

1496th meeting

Monday, 11 November 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1496

AGENDA ITEM 87

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

1. Mr. KASEMSRI (Thailand) expressed gratitude to the Chairman of the International Law Commission for his comprehensive introduction of its report (A/9610 and Add.1-3) and paid a tribute to the achievements of the Commission over the past 25 years. The present report gave evidence of the Commission's continuing contribution to international law-making.

2. The Special Rapporteurs on the topic of succession of States in respect of treaties were to be congratulated for their contributions to the preparation of the draft articles (see A/9610, chap. II, sect.D), which would greatly facilitate the next stage of proceedings. His delegation agreed in principle that a conference of plenipotentiaries should be convened at an appropriate time with a view to concluding a convention on the basis of the draft articles, which would be given careful consideration by his Government. The Commission was to be commended for achieving a judicious balance between continuity of treaty rights and obligations and the "clean slate" rule. With the era of decolonization nearing its completion, it seemed inevitable that the "clean slate" rule would find less and less application in regard to newly independent States emerging from dependent Territories, but would instead be increasingly applicable to the situations contemplated in draft article 33, paragraph 3, where the separation of a new State occurred "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State". In that connexion, there was a paucity of State practice, which might partly account for the vague formulation of the draft, and a statement of the law in that regard might be premature at the present time. However, there was a recognizable political trend towards greater extension of the "clean slate" principle. As the representative of Italy had pointed out (1484th meeting) article 22 seemed to rest on a legal fiction. The purpose of that article was to avoid giving a retroactive effect to a notification of succession by a newly independent State while making provision for continuity. The final result was to bring about a situation where a treaty would be in force although its operation would be suspended. The Commission had admitted that that might not be in strict compliance with all the provisions of the Vienna Convention on the Law of Treaties.¹ Indeed, in his delegation's view, article 22 was not consistent with articles 57 and 58 of the Vienna Convention, which required prior consent of the parties concerned in order to suspend the operation of a treaty.

Unless otherwise agreed by the parties, or in the absence of any legal justification to the contrary, a valid treaty was performable. Even in the extreme case of a fundamental change of circumstances—if succession of States might conceivably be so considered—article 62 of the Vienna Convention did not seem to be applicable. Although it was possible that a party might provisionally suspend performance in accordance with the doctrine of *rebus sic stantibus*, there was no automaticity. Continuity for its own sake should not prevail over the alternative of accession by the successor State in accordance with the provisions of article 2.

3. With regard to the question of multilateral treaties of universal character and the question of settlement of disputes, his delegation was inclined to support the view that they should be left for consideration by the conference of plenipotentiaries.

4. With the able assistance of the Special Rapporteur for the topic of State responsibility, the Commission had made satisfactory progress on that subject. The three additional draft articles approved at the Commission's twenty-sixth session (see A/9610, chap. III, sect. B) would be carefully considered by his Government in due course. His delegation would like, however, to make a few observations on article 8 (b) concerning attribution to the State of the conduct of persons acting in fact on behalf of the State. Subparagraph (b) of article 8 appeared to differ from subparagraph (a) in that it dealt with individuals acting on their own initiative, sometimes without the knowledge of the official organs, and in the absence of the official authorities in the area. His delegation wondered whether such individual initiative should be attributed to the State in all cases. It might be pertinent to consider whether or not such conduct benefited the State, or was tacitly approved by the State or was subsequently endorsed by the State. Moreover, it might be asked whether, in the absence of official authorities, the State could be said to exercise effective control over the area where an internationally wrongful act was alleged to have occurred. Article 8 (b) seemed to imply that private individuals could violate an international obligation of the State, thus incurring State responsibility without the foreknowledge of the State concerned. According to the traditional view, State responsibility was said to arise from a failure of the State to prevent an offence committed by private individuals. Even in that case, however, responsibility was not absolute but contingent at least on implied foreknowledge on the part of State officials of the impending violation. It should also be noted that recent trends seemed to indicate an increasing prominence of the concept of individual responsibility as opposed to collective responsibility.

5. On the topic of treaties concluded between States and international organizations or between two or more interna-

¹ See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

tional organizations, his delegation agreed with the approach taken by the Commission, without prejudice to the final form of the draft, which would be decided upon at an appropriate time. At the present stage the draft articles (*ibid.*, chap. IV, sect. B) were intended to be only provisional. The work of the Special Rapporteur for the topic was deeply appreciated. Important contributions had also been made by the Secretariats of the various international organizations concerned. It should be noted that treaties between international organizations constituted only a small percentage of the legal arrangements between them; the majority of such arrangements were less formal. With regard to article 2, his delegation would suggest that the term "acceptance" should be used in the broad sense to include ratification as well as accession. There seemed to be sufficient United Nations practice to justify that simplification of terminology. Thus, the relevant portion of article 2, paragraph 1 (*d*) would read: "... when signing or accepting a treaty ...". With regard to article 6, concerning the capacity of international organizations to conclude treaties, his delegation appreciated the wisdom of avoiding any doctrinal controversy on that question and fully endorsed the pragmatic approach adopted by the Commission.

6. His delegation wished to commend the efforts of the Commission's Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses and the Sub-Committee's Chairman, Mr. Kearney, who had subsequently been appointed as Special Rapporteur for that topic. Some of the non-navigational uses referred to in the outline adopted by the Commission (*ibid.*, chap. V) seemed to have an important bearing on the question of the meaning and scope of the term "international watercourses". Moreover, the concept of "international drainage basin" was very relevant to the requirements of economic development and integration, as well as pollution control. A body of laws on that subject should aim at enhancing international co-operation, particularly at the regional and subregional level. In that connexion, he noted his country's interest in the development of the lower Mekong Basin. His delegation attached great importance to the Commission's work on international watercourses, and the Sub-Committee's report (*ibid.*, annex) would be duly submitted to the Thai authorities concerned for their careful examination and comments.

7. His delegation took note of the proposed future work programme of the Commission and supported in principle the Commission's recommendation that its minimum standard period of work should be fixed at 12 weeks. His delegation also noted with satisfaction the continuing contacts between the Commission, on the one hand, and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, on the other hand. His delegation was further pleased to note the success of the International Law Seminar for 1974 and wished to record its sincere appreciation for the scholastic contribution made by the members of the Commission as well as the financial contributions given by donor Governments. On a related item, namely, the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, his delegation wished to an-

nounce that the Government of Thailand had decided to contribute \$1,000 to the Programme for the current year.

8. Miss VEGA (Peru) expressed her appreciation for the accomplishments of the Commission during the past 26 years and congratulated its Chairman on his informative introduction of the Commission's report. The Commission's most important achievement at its twenty-sixth session had been the completion of the second reading of the draft articles on succession of States in respect of treaties. With regard to part I of the draft articles, her delegation supported the inclusion of article 11, which made territorial treaties an exception to the "clean slate" principle. With regard to part III, her delegation agreed with the idea that a newly independent State began its existence with a "clean slate" in so far as treaties were concerned. The "clean slate" principle was consistent with the principle of self-determination, under which formerly dependent territories were entitled to conduct their international relations as sovereign and equal States. In her delegation's view, the draft articles on succession of States in respect of treaties should be submitted to an international conference of plenipotentiaries with a view to the conclusion of a convention on the subject.

9. Her delegation attached the greatest importance to the topic of State responsibility, which was an essential concept of international law. Although the Commission had limited its work for the present to the responsibility of States for internationally wrongful acts, that should not prevent it from undertaking in due time a study of the topic of international liability for injurious consequences arising out of the performance of certain activities that were not prohibited by international law. In that connexion, consideration should be given to the new rules which might be laid down in the Charter of Economic Rights and Duties of States² and those set forth in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)) which recognized the full permanent sovereignty of every State over its natural resources and all economic activities.

10. Her delegation regretted that the Commission had not been able to resume its consideration of the most-favoured-nation clause. Although that topic was covered by the general law of treaties, a special study of it should be made in order to adapt it to the requirements of international life, while taking care not to impede efforts made to promote the interests of developing countries.

11. With regard to the report of the Joint Inspection Unit (see A/9795), her delegation pointed to the accomplishments of the Commission and its *sui generis* nature which distinguished it from other organs of the United Nations.

12. Her delegation supported the recommendation that the General Assembly should approve a 12-week session as the minimum standard period of work for the Commission.

13. Mr. BOULBINA (Algeria) commended the Commission on the quality of its work and paid a tribute to the

² Contained in resolution 3281 (XXIX) subsequently adopted by the General Assembly.

memory of Mr. Bartoš. He was sure that Mr. Šahović would prove a worthy successor.

14. The report of the Commission on the work of its twenty-sixth session, comprehensively introduced by the Chairman of the Commission, covered a number of important topics which reflected the changes that had occurred in international society, in particular as a result of the recent process of decolonization. With regard to the topic of succession of States in respect of treaties, he expressed appreciation for the contributions made by the Special Rapporteurs and said that he would refrain from commenting in detail on the draft articles. The Commission had done well to take the "clean slate" principle as the basis for its elaboration of the draft articles. That principle was in conformity with the principle of self-determination and consistent with the general freedom enjoyed by a newly independent State with respect to the treaty obligations of the predecessor State. The exception to the "clean slate" principle provided for in articles 11 and 12 of the draft, concerning boundary régimes and other territorial régimes was entirely consistent with the principle of self-determination. The formulation adopted by the Commission was balanced and realistic. In that connexion, he noted that the Organization of African Unity (OAU) had adopted a resolution which solemnly declared that all member States undertook to respect the boundaries existing at the time of their accession to independence. That resolution had confirmed the principle of *uti possidetis*, which had already been accepted by many States. Before convening a conference of plenipotentiaries to study the draft articles and to conclude a convention on the topic, it might be helpful if the Commission could take up at its next session the question of succession of States in respect of matters other than treaties and quickly complete its study of that topic, thus making available a *corpus juris* as complete as possible on the question of succession of States.

15. The criticism levelled at the Commission by the Joint Inspection Unit could not diminish the esteem in which the Commission was held by all Member States or the importance of its work.

16. Mr. OMAR (Libya) thanked the Chairman of the Commission for his detailed introductory statement and congratulated the members of the Commission on the constructive work accomplished at the twenty-sixth session. The Commission's most prominent achievement at that session had been the completion of the second reading of the draft articles on the succession of States in respect of treaties. His delegation was pleased that the Commission had based its work on the "clean slate" principle, according to which a newly independent State had complete freedom to decide whether to continue in force or to terminate treaties concluded by its predecessor. The Commission had rightly rejected the view that newly independent States continued to be bound by treaties formerly in force with respect to their territory. The draft articles prepared by the Commission were a sound basis for further study. His delegation endorsed the Commission's recommendation in paragraph 84 that a conference of plenipotentiaries should be convened at an appropriate date with a view to the conclusion of a convention based on the draft articles.

17. His delegation attached particular importance to the topic of State responsibility, to which it hoped the Commission would give its full attention. In particular, his delegation urged that efforts should be made to fill in the many loopholes in existing law, including, *inter alia*, the responsibility of colonial States for acts of exploitation committed in territories under their domination, responsibility for resettlement and evacuation of populations and injury caused thereby to life and property, responsibility for transforming colonial territories into theatres of war and sites for military experiments, including nuclear tests, and responsibility for the results of wars launched by colonialist countries among themselves or against liberation movements. In view of the important role played by the Commission in the codification and progressive development of international law, his delegation supported the recommendation contained in paragraph 165 of the report that the Commission's sessions should be extended from 10 to 12 weeks. His delegation also welcomed the Commission's continued co-operation with regional legal bodies.

18. Mr. ASEFI (Afghanistan) said the Commission had played and would in future play an increasingly important role in eliminating the use of force, encouraging co-operation and understanding among States and building a new system of international relations. The Commission's report on its twenty-sixth session reflected its positive accomplishments.

19. Commenting on the draft articles on succession of States in respect of treaties, he endorsed the stipulation in article 6 to the effect that the articles applied 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. Any departure from that principle would deprive the draft of a very important safeguard clause. It was well known that most of the older treaties, particularly those establishing boundaries, were irregular. Such instruments were illicit and therefore invalid, because they were contrary to the principles of *jus cogens* incorporated in the Charter. Article 6 should therefore be maintained.

20. Articles 11 and 12, concerning boundary régimes and other territorial régimes, and the relevant commentary did not satisfy his delegation. Those articles postulated the controversial principle of the inviolability of boundaries and territories and were in flagrant contradiction with the principle of self-determination. The right of peoples to self-determination was the main consideration to be borne in mind in contemporary international law. His delegation did not share the view of the Commission that under certain circumstances other principles should prevail over that of the "clean slate". Articles 11 and 12 were not in keeping with historical reality. Many boundaries had been outlined by the colonial Powers to meet certain strategic or economic objectives without any regard for the geographic or ethnic realities of nations. The legalization of such abnormal and unjust situations would lead to instability and tension among certain States and that would be contrary to the goals of the Commission.

21. The law of succession in respect of treaties was a very complex branch of international law and was governed by very pragmatic considerations. Thus, it was not unusual for

the same State to adopt diametrically opposed positions on the subject. The most complex part of that branch of law was undoubtedly the law of succession of States in respect of boundary régimes or territorial régimes established by a treaty.

22. In paragraph (11) of its commentary to articles 11 and 12, the International Law Commission referred to decisions taken by OAU. The fact that States members of OAU had undertaken to honour existing boundaries at the time of their accession to independence, for reasons that were undoubtedly valid in Africa, did not necessarily imply that their decision was applicable in other regions of the world and in different situations. The precedents mentioned in the Commission's report to justify articles 11 and 12 were not convincing. The manner in which the two articles were formulated gave them a political connotation and that was why they had been supported by quite a few countries. Indeed, like article 62 of the Vienna Convention on the Law of Treaties, articles 11 and 12 of the draft articles on the succession of States in respect of treaties merely reflected the practice followed by the United Kingdom during the eighteenth and nineteenth centuries when it had arbitrarily outlined boundaries in many parts of the world.

23. It would be interesting to see what effect the two articles would have at the international level in the event they should be adopted and included in a convention. Those articles directly concerned only two categories of States: States that were favoured by a previous treaty and States that considered themselves harmed by a previous treaty and wished to challenge its validity. Assuming those articles should be adopted by the General Assembly, would the States that considered themselves harmed agree to be bound by a convention only part of which they could accept? If they did not consider themselves bound by the convention, what would be the practical usefulness of the articles in question?

24. His delegation held the view that the role to be played by arbitration and conciliation in connexion with boundary disputes should not be underestimated. Experience had shown that such procedures could undoubtedly be of greater help than the rigid framework proposed by the Commission in finding an appropriate solution to problems that might arise in that field. Therefore, although his delegation congratulated the Commission and the Special Rapporteurs for the very interesting work they had done on the draft articles on succession of States in respect of treaties, it felt that the question of territorial treaties should be reviewed with a view to establishing rules that would be in harmony with the realities of the contemporary world and the fundamental principles of modern international law.

25. His delegation also wished to congratulate the Commission and the Special Rapporteurs for the progress they had made on the questions of State responsibility and treaties concluded between States and international organizations or between two or more international organizations. It hoped that the Commission would soon be in a position to submit complete draft articles on those subjects, as well as on the most-favoured-nation clause, succession of States in respect of matters other than treaties and legal problems relating to the non-navigational uses of international watercourses.

26. Mr. WARIOBA (United Republic of Tanzania) said the draft articles on succession of States in respect of treaties submitted by the Commission represented a considerable improvement over the draft that had been submitted two years before.³ His delegation whole-heartedly supported the "clean slate" principle with regard to the succession of newly independent States. However, it did not agree on the exceptions to that principle proposed by the Commission in articles 11 and 12 on boundary régimes and other territorial régimes. The arguments adduced by the Commission did not justify those exceptions. Territorial treaties should be dealt with in exactly the same manner as any others. In the case, for example, of the Belbases Agreements of 1921 and 1951, the United Kingdom, as administering Power, had made certain territorial commitments for Tanganyika; once that country had become independent, it had announced its intention to treat the Agreements as void. The same had been true in the case of the Nile Waters Agreement of 1929. That did not mean that the services referred to in the treaties had been discontinued; services could be continued despite the termination of a treaty.

27. With regard to the question whether multilateral treaties should be excepted from the "clean slate" principle, his delegation held that there were even stronger reasons for not doing so than in the case of boundary treaties. It would be illogical to expect any emerging State to be bound by multilateral treaties entered into by the predecessor State.

28. The question whether or not to include provisions concerning the settlement of disputes was one of the most vexing issues facing the international community and one to which it should give special attention. The proposal contained in foot-note 55 of the Commission's report was not the best solution, even though it could provide a considerable improvement over the existing situation. The international community had reached the stage where it must not only consider the possibility of elaborating procedures for the settlement of disputes, but must also consider the possible necessity of providing for an element of compulsion. Its main concern, however, should be to devise a procedure that would be effective, whether that involved compulsory measures or not.

29. His delegation would follow with interest the progress of the Commission on other topics taken up by it, such as State responsibility, succession of States in respect of matters other than treaties, and the law of the non-navigational uses of international watercourses. The latter question was very important and he hoped the Commission would be able to formulate guidelines on the matter within the next few years.

30. Referring to the report of the Joint Inspection Unit on the work of the Commission, he said it was very unfortunate that the reactions of both bodies should have reached the Committee in the manner and tone that they had. If the proper procedure had been followed, the debate would have taken a different course. His delegation did not believe the problem was restricted to questions of procedure alone,

³ See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10, chap. II, sect. C.*

but involved more than had been mentioned in the report. During the discussion on the matter at the twenty-eighth session, his delegation in the Sixth Committee (1405th meeting) had supported a Nigerian suggestion even to the extent of contemplating the dissolution of the Commission. His delegation did not hold that view now, but that did not mean the Commission was free from criticism. The arguments put forth by the Commission in rejecting the report of the Joint Inspection Unit were very strong. Nevertheless, the world had changed so much that existing organs must also change. There were urgent issues that required quick settlement. If the procedures and method of work of the Commission did not allow for it to accomplish its work expeditiously, its procedures and methods of work should be reviewed. The draft articles on succession of States in respect of treaties, for example, were the result of 12 years of work. It might take five years more before a treaty was drawn up and another five years before such a treaty could enter into effect. In other words, it could take over 20 years for the work of the Commission on one issue to have a binding effect. Also, if the composition of the Commission was holding back its progress, the General Assembly should offer suggestions for improvement. The Commission had been a very important organ within the United Nations, but if it continued to follow its present methods, it would be doomed to failure. Furthermore, other organs were bypassing the Commission and doing work in fields which could much better be dealt with by it. On the question of the pattern of conferences, he warned against creating a crisis that would do the Commission no good.

31. Mr. MAÏGA (Mali) said his delegation noted with satisfaction that, in pursuance of General Assembly resolution 3071 (XXVIII), the International Law Commission had completed 39 draft articles on succession of States in respect of treaties, which constituted an important contribution to the codification and progressive development of international law as well as to détente and international co-operation. The doctrine of succession of States had been a very controversial one and had given rise to complex and confusing situations. The Commission, having realized that there was no over-all doctrine that might provide an appropriate solution to the various problems of succession in respect of treaties, had stressed that the codification of the law in that regard would consist of determining the impact of a succession of States within the context of the law of treaties and bearing in mind the principles of the Charter. One of the fundamental principles on which the draft articles were based was the "clean slate" principle, which provided a new State with the opportunity of denouncing all previous treaties concluded on its behalf by a colonial Power.

32. Many of the provisions of treaties concluded by former administering Powers were contrary to the interests and aspirations of the peoples of newly independent States, and the "clean slate" principle ensured that the new State was entirely independent with regard to its political, economic and social options. However, his delegation agreed with the Commission that that principle should not affect boundary and other territorial régimes, which constituted a separate category of treaty relations. Articles 11 and 12 both confirmed the provisions of article 62 of the Vienna Convention on the Law of Treaties, which stated that a fundamental change of circumstances might not be

invoked as a ground for terminating or withdrawing from a treaty if the treaty established a boundary. That exception to the "clean slate" principle was, moreover, endorsed by legal theory and the practice of States and regional and international organizations. As the Commission had noted in paragraph (6) of its commentary to article 12, the case concerning the Temple of Preah Vihear had been settled by a treaty concluded between Thailand [Siam] and France in 1904. Similarly, the Conference of Heads of State and Government of OAU held at Cairo in 1964, also reaffirming the principle of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence, had adopted a resolution solemnly declaring that all States Members of OAU pledged themselves to respect the borders existing on their achievement of national independence. The Conference of Heads of State or Government of Non-Aligned Countries held at Cairo in 1964 had adopted a similar resolution.

33. With regard to the question of State responsibility, his delegation supported the Commission's decision to prepare a set of draft articles based on the relevant provisions of the Charter of the United Nations. The topic had particular importance in the contemporary world because of the interventionism and ambitions of certain Powers, and, in his delegation's view, State responsibility should be regarded as involved both in the case of acts committed by Governments and in the case of acts of aggression or crimes against peoples.

34. It would be advisable for the Commission to take account of State practice with regard to the progressive development and codification of the rules of international law relating to the non-navigational uses of international watercourses also. The legal régimes governing international watercourses varied so widely that the harmonization of rules applicable to all the practical problems that might arise should be approached with great caution.

35. His delegation supported the proposed extension of the Commission's session to 12 weeks, on the grounds cited by the Commission.

36. It welcomed the work done on the topic of treaties concluded between States and international organizations or between two or more international organizations and felt that, in view of the rapidly changing contemporary world, it would be desirable for the Commission to undertake as soon as possible the preparation of a legal instrument on succession of Governments and to resume its study of the most-favoured-nation clause, having due regard to the Declaration on and Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly at its sixth special session (resolutions 3201 (S-VI) and 3202 (S-VI)).

37. Mr. KEBRETH (Ethiopia) expressed appreciation to the Chairman of the Commission for his very lucid introduction of the Commission's report.

38. The Commission had reached a significant phase at its twenty-sixth session in its consideration of the topic of succession of States in respect of treaties, having completed a second reading of the draft articles on that topic. His delegation hoped that, subject to such further comments as

Governments might make, the text of the draft articles would ultimately be embodied in a treaty, to be made supplementary to the Vienna Convention on the Law of Treaties, with which the topic was, in the nature of things, intimately linked.

39. His delegation was in general agreement with the draft articles but wished to reserve specific comments on them for a future occasion. Generally speaking, the Commission's text struck a happy balance between the need for continuity in State relations in an increasingly interdependent world and the need for new States to be free from the shackles of the past. That had been made possible by the Commission's adoption of a method of work that put a premium on a meticulous survey and evaluation of State practice as evidence of the *opinio juris* of the international community. By adopting such a scientific approach, the Commission avoided *ex cathedra* pronouncements based on dogmatic assertions of any one single principle.

40. His delegation hoped that the Commission would be able to pursue its study of the topic of State responsibility for internationally unlawful acts with renewed vigour and determination, and that work on the international liability of States for injurious consequences arising from performance of lawful acts would also figure among the Commission's top priorities.

41. His delegation welcomed the fact that the Commission at its twenty-sixth session had set up a Sub-Committee to deal with the preliminary aspects of the legal problems relating to international watercourses, a subject that was of increasing importance in a world that had to make the best of limited water resources. In his delegation's view, the Commission should aim, at the initial stage, at the formulation of general principles concerning the utilization of water resources, without limiting itself to any one aspect of the problem, such as the question of pollution, which, as the Argentine representative had rightly pointed out, was a consequence of water use.

42. His delegation would consider favourably the Commission's request for an extension of its session to 12 weeks. Endorsement of the Commission's recommendation in that regard would be an affirmation of the Sixth Committee's confidence in the Commission, and the latter, which was frequently pressed for time, would be better able to accelerate the completion of its programme of work.

43. Mr. USTOR (Chairman of the International Law Commission) expressed appreciation to the Committee for the attention given to the report of the Commission and for the kind words uttered in respect of the Commission and himself. He expressed gratitude also to those who had made critical remarks on the Commission or its work, for he knew well that such remarks had all been made in a constructive spirit with the intention of improving the work of the Commission and furthering the cause of international law.

44. Statements by members of the Sixth Committee were always given the most thorough consideration by the Commission. Those statements reflected the views of the Governments or at least the views of authoritative persons who played an important role in the formation of the

ultimate position taken by States Members of the United Nations on specific issues. Members of the Commission always studied most carefully the summary records of the Sixth Committee's debate on the Commission's report, as well as the Committee's report on that agenda item. They always listened attentively to the oral reports of those of their colleagues who had the good fortune to attend the relevant meetings of the Committee. He would do his best to inform the Commission as faithfully as possible about the debate, the mood of the Committee, and, with the greatest pleasure, the spirit of comprehension, appreciation, help and collaboration which he had experienced in the Committee. It was on the mutual comprehension and collaboration of the Commission and the Committee that the cause of the codification and progressive development of international law stood or fell. The current year's debate had again shown clearly that understanding and co-operation between the two bodies was a flawless, living reality.

45. He would inform the Commission of the following with regard to the debate in the Sixth Committee. The report had stirred a very wide interest among members of the Committee; he had the impression that a substantially greater number of speakers had taken part in the debate than in previous years. The discussion had been on a high and scholarly level. Not only had the legal aspects of the various issues been considered but also the political implications had been illuminated and interesting thoughts had been developed. He had been particularly heartened to note that many representatives of young emerging countries had made their voices heard—voices which, as regards learning and erudition, had not fallen behind those of the representatives of other countries. While he had full respect for the reformatory idea of the United Kingdom representative (1493rd meeting) concerning the organization of work of the Sixth Committee, he felt that if it had been implemented at the current session of the General Assembly, he would have been the poorer for having missed many penetrating analyses of the Commission's texts. Some of those analyses illustrated the point that even the most carefully drafted text could give rise to diverse constructions.

46. He would inform the Commission further that its report had, on the whole, received a favourable response from the Sixth Committee, although there were some points on which a diversity of opinion existed. That diversity seemed to be somewhat greater than it had been in 1972 when the first set of draft articles on succession of States in respect of treaties had been presented to the Committee. Regarding that topic and also that of State responsibility, so many and so various points of view had been stated that he had felt a great temptation to respond at least to some of them, to explain and defend the positions taken by the Commission. He would, however, resist that temptation, firstly, because he did not wish to claim the authority to speak on behalf of the Commission about all the controversial issues raised in the debate and, secondly, for the sake of brevity.

47. With regard to the problems of the Commission in general, several members of the Committee had expressed the view that they would welcome an acceleration of the Commission's pace of work and that the need for the codification and progressive development of international

law was still great, notwithstanding the fact that what had been accomplished in that field in the past 25 years—thanks largely to the arduous work of the Commission and the valuable contribution of the Sixth Committee—was quite outstanding in the history of mankind. On that point there was no disagreement between the members of the Committee and the members of the Commission, who also believed that the international community was in ever increasing need of international law. The Commission tried, within the limits of its possibilities, to do its best to augment its output. Its report on the work of the twenty-sixth session testified to an extraordinary effort. It had done everything in its power to comply with the wishes of the General Assembly. It had succeeded in completing the second reading of the draft articles on succession of States in respect of treaties; it had made some progress in the field of State responsibility and it had found time also, at intervals, to address itself to two other topics. The texts submitted by the Commission had been adopted with unanimity or near unanimity, and that was in itself a veritable miracle in view of the composition of the Commission. In order to achieve that, it had been necessary to overcome the greatest difficulty in the very sensitive field of State responsibility, and the three new articles adopted at the twenty-sixth session were the result of long travail. To achieve agreement among jurists of such diverse backgrounds and such different schools of thought was perhaps the most difficult and time-consuming part of the Commission's work. The results so far attained, however, proved that its efforts were not entirely in vain. While bitter remarks were often made about compromises which satisfied neither party, he felt that the compromises reached by the Commission were supportable and useful to all.

48. The law-making treaties which were the outcome of the Commission's efforts were proof that universality of legal concept was not unattainable. Experience showed that the codification of international law was best performed through the interplay of minds trained in various legal systems and different cultures and through the harmonization of the wide range of experience of the members of the Commission, who must continually balance the preservation of their essential diversity against the demands of the imperative objectives of the Commission.

49. With regard to the working methods of the Commission, its members gave constant thought to ways and means of improving its work—to its own "progressive development", as one member had put it. It would continue to do so, as was only natural in the case of a body composed of responsible men, conscious of the expectations of the General Assembly and of the whole community of nations.

50. He was gratified by the Committee's response to the Commission's plea on matters of organization. The Commission would highly appreciate the comprehension shown by the Committee. The codification and progressive development of international law was not considered by the Commission as an end in itself but as a means towards the attainment of peace, security and the well-being of peoples. The codification and progressive development of international law was not a mere academic exercise but a means of achieving peaceful coexistence among States and their better and closer co-operation for the sake of their peoples and for all mankind. That was a noble task, and members of

the Commission devoted their energies and dedicated their lives to it, just as did many members of the Sixth Committee. The vital co-operation between those two bodies, both inspired by the same ideals, had, in the course of the past 25 years, developed into an international law-making machinery unprecedented in history. He trusted that that machinery would continue to work smoothly and that the results of the next 25 years would not lag behind those of the first 25 years but would surpass them. He wished all good luck, good health and a further improvement of the prevailing political atmosphere of confidence, which was an indispensable element of international law-making by means of codification and progressive development.

51. Mr. ROSSIDES (Cyprus) asked the Chairman to convey to the Yugoslav Government his delegation's condolences on the death of Mr. Milan Bartoš, the eminent Yugoslav jurist and distinguished member of the Commission. He expressed also his deep appreciation to the Chairman of the Commission for his lucid introduction of the report of the Commission on the work of its twenty-sixth session.

52. At that session, the Commission had most impressively carried out the recommendations made by the General Assembly in resolution 3071 (XXVIII). It had not only completed the second reading of the draft articles on succession of States in respect of treaties, but had also been able to make further progress on the topic of State responsibility by adopting three new articles and had dealt with the initial articles on treaties concluded between States and international organizations or between two or more international organizations. His delegation was particularly glad to note that the Commission had begun work on the law of the non-navigational uses of international watercourses, a topic which had an important bearing on the problems of environmental pollution.

53. The final set of 39 draft articles on succession of States in respect of treaties represented the culmination of a concentrated effort by the Commission, and he paid a tribute to the dedicated work of the two Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat. Taking into account the comments submitted by Governments, the Commission had revised its first draft, changing somewhat its structure and amplifying some of the original provisions, but had nevertheless maintained its basic approach to the codification of the topic and confirmed the principles on which the draft was based. His delegation was in agreement with that attitude and was therefore able to support the draft as a whole as a suitable basis for the elaboration of a convention.

54. In particular, his delegation agreed that the "clean slate" principle should be at the basis of the regulation of the position of newly independent States, since it was the best designed to meet their situation.

55. With regard to the topic of State responsibility, his delegation reaffirmed its support for the manner in which the Commission was approaching codification of the responsibility of States for internationally wrongful acts. The new articles adopted on the attribution to the State of the conduct of organs or persons acting for it in whatever

capacity represented a step forward in the codification of that most complex and sensitive topic. Following the recommendation of the General Assembly, the Commission had included in its general programme of work the topic of international liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts. His delegation agreed that "responsibility for risk" was different in nature and that the two categories of questions should not be dealt with in one and the same draft. Nevertheless, he stressed the urgent need for the legal regulation of acts which, by reason of their harmful effects, could no longer be treated as lawful. His delegation hoped that the Commission would find it possible to undertake consideration of that topic, as a separate item, in the immediate future. One of the most pressing aspects involved in the study of responsibility for risk was that concerning the effect of activities which, because of technological advances, gravely endangered the human environment.

56. The Commission had taken a first step towards the codification of the "primary" rules in one of the areas more directly relating to the preservation of the environment, namely, the non-navigational uses of international water-courses. On that topic, the Commission would be well advised to concentrate its efforts first on the urgent question of pollution of waters. However, there was also a compelling need for formulate those "secondary" rules that would determine the legal consequences of acts which were still considered as not wrongful under international law. That would be a significant contribution to the consolidation of the international legal order in a world threatened by the multiple perils that accompanied rapid technological advances. That topic had been mentioned in third place in General Assembly resolution 3071 (XXVIII), before the question of treaties concluded between States and international organizations or between two or more international organizations and should, in his delegation's view, be given priority. Some work on the marine environment had been accomplished at the Caracas session of the Third United Nations Conference on the Law of the Sea, but the larger part still remained to be done.

57. With regard to the remarks and suggestions by the Joint Inspection Unit regarding the seat of the Commission and the length and dates of its sessions, he felt that there were certain aspects of the problem that might have been overlooked by the Unit or to which it might not have given sufficient consideration. While the Unit was understandably concerned that as many international conferences and

meetings as possible should be accommodated at the United Nations Office at Geneva, it would seem that, for a body such as the Commission, entrusted with the vitally important work of the progressive development and codification of international law, special considerations should apply. One of the main problems of the technologically changed world was the urgent need to develop international legal order, for only thus could international security be maintained or the prospect of the cessation of the arms race become a realizable proposition. In addition, the growing requirements for the protection of the environment emphatically pointed to the need for the relevant development of international law. A move by the Unit which would result in hampering instead of facilitating the work of the Commission would run counter to the growing need for the progressive development and codification of contemporary international law. It would seem hardly advisable or profitable to interfere with the site of the Commission's meetings, which had been decided upon by the General Assembly in resolution 984 (X). His delegation firmly believed that the question of the time, location and length of the Commission's sessions should be left for the Commission itself to decide. His delegation supported the Commission's view that it should continue to sit at Geneva, in the months between May and July, for a minimum of 12 weeks.

Organization of work

58. The CHAIRMAN informed the Committee that at the 222nd meeting of the General Committee of the General Assembly the President had stressed that, if the current session was to end on 17 December as envisaged, considerable efforts would be required to accelerate the work of the Main Committees. It had been pointed out that by beginning their meetings late, the Main Committees had lost more than 80 hours since the beginning of the current session, or 15 per cent of the time allocated to their session. The early adjournment of meetings owing to a lack of speakers had further aggravated the situation. It had been suggested that in order to make up for lost time, the Main Committees should not only meet punctually but should also hold night meetings and even Saturday meetings. Accordingly, he appealed to all representatives to arrive punctually at meetings, to be ready to speak early in the general debate, to be concise in their statements and prompt in the preparation and submission of draft resolutions.

The meeting rose at 5.50 p.m.