34. The last question raised by the Sub-Committee concerned special arrangements for ensuring that the Commission was provided with the necessary technical, scientific and economic expertise. Such expertise was, of course, important, and the establishment of a special committee of experts might be a suitable solution. Its terms of reference and working methods should, however, be carefully considered, because the work to be accomplished by the Commission was of a legal nature and should not be burdened by excessively complicated technical or scientific details.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

35. The CHAIRMAN announced that Morocco wished to be added to the list of sponsors of working paper A/C.6/L.988.

The meeting rose at 12.30 p.m.

1488th meeting

Wednesday, 30 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1488

AGENDA ITEM 87

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

1. Mr. NYAMDO (Mongolia) congratulated the Chairman of the International Law Commission on his introduction of its report (A/9610 and Add.1-3) and Mr. Šahović on his election as a member of the Commission to fill the vacancy left by the death of his compatriot Mr. Bartoš. At its twenty-sixth session, the Commission had commemorated its twenty-fifth anniversary; during those twenty-five years, it had made a great contribution to the development and codification of international law.

2. His delegation was pleased to note that the Commission had completed its work on the 39 draft articles on the succession of States in respect of treaties *(ibid.*, chap. II, sect. D). On the whole, the draft articles reflected current theory and practice in the matter. The Commission had been right to follow the "clean slate" principle with regard to newly independent States. However, the draft articles contained a serious inadequacy with regard to the succession of States in cases of social revolution. When the draft articles had been studied by the Sixth Committee at the twenty-seventh session of the General Assembly, his delegation had stated (1325th meeting) that a specific reference should be made to the problem of succession of States in cases of social revolution; in such cases, the new State had the right to reject unacceptable treaties. It was unfortunate that the Commission had not made the appropriate changes. Social revolution was an instance of succession of States in respect of treaties, as the practice of many States showed. For example, after the 1921 revolution in Mongolia the question had arisen of succession in respect of treaties, and all unacceptable treaties had been rejected. Thus, it was stated in the preamble to the 1921 Agreement on the establishment of friendly relations between Mongolia and the Russian Soviet Federative Socialist Republic that all previous treaties between the former Governments of the two countries were null and void as a result of the new situation that had been created in both countries. The significance of that agreement was not limited to the solution of the problem of the law of succession of treaties and agreements. Its distinguishing feature was that it was the first international agreement concluded between qualitatively new subjects of international law, namely, two States in which power belonged to the people. From the juridical point of view, there was every reason to consider it as the first international treaty to lay the foundation for a new kind of international relations; that was its historical significance in his delegation's opinion.

3. His delegation considered that a new contribution had thus been made to international law. It could not agree with the arguments adduced by the Commission in paragraph 66 of its report for excluding social revolution, since ordinary changes of Government or revolts usually meant a social revolution.

4. His delegation agreed with the Commission that the "clean slate" principle should not apply to treaties relating to boundary régimes and other territorial régimes. The proposed article 12 *bis* in foot-note 54 of the report was of great interest, since all countries were directly affected by multilateral treaties of universal character. It was certainly in the interests of all countries that a treaty of that kind should remain in force until such time as the newly independent State gave notice of termination of the said treaty for that State. Thus, the principle of absolute continuity was rejected. His delegation therefore supported the proposed article 12 *bis* and would like to see it included among the draft articles. His delegation also supported the Commission's recommendation that the General Assembly should invite Member States to submit observations on the final draft articles.

5. He noted that the Commission had continued its work on the question of State responsibility and had adopted new articles 7-9 in that regard (see A/9610, chap. III, sect. B). His delegation agreed with the provision in article 5 that the conduct of any State organ having that status under the internal law of that State should be

considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question. Articles 6 and 7 were the logical consequence of, and supplementary to, article 5. They were explanatory rather than normative, and their purpose was to prevent a State from rejecting its international legal responsibility.

6. With regard to the attribution to the State of the conduct of persons acting in fact on behalf of the State, there was no doubt that the conduct of a person or group of persons should be considered as an act of the State under the conditions listed in article 8. There seemed to be no difference between article 9 and Mr. Ushakov's proposal in the Commission[1] except that the latter was clearer and more accurate and therefore preferable in the opinion of his delegation. In view of the urgency of the question, the Commission should give the highest priority to the question of State responsibility. The draft resolution to be adopted by the Sixth Committee on the item should contain a recommendation to that effect.

7. The Committee also had before it articles 1-6 adopted by the Commission on the question of treaties concluded between States and international organizations or between two or more international organizations (*ibid.*, chap. IV, sect. B). With regard to article 3, from the purely legal point of view agreements could be concluded only between subjects of international law, and his delegation therefore doubted the necessity of mechanically accepting article 3 of the Vienna Convention on the Law of Treaties[2] and incorporating it into the draft. Article 6 was of significance for international law, since it rightly generalized the practice of international organizations and formulated a new international legal standard.

8. The Commission had specific tasks which called for time and academic study, and its structure and methods of work reflected those tasks. Although it had achieved substantial successes, the conclusion should not be drawn that its structure and methods of work were ideal or complete; there was always room for improvement. The past work of the Commission should be carefully weighed, taking into account its special nature. The question required further examination on the basis of mutual understanding among the various organs concerned. Finally, his delegation saw no need to extend the length of the Commission's sessions.

9. Mrs. SLÁMOVÁ (Czechoslovakia) welcomed the progress made towards the development of international law and expressed appreciation for the work of the Commission in the 25 years of its existence, as a result of which a good many lacunae in international law had been filled. It was clear from the Commission's report that it had carried out the General Assembly's recommendation in resolution 3071 (XXVIII) that it should complete the second reading of the draft articles on succession of States in respect of treaties and continue its work on State responsibility. The draft articles adopted by the Commission derived from existing principles of State succession and could be a substantial contribution to the codification and progressive development of international law. It was clear from the report that the views of Member States had been taken into account, including those of her Government.

10. One major principle underlying the draft articles was the "clean slate" principle, which was a sound approach. However, since the principle had not been carried to its logical conclusion, ambiguities had arisen. That was particularly clear in respect of States formed as a result of separation of parts of a State, in which case the Commission proposed that the agreement should continue to have effect, i.e. it applied the principle of continuity, as laid down in article 33. Her delegation regarded the "clean slate" principle as essential in the case of States resulting from separation and offered the example of her country in 1918, which had come into being following the collapse of the Austro-Hungarian Empire. The Czech and Slovak peoples had had no opportunity to express their approval or disapproval of the treaties concluded by Austria-Hungary, and, as an independent State, Czechoslovakia had had every right to decide which treaties would be applied. Moreover, the "clean slate" principle did not run counter to the proposed article 12 *bis* on multilateral treaties of universal character.

11. Another important question which needed to be settled was that of notification. Notification should be retroactive to the actual date of succession of States. In article 22, paragraph 2, of the draft, the Commission had proposed as a solution the temporary suspension of a treaty as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession. The effects of such a suspension would be mitigated if provision was made for the possibility of temporary application, as was done in article 26 in respect of multilateral treaties. Such a solution would be fully in keeping with the underlying spirit of the draft as a whole.

12. The question of the period of notification also had a wider significance because of the danger that a lack of confidence in treaty relations generally would emerge. It would be advisable for the Commission to examine that issue more closely and to clarify precisely the concept of the moment of succession. The Commission might consider whether the determining factors should be purely objective, i.e. a declaration by the successor State, or whether other factors should be taken into account. Article 2, paragraph 1 *(e)*, did not provide a clear answer.

13. With regard to the question of State responsibility, her delegation could agree in principle with the three new draft articles produced by the Commission at its twenty-sixth session. However, further clarification was needed on certain points.

14. With regard to article 7, concerning attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority, her delegation welcomed the Commission's efforts to exclude from the draft any formulation which might in practice imply the responsibility of a State for acts committed by persons and groups other than those acting on behalf of the

1 A/CN.4/L.208.

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

State or exercising the prerogatives of State power. Not all social or other institutions were thus empowered. Article 7, paragraph 2, should be further clarified so as to make it plain that an organ which was not a part of the official State structure was only to be regarded as acting on behalf of the State if it was exercising the prerogatives of State power or customarily did so.

15. Article 8 demonstrated the Commission's wish to eliminate misunderstandings which might arise from ambiguous terminology, but her delegation felt that further clarification was required, particularly in subparagraph *(a)*, in order to prevent the application of that article to acts which were represented as acts of a State and which in fact were not.

16. The fact of the existence of two drafts of article 9 showed how complex was the point involved. Further clarification was needed in the definition of organs which came under the jurisdiction of States. The article could not cover persons not empowered to exercise the prerogatives of State power, such as doctors and technical assistance personnel. She felt that the article proposed by Mr. Ushakov was more adequate than that adopted by the Commission because it contained most of the considerations which were set forth in the Commission's commentary to article 9 but not included in the Commission's text.

17. Her delegation welcomed the Commission's intention to examine questions such as failure on the part of States to fulfil international obligations, including, first and foremost, those relating to the maintenance of peace. There was also the question of the need to distinguish the degree of seriousness of obligations and violations thereof and the question of international crimes recognized as such in international law. Contemporary international law already accepted the concept of the exceptionally grave responsibility of States whose representatives or individual private nationals acting on the State's behalf committed acts constituting violations of peace. The question had already been dealt with during the drafting of the Statute of the International Court of Justice. She cited, among other instruments relating to the definition of international crimes, General Assembly resolution 260 A (III), which contained the Convention on the Prevention and Punishment of the Crime of Genocide, and General Assembly resolution 2621 (XXV) declaring the further continuation of colonialism a crime in violation of the Charter of the United Nations. Other General Assembly and Security Council resolutions and appeals similarly condemned racial discrimination and *apartheid*, acts against dependent peoples, the use of arms to promote and support racism, and acts of aggression against the sovereignty and territorial integrity of any State. The prohibition of such acts was enshrined in the Charter as a principle binding on all. It would be advisable for the Commission to examine those questions with a view to seeing how imperialist States might be prevented from committing acts under the cover of private enterprises such as international monopolies.

18. She expressed regret that the Commission had been unable to deal directly with the question of the most-favoured-nation clause at its twenty-sixth session. Her delegation felt that the draft articles on that topic should contain provisions which were not limited to the most-favoured-nation clause in agreements between States but extended as well to agreements between international organizations and States and perhaps even between international organizations. In its further work on that topic, the Commission should include provisions covering the principle of the unconditional nature of the most-favoured-nation clause unless otherwise provided, as proposed by the Special Rapporteur in his fourth report.[3] The draft articles should contain unambiguous provisions governing the period during which most-favoured-nation treatment was to be accorded and should provide that most-favoured-nation treatment should be extended *de facto* and not merely *de jure* to arrangements with third parties, unless otherwise agreed. The work done so far by the Commission and the Special Rapporteur on that topic formed a good basis for the eventual codification of that important sector of international law.

19. She welcomed the fact that in the near future the Commission would concentrate primarily on further issues of State responsibility and would prepare draft articles on the topic of succession of States in respect of matters other than treaties. In her delegation's view, questions of succession of States should be dealt with together on the basis of unified principles.

20. With regard to other topics, her delegation fully endorsed the Commission's proposed long-term programme of work. It did not, however, support the proposal to extend the Commission's session to 12 weeks. The intended aim of that proposal could be equally well achieved by organizational efficiency.

21. The importance of the codification and progressive development of international law for international co-operation was stressed in Article 13 of the Charter, and the Commission was making a major contribution to peaceful coexistence among States.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

22. Mr. GHAUSSY (Afghanistan) referred the Committee to his statement at the 1479th meeting. He thanked those representatives who had shown understanding for the cause of the landlocked countries.

23. The draft definition of aggression (see A/9619 and Corr.1, para. 22) which was the result of a compromise, possessed the merit of affirming the right of peoples to self-determination, freedom and independence. However, his delegation would have preferred a more complete definition covering other forms of aggression such as

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3 A/CN.4/266.

economic aggression. None the less, the draft definition was a first stage in the process of defining aggression, which would contribute to the codification of international law.

24. He appreciated the delicate balance which had been achieved in the draft definition but wished to point out again the omission from article 3 *(c)* of any reference to the problem of landlocked countries. His delegation supported the trend in the United Nations in recent years to regard as desirable the adoption of decisions by consensus or without a vote. However, while seeking to reach a consensus through informal consultations, representatives must be aware of the true meaning of the word "consensus" or of a decision taken without a vote. It did not mean that all difficulties had been overcome or that reservations might not be in order. It was in that spirit that he was introducing working paper A/C.6/L.990, whose sponsors had been joined by Zambia. In submitting the working paper, which contained an additional clause designed to correct the omission in the definition, he observed that the special situation of the landlocked countries mentioned by his delegation the previous year had perhaps not been brought home with sufficient emphasis to the Special Committee on the Definition of Aggression in the final stage of its work.

25. The only difference between the case of a landlocked country which had been refused the right of access to and from the sea and that of a State whose ports and coasts were blockaded by another State, as laid down in article 3 *(c)*, was that the landlocked country had no coastline; the nature of the act and its consequences were the same. Article 3, subparagraphs *(f)* and *(g)*, mentioned indirect aggression, but surely the blockading of a landlocked country's routes of access to the sea was also a case of indirect aggression. Among the landlocked developing countries, his country was one of the least developed because, for a landlocked country to survive and develop, it must be able to use routes of access to and from the sea. Therefore, if such access was denied, an act of aggression was involved.

26. Out of respect for the consensus reached concerning the draft definition, his delegation and the other sponsors had submitted not a formal amendment but a working paper, and he hoped that a similar consensus could be reached through continued informal consultations so as to obtain a more comprehensive and therefore more acceptable definition for the international community.

27. Mr. GODOY (Paraguay) referred the Committee to the statement he had made at the 1483rd meeting. At the previous session, it had been suggested to the Special Committee that it should include the blockade of routes of access to the sea of landlocked countries in the definition of aggression. That suggestion had been based on the principles of justice and the sovereign equality of States.

28. States which had a coastline were sufficiently protected by the definition of aggression as drafted, in particular by article 3 *(c)*. However, it was wrong to disregard the 30 or so States without a coastline which required as much if not more protection than the others because of the many disadvantages to which they were subject.

29. He appealed to the Committee to adopt working paper A/C.6/L.990 by consensus and without further discussion, since it was not a formal amendment but merely a suggestion designed to correct an omission which could prove harmful to certain Member States.

30. Mr. MAI'GA (Mali) referred the Committee to his statement at the 1480th meeting. When a coastal State had its ports blockaded, the landlocked countries dependent on those ports were as seriously affected as the coastal State itself. Working paper A/C.6/L.990 corrected an omission in the draft definition. It had been drawn up in conformity with the spirit of the Charter of the United Nations, in particular Article 2, paragraph 4, and Article 74. It would not upset the delicate balance of the definition of aggression but would serve to prevent any ambiguity in the application of the definition to landlocked countries. It was a further contribution to the strengthening of peace and security in the spirit of the definition, and the Drafting Committee of the Special Committee should take it into account.

31. Mr. LEKAUKAU (Botswana) said his delegation was confident that the draft definition of aggression would result in improved international relations. However, working paper A/C.6/L.990 proposed a necessary amendment to the draft definition in order to correct an omission which landlocked States could not permit to pass unnoticed. His delegation's request for the incorporation of the amendment into the draft definition was founded on recent developments in the law of the sea. He referred the Committee to the statement by his delegation at the 33rd meeting of the Second Committee at the United Nations Conference on the Law of the Sea in Caracas and to the statement by the Chairman of his delegation at the 2261st plenary meeting of the General Assembly on 8 October 1974 concerning his country's rights as a landlocked State. The addition to article 3 *(c)* of the clause contained in working paper A/C.6/L.990 would make it clear that if access to the sea was impeded by a blockade of the borders of landlocked States, the action would amount to aggression. That was particularly important to countries like his own which had common borders with countries ruled by white minority régimes. His Government's attitude towards such régimes was well known to all United Nations organs, and States like Botswana should not be forced by a lack of protection under international law to forgo their right to criticize the policies of the minority régimes.

32. His delegation shared the desire to preserve the consensus reached on the draft definition and was aware that the latter was the result of a delicate compromise. However, the proposed addition did not disturb the draft in substance but merely amplified article 3 *(c)* and should be interpreted as referring strictly to coastal ports. He urged the Committee to adopt the working paper in order to guarantee the security of landlocked States.

33. Mr. SINGH (Nepal) said that, as a sponsor, his delegation joined earlier speakers in supporting the working paper introduced by the representative of Afghanistan; it hoped that the working paper would be adopted by consensus in the Committee.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued) (A/C.6/L.980, L.982, L.983, L.985, L.986)**

34. The CHAIRMAN informed the Committee that the representative of Democratic Yemen had expressed his regret at having been unable to be present at the Committee's 1481st meeting. He wished it to be recorded that, had he been present he would have voted against the Israeli motion for division and in favour of draft resolution A/C.6/L.980.

* Resumed from the 1481st meeting.

The meeting rose at 12.15 p.m.

1489th meeting

Thursday, 31 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1489

AGENDA ITEM 87

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

1. Mr. KLAFKOWSKI (Poland) congratulated the Chairman of the International Law Commission on his masterly presentation of its report on the work of its twenty-sixth session (A/9610 and Add.1-3) and stressed the quality of the various draft articles set forth in the report. The codification of international law was becoming an increasingly complex and difficult task. The emergence of a large number of States had created a new climate in the political as well as in the diplomatic, economic, cultural and legal senses, so that the codification of international law must meet new needs and aspirations. The Commission had achieved major successes in that field due to its method of work. As Mr. Suy, Under-Secretary-General and Legal Counsel, had said, before the Commission at its 1265th meeting, "The success of the Commission's method of work" was "undoubtedly characterized by the continuous interaction of scientific expertise and governmental responsibility throughout the preparation of a codification draft. Such interaction required much time . . .".

2. So far 10 multilateral conventions had been concluded on the basis of drafts drawn up by the Commission. The report under consideration made a particularly important contribution to international law, since it set forth draft articles for three different conventions and gave a preliminary outline of principles for another set of draft articles.

3. It should be noted that the work of the Commission was only one stage in the process of codifying international law. The annual consideration of the Commission's report made it possible to assess its scientific work in the light of the realities of international life, represented by governmental delegations. The codification process was highly successful because of such multilateral diplomacy.

4. With reference to the statement by the representative of Iraq at the 1485th meeting he stressed the importance of the democratization of the international community, which was particularly noticeable in the codification of international law. The work of the Commission was affected by that democratization process, and influenced State practice, legal scholarship and the teaching of international law. It should be added that in its work the Commission benefited on a permanent basis from the valuable assistance of the Codification Division.

5. His delegation considered that the draft articles on succession of States in respect of treaties (*ibid.*, chap. II, sect. D) were concise, well-drafted and supplemented by excellent commentaries. His country was one of the 14 States Members of the United Nations which had already submitted written observations on the draft articles (see A/9610, annex I).

6. The Commission had so far adopted only a few articles on State responsibility, but they were the outcome of a remarkable work of synthesis and laid down fundamental rules based on international practice and jurisprudence. Since the subject of State responsibility was highly controversial, it was too early, at the current stage of the Commission's work, to make even preliminary observations.

7. Chapter IV of the report on the question of treaties concluded between States and international organizations or between two or more international organizations was impressive in its clarity, precision and simplicity. That question was of great importance for multilateral diplomacy. The six articles already adopted were the result of a major research effort.

8. He stressed the value of the report on the law of the non-navigational uses of international watercourses already drawn up by the Sub-Committee established to study that subject (see A/9610, chap. V, annex).

9. He recalled that his delegation had always been in favour of updating the Commission's long-term programme of work.

10. Mr. QUENTIN-BAXTER (New Zealand) said that his delegation did not intend to discuss in detail the draft