1484th meeting

Thursday, 24 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1484

AGENDA ITEM 87

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

1. The CHAIRMAN invited the Chairman of the International Law Commission to introduce the report of the Commission on the work of its twenty-sixth session (A/9610 and Add.1-3).

2. Mr. USTOR (Chairman of the International Law Commission) said that, since 1957 when he had first attended the Sixth Committee as a member, times had changed considerably. The membership of the United Nations had almost doubled, mostly through the admission to the Organization of a great number of new States that had regained their independence from their former colonial status, with the result that the Organization had come much closer to universality. The international climate too had changed considerably. Notwithstanding all the miseries which still existed in the world and the controversies, and even armed clashes, among different States and groupings, the peoples of the world had become increasingly aware that their survival depended upon peace and co-operation. The current atmosphere of détente was a hopeful sign in international life and augured well for international law, since law would undoubtedly have an important role to play in the growing co-operation for the better organization of the world.

3. In the course of the Commission's twenty-sixth session, he had presided over three solemn events. On 12 June 1974, the Commission had paid tribute to the memory of the late Mr. Milan Bartoš, former Chairman, Vice-Chairman and Rapporteur of the Commission and Special Rapporteur for the topic of special missions. On 2 July 1974, the Secretary-General had addressed the Commission, and his complimentary words concerning the Commission's contribution to the codification and progressive development of international law, and thus to the fostering of friendly relations and co-operation among States and to the strengthening of international peace and security, had been most gratifying. The most solemn event had been the meeting held on 27 May 1974 commemorating the twenty-fifth anniversary of the opening of the first session of the Commission. Speeches had been made before a large audience of prominent persons, and the list of speakers appeared in paragraph 15 of the Commission's report. After the introductory words of the Chairman, Mr. Suy, the Legal Counsel, had made a scholarly statement on the work of the Commission and on the problems of codification and progressive development. He had recalled that the General Assembly had already paid a resounding tribute to the work accomplished by the Commission over the past quarter of a century and had stressed the importance of the support that the Commission always received from the Sixth Committee and how fundamental its relations with the regional intergovernmental organizations were. He had also paid tribute to the learning and ability of the members of the Commission and to their spirit of idealism and self-sacrifice.

4. Sir Humphrey Waldock, Judge of the International Court of Justice, had conveyed to the Commission the congratulations of the whole Court and had reminded the audience of the close relationship between the Commission and the Court, noting that in all some 15 members of the Commission had become Judges of the Court and that presently 7 members of the Court were former Commission members. His speech had been an elaboration on a quotation from Professor Jennings of Cambridge who, in 1964, had stated, with regard to the work of the Commission and of the Sixth Committee, that the whole procedure that had developed under Article 13, paragraph 1 *(a)*, of the Charter now seriously rivalled the International Court of Justice in its importance for international law.

5. Mr. Ago had said, *inter alia*, that, although the activities of the Commission were less spectacular than those of other United Nations bodies, there was reason to believe that in the long-term its work would not be the least important; the world might one day forget the successes and failures of certain United Nations organs, but it would remember the contribution of the Commission to the rule of law.

6. Mr. Yasseen had emphasized that the Commission in its declaratory role, which consisted in stating existing rules, and in its creative role, which consisted in proposing new rules, thanks to its methods of work, drew on all the opinions expressed by States and all the practices they followed. If it had been able to do useful work, that had been because its work was the result of continuous interaction, throughout the preparation of a codification draft, between scientific expertise and governmental responsibility, between independent thinking and the reality of international life.

7. Mr. Ushakov had stressed that the codification and progressive development of international law were assuming increasing importance, as they provided a basis for peaceful and friendly relations between all States, especially in the present-day world of States with different social systems. He had praised the method of appointing a special rapporteur for each topic and had paid tribute to all past and present special rapporteurs for the diligence with which they performed their difficult and often thankless tasks.

8. Mr. Elias, in an outspoken statement, had deplored the great difference in the status and treatment which existed between Judges of the Court and the members of the Commission, notwithstanding the great importance of the

latter's services to the United Nations, and he had expressed regret that the Fifth Committee was often parsimonious in its appropriations for the Commission to an extent which was not conducive to the proper discharge of the Commission's functions. Mr. Elias had highly praised the work of the Secretariat and expressed appreciation for the support of the Legal Counsel.

9. Mr. Tsuruoka had recalled that the members of the Commission were recruited from among jurists: judges, professors, ambassadors, who, by reason of their professions, were in constant contact with international life. Their varied experience provided the Commission with a source of exceptional quality, covering the various legal trends: revolutionary, progressive, conservative, as he had termed them, the synthesis of which shaped the Commission's work. In the new world, where the birth of a great number of States had created a new diplomatic, political and economic climate, the Commission was called upon to play an increasingly important part, meeting new needs and aspirations and taking into account all trends of thought and the legitimate interests of all peoples.

10. Mr. Kearney had said that the law-making treaties prepared by the Commission that were in force were proof that universality of legal concepts was not unattainable. However, they did not yet provide a partial skeleton around which a living body of world law could be constructed. The Commission must move with all deliberate speed to meet the needs of world society, and the possibilities of prolonging the yearly sessions of the Commission should be studied, together with other proposals for improvements. The basic structure of the Commission, however, should not be changed in an effort to accelerate codification. Any substantial modification in the organization or functioning of the Commission would destroy the delicate balance which it now achieved through the interplay of minds trained in different legal systems and different cultures and through the harmonization of a wide range of experiences.

11. In his own statement he had demonstrated how old, historically speaking, was the idea that a commission of jurists should work on the codification of international law and had expressed the conviction that the international law-making procedure, in which the Commission played such an important part, was destined to improve further. He had stressed that, despite their different creeds and colours, different legal systems and different political persuasions, men could only continue to live together on a shrinking earth by constantly maintaining and developing the legal order which would enable them to live in peace, freedom and justice and that the tasks before the international law-making machinery were endless.

12. Turning to the topic of succession of States in respect of treaties, he could now report that the General Assembly's recommendation, in its resolution 3071 (XXVIII), that the International Law Commission complete the second reading of the draft articles on that topic in the light of the comments received from Member States had been meticulously followed. The Commission had carefully studied the written comments of Governments and also the records of the Sixth Committee. After a thorough, renewed consideration of the emerging problems, the Commission now presented draft articles (A/9610, chap. II, sect. D), which it believed to be an improved version of the 1972 draft.[1] That achievement had been largely due to the extraordinary diligence and dedication of the Special Rapporteur, Sir Francis Vallat, who had not only prepared a lengthy, detailed yet concise report containing summaries and analyses of the comments of Governments, but also proposals as to the changes to be made in the articles or the reasons for leaving them unchanged. He had adapted the explanatory introduction and the commentaries to the 1972 draft to the needs of the 1974 drafts so that chapter II of the Commission's report on its twenty-sixth session contained practically all the relevant material and gave a clear picture of the thinking of the Commission, both in 1972 and 1974. The gratitude of the Commission had been expressed in a resolution reproduced in paragraph 85 of its report.

13. He paid a tribute also to the Chairman of the Drafting Committee, Mr. Hambro, and to all of its members for their untiring efforts and perseverance not only in respect of that topic but with regard to all other subjects dealt with by the Commission. In that connexion, he expressed appreciation also for the invaluable assistance of the secretariat of the Commission.

14. The 1972 draft had been somewhat amplified; the 1974 draft consisted of 39, instead of 31, articles. Moreover, it was now arranged in five parts instead of six. Part V of the 1972 draft had disappeared, and the two articles of which it had consisted—the one on boundary régimes and the other on other territorial régimes—had been transferred to part I and now formed part of the general provisions. That arrangement made it more evident that, in the Commission's view, those régimes remained unaffected by the succession of States as such, irrespective of what type of succession the case in question belonged to. Thus, all successor States were entitled to enjoy the rights arising from such inherited régimes and were bound to carry the burden of obligations stemming therefrom. The articles in question were now articles 11 and 12 and, apart from some drafting changes, had been retained in their original form. Most members of the Commission had felt that the criticism that those articles were contrary to the principle of self-determination was unfounded. The rule of the continuation of those régimes obviously left untouched any legal ground that might exist for challenging them, just as it also left untouched any legal ground for defence against such a challenge. To allay the fears of those who held opposing views, the Commission had included a new article in the draft—article 13—which explicitly stated that nothing in the draft articles should be considered as prejudicing in any respect any question relating to the validity of a treaty. A treaty in that context meant, of course, any type of treaty, including that which established a boundary or other territorial régime.

15. Another new article among the general provisions was article 7, on non-retroactivity. Obviously, a codification convention could not legislate in respect of events which had happened in the past. Some members of the Commission had felt, however, that it was desirable to include a special provision to that effect, having regard particularly to

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

article 6. Article 6 stated that the articles applied only to the effects of a succession of States occurring in conformity with international law, and it had been said that that statement, without further elucidation, might have implications with respect to events which had occurred in the past, even if that statement referred also to the principles of international law embodied in the Charter of the United Nations. That had led to the proposal which had now become article 7 of the draft. The article had been adopted only by a narrow majority, but the cause of the controversy was, of course, only the second part of the article.

16. The main arguments of the opponents of article 7 had been that non-retroactivity was a matter beyond the material rules of the topic and that it was not for the Commission but for Governments to decide upon it when considering the other questions which were usually settled by the final clauses of a convention. It had also been said that the article might give the erroneous impression that a provision of that kind made the draft articles and an eventual convention largely irrelevant to the current interests of States. It had also been argued that the provision was superfluous, because if the articles became a convention, that convention would be subject to the rules of the law of treaties, i.e., to the rule of article 28 of the Vienna Convention on the Law of Treaties,[2] which excluded retroactivity in quite general and unambiguous terms.

17. The majority of members, however, had felt that the adoption of that provision was useful precisely in order to restrict the possible effect of article 28 of the Vienna Convention on the future convention on succession of States in respect of treaties. Indeed, the application of article 28 of the Vienna Convention, which provided for non-retroactivity with respect to "any act or fact which took place . . . before the date of the entry into force of the treaty with respect to that party" would prevent the application of the articles to any successor State on the basis of its participation in the Convention.

18. Article 7 referred to entry into force in general, in contradistinction to article 28 of the Vienna Convention, which spoke of entry into force with respect to the individual State. Article 7 of the Commission's draft limited the non-retroactivity rule to a succession of States which had occurred after the entry into force of the treaty and did not extend it to any act or fact which took place before the entry into force with respect to the individual State, as did article 28 of the Vienna Convention. Thus, article 7 made it possible for the future convention on succession of States in respect of treaties to become applicable to a succession of States which occurred after the general entry into force of the convention, provided that the successor State became a party to it either according to the ordinary rules of the final clauses of the convention or by a notification of succession or by force of a rule of continuity, as the case might be. Article 7, as a *lex specialis*, compared to the *lex generalis* of article 28 of the Vienna Convention, restricted or mitigated the effects of the latter.

19. The Commission had not introduced any changes in the general scheme of the draft, in the belief that the scheme of the 1972 draft had been generally approved by Governments.

20. The title of part II of the draft articles had been changed from "Transfer of territory" to "Succession in respect of part of territory", in order to make it clear that its scope did not extend to cases of incorporation of the entire territory of a State into the territory of another State. Total incorporation would be covered as an instance of uniting of States. Otherwise, that part of the draft restated the so-called and generally recognized "moving treaty frontier" rule in a somewhat more elaborate and perhaps improved drafting.

21. Part III dealt with the position of newly independent States, i.e., those States–as defined as article 2, paragraph 1 *(f)*–the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecesor State was responsible. The Commission had maintained its view, not challenged by Governments, that the special situation of new States emerging from colonial status warranted special treatment and the adoption of special rules.

22. With regard to the underlying principles of part III of the draft articles, after careful consideration of the comments of Governments and delegations in the Sixth Committee, the Commission had found overwhelming support expressed for the "clean slate" principle, as understood by the Commission in 1972. Apart from the fact that the Commission evaluated the practice of States as confirming that principle, it believed that that principle alone corresponded to the situation in which a newly independent State generally found itself. It could be presumed, as a general rule, that the population of a territory in colonial status was normally not in a position to play any part in the actual government as the metropolitan Power and could not, therefore, be regarded as responsible for the conclusion of treaties and, consequently, could not be bound by treaties to which it had not consented. Thus the Commission believed that the "clean slate" principle was well designed to meet the situation of newly independent States and was consistent with the principle of self-determination of peoples.

23. Furthermore, the Commission, on the whole, had believed that the stand which it had taken in 1972 in respect of the theory of "contracting out" to which it referred in the 1972 draft in its commentary to article 12, in paragraph (5), had been approved by the great majority of Governments and delegations. He recalled that in 1972 the Commission had been unable to endorse the thesis that modern law did or should make the presumption that a "newly independent State" consented to be bound by any treaties previously in force internationally in respect of its territory, unless, within reasonable time, it declared a contrary intention. The Commission had continued to feel, on the whole, that a draft based on the principle not of "contracting out" of continuity but of "contracting in" by some more affirmative indication of the consent of the particular States concerned was more in harmony with the principle of self-determination.

24. The Commission had very seriously considered the question whether an exception should be made in respect

2 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.

of the so-called law-making general multilateral treaties, either by generally excepting such treaties from the "clean slate" principle or by according to newly independent States the possibility of contracting out from their predecessor's treaties of that type. That question had been raised in a more or less concrete way in the comments of several Governments, notably in those of the Netherlands, Greece, Spain, Canada, Morocco and the United Kingdom. The Commission had, of course, maintained its unchallenged position embodied in article 5 of the draft, that, like all States of the international community, newly independent States were bound by the generally recognized customary rules of international law.

25. However, the Commission had not accepted in 1972 the assimilation of law-making treaties to custom and had explained in detail, in the 1972 draft in the commentary to article 11 in paragraph (8), its position in respect of law-making treaties. As was stated in that paragraph, it was very difficult to sustain the proposition that a newly independent State was to be considered as automatically subject to the obligations of multilateral treaties of a law-making character concluded by its predecessor applicable to the territory in question. That question was treated also in the 1974 text in the commentary to article 15 in paragraph (8). The Commission held that, since other States were not bound to become parties to general law-making treaties, it would not be equitable to impose such an obligation on newly independent States. It would not be equitable to impose such an obligation on certain newly independent States on the mere chance that their predecessor States had become parties to such treaties while other newly independent States, because their predecessors had not participated in those treaties or in some of them, remained free from that obligation. When discussing that grave problem in connexion with articles 11 and 12 of the 1972 draft—articles 15 and 16 of the draft at hand—the Commission, on the basis both of principle and of the fact that the majority of the commenting Governments had not taken exception to the course taken by the Commission in 1972, had maintained its former position and had neither departed from the "clean slate" principle—as understood by it—in respect of general multilateral treaties nor introduced the "contracting out" system for the purpose of such treaties.

26. The question had come up again during the Commission's discussion of article 18 of the 1972 draft—article 22 of the present draft. Article 18 of the 1972 draft had given retroactive effect to a notification of succession by the newly independent State with respect to a multilateral treaty, even if the notification was delayed for a long period after the date of the succession of States. That could, admittedly, create an impossible legal position for the other States parties to the treaty, which would not know during the interim period whether or not they were obliged to apply the treaty in respect of the newly independent State. The latter State might make a notification of succession years after the date of succession of States, and in those circumstances another party to the treaty might be held responsible retroactively for breach of the treaty.

27. In order to avoid those inconveniences, the Commission had redrafted former article 18, and the present article 22 maintained the retroactive effect of the notification of succession but mitigated the situation of the other States parties. Thus, the treaty which was in force at the date of succession would be considered inoperative for the period between the date of succession and the date of notification unless the newly independent State and the other States parties otherwise agreed, either expressly or tacitly.

28. One member of the Commission had not found that solution satisfactory and, for that reason, had asked that his abstention in the voting on the draft articles as a whole be recorded. Late in the session, he had proposed the inclusion of an article 12 *bis*, the full text of which was reproduced in foot-note 54, with a reference in paragraph 76 of the Commission's report. That proposal would have introduced the "contracting out" system, at least for multilateral treaties of a universal character. The explanatory note to the proposal stated that it was of the utmost importance to the newly independent State and to the international community as a whole that such multilateral universal conventions as the humanitarian conventions, the conventions of the International Labour Organisation, the International Covenants on Human Rights, the Universal Postal Convention and the like, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, if they had already been applied in respect of the territory to which the succession related, should not cease to be in force for the newly independent State. On those grounds, the proposed article 12 *bis* would have maintained in force those treaties between the newly independent State and the other States parties to the treaty until such time as the newly independent State had given notice of termination of the said treaty for that State. The explanatory note emphasized that it was important not to impair the "clean slate" principle and said that that condition would be met if the newly independent State reserved the right to declare any such multilateral convention at any time within a reasonable time-limit terminated for that State.

29. That proposal had elicited sympathy among the members of the Commission on two counts: first, because it would secure the continuity of certain important general multilateral conventions on humanitarian and other important matters and, secondly, because it would automatically solve, at least with respect to those conventions, but not with respect to other multilateral conventions, the problems concerning the retroactive or non-retroactive effect of a notification of succession. If those multilateral conventions would automatically bind the newly independent States until the date they announced their withdrawal or "contracting out", then no problem would arise for the other States parties and there would be no interim period in which they were uncertain about the participation of the newly independent State. However, because of the lateness of the proposal and because it had seemed to the Commission that the "opting in" system which it had adopted in 1972 had received overwhelming support in the Sixth Committee and among the Governments which had submitted comments, it had decided to report that situation to the Sixth Committee.

30. The other sections of part III, on bilateral treaties of newly independent States, on the provisional application of their multilateral and bilateral treaties and the termination thereof, and on the position of newly independent States formed from two or more territories, consisted essentially of the same rules as the 1972 articles, in a redrafted, better elaborated and improved form.

31. Part IV, on uniting and separation of States was, unlike part III, based on the *ipso jure* continuity principle. On uniting of States, there were currently three new articles, articles 30-32, instead of the one in the 1972 draft—article 26. Apart from that amplification, the rules on the succession of States in the event of a uniting of States were in substance the same as those adopted in 1972. There was, however, one clarification which involved an important point of substance. Article 14 and articles 30-32 had been drafted so as to make it clear that, where one State was incorporated into another and thereupon ceased to exist, the case fell not within article 14 but within articles 30-32.

32. The two articles which in the 1972 draft had dealt with the case of a dissolution of a State and separation of part of a State—articles 27 and 28—had been completely redrafted in the light of Government comments.

33. Article 33 of the 1974 draft dealt with cases where a part or parts of the territory of a State separated to form one or more States, whether or not the predecessor State continued to exist, i.e., whether it was a case of dissolution or a case of separation. That article covered the situation from the viewpoint of the successor State. Article 34 dealt with the position of the State which continued to exist after separation of part of its territory. Article 33 maintained the provision that in cases where the separated part of a State became a State in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State, the successor State was to be regarded for the purposes of succession of States in respect of treaties as a newly independent State.

34. Articles 35 and 36 regulated participation in multilateral treaties in cases of separation of parts of a State when such treaties were not in force at the date of succession of States or when, at that date, the treaties in question had merely been signed subject to ratification, acceptance or approval. Article 37 dealt with the question of notifications which had to be made in certain cases.

35. In part V, entitled "Miscellaneous provisions", the Commission had arranged in a more logical way the cases which were excluded from the scope of the draft articles.

36. Some members of the Commission had been of the view that the articles should be submitted to the Assembly with the addition of satisfactory provisions for the settlement of disputes. Several comments received from Governments had stressed the need for such provisions. One member had submitted a draft article based on article 66 of the Vienna Convention on the Law of Treaties with an annex which was identical with the annex to the Vienna Convention. Although several members had supported that move, the Commission had deemed it inadvisable to pursue the matter further without reference to the General Assembly. The full text of that proposal was to be found in foot-note 55, and the views expressed in the Commission were recorded in paragraphs 79-81 of the report.

37. As to further action on the draft articles, the Commission was unanimously of the view that they should be given the same status as the Vienna Convention on the Law of Treaties, and the Commission had recommended in paragraph 84 of its report that the General Assembly submit the draft articles to a conference of plenipotentiaries with a view to the conclusion of a convention.

38. Chapter III of the Commission's report, which dealt with the topic of State responsibility, contained a useful historical review of the work done hitherto by the Commission and general remarks concerning the form, scope and structure of the draft articles. The Commission's study was limited to the responsibility of States for internationally wrongful acts and did not extend to international liability of States for injurious consequences arising out of the performance of certain activities that were not prohibited by international law. The Commission had decided to place that latter topic on its general programme of work in accordance with the recommendation contained in General Assembly resolution 3071 (XXVIII), paragraph 3 *(c)*. The Commission would take up the study of that topic at a later date, when it had terminated some of the topics currently under consideration and had made further progress in the consideration of the topic of State responsibility. A more accurate title for the latter topic would be: general rules of the international responsibility of the State for internationally wrongful acts. On the topic of State responsibility, the Commission had adopted three new articles on the basis of the scholarly report of the Special Rapporteur. The Commission was proceeding with great caution on that topic, which belonged to the very core of international law and touched upon very sensitive interest of States.

39. Chapter IV of the report contained a review of the work done on the question of treaties concluded between States and international organizations or between two or more international organizations, as well as some general remarks concerning the draft articles adopted by the Commission. In view of the close relationship of the articles to the Vienna Convention on the Law of Treaties, the Commission had decided, at least provisionally, to follow the order of the Vienna Convention in so far as possible, so as to permit continuous comparison between the draft articles and the corresponding articles of the Vienna Convention. Hence, the draft articles bore the same number as the corresponding articles of the Vienna Convention. Although the work done thus far was only a beginning, important matters had been decided, such as the definition of the term "international organization". Attention should also be drawn to article 6 of the draft, on the capacity of international organizations to conclude treaties, which had been adopted after a long and lively discussion in the Commission.

40. As could be seen from chapter V of its report, the Commission had scrupulously complied with the recommendation of the General Assembly in connexion with the commencement of its work on the law of the non-naviga-

tional uses of interntional watercourses. A Sub-Committee had been set up to consider the question and to report to the Commission. The report (see A/9610, chap. V, annex), which the Commission had approved, formulated questions to be put to Governments in accordance with article 16 of the Commission's Statute. The Commission had unanimously appointed Mr. Kearney Special Rapporteur for the topic.

41. Chapter VI of the report was devoted to miscellaneous matters. It began by stating that two of the topics on the agenda, namely succession of States in respect of matters other than treaties and the most-favoured-nation clause, had not been considered by the Commission during its twenty-sixth session. Paragraph 164 of the report indicated that the Commission intended to take up those topics, among others, in the course of its next session. In the enumeration of the topics to be considered in 1975, in the second sentence of paragraph 164, those topics were not mentioned in the same order as in the previous report. That had happened inadvertently and could not be construed as if the Commission had taken any decision as to the order in which it wished to take up those topics during its twenty-seventh session. Commenting further on chapter VI, he drew attention to section E, concerning the Commission's co-operation with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. The reciprocal exchange of visits and documents served both the interests of the Commission and those of the regional bodies. The Commission's relationship with those bodies was becoming gradually closer. There was still room, however, for further expansion of their relations in the common interest of developing international law.

42. In the last days of its session, the Commission had had the unpleasant task of replying to certain suggestions made by the Joint Inspection Unit in a report on the pattern of conferences of the United Nations (see A/9795). The position of the Commission had been stated in paragraphs 192-212 of its report. After the closure of the Commission's session, the Chairman of the Joint Inspection Unit had addressed a letter to him which was reproduced in document A/C.6/L.979. That letter had been circulated by the secretariat among the members of the Commission, but of course the Commission as such had not had an opportunity to consider it. Commenting personally on the letter and trying to be as objective as possible, he could not help feeling that the indignation the Chairman had expressed was unjustified. The Commission's remarks had not been meant to attack the personal competence of the Chairman and the members of the Unit. The issues raised in document A/9795 concerning the Commission had been thoroughly considered by other bodies long before. The Commission had rightly believed that those matters had been settled to the satisfaction of all interested parties. The Commission was well aware that the importance of the economical use of the Organiation's conference facilities was of the highest order, but at the same time it believed that the revival of settled issues was not only uneconomical but counterproductive if it disturbed the peace of a body which was working effectively and efficiently.

43. What the Commission deplored most was that the Joint Inspection Unit, before preparing its report, had failed to discuss the matter with the Commission or its secretariat. Consulting some passages of previous reports of the Commission was not a satisfactory substitute for consultations with the Commission or its secretariat. Although the Commission had not been in session when the report had been prepared, its Chairman could have been consulted or, in his absence, questions could have been addressed to the Chief of the Codification Division or other members of the secretariat. The vague references in the report to consultations with the former Legal Counsel and a very kind administrative assistant did not relieve the Unit from the charge that it had failed to become fully informed on all relevant facts.

44. Concerning the seat of the Commission and the time of its sessions, the Joint Inspection Unit could have learned from the Commission, its Chairman or the secretariat that since 1950, with two exceptions, the Commission had held all its regular sessions at Geneva. In 1955 the General Assembly had adopted resolution 984 (X) amending article 12 of the Commission's Statute to read: "The Commission shall sit at the European Office of the United Nations at Geneva. . . ." The right of the Commission to hold its sessions at Geneva had likewise been recognized in General Assembly resolutions 2116 (XX) and 2400 (XXIII). The Commission had agreed in 1962 that the most convenient opening date for its regular annual session was the first Monday of May.[3] The Commission had therefore been surprised to read in paragraph 323 of the Unit's report that the Inspectors were not aware of any substantial justification for the Commission to hold all of its sessions in Geneva. In paragraph 210 of its report, the Commission had remarked that many of its members had made permanent arrangements in order to be present in Geneva. Four members of the Commission were permanent resident ambassadors in Geneva and a fifth member was resident ambassador in Bern, Switzerland. That alone saved the United Nations substantial amounts in travel expenses and *per diem*. At least four members of the Commission were university professors who were sometimes compelled to fly home to meet academic obligations. One member regularly commuted between Paris and Geneva. In the circumstances, if the conference facilities in Geneva were insufficient to cope with the ever-growing demands of proliferating new organs, the Commission's view would be that it would be preferable to concentrate on curtailing those demands and not disturb a smoothly functioning organ which, relying on the provisions of its Statute, had numerous and valid reasons for not changing the time and place of its sessions.

45. The Commission had also been asked to consider the possibility of a somewhat tighter schedule with a view to shortening the over-all duration of the session. In that connexion, he pointed out that the Commission held, as a rule, five plenary meetings weekly, and not four, as was erroneously stated in paragraph 503 of the Unit's report. In its 1957 report to the General Assembly, the Commission had stated the reasons for its practice of holding only one plenary meeting a day.[4] At its twenty-sixth session the Commission and its various subsidiary bodies had held a total of 86 meetings, which was more than 7 meetings a

3 See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9*, para. 83.

4 *Ibid., Twelfth Session, Supplement No. 9*, paras. 26 and 27.

week, the figure cited by the Advisory Committee on Administrative and Budgetary Questions as the usual pattern of meetings for the committees of the General Assembly.[5] As his predecessor, Mr. Castañeda, had stated at the twenty-eighth session of the General Assembly (2186th plenary meeting), it was not equitable to assimilate the Commission in that respect with other United Nations bodies, among other reasons, because the members of the Commission, working in their personal capacity, could not be replaced by alternates or advisors.

46. The report of the Joint Inspection Unit revived the suggestion that the Commission should be divided into sub-commissions in order to increase its output. That again was an old idea which had been thoroughly examined by the Commission as early as its 1958 session, when the Commission, on the basis of an experiment made in 1957, had abandoned the idea. It had stated in 1958 that although there might be occasions in the initial stages of drawing up a draft on a difficult or complex subject when resort to the method of sub-commissions might be desirable, that should be done on an *ad hoc* basis.[6] References to the example of the United Nations Commission on International Trade Law were misleading, since the International Law Commission could not be compared with any other United Nations body, however distinguished, which consisted of Government representatives, i.e., of delegations where the chief delegate could be replaced by one or more alternates.

47. There was no need to explain that the status of the Commission, as a subsidiary organ of the General Assembly, was different from that of the International Court of Justice, one of the principal organs of the United Nations. The Commission, however, ventured to maintain that the importance of its work could be compared to that of the Court and that the work done by the Court at the judicial level was complemented by the Commission's work at the legislative level. The Commission was a basic pillar in the law-making structure of the United Nations, part of a system which worked smoothly and quietly and whose output had been found satisfactory both as to quantity and, more importantly, as to quality. The system was able to keep up the pace required by the international community and it would continue to do so, provided it was handled with sufficient care.

48. He drew attention to paragraph 165 of the Commission's report, which contained the recommendation that the General Assembly approve a 12-week session as the minimum standard period of work for the Commission, as from the next session. He hoped that that modest request would be favourably considered by the Sixth Committee, since an annual session of 10 weeks' duration was insufficient to meet the demands of the Commission's programme of work. He also noted that the International Law Seminar had been organized for the tenth consecutive year at no cost to the United Nations. Credit for that was due to Mr. Raton, Senior Legal Officer in the United Nations Office at Geneva. As in past years, members of the Commission had given lectures to and enjoyed meeting young scholars, recruited mostly from developing countries.

49. Mr. CASSESE (Italy) said that the report of the Commission bore witness to the highly skilled level of its activities and the first-rate quality of its drafts. The Commission made a decisive contribution to the codification and progressive development of international law, and was playing an increasingly important role in the peaceful evolution of international relations.

50. It was clear from the report that the Commission's greatest 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 and the elaboration of a final text. The Commission had managed to balance in a satisfactory manner the demands for freedom of action on the part of successor States with the somewhat conflicting need for stability and continuity in international rights and obligations, and certainty and clarity in treaty relationships. His delegation supported the Commission's solution of adopting, with a few qualifications, the principle of *ipso jure* continuity with regard both to successions resulting from the merger of two or more States (articles 30-32) and to cases of dismemberment or dissolution of an existing State or secession from such a State (articles 33-36). He further endorsed the Commission's solution, which was in keeping with long-established customary law, of making the principle of continuity applicable to treaties establishing boundaries (article 11) and to other so-called territorial treaties (article 12). Despite the possible misgivings of some States concerning article 11, his delegation considered that inasmuch as that provision governed only the possible impact of State succession on boundaries, it should be accepted. It merely provided that a succession of States as such did not affect a boundary established by a treaty.

51. His delegation supported the adoption by the Commission of the "clean slate" principle with respect to the succession of newly independent countries, whereby States emerging from former dependent territories could enter into international relations as sovereign and equal States. The "clean slate" principle was in keeping with the general principle of the self-determination of peoples.

52. Broadly speaking, the draft articles on succession of States in respect of treaties met the need for certainty and clarity in international relations. The Commission was to be commended for abandoning the system of retroactive application of the substantive provisions of treaties, which it had adopted in article 18 of its previous draft,[7] since that system would have raised many problems. The more satisfactory system of retroactive suspension had finally been adopted by the Commission in article 22, paragraph 2, of the latest draft which left no doubt that prior to the notification of succession, neither the newly independent State nor other States would be bound by the substantive provisions of treaties. The practical advantage of the solution chosen by the Commission outweighed the drawbacks, which derived from a twofold fiction: firstly, that treaties were considered in force from the date of succession and secondly that treaties were at the same time regarded as suspended in their operation.

5 *Ibid., Twenty-eighth Session, Supplement No. 8A,* document A/9008/Add.14, para. 3.

6 *Ibid., Thirteenth Session, Supplement No. 9,* para. 62.

7 *Ibid., Twenty-seventh Session, Supplement No. 10,* chap. II, sect. C.

53. His delegation regretted that the Commission had not had time to discuss the proposals submitted by two of its members concerning multilateral treaties of universal character and the settlement of disputes, reproduced in foot-notes 54 and 55 of the report. The first proposal, in foot-note 54, concerning multilateral treaties, was designed to remedy the lack of a greater number of provisions attenuating the wide scope that the "clean slate" principle was given in the draft articles concerning newly independent States. Of course, those draft articles had been tempered by the provisions of articles 11, 12, 26 and 27, yet the general interest of the international community in preventing successions of States from disturbing existing treaty relations required that stability be more firmly ensured when certain overriding community interests were at stake. To be acceptable, the wording of the proposal should be made more precise, but in any case the principle whereby the successor State continued to be bound by the treaties concluded by the predecessor State unless it decided to terminate them could apply at least to universal treaties relative to human rights and fundamental freedoms and to the Geneva Conventions of 1949 for the protection of war victims.

54. With regard to the second proposal, in foot-note 55, many provisions of the final draft made reference to the "object and purpose" of treaties in order to determine whether or not such treaties could apply to successor States, but given the imprecision of the term "object and purpose" those provisions could be correctly applied only if there existed a body responsible for interpreting them and settling any disputes arising out of their application. His delegation considered the establishment of such a body essential, and found considerable merit in the proposal set out in foot-note 55. That proposal referred only to conciliation and should arouse no misgivings among the States which were opposed to the judicial settlement of disputes. In view of the importance of the problems raised, he suggested that States should be invited by the General Assembly to offer their written comments not only on the final draft articles submitted by the Commission but also on the questions of the universal humanitarian treaties and the settlement of disputes.

55. He congratulated the Commission on adopting three more draft articles, namely articles 7, 8 and 9, on State responsibility, which spelt out the principle that any State was internationally responsible not only for the wrongful acts of its organs but also for the wrongful acts of persons, groups, bodies or entities which exercised governmental authority or acted under its control. As a result of that principle, no State could escape international responsibility by claiming that under its municipal legal order the authors of the international wrongful acts were not State organs. His delegation fully endorsed the three new draft articles and their underlying principle and noted that many provisions of the articles reflected the existing practice in inter-State relations. It was gratifying that some of the provisions of the articles clarified existing customary law or spelt out some of its implications. For instance, article 7 accommodated certain types of federal States where the component States could retain their own international personality, so that if the conduct of the organs of a component State was in breach of an international obligation incumbent on that State, then the wrongful act could not be attributed to the federal State, but only to the component State itself. Even in areas where State practice and judicial decisions were limited or lacking, the Commission had elaborated acceptable rules–as in article 8 *(b)*–that correctly relied on the relevant general principles and also took due account of the current demands of international society. He commended the intensive co-operation between the Special Rapporteur for the topic, the Drafting Committee and the Commission as a whole which had resulted in the unanimous approval of three new articles by the Commission. He expressed the hope that at its next session the Commission would consider the topic of State succession as a matter of priority.

56. His delegation supported the programme of work for the next session of the Commission and felt that special attention should be given to the most-favoured-nation clause, succession of States in respect of matters other than treaties, and the non-navigational uses of international watercourses. The final topic was particularly important in view of the current importance of the environment and the prevention of pollution.

57. His delegation endorsed the Commission's recommendation that, as from the next session, 12 weeks should be adopted as the minimum duration of the Commission's sessions on a permanent basis and agreed that it would seem inappropriate for the Commission to depart from its present method of work.

AGENDA ITEM 86

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

58. The CHAIRMAN said that El Salvador, the Ivory Coast, Panama, Senegal and Somalia had joined the sponsors of working paper A/C.6/L.988.

AGENDA ITEM 93

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

59. The CHAIRMAN said that the Ivory Coast had joined the sponsors of draft resolution A/C.6/L.989.

The meeting rose at 12.55 p.m.