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### REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION

#### Report of the Sixth Committee

Rapporteur: Mr. Antonio VIÑAL (Spain)

#### I. INTRODUCTION

1. On the recommendation of the General Committee, the General Assembly decided, at its 4th plenary meeting, on 18 September 1981, to include in the agenda of its thirty-sixth session the item entitled "Report of the International Law Commission on the work of its thirty-third session" and to allocate it to the Sixth Committee.
2. The Sixth Committee considered this item at its 36th, 38th to 54th, 64th and 65th meetings, on 30 October, 2 to 19 November, 1 and 2 December 1981. The summary records of those meetings (see A/C.6/36/SR.36, 38-54, 64 and 65) reflect the views expressed by the representatives who participated in the debate on the item.
3. At the 36th meeting, on 30 October, Mr. Doudou Thiam, Chairman of the International Law Commission at its thirty-third session, introduced the Commission's report on the work of that session. <sup>1/</sup> The Committee also had before it a note by the Secretary-General (A/36/428), prepared pursuant to a decision adopted by the Commission at its twenty-ninth session, containing the text of the draft articles provisionally adopted so far by the Commission on topics under current consideration. At the 50th meeting, on 16 November, the Chairman of the Commission made a statement towards the end of the debate on the item.

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<sup>1/</sup> Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10 (A/36/10 and Corr.1).

II. CONSIDERATION OF DRAFT RESOLUTIONS A/C.6/36/L.15 and L.21

A. Draft resolution A/C.6/36/L.15

4. At the 64th meeting, on 1 December, the representative of Sierra Leone introduced a draft resolution entitled "International Conference of Plenipotentiaries on Succession of States in respect of State Property, Archives and Debts" (A/C.6/36/L.15) sponsored by Algeria, Argentina, Benin, Burundi, Colombia, the Congo, Cuba, Cyprus, Democratic Yemen, Egypt, the German Democratic Republic, Greece, Guinea, India, Iraq, Jamaica, Kenya, the Libyan Arab Jamahiriya, Madagascar, Mali, Mexico, Mongolia, Nigeria, Panama, Romania, Senegal, Sierra Leone, the Sudan, Thailand, Turkey, the Upper Volta, Venezuela, Yugoslavia, Zaire and Zambia, subsequently joined by the Philippines.

5. The Committee also had before it a statement submitted by the Secretary-General (A/C.6/36/L.24) on the administrative and financial implications of the draft resolution.

6. At the same meeting, the Committee adopted the draft resolution by consensus (see para. 11, draft resolution I).

7. The representatives of the United States of America, Israel, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics made statements in explanation of their positions on the Committee's decision.

B. Draft resolution A/C.6/36/L.21

8. At the 65th meeting, on 2 December, the representative of Venezuela introduced a draft resolution entitled "Report of the International Law Commission on the work of its thirty-third session" (A/C.6/36/L.21) sponsored by Argentina, Bangladesh, Brazil, Canada, Chile, Ecuador, Egypt, the German Democratic Republic, Greece, Japan, Madagascar, Mexico, Mozambique, the Netherlands, New Zealand, the Philippines, Romania, Sierra Leone, Spain, Turkey, the Upper Volta, Uruguay, Venezuela, and Yugoslavia, subsequently joined by Algeria, the Bahamas, Bulgaria, Germany, Federal Republic of, Italy, Mali, Morocco, Nigeria, Paraguay and Senegal.

9. At the same meeting, the Committee adopted the draft resolution by consensus (see para. 11, draft resolution II).

10. The representatives of the Ukrainian Soviet Socialist Republic and Israel made statements in explanation of their position on the Committee's decision.

III. RECOMMENDATIONS OF THE SIXTH COMMITTEE

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

DRAFT RESOLUTION I

International Conference of Plenipotentiaries on Succession  
of States in respect of State Property, Archives and Debts

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its thirty-third session <sup>2/</sup> which contains final draft articles and commentaries on succession of States in respect of State property, archives and debts,

Noting that the International Law Commission at its first session in 1949 listed succession of States and Governments among the topics of international law as being suitable for codification, that at its fourteenth session in 1962, pursuant to General Assembly resolution 1686 (XVI) of 18 December 1961, it included the topic on its priority list and that at its fifteenth session in 1963 the Commission endorsed the objective of preparing draft articles on the topic,

Recalling that in its resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965, 2167 (XXI) of 5 December 1966, 2272 (XXII) of 1 December 1967, 2400 (XXIII) of 11 December 1968 and 2501 (XXIV) of 12 December 1969, the General Assembly recommended that the International Law Commission should continue the work of codification and progressive development of succession of States and Governments, taking into account the views expressed in the General Assembly and the comments submitted by Governments with appropriate reference to the view of States which have achieved independence since the Second World War,

Recalling further that, by its resolution 3495 (XXX) of 15 December 1975, the General Assembly decided to convene a Conference of Plenipotentiaries to consider the International Law Commission's draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Noting also that the Vienna Convention on Succession of States in respect of Treaties was adopted on 23 August 1978,

Noting further that, subsequent to the adoption of General Assembly resolutions 2634 (XXV) of 12 November 1970, 2780 (XXVI) of 3 December 1971, 2926 (XXVII) of 28 November 1972, 3071 (XXVIII) of 30 November 1973, 3315 (XXIX) of 14 December 1974, 3495 (XXX) of 15 December 1975, 31/97 of 15 December 1976 and 32/151 of 19 December 1977, the International Law Commission, pursuant to General Assembly resolutions 33/139 of 19 December 1978, 34/141 of 17 December 1979 and 35/163 of 15 December 1980, completed at its thirty-third session its draft articles on succession of States in respect of State property, archives and debts,

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<sup>2/</sup> Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10 (A/36/10 and Corr.1).

Recalling that, as stated in paragraph 86 of the report of the International Law Commission on the work of its thirty-third session, the Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on succession of States in respect of State property, archives and debts, and to conclude a convention on the subject,

Mindful of Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the successful codification and progressive development of the rules of international law governing succession of States in respect of State property, archives and debts would contribute to the development of friendly relations and co-operation among States, irrespective of their differing constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

1. Expresses its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of State property, archives and debts, and to the Special Rapporteur on the topic for his contribution to this work;

2. Decides that an international conference of plenipotentiaries shall be convened to consider the draft articles on succession of States in respect of State property, archives and debts, and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

3. Requests the Secretary-General to convene the United Nations Conference on Succession of States in respect of State Property, Archives and Debts early in 1983 at a place to be determined by the General Assembly at its thirty-seventh session;

4. Invites Member States to submit, not later than 1 July 1982, their written comments and observations on the final draft articles on succession of States in respect of State property, archives and debts, prepared by the International Law Commission;

5. Requests the Secretary-General to circulate such comments so as to facilitate the discussion on the subject at the thirty-seventh session of the General Assembly;

6. Decides to include in the provisional agenda of its thirty-seventh session an item entitled "United Nations Conference on Succession of States in respect of State Property, Archives and Debts".

DRAFT RESOLUTION II

Report of the International Law Commission on the work  
of its thirty-third session

The General Assembly,

Having considered the report of the International Law Commission on the work of its thirty-third session, 3/

Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 4/ and to give increased importance to its role in relations among States,

Noting with appreciation that at its thirty-third session the International Law Commission, pursuant to General Assembly resolutions 34/141 of 17 December 1979 and 35/163 of 18 December 1980, completed the second reading of the draft articles on succession of States in respect of State property, archives and debts, and commenced the second reading of the draft articles on treaties concluded between States and international organizations or between international organizations,

Noting further with appreciation the progress made at that session by the International Law Commission on State responsibility, international liability for injurious consequences arising out of acts not prohibited by international law, jurisdictional immunities of States and their property and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier,

Taking note of the intention of the International Law Commission to appoint a new special rapporteur on the topic "the law of the non-navigational uses of international watercourses" 5/ and stressing the desirability of the Commission doing so at the commencement of its thirty-fourth session, thus ensuring continuity of its work on the topic,

Recognizing the importance of referring legal and drafting questions to the Sixth Committee, including topics which might be submitted to the International Law Commission, thus enabling the Commission further to enhance its contribution to the progressive development of international law and its codification,

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3/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10 (A/36/10 and Corr.1).

4/ General Assembly resolution 2625 (XXV), annex.

5/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10 (A/36/10 and Corr.1), para. 256 (c).

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

2. Expresses its appreciation to the International Law Commission for the work accomplished at that session;

3. Recommends that, taking into account the written comments of Governments as well as views expressed in debates in the General Assembly, the International Law Commission should:

(a) Complete at its thirty-fourth session the second reading of the draft articles on treaties concluded between States and international organizations or between international organizations adopted at its twenty-sixth, twenty-seventh and twenty-ninth to thirty-second sessions, also taking into account the written comments of principal international organizations;

(b) Continue its work aimed at the preparation of draft articles on part two of the draft on responsibility of States for internationally wrongful acts, bearing in mind the need for the second reading of the draft articles constituting part one of the draft; international liability for injurious consequences arising out of acts not prohibited by international law; the law of the non-navigational uses of international watercourses; jurisdictional immunities of States and their property and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier;

(c) Continue its study of the second part of the topic of relations between States and international organizations;

4. Endorses the conclusion reached by the International Law Commission regarding the establishment, at its thirty-fourth session, of general objectives and priorities which would guide its study of the topics on its programme of work within the term of office of Commission members elected at the present session of the General Assembly; 6/

5. Expresses its satisfaction with the conclusion of the International Law Commission that it will continue to keep under review the possibility of improving further its present procedures and methods with a view to the timely and effective fulfilment of the tasks entrusted to it; 7/

6. Reaffirms its previous decisions concerning research projects and studies required by the work of the International Law Commission and the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat, as well as those concerning the need for continuing provision of summary records of the Commission's meetings;

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6/ Ibid., para. 258.

7/ Ibid., para. 260.

7. Urges Governments to respond as fully and expeditiously as possible to the requests of the International Law Commission for comments and observations on its draft articles and questionnaires and for materials on topics on its programme of work;
8. Reaffirms its wish that the International Law Commission will continue to enhance its co-operation with legal organs of intergovernmental organizations whose work is of interest for the progressive development of international law and its codification;
9. Expresses the wish that seminars will continue to be held in conjunction with sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars;
10. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the thirty-sixth session of the General Assembly and to prepare and distribute a topical summary of the debate.

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