United Nations
GENERAL ASSEMBLY
THIRTY-SECOND SESSION
Official Records*

SIXTH COMMITTEE
38th meeting
held on
Monday, 7 November 1977
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 38th MEETING

Chairman: Mr. BOJILOV (Bulgaria)

CONTENTS

Distr. GENERAL
A/C.6/32/SR.38
11 November 1977
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 11 a.m.

AGENDA ITEM 112: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-NINTH SESSION (continued) (A/32/10 and A/32/183)

1. The CHAIRMAN warmly congratulated the members of the Soviet delegation on the occasion of the sixtieth anniversary of the Great October Socialist Revolution, which was rightly considered the most significant event of the twentieth century. The Revolution had marked a turning-point, not only in the history of the USSR, but also in that of the whole world, by transforming international relations and in particular the system of international law. The Decree on Peace of 1917 had laid down new principles which had had an irreversible historical impact and had opened the way to the strengthening of peace and international security, disarmament, the elimination of colonialism and racial discrimination and the development of international co-operation in all fields, principles later incorporated in the United Nations Charter.

2. Mr. KUNZ (Czechoslovakia), speaking on behalf of the delegations of Bulgaria, Cuba, the German Democratic Republic, Hungary, Poland and Romania, as well as his own delegation, congratulated the USSR, Byelorussian and Ukrainian delegations on the occasion of the sixtieth anniversary of the Great October Socialist Revolution. From the first decree of the Soviet State, the famous Decree on Peace which was for ever linked with the name of Lenin, the founder of the Bolshevik Party, to the peace initiative presented by the USSR at the current session of the General Assembly and the most recent proposals by Mr. Brezhnev, Secretary-General of the Central Committee of the Communist Party and President of the Presidium of the Supreme Soviet of the USSR, Soviet foreign policy had untiringly striven to secure lasting international peace, relaxation of international tensions and the strengthening of relations of mutually beneficial co-operation among all States of the world. Soviet society was true to the legacy of the October Revolution, not only in the international sphere, but also in the development of socialist democracy within the Soviet State. A significant step in that direction had been the adoption of a new Soviet Constitution, which reflected the complete success of the Soviet Union in building a socialist society and outlined the country's prospects of further development.

3. Referring to the three new draft articles on State responsibility, he noted that one of the most important tasks of the International Law Commission would be the consolidation and development of the most positive result it had achieved thus far, namely the division of breaches of international obligations into international crimes and international delicts. As already emphasized by his delegation the previous year, draft article 19 was one of the leading provisions in the contractual regulation of State responsibility. Attention should first be given to the legal regulation of the prevention and, above all, of the repression of international crimes, which were the most dangerous acts gravely endangering international peace and security. International delicts could be dealt with in the second place. In that regard the Commission should proceed in the same manner as when formulating draft article 19, by trying to reflect obligations of a compulsory and dispositive nature in all subsequent articles.

/...

(Mr. Kunz, Czechoslovakia)

4. Although their wording was acceptable, draft articles 20, 21 and 22 on State responsibility, could, given their place, diminish the impact of article 19. The criteria set forth in articles 20 and 21 could, without doubt, make it possible to ascertain under certain circumstances whether a breach of an international obligation had taken place, but they had no practical meaning if the obligation was so many-sided that it was difficult to decide whether it should be considered an obligation "of conduct" or an obligation "of result". For example, it could be asked which category should be assigned to the obligation arising from the principle of the peaceful settlement of disputes. On the basis of that principle, States were obliged to arrive at a specific result, the peaceful settlement of a dispute, but they might attain that result by means of their own choice, provided they were peaceful. Thus the obligation defined the means to be used for its implementation, while leaving States the freedom of choice. As the distinction between obligations "of conduct" or "of result" could give rise to misunderstandings, his delegation therefore favoured articles 20 and 21 only on condition that their provisions were considered to be auxiliary and complementary. Article 16 could be used to establish the existence of a breach of international law and the auxiliary and complementary character of articles 20 and 21 could be stressed by inserting into them a stipulation that would link the whole draft to generally recognized international legal documents, such as the 1970 Declaration on Principles of International Law or the Final Act of the Conference on Security and Co-operation in Europe. His delegation considered provisions of article 21 to be one of the complementary means for the fulfilment of international obligations. It should not be forgotten that, as the Commission had decided in preparing the draft articles, State responsiblity did not arise from the breach of certain specific international obligations, but from the breach of any international obligation.

5. With regard to succession of States in respect of matters other than treaties, his delegation considered that the decision previously taken by the Commission to give priority to the legal regulation of matters of an economic nature was entirely justified, and that articles 17 to 22, adopted at its previous session, constituted an important contribution, with certain reservations, to the process of codification and progressive development of international law.

6. Concerning part II, section 2, which had been left open by the Commission, legal norms required the consent of the creditor for the validity of subrogation of the debtor. That principle should be applied to the codification of succession of States in respect of debts. With the exception of cases of dissolution of a predecessor State, succession could not automatically give rise to a new legal relationship between the successor and the creditor State and thus bring about a novation in the relationship between the predecessor State and the successor State. His delegation therefore considered article 22, as proposed by the Commission, to be fully justified. It would, however, be useful for the Commission to return to article 21 before finalizing the draft articles

(Mr. Kunz, Czechoslovakia)

dealing with cases of uniting, division or separation of States and require the consent of the creditor State in those cases also. Moreover, the fixing of the proportion of debt passing to the successor also required an agreement between predecessor and successor States which seemed somewhat illusory, since article 21, paragraph 2, only applied in the absence of an agreement between them. In cases of small territorial changes, the principle of automatic transmission of part of the debt became entirely impractical, and his delegation felt that it would be appropriate to apply article 22 in that case, as well as to the provisions concerning separation of States.

7. The provisions of article 19 should not be confined to the passing of a debt or part of a debt arising ipso jure from a succession of States, but should be extended to comprise cases where an agreement had been completed between a predecessor and a successor State in accordance with the articles and had been accepted by the creditor or by an international organization.

8. The Commission referred in two places in its report to the assumption of a part of the Czechoslovak State debt by the former German Reich after 1939. Although the report mentioned that no succession of States in accordance with international law had been involved in that case, the example was quoted in the commentary on article 21. Regardless of the provisions of article 21, his delegation considered the reference entirely inappropriate. In no way could an act by a State in flagrant breach of international law serve to support an argument or explain new legal rules. His delegation would therefore appreciate the deletion of the reference in future documents of the Commission.

9. With respect to treaties concluded between States and international organizations or between two or more international organizations, the method adopted by the Commission in following the provisions of the Vienna Convention while keeping in mind the specific position of international organizations was the only possible way to proceed. However, it should be emphasized that the analogy had certain limits, because of the special character of the legal personality of international organizations, which could never be assimilated to States. That applied particularly to the right of those organizations to make reservations. With regard to reservations to multilateral treaties between States and organizations where the participation of the organization was essential to the object and aim of the treaty, the criteria used to establish the category to which the treaty belonged seemed rather vague. The interpretation of the corresponding provisions of the Commission's draft could cause difficulty. A final decision on the matter should be reached by taking into account the views of Governments. It would also be appropriate to follow the Vienna Convention with regard to entry into force and provisional application. That method would make it possible to arrive at a certain unification and stabilization of the legal rules, which was one of the main conditions for successful codification.

10. Mr. AL-ADHAMI (Iraq) welcomed the three new draft articles on State responsibility. The distinction between obligations "of conduct" or "of means" and obligations "of result" was fundamental to the determination of the time and

(Mr. Al-Adhami, Iraq)

duration of the breach of an international obligation. Of course, that distinction might sometimes give rise to difficulties but they could be overcome through effective procedures for the settlement of disputes. In that connexion, the Commission had indicated in paragraph 24 of its report that, after completing work on parts 1 and 2 of the draft articles, it might decide to add to the draft a part 3 concerning the implementation "mise en oeuvre" of international responsibility and settlement of disputes.

11. That was, in the view of his delegation, the key element of any regulation of the régime of international responsibility. As his delegation had stated the preceding year, the rules relating to the origin, content, forms and degrees of responsibility, however clear they might be, would be of little use unless they were coupled with sufficiently effective provisions for their implementation mise en oeuvre. His delegation considered that "effective provisions" meant the establishment of compulsory arrangements for the settlement of disputes arising from the interpretation and application of the draft articles. Provision should therefore be made in the text of the draft itself for procedures and machinery which, when set in motion at the request of a party to a dispute, would result in a decision that was binding on all parties. In that way alone could the evisceration of the draft articles be prevented and their full effectiveness be ensured.

12. Turning to the question of succession of States in respect of matters other than treaties, he noted that two positions had been expressed in both the Commission and the Sixth Committee with regard to the scope to be given to article 18. Some were of the view that the article should cover only financial obligations chargeable to a State vis-à-vis another State, an international organization or another subject of international law and favoured retaining the word "international" in the text; others believed that it should also cover obligations even vis-à-vis creditors who were individuals or corporations, and favoured the deletion of the word "international". His delegation endorsed the former position.

13. The wording of article 22 was satisfactory, particularly paragraph 2 which highlighted the need to prevent the infringement of the principle of the permanent sovereignty of every people over its wealth and natural resources and to safeguard the fundamental economic equilibria of the newly independent State.

14. Two points of view had been put forward in the Commission with regard to article 30 concerning treaties between States and international organizations or between two or more international organizations. Some were of the view that Article 103 of the Charter of the United Nations covered international organizations, whereas others felt that it did not, so that the latter could enter into agreements without having to take into account the Charter, to which they were not and could not be parties. His delegation fully endorsed the former view. It was inconceivable that, in regard to collection action, States should rid themselves of limitations to which they were subject individually. The weak wording of article 30, paragraph 6, was regrettable and it was to be hoped that the primacy of the provisions of the Charter would be asserted in stronger terms.

(Mr. Al-Adhami, Iraq)

15. While the form of the Commission's report was excellent, its late distribution posed a problem which was particularly serious for the developing countries. The Commission had suggested that in 1977 the Sixth Committee should not begin its consideration of the report until the last week in October. That, however, served only to substitute one problem for another. In order to do justice to the report, it would have to be circulated at least four weeks before the opening of the General Assembly. The Commission would then have to meet earlier, and that might cause difficulties for some of its members. Nevertheless, consideration should be given to such a course in view of the wish of the members of the Sixth Committee to give the reports of the Commission all the attention they deserved.

16. Mr. PASZKOWSKI (Poland) noted that new values had been introduced in international relations by the Great Socialist Revolution, the sixtieth anniversary of which was being celebrated in the Soviet Union and many other countries. There was a direct link between the first act promulgated by the revolutionary authorities, the Decree on Peace, and the Charter of the United Nations: both documents laid down legal principles based on the concept of peaceful coexistence.

17. Many representatives had referred both during the general debate and in various committees to the great number of important initiatives undertaken by the Soviet Union and in particular to the Declaration on the Granting of Independence to Colonial Countries and Peoples, the numerous disarmament proposals it had put forward and its constant efforts to strengthen international peace and security and to consolidate the process of détente. Over the years eminent Soviet jurists had made an important contribution to the work on codification and progressive development of international law carried out by the Sixth Committee and the International Law Commission.

18. His delegation endorsed the general orientation of the Commission's work on the three priority topics on its programme. It noted with satisfaction the speedy response of the Commission to paragraph 4 of General Assembly resolution 31/76, which requested the Commission to study the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier.

19. He noted that many members of the Commission found it impossible to be present during the whole session, especially since the duration of sessions had been increased to 12 weeks. That was a matter which Governments and the Commission itself should look into. Members of the Commission were chosen with a view to ensuring representation of the main forms of civilization and of the principal legal systems of the world, and the international community was therefore entitled to expect that the Commission's draft articles would be the product of collective wisdom. Accordingly, Governments and other bodies must make every effort to enable individual members of the Commission to participate fully in its work. In that connexion, the recent efforts to avoid overlapping between the next session of the Conference on the Law of the Sea and the thirtieth session of the Commission were an encouraging sign.

(Mr. Paszkowski, Poland)

20. There were several stages at which Governments could put forward their views on the results of the Commission's work. The first stage was the annual consideration of the Commission's report in the Sixth Committee. However, the late publication of the report gave rise to considerable difficulties. In the past, it had been the practice of the Sixth Committee to begin its work with the consideration of the Commission's report, in view of the importance Governments attached to it. Unfortunately, that was no longer possible. It should be possible, however, to arrange the programme of work of the Sixth Committee in such a way as to ensure the uninterrupted consideration of the Commission's report. Some representatives came to New York specifically to attend meetings at which the report was considered and it was, moreover, highly desirable for those meetings to be attended by the Chairman of the International Law Commission.

21. Much would be gained if the commentaries that usually accompanied the draft articles drawn up by the Commission were written in a spirit of détente, compromise and mutual understanding. While the primary role of the commentaries was not the dissemination of scientific or theoretical material, the Commission's report should nevertheless be a self-contained document. The summary records of the Commission's proceedings were distributed only to its members and often were not available in final form until about one year after the close of each session. In practice, therefore, the commentaries were the only source of information readily accessible to Governments on the background and rationale of individual draft articles.

22. Governments could also submit comments to the Commission in writing in response to the Commission's appeals. Comments received in due time could be taken into account when the Commission drafted the final version of the draft articles. Governments should therefore endeavour to submit their comments as soon as possible. The Commission was currently awaiting the comments of Governments on the draft articles relating to the most-favoured-nation clause.

23. The representatives of States had a further opportunity to comment on the draft articles prepared by the Commission at plenipotentiary conferences. At that stage, however, it was usually too late to try to introduce substantial changes in the basic texts proposed by the Commission, owing to limitations of time. The success of a diplomatic conference whose work was based on sound proposals was virtually assured. Experience had shown that texts adopted at codification conferences followed almost word for word those proposed by the Commission. At such conferences, the members of the Commission were in the best position to suggest what was the proper course to follow, because of their greater familiarity with the subject-matter. However, there should be no feeling of rivalry between the members of the Commission and other participants. His delegation welcomed any contribution the members of the Commission might wish to make at any stage in the codification and progressive development of international law. It was clear that there was ample opportunity for States to influence the process of the codification of international law at various stages in the Commission's work.

24. Mr. DAMDINDORJ (Mongolia), after extending the warm congratulations of his delegation to the delegations of the Soviet Union, the Byelorussian SSR and the Ukrainian SSR on the sixtieth anniversary of the October Socialist Revolution, stressed the significant progress made by the Commission at its most recent session in carrying out the tasks entrusted to it by the General Assembly in resolution 31/97. The Commission, and all those taking part in the legal activities of the United Nations, were making a genuine contribution to codification and the progressive development of contemporary international law, as well as to the establishment of lasting peace and fruitful co-operation between nations through respect for law and order.

25. Referring to the question of State responsibility, he recalled that, the previous year, his delegation had supported the distinction made by the Commission, in article 19, between international delicts and international crimes. Articles 20, 21 and 22, drawn up by ILC at its most recent session, provided a general framework for establishing whether a State had committed a breach of an international obligation; they offered remedies when the initial conduct of a State was inconsistent with the result required of it by an international obligation, and defined when local remedies for achieving a required result were exhausted. Those new provisions appeared to have been drafted with due respect for the permanent sovereign right of States and the principle of non-interference in their internal affairs.

26. The diversity of legal concepts currently existing in the world could give rise to difficulties in the interpretation of article 22, but the existing formulation of that article clearly defined when local remedies could be considered to have been exhausted. State practice varied on that point, and it was extremely difficult to formulate a uniform attitude to the status, rights and duties of aliens in a foreign country, whether they were natural or juridical persons, unless the host country and the country of which those persons were nationals concluded a specific agreement or convention. That was the procedure followed by the Mongolian Government, in accordance with internationally accepted principles.

27. The six new articles drafted by the Commission concerning succession to State debts were intended to relieve the burden imposed upon newly independent States. In that regard, his delegation shared the views of the Commission as recorded in paragraph 39 of its commentary on article 22 (A/32/10, p. 206), according to which international law could be codified or progressively developed in isolation from the political and economic context in which the world was living at present. With regard to article 18, he said that his delegation supported the retention of the word "international" in the text of that article, since only true international financial obligations should be chargeable to successor States.

28. His delegation welcomed the creation by the Commission of a Working Group to begin studying the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. In its recent written comments on the implementation by States of the provisions of the 1961 Vienna Convention on Diplomatic Relations, the Mongolian Government had emphasized a number of questions,

(Mr. Damdindorj, Mongolia)

particularly communication by diplomatic couriers, the exemption of diplomatic couriers and their baggage from customs inspection or control, including distant inspection or control with the use of technical means, and the inviolability of diplomatic mail in cases of rupture of diplomatic relations. It was to be hoped that in 1978 the Commission would take concrete steps in studying the proposals on elaborating an additional protocol to define the status of diplomatic couriers and supplement the Vienna Convention on Diplomatic Relations.

29. The General Assembly, in its resolution 31/97, had requested the Commission to complete, in 1978, the second reading of the draft articles on the most-favoured-nation clause. The Commission had appointed a new Special Rapporteur for that topic at its previous session.

30. He had no doubt that the question of the law of the non-navigational uses of international watercourses would be studied in all its aspects by the new Special Rapporteur appointed by the Commission, and that it would finally be converted into an international convention.

31. As for the future programme and methods of work of the Commission, his delegation agreed with the conclusions and recommendations contained in paragraphs 98 to 130 of the report under consideration.

32. Mrs. KONRAD (Hungary) said that, on the occasion of the sixtieth anniversary of the October Socialist Revolution, she wished to stress the importance of the Peace Decree, the promulgation of which had been one of the first tasks of the Revolution, and which had always been the basis of the Soviet Union's indefatigable struggle for the maintenance of peace and the development of international co-operation. It had been the beginning of the road to socialism, which numerous countries, including Hungary, were now following. Not only had the October Revolution made it possible to achieve important results in the political, economic, social, cultural and scientific spheres, but it had also signalled the development of the science of international law. The Soviet Union's progressive ideas in matters of international law had contributed in no small part to the progressive development of international law; they had been embodied, for example, in the instruments drafted over the years by the Commission.

33. Turning to the report under consideration, she noted that, at its previous session, the Commission had made considerable progress in the study of three priority topics, but the new articles it had drafted could be properly evaluated only in the light of articles to be drafted later.

34. In articles 20 and 21 of the draft on State responsibility, the Commission had made a justified and acceptable distinction between two types of international obligation, on the basis of the ways and means by which States chose to fulfil their international obligations. In article 22, it had set out the basic rules defining the conditions in which breach of an obligation concerning the treatment

(Mrs. Konrad, Hungary)

to be accorded to aliens could be considered to have been committed. Her delegation believed it was important to state the fundamental principle of the exhaustion of local remedies and to interpret it as the Commission had done in its commentary, by making it clear that it did not extend to nationals of the State concerned.

35. Turning to the question of the succession of States in respect of matters other than treaties, she wished to stress from the outset the high scientific level of the preparatory work carried out by the Special Rapporteur for that topic. The quality of that work had enabled the Commission to draft six new articles. The word "international" should be retained in the definition of State debt, contained in draft article 18. International law governed the relations between the subjects of international law; it did not extend, therefore, to financial relations between a State and private creditors, which were governed by internal law.

36. The Commission had made real progress in the study of treaties concluded between States and international organizations or between international organizations, for it had adopted 22 new articles, some of which were concerned with the delicate question of reservations. The difference between the treaty-making abilities of States and international organizations made it both necessary and justifiable to draw up articles on the treaties to which international organizations were parties. International organizations differed not only from States, but from each other as well. Furthermore, the appearance of international organizations on the world scene, particularly as contracting parties, was a relatively recent phenomenon so that practice was still very limited and far from uniform. In such conditions, the greatest caution was to be exercised in drafting articles, particularly concerning reservations.

37. Seeking to take into account the differences between the treaty-making abilities of States and international organizations, the Commission had not treated them equally in the provisions relating to reservations. It had adopted a general liberal rule, but had imposed restrictions when the participation of an international organization was essential to the object and purpose of a treaty concluded between States and international organizations. This concept appeared to have drawbacks on both the theoretical and practical levels. Her delegation believed that international organizations had a restricted capacity to formulate reservations because of their very nature, a fundamental difference distinguishing them from States. Consequently, the rules which should apply to them should not depend on whether their participation in a treaty was essential to its object and purpose. In practice, such a solution would inevitably involve uncertainty. For that reason, her delegation supported the proposal made by one member of the Commission that an international organization could formulate a reservation if expressly authorized so to do by the treaty, or if it was otherwise agreed that the reservation was authorized. That simple and logical proposal deserved to be studied in depth.

38. Finally, she welcomed the fact that the Commission had begun to study the question of the status of the diplomatic courier and the diplomatic bag not

(Mrs. Konrad, Hungary)

accompanied by diplomatic courier, and expressed the hope that that work would culminate in the drafting of a protocol as soon as possible. The Commission should complete the consideration of the items on its agenda as quickly as possible, so that it could begin to study other important topics on its programme of work.

39. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking on behalf of his own delegation and of the Byelorussian and Ukrainian delegations, thanked those members of the Committee who had spoken cordial words on the occasion of the sixtieth anniversary of the great October Socialist Revolution. In so doing, they had acknowledged both the universal importance of that revolution, which had opened the way to the solution of the many problems facing mankind, and the contribution of the Soviet Union to the maintenance of international peace and security, to the liberation of non-independent peoples and to social progress. On the occasion of that anniversary, Mr. Brezhnev, General Secretary of the Central Committee of the Communist Party and President of the Presidium of the Supreme Soviet of the Soviet Union, had recently declared that the unforgettable days of October had shaken the whole world, ushering in an historic era of world renewal that marked the transition to socialism and to communism, towards which hundreds of millions of human beings had begun to advance and which would one day embrace the whole of mankind. The Chairman of the Committee, for his part, had recalled that Soviet power had been born under the auspices of Lenin's Decree of Peace. Since then, the world had turned towards peaceful coexistence between States with different social systems and towards international détente, which had yielded important results, especially in the restructuring of international relations.

40. Turning to the report of the International Law Commission, he said that the work done by the Commission at its previous session had been useful and positive. Significant progress had been made in the three priority topics.

41. The Commission had prepared three new articles on State responsibility, a topic which held a special place in international law, since the rules applicable in that field had an effect on international relations as a whole; they were instrumental in the implementation and observance of all other rules of international law. It was evident that, by failing to discharge their international obligations, States undermined the foundations of international order. The fact that the topic had been on the agenda of the Commission for 28 years showed that results were still far from satisfying the needs of the international community. The General Assembly had therefore rightly requested the Commission to continue its work as a matter of high priority. He noted, in that regard, that the Commission had divided its draft into three parts, the first of which was subdivided into five chapters, but had thus far considered only the first two chapters and a part of the third. It was surprising, therefore, that the Commission should have devoted only 8 of the 60 meetings at its last session to the matter of State responsibility. He hoped that the Commission would give particular attention to that topic at its thirtieth session.

42. Without prejudice to the position that his Government would adopt, he wished to make a number of comments regarding articles 20 to 23. The Commission had

(Mr. Kolesnik, USSR)

correctly distinguished between obligations "of conduct" and obligation "of result". The former required a State to perform or to refrain from a specified action. States were thus bound to abstain from the threat or the use of force against the territorial integrity or political independence of another State and to adopt laws prohibiting racial discrimination. Article 20, which dealt with the breach of obligations of that type, was entirely satisfactory and called for no comment. Article 21 dealt with obligations "of result", which required only that States achieve a specified result, leaving them free to choose the means of achieving it. States were thus bound to settle their disputes by peaceful means of their choice, including those provided for under Article 33 of the Charter. Like the obligation to bring about a peaceful settlement of disputes, most international obligations relating to human rights were obligations "of result".

43. Article 21, paragraph 2, dealt with a particular set of obligations "of result" - those which allowed a State, after following a course of conduct not in conformity with the result required of it, to bring about that result subsequently by adopting another course of conduct to remedy the consequences of the initial course of conduct. In that case there was a breach of the obligation only if the State also failed by its subsequent conduct to achieve the result required of it by that obligation. If, for example, a country agreed to exempt from customs duties goods from another country, and those customs duties were nevertheless levied on such goods upon their entry into its territory, there would be breach of the former country's obligation only if the competent authorities did not reimburse the customs duties unlawfully collected.

44. Article 22, relating to the exhaustion of local remedies, was of particular importance in the modern world, where so many countries, on the pretext of protecting their nationals, interfered in the internal affairs of other States. His delegation felt that the wording of articles 20 to 22, which had considerable scope both in theory and in practice, was acceptable.

45. With regard to the draft articles on succession of States in respect of matters other than treaties, his delegation felt that articles 17 to 22 required close scrutiny.

46. Article 18, which was the keystone of the first part of the draft concerning succession to State debt, contained a definition of the expression "State debt". That definition was very broad and seemed to apply to all State debts, i.e. to debts incurred by a State vis-à-vis individuals, both legal and natural persons, to debts incurred by a State, acting under domestic law as a legal person, under loan agreements concluded with foreign, natural or legal persons, and debts incurred by a State vis-à-vis another State or another subject of international law, such as an international organization. In the view of his delegation, only financial obligations in the last-mentioned category fell properly within the scope of international law and pertained to State succession, the other debts being exclusively governed by domestic law. The term "international", placed between brackets in the draft, should therefore be retained, particularly since the interests of private foreign creditors were protected by the provisions of article 20, paragraph 1.

(Mr. Kolesnik, USSR)

47. In reference to article 20, paragraph 2, which dealt with the effects of the passing of State debts with regard to creditors, he felt that, although the rights of creditors should be protected, it was necessary to allow the predecessor State and the successor State or States latitude to conclude any agreement regarding the passing of State debts of the predecessor State. Paragraph 2 should therefore be reworded accordingly.

48. With regard to article 22, which dealt with succession to State debt when the successor State was a newly independent State, he recalled that the Special Rapporteur had proposed that newly independent States which had formerly been colonies should assume debts of the former metropolitan Power which had been incurred to their benefit. That proposal had drawn sharp criticism in the Commission, which had sought, on the contrary, to strengthen the principle of the non-transferability of State debts of the predecessor State to a newly independent State. His delegation felt that a newly independent State should not automatically assume any debts incurred by the predecessor State and strongly supported article 22, based on the clean slate principle. That principle, which contributed significantly to the progressive development of international law, corroborated the legal soundness of various General Assembly resolutions proclaiming the principle of the permanent sovereignty of States over their natural resources.

49. In reference to the draft articles on treaties concluded between States and international organizations or between international organizations, he said that the provisions adopted by the Commission at its previous session were far from acceptable. In his desire to establish a degree of parallelism between those draft articles and the Vienna Convention, the Special Rapporteur had neglected the essential fact that international organizations were not fully-fledged subjects of international law.

50. In that respect, the draft articles relating to reservations were revealing. The Commission had agreed that, like States, international organizations could formulate reservations, but subject to the condition that such reservations were not incompatible with the object and purpose of the treaty. That principle conformed to neither the doctrine nor the practice followed by international organizations. Without wishing to draw any hasty conclusions, he felt that the arguments advanced by those who considered that international organizations should not be entitled to make reservations to a treaty unless such reservations were expressly provided for in the treaty should urge the Commission to reconsider those articles.

51. Article 27, paragraph 2, which provided that "an international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty ...", had caused his delegation grave concern. In adopting that provision, the Commission had once again overlooked the difference between international organizations and States. Unlike States, international organizations could not amend the rules which governed them in order to be able to perform the treaties to which they were party, as those rules took precedence over the treaties. It would therefore be advisable to amend paragraph 2 to bring it into line with Article 103 of the Charter.

(Mr. Kolesnik, USSR)

52. As for the other matters considered by the Commission, his delegation welcomed the appointment of a new Special Rapporteur for the question of the most-favoured-nation clause. Pursuant to the recommendation contained in General Assembly resolution 31/97, the Commission had requested the Secretariat to forward the draft articles dealing with that topic to the Member States and to a number of bodies and organizations for their observations. His delegation felt that the Commission should comply with the General Assembly's recommendation that it endeavour to complete the second reading of that draft at its next session. In addition to being well conceived, the draft would not fail to have significant effects on economic co-operation between States and would contribute greatly to the development of international law.

53. His delegation attached great importance to the conclusions of the Working Group set up by the Commission to ascertain the most suitable ways and means of dealing with the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Commission should give careful consideration to the possibility of drafting a protocol on that topic.

54. In reference to its programme of work, he stressed that the Commission should concentrate essentially on urgent questions.

The meeting rose at 1.15 p.m.