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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-FIRST SESSION

DECLARATION AND RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES: RESOLUTION RELATING TO ARTICLE 1 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES

Report of the Sixth Committee

Rapporteur: Mr. Piet-Hein HOUBEN (Netherlands)

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I. INTRODUCTION

1. At its 1758th plenary meeting, on 20 September 1969, the General Assembly included the items entitled "Report of the International Law Commission on the work of its twenty-first session" (item 86) and "Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties: (a) Declaration on Universal Participation in the Vienna Convention on the Law of Treaties; (b) Resolution relating to article 1 of the Vienna Convention on the Law of Treaties; (c) Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the annex thereto" (item 94) in the agenda of its twenty-fourth session and allocated them to the Sixth Committee.

2. At its 1102nd meeting, on 24 September 1969, the Sixth Committee decided to consider sub-heading (b) of item 94 entitled "Resolution relating to article 1 of the Vienna Convention on the Law of Treaties" together with the report of the International Law Commission on the work of its twenty-first session. The Sixth Committee considered items 86 and 94 (b) at its 1103rd to 1111th and 1119th meetings, held from 25 September to 1 October and on 8 October 1969.

3. At the 1103rd meeting, on 25 September 1969, Mr. Nikolai Ushakov, Chairman of the International Law Commission at its twenty-first session, introduced the Commission's report on the work of that session (A/7610 and Corr.1). At the 1119th meeting, on 8 October 1969, he commented on the observations which had been made during the debate on the report.

4. The report of the International Law Commission on the work of its twenty-first session, which was before the Sixth Committee, is divided into six chapters entitled: I. Organization of the session; II. Relations between States and international organizations; III. Succession of States and Governments; IV. State responsibility; V. The most-favoured-nation clause; and VI. Other decisions and conclusions of the Commission.

5. In connexion with the "Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties" (item 94), the Secretary-General submitted a note (A/C.6/L.743) which made reference to another note submitted by the Secretary-General (A/7592). The text of the resolution relating to article 1 of the Vienna Convention on the Law of Treaties, reproduced in the explanatory memorandum attached to the Secretary-General's note (A/7592), read as follows:

"The United Nations Conference on the Law of Treaties,

"Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

"Taking note that the Commission's draft articles deal only with treaties concluded between States,

"Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

"Cognizant of the varied practices of international organizations in this respect, and

"Desirous of ensuring that the extensive experience of international organizations in this field be utilized to the best advantage,

"Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study, in consultation with the principal international organizations, of the question of treaties concluded between States and international organizations or between two or more international organizations."

6. At the 1121st meeting, on 10 October 1969, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on items 86 and 94 (b). Referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject matter, the report should include a summary of the representative trends of opinion and not of the individual views of all delegations.

II. PROPOSAL

7. At the 1119th meeting, on 8 October 1969, the representative of India introduced a draft resolution (A/C.6/L.746 and Add.1 and 2) sponsored by Cameroon, Ceylon, Chile, Finland, India, Mexico, Morocco, Nigeria, Romania, Spain, Sweden, Syria, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, later joined by Japan, the Sudan and the Ukrainian Soviet Socialist Republic. When introducing the draft resolution, the

representative of India, on behalf of the co-sponsors, modified its operative paragraph 2 by inserting the word "profound" before the word "appreciation" and the word "valuable" before the word "work". As revised (A/C.6/L.746/Rev.1), the seventeen-Power draft resolution reads as follows:

"The General Assembly,

"Having considered the report of the International Law Commission on the work of its twenty-first session,

"Having discussed the resolution relating to article 1 of the Vienna Convention on the Law of Treaties adopted by the United Nations Conference on the Law of Treaties,

"Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

"Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-first session of the International Law Commission, a fifth session of the Seminar on International Law,

"1. Takes note of the report of the International Law Commission on the work of its twenty-first session;

"2. Expresses its profound appreciation to the International Law Commission of the valuable work it has accomplished during that session;

"3. Takes note with approval of the programme and organization of work planned by the International Law Commission, including its intention of bringing up to date its long-term programme of work and of completing its draft articles on representatives of States to international organizations before the expiry of the term of office of its present membership;

"4. Recommends that the International Law Commission:

"(a) Continue its work on relations between States and international organizations with a view to complete its draft articles on representatives of States to international organizations in 1971;

"(b) Continue its work on succession of States and Governments taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

"(c) Continue its work on State responsibility taking into account paragraph 4 (c) of General Assembly resolution 2400 (XXIII);

"(d) Continue its study of the most-favoured-nation clause;

"5. Recommends that the International Law Commission should study in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question;

"6. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of nationals of developing countries;

"7. Requests the Secretary-General to forward to the International Law Commission the records of the twenty-fourth session of the General Assembly concerning the discussions on the Commission's report and the resolution relating to article 1 of the Vienna Convention on the Law of Treaties."

III. DEBATE

8. The main trends of the Sixth Committee's debate on agenda items 86 and 94 (b) are summarized below. Those relating to item 86, "Report of the International Law Commission on the work of its twenty-first session", are summarized in section A, and those relating to item 94 (b), "Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties: (b) Resolution relating to article 1 of the Vienna Convention on the Law of Treaties", are summarized in section B. Section A is, in turn, divided into six sub-sections. The first concerns the general comments made on the Commission's work and on the promotion by the United Nations of the progressive development and codification of international law. The other five are devoted to the observations made on chapters II to VI of the Commission's report, and each one bears the title of the chapter to which it relates.

A. Report of the International Law Commission on the work of its twenty-first session

1. General comments on the work of the International Law Commission and the promotion by the United Nations of the progressive development and codification of international law

9. Many representatives congratulated the International Law Commission on the work it had done at its twenty-first session and expressed the view that its report on that session constituted yet another valuable and important contribution

by the Commission to the promotion of the progressive development and codification of international law, entrusted to the General Assembly under Article 13, paragraph 1 (a), of the Charter of the United Nations. Certain representatives also said that the report of the International Law Commission had the merit of reflecting two striking aspects of the recent evolution in international relations - the rapid growth of the international community, which was due to the increasing number of States that had gained independence, and the progressive development of a systematic network of international organizations designed to bring about ever closer co-operation among States but also endowed with responsibilities of their own.

10. Several representatives observed that in providing an appropriate institutional system for the promotion of the progressive development and codification of international law, the United Nations had become an efficient centre for the encouragement and co-ordination of those activities. Publicists who in past years had made pessimistic predictions now admitted the importance of United Nations achievements in the field of the progressive development and codification of international law. Some representatives emphasized the significant role which the International Law Commission had played in those achievements and expressed the view that its success resulted from a combination of factors, including the excellent quality and the objectivity of its drafts, the balanced way in which both established rules and the more recent practice of States are reflected in those drafts, its efforts to serve the interests of the international community as a whole, the high level of technical competence of its members and the constructive spirit of mutual co-operation which inspired their work, the fact that the main legal systems of the world were represented in the Commission, and the relations established with the General Assembly and the Sixth Committee.

11. It was observed that the annual consideration of the report of the International Law Commission by the General Assembly and the Sixth Committee was an important stage in the progressive development and codification of international law by the United Nations; it enabled the members of the Sixth Committee, who were representatives of Member States, to review regularly the state of current work on the progressive development and codification of international law, as well as the state of international law in general, and thus

to collaborate with the legal experts elected to the Commission by the General Assembly. The debate on the report revealed the main legal trends in the international community and the attitudes of States towards them, thus facilitating the preparation of drafts by the International Law Commission and guiding the General Assembly in its efforts to find appropriate solutions to the various problems relating to the progressive development and codification of international law. Certain representatives said they were glad that the Sixth Committee was playing an increasingly active part in the codification and progressive development of international law.

12. Several representatives emphasized that it was important and essential to progressively develop and codify international law. Some added that the progressive development and codification of international law helped to strengthen international legality and to improve international relations and was consequently a powerful means of maintaining international peace and security and intensifying co-operation among all States, irrespective of their political, economic or social systems. Others observed that small and medium-sized countries were becoming increasingly aware of their rights and obligations in international relations and that there was therefore a need to bring up to date the rules and principles which regulated relations between States.

13. With regard to the activities relating to the codification and progressive development of international law undertaken in 1969, some representatives emphasized that the adoption of the Vienna Convention on the Law of Treaties has been an outstanding achievement. Certain representatives felt that the speedy entry into force of the Convention would help to create conditions conducive to respect for and implementation of treaty obligations. It was said that the General Assembly should take steps to close the remaining gaps in the Convention, especially that relating to the principle of universal participation in general multilateral treaties. It was also observed that the Secretariat should examine closely the Vienna Convention on the Law of Treaties to establish whether the existing rules and practices regarding the exercise of depository functions by the Secretary-General, which had been formally sanctioned by decisions of the General Assembly, needed to be modified in any way, and that the opportunity might also be taken to continue unifying administrative practice relating to the

performance of depository functions by the secretariats of international organizations. Lastly, it was added that although the task of registering, translating and publishing treaties was very time-consuming, an effort should be made to publish them within one year of their submission and a special effort should be made to bring the United Nations Treaty Series up to date on the occasion of the twenty-fifth anniversary of the United Nations.

2. Relations between States and international organizations

(a) General observations on the draft articles on representatives of States to international organizations

(i) Progress of work

14. Many representatives expressed satisfaction at the substantial work accomplished in 1969 by the International Law Commission and, in particular, by the Special Rapporteur on the topic, Mr. El-Erian, which had resulted in the adoption by the Commission of twenty-nine new draft articles (draft articles 22 to 50) on representatives of States to international organizations to be added to the set of twenty-one (draft articles 1 to 21) adopted on that subject by the Commission in 1968. In their view, the new set of draft articles adopted represented an important step forward in the codification and progressive development of international law relating to relations between States and international organizations and augured well for the completion of work on that important topic.

15. Several representatives emphasized the practical importance of the draft articles on representatives of States to international organizations. It was deemed to be in the interest of the international community as a whole to ensure the effective and undisturbed operation of international organizations, which were designed to bring about harmonious relations and a closer co-operation among States. It was also said that the questions dealt with in the draft articles were of particular interest to newly independent States which still lacked an extensive network of embassies. Besides, the observation was made that the international organizations themselves had responsibilities of their own and their interests required that the general status of representatives of States be clearly established and widely recognized. In this connexion gratification was expressed that international organizations had been accorded their rightful place in the draft articles.

16. Several representatives welcomed the Commission's decision to transmit the draft articles through the Secretary-General to Governments of Member States for their observations and expressed satisfaction at the decision to transmit the draft articles to the Government of Switzerland and the secretariats of the United Nations, the specialized agencies and the International Atomic Energy Agency for their observations.

17. Most representatives who referred to the matter indicated that their comments were of a general and preliminary nature; their Governments would study carefully the draft articles and submit in due course detailed written observations thereon.

(ii) Scope of the draft articles

International organizations of a universal character

18. Certain representatives considered that the draft articles should apply only to major organizations of a universal character, and not to all organizations of a universal character, as implied in paragraph 1 of article 2, adopted in 1968. Others observed further that although the draft articles were intended to apply to international organizations of a universal character, they might be used as models for headquarters agreements of international organizations not of a universal character.

Permanent missions to international organizations

19. Some representatives considered that the draft articles gave the impression of applying to all permanent missions irrespective of size and scope, whereas they could apply only to those which were comparable to normal diplomatic missions; therefore, the definition of "permanent mission" adopted in 1968 (draft article 1 (d)), seemed inadequate for those representatives. Doubts were also voiced whether the Commission had been right to embark on its study of permanent missions without first considering what status should be accorded to international organizations of the type under consideration. Lastly, referring to the composition of the mission, certain representatives considered that the expression "diplomatic staff" in draft article 1 (g and h) was inaccurate in the context of a permanent mission.

Permanent observers of non-member States to international organizations

20. Several representatives endorsed the Commission's decision to include in the draft articles provision dealing with permanent observers of non-member

States to international organizations. In this respect, the view was expressed that any such provisions should take into account the legitimate interests of the host State, and not only the invitation of the organization concerned. In certain cases the host State might not even be a member of the international organization in question and would therefore have no say in deciding whether or not observers of a State which it did not recognize should be admitted. On the other hand, it was considered that conditions such as the agreement of the host State were unacceptable since they restricted the independence of international organizations. The opinion was further expressed that the scope of provisions on the subject should be determined in accordance with the principles of universality and non-discrimination.

Delegations to organs of international organizations or to conferences convened by such organizations

21. Several representatives agreed with the Commission's conclusion that its draft should also include articles dealing with delegations to sessions of organs of international organizations. As regards, however, delegations to conferences convened by such organizations, some representatives reserved their position. It was said in this connexion, that an international conference was a sovereign body, irrespective of who convened it.

Possible effects of exceptional situations

22. Several representatives expressed interest in the future examination by the Commission of the possible effects of exceptional situations, such as absence of recognition, absence or severance of diplomatic relations or armed conflict, on the representation of States in international organizations.

(iii) Form of the work

23. In the opinion of certain representatives, the new set of draft articles, together with the twenty-one previously approved, formed an excellent basis for a future convention on the subject. Others, however, doubted whether a set of general rules in the form of a convention covering the establishment and status of permanent missions to international organizations of universal character was the best approach. In their view, a code intended to serve as a standard and a

model would be more appropriate, since it was likely that specific agreements would be needed on many points dealt with in the draft articles.

(b) Observations on sections II, III and IV of part II of the draft articles

24. A number of representatives indicated in general their approval of sections II, III and IV of part II of the draft articles. Others stressed the importance which they attached to matters covered by some of the draft articles contained in those sections. In this connexion, particular mention was made of articles 24, 25, 27, 28, 29, 30, 31, 32 and 44. The observation was made by certain representatives that the 29 additional draft articles seemed to deal only with permanent missions of States other than the host State. In their view, they should also cover the permanent mission of the host State itself, to which many of the twenty-one draft articles adopted in 1968 applied. Finally, it was remarked that the Commission should be a little more bold in recasting the material and departing from the structure and contents of the 1961 Vienna Convention on Diplomatic Relations, in order to simplify the presentation of the draft. Articles 39 and 40, for example, were confused, when read after articles 30 to 38.

(i) General comments on the facilities, privileges and immunities of permanent missions to international organizations (section II of part II)

25. A number of representatives agreed that permanent missions to international organizations should enjoy privileges and immunities analogous to those accorded to diplomatic missions in the context of bilateral relations. It was pointed out in this connexion that, for all practical purposes, both kinds of missions enjoyed an almost identical status in most instances. Consequently, it was considered that the provisions of the Vienna Convention on Diplomatic Relations had properly been used as a basis for the formulation of the new draft articles on representatives of States to international organizations. Nevertheless, it was felt that the analogy principle should be applied in such a manner as to respect the particular characteristic of the permanent mission.

26. Some representatives said that in drafting the new articles, the Commission had struck the right balance: it had departed from the precedents of the Vienna Convention when it had been necessary due to the inapplicability of

certain key features of diplomatic privileges and immunities in the classic sense - the principle of reciprocity and the concepts of agrément and persona non grata - to a triangular relationship between sending State, host State and international organization. In this regard, the observation was made that the difference between diplomatic missions and permanent missions was evidenced by the fact that a State might send a permanent mission to an international organization whose headquarters were in a host State with which the sending State had no diplomatic relations.

27. Several representatives agreed that the starting point towards the establishment of the privileges and immunities of permanent missions to international organizations should be the modern theory of the "functional necessity" rather than the "extraterritoriality" or the "representative character" theories.

28. The view was expressed that if the future convention were to command the widest possible acceptance two considerations should be taken into account. First, if their basis was functional necessity, the level of the privileges and immunities to be granted to the permanent missions should vary according to the functions which they performed; it was therefore considered appropriate to cover only those privileges and immunities regarded as essential, and to leave the others to be agreed between the host State and the international organization concerned. Secondly, it was also stated that since the principle of reciprocity was not applicable, it would seem wise not to impose too heavy a burden on the host State with regard to the privileges and immunities to be accorded to permanent missions from other States, particularly in view of the tendency of international organizations to congregate in a limited number of States with suitable conditions for their efficient functioning. A realistic attitude should be adopted and the protection afforded to the permanent mission should not extend beyond what was functionally necessary.

29. Stressing the importance of the functional element over diplomacy in relations between States and international organizations, a number of representatives, referring in particular to draft articles 4 and 5, adopted in 1968, considered that the draft articles should be based as far as possible on existing agreements on privileges and immunities. They, therefore, emphasized the need to take into account the current practice of States and international

organizations in that regard. The opinion was expressed that the draft might be more readily acceptable given the fact that it was without prejudice to other international agreements in force. Nevertheless, it was considered that problems of incompatibility might still arise between certain new provisions and existing instruments or practices.

30. The belief was expressed that a closer examination should be made of cases where an agent had functions of a dual nature, serving as the representative of the sending State not only to the host State but also to an international organization situated in the territory of the host State.

31. The view was held that care should be taken in elaborating the various exemptions included in the draft. The immunities under consideration were purely procedural in character and, as such, could be waived with proper authorization from the sending State. Thus, there could be no absolute immunity even from the jurisdiction of the host country, let alone immunity from its substantive law.

32. The statement in paragraph (5) of the Commission's general comments on section II, to the effect that the representative of a State to an international organization represented his State "before" the organization, was considered to be misleading; it was said that the representative represented his State in the organization and before any organization or personality as might be necessary in the performance of his duties; the member State was itself part and parcel of the organization and the organization was not something apart from its members.

(ii) Comments on specific provisions of the draft articles

Article 22 (General facilities)

33. Some representatives supported draft article 22 for, in their opinion, its provisions merely confirmed the practice of certain international organizations.

34. As regards the second sentence of the draft article, the view was expressed that its inclusion might make it possible to interpret in a less absolute manner the obligations imposed in the first sentence, since it seemed to imply that obligations would not be honoured unless the organization assisted the permanent mission.

35. Referring to paragraph (2) of the commentary on the draft article, some

representatives considered that the question whether the organizations themselves should become parties to the future convention involved a matter of principle, whose resolution would determine to a large extent the final text of the draft articles. In their opinion, even if the solution were in the affirmative, the question would also have to be settled whether it was better to state the rights and duties of international organizations in separate articles or to deal with them as incidental and dependent on articles concerning primarily the rights and duties of the host, sending or third States or of the missions themselves and their members. In this connexion, it was also said that, in view of the fact that in the group of twenty-nine draft articles the international organization figured merely as an intermediary or agent, it might be better not to speak of an obligation of the international organization but rather to stress the obligation of the host State to accept the good offices of the organization whenever they were offered as regards any matter affecting the facilities, privileges and immunities of permanent missions.

Article 23 (Accommodation of the permanent mission and its members)

36. The use of the word "accommodation" and of the term "suitable accommodation" was criticized. It was said that the word was open to different interpretations and that it was not clear which would be the criteria to determine whether the accommodation was "suitable" or not.

Article 24 (Assistance by the Organization in respect of privileges and immunities

37. The opinion was expressed that draft article 24 might induce organizations to intervene in relationships between sending and host States in cases where no real problem concerning privileges and immunities had arisen.

38. Referring to the commentary to draft article 24, some representatives endorsed the statement of the Legal Counsel, speaking as the representative of the Secretary-General, to the effect that the rights of representatives should properly be protected by the Organization and not left entirely to the bilateral action of the States immediately involved. It was in the interest of the Organization itself that the representatives of the member States should enjoy the privileges and immunities necessary to help them discharge their functions.

Other representatives disagreed with the principle - referred to in that statement - that the Organization itself was a party to the Convention on the Privileges and Immunities of the United Nations. In their opinion, a distinction should be made between multilateral conventions to which only States were parties, and headquarters agreements to which organizations could become parties.

Article 25 (Inviolability of the premises of the permanent mission)

39. Some representatives gave general support to article 25, subject to the incorporation in its text of proper safeguards to prevent the arbitrary use of its provisions. In this respect, it was considered that the concept of public safety was not clearly defined and that no indication was given as to who was to determine whether or not public safety was seriously threatened.

40. As regards paragraph 1 of the article, the view was expressed that only in extreme cases, such as disasters, could an exception be allowed to the principle of inviolability and that the host State should have the burden of proving that the circumstances justified any departure from that principle. Referring to the last sentence of paragraph 1 some representatives considered that in view of the permanent and representative character of missions to international organizations, and of their functions, there was no reason why the corresponding provisions of the Vienna Convention on Diplomatic Relations should not be followed. Certain representatives further considered that the last sentence in paragraph 1, established a limitation on the principle of inviolability which might lead to the virtual negation of the principle. It was said that an objective and concrete legal prerogative was made dependent on the subjective judgement of the authorities of the host State as to what constituted "fire or other disaster that seriously endangers public safety". The term "other disaster" was deemed particularly vague and leaving a wide margin for arbitrary interpretation. In addition, it was stated that the phrase "only in the event that it has not been possible to obtain the express consent of the permanent representative" could be interpreted to mean that the premises of the permanent mission could be broken into even against the wishes of the permanent representative.

41. As regards paragraph 3 of the article, it was said that the expression "other property thereon" should be more closely defined.

Article 26 (Exemption of the premises of the permanent mission from taxation)

42. The view was expressed that it was only fair that the exemption established in article 26 should extend to any premises rented by the mission, so that States which were not in a position to purchase the necessary premises would not be deprived of the benefits provided for in the article.

Article 28 (Freedom of movement)

43. The opinion was expressed that article 28 should be restricted to movement of members of the mission that was necessary in the performance of the functions of the mission, and that there was no need to extend it to families.

Article 32 (Immunity from jurisdiction)

44. A number of representatives supported the provision laid down in paragraph 1 (d) of article 32, as means of protecting the victims of motor accidents. Some representatives considered that the exception provided for in that provision should extend to accidents caused by a vehicle used in the performance of official functions. Certain representatives considered also that provisions should be adopted requiring representatives to international organizations to be insured against liability for accidents caused by vehicles used by them. In this connexion, some representatives were of the view that such provisions should be so drafted as not to enable insurance companies to evade their obligations by relying on the immunity of the insured.

45. On the other hand, a number of representatives considered that the corresponding provisions of the Vienna Convention on Diplomatic Relations constituted a better solution than that offered by the provision in paragraph 1 (d). The opinion was expressed that although such a provision might be appropriate in a convention on special missions, which were temporary in character, it would be out of place as regards permanent missions. Emphasis was also made on articles 34, 45 and 50 of the draft as offering adequate guarantees to cover the situation in question.

46. Referring to article 34, some representatives stated that the problem could be solved by a general waiver. Others, however, considered that paragraph (d) should be completed by a sentence along the lines of the provision contained in article 34, to the effect that the sending State should use its best endeavours

to bring about a just settlement of the claims, but without the necessity for waiving immunity.

Article 34 (Settlement of civil claims)

47. Some representatives regarded the provisions of article 34 as judicious and necessary. Others, while agreeing that they were desirable in themselves, nevertheless considered that they might not be appropriate for a legal text, since the sending State's obligation under the article depended very largely on its own subjective criteria. In this connexion, the suggestion was made that in the last sentence, the expression "it shall use its best endeavours to bring about" should be replaced by the words "it shall bring about".

Article 36 (Exemption from dues and taxes)

48. The provisions of sub-paragraph (f) were considered too specific.

Article 39 (Exemption from laws concerning acquisition of nationality)

49. A number of representatives agreed that the subject-matter of article 39 should be dealt with in the draft articles themselves and not be relegated to an optional protocol. Some representatives supported the provisions of the article as useful and as marking a real advance in the definition of the legal status of permanent missions. Other representatives considered, however, that the article required further refinement and expressed doubts as to whether it was compatible with legislation which allowed persons to avoid the application of nationality laws by an act of personal will (option or repudiation).

Article 40 (Privileges and immunities of persons other than the permanent representative and the members of the diplomatic staff)

50. The view was expressed that it was desirable to state that the privileges and immunities granted must be used for the sole purpose of assisting the persons enjoying them in the performance of their duties, and that any possibility of using such privileges or immunities for lucrative or other purposes extraneous to the requirements of the mission as such should be excluded.

Article 41 (Nationals of the host Stage and persons permanently resident in the host State)

51. It was pointed out that paragraph 1 of article 41 contained a drafting mistake which had appeared in the French text of the Vienna Convention of 1961,

but had been corrected in the Vienna Convention of 1963. It should be stated in the French text that the persons concerned "ne bénéficient que de l'immunité de juridiction et de la inviolabilité pour les actes officiels accomplis dans l'exercice de leurs fonctions".

Article 42 (Duration of privileges and immunities)

52. The use of the expression "a reasonable period" in paragraph 2 of article 42 was criticized on the basis that it was not clear what interpretation should be given to it.

Article 44 (Non-discrimination)

53. A number of representatives agreed that article 44 be removed to the end of the whole draft. Some representatives supported the provisions of the article and the view expressed in paragraph (4) of the commentary, that the privileges and immunities granted should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States. Other representatives, however, considered that in examining certain exceptional circumstances, such as the participation in an organization of States that were not recognized, it would be found that the rule had sometimes been varied on grounds of the lack of reciprocity. A rewording of the text was also suggested, as follows: "In the application of the provisions of the present articles, there shall be no discrimination against any State".

Article 45 (Respect for the laws and regulations of the host State)

54. It was pointed out in general that article 45 was the result of a compromise and had the merits and defects of any compromise.

55. As regards paragraph 1 of the article the opinion was expressed that the rule might be misinterpreted to mean that failure by a member of the permanent mission to respect the laws and regulations of the host State would absolve that State from the obligation to respect the immunity which he enjoyed. On the other hand, the observation was made that there was no provision for the host State to declare a representative to the international organization, persona non grata; since the functions of a representative to an international

organization were defined to a large extent by the draft articles themselves, the question arose whether the sending State ought not to be obliged to recall a representative in the case of a gross breach on his part of the obligations imposed on him by the draft articles.

56. As regards paragraph 2 of the article, it was considered that its provisions did not fully guarantee to members of permanent missions the free performance of their functions, since they did not always perform their functions on the premises of the organization or the permanent mission. The view was expressed that, since the question arose whether the limitation on the operation of the first part of that paragraph was correctly defined, it might be advisable to define it in another way, for example, by providing that the provisions of paragraph 2 should not apply to acts performed by the person in question in carrying out the functions of the permanent mission, no matter where those acts were performed. On the other hand, it was considered unacceptable that, as the text stood, the host State could not even request the recall of a person enjoying immunity when the latter had committed a crime within the premises of a permanent mission. Surprise was voiced that the draft articles did not contain a provision for the possible expulsion of persons enjoying immunity, several examples of which could be found in existing agreements. The suggestion was also made to carefully search for another formula to replace the adjective "manifest", which might be the subject of a real dispute.

57. As regards paragraph 3 of the article, it was considered that the inclusion of the phrase "as laid down in the present Convention" would lessen the risk of arbitrary interpretations by the authorities of the host State, particularly in view of the general reservation contained in article 4 of the draft articles; its omission would imply the prevalence of the headquarters agreements concluded between the host State and the organization.

Article 46 (Professional activity)

58. It was considered that the prohibition established in article 46 should be extended to the administrative and technical staff of the permanent mission as well, though an exception might be made in the case of teaching.

Article 47 (End of the functions of the permanent representatives or of a member of the diplomatic staff)

59. The suggestion was made to add a new sub-paragraph (c) reading: "in case of death".

Article 50 (Consultations between the sending State, the host State and the organization

60. A number of representatives supported the text of article 50. In the opinion of some, tripartite consultations were the most appropriate method of solving any disputes which might arise. For others, such consultations would make it possible to dispose of many types of disputes very simply. A number of representatives, however, expressed reservations on the article. Certain representatives considered that article 50 did not specify how questions concerning the interpretation of the draft articles were to be resolved; moreover, in cases involving either the application or the interpretation of the draft articles, legal disputes on well-defined rules might arise. It therefore seemed necessary to provide for impartial third-party settlement. It was also said that the provisions of article 50 might not be adequate to resolve cases in which the host State was not willing to grant all the privileges and immunities specified in the draft articles, especially when they were very far-reaching. Further, it was stated that article 50 might prejudge the reply to the question as to which organ of the organization would be responsible for ensuring respect for the privileges and immunities granted. One outcome of the provisions of the article might be that the secretariat of the organization concerned might find itself invested with authority that could not rightly be acquired except in virtue of the organization's constitutional instruments.

3. Succession of States and Governments

(a) Observations on the topic as a whole

61. Several representatives expressed satisfaction at the fact that, as recommended by the General Assembly, the International Law Commission had continued to examine in depth questions relating to the topic of the succession of States and Governments and had stressed the need to continue to give priority to the topic and to resolve the difficulties which it poses with a view to

producing as rapidly as possible drafts or texts covering the two aspects under consideration, namely "succession in respect of treaties" and "succession in respect of matters other than treaties".

(i) Specific problems of new States

62. A number of representatives emphasized that the topic was of great practical importance and particular interest to the new States which had emerged on the international scene since the Second World War, and that it was therefore necessary in studying the topic to bear fully in mind the views and the experience gained by those States. In that connexion, several representatives pointed out that the newly-independent States were faced with problems of succession which seriously hampered their development and that efforts should be made to ensure that their inalienable right to self-determination was not fettered by the perpetuation of political, economic and juridical situations imposed on them and at variance with that development. The need for ensuring the political and economic development of the new States set up as a result of the breakdown of the colonial system should, in the opinion of those representatives, prevail over any other consideration.

63. Some also argued that the International Law Commission should study the succession of States and the specific problems of decolonization in the light of the basic principles of contemporary international law, e.g. those incorporated in the United Nations Charter and other instruments of world-wide application, and of the pertinent declarations and resolutions adopted by the General Assembly during the last few years. Any legal rule adopted in matters of State succession should, they felt, conform to principles such as the equality of rights of peoples and their right to self-determination, the sovereign equality of States and the obligation of States to co-operate with one another.

64. Other representatives emphasized that the succession of States and Governments involved very delicate and important economic, political and financial aspects of general interest, so that it was necessary to solve the problems arising out of codification of the topic by compromise solutions based on equity and justice. In their view, if the intention was to codify rules of general and lasting validity likely to be accepted and applied by the international community as a whole, it was essential that the rules codified should properly reflect all the interests and opinions of States and not merely particular or partial interests and views. It was also argued that it should be

asserted that the successor State could not succeed to rights and obligations more extensive than those of the predecessor State.

(ii) Judicial settlement of disputes

65. Reference was made to the need for including in drafts or texts on the succession of States and Governments express provisions on the judicial settlement of disputes so as to guarantee the proper functioning of the rules codified.

(iii) Form of the work

66. Certain representatives expressly reserved the position of their delegations on the final form of the codification of the aspects of the topic now under consideration, until such time as the International Law Commission put forward specific drafts or texts on the subject.

(b) Succession in respect of matters other than treaties

67. The report submitted to the International Law Commission by the Special Rapporteur on succession in respect of matters other than treaties, Mr. Bedjaoui, was considered by several representatives to be a valuable contribution to the study of that aspect of the topic. Some representatives praised the work done by the Special Rapporteur and associated themselves with his approach to the problem of economic and financial acquired rights and the succession of States. Others considered that the attitude adopted by the Special Rapporteur could give rise to controversy, but felt that this was due to the very complexity of the question itself and that his attitude was important in as much as it reflected views shared by the new States. Finally, the opinion was expressed that the report submitted was exceptionally controversial.

68. Others pointed out that the preliminary work should not become self-perpetuating and that the Commission should proceed as rapidly as possible to examine the various concrete questions arising in connexion with succession in respect of matters other than treaties, avoiding general discussions which were very largely repetitive and of doubtful practical value.

69. Some representatives were of the opinion that the fundamental differences which had emerged in the International Law Commission in regard to economic and financial acquired rights and State succession, as accurately reflected

in the Commission's report, should not prevent it from continuing to pursue vigorously the study of succession in respect of matters other than treaties, and that this tudy should continue to be given priority. These representatives expressed the hope that the International Law Commission would be able to smooth out the present differences of opinion and bring the various views into line with a view to making progress as rapidly as possible in the codification of this aspect of the topic.

(i) Method of work

70. Several representatives, emphasizing the need for proceeding with caution and in a realistic and practical manner, shared the view of the majority of the members of the Commission that in questions as complex as that of succession in economic and financial matters an empirical method should be adopted, beginning with a study of public property and public debts, and leaving the problems of acquired rights until later. Certain representatives nevertheless did not consider it necessary to have recourse to an empirical method for the codification of succession in economic and financial matters and maintained that that was not the most appropriate method of solving the problems of this aspect of State succession in the modern international community. It was also said that in any case the problem of acquired rights must not be evaded at a later stage. The decision of the Commission to request the Special Rapporteur to prepare draft articles on the succession of States in respect of economic and financial matters, and the intention of the Special Rapporteur to devote his next report to public property and public debts, were expressly supported by several representatives.

(ii) Origins and types of succession

71. While considering it necessary to examine the other modes of succession also, several representatives expressly endorsed the importance given by the Special Rapporteur to the study of the problems arising out of decolonization. In their opinion decolonization was not yet a thing of the past, nor was it a passing phenomenon which disappeared the moment a country acceded to independence; it was a long-term process during which structural changes were produced which required examination in the specific context of State succession. They also felt that cases of succession resulting from a former colonial

situation had peculiarities which called for special treatment. The colonial Powers had special responsibilities as predecessor States, and should therefore assume obligations greater than those normally assumed by such States in cases of succession.

72. Some representatives considered that the Commission should not limit itself to studying cases of succession resulting from the change-over from colonial administration to independence. Decolonization as a cause of succession did not exhaust the subject. Furthermore, the decolonization process was coming to an end and the undeniable importance of the current problems deriving from it would soon give way to problems arising from other causes of succession. The Commission should therefore look to the future and examine carefully not only the problems arising from decolonization but also those resulting from other causes of succession, such as unions, mergers and other forms of association (common markets, free trade associations, currency unions, etc.). Some of them urged that the question of succession was not divisible and that to treat succession as it applies to so-called decolonization separately would misconstrue the nature of the problem and the desirability of uniformity in the codification process.

73. Lastly, other representatives said that the approach adopted to the question of succession should be a broad one, and that the rules to be worked out should cover all types of succession, on the understanding, however, that specific provisions might be required in particular cases, for example, that of States which had recently acceded to independence.

(iii) Succession of States and the problem of acquired rights

74. Among the representatives who spoke on the topic of succession of States and Governments, some specifically referred to questions relating to the problem of acquired rights in the context of State succession.

75. Some representatives, taking the same starting-point as the Special Rapporteur, namely, the idea that acquired rights should be examined in the light of the basic principles of contemporary international law, especially the principle of sovereign equality and the principle of self-determination, agreed with the Special Rapporteur's conclusion that acquired rights could not have a legal basis in a transfer of sovereignty from the predecessor State

to the successor State entailing a transfer of obligations. In their view, the successor State possessed its own sovereignty as an attribute that international law attached to its statehood, and consequently there was no transfer but a substitution of sovereignties by the extinction of one and the creation of another. They considered that the successor State was not bound by the acquired rights granted by the predecessor State, unless it acknowledged those rights of its own free will or its competence was restricted by a treaty, although, as a State, it must not depart at any time from the rules of conduct governing every State.

76. Other representatives considered that the principle of acquired rights should be maintained, not so much because of a transfer of sovereignty as in order to ensure equity and good faith, which were essential to international legal order. If the principle of acquired rights were to be completely eliminated, there would be a risk of weakening another fundamental principle of legal order, that of security. Legal certainty was equal in importance to the progressive development of law, and a balance must be maintained between the two. Certain representatives said that in examining acquired rights and State succession, the circumstances surrounding certain cases of succession, in particular cases of independence resulting from a freely accepted agreement, should not be overlooked.

77. Certain representatives linked the question of acquired rights to the principle of permanent sovereignty over natural resources and considered that in preparing its future draft on succession with respect to economic and financial matters, the International Law Commission should bear in mind General Assembly resolution 1803 (XVII), in view of the special importance of that principle for new States and developing countries. Other representatives said that a proper balance should be sought between respect for acquired rights and the principle that every State had the right to dispose freely of its natural resources.

78. The observation was made that the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties, adopted in 1969 by the Vienna Conference on the Law of Treaties, was very relevant to the problems raised by acquired rights, because many of the acquired rights claimed by predecessor States had been secured through treaties signed as a result of such coercion.

(iv) Economic and financial acquired rights and specific problems of new States

79. Some representatives said that in cases of decolonization the starting-point should be that all so-called economic and financial acquired rights were void, for the sovereign right of new States to nationalize and exploit their natural resources as they saw fit for their economic development should be safeguarded.

80. Other representatives said that although political independence would be incomplete without economic self-determination, positions on the doctrine of acquired rights should not be carried to extremes that would impede the economic development of the new States. They considered that it would be better to work out an equitable arrangement with regard to compensation, so as to protect the legitimate interests of the new States properly while not discouraging the capital investments which they urgently needed for their economic development.

81. Certain representatives said that foreign companies that had invested in a colony often showed a tendency, after the colony became independent, to resist any attempt to review the rights granted them by the predecessor State or to demand excessive compensation. They considered that in calculating compensation it was necessary to take into account the unjustified profits obtained by those companies in the past and to avoid imposing on the new States any unfair burdens and responsibilities in the creation of which they had played no part, especially when complete transfer of the burdens and responsibilities incurred by the predecessor State was prejudicial to the political, economic and social development of the new State.

82. Other representatives expressed the view that the notion of unjust enrichment was not applicable to the successor State in the context of decolonization and that consequently the problem of acquired rights could not be approached from that angle in the case of newly independent States. In this connexion, the view was expressed that decolonization was not comparable to other causes of State succession. It was felt that the enrichment of new States should be welcomed rather than discouraged and that an attempt should be made to evolve principles of co-operation on the basis of which all peoples would be entitled to an equitable share in economic and social progress. The idea of preparing a development charter was supported by certain representatives.

(v) Relationship between succession in economic and financial matters and the topic of State responsibility

83. It was remarked that questions relating to succession in economic and financial matters, such as that of acquired rights, would have to be considered both within the context of State succession and within the context of State responsibility, bearing in mind the various problems raised by those questions in both contexts.

(c) Succession in respect of treaties

84. Certain representatives expressed regret that the International Law Commission had not yet been able to devote to the study of succession in respect of treaties either the time or the attention required by that important aspect of the succession of States and Governments. They hoped that the Commission would, as planned, give priority to the study of succession in respect of treaties at its next session, study which some representatives considered would supplement the Vienna Convention on the Law of Treaties.

85. Since lack of time had prevented the International Law Commission from considering the report submitted by the Special Rapporteur, Sir Humphrey Waldock, few comments were made on questions relating to succession in respect of treaties. The opinion was expressed that in studying that aspect of succession a distinction should be drawn between the various types of treaty (the traité-loi and the traité-contrat, bilateral treaties and multilateral treaties). It was said that the process of succession must be initiated by the predecessor State, the successor State must express willingness to accept the obligations and rights to be passed on to it, and the consent of the other contracting States must also be obtained. It was also considered that the International Law Commission's draft should contain provisions that could resolve some of the present difficulties arising from situations which had existed prior to decolonization and from the imposition of territorial and boundary changes in violation of the fundamental right of self-determination. In this connexion the view was expressed that colonial treaties which had been imposed by force were invalid and could not be maintained in force by succession without the express consent of all the parties concerned.

4. State responsibility

86. All the representatives who referred to this topic said they were glad that the International Law Commission, in response to the wish often expressed by the General Assembly, had at last been able to take up the complex and important topic of State responsibility, which had been repeatedly deferred since 1963, when the Commission had approved the general conclusions set out in the report or the Sub-Committee on State Responsibility. The historical outline contained in the report submitted by Mr. Ago, the Special Rapporteur on that topic, was considered a useful and valuable contribution to the substantive work to be begun by the Commission on the topic. Noting that the Commission had already reached wide agreement on the general lines of the programme to be undertaken on that topic, many representatives commended the Commission's plan to press ahead rapidly with its study of State responsibility, and welcomed the request addressed to the Special Rapporteur to submit a report containing a first set of draft articles at the Commission's twenty-second session.

87. The plan for the study of the topic, the successive stages of that plan and the criteria that should govern the different parts of the project to be prepared, as set out in the report of the International Law Commission, met with general approval. Some representatives specifically agreed with the Commission's view that the codification of the topic of State responsibility should start not with a definition of the contents of the rules of international law which laid obligations upon States, but with the "imputability" to a State of the violation of the obligations arising from those rules. The Commission's first task would thus be to establish the conditions under which an act which was internationally illicit and which, as such, generated an international responsibility, could be imputed to a State. However, the observation was made that although that approach might help to overcome theoretical difficulties which might delay the Commission's work on the topic, there was no doubt that if "imputability" was taken as the starting point, there was a risk that the State would be considered as a mere abstraction.

88. Some representatives stressed the connexion between the topic of State responsibility and questions relating to the maintenance of international peace and security, and emphasized that the International Law Commission

should, at the appropriate time, pay special attention to the specific problems raised by responsibility for acts of aggression and other crimes against international peace and security. Certain representatives also mentioned responsibility for acts by mercenaries and responsibility for violation of human rights. Other representatives said that although the Commission would, at a later stage in its work, have to take account of the problems relating to the "implementation" of responsibility for violation of specific rules, such as those relating to the maintenance of international peace and security, it would be easier to solve those problems once the conditions and consequences of imputation and the various forms and degrees of responsibility had been defined.

89. Certain representatives stressed the importance, alongside that of responsibility for illicit acts, of the so-called responsibility for risks arising out of the performance of certain lawful activities, such as spatial and nuclear activities, and expressed the hope that the International Law Commission would not defer too long its consideration of that second category of responsibility. Those representatives felt that it was essential to regulate such activities properly, since the development of science and technology had made them potentially harmful to all mankind and capable of causing even greater damage than some illicit acts. It was pointed out that the work done by the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space on a draft agreement on liability for damage caused by the launching of objects into outer space would be very useful in connexion with the International Law Commission's study of responsibility for risks. Reference was also made to questions relating to the legality of nuclear tests which might cause damage to persons or property.

5. The most-favoured-nation clause

90. Many representatives stressed the interest of their respective countries in the topic, noted with satisfaction that the International Law Commission had continued studying the most-favoured-nation clause, and congratulated the Special Rapporteur on that topic, Mr. Ustor, on the report he had submitted to the Commission. The survey of the history of that clause up to the Second World War contained in the report was considered very useful for the further work which the Commission proposed to do on that topic. In that connexion, several representatives expressed support for the Commission's instructions to the Special Rapporteur to prepare a study, taking into account the replies

received from the organizations and interested agencies consulted and the cases dealt with by the International Court of Justice.

91. Several representatives stressed once again the important role which the most-favoured-nation clause could play in the development of international trade and the promotion of economic co-operation among States. Some felt that the codification and progressive development of legal rules relating to the clause would facilitate the elimination of discrimination in international trade. It was also felt that such codification would contribute to the attainment of the aims of the First United Nations Development Decade and that the study of the clause by the International Law Commission would be most helpful for the future work of the United Nations Commission on International Trade Law.

92. Certain representatives said that the International Law Commission should first undertake a preparatory study of the major fields of application of the clause in order to obtain an objective picture of State practice and the rules prevailing on the matter. Other representatives considered that, in view of the paucity and inadequacy of the customary rules relating to the clause, the Commission should also take into consideration the new trends which had developed recently as a result of the evolution of international economic and trade relations. It was mentioned that the Institute of International Law had expressed the view that the most-favoured-nation clause was a subject for progressive development rather than codification.

93. Lastly, several representatives observed that the International Law Commission, in studying the clause, should bear in mind the possibility of applying it multilaterally as well as bilaterally and seek to ensure that such application in no way impeded the economic progress of the developing countries. It was recalled that in 1969 the Institute of International Law had adopted a resolution stating that the clause should not preclude the establishment of preferential treatment for developing countries by means of a general system of preferences based on objective criteria, that States benefiting from the clause should not be permitted to invoke it to claim treatment identical with that enjoyed by States participating in regional integration systems, and that the option to derogate from the clause should be linked to adequate institutional and procedural guarantees, such as those provided under a multilateral system. In this regard, reference was made to the practice of replacing the most-favoured-nation clause by a non-discriminatory-

treatment clause, to which an exception was generally made in respect of regional co-operation agreements.

6. Other decisions and conclusions of the International Law Commission

94. Paragraphs 95-108 below reproduce, in summary and systematic form, the comments made on the topics dealt with in chapter VI of the report of the International Law Commission.

(a) Updating of the long-term programme of work

95. A number of representatives noted with satisfaction that the International Law Commission, in paragraph 91 of its report, had confirmed its intention of bringing up to date its long-term programme of work in 1970 or 1971, taking into account the General Assembly recommendations and the international community's current needs, and discarding those topics on the 1949 list which were no longer suitable for treatment. Some representatives observed that the topics selected should be of practical importance and as specific as possible. It was also suggested that it would be advisable to establish a time-table for the gradual study of those topics and to complete the work on the topics currently under consideration before beginning work on new ones.

96. Certain representatives said that in bringing its programme up to date the International Law Commission should focus primarily on the international community's current needs, which should be appraised in the light of important developments which had taken place on the international scene in recent years, such as the entrance into the international community of many newly independent States, bearing in mind the wishes of States as expressed in the deliberations of the General Assembly, the Sixth Committee and the Special Committees of the General Assembly.

97. With reference to the suggestion made in 1968 by Mr. Ago (document A/7209/Rev.1, para. 102), one of the members of the Commission, and to the recent study by UNITAR entitled Wider Acceptance of Multilateral Treaties, the view was expressed that the International Law Commission should consider the measures that could be taken to expedite the process of ratification or of accession to codification conventions in order to shorten the final stage of the codification of international law, and should include an appropriate topic in its programme of work. It was felt that the acceptance or non-acceptance of such conventions often resulted not from their

substance or from a deliberate decision on the part of Governments, but from factors that could be eliminated by international and national measures designed to foster interest in such conventions. However, opposition was expressed to the suggestion that the International Law Commission should consider that question, as it was inadmissible that an international organization should interfere in any way with the exercise of the sovereign right of every State to decide for itself whether or not it would ratify a given convention.

98. Reference was also made to the importance of studying questions such as conflicts between treaties and domestic law, the community law of contemporary economic integration units and the problems of international law relating to the economic and social development of the non-industrialized countries.

(b) Duration of the term of office of the members of the Commission

99. Various comments were made on the International Law Commission's proposal that the term of office of its future members should be extended from five years to seven, for the reasons given in paragraph 90 of its report.

100. Several representatives were opposed to the extension of the term of office because they considered that the present system - a term of office of five years with the possibility of re-election - gave sufficient guarantees for the continuity of work and, at the same time, permitted a reasonable rotation in the participation of jurists belonging to the various groups and systems represented in the Commission. In their view, extending the term of office would be tantamount to slowing down the rotation, thus denying jurists from certain areas the opportunity to participate in the Commission's work for a long period of time.

101. Some representatives supported the Commission's proposal because they felt that a longer term of office would help to ensure continuity, harmony and efficiency in its work. In their view, a change in the Commission's membership during the study of a specific topic would be prejudicial to progress in the work, and five years was too short a period for the initiation and completion of drafts relating to important topics of international law, in view of the length of time required, by the very nature of the topics, for their study and of the duration of the various stages of the procedure which the Commission was obliged to follow according to its Statute.

102. Other representatives reserved their position on the question for the time being, for they considered it necessary carefully to weigh all the factors before taking a final decision. Certain representatives indicated that they were prepared to support the majority view.

103. It was agreed that in the present report of the Sixth Committee the passage should be recorded concerning the proposal to extend the term of office which appears in paragraph 117 below.

(c) Organization of future work

104. The decisions of the International Law Commission relating to the organization of its future work were supported by all the representatives who spoke on the question. In their view, the Commission should try, before the expiry of the term of office of its present membership, to complete the study of relations between States and international organizations, undertake substantive consideration of State responsibility and succession in respect of treaties, and further its study of succession of States in economic and financial matters and of the most-favoured-nation clause. Many representatives emphasized the desirability of concluding the draft articles on representatives of States to international organizations by 1971 and of continuing to give priority to the study of matters relating to State responsibility and the succession of States and Governments.

105. Various opinions were expressed concerning the possibility of holding an additional or extended session in 1971 to complete the examination of the draft articles on representatives of States to international organizations, as mentioned in paragraph 92 of the Commission's report. Some representatives said that the General Assembly should give the International Law Commission the facilities which the latter deemed necessary for the completion of the draft articles while others felt that that objective could be attained by improving the Commission's organization and methods of work without resorting to measures such as additional or extended sessions which would entail increased expenditure for the United Nations. Several representatives stressed that the Commission should try to complete the envisaged work during the normal course of its regular session. It was agreed that in the present report of the Sixth Committee the passage should be recorded concerning the possibility of an additional or extended session in 1971 which appears in paragraph 117 below.

(d) Relations with the International Court of Justice

106. Several representatives supported the trend in favour of strengthening the natural links between the International Court of Justice and the United Nations bodies responsible for promoting the progressive development and codification of international law, and said they were glad that the visit to the International Law Commission by the President of the Court had helped to strengthen those links.

(e) Co-operation with other bodies

107. Many representatives said that the codification and progressive development of international law by the United Nations should reflect the trends existing in the various legal systems of the world; they therefore noted with satisfaction the continued maintenance and development of the long-standing relations between the International Law Commission and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee.

(f) Seminar on International Law

108. Many representatives noted with satisfaction the success of the fifth session of the Seminar on International Law organized during the twenty-first session of the International Law Commission, and expressed their gratitude to the members of the Commission who had participated in it and to the United Nations Office in Geneva for the way in which the Seminar had been organized. The Commission's recommendation that future Seminars should be held in conjunction with its forthcoming sessions met with general approval. Once again, it was pointed out that the Seminar enabled young jurists from various legal systems to familiarize themselves with the Commission's work and to have valuable exchanges of views with the Commission's members, thus fostering a better appreciation and wider dissemination of international law. The special importance of the Seminar for participants from developing countries was stressed. A number of representatives thanked the States which had provided scholarships for participants from developing countries and expressed the hope that similar assistance would be offered for future Seminars, so that the number of participants from those countries could continue to increase. One representative announced that his

Government would offer another scholarship for the 1970 Seminar, and a second representative said that his Government was studying the possibility of granting another scholarship for that session of the Seminar.

B. Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties: (b) Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

109. Most of the representatives who spoke on this question agreed that the General Assembly should refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations, in accordance with the recommendation contained in the resolution of the United Nations Conference on the Law of Treaties relating to article 1 of the Vienna Convention on the Law of Treaties (see text in paragraph 5 above). However, there were some differences of emphasis on the part of those representatives regarding the importance of the question, the need to study it and the urgency of its codification.

110. Those who stressed the importance of the question pointed out that the number of legal instruments to which international organizations were parties was rapidly and constantly growing as the role of those organizations in the field of international co-operation increased, and already amounted to about 20 per cent of the multilateral treaties in force. Some of those representatives added that the resolution adopted by the Conference and the history of its drafting showed that many States were interested in the question and in its consideration by the International Law Commission. Some representatives also said that such consideration, combined with the Commission's work on succession in respect of treaties, would supplement the Vienna Convention on the Law of Treaties.

111. A reservation was expressly made regarding certain problems presented by the resolution relating to article 1 of the Vienna Convention on the Law of Treaties. It was considered that the resolution might be interpreted in such a way as to prejudice the result of the study it recommended, for it was not certain that the instruments referred to could properly be regarded as "treaties"

The question was raised whether it would be good legal policy to try to assimilate such agreements to treaties concluded between States; it should be acknowledged from the outset that fundamental differences existed between treaties in the sense of the Vienna Convention and the agreements to which international organizations were parties. The matter related to both international law and domestic law and in both contexts raised extremely difficult and delicate questions. If the General Assembly decided to refer the question to the International Law Commission for study as recommended in the resolution it should be on the understanding that the Commission would be absolutely free to reach whatever conclusions it found appropriate.

112. It was also felt that it would be premature for the International Law Commission to be asked to begin studying the question of treaties between States and international organizations or between two or more international organizations before knowing what was to happen to the Vienna Convention on the Law of Treaties or what proposals the Commission would make later on about bringing its programme of work up to date.

113. It was further said that it would be advisable, if only from the point of view of terminology, to reserve the term "treaty" for agreements between States and to use another expression for instruments to which a subject of international law other than a State was or might become a party. The establishment of a specific terminology for international agreements between States and international organizations or between two or more international organizations would have the added advantage of being more consonant with the provisions of articles 1 and 3 of the Vienna Convention on the Law of Treaties.

114. Several representatives supported the proposal to refer the question to the International Law Commission, on the understanding that that would not alter the order of priority of the topics currently being studied, especially State responsibility and the succession of States and Governments. Other representatives considered that it would be advisable for the Commission to take up the question in the near future and give it a measure of priority, taking due account of the other items on its current programme of work. Other representatives felt that for the time being the Commission should simply include the question in its long-term programme of work. Lastly, some representatives stressed that it

was for the Commission itself to decide when would be the best time to begin its study of the question and what degree of priority it should be given in the light of its current programme of work and the conclusions resulting from the envisaged updating of its long-term programme of work.

115. Concerning the method to be used, certain representatives felt that the International Law Commission should study the question "in consultation with the principal international organizations", as expressly stated in the resolution relating to article 1 of the Vienna Convention on the Law of Treaties. Others were not opposed to the idea that the General Assembly should recommend such consultations, provided that that recommendation duly protected the Commission's autonomy and freedom of decision regarding its methods of work by a reference to its practice for the study of questions relating to the codification and progressive development of international law, which was based on its Statute.

IV. VOTING

116. At its 1119th meeting, on 8 October 1969, the Sixth Committee voted on the revised draft resolution (A/C.6/L.746/Rev.1), as follows: (a) first, it adopted by 79 votes to none, with 3 abstentions, operative paragraph 5 of the draft resolution, by a separate vote requested by the representative of Israel; (b) secondly, it adopted unanimously the draft resolution as a whole (see paragraph 118 below).

117. Following the adoption of the draft resolution, the Sixth Committee agreed to record in the present report, the following passage read by the representative of India when introducing the draft resolution:

> "The Committee has taken note of the proposal concerning the extension of the term of office of the Commission's members. After having carefully considered the question it has thought inappropriate to take a decision at the present session of the General Assembly, although it would do so at a later session. Meanwhile, it invites the International Law Commission to give further consideration to the various possible solutions that might be applied concerning the duration of its members' term of office. The Sixth Committee, while expressing the hope that the International Law Commission could complete its work at its regular session, wished to postpone until the twenty-fifth session of the General Assembly any decision as to whether the Commission should hold an extended or additional session in 1971."

V. RECOMMENDATION OF THE SIXTH COMMITTEE

118. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the International Law Commission and resolution relating to article 1 of the Vienna Convention on the Law of Treaties adopted by the United Nations Conference on the Law of Treaties

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-first session,[1/]

Having discussed the resolution relating to article 1 of the Vienna Convention on the Law of Treaties adopted by the United Nations Conference on the Law of Treaties,[2/]

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-first session of the International Law Commission, a fifth session of the Seminar on International Law,

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

2. Expresses its profound appreciation to the International Law Commission for the valuable work it accomplished during that session;

3. Takes note with approval of the programme and organization of work planned by the International Law Commission, including its intention of bringing up to date its long-term programme of work and of completing its draft articles on representatives of States to international organizations before the expiry of the term of office of its present membership;

1/ A/7610 and Corr.1.

2/ A/7592, para. 8.

4. Recommends that the International Law Commission should:

(a) Continue its work on relations between States and international organizations with a view to completing in 1971 its draft articles on representatives of States to international organizations;

(b) Continue its work on succession of States and Governments, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963;

(c) Continue its work on State responsibility, taking into account paragraph 4 (c) of General Assembly resolution 2400 (XXIII) of 11 December 1968;

(d) Continue its study of the most-favoured-nation clause;

5. Recommends that the International Law Commission should study in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question;

6. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of nationals of developing countries;

7. Requests the Secretary-General to forward to the International Law Commission the records of the twenty-fourth session of the General Assembly concerning the discussions on the Commission's report and on the resolution relating to article 1 of the Vienna Convention on the Law of Treaties.
