United Nations
GENERAL ASSEMBLY
THIRTY-FIRST SESSION
Official Records *

SIXTH COMMITTEE
26th meeting
held on
Monday, 25 October 1976
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 26TH MEETING

Chairman: Mr. MENDOZA (Philippines)

CONTENTS

* This record is subject to correction. Corrections should be incorporated in a copy of the record and should be sent *within one week of the date of publication* to the Chief, Official Records Editing Section, room LX-2332.

Corrections will be issued shortly after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL
A/C.6/31/SR.26
27 October 1976

ORIGINAL: ENGLISH

The meeting was called to order at 10.55 a.m.

AGENDA ITEM 106: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY EIGHTH SESSION (A/31/10) (continued)

1. Mr. MUSEUX (France) congratulated the Chairman of the International Law Commission on his clear introductory statement, which constituted an important element in what should be an increasing dialogue between the Commission and the Committee. As part of that dialogue, the representatives of States were best qualified to make such comments on the general and political aspects of the work of the Commission as the concept of the well-being of the international community seemed to them to require. In order to ensure the widest possible approval among States for the Commission's efforts, that concept must be viewed not merely from an idealistic standpoint, but from one which also took into account the practical constraints to which States were subject.

2. With regard to the question of the most-favoured-nation clause, his delegation associated itself with the tributes paid to the Special Rapporteur for his contribution to the study of a difficult and complex subject which was of great importance for the development of relations among States. As the Commission itself had remarked, the draft articles contained in its report did not pretend to be exhaustive. It remained to settle the final form of the text, some points relating to the national treatment clause, and the question of the application and interpretation of the articles and possibly that of the settlement of disputes. Those were all matters on which his Government would make known its opinion when it was consulted officially. For the moment, he wished merely to recall the statements made the previous week on behelf of the States members of the European Economic Community by a member of the Commission of that body and the representative of the Netherlands.

3. Referring to the question of State responsibility, he said that the adoption by the Commission of draft articles 16 to 19 represented an important contribution to the definition of the objective element of an internationally wrongful act. Nevertheless, his delegation was unable, at the current stage of the development of international law, to subscribe to all the principles presented in those draft articles. His delegation approved of draft articles 16 and 17, and with the basic concept of draft article 18. However, paragraph 2 of that draft article might, if implemented, give rise to more difficulties than it resolved. The vagueness of the rules relating to jus cogens, which had been noted on numerous occasions by his Government, made it difficult to apply them in order to solve intertemporal disputes Moreover, what would happen in the case of a State which, because of a change of policy, found itself in violation of an existing rule of jus cogens? Should such a State receive better treatment under the terms of paragraph 1? Furthermore, paragraph 5 seemed to fall within the purview of tempus commissi delicti, which the Special Rapporteur was to deal with in draft article 22. The Commission should, at the same time, consider the relationship between that rule and the rule concerning the exhaustion of local remedies.

(Mr. Museux, France)

4. As stated in the commentary, draft article 19 was one of the most delicate and important of the whole study. In stating that it was inconceivable to limit its task to establishing in the draft articles a supposedly general régime of responsibility valid for all internationally wrongul acts, leaving it to international custom or particular conventional instruments to lay down the régime, or rather régimes, of responsibility applicable to international "crimes", the Commission had implicitly taken a position which favoured the existence of such crimes under general international law and their imputability to States. His delegation shared the view that draft article 19, with the exception of paragraph 1, contained solely rules of progressive development. The Commission recognized as much in paragraph (13) of its introductory commentary. The Commission had espoused a trend which was far from constituting an established or generally recognized rule. Although the Commission was undoubtedly concerned not only with the codification, but also with the progressive development of international law, under draft article 19, State responsibility took on a penal nature contrary to the views of most writers, the whole body of case law and the provisions of Article 36, paragraph 2, of the Statute of the International Court of Justice. Furthermore, the approach adopted in paragraph 3 of draft article 19 seemed to conflict with the declared purpose of the Commission as set out in paragraph 68 of the report. Moreover, the list contained in paragraph 3 was not exhaustive, and it was questionable whether States would be satisfied with such vague descriptions of acts which might subsequently have grave consequences. A distinction between international crimes and international delicts would inevitably lead to the establishment of different régimes of international responsibility. The provisions of draft article 19 would affect not only the other articles of part 1, but also parts 2 and 3.

5. While refusing to envisage the consequences of adopting draft article 19, the Commission, in its commentaries, in fact drew a distinction between a system of reparation, which would apply essentially to delicts, and sanctions machinery applying to international crimes. Since Article 36, paragraph 2, of the Statute of the International Court of Justice dealt only with reparation for damages, responsibility for crimes could not be established through judicial proceedings. Was, then, the International Court of Justice or an arbitration tribunal to declare itself automatically incompetent when the acts brought before them were of a certain degree of gravity? Was it possible to speak of responsibility when no judicial organ existed to establish it? Under Chapter VII of the Charter, the powers conferred on the Security Council were designed as a means of maintaining or restoring peace, rather than on establishing responsibility, which was only one of the factors to be taken into consideration by the Council in making what was essentially a political assessment. Furthermore, the Council could also decide on preventive sanctions, which were not compatible with the régime of responsibility as currently understood.

6. As had already been pointed out, the concept of responsibility adopted by the Commission led to recognition of actio popularis, which was another important innovation. At the thirtieth session of the General Assembly, his delegation had drawn attention to the importance which it attached to the concept of damages in matters of international responsibility. In the light of the adoption of draft

(Mr. Museux, France)

article 19 by the Commission, his delegation felt obliged to adhere wholly to the position which it had stated on that question at the thirtieth session of the General Assembly.

7. Consequently, draft article 19 appeared premature in the light of the Commission's work on State responsibility, and in particular, at the current stage of development of international law. In the view of his delegation, it was not appropriate for the Commission to consider whether certain acts attributable to the State could have consequences other than simple obligations to make reparation within the context of State responsibility, which should remain a civil responsibility. To proceed otherwise would be to discard centuries of effort in the field of internal law. Moreover, the difference between the State and the individual called for more than a simple distinction between two categories of responsibility. For example, account should be taken of the fact that to establish a new type of State responsibility would be to establish a sort of collective criminal responsibility, which was contrary to modern penal law. The substance of draft article 19 would therefore be better situated in a commentary indicating the topics which might be the subjects of special studies concerning the establishment of rules of law and the consequences of a breach of those rules in the light of the developments of international law. The Commission's text presumed the existence of well-established rules in the fields referred to, while it was clear from the commentary itself that such was not the situation.

8. Referring to succession of States in respect of matters other than treaties, he said that, at the current stage of international law, it was not possible to lay down absolute and incontestable rules. The Commission could have made more effort to identify the principles laid down in treaties concluded in that field, rather than to proposing rules which, in some cases, seem to be based on abstract points of view. Such was the case with the Commission's conclusions regarding the transfer of immovable property. His delegation believed in the importance of the conventional approach as the most satisfactory in reaching equitable solutions in that field. Consequently, he had some reservations with regard to the Commission's proposals concerning succession to State property. Furthermore, as with succession of States in respect of treaties, his delegation regretted that the Commission had felt obliged to draw a distinction between States formed as a result of the separation of part of a State. In doing so, it had referred to a political concept, the introduction of which into the draft was questionable and which limited the freedom of the newly independent States to negotiate.

9. Finally, it would be advisable for the Commission to give closer consideration to the fate of the various categories of State property. On the basis of the considerable research conducted by the Special Rapporteur, it should be possible to produce a text which was more detailed and more representative of the current state of international law. A number of additional definitions were also called for, since the terms used could give rise to difficulties in interpretation. His Government had noted with interest that the Special Rapporteur intended shortly to consider the problem of succession to public debts.

(Mr. Museux, France)

10. Referring to the non-navigational uses of international water courses, he noted that divergent views had been expressed with regard to the question of geographical scope. Consequently, the Commission should exercise considerable caution in that regard.

11. It was regrettable that it had not been possible for the Commission to consider treaties concluded by international organizations. Consequently, he welcomed the fact that a substantial portion of the coming session was to be devoted to that question.

12. His delegation supported the Commission's efforts to improve its methods of work. The establishment of a Planning Group had been an excellent step. For greater efficiency, the Commission's sessions should continue to be held at Geneva, for the reasons given by the Commission itself in paragraph 179 of its report.

13. He suggested that, in order to facilitate the work of delegations, the reports should be published in separate volumes to be circulated as they became ready.

14. Mr. BAVAND (Iran) said that his delegation had noted with satisfaction that the International Law Commission had completed the first reading of the draft articles on the most-favoured-nation clause. The general orientation of the draft was sound and almost commensurate with the realities of international trade law. However, due to the Commission's wish not to be drawn into discussion of economic policy matters, the report did not effectively reflect the spirit of new economic principles generated by recent international events and approved by various international legislative forums. The incorporation of the principle contained in draft article 21 constituted a general recognition of the legitimate needs and interests of developing countries. The concept of a generalized system of preferences had already been approved and authorized by the respective international conferences and organizations, and its effect on international trade relations had been both modest and praiseworthy.

15. In the light of recent developments in international trade relations, particularly the new principles laid down in the Tokyo Declaration of GATT and articles 18 and 26 of the Charter of Economic Rights and Duties of States, it seemed advisable that the new trend towards broadening the concept of special treatment should find expression in the draft. In that connexion, his delegation welcomed the provisions contained in draft article 27.

16. His delegation welcomed the provisions contained in draft article 23. However, it should be noted that one of the basic elements currently under negotiation between land-locked and coastal transit States had been the incorporation of the element of reciprocity in their bilateral or regional arrangements for access to and from the sea. That principle had already been incorporated in the 1958 Convention on the High Seas and the 1965 Convention on Transit Trade of Land-Locked States and had also been the subject of negotiation at the Third United Nations Conference on the Law of the Sea. Consequently, his delegation's support of the provisions laid down in draft article 23 should in no way be interpreted as a withdrawal from its former view.

(Mr. Bavand, Iran)

17. With regard to the question of customs unions and similar associations, his delegation fully shared the interpretation of the Commission and supported its decision not to attempt the formulation of a rule establishing a general exception for customs unions and similar associations. Furthermore, since there was no rule of customary international law or evidence of any consensus among States which would relieve States, upon their entering into a customs union, of their obligations under a most-favoured-nation clause, his delegation believed that the Commission's decision should be retained.

18. His delegation agreed basically with the provisions laid down in draft article 16 concerning the question of State responsibility. He agreed with the content of draft article 17, the underlying principle of which was already implicit in the wording of draft article 3 (b). The purpose of draft article 17 was to provide a clear and explicit text on which an injured State could base its legitimate reaction so as to be protected against any interpretation or pretext which the State committing the offence might invoke in order to evade its international responsibility. The Special Rapporteur had concluded that the origin of the obligation breached had no bearing on the characterization of an act of the State as internationally wrongful, or on the consequences which international law attached to such an act as far as responsibility was concerned. His delegation considered that draft article 17 should contain an express reservation concerning the provision in Article 103 of the Charter.

19. His delegation had no objection to draft article 18. The basic principle stated in paragraph 1 of that article had been amply supported by international judicial decisions, State practice and doctrine. Paragraphs 3, 4 and 5 dealt with application of that basic principle to cases in which an act of the State not in conformity with an international obligation extended over a period of time and coincided only partly with the period during which the obligation was in force for that State. In intertemporal law, the principle applied was that all facts and attenuating or aggravating circumstances must be assessed in the light of the rules of law contemporaneous with them. Paragraph 2, which dealt with the retroactive application of jus cogens, was based on the elasticity of moral force inherent in peremptory norms of general international law. In accepting the existence of such an exception, the Commission had rightly sought to avoid any undue extension of that exception which might weaken the general rule laid down in paragraph 1. Indeed, the scope of the exception should be kept within strict limits.

20. Draft article 19 marked a turning point in the progressive development of international law in the field of State responsibility and was a courageous step towards dealing systematically and comprehensively with the subject-matter of the international obligation breached. His delegation had no difficulty with the view expressed by the Special Rapporteur that the contents of the international obligation breached had no bearing on the characterization as internationally wrongful of an act of a State which was not in conformity with what was required of it by that obligation and that such an act was indisputably internationally wrongful and engaged the responsibility of States. Paragraph 2 questioned the validity of the traditional view linking violation to reparation and confining the

(Mr. Bavand, Iran)

relationship arising from breach of an international obligation to the committing State on the one hand, and the injured State on the other. The Special Rapporteur had stressed that contemporary international law did not contain only one régime of responsibility applicable to every type of internationally wrongful act regardless of its degree of gravity and of whether it was injurious to the vital interests of the international community as a whole or simply to the interests of a particular member of that community. According to the latter viewpoint, general international law provided for two completely different régimes of responsibility. It was interesting to note that the distinction between international crimes and international delicts was not purely descriptive or didactic but normative. That novel approach had shaken the whole structure of the traditional concept of State responsibility. His delegation welcomed the general legal framework of paragraphs 2 and 3 of draft article 19.

21. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation considered the work done by the International Law Commission at its twenty-eighth session to be positive from the point of view of the significance of the results achieved.

22. The question of State responsibility occupied a special place in international law, for the rules which applied in that sphere embraced the whole gamut of international relations. Their value was apparent not only to specialists but also to the public at large, for history had demonstrated that breaching by States of their international obligations inevitably affected the very foundations of peaceful relations between States. In the opinion of his delegation, draft article 16, which was the key to chapter III of the Commission's study, related to as many potential instances of breach of an international obligation by a State as was possible. That was so because the article stated that there was a breach of an obligation when the act of a State was "not in conformity" with what the obligation required of it and conformity could not be held to exist even when the act was only partially in contradiction with the obligation. The draft article therefore excluded all possibility of justifying a breach of an international obligation by casuistry. Similarly, his delegation considered that the wording of draft article 17 precluded any attempt to justify a breach of an international obligation by relying on purely formal considerations. The same goal was served by draft article 18, which stated clearly and simply that an act could be considered internationally wrongful only if it constituted a breach of an obligation which had been in force for the State concerned at the time it had been performed. Only a fundamental change in the rules of international law could give rise to situations in which that principle would not apply.

23. His delegation considered that the distinction made in article 19 between international crimes and international delicts was of fundamental importance and that the fact, mentioned in paragraph (56) of the commentary on that article, that the members of the Commission had adopted its text "unanimously" was particularly significant in that respect. Some speakers had expressed doubts about the need for such a distinction and had argued that the question could be settled only when the Commission came to prepare draft articles on sanctions.

(Mr. Kolesnik, USSR)

However, it was possible to assert even at the current stage, and on the basis of positive law, that the sanctions for an international crime were of a special nature. For example, it was apparent from the treaty instruments to which the end of the Second World War had given rise and from the Judgement of the Nuremburg Tribunal that political and material responsibility was to be borne by the aggressor State and criminal responsibility by the individuals who had unleashed a conflict.

24. A further achievement of the Commission lay in the definition in draft article 19 of the general criteria for including internationally wrongful acts in the category of international crimes. By referring to breaches of obligations considered "essential for the protection of fundamental interests of the international community" and breaches recognized as crimes by the community "as a whole" as international crimes, draft article 19, paragraph 2 took account both of breaches of "mandatory" rules of international law or jus cogens and of the long and widely held view that, offences erga omnes should be placed in a special category.

25. While subparagraphs (a)-(c) of article 19, paragraph 3, mentioned concrete, recognized obligations of States, subparagraph (d) was less specific. It was not impossible that there would be formulated in the very near future a category of international obligations prohibiting what might be termed "geocide" and it could then be considered whether a breach of such an obligation constituted an international crime. He referred in that respect to the statement of the representative of Bulgaria and also to the fact that formulation of an international obligation whose breach would constitute an international crime must be based on rules of international law clearly expressed and recognized by the international community.

26. The latest draft articles on State responsibility to be adopted by the Commission reflected the current level of development of international law and fulfilled the requirements incumbent on the United Nations in respect of the strengthening of international peace and security.

27. There could be no doubt of the timeliness of the Commission's work on the most-favoured-nation clause, for the principle of most-favoured-nation treatment was of the greatest importance for co-operation among States in the sphere of economic relations in general and in the development of international trade in particular. His delegation wished to stress that the definition of most-favoured-nation treatment given in draft article 5 covered the ideal case, in which the treatment which the granting State accorded to the beneficiary State was no less favourable than that it extended to any third State. There were, however, in practice cases in which States conducted their trade and other economic relations with specific countries on other bases and the Commission had included recognition of their sovereignty in that respect in draft article 26.

(Mr. Kolesnik, USSR)

28. His delegation had noted that draft articles 21 and 27 referred to exceptions to the most-favoured-nation clause from which developing countries could benefit and also considered that draft articles 22 and 23 took satisfactory account of the situation of land-locked States and of States having a common frontier which traded with each other. The Commission had concluded that there were no other legal exceptions to the most-favoured-nation clause and the discussions on customs unions and similar associations within the Commission and at the previous session of the Sixth Committee had shown that a majority of members of the Commission and States shared that view. In the opinion of his delegation, there was no legal basis for the attempts by representatives of some exclusive economic groups to justify their discriminatory trading policies on the grounds that the rights and privileges accorded to the members of such groups could not be claimed by States which were the beneficiaries of a most-favoured-nation clause. The principle of most-favoured-nation treatment was essentially general in character and presupposed an opportunity for all States to claim its benefits, while the aim of exclusive economic groups was to safeguard privileges for the most powerful imperialist countries at the expense of the international community and of their weaker partners. The policy and practice of such groups was incompatible with the Charter of Economic Rights and Duties of States, and particularly with article 12 thereof.

29. The Commission's draft articles on the most-favoured-nation clause represented a substantive contribution to the progressive development and codification of international law and could be passed on to Governments for their comments in the form in which they had been submitted to the Committee.

30. His delegation found the draft articles on succession of States in respect of matters other than treaties satisfactory, with the exception of draft article 14. It hoped that the Commission would take steps to remedy the deficiency of that article, which stated that, in the event of the uniting of States, the question of succession should be settled in accordance not with international law but with the internal law of the successor State.

31. The proposal to establish a permanent planning committee was not as simple as it might appear at first glance. Judging from the remarks in paragraph 171 of the Commission's report, such a committee would in practice fulfil many of the functions of the Enlarged Bureau, in which the presence of the representatives of all the legal systems in the world and of the Special Rapporteurs ensured deep and comprehensive consideration of planning matters.

32. Mr. EL-ERIAN (Chairman of the International Law Commission) said that the discussion on the report of the International Law Commission would provide an excellent basis for consideration of the revised text of the draft articles.

33. Commenting on the main issues raised in the discussion, he noted that the draft articles on the most-favoured-nation clause had on the whole been favourably received. There had been general approval of the Commission's approach to the relationship between the most-favoured-nation clause and the differing levels of

(Mr. El-Erian, ILC)

economic development and also of articles 21, 22 and 23, which provided for exceptions to the application of that clause. There had likewise been general approval for the reservation provided under article 27 and for the miscellaneous provisions in articles 24, 25 and 26.

34. While a number of delegations had endorsed the Commission's decision to omit any provision for an implied exception to the application of the clause in the case of customs unions and similar associations of States, the representative of the European Economic Community and certain other delegations had taken a different view, particularly in regard to article 15. That view would, of course, be the subject of further consideration by the Commission but he would point out that the scope of the draft was limited by article 1 to "most-favoured-nation clauses contained in treaties between States". Indeed, it was within the context of the Commission's work on the law of treaties that the idea of a study on the most-favoured-nation clause had first been considered. Although that clause was particularly important in international trade, the study had been extended to cover as many areas as possible. The "customs-union issue" arose only in relation to the application of the clause under commercial treaties, particularly those relating to customs dues, and could therefore not be regarded as a general problem. Moreover, provision for exceptions was often to be found in commercial treaties concluded outside the General Agreement on Tariffs and Trade - article XXIV of which excluded three types of regional arrangement from GATT obligations.

35. The Committee's debate on the draft articles on State responsibility was a striking illustration of the operation of the codification process and the incisive analyses of matters of substance would do much to assist the Commission in its work. He noted that articles 16 and 17 had been accepted, subject to certain drafting amendments, but that articles 18 and 19 had been the subject of considerable comment. The basic rule in article 18, paragraph 1, had given rise to no disagreement but some delegations had felt that the provisions of paragraphs 3, 4 and 5, which dealt with the application of the rule, were too complex and should be included later in the draft. Doubts had also been expressed regarding paragraph 2, which provided for an exception to the basic rule. That exception, however, was extremely narrow and would only apply where a previously prohibited act subsequently became compulsory by virtue of a peremptory norm of general international law. As stated in the commentary, it was not a question of deeming an act to be wrongful retroactively but rather of the supervening application of jus cogens whereby conduct previously considered to be unlawful would have to be shown. Moreover, the rule as drafted was limited in time to related claims submitted after the establishment of the jus cogens rule, and would have no effect on matters already settled. The Commission would, however, take full account of all the comments made, including those concerning the point in the draft at which the provisions of article 18, paragraph 2, should be included.

36. Article 19, paragraph 1, which defined an internationally wrongful act, had also been generally approved but the remaining paragraphs had given rise to three broad viewpoints. The first, which the Commission shared, was that contemporary international law distinguished between categories of internationally

(Mr. El-Erian, ILC)

wrongful acts according to the subject-matter of the international obligation breached and the gravity of the breach. The normative consequences of such a distinction were that the forms of responsibility which attached to serious breaches of obligations involving the protection of the fundamental interests of the international community, and were recognized by that community as a whole as crimes, differed from the forms of responsibility which attached to less serious breaches of those obligations or to the breach of obligations having a different subject-matter and which were known as "delicts". The delegations holding that view considered that the legal consequences of State responsibility for an international crime, such as war or aggression, could not, under contemporary international law, be met purely by compensation for damages. In general, they accepted paragraphs 2 and 3 of article 19, although some delegations had made suggestions for improving subparagraphs 3 (b), (c) and (d).

37. The second view was that much of article 19 was at variance with the Commission's decision not to deal in the present draft with the "primary" rules whose breach incurred international responsibility. The fact that some internationally wrongful acts were more far-reaching in effect than others did not, in the opinion of the delegations holding that view, justify the creation of an international law of criminal responsibility of States which went beyond the requirement of compensation, and would not be in the interests of the community of nations. The delegations in question, which expressed the hope that the Commission would reconsider its approach to article 19, considered that the draft should provide for ways of measuring damages for very serious breaches that would incur a higher degree of international responsibility than was involved in restitutio in integrum.

38. The third view was that contemporary international law distinguished, or tended to distinguish, serious breaches of certain international legal obligations from other internationally wrongful acts. The delegations holding that view had reserved their position on article 19 pending submission by the Commission of the proposed rules on other parts of the draft and in particular those relating to the content, form and degree of international responsibility, to the implementation (mise en oeuvre) of international responsibility and to settlement of disputes.

39. The comments made in support of those viewpoints, together with the reservations expressed on subparagraph 3 (d), would be considered by the Commission in due course.

40. Two further points required clarification, the first of which concerned the relationship between the notions of "international crime" and "jus cogens". The notion of jus cogens, together with the recognition within international law of peremptory norms, had been particularly relevant in arriving at a differentiation between two types of internationally wrongful act, as provided for in article 19, first, because it underlined the increasing attention being paid to the subject-matter of international norms in the development of normative distinctions in the various fields of law; secondly, because the broad areas in

(Mr. El-Erian, ILC)

which peremptory norms of international law were to be found coincided to a certain extent with those areas where international obligations existed the violation of which might under certain circumstances constitute an international crime; and, thirdly, because jus cogens norms, like international crimes, concerned the international community as a whole and not merely the parties involved. The reference to jus cogens in the commentary did not, however, mean that all international crimes, in the sense of article 19, corresponded to the notion of jus cogens, since the process whereby the international community as a whole recognized a norm of international law as a jus cogens norm was independent of the process whereby it recognized certain internationally wrongful acts as international crimes. The Committee would note that article 19, paragraphs 2 and 3, unlike article 18, paragraph 2, did not refer to "peremptory norms of general international law".

41. Secondly, with regard to the scope of the draft articles on State responsibility, the Commission had in no way intended, in distinguishing between international crimes and international delicts, to exceed the limits of the subject as defined by itself in pursuance of the General Assembly's recommendations but only, as in the past, to codify the secondary general rules of international law governing State responsibility. In his opinion, therefore, the Commission was not required to think in terms of the civil responsibility of States as opposed to their criminal responsibility, but rather to draft a code on the international responsibility of States for internationally wrongful acts, the latter being defined by international law and not by reference to municipal or any other law. In that connexion, he drew attention to paragraphs 52 and 53 of the report of the Sub-Committee on State Responsibility (Yearbook of the International Law Commission, 1963, Vol. II, p. 224) which recommended the approach, subsequently endorsed first by the Commission and then by the General Assembly, to be adopted in regard to the work on State responsibility. Without prejudging the Commission's further consideration of the forms of responsibility attaching to internationally wrongful acts, he would point out that international law recognized other measures besides economic compensation for the legal consequences of such acts, for instance, the obligation to make reparation, satisfactory measures and sanctions in various forms.

42. He noted that the draft articles on succession of States in respect of matters other than treaties had received general support, as had the distinction drawn between movable and immovable property. Article 13 had been particularly well received, many delegations stressing the importance of paragraph 6, but certain delegations had considered that article 14 required further study. Opinions had been divided as to the inclusion of the concept of equity in some of the articles and it had been suggested that the Commission should study the matter further. A number of delegations had expressed the hope that the Commission would pursue the problems relating to public debts at its next session.

43. He also noted that the Committee had welcomed the progress made in regard to the non-navigational uses of international watercourses and that it was hoped that States would respond as fully as possible to the Commission's questionnaire. In

(Mr. El-Erian, ILC)

general, the Commission had been commended for refraining from any decision on the scope of the subject at the current stage. A number of delegations had advocated the formulation of general basic principles, one of which was that the use of international watercourses should be subject to the principle of legal responsibility. Among the concepts mentioned were those relating to "abuse of rights", "good faith" and "good neighbour relations".

44. Referring to the format of the report and the Commission's method of work, he said that the Commission recognized that the commentaries were somewhat lengthy. The report would have a wide circulation, however, and the Commission had felt it important, at the initial stage of first reading, to provide sufficiently detailed information and thus to illustrate the bases for its decisions. Reference had therefore been made to such matters as doctrine and State practice, as well as to a number of General Assembly and other resolutions. International law was in a state of flux and the commentaries, which had been prepared by well-known authorities, would provide a useful indication of current trends. He would ask the Secretariat to consider the possibility of issuing the report in two or three instalments as had been suggested.

45. The Commission had been divided on its method of work, some members feeling that the Planning Group should be an independent standing body rather than an offshoot of the Enlarged Bureau while others had felt, in view of the Commission's limited membership, that it would suffice if the Bureau set up a sub-committee on an ad hoc basis. He favoured an independent Planning Group, to which members who were not part of the Enlarged Bureau might be appointed. The matter would, of course, be carefully considered by the Commission but, in the final analysis, it mattered little what kind of group was set up provided that the work was done.

46. Lastly, thanking those Governments which had awarded fellowships for participation in the International Law Seminar and expressing the hope that other Governments would follow their example, he said that, as the world order changed, so was the law assuming an increasingly important role. The Committee and the Commission were faced with the challenging task of reconciling the ideal with the possible and evolving new formulas for dealing with the problems of the future while drawing on the heritage of the past.

The meeting rose at 1.15 p.m.