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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-FOURTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. B. A. SHITTA-BEY (Nigeria)

CONTENTS

CONTENTS (continued)

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CONTENTS (continued)

I. INTRODUCTION

1. At its 2037th plenary meeting, on 23 September 1972, the General Assembly included in the agenda of its twenty-seventh session the item entitled "Report of the International Law Commission on the work of its twenty-fourth session" (item 85) and allocated it to the Sixth Committee for consideration and report.

2. The Sixth Committee considered this item at its 1316th to 1328th and 1336th to 1339th meetings, held from 28 September to 10 October and from 18 to 20 October 1972.

3. At the 1316th meeting, on 28 September 1972, Mr. Richard D. Kearney, Chairman of the International Law Commission at its twenty-fourth session, introduced the Commission's report on the work of that session.[1/] At the 1328th meeting, on 10 October 1972, he commented on the observations which had been made during the debate on the report. The members of the Sixth Committee expressed their appreciation to the Chairman of the Commission for his introductory statement and explanations.

4. The report was divided into five chapters entitled: I. Organization of the session; II. Succession of States in respect of treaties; III. Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law; IV. Progress of work on other topics; V. Other decisions and conclusions of the Commission. Comments of Member States on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, transmitted to the International Law Commission in accordance with part III of General Assembly resolution 2780 (XXVI) of 3 December 1971, were annexed to the report.

5. Chapter II of the report contained the draft articles on succession of States in respect of treaties provisionally adopted by the Commission, and Chapter III contained the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons provisionally approved by the Commission.

1/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev.1).

6. At the 1341st meeting, on 24 October 1972, the Rapporteur of the Sixth Committee raised the question whether the Sixth Committee wished to include in its report to the General Assembly a summary of views expressed during the debate on the item. After referring to Assembly resolution 2292 (XXII) of 8 December 1967, the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the subject-matter, the report should include an analytical summary of its debate on the item.

II. PROPOSALS AND AMENDMENTS

7. Austria, Canada, Colombia, Costa Rica, Greece, Japan, Liberia, New Zealand and Uruguay, later joined by Australia and Guatemala, submitted a draft resolution (A/C.6/L.852) which was introduced at the 1336th meeting, on 18 October 1972, by the representative of Canada. The draft resolution read as follows:

"The General Assembly,

"Having considered the report of the International Law Commission on the work of its twenty-fourth session,

"Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

"Welcoming the draft articles prepared by the International Law Commission on succession of States in respect of treaties,

"Recalling that in its resolution 2780 (XXVI) it recommended that the International Law Commission should study as soon as possible, in the light of comments of Member States, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law with a view to preparing a set of draft articles dealing with offences against such persons,

"Believing that the need to protect the means by which international relations are carried on is of utmost urgency in view of the continuing violent attacks upon diplomats, embassies and other persons and places entitled to special protection under international law,

"Noting with satisfaction the draft articles prepared by the Commission on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons,

"Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-fourth session of the International Law Commission, an eighth session of the Seminar on International Law,

I

"1. Takes note of the report of the International Law Commission on the work of its twenty-fourth session;

"2. Expresses its appreciation to the International Law Commission for the work it accomplished at its twenty-fourth session;

"3. Approves the programme and organization of work of the twenty-fifth session of the International Law Commission to be held in 1973, including the decision to place on the provisional agenda of that session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General";

"4. Recommends that the International Law Commission should:

"(a) Continue its work on State responsibility, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963 and 2400 (XXIII) of 11 December 1968, with a view to the preparation of a first set of draft articles on the topic;

"(b) Proceed with further consideration on succession of States in respect of treaties in the light of comments received from Member States on the present draft;

"(c) Continue its work on succession of States in respect of matters other than treaties, taking into account the views and considerations referred to in the relevant General Assembly resolutions;

"(d) Continue its study of the most-favoured-nation clause;

"(e) Continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations;

"5. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of jurists of developing countries;

"6. Requests the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-seventh session of the General Assembly;

II

"1. Decides that an international conference of plenipotentiaries shall be convened to consider the question of the protection of diplomats and other internationally protected persons on the basis of the draft articles provided by the International Law Commission and the relevant comments by Member States and to embody the results of its work in an international convention;

"2. Requests the Secretary-General to convoke a conference as early in 1973 as practicable;

"3. Invites States Members of the United Nations, States members of specialized agencies, States parties to the Statute of the International Court of Justice and States that the General Assembly decides specially to invite to participate in the conference;

"4. Refers to the conference the draft articles contained in chapter III of the report of the International Law Commission on the work of its twenty-fourth session as the basic proposal for consideration by the conference;

"5. Requests the Secretary-General to transmit to the conference the records of the discussion of the draft articles in the General Assembly and all other relevant documentation and recommendations relating to its method of work and procedures and to arrange for the necessary staff and facilities which will be required for the conference including such experts as may be necessary;

"6. Invites the specialized agencies and the interested intergovernmental organizations to send observers to the conference;

"7. Invites the States referred to in paragraph 3, the Secretary-General and the specialized agencies and interested intergovernmental organizations to submit, not later than 1 March 1973, their written comments and observations on the draft articles concerning the Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected Persons prepared by the International Law Commission;

"8. Requests the Secretary-General to circulate such comments at the earliest possible time."

8. Argentina submitted amendments (A/C.6/L.854) to section I of draft resolution A/C.6/L.852. A revised version of the amendments (A/C.6/L.854/Rev.1), modifying the order and numbering of paragraphs, was submitted later. As revised, the amendments were as follows:

1. Reverse the order of operative paragraphs 3 and 4.

2. Add the following paragraph after the new operative paragraph 4 (existing paragraph 3):

> "Recommends that the International Law Commission in considering its programme of work should decide upon the priority to be given to the topic of the law of the non-navigational uses of international watercourses, as requested in General Assembly resolution 2780 (XXVI);"

3. Add the following paragraph after the existing operative paragraph 6:

> "Requests the Secretary-General to submit, as soon as possible, the study on the legal problems relating to the non-navigational uses of international watercourses requested in General Assembly resolution 2669 (XXV) and to present to the International Law Commission at its twenty-fifth session an advanced report of such study;"

9. Mauritania submitted amendments (A/C.6/L.855) to section II of draft resolution A/C.6/L.852, introduced at the 1337th meeting, on 19 October. The amendments were as follows:

1. Delete paragraphs 1, 2, 3, 4, 5 and 6.

2. Paragraph 7, to become operative paragraph 1, should be amended as follows:

(a) Replace the words "the States referred to in paragraph 3" by the words "Member States";

(b) Replace the words "not later than 1 March 1973" by the words "as soon as possible".

3. Paragraph 8, to become operative paragraph 2, should be amended by replacing the words "to circulate such comments at the earliest possible time" by the words "to transmit such comments and observations to the International Law Commission together with the records of the discussion of the draft articles in the General Assembly during its twenty-seventh session".

4. Add a new paragraph, to become operative paragraph 3, as follows:

> "3. Requests the International Law Commission, in view of the importance of the question, to address itself to the question at its earliest convenience in the light of the comments and observations of Governments."

10. At the 1336th meeting, Czechoslovakia submitted amendments (A/C.6/L.856) to section II of draft resolution A/C.6/L.852. The corrected version of the amendments (A/C.6/L.856/Rev.1) read as follows:

"Replace section II of draft resolution A/C.6/L.852 by the following text:

1. Invites States, and also the specialized agencies and interested organizations, to submit, not later than 1 July 1973, their written comments and observations on the draft articles prepared by the International Law Commission concerning the prevention and punishment of crimes against diplomatic agents and other internationally protected persons;

2. Requests the Secretary-General to circulate the comments and observations referred to in paragraph 1 in order to facilitate consideration of the draft articles by the General Assembly at its twenty-eighth session in the light of those comments;

3. Decides to include an item entitled 'Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons' in the provisional agenda of the twenty-eighth session of the General Assembly with a view to the adoption of such a convention by the General Assembly;

4. Requests the Secretary-General to transmit to that session all relevant documentation which may be required for the discussion of that item."

11. Mexico submitted amendments (A/C.6/L.857) to the preamble and sections I and II of draft resolution A/C.6/L.852. The amendments were as follows:

1. Fifth preambular paragraph: replace the words "is of utmost urgency" by the words "requires the most careful consideration by States".

2. Sixth preambular paragraph: delete the words "with satisfaction".

3. Add the following preambular paragraph:

"Considering that since its first session in 1949 the International Law Commission has included the question of State responsibility in its agenda and that so far it has received six reports from its first Special Rapporteur and four reports from its second Special Rapporteur, in addition to various studies prepared by the United Nations Secretariat,".

4. In paragraph 4 (a) of section I, replace the word "Continue" by the words "Give the highest priority to".

5. Replace paragraph 1 of section II by the following:

"1. Requests the Secretary-General to transmit the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons prepared by the International Law Commission to Member States, so that they may submit their comments as soon as possible both on the substance of the question and on the procedure to be followed for the continuation of the work begun by the Commission on those draft articles;"

6. Delete paragraphs 2, 3, 4, 5, 6 and 7 of section II.

7. Renumber as paragraph 2 existing paragraph 8 of section II.

8. Add the following paragraph to section II:

"3. Decides to include the following item in the provisional agenda of its twenty-eighth session: 'Consideration of the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons.'"

12. Afghanistan and Yugoslavia submitted amendments (A/C.6/L.858) to section II of draft resolution A/C.6/L.852 which were introduced by the representative of Afghanistan at the 1337th meeting. The amendments were as follows:

1. In operative paragraph 2, replace the words "as early in 1973 as practicable" by the words "during August or early September 1973".

2. Delete operative paragraph 4.

3. Operative paragraph 7 becomes operative paragraph 4.

4. Operative paragraph 8 becomes operative paragraph 5.

5. Add a new operative paragraph 6 as follows:

"Refers to the International Law Commission the draft articles contained in chapter III of the Commission's report on the work of its twenty-fourth session for final consideration in the light of the discussion held during the Sixth Committee's twenty-seventh session and the comments referred to in paragraph 4 for the purpose of submission to the conference through the Secretary-General;".

6. Operative paragraph 5 to become operative paragraph 7 and amended as follows:

"Requests the Secretary-General to transmit to the conference the records of the discussion of the draft articles in the General Assembly and all other relevant documentation and recommendations relating to its method of work and procedures as well as the final draft prepared by the International Law Commission during its twenty-fifth session and to arrange for the necessary staff and facilities which will be required for the conference including such experts as may be necessary;".

7. Operative paragraph 6 becomes operative paragraph 8.

13. The sponsors of draft resolution A/C.6/L.852 submitted a revised draft resolution (A/C.6/L.852/Rev.1) which was introduced by the representative of Australia, at the 1337th meeting. The revised draft resolution was identical to the original except for the following changes in sections I and II:

(a) The order of paragraphs 3 and 4 of section I was reversed;

(b) A new paragraph 5 was added to section I which read as follows:

"5. Notes that the International Law Commission intends, in its discussion of its long-term programme of work, to decide upon the priority to be given to the topic of the law of non-navigational uses of international watercourses as requested in General Assembly resolution 2780 (XXVI);"

(c) Paragraphs 5 and 6 of section I were renumbered as 6 and 7, respectively;

(d) A new paragraph 2 was added to section II and read as follows:

"2. Decides also that the Conference and its Main Committee shall have summary records of their proceedings;"

(e) Paragraphs 2 to 8 of section II were renumbered as 3 to 9, respectively.

The sponsors of the revised draft resolution (A/C.6/L.852/Rev.1) further revised orally paragraph 1 of section II by replacing the words "of diplomats and other internationally protected persons" by the words "and inviolability of diplomatic agents and other persons entitled to special protection under international law".

14. Czechoslovakia and Mauritania submitted jointly revised amendments (A/C.6/L.856/Rev.2) to section II of the revised draft resolution A/C.6/L.852/Rev.1. The revised amendments, which were introduced by the representative of Mauritania at the 1339th meeting, on 20 October 1972, were identical to the amendments in document A/C.6/L.856/Rev.1 except that:

(a) In paragraph 1 the words "not later than 1 July 1973" were replaced by the words "as soon as possible";

(b) In paragraph 1 the word "provisional" was inserted before the words "draft articles";

(c) In paragraph 3 the word "adoption" was replaced by the words "final elaboration".

15. Afghanistan and Yugoslavia also submitted revised amendments (A/C.6/L.858/Rev.1) to section II of the revised draft resolution A/C.6/L.852/Rev.1. The revised amendments were identical to the original version except that:

(a) In the sixth amendment the words "the final draft" were replaced by the words "the report on this subject";

(b) All amendments incorporated the corresponding renumbering of paragraphs resulting from changes of order and number of paragraphs in the revised draft resolution.

16. At the 1338th meeting, on 19 October 1972, the representative of Argentina withdrew the first and second of the revised amendments in document A/C.6/L.854/Rev.1 and indicated that the third amendment should be inserted immediately after the new paragraph 5 of section I of the revised draft resolution. At the 1339th meeting, the representative of Mexico withdrew the fifth and eighth amendments in document A/C.6/L.857 relating to section II of the draft resolution.

17. Afghanistan and Yugoslavia, joined later by Czechoslovakia and Spain, submitted a draft resolution (A/C.6/L.859) entitled "Twenty-fifth anniversary of the International Law Commission". The text of the draft resolution was identical to that recommended by the Sixth Committee (see para. 206 below, draft resolution II).

18. The attention of the Committee was drawn to the statements submitted by the Secretary-General (A/C.6/L.853 and Add.1 and A/C.6/L.860) on the administrative and financial implications of draft resolution A/C.6/L.852 and Rev.1 and amendments thereto in document A/C.6/L.858 and Rev.1. At the 1328th, 1336th, 1337th and 1339th meetings, the Secretary of the Committee made statements on the subject.

III. DEBATE

A. General comments on the work of the International Law Commission and the promotion by the United Nations of the progressive development and codification of international law

19. The representatives who spoke in the debate congratulated the International Law Commission on the valuable work and fruitful results accomplished at its twenty-fourth session and on the excellent report reflecting the tradition of high quality of the Commission as well as its dedication to the progressive development of international law and its codification.

20. Certain representatives stressed the need to accelerate the process of progressive development and codification of international law in view of the enhanced role played by it in contemporary international relations. Alluding to the Secretary-General's statement, made at the 1194th meeting of the Commission, on 4 July 1972, it was observed that there was no long-term alternative to a policy of peaceful coexistence within the framework of international law and it was essential that its codification and progressive development should be pursued even more energetically in the future. In this connexion, it was also pointed out that the General Assembly should grant the Commission the time and resources it required to carry out its work satisfactorily.

21. Several representatives emphasized the importance of the close co-operation between the Sixth Committee and the Commission. Successful codification and progressive development of international law depended on the harmonious blending of the legal expertise of the latter and the element of political decision-making represented in the former. In this respect it was suggested that in future the Commission's reports should be circulated sufficiently in advance to allow closer and more effective co-operation between the Sixth Committee and the Commission. It was also suggested that the Sixth Committee should reconsider the traditional placing of the item relating to the Commission's report at the top of its agenda so that Governments might have sufficient time to give it much attention.

22. The wish was expressed, and the Sixth Committee unanimously agreed, that the twenty-fifth anniversary of the Commission be celebrated in the General Assembly, during its twenty-eighth session, in view of the outstanding contribution made by the Commission during the past 25 years to the task of promoting and encouraging the progressive development and codification of international law undertaken by the United Nations, in accordance with Article 13, paragraph 1 (a) of the Charter (see para. 206 below, draft resolution II).

B. Succession of States in respect of treaties

23. Without prejudging the final position of their respective Governments on the matter, a number of representatives commented, in a more or less detailed manner, on the provisional "Draft Articles on Succession of States in respect of Treaties" prepared by the International Law Commission. Such comments related to the importance of and need for the codification of the law relating to topic, the approach followed by the Commission, and to the underlying principles, general features and specific provisions of the draft articles. Other representatives refrained from making comments thereon until their Governments had the time to study thoroughly the draft and its implications.

1. Observations on the draft articles as a whole

(a) Importance of and need for the codification of the topic

24. The provisional draft articles on succession of States in respect of treaties prepared by the Commission were considered a particularly important step in the progressive development and codification of international law. Many representatives commended the members of the Commission, and in particular the Special Rapporteur, Sir Humphrey Waldock, for their contribution to the preparation of a draft which was referred to as an impressive piece of scholarly study, masterly work and legal expertise. The excellency of the comprehensive commentaries analysing the reasons and legal principles underlying each article was also stressed. Some representatives extended their thanks to the Secretariat for the valuable corpus of State practice contained in the studies and publications on the subject made available to the Commission.

25. Several representatives stated that the draft articles were a good and solid basis for continued work on the topic and seemed likely to prove acceptable to the entire international community. Underscoring the role played by the Commission in the process of adapting international law to developments in the modern world, those representatives stated that the greatest merit of the draft articles was that they took account of the principles of international law enshrined in the Charter, particularly of the principle of self-determination and the principle of sovereign equality of the States, as well as of the realities of contemporary international life.

26. The draft was the more remarkable because the task of codification was particularly difficult in the field where there was no general doctrine, and State practice and custom had not yet produced well established and consistent precedents. Moreover, some trends deriving from existing precedents could hardly be regarded as general rules of international law. Actually, in matters of succession both State practice and legal opinion showed gaps and conflicting views. The Commission had, therefore, been obliged to make certain innovations and do creative work with a view to finding appropriate and balanced solutions to the various problems involved. The draft articles marked the meeting-point of those diverse legal opinions and tendencies. That fact had naturally determined the codification working methods followed by the Commission and the draft, which contained elements of codification as well as of progressive development of international law, intended to lay down practicable and detailed provisions which would introduce uniformity and clearness in the sparse present rules, develop them and fill the existing lacunae, taking into consideration the interest of the States as well as those of the international community.

27. Notwithstanding this generally favourable reaction, some representatives criticized certain aspects of the conclusions reached by the Commission in connexion with matters related mainly to the "clean slate" principle as a basic general rule for newly independent States, to the recognized exceptions to that principle, and to the scope and scheme of the draft. Other representatives singled out a certain number of questions for further study with a view to improving the draft.

28. Stressing the central place occupied by treaties in international relations, some representatives considered that the codification of the topic of succession in respect of treaties was an urgent task, because certain additions were still needed to the codification of the law of treaties embodied in the 1969 Vienna Convention on the Law of Treaties. It was also mentioned that the draft articles constituted a link between the law of treaties and the law of the succession of States.

29. Several representatives underlined the special importance of the draft articles for the newly independent States which had to protect their economic and political independence after having freed themselves from colonial domination, and recalled the obligations of administering Powers in respect of dependent territories

under the system established by the Charter and other United Nations instruments. They considered that the Commission had rightly concentrated on newly independent States and, in accordance with the recommendations contained in several General Assembly resolutions, proceeded with its work on the topic with appropriate referemce to the views of States which have achieved independence since the Second World War. It should not be forgotten that the process of decolonization was far from complete. On the other hand, the draft articles also contained important provisions concerning the uniting, dissolution and separation of States.

30. Other representatives considered that the draft articles payed too much attention to the problems of newly independent States, at a time when the era of decolonization was drawing to a close, at the expense of succession problems of the future. In their view the provisions of the draft relating to the uniting, dissolution and separation of States should be developed in the light of the practical needs of the future and due consideration given to the new forms of association of States which were coming into being, such as economic integration units or fiscal unions.

31. Some representatives said that by submitting the draft at a time when there remained only a few dependent territories which might benefit from it, the Commission lagged behind events with the result that the topic had, to a great extent, lost its practical importance. Certain representatives urged the Commission to deal more expeditiously in the future with the study of all parts of the general topic of succession and to complete the present draft with others concering the remaining parts of the topic, particularly succession of States in economic and financial matters.

32. It was also said that the Commission had been quite right to confine the scope of the draft articles, for the time being, to the question of succession of States in respect of treaties and to postpone consideration of other aspects of State succession, thus viewing the question essentially within the context of the law of treaties. That was a sound approach because the law of treaties was based on the concept of consent, and it would therefore have been unwise to adopt a policy of attempting to thrust upon newly independent States certain rules of devolution without giving them the option of accepting or declining treaty rights and obligations coming from the past.

33. With regard to the procedure to be followed, certain representatives suggested that the Commission should be invited to consider again the subject of succession of States in respect of treaties at its next session in 1973, in order to facilitate consideration of the draft articles by an international conference at an early date. Most of the representatives considered, however, that Governments were entitled to a reasonable amount of time to consider the draft articles and to submit written comments thereon. They endorsed the Commission's decision to transmit the provisional draft articles, through the Secretary-General, to Governments of Member States for their observations, in accordance with articles 16 and 21 of the Commission's Statute. The Commission, in their view, should not consider the matter in 1973, but at a later stage in the light of the observations submitted by Governments.

(b) Sources of the draft articles

34. As mentioned above, several representatives noted with satisfaction that, for the preparation of the draft articles, the Commission had drawn on certain relevant principles of international law enshrined in the Charter of the United Nations and had duly taken into account recent State practice concerning cases of newly independent States. It was also added that the Commission had not disregarded earlier precedents, particularly those regarding the uniting, dissolution and separation of States, nor the decisions of international courts where they had been useful as guidance. Certain representatives stressed that a sharp distinction between the value of the earlier and later precedents should be avoided. The view was also expressed that the practice of depositaries was purely administrative in character and could not be regarded as being binding on States parties or giving rise to a customary rule. Finally, some doubts were expressed whether full justice was done to the many occasions where, without controversy, the States concerned had continued to apply treaties, particularly in the bilateral field.

(c) The concept of "succession of States"

35. All representatives who referred to the matter, shared the Commisison's view that analogies drawn from municipal law concepts of succession should be avoided. They agreed with the use, for the purpose of the draft articles, of the expression

"succession of States" to denote simply the fact of the replacement of one State by another, thus excluding all questions of rights and obligations as a legal incident of that change.

(d) Relationship between succession in respect of treaties and the general law of treaties

36. A number of representatives agreed with the Commission's conclusion that a close examination of State practice afforded no convincing evidence of any general doctrine by reference to which the various problems of succession in respect of treaties would find their appropriate solution and that the task of codifying the law on the topic appeared, in the light of that practice, to be rather one of determining within the law of treaties the impact of the occurrence of a "succession of States" than vice versa. They endorsed the Commission's approach that the provisions of the 1969 Vienna Convention on the Law of Treaties should be taken as an essential framework of the law relating to succession of States in respect of treaties. However, the view was also expressed by one representative that the analogy with the Vienna Convention on the Law of Treaties was carried too far and that the statement contained in paragraph 32 of the Commission's report was not acceptable.

(e) The principle of self-determination and the law relating to succession in respect of treaties

37. Some representatives were gratified to note that, having assessed the implications of the principle of self-determination, the Commission had opted for the "clean slate" principle as the underlying basic principle for the formulation of the provisions of the draft articles relating to newly independent States. A newly independent State would not be bound as a general rule by treaties concluded by the former metropolitan Power. The "clean slate" principle was not however incompatible with the continuity of treaty rights and obligations which could remain in force provided that the newly independent State so desired. It meant that the successor State could not be considered as automatically or ipso jure bound by its predecessor's treaties, but the successor State retained the right to succeed to such treaties as might, after critical review, be deemed to correspond to its interests. In other words, the newly independent State was entitled to choose which treaties concluded by its predecessor would be regarded as continuing and which would be considered as terminated. Consequently, those representatives praised the

Commission for having departed, in cases relating to newly independent States, from the legal presumption in favour of the continuity of treaty relations suggested by the International Law Association.

38. Certain representatives considered that the "clean slate" principle had also a natural application in cases concerning a change of régime in a State as a result of a social revolution which might cause such State to modify radically its position with regard to its international relations. They could therefore not accept the restrictive application of that principle in the draft articles to newly independent States only.

39. It was stated that it might have been more logical to base the "clean slate" principle on State sovereignty rather than on a concept which, like the principle of self-determination, was of an extra-juridical nature. State sovereignty implied that a State could not be bound by a treaty without its consent. In that context, the "clean slate" principle would automatically be established because it was an essential attribute of the autonomy of the new State, with respect both to internal matters and to international relations.

40. It was also pointed out that, in the present state of international law, there were no hard and fast rules as to how to approach the matter. One could therefore either proceed from the principle that a successor State automatically succeeded to the treaties concluded by the predecessor State, at the same time providing for certain departures from that principle, or else, uphold the general rule that there was no automatic succession and provide for exceptions to that rule as the Commission had done. While not objecting to the latter solution, some misgivings were expressed as to the way in which the Commission had arrived at the proposed conclusions. It could not be said with certainty that modern practice led to the conclusion that any successor State was entitled to consider itself a party to multilateral treaties concluded by its predecessor without the other States parties having given their express consent or, at least, their clear tacit consent.

41. Other representatives stressed that, as the basic rule for newly independent States, the "clean slate" principle should be properly understood and limited. The growing interdependence between States and the benefits deriving from the continuity of treaty relations required the principle to be qualified. Some emphasized the need to prevent a total rupture in the treaty relations of a territory

which acceded to independence, others the necessity to preserve equality between the newly independent States and the other States parties, and, finally, other representatives underlined the convenience of ensuring the continuity of certain types of treaties. In this connexion, it was noted with satisfaction that the Commission in paragraph 37 of its report had stated that the "clean slate" principle, as it operates in the modern law of succession of States, was very far from normally bringing about a total rupture in the treaty relations of a territory which emerges as a newly independent State.

42. In the light of the foregoing considerations, most representatives accepted the "clean slate" principle as understood by the Commission and reflected in the draft articles. First, the principle applied mainly to "newly independent States", while for the uniting or dissolution of States the prevailing principle was, under specified conditions, the continuity of treaties. Secondly, in the context of the part of the draft concerning newly independent States, several provisions were intended to promote continuity by stipulating means to facilitate the participation of the newly independent State as a "party" in the predecessor State's treaties extended to the territory before independence or to apply such treaties provisionally pending a final decision on the matter. Thirdly, the draft provided, in different contexts, for exceptions and safeguards intended to protect the interests of the successor State and the other States parties by distinguishing, for example, between multilateral and bilateral treaties and between multilateral treaties in general and multilateral treaties of a restricted character, and taking into account other relevant considerations. Fourthly, part V of the draft excluded the so-called "dispositive", "localized" or "real" treaties from the scope of the "clean slate" principle.

43. While accepting the first, second and third considerations mentioned in the preceding paragraph, a few representatives expressed reservations with regard to the fourth point. In their view, the "clean slate" principle should apply to all kinds of treaties, including the "dispositive", "localized" or "real" treaties.

44. Other representatives supported intermediate positions between that view and the provisions embodied in part V of the draft articles. For the views expressed on the boundary régimes or other territorial régimes established by a treaty as exceptions to the "clean slate" principle, see paragraphs 95 to 108 below.

45. Some representatives wondered whether the Commission should not have considered placing certain types of treaties, other than treaties establishing a boundary régime or other territorial régime, among the exceptions to the "clean slate" principle.

46. In that respect, it was said by certain representatives that the "clean slate" principle should make an exception, even in respect of newly independent States, in the case of "law-making treaties" concluded within or under the auspices of the United Nations, especially with regard to general codification conventions. Whenever the United Nations succeeded, after a complex and lengthy process, in adopting such conventions everything possible should be done to strengthen them in the interests of the newly independent States as well as the international community as a whole. United Nations law-making treaties had not been made by a foreign Power in possible disregard of the principle of self-determination or other principles of the Charter, but were acts of the international community intended to establish written rules of world-wide scope in areas essential to the international community and embodied, to a large extent, existing customary rules.

47. In the opinion of some of these representatives, to consider newly independent States automatically bound by such conventions seemed equally as acceptable as considering them bound by customary law and general principles of international law. A legal presumption of continuity for law-making treaties would be a better method of ensuring their applicability than to approach the matter by distinguishing between the convention as such and its contents. The method of applying the content of the convention as customary law might often be disputed, particularly when the convention contained also elements of progressive development. What should be done was to develop criteria for identifying and defining the law-making conventions and distinguishing them from other kinds of multilateral treaties. In that respect reference was made to the drafting of the convention by the United Nations, the number of ratifications of accessions, and the general acceptance of the treaty by existing States.

48. While sharing the view that the law-making treaties should be singled out, other representatives did not, however, agree that newly independent States should be considered automatically bound by law-making treaties. Newly independent States should be able to decide whether to accede to the treaties, in exercise of their right of self-determination.

49. Other representatives considered that the Commission had wisely made no distinction between law-making treaties and other multilateral treaties. To except law-making treaties from the scope of application of the "clean slate" principle would in fact be counter to the whole philosophy of the principle itself. It should not be forgotten that some law-making treaties had been concluded at times and in circumstances which had not catered to the interests and needs of the new community of newly independent States and when the implications of a vastly enlarged world community for the international legal order would not have been foreseen. The newly independent States were most anxious to participate in the formulation of the norms of international law, but would not accept that a group of States should legislate for the whole international community. They wanted to determine freely to which multilateral treaties of a general nature, whether or not they were law-making treaties, they should accede. It did not mean, of course, that the newly independent States were not bound by generally accepted customary law or by general principles of international law.

(f) Form of the draft

50. Notwithstanding a few views to the contrary, most of the representatives who referred to this question considered that to cast the results of the study of the topic in the form of a group of draft articles which could eventually serve as a basis for the conclusion of a convention was the most appropriate way of codifying the rules of international law relating to succession of States in respect of treaties. It was also said that the draft articles were already a sound basis for the conclusion of such a convention, which would supplement the 1969 Vienna Convention on the Law of Treaties. One of these representatives was of the opinion that only parts I to IV of the draft were a good basis for a convention.

51. Some representatives underlined the anomaly of giving a conventional form to the codification of the topic, since a succession of States in most cases brings into being a new State which under the "clear slate" principle could not be bound by the convention until it became a party thereto in its own behalf. This apparent anomaly was explained by other representatives by reference to the interpenetration between customary and conventional international law and the working of the codification

process. It was well that the future authorities of a new State should have some prior knowledge of the dealing with questions arising from the succession of States. Moreover, since the proposed convention was designed to leave all options open to newly independent States, it was unlikely that they would be reluctant to participate in it.

(g) Scope of the draft

52. The scope of the draft articles, as described in paragraphs 42 and 43 of the Commission's report, was generally endorsed. However, some points made in connexion with general considerations on the scheme of the draft and the provisions in articles 1 and 2 also involved aspects relating to the scope of the draft (see paragraphs 64-71 below). In addition, one representative criticized the present scope for having excluded treaties concluded by international organizations.

53. That exclusion, it was said, would leave outside the scope of the draft certain cases of succession resulting from the participation of States in certain hybrid unions, like custom unions and common markets. Such unions might obtain an exclusive right to enter into trade agreements, as the European Economic Community under the Treaty of Rome. Trade agreements partners of the individual States forming the union, prior to the establishment of the latter, might not be sufficiently helped by providing that they would always have a right to claim damage from the States entering in the union. They might have a real interest in obtaining some legal relationship with the successor organization. In such a context, a sharp distinction between treaties made by States and treaties made by international organizations would seem objectionable.

(h) Scheme of the draft

54. Some representatives supported the conclusion of the Commission that, for the purpose of codifying the law of succession of States in respect of treaties, it would be sufficient to arrange cases of succession of States under three broad headings: (i) transfers of territory; (ii) newly independent States; (iii) the uniting, dissolution and separation of States. Other representatives stated that such an arrangement implied serious omissions, because it did not take into account the very important case of a change of régime in a State as a result of a social revolution.

55. The point was made that the distinction between "newly independent States" and States resulting from the separation of part of an existing State, the uniting of two or more States or the dissolution of a State was artificial. One category would have sufficed, that of the "new State", which would have made it possible to simplify the draft. The view was also expressed that the Commission should have avoided the use of extra-judicial concepts or terms. For instance, it was difficult to see what compelling technical reasons led the Commission to distinguish between what it termed "newly independent States" and States "emerging from the separation of a State", particularly in view of the fact that it had finally adopted identical solutions for both cases.

56. Mention was made of the need of studying problems concerning protectorates, mandates and trusteeship territories, but the view was also expressed that the highlighting of the differences between colonial administrations in former protected States or dependent territories was not justified, since the sovereignty of such States or territories had been limited in every case.

57. Certain representatives stressed that the Commission should give more detailed consideration to the different categories of treaties which should be distinguished in the draft. Recalling the question of law-making treaties mentioned above (see paragraphs 46-49), it was suggested that it might be appropriate, and would help in some contexts, to make in respect of multilateral treaties a tripartite distinction (general multilateral treaties; normal multilateral treaties; multilateral treaties of limited participation) instead of the present bipartite one (multilateral treaties; multilateral treaties of limited participation). Under the category of "general multilateral treaties" would fall, to use the wording of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, the multilateral treaties which dealt with the codification and progressive development of international law or the object and purpose of which were of interest to the international community as a whole (see paragraph 80 below).

58. Certain other points of a general nature were mentioned as deserving further consideration by the Commission. For instance, the idea of the continuity of the State, which at present it was said appeared only in article 28, should be examined in a more general context. The Commission might also consider the possibility of

extending to provisions concerning cases of transfer of territory and of newly independent States, as articles 10, 12 and 13, the exception concerning cases where a succession of States radically changed the conditions for the operation of the treaty, provided for in articles 25, 26, 27 and 28.

59. It was also suggested that the Commission might study the effects of the succession of States in respect of treaties which had already been the subject of an authentic interpretation either expressly or as the result of practical application, as provided for in article 31, paragraph 3, of the Vienna Convention on the Law of Treaties. The draft, it was said, touched on that question when it referred, in article 4 (treaties constituting international organizations and treaties adopted within an international organization), to "any relevant rules" of an international organization.

60. Some references were made to the need of studying the question whether any time-limit ought to be placed on the exercise of a newly independent State's option to notify succession to a multilateral treaty.

61. The question of the status of the treaties concluded between two independent States that entered into a union and the status of those treaties upon the dissolution of that union was also raised.

62. Certain representatives emphasized that in the event the draft led to the conclusion of a convention, it would be essential to devise a satisfactory system for the settlement of disputes arising out of the interpretation and application of the convention. Others said that such questions should be examined in due course.

63. Finally, it was also pointed out that, in revising the draft, the Commission should pay attention to problems of drafting with a view to avoiding ambiguous, imprecise or complicated formulations which might hamper the interpretation and operation of the provisions.

2. Comments on specific provisions of the draft articles

Part I. General provisions

Articles 1 and 2

64. Some representatives stressed the fact that the provisions of articles 1 and 2 carefully circumscribed the scope of the draft in a manner consistent with the 1969 Vienna Convention on the Law of Treaties. As a result, however, the scope of the draft was limited and covered only certain categories of treaties and of parties thereto.

65. In this connexion, certain representatives stated that, although succession of governments and succession of other subjects of international law were altogether excluded from the draft articles, the scope resulting from the provisions contained in articles 1 and 2, paragraphs 1 (b) and 1 (f) was a rather limited one. These representatives considered that the scope should be broadened with a view to including, at least, cases of succession of States in the event of a social revolution. Formation of a new historic type of State as a result of a social revolution changes radically the character of State as a subject of international law. A State of a new type determines itself whether it confirms or rejects the obligations that had arisen before it came into being. Such was the practice in France, after the Great French Revolution, and in Russia after 1917. Similarly the analysis of succession of States with respect to treaties should be supplemented by the analysis of the practice of States which have come into being as a result of social revolutions.

66. It was also suggested that in the light of the qualified definition of the term "treaty" in article 2, paragraph 1 (a), the word "certain" should be inserted in article 1 before the word "treaties". The view was also expressed that the definition of the term "treaty" should make explicit that the treaties covered were validly concluded international agreements because agreements, including devolution agreements, imposed by force, were vitiated from the start and had no legal validity.

67. Certain representatives supported the definition of the term "succession of States" in article 2, paragraph 1 (b), and stressed that it could be applied not only to succession of States in respect of treaties but to succession in general. Other representatives doubted that the expression "in the responsibility for the

international relations of territory", and in particular the use of the word "responsibility", was a felicitous choice. In this connexion, it was said that it was not a question of "international relations of territory" but of international relations of sovereignty in respect of a particular territory; that there was a transfer not only of responsibilities but also of rights and obligations; that due account should be taken of the fact that every territory had a population enjoying an inalienable right to self-determination; and that the word "responsibility" had a very specific meaning in the law of contracts and obligations. It was also observed that the word "responsabilité" had a more precise meaning in French legal language than the word "responsibility" in English usage. The view was also expressed that the words "one State by another" in article 2, paragraph 1 (b), created the impression that one "whole" State was to be replaced by another. The addition of the words "or part" of a territory was likely to be conducive to greater accuracy.

68. With regard to the definition of the expression "date of the succession of States" in article 2, paragraph 1 (e), it was noted that ascertaining the date of replacement could be done more conveniently if the concept of replacement was defined. The replacement had two component parts. One was demonstrable capacity of the successor State to hold and administer the territory inherited by it and the other was the existence of sufficient stability to be able to discharge the responsibility for international relations.

69. Certain representatives observed that the definition of the term "newly independent State" in article 2, paragraph 1 (f), rightly included all categories of formerly dependent territories freed from colonialism, although it did not apply to all cases of newly-formed States. The definition, it was added, should cover also theoretically independent territories subject to control through new forms of neo-colonialism.

70. Underlining that the draft did not entirely exclude situations where a successor State could become party to the treaty in question by means provided for in the final clauses of its text, certain representatives questioned the advisability of excluding "accession" from the means to establish the consent to be bound by a treaty enumerated in article 2, paragraph 1 (i).

71. Some representatives suggested that the definition of the term "international organization" in article 2, paragraph 1 (n), should be amended by inserting the word "international" before the words "intergovernmental organization". That amendment would remove any doubts which might arise when the expression was used in the context of States with a federal structure.

Article 4

72. Reference was made with approval to the fact that the draft took into account the special aspects of succession in respect of treaties constituting international organizations and treaties adopted within an international organization and safeguarded the rules on membership and other relevant rules of the organization concerned. The opinion was expressed that treaties involving membership of international organizations should not be hastily succeeded to, because membership might involve obligations such as budgetary commitments.

Article 6

73. Some representatives stressed the paramount value of the provision contained in article 6, according to which the draft would apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations. These representatives supported the inclusion of such a provision in the draft. Certain representatives questioned however the utility of the inclusion, in the light of the general reservation provided for in article 31 with regard to military occupation and outbreak of hostilities.

Articles 7 and 8

74. With regard to devolution agreements (article 7), it was said that the Commission had rightly concluded that those agreements could not form the basis for the transmission of treaty rights and obligations to the successor State. Agreements of that kind had been often concluded for the exclusive benefit of the former colonial Power. On the other hand, unilateral declarations made by successor States (article 8) were more in keeping with the status of a newly independent State. While not contesting the view of the Commission that the legal effect of a unilateral declaration would be analogous to that of a devolution agreement, certain representatives felt that, if possible, the difference between the two forms of legal act should be reflected in the wording of the relevant provisions of the draft.

Article 9

75. It was observed that in at least one significant precedent, the 1966 Geneva Agreement between the United Kingdom and Venezuela, practice indicated that the consent of the future successor State could be given in the act of signature of the treaty providing for its participation, which would be binding upon such State and make it a separate party to the instrument upon the attainment of independence, or, possibly, by the execution by the successor State of acts which clearly showed its intention of continuing to be bound by the treaty.

Part II. Transfer of territory

Article 10

76. It was said that the "moving treaty frontiers" principle embodied in article 10 of the draft could be endorsed without difficulty, since its application would necessarily depend upon strict invocation of article 6.

Part III. Newly independent States

Article 11

77. Several representatives stated that the Commission had been correct in adopting the "clean slate" principle as a general rule with regard to the position of newly independent States in respect of the predecessor State's treaties (article 11). They stressed that in the case of newly independent States the "clean slate" principle was more equitable than the principle of the continuity of treaty rights and obligations and took duly into account the principles of self-determination and of sovereign equality of States enshrined in the Charter of the United Nations and State practice. Furthermore, the "clean slate" principle as formulated in the draft did not prevent the participation of newly independent States in multilateral treaties by a notification of succession (article 12) nor the continuance in force of bilateral treaty by express or tacit agreement between a newly independent State and the other State party (article 19). General observations on the "clean slate" and continuity principles and the question of general law-making treaties have already been recorded in paragraphs 37 to 49 above.

Article 12

78. Certain representatives stressed that article 12 (Participation in multilateral treaties in force) reflected the consensual element which was the essence of treaty relationships. Those representatives supported in general paragraphs 2 and 3 of article 12 as well as the proviso related thereto contained in the opening words of paragraph 1. It was suggested, however, to add at the end of paragraph 2 the phrase "or if the successor State is not able to satisfy the condition or conditions of participation". The notion of the object and purpose of the treaty should not be confused with the conditions which might govern the participation of a new party.

79. The view was expressed that the article should make provision for the case where some parties to the treaty objected to the notification of succession and others not, in cases other than those dealt with in paragraph 3 of the article. Such a rule could be basically the one adopted for reservations in article 20, paragraph 4 (b), of the 1969 Vienna Convention on the Law of Treaties, so that the treaty would be in force between the newly independent State and some of the States parties, but not others. In this connexion, it was mentioned that a possible solution to the problem would be to affirm the existence of three categories of multilateral treaties: multilateral treaties of limited participation, normal nultilateral treaties and general multilateral treaties. With regard to treaties in the first category, the consent of all the parties to the treaty would be required in order for the succession to occur. As far as the second category was concerned, the treaty would remain in force between the new State notifying its succession and all the other States parties which were not opposed to such notification. With regard to the last category of treaties, it might be stipulated that no objection to notifications of succession of new States to general multilateral treaties would be admissible, in view of the normative character and universal application of such treaties.

80. In respect of treaties falling under paragraph 3, the view was expressed that the possibility should not be ruled out that a special treaty of that kind could enter into force as between the newly independent State and only some of the States already parties to it.

81. Regarding whether the successor State's participation in a multilateral treaty might be incompatible with the object and purpose of the treaty, it was said that the determining criterion could be simply explained as dependent on the legal nexus established by the predecessor State between the territory and the terms of the treaty. This would appear to pose no problems at all if the particular treaty in question was internationally applicable at the date of the succession of States.

Article 13

82. It was said that the provisions concerning participation in multilateral treaties not yet in force at the date of the succession of States were an acceptable innovation.

Article 14

83. Certain representatives considered that the provisions concerning the ratification, acceptance or approval by a newly independent State of a multilateral treaty signed by the predecessor State (article 14) were an innovation. Some questioned the necessity of the article and suggested its deletion. Others considered the article acceptable.

Articles 15 and 16

84. Certain representatives referred also to the provisions set forth in article 15 (reservations). Some of them pointed out that it would be logical for the "clean slate" principle also to apply to reservations. It would be preferable for the newly independent State to be obliged to renew a reservation made by its predecessor if it so wished. Such an approach would enable the newly independent State to exercise the same options it was allowed in other circumstances and would also have the advantage of strengthening multilateral treaties by weighing the balance in favour of a less restrictive application of its provisions. Moreover, it would be also in accordance with paragraph 2 of article 15 which allowed a newly independent State to make a new reservation to suit its own particular position at the time when it made its notification of succession. A similar view was also expressed with respect to article 16 (consent to be bound by part of a treaty and choice between differing provisions). The advisability of not automatically maintaining reservations in the particular case of law-making conventions was also supported by certain representatives but denied by others. /...

85. The view was also restated that when a newly independent State gave notice to the depository of its "succession" to a treaty and at the same time notified him of reservations of its own without alluding to those formulated by its predecessor, the newly independent State was a party to the treaty in question by succession, although the terms of the participation had been modified by the formulation of its new reservations and the implicitly abandoning of the predecessor State's reservations. To some extent, it was added, such a situation seemed analogous to the application of successive treaties relating to the same subject-matter where the provisions of the earlier treaty applied only to the extent that they were compatible with those of the latter treaty.

86. Reference was made with approval to the method of drafting by reference followed by the Commission in paragraph 3 (a) of article 15.

Articles 19 to 21

87. Some representatives stated that the rules in article 19, under which the consent of both the newly independent State and the other State party was required for a "bilateral treaty" to be considered as being in force, were pertinent and in accordance with international customary law and State practice. Certain representatives said that the expression of agreement by conduct, as provided for in paragraph 1 (b) of article 19, might give rise to difficulties and considered preferable to envisage an obligation of notification for the successor State. It was also considered advisable to be more precise about the date of the succession of States referred to in paragraph 2 of article 19.

88. It was explained that articles 20 and 21 gave effect to the basic rules of article 19, but the need of such articles was also questioned on the assumption that they were merely statements of fact.

Articles 22 to 24

89. Certain representatives noted with satisfaction the inclusion in the draft of provisions on provisional application (articles 22 to 24). With regard to article 23 (bilateral treaties), it was noted that a unilateral declaration by the successor State and the acceptance by the other State party had been used in State practice as a provisional method for maintaining treaty relationships. Very often such method had been preferred to negotiating the express revival of a "lapsed treaty" or a new treaty to replace it.

Article 25

90. Reference was made with approval to article 25 (newly independent States formed from two or more territories) according to which, with certain exceptions, any treaty which was continued in force under articles 12 to 21 would be considered as applying in respect of the entire territory of a newly independent State formed from two or more territories. However, it was also pointed out that the provision in article 25, paragraph (a), was too general in scope and lent itself to different interpretations. (The same point was made in connexion with article 27, paragraph 2 (b)).

Part IV. Uniting, dissolution and separation of States

Articles 26 to 28

91. Certain representatives noted with approval that in formulating the rules concerning the uniting, dissolution and separation of States the Commission had favoured, generally speaking, the principle of continuity. The need to reflect further on the complex questions raised by the provisions embodied in articles 26 to 28 was also mentioned.

92. With regard to article 26 (uniting of States), the view was expressed that the strict application of the principle of consent, embodied in paragraph 2 of the article, might be somewhat relaxed so as to make the treaty applicable to the successor State as a whole.

93. Concerning article 27 (dissolution of a State), it was said that the principle of continuity seemed perfectly legitimate in the case of the dissolution of "a union of States", the members of which frequently had some degree of international personality, but that the "clean slate" principle should be applied in cases concerning the dissolution of a union State in accordance with State practice.

94. The need for distinguishing between the dissolution of a State (article 27) and the separation of part of a State (article 28) and for providing that, in the first case, treaty relations should continue whereas, in the second, the "clean slate" principle would be applicable to the separated part was questioned by certain representatives. In their view it would be advisable, if only for reasons of consistency, that the same rules should be applied to both situations, unless it was made clear that the dissolution related to a union of former independent States.

Part V. Boundary régimes or other territorial régimes established by a treaty

Articles 29 and 30

95. Some representatives stated that the approach followed by the Commission with regard to the subject-matter of articles 29 and 30 was unobjectionable or unavoidable, that the present formulation of these articles was in principle acceptable, and that the articles should be retained in the draft, because they reflected positive international law and State practice and were designed to protect the interests of the successor States, particularly of the newly independent States, and those of the international community as a whole. In their view, it was highly desirable not to affect treaties establishing boundary régimes or other territorial régimes simply because a case of State succession occurred. The "clean slate" principle should not apply in an area where stability was so important as to override other considerations. The guiding motivation should be that of preserving peace and security. Articles 29 and 30 were a useful supplement of article 62 (fundamental change in circumstances) of the 1969 Vienna Convention of the Law of Treaties.

96. In this connexion, it was stated that a successor State did not come into existence in a vacuum. There were realities which did not depend upon its will. The terrain of the territory of such a State and the area of the territory in which it replaced the predecessor State, for example, were such realities. Inherent to the concept of replacement was that of the continuity of the same territory. When a new State came into existence in a given territory, the territory remained the same, only the State changed. All that was tied up to the territory was unalterable by reason of succession only.

97. Certain representatives considered that, in spite of the Commission's efforts, articles 29 and 30, as at present drafted, belied existing facts and cut across fundamental principles of modern international law, such as the principles of self-determination of sovereign equality of States, and of permanent sovereignty of States over their natural resources.

98. Some of them stressed the need to apply consistently and in all cases the principle of self-determination. Such principle had the character of jus cogens and no departures from it were admissible in respect of any category of treaties, including the so-called "localized" treaties. Those representatives failed to understand how the emergence of a newly independent State resulting from the liberation of a people from colonial domination could be regarded as a fundamental change of circumstances within the meaning of article 62 of the Vienna Convention on the Law of Treaties.

99. Certain representatives considered that the basic criterion in the matter should be to take into account the peculiar position of newly independent States concerned, former dependent territories, and the need to preserve peace and stability.

100. The view was expressed by certain representatives that the fact that States members of the Organization of African Unity (OAU) had pledged themselves to respect the borders existing on their achievement of national independence did not necessarily mean that the measure, which they had adopted in the interests of stability in Africa, should be consecrated as a rule of international law.

101. It was also said by certain representatives that a distinction should be made between "boundary treaties", mainly bilateral, and "other kinds of territorial treaties" affecting a large number of States (treaties concerning waterways, fisheries, etc.). Territorial treaties concluded in the interests of the international community should be respected, but boundary treaties required the agreement, at least tacit, of the neighbouring countries and could only be recognized if the treaty in question was: (a) a lawful treaty; (b) the continuation of the treaty was not a source of tension and instability; and (c) the rights of the people of the territory were not disregarded. A boundary was not a mere geometrical line but an area inhabited by people whose sentiments and right to self-determination should be respected. In the case of accession of a State to independence, the change of circumstances was not so fundamental that the exception for which provision was made in article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties, should not be applicable. It was also recalled that paragraph 2 (a) of article 62 of the Vienna Convention on the Law of Treaties

was adopted on the understanding that it in no way hampered the independent operation of the principles of self-determination and other valid principles. In the view of these representatives, the Commission should not try to codify rules concerning boundaries, because it might lead to perpetuate treaties which otherwise could be validly terminated.

102. In this field, it was added, it would be easier to find an appropriate solution for each particular boundary problem through political accommodation of the parties concerned or through arbitration. The role played by arbitration and conciliation in boundary conflicts in Latin America, notwithstanding the uti possidetis principle, and, in a more limited way, in Africa should not be underestimated.

103. Other representatives rejected the criticism advanced in relation to the boundary régime provisions of article 29 of the draft and considered that such provisions were well conceived. In this connexion it was said, inter alia, that (a) it was not a question of the status of the principle of self-determination but of its scope; (b) the principle of self-determination could not be extended to the point of removing the very foundation of the existence of the new State from the moment of its creation; (c) boundary treaties, which were intended to define the limits of sovereignty, must be capable of enduring, regardless of any transfer of sovereignty, because the latter could be transferred only on the basis of the boundaries which defined it; (d) succession of States was not a fundamental change of circumstances, which could only arise between two States having treaty relationship, but a problem of determining whether the treaty relationship was still in existence; (e) it was artificial to seek to divorce the question of succession of States from the essential framework of the Vienna Convention on the Law of Treaties, in particular paragraph 2 (a) of article 62 of that Convention.

104. Certain representatives stated that the expression "as such" at the beginning of article 29 was a clear indication that, whether it referred to succession in respect of a treaty or to the régime established by the treaty, all territorial claims which had arisen prior to the succession of States were maintained and their validity was unaffected by the mere occurrence of the succession. Therefore, article 29 would not consecrate any existing boundary if it was open to challenge. The provisions of the article would leave untouched any grounds of claiming the

revision or setting aside of a boundary settlement, whether self-determination, the lawfulness or validity of the treaty establishing the settlement or its termination. It was recalled that similar considerations prevailed in connexion with the adoption of article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties. Such paragraph of the Convention precluded only the invocation of the codified rules on fundamental change of circumstances as a ground for terminating a boundary treaty or withdrawing therefrom, but did not prevent that a boundary treaty could be challenged, and the boundary changed, by invoking other rights or grounds.

105. Certain representatives expressed reservation with regard to article 30 (other territorial régimes). They considered that article 30 went much further than article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties by stipulating that a succession of States did not as such affect obligations relating to the use of a particular territory. The scope of the provisions in article 30 should be made clear, because, at present, it seemed to apply indiscriminately to all the many kinds of treaties establishing a territorial régime and could include general treaties made by colonial Powers, such as the Berlin Act of 1885 which established a régime of free navigation on both the rivers Congo and Niger, treaties made by a colonial Power as administering authority granting rights and obligations in perpetuity, for instance a lease, over the territory of a colony or trust territory, or treaties relating to the establishment of military bases. The problems deriving from the discontinuity of colonial treaties establishing a territorial régime should be solved on the basis of the principle of good neighbourliness. Facilities granted to neighbouring or other States, for instance in respect of transit, could be maintained to the extent that it deemed to be consonant with the sovereignty of the successor State and its right to dispose of its natural resources. New arrangements could be concluded for the protection of rights and interests created by usage. It was also said that the drafting of article 30 could be simplified with a view to avoiding useless repetitions.

106. Certain representatives, who supported articles 29 and 30, doubted whether the Commission had solved the doctrinal issue involved. Should the rules in these articles be formulated in terms of the boundary or territorial régime resulting from the dispositive effects of a treaty or should they relate to succession in respect of the treaty itself? Articles 29 and 30 would seem to have been drafted from the standpoint that the question was not the continuance in force of a treaty

but that of the obligations and rights which devolved upon a successor State, but it could rightly be asked how, in legal theory, the rights and obligations of parties emanating from a certain treaty could be separated from the international instrument which had created those rights and obligations.

107. The view was expressed that if the provisions were drafted in terms of the "régime", more than in terms of the "treaty", it would be perhaps more appropriate to include them in the future draft on the part of the topic relating to succession of States in respect of matters other than treaties.

108. Without challenging the fundamental considerations on which the Commission had based itself, certain representatives felt that the Commission should give to the problems involved in the subject-matter of articles 29 and 30 a more detailed study and elaborate on its conclusions, which were now drafted in a purely negative form. Articles 29 and 30 should be considered within the context of the draft as a whole and, in particular, article 6, which restricted its field of application to cases of succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Part VI. Miscellaneous provisions

Article 31

109. Some representatives stated that cases of military occupation, State responsibility and outbreak of hostilities, referred to in article 31, should not affect the provisions of the draft articles on succession of States in respect of treaties.

110. The need for including in the present draft an article restating article 73 of the Vienna Convention on the Law of Treaties was, however, questioned by certain representatives. In particular, it was said that the reference to cases of military occupation should be deleted from article 31. Under the principles of modern international law prohibiting the use of force in relations between States, situations arising from the use of force, such as military occupation, were illegal and could not lead to the annexation of territories or to the recognition as legal of territorial acquisition resulting from the threat or use of force, as stated 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. Moreover, cases of military occupation were not mentioned in article 73 of the Vienna Convention on the Law of Treaties.

C. Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

111. In the course of the debate, many comments were made on the "Draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons" drawn up by the International Law Commission in the context of the topic entitled "Protection and inviolability of diplomatic agents and other persons entitled to special protection under international law". In those comments - made both by representatives who favoured the draft articles and by others who expressed reservations on them - reference was made to certain aspects of the draft as a whole, to specific provisions in it and to questions concerning the possible elaboration of a convention on the basis of the draft articles. Most of the representatives who made observations stressed that their comments were general and preliminary in nature and without prejudice to the more detailed and definitive commentaries which their Governments would be presenting in due course. Some representatives expressly indicated that they were refraining from making comments until their Governments had had an opportunity to examine the draft articles more thoroughly.

112. Some representatives also reserved the right to make further comments on the draft articles in the course of the examination by the Sixth Committee of the agenda item entitled "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".

1. Observations on the draft articles as a whole

(a) Importance of the topic and necessity and urgency of taking effective measures in respect of it

113. Stressing the importance of the topic and the necessity and urgency of taking effective measures in respect of it, many representatives offered special congratulations to the International Law Commission on the promptness, skill and competence with which it had responded to the request made by the General Assembly

in its resolution 2780 (XXVI) of 3 December 1971, in spite of the difficulty of the task and its heavy programme of work. The method followed by the Commission, namely the establishment of a representative Working Group instead of the appointment of a Special Rapporteur, was fully justified in the present context in view of the need for speeding up the preparation of the draft articles and completing the first reading in the shortest possible time.

114. Certain representatives nevertheless expressed regret that the draft articles had been prepared with such speed by the Commission, that a Working Group had been convened rather than a Special Rapporteur appointed, and that the study of other topics such as State responsibility was deferred even though such topics had long been on the Commission's programme of work.

115. The view was also expressed by certain representatives that the problems faced by the Commission in handling the topic lay rather with the terms of the mandate given to it by the General Assembly. In the future it would be well to avoid entrusting the Commission with the study of questions involving highly political issues.

116. Most representatives pointed out that attacks on diplomatic agents and other internationally protected persons affected not only the personal safety and freedom of innocent persons but also the exercise by them of their official functions, thus hampering the normal course and safety of international relations, the communications between one government and another and between governments and international organizations, friendly relations and co-operation between States, and in general promotion of the purposes and principles of the United Nations Charter. In the face of the increase in number, frequency and seriousness of such attacks in the last few years, and the new forms taken by such attacks, the prompt adoption of effective international measures was called for with a view to putting an end to a situation which was deteriorating steadily. Although the national laws of many countries already imposed severe penalties for such crimes and the existing international law and international conventions - especially the Vienna Conventions on Diplomatic and Consular Relations - recognized and set forth the basic obligations of States in regard to the protection and inviolability of diplomatic agents and other internationally protected persons, the events referred to proved the need for still closer co-operation among States in the matter.

117. Certain representatives maintained that attacks on diplomatic agents and other internationally protected persons were basically an aspect of a wider and more complex problem, namely, terrorism. Some of them nevertheless were of the opinion that that was no reason why the draft prepared by the Commission should not be considered independently of the topic of terrorism. Other representatives emphasized that the adoption of effective and equitable measures in keeping with the spirit and letter of the United Nations Charter and the Universal Declaration of Human Rights involved, as in the case of terrorism, an examination of the causes of attacks against diplomatic agents and other internationally protected persons. Only the identification and eradication of those causes, among which were mentioned imperialism, colonialism, neo-colonialism, racism, apartheid and régimes of terror, would make it possible for States, acting in co-operation with one another in conformity with the principle of sovereign equality, to eliminate their effects; and any measures adopted must be such as did not in any way restrict the exercise of the right of self-determination or individual freedom.

118. Some representatives also argued that, even though threats to the safety of diplomatic agents and other internationally protected persons inevitably impaired the relations between the countries concerned, it must not be concluded that all acts against such persons were of the same kind, were derived from the same motives or were equally to be condemned. To deal adequately with the problem, some argued, a clear distinction must be made between acts of terrorism committed by ordinary criminals and those which were the consequence of the struggle for national liberation and revolution by the people against oppressors. The political aspects of the question could not be deliberately ignored and international efforts to eliminate acts of terrorism should not be converted, for example, into efforts to suppress national liberation movements and other legitimate movements whose aim was to promote the principles of the United Nations Charter.

119. Other representatives explained that their position in the matter was motivated by a concern to strengthen the international juridical order as an indispensable element for the maintenance of world peace, and to combat the growing tendency towards anarchy. In that context, the view was expressed that the crimes envisaged in the draft prepared by the International Law Commission ought ultimately to be judged by an international court, together with crimes against the peace and

security of mankind; and it was pointed out that consideration of the question of an international criminal jurisdiction remained in abeyance for want of an agreement on the definition of aggression.

120. A considerable number of representatives argued that the main principle involved was that of the inviolability of diplomatic agents and the consequent obligation on States to protect such agents and other persons entitled to special protection under international law, and that existing international diplomatic law presented a number of gaps in that field which needed to be filled. Examples cited included the fact that neither the "appropriate steps" for protection which the receiving or host State was required to adopt nor the nature and extent of the responsibility of the State for failure to comply with that requirement had ever been clearly defined or crystallized. Other representatives held the view that what was needed at the present time was not to emphasize further the obligations of States in regard to the protection of the persons in question but rather, as emerged from the Commission's draft articles, to take measures calculated to deter the commission of crimes against the agents of States. International co-operation in that field should therefore be directed mainly towards preventing attacks on diplomatic agents and other internationally protected persons, prosecuting those who committed such crimes and ensuring that they did not escape punishment by taking refuge in other countries, and, in general, creating conditions in which the perpetrators of such acts would have nothing to gain thereby.

121. Apart from such differences of emphasis in regard to existing diplomatic law or the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, the representatives who made the observations referred to in the previous paragraph concluded that the best way of achieving the end sought would be to draw up an international convention likely to be very widely acceptable, on the basis of the draft articles prepared by the International Law Commission. Such a convention would not merely have a deterrent effect but would serve to strengthen and supplement the rules of public international law in force.

122. Other representatives challenged the view that the problem of attacks against diplomats and other persons entitled to special protection could be solved by drawing up yet another international legal instrument. Diplomatic law was one of the branches of law which had been most strongly developed in the last few years.

Important international instruments such as the Vienna Conventions on Diplomatic and Consular Relations and the Convention on Special Missions had already been adopted on the subject, and others such as the draft articles on the representation of States in their relations with international organizations were in an advanced stage of preparation. Such instruments and drafts had already codified the obligation of the receiving or host State to adopt special measures to protect diplomatic agents and other persons entitled to special protection. If the goal was to develop international criminal law, it could not be done in a piecemeal and circumstantial manner. Moreover, national legislations already laid down the principle that attacks against diplomatic agents and other persons entitled to special protection constituted crimes punishable by severe penalties. The representatives in question concluded that what was called for was not the preparation of a new international instrument but the proper and strict application of the current rules of international law. In that connexion, it was intimated that those States which had not yet ratified the principal multilateral conventions on the subject should do so.

123. Finally, a few of the representatives mentioned above expressed serious reservations concerning the elaboration of an international convention based on the draft articles prepared by the Commission. The reservations were motivated by various reasons, in particular, the lack of importance or urgency of the question and the philosophy underlying the measures proposed.

(b) Sources of the draft articles

124. Some representatives observed that, when preparing the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, the Commission had had at its disposal a number of relevant multilateral conventions, such as the Vienna Conventions on Diplomatic and Consular Relations, the Convention on Special Missions, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against Persons and related Extortion that are of International Significance. Some representatives said that their respective

countries were already parties to one or more of those conventions and endorsed the principles on which they were based. In addition, it was noted that the Commission had also had other background material, such as the draft convention in the working paper submitted the previous year by Uruguay, the "Rome draft" transmitted by Denmark, the written observations submitted by various Governments in pursuance of General Assembly resolution 2780 (XXVI) and the oral comments made on the question in the Sixth Committee during the twenty-sixth session of the General Assembly.

125. Other representatives were of the view that the international instruments cited in the Commission's report might serve only as a point of reference for the draft articles and could not be considered as grounds for supposing the existence of unreserved general agreement regarding the draft articles and their underlying principles. It should be remembered that the Hague and Montreal Conventions contained new legal principles because they had been conceived to regulate new legal subject-matter, which was not the case in the subject under consideration. With regard to the OAS Convention, the OAS member States had expressed differing views and many of them had not signed the Convention. If the aim was to formulate a generally acceptable international convention, it would be necessary to assemble more precedents and views.

(c) Scope, purpose and structure of the draft articles and general principles involved

126. A number of representatives pointed out that the Commission's draft articles were based on existing legal rules, sanctioned by customary international law and several general multilateral treaties, concerning the inviolability of diplomatic agents and the responsibility of States to accord a high degree of protection to those agents and to other persons entitled to special protection, and were designed to protect the system of communications among States. It was in the light of those two aspects that the structure and limitations of the draft should be regarded. The articles, which were essentially based on the principle of international co-operation, correctly concentrated on providing for the prevention and punishment of crimes against persons in respect of whom there existed an international obligation to provide protection, while taking care not to establish a régime which could be used as an instrument of repression on the pretext of protecting such persons. According to those representatives, the régime established in the draft,

even if it did not solve all the legal and political problems involved, fully reflected in general terms the objectives sought.

127. While they did not underestimate the legal value of the draft articles and generally endorsed their aims, structure and content, some representatives considered that certain problems of substance raised by the draft required further study with a view to its improvement. In that connexion, reference was made to a series of questions concerning the scope of the draft ratione personae and ratione materiae, extradition, the concept of "political crimes", the compatibility of the draft with the right of asylum, and the question of the establishment of jurisdication and the territoriality of criminal law. It was also said that the draft should include an article on the general obligation of neutrality in any political conflict on the part of persons who are entitled to special protection under international law on the territory of the State where they exercise their functions.

128. Some representatives considered that the draft articles were too repressive and did not take into account the diverse causes or motivations behind the crimes which were to be prevented or punished. In addition, the draft articles disregarded generally accepted principles of criminal law and international law, such as the rules governing extradition, the distinction between "political crimes" and other crimes, the right of asylum and the principle of the territoriality of criminal law. For those reasons, the representatives concerned expressed serious reservations about the draft or actually rejected its basic ideas and general tenor.

129. Some representatives felt that the legal régimes of protection proposed in the draft articles enabled diplomatic agents and other internationally protected persons to carry out their functions normally and ensured that receiving or host States were not forced to choose in each particular case between their obligations to their own nationals and their obligations to the sending State and the international community. It was also stated that one of the principal merits of the draft was that it proposed a régime which did not specify in greater detail the content of the obligation of the receiving or host State to take appropriate steps to protect diplomatic agents and other internationally protected persons. That might have been inappropriate in some of the varied circumstances which might call into play the basic obligation to provide protection.

130. It was also stated that the draft was structured along a logical sequence of stages between the two imperatives of deterrence and prevention. For example, article 3 concerned preventive measures and articles 5, 6, 7 and 10 action to be taken in case of offence, while acknowledging that the goal of such action should also be deterrence. Other provisions in the draft made it possible to determine the competent jurisdiction and gave States parties the option, in accordance with the principle aut dedere aut judicare, either to extradite the alleged offender or to submit the case to their competent authorities for prosecution. That eliminated the possibility that persons with respect to whom there were reasons for considering that they had committed a serious crime against internationally protected persons might escape punishment by seeking refuge in another country.

131. Some representatives emphasized the need to study the draft carefully from the point of view of the rules governing extradition. For example, it was asked whether in a case involving extradition the victim must be recognized as having the status of a protected person in both States concerned or whether it should suffice that he had protected status in the State where the offence had been committed. Other representatives considered that the draft articles disregarded commonly accepted principles regarding extradition, including the requirement for explicit definition of extraditable offences.

132. Certain representatives considered it unacceptable to equate an ordinary criminal with the perpetrator of a political offence and criticized the draft for disregarding the principle of non-extradition of the latter and the right of political asylum. In that connexion, it was stated that, although authors were not agreed on the definition of a political crime, the most widely held view adopted, for the purpose of defining such a crime, the subjective criterion of the motive of the act, while bearing in mind the political atmosphere in the State in whose territory the crime was committed and taking the offender's personality into consideration in order to avoid granting political asylum to ordinary criminals. Moreover, each State reserved its competence with regard to the definition of a crime, as provided in the Bustamente Code. In addition, in its resolution 2312 (XXII), the General Assembly had affirmed that territorial asylum was granted by a State in the exercise of its sovereignty and the Universal Declaration of Human Rights recognized, in article 14, that everyone had the right to seek asylum in any country.

133. Other representatives emphasized that one of the major defects of the draft was that it contained no clause safeguarding the right of asylum and that, in their existing formulation, the provisions concerning extradition could directly conflict with the possibility of invoking or exercising the right of asylum. It was recalled that the OAS Convention to Prevent and Punish Acts of Terrorism contained a specific provision safeguarding the right of asylum, that the 1937 League of Nations Convention for the Prevention and Punishment of Terrorism also provided for the right of asylum and that the General Assembly had in resolution 1400 (XIV) specifically requested the International Law Commission to undertake the codification of the principles and rules relating to the right of asylum. In that connexion, it was said that serious crimes against diplomatic agents and other persons entitled to special protection should be severely punished under municipal legislation, but that it was unacceptable that the fact of conferring the status of international crime on any type of "violent attack" committed against the person or liberty of such persons should, in all cases and regardless of the circumstances, prevent States - particularly those of Latin America, where diplomatic and territorial asylum was a traditional institution - from granting asylum in exceptional cases to the perpetrator of such a crime who had sought refuge in their territory. In addition, as stated in the Declaration on Territorial Asylum adopted by the General Assembly in its resolution 2312 (XXII), it rested with the State granting asylum to evaluate the grounds for determining whether the crime was political in nature and grant asylum.

134. Other representatives considered that the crimes mentioned in the draft articles could not be regarded as political crimes and be covered by the right of asylum. In that connexion, it was noted that article 14 of the Universal Declaration of Human Rights, which was the basis for the Declaration on Territorial Asylum in General Assembly resolution 2312 (XXII), provided that the right to seek and enjoy asylum might not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. Those who did violence to diplomatic agents and other specially protected persons, threatening the relations of friendship and co-operation among States, were engaging in acts contrary to the purposes stated in the Charter. In any case, the draft articles left untouched the central element in the law concerning asylum, namely the principle of non-refoulement.

135. Other representatives pointed out that it was impossible to define "political crimes" and that their inclusion in the draft articles would raise the question of the responsibility of States to afford adequate protection to diplomatic agents and other persons entitled to special protection. The balanced system of extradition or punishment embodied in the principle aut dedere aut judicare, adopted in the draft articles, was the best arrangement that could be envisaged. According to that principle, the State party in whose territory the alleged offender was present did not need to return him to the State requesting extradition if, for example, there was reason to fear that he might be subjected to unfair treatment there but could always choose to submit the case to its own authorities. Because of the importance which certain States attached to the right of asylum, some representatives also favoured that solution, while stating that the best arrangement would be for States parties to recognize in specific terms that crimes against persons enjoying special protection under international law could not be classed as political crimes and for them to refrain from granting asylum to the perpetrators of such crimes.

136. It was also stated that, although the crimes mentioned in the draft could not be considered as political crimes, it would be preferable expressly to safeguard the right of asylum, as was done in the OAS Convention, in order to ensure that political crimes did not fall within the scope of the articles.

137. Certain representatives criticized the provisions of the draft concerning the establishment of jurisdiction, on the ground that they disregarded the basic principle of the territorial character of criminal law, which was based on the principle of sovereignty and on the reciprocal recognition of the sovereign equality of States. The territorial character of criminal law did not, however, prevent States from giving each other mutual assistance by means of extradition on the basis of bilateral agreements. The interests of all States would be adequately protected by the proper exercise by each of its territorial competence, and it would be sufficient to supplement the latter by bilateral extradition agreements. The prosecution of a crime was a matter within the exclusive jurisdiction of the territorial State, which was free to request the extradition of the alleged offender when he was not present in its territory.

138. Other representatives acknowledged that the provisions of the draft articles constituted a further departure from the normal practice of States with regard to

the territorial scope of their criminal law and to the extradition of fugitive offenders, but considered that the approach to the question in the draft articles was in principle fully justified. Although in the case under consideration there was no intention of creating a new international crime, as in the case of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, there was an essential similarity in both instances deriving from the existence of the same "international element" in both types of case. Those representatives questioned, however, whether it was necessary to create a system of universal jurisdiction and preferred a more limited system of extra-territorial jurisdiction along the lines of the Hague and Montreal Conventions. The States directly affected by the offence would have primary jurisdiction and other States would have to exercise jurisdiction only if the offender was present in their territory and they declined to extradite, as opposed to the system in the draft articles whereby all States would have an equal claim to jurisdiction.

139. Lastly, other representatives considered that the draft articles correctly allowed all States to assert their jurisdiction with respect to attacks against diplomats. That made it possible to classify such attacks as international crimes and, for the purposes of extradition, to meet the requirement that both parties should consider the attacks as crimes. It was also stated that the establishment of universal jurisdiction in that regard would constitute real progress, although it might theoretically be argued that, in the interest of respect for the rule of law, it would have been still better to have provided for the mandatory punishment of the offender by any State into whose jurisdiction he might come.

2. Comments on specific provisions of the draft articles

Title

140. With regard to the title of the draft, it was observed that it would be more exact to use the expression "persons entitled to special protection under international law" rather than "internationally protected persons", since it was for States to ensure the protection of diplomats stationed in their territory, for the international community was by no means able to ensure such protection. For similar reasons, the view was also advanced that the expression "internationally protected person" should be replaced in the body of the draft articles by the expression "person entitled to special protection under international law".

Article 1

141. Some representatives emphasized that in the article which determined ratione personae, the scope of the draft, it was necessary not to lose sight of the draft's basic object, which was to protect the system of communications among States, and that account should therefore be taken of current realities and the needs of the modern world in that field as well as the need for States to co-operate as broadly as possible in conformity with the relevant obligations laid down by the Charter. In their opinion, paragraph 1 of article 1 adequately met those criteria. Those representatives considered it appropriate for the expression "internationally protected person" to cover not merely diplomatic agents in the normal sense of the term but also all categories of persons entitled to special protection under international law, in view of the essential role they played in modern international relations.

142. Other representatives voiced the opinion that the ratione personae coverage of the draft needed to be made more precise by a clearer definition of the categories of persons protected and of the very concept of "special protection". Doubt was expressed that an imprecise general formulation such as that used in the draft, together with the ambiguity of certain terms in the title and in the articles themselves, was the best means of achieving what, to judge from the commentary, appeared to be the intention of its authors, namely the broadest possible coverage.

143. In that connexion, it was stated that, in view of the existing wording of article 1, paragraph 1, the question arose whether "internationally protected person" included categories of persons who did not enjoy inviolability in the generally accepted meaning of the term but merely, under certain international instruments, immunity from legal process or from arrest or detention in respect of words spoken and acts performed by them in their official capacity. Inviolability implied that the receiving State or host State had the duty to take all appropriate steps to prevent any attack upon the person, freedom or dignity of those entitled to it, while immunity meant protection against interference by the authorities of the receiving State or host State but not against acts of terrorism. If a general formula were to be maintained, it should be explicitly stated in that provision whether the special protection should mean inviolability or should also cover the

whole range of persons entitled to a greater or lesser degree of immunity. It was suggested that, unless a satisfactory general formula could be worked out, the most appropriate procedure would be to enumerate the categories of persons to be protected.

144. According to another viewpoint, the appropriate course of action was to specify the categories of persons entitled to special protection under international law and to stipulate that, in other cases, the obligation of States extended only to persons specified in an international convention to which they were parties and in so far as that convention granted special protection to the persons concerned. The notion of "special protection" should also be defined in order to ensure the balanced and effective application of the convention to be elaborated.

145. Another alternative mentioned was to include in article 1 a reference to the Vienna Conventions on Diplomatic and Consular Relations, the Convention on Special Missions, and the Conventions concerning the privileges and immunities of the United Nations and specialized agencies, together with a provision stipulating that the persons affected by those Conventions were entitled to special protection.

146. In addition, certain representatives criticized the ratione personae coverage of the draft because, in their opinion, it dealt solely with the protection of persons who already enjoyed protection and inviolability as diplomatic agents.

147. It was also pointed out that, in determining ratione personae the scope of the draft, the fact should be taken into consideration that the number of persons entitled to special protection under international law was considerably greater than that for which provision was made in national legislation and ranged from Heads of State to international officials on official missions.

148. The inclusion in paragraph 1 (a) of a Head of State or Government among the categories of persons covered by the expression "internationally protected person" was not questioned by the representatives who referred to that matter. Some emphasized that in many countries the functions of Head of State or Government were performed by collegial organs and stressed the need to take that fact into account in the preparation of the final version of that provision in order to ensure that all members of such organs were properly protected.

149. Some representatives expressed the view that the same protection as was accorded in the draft to Heads of State or Government should be extended to persons of cabinet rank, especially ministers for foreign affairs and their families. In

dealing with the question of internationally protected persons, the Commission had based itself on the traditionally accepted rules of international law, but the present requirements of international communication pointed to the advisability of adopting an innovative approach. Heads of State now conducted foreign relations through their foreign ministers who were, de facto and de jure, the administrative heads of their countries' diplomatic services. Furthermore, it was becoming increasingly common for a minister for foreign affairs to perform in person, on behalf of his Head of State, the traditional functions of diplomatic agents abroad, including the functions of representation and negotiation, and that tendency was likely to become even more widespread in future. It was now not uncommon for a minister for foreign affairs to spend long periods abroad.

150. A number of references were made to specific categories of persons who were, or who should be, included in paragraph 1 (b) of article 1 as internationally protected persons. Some representatives endorsed the inclusion of the various categories of persons covered by the present formulation, emphasizing that the inclusion of international officials reflected existing law and the increasingly vital role played by international organizations in the contemporary world. Other representatives were of the opinion that the existing formulation should be revised with a view to broadening or limiting the categories of internationally protected persons. On the one hand, doubt was expressed that protection should be extended to members of special missions, or to all such members, and to officials of all regional international organizations. With respect to members of special missions, it was pointed out that they were less exposed to dangers of the kind that threatened members of permanent missions. On the other hand, it was stated that protection should be extended to representatives of national liberation movements visiting or resident in foreign countries, particularly representatives of movements recognized by the United Nations and by regional political organizations. It was further stated that it might be wise to protect persons who, under international agreements, were stationed outside their country for the purpose of providing technical co-operation and other forms of assistance to foreign States. It was also deemed to be anomalous that, as a result of the definition of "international organization" set out in article 1, paragraph 3, a minor official of a regional intergovernmental organization might enjoy protection not afforded to a senior representative of the International Committee of the Red Cross, which performed international and humanitarian functions.

151. The limitations in space or function of the protection granted under article 1, paragraph 1 (a) and 1 (b), were also the subject of comment. Some comments were favourable to the approach to that point taken in the draft, because of its international orientation and its aim of protecting the system of communications between States. On the other hand, doubt was expressed as to whether protection should be extended to Heads of State or Government when they were in a foreign State but were not exercising functions related to communication between States or Governments. In this connexion, it was said that the protection of such persons could more appropriately be provided under a convention on prevention and punishment of terrorism as the one concluded in 1937 within the League of Nations. In respect of paragraph 1 (b), it was stated that diplomatic agents were frequently subjected to attacks outside the performance of their official duties. It was further stated that, in view of the present mobility of diplomatic agents, they should be afforded protection wherever they might be, since it should be borne in mind that small States did not have the means to establish a large number of permanent diplomatic missions.

152. Finally, the view was expressed that it was incorrect to use the expression "presunto culpable" in the Spanish text of article 1, paragraph 2, to describe a person who had not yet been brought to trial. An effort should be made to find equivalent terms in the various languages which were compatible with all legal systems.

Article 2

153. Some representatives endorsed the approach taken by the International Law Commission with respect to article 2, and also the wording of that article. Other representatives expressed the opinion that the article should be improved by changing its basic approach and/or present wording. Finally, other representatives considered the article to be unacceptable, basing their opposition to the draft as a whole partly on their criticisms of article 2. In addition, a number of concrete suggestions were made concerning certain specific provisions in the article.

154. Proponents of the first of those views held the formulation "violent attack" to be satisfactory and appropriate, since it enabled the draft to cover all serious offences while at the same time leaving open to each State party to the future

convention the possibility of utilizing the various definitions in its internal law to determine the specific offences covered by the concept of "violent attack". An over-specific and excessively detailed statement of crimes might jeopardize one of the essential aims of the draft, namely to ensure the widest possible participation of States in the future convention. Furthermore, the use of the term "crime" was justified, since the acts dealt with by the article were normally regarded as crimes in domestic legislation. The article consequently took due account of the condition required by certain States in extradition proceedings, namely that the act on account of which extradition was requested should be considered a grave offence under the legislation of the States concerned.

155. Other representatives considered that the notion of "violent attack" was excessively vague and imprecise and lacked specific legal meaning. To base the wording of the article on a notion of that kind would create complications in interpreting and applying the future convention and would make it more difficult for States to participate in it. The most appropriate solution would be to replace that notion by a list of the particular categories of offences, such as murder, kidnapping and bodily assault, to be dealt with in the draft, and to leave the precise definition of each of the categories listed to national legal systems. In that connexion, it was stated that the present general formulation would not lead to uniformity since each State party would utilize its own internal law to define the crimes covered by the notion of "violent attack"; that there was no legal difficulty in listing in the future convention the crimes concerned, since they were already defined and penalized under all national legal systems; that there were many instances of treaties in which offences were listed without being described; and that under a number of national legal systems a "violent attack" as such was not a punishable offence. It was also stated that it was necessary to avoid creating crimes that were new to the domestic law of States in order to ensure that the proposed convention came into force as soon as possible.

156. Certain representatives stated that the crimes to be included in article 2 should constitute serious offences under national criminal law. It should be borne in mind that a request for extradition was, as a general rule, granted only in respect of offences punishable by a severe penalty under the internal law of both States concerned. The greatest care should therefore be taken to ensure that the

crimes to be covered by the draft constituted serious and normally extraditable offences. A broad and imprecise general formulation such as the present one did not meet that requirement, at least in the case of a number of countries.

157. It was also stated that the notion of "violent attack" was so broad that it could encompass petty offences and might lead to technical complications in those countries whose domestic law did not recognize the notions of "attempt" and "participation as an accomplice" with regard to petty offences.

158. Some representatives emphasized that it was necessary for the perpetrator of an offence under article 2 to know before committing it that the victim was an "internationally protected person". In their opinion, the existing formulation did not establish the requisite connexion between the offences which it described and the status of the victim. The word "intentional" used in that formulation was inadequate to clarify that point.

159. Certain representatives opposed article 2 on the ground that it completely ignored or altered well-established legal principles, such as nullum crimen sine lege, nulla poena sine lege, the principle of the territoriality of criminal law and the principles governing extradition. Any offence should be expressly defined and the appropriate penalties should be explicitly laid down, since in criminal matters interpretations by analogy or extension were inadmissible. An imprecise and tautological notion such as "violent attack" was at the same time unduly broad and unnecessarily restrictive. It might cover cases such as robbery perpetrated against a diplomatic agent in which it was very unlikely that a State would waive the principle of territoriality in criminal law. On the other hand, the term "attack" might result in the exclusion of the most serious crimes, such as murder, bodily assault and attacks committed against an authority in the exercise of its functions. Furthermore, the words "regardless of motive", by ruling out any consideration of the motives of the crime, constituted an inadmissible modification of the principles governing extradition.

160. The view was also expressed that the acts of violence dealt with in the article originated in a variety of political and social factors which could not be overlooked when assessing the nature and seriousness of those acts. It was therefore essential to examine the international incidents to which such acts gave rise in a reasonable manner and in the light of the different circumstances of each

specific case. If no distinction were made between such acts and all of them were indiscriminately punished by severe penalties, the resulting situation might be exploited by the forces which repressed national liberation movements and people's revolutions and might even be used as a pretext to commit acts of aggression.

161. Certain representatives considered that the present wording of certain provisions of article 2, paragraph 1, left some gaps which in their view should be filled. For example, the expression "violent attack upon the person or liberty of an internationally protected person" (subparagraph (a)) did not encompass insults or other offences against the honour or dignity of the diplomatic agent and other persons protected under the draft articles. Likewise, the expression "violent attack upon the official premises or the private accommodation of an internationally protected person" failed to cover attacks on property such as diplomatic vehicles. That omission might be rectified by including a reference to the property of the diplomatic mission or the diplomatic agent.

162. Referring to the provisions of article 2, paragraph 1, concerning "attempt" (subparagraph (d)) and "participation as an accomplice" (subparagraph (e)), some representatives pointed out that "attempt" was only one stage in the commission of a crime and that "participation as an accomplice" was one of the forms of participation in a crime. It was said that it would be inappropriate to bring any "attempt to commit" or "participation as an accomplice" in the crimes mentioned in article 2 within the scope of the draft articles. It was suggested that the expression "participation as an accomplice in any such attack" should be replaced by the phrase "participation in any such offence". Lastly, it was also stated that the "threat" (subparagraph (c)), which as such was not a crime in certain municipal laws and was a concept which could be interpreted subjectively by the States parties, should be omitted from the draft articles.

163. The principle of universality as the basis for determining jurisdiction in respect of the crimes enumerated in article 2, as set forth in the concluding part of paragraph 1, was the subject of various comments, the gist of which has been outlined above (see paragraphs 137 to 139).

164. In the view of some representatives, the inclusion of that principle in article 2 was justified inasmuch as the crimes dealt with in the draft articles affected the international community as a whole. It was essential for the draft articles to incorporate that principle so as to eliminate any possibility of

impunity for persons committing such offences. Certain representatives thought it preferable for the provisions concerning the establishment of jurisdiction to be based, as in the Hague and Montreal Conventions, on the concept of extra-territoriality rather than that of universal jurisdiction.

165. Other representatives had misgivings about the necessity or desirability of including in the draft articles provisions relating to jurisdiction and suggested that the concluding part of article 2, paragraph 1, as well as paragraph 3 of that article, should be deleted. The establishment of a universal or quasi-universal jurisdiction was acceptable only in respect of specific crimes of exceptional seriousness, but not in respect of crimes of the degree or seriousness of those covered by article 2. The deletion of the provisions of article 2 in question would not mean that such crimes would go unpunished, since States normally exercised jurisdiction not only over crimes committed in their territory but also over crimes committed in aircraft and other places under their jurisdiction.

166. The view was also expressed that a provision such as the one in the concluding part of article 2, paragraph 1, would entail radical changes, which would be difficult to accept, with regard both to substantive criminal law and to the rules relating to the application of criminal law territorially.

167. Some representatives expressed reservations with regard to article 2, paragraph 2. It was felt that the phrase "punishable by severe penalties which take into account the aggravated nature of the offence" implied that penalties should be imposed by reference to the nature of the victim as well as to the nature of the offence. Such a provision might cause some States to have difficulties in participating in the future convention; it was considered that the corresponding provisions of the Montreal and the Hague Conventions were more appropriate. On the other hand, the view was also expressed that it would be advisable to have a provision imposing heavier penalties for crimes committed against foreign diplomats, in accordance with the generally recognized principle that States had a special duty to protect such persons.

168. The wording "shall make these crimes punishable by severe penalties" was criticized on the grounds that according to several theories the imposition of penal sanctions should be based on such considerations as the prevention of crime or the security of society rather than the infliction of punishment. The expression

"severe penalties" was also criticized as being too vague, and it was suggested that it should be replaced by a provision stipulating that the persons committing the crimes referred to in article 2 would be subject to imprisonment.

Article 3

169. Certain representatives welcomed the provisions of the draft articles designed to prevent the crimes referred to in article 2 by means of international co-operation. It was also said, however, that article 3 should define more precisely the obligations of States in the matter of prevention.

Article 4

170. It was pointed out that, while the text of article 4 appeared to suggest that the draft dealt only with crimes committed in the territory of a State party, the commentary on article 5 made it clear that the draft was intended to deal with the crimes specified even when they were committed in non-party States.

Article 5

171. With regard to the wording of article 5, it was said that it would have been preferable to reproduce the provisions in article 6 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft. The deletion of the words "prosecution or" in article 5, paragraph 1, was suggested, since they were considered prejudicial to the institution of asylum. It was also suggested that the word "nearest" in paragraph 2 should be deleted, since it was not included in the Vienna Convention on Consular Relations and, in any event, the foreign officer could normally be expected to provide assistance with the authority bestowed upon him. As a matter of drafting, it was pointed out that for consistency with the wording of article 6 the words "the purpose of" should be inserted between the words "for" and "prosecution" in the English text of article 5, paragraph 1.

Article 6

172. Some representatives stressed the fundamental importance of the provision laid down in article 6 within the general framework of the draft articles and expressed their satisfaction that the provision incorporated the principle aut dedere aut judicare. In their view, that provision would make a major contribution

to the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. In addition, that principle was consistent with international law and had been incorporated in recent multilateral conventions, such as the Hague and Montreal Conventions.

173. Certain representatives, however, expressed serious reservations with regard to the inclusion of the principle aut dedere aut judicare in article 6, and some of them advocated deletion of the article. They based their view on their positions of principle with regard to such questions as the distinction between "political crimes" and other crimes, extradition and "political crimes", and the institution of the right of asylum referred to above (see paragraphs 132 and 133).

174. The view was also expressed that the scope of article 6 should be supplemented so that its provisions could not be used as a means of coercion against small States.

175. Lastly, it was suggested that the words "through proceedings" should be deleted or that the word "procedures" should be substituted for "proceedings" so as to make it absolutely clear, as was explained in the commentary, that the obligation of the State in whose territory the alleged offender was present to submit the case for prosecution did not necessarily imply that the State should institute "judicial proceedings".

Article 7

176. Three tendencies emerged with regard to article 7. Some representatives were in favour of the provision contained therein, others found it unacceptable and still others were of the opinion that the present wording went too far and should be revised.

177. In support of the provision, it was said that it provided an appropriate solution to the problems of extradition between States which had not entered into extradition treaties with each other. The convention which was to be elaborated on the basis of the draft articles would, when adopted, itself serve as an extradition treaty. Moreover, the wording of article 7 was based on the corresponding provisions of the Hague and Montreal Conventions and was consistent with the provisions of articles 5 and 6 of the draft.

178. Arguments against the provision referred to the fact that States which had entered into bilateral extradition treaties would be unlikely to accept the extension of their application to such poorly defined crimes as those in the draft articles. Moreover, the article contradicted the provisions of article 6 of the draft since, if it was established that any extradition treaty automatically applied to the crimes specified in article 2, that would implicitly nullify the option provided for in article 6.

179. The representatives who were in favour of revising the article indicated that such a revision could be carried out in the light of the relevant provisions of the aforementioned Hague and Montreal Conventions. For example, one might envisage the possibility of including in article 7 of the draft a provision based on article 8, paragraph 4, of those Conventions. It was also said that the relevant provisions of the 1961 Single Convention on Narcotic Drugs might be taken as a model for that purpose.

180. Certain representatives welcomed the solution provided in article 7, paragraph 4, for cases of conflict between requests for extradition. It was also pointed out, however, that the provision might cause problems in limiting the discretionary power of a State to choose among several requests for extradition. Lastly, it was observed that in order to avoid any ambiguity it would probably be necessary to amend the wording of that provision, inasmuch as a request for extradition might be made even before the communication required under article 5, paragraph 1.

Article 8

181. It was pointed out that in guaranteeting "fair treatment" article 8 was compatible with the Universal Declaration of Human Rights, but it was also observed that such vague terms as "fair treatment" did not constitute adequate protection for the fundamental rights of the accused.

Article 9

182. All representatives who referred to the article expressed doubts as to the desirability or necessity of including in the draft a provision concerning a statutory limitation as to the time in which prosecution might be instituted for the crimes set forth in article 2, and some representatives proposed that the

article should simply be deleted. Among the reasons advanced in that regard, the following were prominent: existing differences between municipal legal provisions with regard to statutory limitation; the fact that some national legal systems contained no rules concerning statutory limitation as regards prosecution; the distinction in many municipal laws between limitation in respect of prosecution and limitation in respect of penalties; the fact that the text of the article would set the maximum national limitation period for all the crimes covered by the draft articles; the fact that the text of the articles had no regard for the category of the crime under domestic law; the difficulty of determining objectively which crimes were "the most serious"; and the possibility of establishing different statutory limitation periods for different categories of serious crimes.

Article 10

183. It was observed that the article envisaged co-operation between States parties in the matter of legal assistance but made no mention of non-party States.

Article 12

184. The remarks made on the subject of article 12 reflected four different tendencies. Some were inclined to favour alternative A, some favoured alternative B, some considered both alternatives inadequate and, finally, some were of the view that neither of the two alternatives was necessary.

185. Those holding the last-mentioned view felt that disputes which might arise between States parties concerning the application or interpretation of the proposed convention could be settled satisfactorily by negotiation and by reference to the other relevant rules and procedures of international law. They had serious reservations with regard to article 12, in particular alternative B, under which a dispute could be submitted to arbitration or to the International Court of Justice upon the unilateral request of any of the parties to the dispute. In their view, a dispute could be submitted to arbitration or to the Court only with the consent of both parties thereto, in accordance with the principle of the sovereign equality of States. It was also said that the inclusion in the future convention of a provision concerning the settlement of disputes might reduce the number of States likely to accede to the convention.

186. Other representatives considered that every effort should be made to include in the future convention an acceptable procedure for the settlement of disputes which would be an improvement on the procedure laid down in Article 33 of the Charter. In the view of those representatives, both alternative A and alternative B of article 12 contained loop-holes which might make the procedures envisaged therein a dead letter. For example, with regard to paragraph 5 of alternative A, it was doubtful whether the envisaged conciliation commission would be competent to ask any organ that was authorized in accordance with the Charter of the United Nations to request an advisory opinion from the International Court of Justice to make such a request. With regard to alternative B, it was observed that paragraph 1 raised problems of interpretation inasmuch as it was not clear whether, in the event of a dispute being referred to the International Court of Justice, the Court would consider the question of substance or the problem of lack of agreement on the organization of arbitration, or both questions. Moreover, paragraph 2 of alternative B, in authorizing States parties to make reservations to paragraph 1, substantially weakened the latter paragraph and might even invalidate any possible system for the settlement of disputes which might be agreed upon between the parties concerned. In that connexion, it was suggested that it would be well to combine both alternatives of article 12, so that the parties would be obliged, in all cases, to use the conciliation procedure provided for in alternative A but, if that failed to produce the desired results, each would have the option of instituting arbitration proceedings.

3. Future action on the draft articles

187. A number of representatives stressed the urgency of the question and favoured the conclusion of a convention on the subject as soon as possible. Several representatives, on the other hand, expressed caution against undue haste and called for careful consideration of the draft articles before adopting a convention so as to secure the widest possible agreement. Certain representatives questioned the need of elaborating a convention on the topic.

188. In paragraph 64 of its report, the Commission recorded the decision it took, in accordance with articles 16 and 21 of its Statute, to submit the draft articles to the General Assembly and to Governments for comments. Almost unanimous support was voiced to this decision by the representatives participating in the debate.

189. As to the future handling of the draft articles, beyond submission to Governments for comments, four different main trends emerged from the debate. First, some representatives advocated the holding of a conference of plenipotentiaries early in 1973, or as early as possible before the twenty-eighth session of the General Assembly, with a view to adopting a convention on the basis of the draft articles prepared in 1972 by the Commission. In their view, a conference of plenipotentiaries would be in a better position than the Sixth Committee for elaborating and adopting without delay the convention, particularly in the light of the expected heaviness of the Sixth Committee's agenda at the twenty-eighth session of the General Assembly. Moreover, a conference would, as a specialized forum, facilitate the consideration of all aspects of the draft by providing the expertise, coherence and uniformity indispensable for its study. This view was reflected in draft resolution A/C.6/L.852/Rev.1. Some of the above-mentioned representatives thought it advisable for the Commission to give a second reading to the draft articles, in the light of comments and observations of Governments and statements made in the Sixth Committee, before the opening of the conference. This latter view was reflected in the amendments contained in document A/C.6/L.858/Rev.1.

190. Secondly, some representatives expressed the view that the best forum for the elaboration of a convention on the subject would be the Sixth Committee at the twenty-eighth session of the General Assembly, with or without a second reading of the draft article by the Commission. Among the reasons for choosing the Sixth Committee, rather than a conference of plenipotentiaries, those representatives mentioned the need for economy, the possibility of a greater number of participating States, and the availability of experts who would be in New York during the General Assembly session. The experience of the Committee in adopting the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on Special Missions was also cited. Furthermore, certain representatives found difficulty in accepting the invitation clause contained in draft resolution A/C.6/L.852/Rev.1. This view was reflected in the amendments contained in document A/C.6/L.856/Rev.1 and, later on, in document A/C.6/L.856/Rev.2.

191. Thirdly, certain representatives were of the opinion that the matter should be taken up by the Sixth Committee at the twenty-eighth session of the General

Assembly without prejudging the question of the elaboration of a convention or the procedure to be followed. This view was reflected in the amendments contained in document A/C.6/L.857.

192. Finally, other representatives took the view, reflected in the amendments in document A/C.6/L.855, that the Commission should be asked to give a second reading to the draft articles at its earliest convenience, in the light of the comments and observations of Governments, without prejudging any aspect of the action which should be subsequently taken.

D. Other decisions and conclusions of the Commission

1. The law of the non-navigational uses of international watercourses

193. Some representatives restated the view that the Commission should decide upon the priority to be given to the above-mentioned topic, at its twenty-fifth session, as requested in General Assembly resolution 2780 (XXVI). They also requested that the study on the subject undertaken by the Secretary-General pursuant to that resolution be completed and circulated, as soon as possible, and an advance report of such study presented to the Commission at its next session. This view was reflected in amendments contained in document A/C.6/L.854/Rev.1. Other representatives said that the priority to be given by the Commission to the study of the law of the non-navigational uses of international watercourses should not jeopardize the study by the Commission of other important topics on its current programme of work. One representative restated the opposition of his delegation to the study of the topic by the Commission. In his view, the subject did not call for the elaboration of a uniform model for universal action but for individual solutions appropriate to the individuality of each hydrographic basin. Such individual solutions should be found through co-operation among the States of the zone, taking into account the sovereign rights of the States to dispose freely of their natural resources and to carry out their plans for development as well as the principle of the State responsibility which implied that each State must faithfully observe the obligation not to cause significant damage to other States, by providing technical data on the work to be carried out within their national jurisdiction, and make restitution for such damages as duly proven and measured. The Commission's conclusions on the question of pollution of international watercourses were noted with approval. In studying the matter, the Commission should make full use of the work done by other competent bodies in the field and avoid duplication. In this connexion, reference was made to the work of the Council of Europe, where a draft convention on the protection of international fresh waters against pollution was at present under study, and to the fact that the subject of pollution, including that of international rivers, was considered at length in the United Nations Conference on Human Environment.

2. Organization of future work

194. Most of the representatives who referred to matters relating to the organization of the future work of the Commission endorsed the plan outlined in paragraphs 78 and 79 of the Commissions's report. The need of continuing the study of State responsibility, succession of States, the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations was generally recognized and reflected in draft resolution A/C.6/L.852/Rev.1. Several representatives welcomed the Commission's decision to give priority in 1973 to State responsibility and to succession of States in respect of matters other than treaties. It was also said that the Commission should make further progress in its consideration of the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations. For the views expressed in connexion with the revision of the draft articles on succession of States in respect of treaties, see paragraph 33 above.

195. Some representatives expressed their concern for the delay in the study of the topic of State responsibility. They recalled that the topic was in the Commission's programme of work since the establishment of the Commission and that the General Assembly had recommended on several occasions to speed up its study. Underlining the utmost and permanent importance of the topic, as well as the current concern of States for some of its aspects, for instance, State responsibility in matters relating to the human environment, outer space and the law of the sea, those representatives said that the Commission should give the highest priority to the study of State responsibility and prepare urgently draft articles thereon. This view was reflected in the amendments contained in document A/C.6/L.857.

196. The Commission's intention to review its long-term programme of work, on the basis of the "Survey on International Law" prepared by the Secretary-General, was fully supported. This support was reflected in draft resolution A/C.6/L.852/Rev.1.

197. Recalling the developments which in the last few years occurred in fields such as the protection of human rights in armed conflicts, the curbing of hijacking of aircrafts and the prevention and punishment of violence against diplomatic agents and other persons, the view was expressed that the Commission should give some fresh thought to the possibility of taking up again, at an early date, questions

relating to international criminal law and particularly to the preparation of a code of war crimes and other crimes against humanity connected with war crimes. The present discussions under the agenda item 49, entitled "Human rights in armed conflicts" did not deal with the criminal law aspects of these matters. The Commission could proceed to study the code simultaneously with the work of the Special Committee on the Question of Defining Aggression.

198. It was stated that the United Nations work on codification and progressive development of international law should include the central question of the fundamental rights and duties of States. An agreement of universal scope should be concluded setting forth the cardinal principles to be observed in the conduct of international relations with a view to guaranteeing the sacred right of all countries to a full existence, sovereignty and independence and to condemn any violation of the principles embodied in such agreement as acts contrary to the peace and the cause of international co-operation. The study of the legal rules relating to the peaceful means of settling international disputes and its adaptation to the needs and requirements of the peaceful coexistence between States was also suggested. In this connexion, the attention of the Commission was drawn to the consideration by the General Assembly, at its present session, of an item entitled "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".

199. Finally, reference was made to the need of studying topics such as the economic and social development of all mankind based on co-operation between States, the collective responsibility of all States to supervise and realize the achievement of such development with regard to weaker or dependent nations, the responsibility of all States to respect the territorial integrity of all other States and of colonial territories, the equal right of all States to self-determination and independence and to equality before the law, the responsibility of all States to settle their disputes by peaceful means, and the categorization as criminal offences of genocide, war, colonial and economic crimes, activities resulting in violation of human rights and activities contrary to the principles of the United Nations Charter and to the general principles of law recognized by nations.

3. Co-operation with other bodies

200. Many representatives welcomed the Commission's continuing co-operation with regional international bodies concerned with the codification and progressive development of international law. They regarded that co-operation as fruitful and of mutual benefit. Several of them expressed the hope that such co-operation should be maintained and strengthened. It was pointed out that although the task of the Commission was to codify universal rules of international law whereas regional bodies were concerned primarily with regional rules, the two rules should be harmonized.

4. Gilberto Amado Memorial Lecture

201. Several representatives welcomed the success of the first Gilberto Amado Memorial Lecture. The representative of Brazil informed the Committee that his Government had decided to renew its contribution to the Lecture.

5. International Law Seminar

202. Many representatives noted with satisfaction that the United Nations Office at Geneva had once again successfully organized the Seminar, providing an opportunity for an exchange of views between members of the Commission and young jurists. The hope was expressed that means will be found to expand the Seminar with a view to ensuring an even greater participation. Thanks were expressed to the members of the Commission and of the Secretariat who took part in the Seminar and to the Governments which had made scholarships available for participants from developing countries. Three representatives announced that their Governments would again make financial contributions to enable nationals of developing countries to attend the forthcoming session of the Seminar.

IV. VOTING

203. At its 1339th meeting, on 20 October 1972, the Sixth Committee proceeded to vote on the eleven-Power draft resolution (A/C.6/L.852/Rev.1) and the amendments thereto, and on the four-Power draft resolution (A/C.6/L.859), referred to in section II above, as follows:

(a) The Committee adopted, without objection, the first, second, third and fourth preambular paragraphs of the eleven-Power draft resolution (A/C.6/L.852/Rev.1);

(b) The Committee adopted by 40 votes to 33, with 39 abstentions, the first Mexican amendment (A/C.6/L.857) relating to the fifth preambular paragraph;

(c) The Committee rejected by 43 votes to 33, with 35 abstentions, the second Mexican amendment (A/C.6/L.857) relating to the sixth preambular paragraph;

(d) The Committee adopted, without objection, the seventh preambular paragraph of the eleven-Power draft resolution (A/C.6/L.852/Rev.1);

(e) The Committee adopted by 48 votes to 24, with 41 abstentions, the third Mexican amendment (A/C.6/L.857) relating to the eighth preambular paragraph;

(f) The Committee adopted by 106 votes to none, with 8 abstentions, the preamble of the eleven-Power draft resolution (A/C.6/L.852/Rev.1) as amended;

(g) The Committee adopted by 70 votes to 1, with 39 abstentions, the third Argentinian amendment (A/C.6/L.854/Rev.1) to section I;

(h) The Committee rejected by 37 votes to 29, with 47 abstentions, the fourth Mexican amendment (A/C.6/L.857) relating to section I;

(i) The Committee adopted by 108 votes to none, with 7 abstentions, section I of the eleven-Power draft resolution (A/C.6/L.852/Rev.1) as amended;

(j) The Committee adopted by 54 votes to 40, with 20 abstentions, the amendment submitted by Czechoslovakia and Mauritania (A/C.6/L.856/Rev.2) to section II of the eleven-Power draft resolution;

(k) The Committee adopted by 73 votes to 1, with 41 abstentions, the eleven-Power draft resolution (A/C.6/L.852/Rev.1) as a whole, as amended (see para. 206 below, draft resolution I);

(l) The Committee adopted unanimously the four-Power draft resolution (A/C.6/L.859) (see para. 206 below, draft resolution II).

204. At the same meeting, the representatives of Ecuador, Venezuela, Canada, New Zealand, France and Yugoslavia made statements in explanation of vote.

205. At the 1341st meeting, on 24 October, the Chairman of the Committee made the following statement: "During the vote at the 1339th meeting on document A/C.6/L.852/Rev.1 as a whole, as amended, there was a misunderstanding on the part of the Chinese representative. The Chinese delegation now wishes to state that its negative vote should be changed into non-participation in the voting."

V. RECOMMENDATIONS OF THE SIXTH COMMITTEE

206. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-fourth session, 2/

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Welcoming the draft articles prepared by the International Law Commission on succession of States in respect of treaties, 3/

Recalling that in its resolution 2780 (XXVI) of 3 December 1971, it recommended that the International Law Commission should study as soon as possible, in the light of comments of Member States, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law with a view to preparing a set of draft articles dealing with offences against such persons,

Believing that the need to protect the means by which international relations are carried on requires the most careful consideration by States in view of the continuing violent attacks upon diplomats, embassies and other persons and places entitled to special protection under international law,

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2/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev. 1).

3/ Ibid., chap. II. C.

Noting with satisfaction the draft articles prepared by the International Law Commission on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, 4/

Considering that since its first session in 1949 the International Law Commission has included the question of State responsibility in its agenda and that so far it has received six reports from its first Special Rapporteur and four reports from its second Special Rapporteur, in addition to various studies prepared by the United Nations Secretariat,

Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-fourth session of the International Law Commission, an eighth session of the Seminar on International Law,

I

1. Takes note of the report of the International Law Commission on the work of its twenty-fourth session;

2. Expresses its appreciation to the International Law Commission for the work it accomplished at its twenty-fourth session;

3. Recommends that the International Law Commission should:

(a) Continue its work on State responsibility, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963 and 2400 (XXIII) of 11 December 1968, with a view to the preparation of a first set of draft articles on the topic;

(b) Proceed with further consideration on succession of States in respect of treaties in the light of comments received from Member States on the present draft;

(c) Continue its work on succession of States in respect of matters other than treaties, taking into account the views and considerations referred to in the relevant resolutions of the General Assembly;

(d) Continue its study of the most-favoured-nation clause;

4/ Ibid., chap. III, B.

(e) Continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations;

4. Approves the programme and organization of work of the twenty-fifth session of the International Law Commission to be held in 1973, including the decision to place on the provisional agenda of that session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General";

5. Notes that the International Law Commission intends, in its discussion of its long-term programme of work, to decide upon the priority to be given to the topic of the law of non-navigational uses of international watercourses as requested in General Assembly resolution 2780 (XXVI);

6. Requests the Secretary-General to submit, as soon as possible, the study on the legal problems relating to the non-navigational uses of international watercourses requested in General Assembly resolution 2669 (XXV) of 8 December 1970, and to present to the International Law Commission at its twenty-fifth session an advanced report of such study;

7. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of jurists of developing countries;

8. Requests the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-seventh session of the General Assembly;

II

1. Invites States and also the specialized agencies and interested organizations to submit, as soon as possible, their written comments and observations on the provisional draft articles prepared by the International Law Commission concerning the prevention and punishment of crimes against diplomatic agents and other internationally protected persons;

2. Requests the Secretary-General to circulate the comments and observations referred to in paragraph 1 above in order to facilitate consideration of the draft articles by the General Assembly at its twenty-eighth session in the light of those comments and observations;

3. Decides to include in the provisional agenda of its twenty-eighth session an item entitled "Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons" with a view to the final elaboration of such a convention by the General Assembly;

4. Requests the Secretary-General to transmit to the General Assembly at its twenty-eighth session all relevant documentation which may be required for the discussion of that item.

DRAFT RESOLUTION II

Twenty-fifth anniversary of the International Law Commission

The General Assembly,

Recalling that on 21 November 1947 the General Assembly adopted resolution 174 (II) by which it established the International Law Commission and approved the Statute of the Commission,

Noting that the twenty-fifth anniversary of the opening of the first session of the International Law Commission will be marked on 12 April 1974,

1. Commends the International Law Commission and all the distinguished lawyers who have participated in its work for the outstanding contribution made to the codification and progressive development of international law;

2. Recommends that the twenty-fifth anniversary of the International Law Commission should be observed, in an appropriate manner, by the General Assembly during its twenty-eighth session;

3. Requests the Secretary-General to bring the present resolution to the attention of international organizations concerned with questions of international law.
