begin in specific form the actual codification itself. Consequently, some time elapsed before the submission of the articles. That being so, some members of the Commission were of the opinion that it would be helpful if the Commission were to include forthwith certain new topics in its programme, with a view to undertaking the preliminary work as soon as possible and beginning codification at some future date when it was able and saw fit to do so.

51. During the week of the debate on the future programme of work individual members had had many observations to make concerning the topics which they deemed most appropriate for future consideration by the Commission. Many comments had been made about the list of 14 topics, the topics on the list which had not yet been completed, and so on. In addition to the topic of the non-navigational uses of international watercourses—of which, it would be recalled, the priority examination by the Commission had been recommended by the General Assembly in 1971 (resolution 2780 (XXVI))—some of the following items had been indicated by several members as appropriate for study and codification by the Commission. The topics, not in order of importance, were: the jurisdictional immunities of foreign States and their organs, agencies and property; unilateral acts; treatment of aliens; liability for certain lawful activities entailing a high degree of risk, and selected aspects of environmental law. He had earlier addressed several comments to the last two of those topics.

52. The Commission had not taken any formal decision of course, that is to say, it had not approved a list for recommendation to States. It had merely agreed to take note of the observations of the various members, i.e. to include in paragraph 173 of the report a list of the topics to which members had most frequently alluded during the discussion, which were precisely

[11] A/CN.4/245.

those topics which he had just indicated to the Committee.

53. A few other topics had also been referred to by one or more members but with less emphasis than those of which he had spoken. The same paragraph 173 of the report listed that second category of topics.

54. In addition to the instructions which it received from the Assembly, the Commission would be deeply interested to learn of the individual opinions held by members of the Sixth Committee both on the desirability of codifying some of the subjects mentioned and on its future work programme in general. He urged members to submit their comments.

55. While he did not wish to dwell on the problem of the Commission's methods of work, the length of its sessions, and so on, he felt bound to say that the Commission had been of the opinion that a somewhat longer session than the customary period of 10 weeks would be required in 1974. It was felt that a session of some 14 weeks was necessary. The reason was the following. One of the two items to which priority was to be given was that relating to the second and final reading of the 31 draft articles on the topic of succession of States in respect of treaties. To complete its examination the Commission would require at least six or seven weeks.

56. Furthermore, the Commission had learnt from experience that a measure of continuity was required if it was to make substantial headway on a topic. That was to say that the same amount of progress was not made when the Commission discussed a topic for two or three weeks one year, for another two or three weeks the next year, and so on. The results were better and time was used more profitably if there was a certain continuity of discussion and of drafting of the articles relating to a given topic.

57. If the Commission was to make real progress in 1974 on the topic of State responsibility—as it had been requested to do by the Assembly on several occasions—it would require a 14-week session, or five or six weeks more than at present. It would then be able to continue its examination of the pending articles and adopt in first reading the 13 articles already submitted by the Special Rapporteur and any new articles that he might also wish to submit. It must be stressed that in order to adopt in first reading 13 articles on so delicate and difficult a topic, five or six extra weeks were indispensable. That explained why the Commission wished to hold a 14-week session in 1974.

58. Mr. NJENGA (Kenya) requested that, in view of the importance of the report of the Commission, the introductory statement by its Chairman should be reproduced *in extenso*.

59. The CHAIRMAN, referring to the request of the Kenyan representative, read out operative paragraph 10 (*e*) of General Assembly resolution 2538 (XXIV). He thought that the Kenyan request was fully justified, since the statement by the Chairman of the Commission would serve as a basis for the Committee's discussion.

60. He requested the Secretary of the Committee to give the financial implications of the Kenyan request.

61. Mr. RYBAKOV (Secretary of the Committee) said that the reproduction *in extenso* of the statement made by the Chairman of the Commission would involve financial implications of $2,000.

62. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed that the statement by the Chairman of the Commission should be reproduced *in extenso*.

It was so decided.

The meeting rose at 4.45 p.m.

1397th meeting

Wednesday, 26 September 1973, at 10.55 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1397

AGENDA ITEM 89

Report of the International Law Commission on the work of its twenty-fifth session *(continued)* (A/9010)

1. The CHAIRMAN proposed suspension of the meeting until five minutes after the end of the statement by the first speaker at the morning meeting of the plenary Assembly.

It was so decided.

The meeting was suspended at 10.55 a.m. and resumed at 11.55 a.m.

2. Mr. YASSEEN (Iraq) said that the General Assembly's consideration of the report of the International Law Commission (A/9010), far from being a routine task, constituted a very important phase in the process of codification and progressive development of international law, as it provided an opportunity to engage in the dialogue and consultations which characterized multilateral diplomacy.

3. Among the activities organized under the auspices of the Commission, mention should be made of the ninth session of the International Law Seminar, which enabled young jurists from all parts of the world to become familiar with the work of the Commission, as well as the second Gilberto Amado Memorial Lecture, delivered by Professor Constantin Eustathiades, who had spoken on a very important question of direct concern to the United Nations and the Commission, namely, the codification conventions not ratified. Thought must be given to the fate of the Commission's work. The non-ratification of the conventions it prepared hindered the progressive development of inter-