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

Report of the Sixth Committee

Rapporteur: Mr. Joseph A. SANDERS (Guyana)

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I. INTRODUCTION

1. At its 2236th plenary meeting, on 21 September 1974, the General Assembly included in the agenda of its twenty-ninth session the item entitled "Report of the International Law Commission on the work of its twenty-sixth session". At its 2237th plenary meeting, on the same day, the General Assembly allocated that item to the Sixth Committee for consideration and report.

2. The Sixth Committee considered this item at its 1484th to 1496th, 1507th, 1509th and 1519th meetings, held from 24 October to 11 November, on 27 and 28 November and 6 December 1974.

3. At its 1484th meeting, on 24 October, Mr. Endre Ustor, Chairman of the International Law Commission at its twenty-sixth session, introduced the Commission's report on the work of that session. 1/ At the 1496th meeting, on 11 November 1974, he commented on the observations which had been made during the debate on the report. The members of the Sixth Committee expressed their appreciation to the Chairman of the Commission for his statements.

4. The report was divided into six chapters entitled: I. Organization of the session; II. Succession of States in respect of treaties; III. State responsibility; IV. Question of treaties concluded between States and international organizations or between two or more international organizations; V. The law of the non-navigational uses of international watercourses; VI. Other decisions and conclusions of the Commission. Annex I to the report contained the observations of Member States on the draft articles on succession of States in respect of treaties, adopted by the Commission at its twenty-fourth session. Annex II contained comparative tables of the numbering of the articles of the provisional draft on succession of States in respect of treaties (1972) and of the final draft adopted by the Commission.

5. Chapter II of the report contained final draft articles on the succession of States in respect of treaties adopted by the International Law Commission, following its completion of the second reading of the articles, in the light of the comments from Member States (see annex I of the report). Chapters III and IV contained draft articles provisionally adopted by the Commission on the subjects of State responsibility and treaties concluded between States and international organizations or between international organizations, respectively. Chapter V contained a description of the Commission's work on the law of the non-navigational uses of international watercourses and an annex reproducing the report of the Sub-Committee on that topic.

6. At the 1509th meeting, on 28 November 1974, 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 main trends which emerged in the course of the debate on the item. After referring to General Assembly resolution 2292 (XXII), of 8 December 1967, the Rapporteur informed the Committee of the

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1/ A/9610, vols. I and II and Add.1-3 (to be issued as Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1)).

financial implications of the question. At the same meeting, the Sixth Committee decided that, in view of the subject-matter, the report should include an analytical summary of the Committee's debate on the item.

II. PROPOSAL

7. At the 1507th meeting, on 27 November 1974, the representative of Yugoslavia introduced a draft resolution (A/C.6/L.996) sponsored by Algeria, Austria, Canada, Egypt, Guyana, Indonesia, Kenya, Mexico, New Zealand, Norway, Sweden and Yugoslavia, later joined by Cyprus, Finland, Jamaica, Nigeria, Senegal, Upper Volta and Zaire. The draft resolution read as follows:

"The General Assembly,

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

"Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, and to give increased importance to its role in relations among States,

"Noting with appreciation that at its twenty-sixth session the International Law Commission, in the light of comments received from Member States, completed the second reading of the draft articles on Succession of States in respect of treaties, as recommended by the General Assembly in resolution 3071 (XXVIII) of 30 November 1973,

"Taking note of the draft articles prepared at the same session by the International Law Commission on State responsibility and on treaties concluded between States and international organizations or between international organizations,

"Welcoming the fact that the International Law Commission commenced its work on the law of non-navigational uses of international watercourses by adopting the required preliminary measures,

"Bearing in mind that the outstanding achievements of the International Law Commission during its twenty-six sessions in the field of the progressive development of international law and its codification in accordance with the aims of Article 13, subparagraph 1 (a), of the Charter contribute to the fostering of friendly relations among nations,

I

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

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

"3. Approves the programme of work planned by the International Law Commission for 1975;

"4. Recommends that the International Law Commission should:

"(a) Continue on a high priority basis at its twenty-seventh session its work on State responsibility, taking into account General Assembly resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2400 (XXIII) of 11 December 1968, 2926 (XXVII) of 28 November 1972 and 3071 (XXVIII) of 30 November 1973, with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts at the earliest possible time and take up, as soon as appropriate, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law;

"(b) Proceed with the preparation of draft articles on succession of States in respect of matters other than treaties, on a priority basis;

"(c) Proceed with the preparation of draft articles on the most-favoured-nation clause;

"(d) Proceed with the preparation of draft articles on treaties concluded between States and international organizations or between international organizations;

"(e) Continue its study of the law of the non-navigational uses of international watercourses taking into account General Assembly resolutions 2669 (XXV) of 8 December 1970, 3071 (XXVIII) of 30 November 1973 and other resolutions concerning the work of the International Law Commission on the topic, and comments received from Member States on the questions referred to in the annex to chapter V of the Commission's report;

"5. Approves in light of the importance of its existing work-programme a 12-week period for the annual sessions of the International Law Commission, subject to review by the General Assembly whenever necessary;

"6. Recognizes the efficacy of the methods and conditions of work by which the International Law Commission has carried out its tasks and expresses confidence that the Commission will continue to adopt methods of work well suited to the realization of the tasks entrusted to it;

"7. Expresses its appreciation to the Secretary-General for having completed the supplementary report on the legal problems relating to the non-navigational uses of international watercourses, requested by the General Assembly in resolution 2669 (XXV) of 8 December 1970;

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

"9. Requests the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-ninth session of the General Assembly.

II

"1. Expresses its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of treaties and to the Special Rapporteurs on the topic for their contribution to this work;

"2. Invites Member States to submit to the Secretary-General, not later than 1 August 1975, their written comments and observations on the draft articles on succession of States in respect of treaties contained in the report of the International Law Commission on the work of its twenty-sixth session, including comments and observations on proposals referred to in paragraph 75 of that report, which the Commission was prevented from discussing by lack of time, and on the procedure by which and the form in which work on the draft articles should be completed;

"3. Requests the Secretary-General to circulate, before the thirtieth session of the General Assembly, the comments and observations submitted in accordance with paragraph 2 above;

"4. Decides to include in the provisional agenda of its thirtieth session an item entitled 'Succession of States in respect of treaties'."

8. The Committee had before it a statement submitted by the Secretary-General (A/C.6/L.997) on the administrative and financial implications of the draft resolution (A/C.6/L.996).

III. DEBATE

A. General comments on the work of the International Law Commission

9. The representatives who took part in the debate congratulated the International Law Commission on the work it had accomplished during its twenty-sixth session, which had been one of the most fruitful in its history. The excellent report submitted on the work of that session (A/9610, vols. I and II) bore witness to the highly skilled level of the Commission's activities and the first-rate quality of its drafts; it was one more example of the outstanding contribution made by the Commission in the course of its 26 sessions in the field of the progressive development of international law and its codification, in accordance with Article 13, subparagraph 1 (a), of the Charter of the United Nations and thus to the fostering of friendly relations and co-operation among States, the development of détente and the strengthening of international peace and security. In view of the current positive developments in international relations, the role of international law was becoming increasingly significant as the concrete manifestation of co-operation among States in the various spheres of international life. The work of the Commission was therefore likely to be of ever-growing importance in the future through its influence on State practice and legal scholarship and teaching.

10. The codification of international law was becoming an increasingly complex and difficult task in a changing world beset by conflicts. 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. However, the scope of international law had expanded considerably since the Commission had opened its first session in 1949. The Commission had proved flexible enough to respond to such new developments.

11. It was noted that the work of the Commission was only one stage in the process of codifying international law. The discussion of the report of the Commission in the Sixth Committee was an essential part of the preparatory work of the codification and development of international law. The annual consideration of the Commission's report made it possible to assess the work of the Commission in the light of the diplomatic realities of international life. The codification process was highly successful because of such interaction. In the era of the United Nations, the codification of international law cannot be but a democratic process harmonizing, on the basis of the principle of sovereign equality, the interests of the international community with those of its individual members. All States should, therefore, participate in the technical elaboration and political adoption of codification of instruments intended to embody norms of general international law. Broader participation was particularly important as the international community became increasingly universal.

12. Some representatives referred to the criteria to be followed in the election by the General Assembly of the members of the International Law Commission. In their view, competence should not be sacrificed to other considerations, such as

rotation. The requirements of the personal qualifications of the candidates could be met without disregard for the requirement of the representation in the Commission of the main legal systems of the world.

13. The Sixth Committee paid tribute to the memory of Mr. Milan Bartoš, the eminent Yugoslav jurist who had distinguished himself in the Commission as its Chairman, Vice-Chairman, General Rapporteur and Special Rapporteur for the topic of Special Missions.

14. In the course of the consideration of the Commission's report, it was suggested that the United Nations Secretariat, the depositary of a very large number of multilateral treaties, should make a concise study of means of improving the centralization and dissemination of information on the activities of depositaries of multilateral treaties, taking into account, inter alia, the possibilities offered by the computerization of treaty information now being carried out within the Secretariat.

B. Succession of States in respect of treaties

15. The International Law Commission was congratulated for its valuable work in submitting a final set of draft articles on succession of States in respect of treaties, thus carrying out the General Assembly's recommendation contained in paragraph 3 (a) of resolution 3071 (XXVIII) of 30 November 1973. Praise was voiced for the two Special Rapporteurs on the topic, Sir Humphrey Waldock and Sir Francis Vallat, for their outstanding contributions in the preparation of the draft articles.

16. Many representatives were of the view that the completion by the Commission of the second reading of the draft articles on such an important and complex topic, together with the commentaries thereto, was a praiseworthy achievement and an important contribution to the codification and progressive development of international law as well as to international co-operation and détente. It was also said that the Commission's work on succession of States in respect of treaties would complete the codification of the general law of treaties by incorporating into treaty law developments which had emerged as a result of the end of the colonial era.

17. Several representatives underlined the theoretical and practical importance of the draft articles adopted by the Commission for the international community and, in particular, for those States which had recently achieved independence. The doctrine concerning succession of States in respect of treaties had often been controversial and State practice not always consistent. The draft articles met the need for certainty and clarity in that important field of international relations.

18. A considerable number of representatives commented upon the final set of draft articles on succession of States in respect of treaties. Such comments related to the draft articles as a whole, to their specific provisions and to the final phase of the codification of the topic. Many representatives noted that the observations

advanced were of a general or preliminary nature and that their Governments would make known their position in a more detailed and final manner at an appropriate time. In addition, some representatives referred to the oral or written observations made on behalf of their Governments at the twenty-seventh session of the General Assembly on the draft articles on the topic provisionally adopted by the Commission in 1972. 2/

1. Comments on the draft articles as a whole

19. Many representatives viewed the draft articles as being generally acceptable, susceptible to a large measure of support, and as providing a good basis for enabling States to finalize the codification of the topic. The inductive approach followed by the Commission in the course of the preparation of the draft articles had proved to be worth-while. As reflected in the extensive commentaries to the articles the Commission had paid particular attention to ascertaining the actual practice of States with regard to the different cases of succession and their impact in treaty relations.

20. Several representatives viewed the final draft articles as a considerable improvement on the provisional draft adopted in 1972. The changes introduced by the Commission in the structure of the draft as a whole, the new provisions added and the reformulation of some of the former provisions were seen as generally for the better. It was pointed out that while the final draft articles retained in essence all that had been proposed concerning newly independent States in the provisional draft, the provisions relating to other cases of succession had been considerably developed. That was particularly important now that the era of decolonization was nearing its completion and future problems of succession were likely to arise in connexion with other cases of succession.

21. None the less, certain conclusions reached by the Commission concerning in particular the scope of the draft articles were criticized by some representatives. The view was also expressed that it could not be maintained that international law in its current state of development laid down absolute rules in respect of succession of States to treaties. It was likewise regretted that the Commission had been unable, for lack of time, to consider the questions concerning multilateral treaties of universal character and peaceful settlement of disputes referred to in paragraph 75 of its report (A/9610, vol. I) (see paras. 40 to 47 below). Certain representatives stressed that certain provisions of the draft articles needed drafting improvements and more precise language.

22. Many representatives supported the underlying principles reflected in the draft

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2/ See Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev.1). The oral observations of Governments on those articles are contained in the summary records (A/C.6/SR.1316 to 1328) and their written comments in the report of the Commission on the work of its twenty-sixth session (A/9610, vols. I and II and Add.1 and 2).

articles. They stressed that the draft articles as a whole represented a compromise between the principle of de jure continuity, derived from pacta sunt servanda, and the principle that a "new State" began its treaty obligations with a "clean slate", derived from the right of self-determination. It was in the interest of all States to ensure that cases of State succession did not disturb existing treaty relations which had been established in accordance with the generally recognized principles of international law and which served to safeguard peace and develop international co-operation. On the other hand, the entry into international relations of newly independent States should be facilitated so as to enable them to exercise their rights as sovereign States and to examine critically the treaties concluded by their predecessor in order to allow those States to continue the treaties in question, to apply them provisionally or to terminate them. In this connexion, the principle of "clean slate" was given two different interpretations. According to one, the principle means that the new State has no rights or obligations deriving from the treaties of its predecessor until it determines its attitude towards those treaties. Under the second interpretation, the principle of "clean slate" means that the new State has a right to be or not to be a party to a treaty, but it does not mean that the newly independent State should be automatically deprived of the rights from its predecessors' treaties on the date of the succession.

23. Other representatives raised questions as to the extent to which some of the underlying principles, in particular, the "clean slate" principle were or were not applied in the draft. They considered that further improvements were necessary and made general suggestions as to how those principles should be reflected in the draft articles. It was stressed that the principle of the sovereign equality of States should be fully taken into consideration in formulating rules on succession of States in respect of treaties and that further respect should be paid to the principle of continuity so as to promote stability in international relations. Also, the view was expressed that the Commission had not sufficiently contemplated all the possible situations where the right of the successor State to maintain the multilateral treaties of its predecessor was subject to the express or unequivocal tacit consent of the other parties.

(a) Sources of the draft articles

24. Several representatives expressed gratification that the Commission had taken into account the views and practice of States which had achieved independence since the Second World War, as well as earlier State practice and the relevant principles of international law enshrined in the Charter of the United Nations. By having made a meticulous survey and evaluation of State practice as evidence of the opinio juris of the international community, the Commission avoided ex cathedra pronouncements based on dogmatic assertions. Doubts were expressed, however, by certain representatives whether in its assessment of the implications of State practice in respect of treaties, the Commission had given sufficient weight to those many cases where, without difficulty or controversy, the States concerned had continued to apply treaties after a succession of States had taken place. Such a practice would seem to demonstrate, according to those representatives, a presumption of continuity. Certain representatives emphasized

that as the practices of States were diverse, the Commission's work in the field of succession of States in respect of treaties was more in the nature of progressive development than in the codification of existing practice.

25. Certain representatives noted that paragraph 47 of the Commission's report (A/9610, vol. I) indicated that it had taken into consideration in its work on the topic the development of depositary practice. They stressed that information disseminated by the different depositaries constituted important material by which Governments and many organizations kept abreast of changes taking place in the pattern of multilateral treaty relationships. But the view was also expressed that positions adopted by depositaries could not be the source of a customary rule or be binding on States parties to treaties, since their role was purely administrative.

(b) The concept of "succession of States"

26. Most representatives who referred to the matter agreed that the expression "succession of States" should be interpreted as applying simply to the fact of the replacement of one State by another in the responsibility for the international relations of a territory, leaving aside from the definition all questions of the rights and obligations as a legal incident of that change. The use of the word "responsibility" was, however, questioned (see para. 49 below).

(c) Relationship between succession in respect of treaties and the general law of treaties

27. Those representatives who spoke on the relationship between State succession in respect of treaties and the general law of treaties supported the Commission's position that the task of codifying the topic appeared to be rather one of determining within the law of treaties the impact of the occurrence of a succession of States than vice versa. Support was also expressed for the Commission's decision to follow closely in the drafting of the articles, the language of the 1969 Vienna Convention on the Law of Treaties 3/ where appropriate and to avoid restating in the draft articles general rules applicable to treaties.

(d) The principle of self-determination and the law relating to succession in respect of treaties

28. Many representatives expressed satisfaction that the Commission, having assessed the main implications of the principle of self-determination in the law

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3/ For all references to the text of the Vienna Convention on the Law of Treaties, see Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference (United Nations publication, Sales No.: E.70.V.5), p. 289, et. seq.

concerning succession of States in respect of treaties, determined that the underlying norm for cases of newly independent States, or for cases that may be assimilated to them, should be the "clean slate" principle. Thus a newly independent State would not, as a general rule, be ipso jure bound by treaties concluded by the former metropolitan Power. The successor State, however, retained the right to notify its succession to multilateral treaties previously applied to its territory as might, after critical review, be deemed to correspond to its interests. It was thus entitled to choose which multilateral treaties concluded by its predecessor would be regarded as continuing and which would be considered as terminated. It was stressed by many representatives that such an approach was in full harmony with the fundamental principle of the right of peoples to self-determination. A newly independent State, as any independent sovereign State, should be free to decide which treaties concluded by its predecessor State should be maintained and which rejected, as some colonial Powers had concluded treaties which were not in the interest of the territories under their administration. It was also stressed by several representatives that it would be unjust and contrary to the principle of sovereign equality of States if newly independent States were bound, by virtue of the principle of continuity, by treaty obligations which they had not themselves contracted. The "clean slate" principle was therefore nothing more than a confirmation of the fundamental principle of consent.

29. Several representatives, stressing how great an interest all States had in maintaining the stability of treaty relations which was so important a part of the whole structure of international relations, remarked with gratification that the "clean slate" principle, as understood by the Commission and reflected in the draft articles, had a certain flexibility and was limited in its scope of application. As embodied in the draft articles, the "clean slate" principle was not incompatible with the continuity of treaty rights and obligations. Thus, boundaries and other territorial régimes established by a treaty were excepted from the application of the "clean slate" principle and, with one exception, the principle of continuity applied to cases of the uniting and separation of States. Continuity was also promoted in the case of a multilateral treaty not of a restricted character, which could in general be continued by a newly independent State without the consent of the other parties to that treaty. But the draft articles reflected likewise a concern for the position of States other than the successor or predecessor State. For instance, the participation of a newly independent State in a bilateral treaty or a restricted multilateral treaty previously applied to its territory was subject to the consent of the parties to the treaty.

30. For some representatives the principle of self-determination had not received adequate consideration by the Commission and the "clean slate" principle had not been carried fully to its logical conclusion. The view was expressed that it would be preferable to apply the same principle to all successor States, including new States created by the uniting or separation of States. Certain representatives favoured specifically the application of the "clean slate" principle to cases of succession where the territory of a State was divided into several parts to form one or more States and to new States formed by secession. Sometimes the territories of those new States were subjected to worse forms of colonialism than former colonies.

31. Other representatives believed that the "clean slate" principle should also be applied to other cases where successor States had emerged in the exercise of the right of peoples to self-determination, as in the cases of profound social revolution (see para. 36 below). In addition certain representatives did not support the exception to the "clean slate" principle contained in the draft articles in the case of treaties establishing boundaries or other territorial régimes (see paras. 65 to 67 below).

32. On the other hand, certain representatives considered it difficult to base the "clean slate" principle on the principle of self-determination. In their view there appeared to be no obvious link between these two principles. Moreover, it was emphasized that there had been many cases where new States had continued to apply treaties after a succession of States had taken place, it being in their interest to opt for the continuity of legal obligations. Furthermore, in many cases, State practice, particularly in connexion with devolution agreements and with unilateral declarations, appeared to demonstrate a presumption of continuity. It was also stated that it was therefore somewhat misleading to speak of the "clean slate" principle as though it were derived from a study of State practice and amounted to a codification of existing law.

33. While recognizing that the "clean slate" principle may be justified in cases of decolonization by struggle or "revolutionary separation" it should be kept in mind, in the view of some representatives, that the international community was experiencing and would continue to experience cases of smooth transition from dependence to full independence in which the people concerned exercised, during a certain period of time, the right to consent to the establishment of treaty relations affecting their interests and their territory. Attempts should be made to introduce such considerations in the draft articles. In that connexion, one representative wondered whether an exception should be made for the case where the emergence of a newly independent State took place in circumstances closely similar to those envisaged in article 33, paragraph 1, of the draft which concerned separation of parts of a State.

34. Some representatives were of the view that a "contracting out" approach with regard to certain multilateral treaties of universal character, which enunciated generally accepted norms of international law, would not be in conflict with the "clean slate" doctrine (see paras. 41 to 44 below). It was merely a matter of juridical technique in finding the most appropriate formula of participation of newly independent States in those treaties. However, several other representatives considered the "contracting out" approach as inconsistent with the principle of self-determination and expressed gratification that the Commission had not adopted such an approach. Certain representatives indicated that they were prepared to accept any solution on the matter which would receive the support of a vast majority of States.

35. Certain representatives wondered whether the Commission had fully considered all the exceptions which should be made to the "clean slate" principle with regard, in particular, to certain categories of treaties. In their view, the evolution of international law would appear as having been ignored, as no distinction had been made between unjust treaties and multilateral treaties which

conformed to the Charter of the United Nations and concerned international peace and security and co-operation and had been concluded on a non-discriminatory basis. All treaties should not automatically lapse for a newly independent State, since treaties created not only obligations, but also rights which might turn out to be indispensable. In that connexion, multilateral treaties of a law-making nature or of a universal character were singled out by several representatives (see paras. 41 to 44 below). The question whether the Commission should have considered excepting from the "clean slate" principle treaties involving financial burdens was also raised.

(e) Scope of the draft

36. The limitation of the scope of the draft articles to succession of States in respect of treaties was not subject to question. Some representatives, however, did not accept the Commission's view, found in paragraph 66 of its report (A/9610, vol. I), that, in the majority of cases, a social revolution brought about a change of government, while the identity of the State remained the same. The draft articles, in their view, would be inadequate if cases of social revolution were not taken into account. They pointed out that the Commission's use of the phrase "in the majority of cases" seemed to indicate an acknowledgement that there were cases in which a revolution did effectively change the identity of the State concerned and could not be treated as a mere succession of governments. In the opinion of those representatives, a revolution which completely transformed the economic and social structure and which entailed the transfer of political power to the people did not involve a mere change of government alone but the birth of a new type of State. The suggestion was made that the possibility of defining the category of revolution which fell within the scope of a succession of States should be examined. Other representatives endorsed the Commission's decision to exclude cases of social revolution from the draft articles, as such an event merely gave rise to a succession of governments. There was, it was said, an accepted principle of international law that no State could plead revolutionary changes in its constitution or domestic structure as an excuse for evading treaty obligations. In this connexion, it was said that a succession of States resulting from a social revolution should not necessarily be treated as a case of the emergence of a newly independent State.

37. Those representatives who spoke on the matter supported the Commission's decision to exclude from the scope of the draft articles cases of succession of international organizations in respect of treaties. It was stressed that there was no doubt that the status of a subject of international law was not the same for States and for international organizations. Reference was, however, made to the desirability of harmonizing the various points of view on the question, as there was a difference of status between purely intergovernmental associations and some communities based on economic and political union.

38. Finally, it was noted that the draft articles did not contain any provision concerning the relationship between recognition and State succession in respect of treaties. In this respect, one representative considered it necessary to

include in the future convention a provision that would make it clear that succession in respect of multilateral treaties occurred independently of the recognition of a State.

(f) Scheme of the draft

39. The general scheme of the draft articles on succession of States in respect of treaties met with the general approval of most representatives who addressed themselves to the matter. In particular, those representatives endorsed the Commission's decision to place the two articles dealing with boundary or other territorial régimes (articles 11 and 12) in part I of the draft, entitled "General Provisions", rather than in a separate part near the end of the draft, as had been done in the articles provisionally adopted in 1972.

40. Reference was made with approval by certain representatives to the Commission's arrangement of the cases of succession of States under three broad categories, namely, succession in respect of part of territory, newly independent States, and uniting and separation of States, but the view was also expressed that it was not always easy to distinguish between newly independent States and other successor States, in particular successor States emerging from the separation of part of a State. One representative believed that, by so distinguishing, the Commission had introduced a political concept which had no place in the draft articles and had led it to adopt solutions which might give rise to contradictions. It was also stressed that it was important to examine carefully the differences between the three categories of treaties referred to in the draft, namely multilateral treaties in general, multilateral treaties of a restricted character, and bilateral treaties. Many observations concerning the scheme of the draft articles related to the proposals concerning multilateral treaties of a universal character and settlement of disputes which had not been discussed by the Commission at its twenty-sixth session 4/ for lack of time.

41. Some representatives supported the inclusion in the draft articles of a provision along the lines proposed by one member of the Commission to the effect that any multilateral treaty of universal character which, at the date of a succession of States, was in force in respect of the territory to which the succession of States relates should remain in force between the newly independent State and the other States parties to the treaty until such time as the newly independent State gave notice of termination of the said treaty for that State. It was stressed that it was in the interest of the international community as a whole, including newly independent States, to maintain stability with regard to multilateral treaties of universal character, which enunciated, in accordance with the Charter of the United Nations, generally accepted norms of international law. Multilateral treaties regarding international peace and security, co-operation on a non-discriminatory basis, human rights and fundamental freedoms were mentioned,

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4/ See A/9610, vol. I, paras. 76-81.

as well as those of a humanitarian or law-making nature. In the view of those representatives, such a provision would represent a proper balance between the "clean slate" principle and the need to maintain stability with regard to multilateral treaties of universal character and would not run counter to the "clean slate" principle, as the newly independent State would have the right to terminate its participation in the treaty. The "contracting out" system would be a more appropriate legal technique in the case of multilateral treaties of universal character. It was said that the identification of such treaties was merely a matter of finding the most appropriate formula.

42. One representative considered that it was possible to identify such treaties by a technical device, namely, the test of the number of parties to a multilateral treaty open to universal participation, universal participation being understood as participation open to "all States recognized as such by the practice of the United Nations at any given time".

43. On the other hand, other representatives opposed the inclusion of a provision providing for a "contracting out" system for newly independent States with regard to multilateral treaties of universal character. It was pointed out that such a provision would be a source of uncertainty, as it was extremely difficult to define precisely which treaties came within that category. Certain representatives emphasized that many of the essential rules laid down in multilateral treaties of a universal or law-making character were already rules of customary international law and thus binding on all States, including newly independent States, irrespective of provisions contained in the draft articles. Moreover, it was pointed out by one representative that all multilateral treaties of universal character did not necessarily embody customary rules and, even if they did in certain provisions, they also contained others of a purely contractual character, such as on the settlement of disputes. Certain representatives underscored their view that the proposed inclusion might be incompatible with the principle of self-determination. As States in general were not bound to become parties to multilateral treaties of universal character, there was no reason why newly independent States should be treated differently or penalized by the imposition of automatic participation in those treaties without their consent. One representative believed it was unnecessary to include a provision as had been proposed, since under the draft articles a notification of succession was always retroactive to the date of the succession of States and thus no hiatus existed.

44. Certain representatives considered that further careful study should be given to the matter. The view was expressed that the Commission should re-examine the draft articles on succession of States in respect of treaties in the light of, inter alia, the proposal concerning multilateral treaties of universal character. Other representatives believed that the question should be left for consideration at the final stage of the codification of the topic, such as at the time of the elaboration of a convention by a conference of plenipotentiaries (see paras. 95 to 99 below). The view was also expressed that Member States, in submitting their written observations on the draft articles on succession of States in respect of treaties, should also comment upon the proposal concerning multilateral treaties of universal character.

45. Several representatives considered that because some of the rules on succession of States in respect of treaties were complex, difficulties might well arise in their application or interpretation. Therefore, it was essential in their view to include a provision which established certain procedures for the settlement of disputes. In that connexion, mention was made of the references in the draft articles to the incompatibility test with regard to a treaty's object and purpose, as well as to some other specific provisions, like article 2, subparagraph 1 (f), article 16, and article 33, paragraph 3. The distinction made in the draft articles between multilateral treaties in general and those of a restricted character was also seen as a source of difficulties, making it desirable to include a provision for the settlement of procedures.

46. Certain representatives supported the proposal made by one member of the Commission for the inclusion in the draft of an article on settlement of disputes with an annex providing for a conciliation procedure for controversies regarding the interpretation or application of the draft articles which were not settled through negotiation. It was said that the proposal had merit as it referred only to conciliation and should arouse no misgivings among those States which were opposed to compulsory judicial settlement of disputes. Other representatives supported compulsory procedures for settlement of disputes in the event that conciliation was not successful. Reference was made to recourse to the International Court of Justice or to arbitration. One representative believed that different settlement procedures might prove to be desirable in relation to different kinds of questions which might arise from the draft articles. Another representative viewed the proposal as not being the best solution, as the international community had reached the stage where it must not only consider the possibility of elaborating procedures for the settlement of disputes, but must concern itself with devising effective means of settlement whether or not compulsory procedures were involved.

47. Several representatives noted that the Commission, in paragraph 81 of its report (A/9610, vol. I), expressed its willingness to consider the question of the settlement of disputes for the purposes of the draft articles on succession of States in respect of treaties at its next session and to prepare a report for the General Assembly. Certain representatives supported such a course of action. Other representatives, however, pointed out that the formulation of such a provision usually required negotiation and that therefore the question should be left for consideration at the final stage of the codification of the topic, such as at the time of the elaboration of a convention by a conference of plenipotentiaries (see paras. 95 to 99 below). A number of representatives were of the view that Member States, in submitting their observations on the draft articles on succession of States in respect of treaties, should also comment upon the question of settlement of disputes.

2. Comments on the various draft articles

Part I. General provisions

Article 2

48. It was said that the expressions contained in article 2 provided a good example of the importance of the Commission's work for the definition of legal principles and standards in modern international relations.

49. The definition of the expression "succession of States", as formulated by the Commission in subparagraph 1 (b) and according to which a "succession of States" meant for the purposes of the draft articles the replacement of one State by another in the responsibility for the international relations of territory, was supported by certain representatives (see also para. 26 above). One representative, however, did not agree with the proposed definition. In his view, a succession of States was not simply a matter of "international relations of territory" but of relations affecting sovereignty over a particular territory. He criticized likewise the use of the term "responsibility" which had a special connotation in international law. Some representatives stressed that the definition given in subparagraph 1 (b) of article 2 was valid for all aspects of succession of States in international relations and not only for succession of States in respect of treaties. It was also noted that the definition applied for all types of succession and not only to a succession involving the establishment of a "newly independent State" as defined in subparagraph 1 (f) of article 2.

50. Reference was made to the definition of the expression "date of the succession of States" found in subparagraph 1 (e) of article 2 and to the need for indicating clearly the moment when the obligations of the successor State began.

51. With regard to the definition of the expression "newly independent State", contained in subparagraph 1 (f) of article 2, certain representatives urged greater precision. One view was that a "newly independent State" was a State whose territory had not been independent before succession and whose international relations had formerly been directed by another State. The concept thus included all forms of accession to independence.

52. The Commission's conclusion that the characteristics of the various historical types of dependent territories (colonies, trusteeships, mandates, protectorates, etc.) did not today justify differences in treatment from the standpoint of the general rules governing succession of States in respect of treaties was questioned by certain representatives. One representative brought out that some States had participated in international relations and concluded important international conventions before being placed in a colonial status. It would be therefore of interest to know what fate would be reserved for such conventions in the event of a regaining of independence as a result of a subsequent succession of States. Certain representatives emphasized that sometimes a dependent territory might enjoy a certain degree of autonomy, including limited responsibilities for the conduct of its own international relations, before achieving full independence. For instance, it might well be fully consulted in advance on whether it concurred

in the conclusion of international agreements relating to the territory in question. The disregard of different stages of dependence and of transitional legal or constitutional arrangements, coupled with an application of the "clean slate" principle, might lead, in the view of some of those representatives, to contradictory results and deny the self-determination of the dependencies prior to full independence. It was also noted by certain representatives that no definition of "dependent territory" appeared in the draft articles and that no legal criteria were provided for distinguishing between a "separating" territory as envisaged in article 33, and a formerly "dependent territory". It was suggested that a new State formed by secession should be included within the concept of "newly independent State". One representative stressed that, as a matter of progressive development of international law, it would be advisable to include within the notion of dependent territory situations existing before the establishment of a fully independent régime, both politically and economically, in the territory concerned as a result of its liberation from forms of neo-colonialism.

Article 4

53. It was remarked upon favourably that, according to the terms of subparagraph (a) of article 4, in the case of multilateral treaties which were constituent instruments of international organizations the draft articles would apply without prejudice to the rules concerning acquisition of membership and any other relevant rules of the organization concerned. The current practice, reflected in the draft articles, that a newly independent State to whose territory a multilateral treaty was made applicable before the date of the succession of States may participate in the treaty by a mere notification of succession was therefore subject, in the case of a constituent instrument of an international organization, to the proviso set forth in article 4.

Article 5

54. One representative remarked that, although article 5 entitled "Obligations imposed by international law independently of a treaty", seemed to overlap with article 43 of the Vienna Convention on the Law of Treaties, it might be useful to retain the article, since some States which were not parties to that Convention might wish to participate in the future convention on the succession of States in respect of treaties.

Article 6

55. The stipulation in article 6 to the effect that the articles applied only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations was endorsed by some representatives. The view was expressed by certain representatives that any departure from that principle would deprive the draft of a very important safeguard clause, as some treaties, including some treaties establishing boundaries, were contrary to principles of jus cogens

incorporated in the Charter and were, therefore, invalid. Certain other representatives, however, were not satisfied with the wording of article 6, mainly because the relationship between that article and article 11 ("Boundary régimes") was not clearly defined. In their view, article 6 should be drafted unambiguously in such a way as to avoid any interpretation which might detract from the provisions of article 11. It was even suggested by one representative that article 6 be deleted, in view of the possible erroneous interpretations to which it might give rise.

Article 7

56. Certain representatives welcomed the inclusion in the draft of the provision on the non-retroactivity of the present articles contained in article 7 and viewed it as useful and necessary, in the light of the consequences which may otherwise arise as a result of the application of the general principle of non-retroactivity of treaties, embodied in article 28 of the Vienna Convention on the Law of Treaties, to the future convention on succession of States in respect of treaties.

57. It was said that the provision set forth in article 7 would not deprive the draft articles of its practical meaning. A set of reasonable, equitable and generally acceptable draft articles would become in any case an effective and useful guide for States even before entry into force of the corresponding conventional codification instrument and their participation thereon. In this connexion, it was also recalled that participation by successor States in such an instrument would involve delicate problems relating to the method of giving consent to be bound by it and the retroactive effect thereof. One representative pointed out that the words "except as may be otherwise agreed" would facilitate the consideration, in due course, of the advisability of including a non-retroactivity provision in the final clauses of the future convention itself.

58. Certain other representatives viewed article 7 as superfluous, in the light of article 28 of the Vienna Convention, and as an unnecessary deviation from the Commission's approach of not restating in the present draft the general rules applicable to treaties. Some of them suggested that the article be deleted. A brief exposition of those general rules in the present draft could lead to confusion and misinterpretation, in particular as regards the relationship between articles 7 and 11. The view was also expressed that the emphasis on non-retroactivity would tend to weaken the codification aspects of the proposed convention on succession of States in respect of treaties and would therefore call into question the utility of the whole undertaking.

Articles 8 and 9

59. A number of representatives expressed support for articles 8 and 9, dealing with devolution agreements concluded between successor and predecessor States and unilateral declarations made by successor States, respectively. The effect of those articles, that such agreements or declarations could not in themselves form the basis for the transmission of treaty rights and obligations to the successor

State, was viewed as fully justified, in accordance with the "clean slate" principle, and consistent with the principle of sovereign equality of States. For instance, it was underlined that the legal effects of a devolution agreement were limited to the two parties concerned and did not create a legal nexus between the successor State and third States. The conclusion of a devolution agreement merely indicated the willingness of the successor State to continue the treaties of its predecessor. However, the view was also expressed that in many cases, State practice in connexion with devolution agreements and unilateral declarations appeared to demonstrate a presumption of continuity.

60. One representative suggested that article 8 be completed by the addition of a provision stating that a devolution agreement could contribute to the transfer of treaty obligations and rights from the predecessor State to the successor State on the condition that the agreement clearly indicated the intention of the successor State to give to it certain legal effects either for certain specific treaties or for all treaties to which the predecessor State had been a party. For bilateral treaties and multilateral treaties of a restricted character, that effect would be an offer to accept treaty relations, subject to the consent of the other parties, and for non-restricted multilateral treaties the effect would be a notification of succession.

61. Concerning drafting, the view was expressed that as the underlying idea of the two articles was the same, it should be possible to merge them. In addition, the need to include paragraph 2 in article 8 as well as in article 9 was questioned.

Article 10

62. With regard to article 10, concerning treaties providing for the participation of a successor State, the requirement in paragraph 2 that the successor State "expressly accepts in writing" to be considered a party was criticized by one representative. In his view, such a requirement would make the provision unnecessarily rigid. There should be other ways in which the successor State could indicate its acceptance.

Articles 11 and 12

63. Many of the representatives who spoke on the matter favoured the retention in the draft articles of articles 11 and 12, which provided in essence that a succession of States did not as such affect boundaries or other territorial régimes established by a treaty. Those representatives stressed that articles 11 and 12 were based on long-established and generally recognized principles of international law and reflected the practice of States, both individually and within regional bodies, as well as prevailing doctrine. Reference was also made to article 62 of the Vienna Convention on the Law of Treaties, which provides that a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty which establishes a boundary.

64. The exception of such treaties from the application of the "clean slate"

principle was seen by those representatives as essential for guaranteeing stability in international relations and, therefore, for the maintenance of international peace and security. A newly independent State was not born into a legal vacuum but within an international society governed by international law. It was also recalled by some of them that articles 11 and 12 related to "objective régimes", normally to situations that might originally be established by a treaty, but that, once established, have in international law a status independent from the treaty in question. As drafted by the Commission, articles 11 and 12 did not prevent a State from challenging, on grounds other than the "clean slate" principle, or from supporting the validity of the treaties referred to in those articles in accordance with the general law of treaties, a point confirmed by the provision set forth in article 13 of the draft. It was also stressed that articles 11 and 12 were to be binding not only on newly independent States, but also on third States which, in the absence of such provisions, might use the occasion of a succession of States to terminate their obligations under treaties of a territorial character, thus threatening the territorial integrity of newly independent States.

65. Some representatives, on the other hand, were not convinced by the Commission's arguments and precedents that boundary or other territorial régimes established by a treaty should be excluded from the application of the "clean slate" principle. The reasons it had given seemed to be based mainly on the declarations and practices of former colonial Powers and did not reflect historical realities and the main consideration to be borne in mind in contemporary international law: the right of peoples to self-determination. It should not be presumed that newly independent States automatically succeeded to treaties establishing their boundaries which were concluded by colonial Powers to meet certain strategic or economic objectives without any regard for the geographic or ethnic realities of nations and which, in some cases, ran counter to the provisions of treaties concluded earlier. That was particularly true for treaties concluded among colonial Powers whose object was to divide a territory into zones of influence or into different zones under different administrative systems. Those Powers possessed only limited competence and had therefore no right to dispose of a territory. The legalization of such abnormal or unjust situations would lead to instability and tension among certain States. The complexity of the question and the need for it to be governed by pragmatic considerations was stressed, as well as the need not to underestimate the role to be played by arbitration and conciliation in connexion with boundary disputes. The fact that States members of a regional organization had undertaken to respect the borders existing on their achievement of national independence did not imply that their decision was applicable to other regions of the world and in different situations. The question was raised concerning the practical usefulness of the articles if States that considered themselves harmed by them did not consider themselves bound by a future convention.

66. One representative underlined that article 11 might be justified on the pragmatic grounds that State practice indicated that disputes over boundaries had historically been a source of frequent conflicts and that it was therefore in the interests of the entire international community to exclude the application of the "clean slate" principle. But, if the article were based on the "dispositive" effects of treaties which established boundaries, then the question

arose as to which other treaties had such effects. In his view, such an approach would lead to a proliferation of exemptions from the "clean slate" rule and would jeopardize the principles of consent and self-determination.

67. Certain representatives made specific reference to article 12. The view was expressed that article 12 might be too categorical and extreme. The justification for including article 11 relating to boundaries established by a treaty might not hold, in their view, for the cases covered by article 12. It would be inconsistent with the principle of self-determination to say that a newly independent State should with respect to the use of its territory and the resources therein, be permanently fettered by servitudes imposed on the territory by the former colonial Power for the benefit of other States in consideration of motives which might have been satisfactory to the predecessor State but not consented to by the successor States. In this regard, it was said that, so far as "territorial régimes" created by treaties concluded by its predecessor were concerned, a newly independent State inherited only, where necessary, an obligation to renegotiate the treaty's provisions so as to protect the beneficiary State's vital interests, while not jeopardizing the successor State's independence. One representative considered that article 12 should be made clearer, because, as presently drafted, its provisions could be interpreted to cover an infinite range of supposedly territorial treaties. He stressed that agreements on transfer of territory had no legal value unless they represented the freely expressed will of the successor State.

68. Lastly, one representative was of the opinion that, once it was decided that boundary and other territorial régimes were matters relating to a legal situation established by the dispositive effects of treaties, that would inevitably provide certain guidelines for future discussions on succession of States in respect of matters other than treaties.

Article 13

69. Certain representatives stressed the importance of article 13, which provided that nothing in the draft articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty. They saw the article as being complementary to articles 11 and 12. Other representatives considered the article superfluous or subject to misinterpretation and suggested its deletion or its reformulation so as to exclude any possibility that it would lead to a restrictive and incorrect interpretation of article 11.

Part II. Succession in respect of part of territory

Article 14

70. Those representatives who made statements concerning article 14 supported the "moving treaty frontiers" rule, which was reflected therein. The modifications which the Commission had made with regard to the article were generally endorsed.

Part III. Newly independent States

71. The representatives who referred in a general manner to part III of the draft articles expressed general approval of the approach taken by the Commission with regard to that part as well as of the modifications made therein at the Commission's last session. They considered that the articles in part III appeared to make the position of a newly independent State as flexible as possible. Generally speaking, a newly independent State could, if it so desired, continue to participate in a treaty previously applied to its territory. It was suggested, however, that articles 15 to 19 and 24 might be reviewed in the light of certain considerations, such as the need to identify the moment when the obligations of the successor State began. It was also said that the principle set out in articles 16, 17 and 18 should be formulated as a right and not merely as an option open to the newly independent State. Stress was placed on making a greater effort to achieve maximum clarity in the drafting of those three articles.

Article 15

72. The general rule provided for in article 15 was favourably commented upon by many representatives who spoke on the matter. Some of them stressed that the article was not framed as a presumption against succession but simply as a denial of automatic succession. The need to distinguish between unjust multilateral treaties and those multilateral treaties regarding international peace and security and based on the principle of peaceful coexistence was also stressed by certain representatives, as well as the need to examine the question of multilateral treaties of universal character (see paras. 40 to 44 above). Reference was made by other representatives to the possibility of providing for the maintenance in force of treaties concluded during the "transitional period" immediately before independence (see para. 33 above).

Article 16

73. Certain representatives were of the view that the provisions of article 16, concerning a newly independent State's participation in multilateral treaties in force at the date of the succession of States, needed greater clarity and precision, as in its present wording the article could give rise to differences of interpretation.

Article 18

74. One representative commended the provisions set forth in this article according to which a newly independent State may ratify, accept or approve a multilateral treaty which has been signed by the predecessor State subject to ratification, acceptance or approval. Another representative, however, doubted whether it was worth-while to retain the article.

Article 19

75. One representative was of the view that, if the newly independent State had a "clean slate" with regard to a multilateral treaty, then logically that should be applicable to any reservations to that treaty made by the predecessor State. Should the newly independent State wish to be bound by reservations, it should make its views clear on becoming a party to the treaty either by expressly adopting the reservations of the predecessor State or by formulating its own specific reservations. Another representative noted that, in its written observations, his Government had disagreed with the provisions of what was now paragraph 2 of article 19, concerning the reservations which a newly independent State could formulate when making a notification of succession, but that it would reassess its position in the light of the reasons given by the Commission in the commentary to the article.

Article 21

76. Certain representatives noted that article 21, concerning a notification of succession made by a newly independent State, and article 37, concerning a notification under articles 30, 31 or 35 of the draft, were essentially the same and might be amalgamated. The view was also expressed that paragraph 4 of article 21 was superfluous.

Article 22

77. Several representatives commended the Commission for the system adopted with regard to the effects of a notification of succession. According to that system a newly independent State which made a notification of succession would be considered a party to a treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date, but the operation of the treaty would be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making the notification of succession. It was underlined by some representatives that such a system left no doubt that prior to the notification of succession the provisions of the treaty concerned would not be applied in the relations between the newly independent State and other States parties to the treaty. Thus, it was said, the system embodied in article 22 would have the practical advantage of establishing legal certainty in treaty relations. It was emphasized that the effects of the suspension provided for in paragraph 2 of the article would be mitigated if provision were made for the possibility of applying provisionally the treaty during the interim period, particularly in the light of the provisions contained in article 26 of the draft.

78. Certain representatives were of the opinion that more study of the matter was required. The view was expressed that article 22 did not appear consistent with certain provisions of the Vienna Convention on the Law of Treaties. One representative underlined that the final result of the provision of article 22 was to bring about a situation where the treaty would be considered in force, but its operation suspended. In his view, such a solution, independently of the provisions of article 28 ("Non-retroactivity of treaties") of the Vienna Convention on the

Law of Treaties, did not conform to the letter of articles 57 and 58 of that Convention, which require prior consent of the parties concerned to suspend the operation of a treaty, whereas the suspension envisaged in article 22 is regarded as automatic. Moreover, while it is possible, outside the provisions of the Vienna Convention, for a party to suspend provisionally the operation of a treaty in accordance with the doctrine of the clausula rebus sic stantibus, there is no automaticity. It may therefore be asked whether the successor State's expression of consent should be given such retroactive effect as to make it a party to the treaty from the date of succession, while in fact there appears to be little practical consequence ensuing from this arrangement. Continuity for its own sake should not prevail, in his view, over the alternative of accession by the successor State.

Article 23

79. The representatives who made comments on article 23 expressed their support for that article, which dealt with the conditions under which a bilateral treaty is considered as being in force in the case of a succession of States.

Article 29

80. One representative commended the Commission for having adopted the "clean slate" principle as the general rule for cases of newly independent States formed from two or more territories as indicated in article 29, but wondered why the Commission had not extended the principle to cases of succession where the territory of a State was divided into several parts to form one or more States (see paras. 83 to 86 below). Another representative noted that although the article had become long, it was more precise and more complete. He suggested that it might be appropriate to insert in paragraph 1 of article 29 an explicit reservation taking into account the many exceptions contained in paragraphs 2 and 3 of the general rule established in paragraph 1.

Part IV. Uniting and separation of States

81. Many of those representatives who referred generally to part IV expressed satisfaction that its provisions had been elaborated upon in greater detail by the Commission during the second reading and that, as a general rule, the principle of continuity of treaty rights and obligations applied in cases of the uniting or separation of States. It was noted that an exception in favour of the application of the "clean slate" principle had been made in article 33, paragraph 3, (see paras. 83 to 86 below). One representative expressed the view that whether a new State, created by a uniting or separation of States, would be willing to accept treaty obligations contracted by its predecessor State should be left to that new State to determine for itself. In his view, it would be preferable to apply the same principle to all States. Finally, it was also said that the drafting of part IV could be somewhat improved.

Articles 30, 31 and 32

82. Support was expressed for the modifications introduced by the Commission in article 30 as well as for the addition of articles 31 and 32 to the draft.

Article 33

83. Certain representatives expressed support for article 33 which provided as a general rule that the principle of continuity should apply in cases of separation of parts of a State, with an exception (para. 3) for those cases in which the territory concerned becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State. Those representatives praised the Commission for having formulated in a single article a solution which could apply to the unlimited range of situations which might arise in cases of separation of parts of a State and which takes duly into account the case where the circumstances surrounding the separation were such that separation could be compared to a case of decolonization.

84. On the other hand, certain representatives believed that the general rule applicable to the new State in cases of separation should be the "clean slate" principle. The right of self-determination was applicable to all peoples and should not be denied to territories other than colonial dependencies. The considerations which had led the Commission to decide to accept the "clean slate" principle in the case of newly independent States were even more relevant to States formed by secession, which were sometimes subjected to worse forms of colonization than former colonies.

85. Other representatives expressed concern with regard to article 33, in particular paragraph 3, which was described as ambiguous and susceptible to varying subjective interpretations and as setting impracticable criteria for entitlement to its benefits. Reference was made to the need to distinguish precisely the concept of "dependent territory" referred to in article 2, subparagraph 1 (f), and that of a "part of the territory of a State" separating to form a State included in article 33.

86. Lastly, it was stated by another representative that, while the law in regard to the matter dealt with in paragraph 3 of article 33 might be uncertain at the present time, there was a recognizable political trend towards greater extension of the "clean slate" principle.

Articles 35 and 36

87. Support was expressed for the Commission's decision to add articles 35 and 36 to the draft articles.

Article 37

88. As already indicated (see para. 76 above), the suggestion was made that

article 37, concerned with a notification given under articles 30, 31 and 35, be amalgamated with article 21, concerning a notification of succession, in a single article.

Part V. Miscellaneous provisions

Articles 38 and 39

89. Provisions of part V of the draft were supported by certain representatives, but criticism was also expressed with regard to some of them. For instance, one representative did not believe it was necessary to provide in article 38 for the exclusion from the scope of the draft articles of questions that might arise in regard to the effects of a succession of States in respect of a treaty from the outbreak of hostilities between States. Moreover, a few representatives favoured the deletion of article 39, which excluded from the scope of the draft articles questions arising in regard to a treaty from the military occupation of a territory. In their view, military occupation could not give rise to a legal situation which would have any effect on treaties.

3. Final phase of codification of the topic

(a) Form to be given to the codification of the topic

90. Several representatives who spoke on the matter supported the Commission's view, reflected in paragraphs 61 to 64 of its report (A/9610, vol. I), that the codification of the law of the succession of States in respect of treaties should be couched in the form of a convention, as had been the case with the codification of the general law of treaties. While recognizing that a convention on the topic would ex hypothesi not be binding on a successor State unless and until it took steps to become a party thereto and that even then the convention would not be binding upon it in respect of any act or fact which took place before the date on which it became a party, those representatives believed that a convention on the subject would have its own value and would be the most appropriate form of finalizing the codification of the topic. They stressed that new States would find in the provisions of such a convention the norms by which to be guided in dealing with questions arising from a succession of States, irrespective of their formal participation in the codification instrument.

91. Certain representatives, however, were not convinced that a convention would be the best type of instrument for the codification of the law on the subject. Those representatives emphasized the questions mentioned above concerning the initial binding effect of such a convention on a new State and the relevance of a convention for acts or facts occurring before its entry into force with respect to that State. It was also said by one representative that there is unlikely to emerge a large number of additional new States so that to some extent a convention on the subject may not be necessary. The suggestion was made that it might be preferable to give the draft articles another form, such as that of a resolution or a declaratory statement of principles.

92. One representative urged a flexible approach, stressing that, while the Commission's practice to present its conclusions in the form of draft articles capable of constituting a convention was sound, that did not imply any automatic commitment on the part of the Sixth Committee, as a political organ, to transform the draft articles into a convention.

93. Several representatives urged that Member States be requested to submit their views on the form which the draft articles should take.

94. Finally, certain representatives underlined the connexion between succession of States in respect of treaties and succession of States in respect of matters other than treaties and advocated tha elaboration of a single convention or at least the establishment of uniform principles for those two aspects of State succession. Referring to the question of treaties involving financial burdens, one representative deemed it advisable to know the outcome of the study to be done on the subject, in connexion with succession of States in respect of matters other than treaties, before taking a definitive position on the question of the final form to be given to the codification of succession of States in respect of treaties on the basis of the draft articles submitted by the Commission.

(b) Procedure by which the topic is to be codified

95. A number of representatives supported the Commission's recommendation (A/9610, vol. I, para. 84) that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on succession of States in respect of treaties. They considered that the draft articles could serve as a solid basis for the preparation of a convention by such a conference. Reference was made to the possibility of holding the conference in 1976 so as to give Governments enough time to study the draft articles. It was pointed out that 1975 was a year overburdened with a number of major legal conferences.

96. Other representatives, however, considered that it would be premature for the General Assembly at the present stage to take a decision on the matter. Besides the question of the appropriate form to be given to the draft articles (see paras. 90 to 94 above), some of those representatives underlined that, in their view, the draft articles themselves were not yet a complete and appropriate basis for the work of a conference. The suggestion was made that the Commission should re-examine the draft articles once again in the light of the comments made by Governments and of the proposals concerning the scheme of the draft (see paras. 40 to 47 above).

97. Other representatives believed it would be premature to convene an early conference as there seemed to be no sense of urgency to do so. An interval of a few years could have certain advantages. It was essential to be assured in advance that a sufficiently large number of States would be willing to take part in a conference of plenipotentiaries entrusted with the task of studying the draft articles prepared by the Commission. There should be a reasonable probability that the future convention would attract a sufficiently wide measure of support.

98. Certain representatives stated that consideration should be given to the possibility of submitting the draft articles to the Sixth Committee for the elaboration of a convention on the subject in the same manner as for the Convention on Special Missions (General Assembly resolution 2530 (XXIV), annex).

99. Lastly, several representatives expressed the view that it would seem preferable to postpone a decision on the further handling of the draft articles until the General Assembly would have the benefit of written comments and observations from Governments not only on their substantive content but also on the procedure by which, and the form in which, the work on the draft articles should be completed. After such comments had been received, the Sixth Committee would then re-examine the question.

(c) Request for comments from Governments

100. Most representatives who spoke on the matter endorsed the Commission's recommendation (A/9610, vol. I, para. 84) that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties.

C. State responsibility

101. The fundamental importance of the topic of State responsibility to the harmonious conduct of international relations was underlined by several representatives. The codification and progressive development of the rules of international law concerning State responsibility could not but strengthen the observance and fulfilment of international obligations, including those relating to the maintenance of international peace and security, the sovereignty and independence of States, and the protection of human rights, and would therefore have a positive effect on certain basic aspects of international life. Moreover, the clarification of those rules through the codification process would serve to prevent any possible recurrence of practices of the past and facilitate the settlement of any eventual claim in a friendly manner.

102. Many representatives reaffirmed expressly their support for the approach to and treatment of the question of State responsibility by the International Law Commission and the Special Rapporteur, Mr. Roberto Ago. While the draft articles adopted in first reading by the Commission were still few in number, they were none the less the product of a remarkable work of synthesis and laid down fundamental rules based on international practice, judicial precedents and authoritative doctrine. In dealing with a topic which belonged to the very core of international law and touched upon very sensitive interests of States it was necessary to proceed with caution. The Commission was therefore right in re-examining certain basic principles in the light of present-day conditions instead of taking them for granted.

103. Several representatives urged the Commission to accelerate its study of the topic by giving the greatest priority to the preparation of the corresponding draft articles, as recommended by the General Assembly in resolution 3071 (XXVIII). Some progress had been made but much remained to be done. The Commission should continue to study the question with vigour and determination and should elaborate a greater number of articles in order to enable the Assembly to form a clearer picture of the question as a whole. The articles so far adopted were only a part of a much broader work which could not be appropriately judged until further substantive progress had been accomplished. The view was also expressed that, up to now, little progress had been made and that the nine articles adopted, concerning general principles and theoretical questions, had not yet touched upon the problems which are at the heart of the question.

104. Some representatives advanced comments of a preliminary nature either on the draft as a whole or on certain specific articles, particularly on those adopted by the Commission at its twenty-sixth session. Other representatives indicated that they would refrain from expressing comments on the draft articles at the present stage.

1. Comments on the draft articles as a whole

(a) Form of the draft articles

105. The Commission's decision to give to its study on State responsibility the form of a set of draft articles, thus following the relevant General Assembly recommendations, was expressly supported by several representatives. Some indicated that the work must be pursued with a view to the preparation of a draft convention, but the hope was also expressed that the final form of presentation of the draft articles would be that of a draft declaration.

(b) Scope of the draft

106. The limitation of the present draft articles to the responsibility of States for internationally wrongful acts met with general approval, although it was also said that no study on State responsibility could be complete without consideration of international liability for injurious consequences arising out of the performance of lawful activities as well.

107. Certain representatives emphasized that the topic of liability without fault did not fall within the scope of the Commission's examination of State responsibility. The question of the international liability of States for injurious consequences arising out of the performance of certain activities that are not prohibited by international law had been placed by the International Law Commission on its general programme of work as a separate topic, in accordance with the recommendation contained in paragraph 3 (c) of General Assembly resolution 3071 (XXVIII), and its study would require firstly a thorough examination of relevant international practice (for the priority to be given to the study of that new topic see paragraph 183 below). In this connexion, one representative recalled that, at the recent session of the Third United Nations Conference on the Law of the Sea, held in Caracas, some new and quite far-reaching concepts had been advanced on the question of liability under international law for injurious consequences arising out of the performance of certain activities which were not prohibited by international law, thus adversely affecting the substantive issues under discussion at that Conference. In his view, a conference on the law of the sea was not the place to adopt conclusions on such basic legal issues.

108. It was noted with approval that the draft articles being prepared by the International Law Commission deal with the general rules of international responsibility of States for internationally wrongful acts, that is to say, with the rules which govern all the new legal relationships that may follow from an internationally wrongful act of a State, regardless of the particular sector to which the rule violated by the act may belong. In this respect, some representatives praised the Commission for having thus avoided the conventional approach of determining the rules relating to State responsibility on the basis of the rules concerning the treatment of aliens.

109. Several representatives stressed the need for the Commission to take into account, as appropriate, the gravity of the internationally wrongful act in the light of the importance attached by the international community to respect for some international obligations. The Commission should not confine itself to stating

that a breach of an international obligation of the State entailed its international responsibility. It was essential to go further and distinguish clearly between different categories of breaches of international obligations. This differentiation would be necessary in order to determine the legal consequences attributable by international law to the wrongful act concerned, including the distinction between civil and criminal international wrongfulness. Moreover, the inclusion in the draft articles of different categories of breaches based on the degree of seriousness for the international community of the obligations violated was, in the view of those representatives, not only of necessity legally but also of great political and practical importance, possible and in keeping with contemporary international law.

110. Some of those representatives mentioned as an example of over-all important international obligations at the centre of today's attention on problems concerning State responsibility those relating to the maintenance of international peace and security and, in particular, obligations directed to preventing the resort to armed force in contravention of the Charter of the United Nations, like acts of aggression and other crimes against peace and humanity. Such obligations were enshrined in the Charter as a fundamental principle binding on all States. The draft articles being prepared by the Commission should provide for appropriate remedies for cases of State responsibility arising from the violation of those obligations.

111. Acts against dependent peoples, like the plundering of the natural resources of colonial territories and the transformation of those territories into theatres of war and sites for nuclear tests and other military experiments, acts directed to the military occupation of territories of another State, acts against fundamental human rights, like genocide, forced settlement and evacuation of populations, racial discrimination and apartheid, and certain acts against foreign nationals, like the mistreating of foreigners who were working or temporarily residing in the territory of another State, were also referred to by some representatives as examples of acts involving, inter alia, breaches of international law which should not be regarded as ordinary violations.

112. The view was expressed that the draft articles should deal with other problems of State responsibility which were likewise at the centre of the preoccupations of the contemporary international community, such as the extent to which a State might be held responsible for actions of certain private enterprises (transnational corporations, international monopolies), rather than to cover special and very exceptional situations related, for example, to the actions of de facto organs or of insurgents.

(c) Structure of the draft

113. The broad outline and structure of the draft articles on State responsibility laid down by the International Law Commission was not contested by any of the representatives who referred to the matter during the discussion. Subject to the clarifications requested by some representatives with regard to certain concrete points (see paras. 121 to 135 below), the draft articles so far approved by the

Commission, including the three new articles (articles 7 to 9) adopted at its twenty-sixth session, received general support. As was indicated by several representatives, the underlying principles of the rules set forth in those articles were based on well-established State practice and supported by numerous decisions of international tribunals as well as by the most authoritative doctrine. It was also added that, even in areas where State practice and judicial decisions were limited or lacking, the Commission had elaborated acceptable rules that correctly relied on the relevant general principles and also took due account of the current demands of international society. As a whole, the articles already adopted were considered a solid foundation for the elaboration of further rules on the topic.

114. Certain representatives pointed out that the draft articles were in harmony with the principle of State sovereignty. The State was regarded as an entity in international relations and, at the same time, in accordance with international law the structure of the State was respected as its internal affair. It was also noted with approval that the defence of municipal law had been rejected.

115. Referring to the three new articles approved by the Commission at its twenty-sixth session, several representatives welcomed the adoption of the principle that States might be held responsible not only for wrongful acts of their organs, but also for acts of bodies, entities, groups or persons exercising governmental authority or acting under government control. In their view, no State should escape international responsibility for an internationally wrongful act by claiming that, under its municipal legal order, the authors of the act were not State organs.

116. One representative criticized the attitude of those who intended to use the distinction between acts of State organs and acts of other institutions in order to exclude the responsibility of the State when the damaging act was the work of a private law entity. In his view, a State should be responsible for the actions of any institution on its territory, whether it was an organ of the State or any other kind of institution, because a State could and should exercise its authority over any institution under its jurisdiction. Furthermore, a State was failing in its responsibilities if it did not prevent its nationals from engaging in activities contrary to international law and, more particularly, to the Charter of the United Nations.

117. With regard to the objective element of the internationally wrongful act, most of the comments made concerned the question of distinguishing between different categories of breaches of international obligations, a point already referred to above (see paras. 109 to 111). It was also said that the criterion whereby the circumstances in which the conduct attributed to the State must be considered as constituting a breach of international legal obligations should be made unequivocally contemporary because what might be lawful at one time might subsequently become unlawful. It was also suggested by one representative that the notion of "abuse of rights" be given a place in the draft.

118. It was stated that the Commission should consider, at some stage, the problems concerning the implementation (mise en oeuvre) of State responsibility,

since it would not be realistic to omit the question of the practical application of the basic rules of State responsibility. The necessity to include in the draft articles adequate dispute settlement provisions was also underlined by certain representatives. The view was expressed by one representative that the Commission should add to the draft on State responsibility a provision excluding its retroactive application, as has been done in the draft articles on the succession of States in respect of treaties, so as to prevent the reopening of long-settled international disputes and facilitate ratification by a large number of States.

119. Finally, some representatives praised the Commission and the Special Rapporteur for the excellent drafting of the articles and the learned commentaries which accompanied them. Others urged the maximum of clarity in drafting the text of the articles in order to rely as little as possible on the commentaries for elucidation.

2. Comments on the various draft articles

Chapter I. General principles

120. No specific comments were made on articles 1 to 4 of the draft.

Chapter II. The act of the State under international law

121. Comments were made on the articles already approved for this Chapter of the draft with the exception of article 5.

Article 6

122. While agreeing with the general principle embodied in article 6, a corollary of article 5, one representative underlined that the application of that principle to cases of responsibility of the State for injuries caused to the person or property of aliens was subject in international practice to certain prerequisites, such as the existence of effective damage and, in particular, to the exhaustion of local remedies rule. The judiciary was responsible for remedying irregular acts of the executive and legislative powers. No act of any State power could be definitely attributed to a State until the act in question had been brought before the courts of the State and judged at the highest level. An international claim could therefore arise only from a miscarriage of justice. The exhaustion of local remedies rule formed part of general international law and the Latin American countries were particularly attached to it as was clear from the many resolutions, declarations and conventions adopted at regional conferences in the western hemisphere. He expressed the hope that in due time the relevant rules would be incorporated into the Commission's draft, as otherwise his delegation could not support article 6.

Article 7

123. Some representatives stressed the usefulness of including in the draft an article dealing with the attribution to the State of the conduct of entities, other than State organs, empowered to exercise elements of governmental authority, in order to prevent a State from rejecting in certain cases its international legal responsibility. It was also pointed out that article 7, like article 6, was the logical consequence of, and supplementary to, the provision in article 5.

124. With regard to paragraph 1 of the article, some representatives referred to the situation of the component States of a federal State. They considered that the provision proposed by the Commission accommodated certain types of federal States where the component States could have retained, under certain circumstances, their own international personality separate from the international personality of the federal State. If the conduct of the organs of a component State were in breach of an international obligation incumbent on that State, then the wrongful act would not be attributed to the federal State but to the component State itself. Support was expressed in this respect for the Commission's conclusion that to determine in such cases what subject of international law is to be held internationally responsible for that conduct was a different aspect of the matter which could appropriately be dealt with in other articles of the draft.

125. In this connexion, the view was also expressed that the theoretical basis of State responsibility in a federation was a question dependent upon the particular legal or institutional system in each federal State. In certain cases, limited international legal personality might be conferred on component States under internal law. In most cases, however, the federal Government was alone responsible for the conduct of foreign affairs. In those cases, there could be no question of the component States having any international rights or obligations. The responsibility of the State for the action of entities empowered to exercise elements of the governmental authority would rest on the conception of such actions as acts of the federal State.

126. Some representatives expressed reservations concerning paragraph 2 of the article. It was suggested that the rule embodied in the paragraph might go too far in attributing to a State the conduct of entities which were not part of the formal structure of the State or of a territorial governmental entity and, therefore, likely to be unacceptable to some Governments. It was also stated that the paragraph should be further clarified so as to make plain the entities which are not a part of the formal structure of the State to be covered by the provision, because not all social or other institutions were empowered by the internal law of the State to exercise elements of the governmental authority. For instance, it was doubted by certain representatives that the conduct of an organ of a railway company to which certain police powers had been granted could be regarded as an act of the State under international law.

Article 8

127. Some representatives stated that there was no doubt that the conduct of a

person or a group of persons should be considered as an act of the State under international law if the conditions provided for in the article are fulfilled. Other representatives considered, however, that the full implications of the text of the article were not yet clear and that further clarification was needed of both subparagraphs and, in particular, of subparagraph (b) and of the "circumstances" referred to therein. Finally, certain representatives expressed concern that the formulation of the article could be interpreted as extending the scope of State responsibility beyond fundamental principles of justice.

128. Referring to subparagraph (a), one representative mentioned the case of transnational enterprises, which were not content with acting on behalf of the State, but seized the machinery of the State for their own interest. Another representative raised the question whether or not the article intended to include private corporations.

129. One representative wondered whether individual initiatives of the kind referred to in subparagraph (b) of the article should be attributed to the State in all cases. It might be pertinent to consider whether or not such conduct benefited the State, or was tacitly approved by the State or was subsequently endorsed by the State. Moreover, it might be asked whether, in the absence of official authorities, the State could be said to exercise effective control over the area where an internationally wrongful act was alleged to have occurred. Subparagraph (b) would seem to imply that private individuals could violate an international obligation of the State, thus incurring State responsibility without the foreknowledge of the State concerned. According to the traditional view, State responsibility was said to arise from a failure of the State to prevent an offence committed by private individuals. Even in that case, however, responsibility, according to that representative, was not absolute, but contingent at least on implied foreknowledge on the part of State officials of the impending violation.

130. In cases of natural disaster or armed invasion when the local authorities fled before the invader, referred to in the commentary to the article, it was quite understandable, in the opinion of another representative, that private individuals would provisionally assume, in the collective interest, the management of public affairs, but, as the Commission itself recognized, there was no formal or real link with the machinery of the State or of one of the entities entrusted by the internal law of the State with the exercise of elements of governmental authority. That being so, it was hard to see why, once order had been re-established, the acts of persons who had not been entrusted with any task whatsoever by the State authorities should be attributed to the State. Moreover, it would not be just to attribute to the State the acts of those who for personal gain took advantage of the situation and violated the rights normally respected by the community.

131. The view was also expressed by another representative that any person who assumed power by force, against the will of the people and by abolishing all existing legal institutions, was simply usurping power and, consequently, his actions should not be considered as acts of the State under international law.

132. Some representatives stated, however, that the Commission, in elaborating the rule in subparagraph (b) had correctly relied on the relevant general principles and also taken due account of the current demands of the international society.

Article 9

133. Certain representatives referred to the question of the dual loyalty of organs placed at a State's disposal by another State or by an international organization. However rare the case of attribution envisaged in the article might be, some representatives considered necessary the retention of the article, because such organs might fail to comply with the rules of international law, or might violate international obligations, thereby engaging the responsibility of the State at whose disposal they had been placed. In this connexion, it was said that the expression "placed at its disposal" presupposed, as stated in the Commission's commentary to the article, that, in performing the functions entrusted to it by the beneficiary State, the organs concerned shall act with the consent of that State and under its exclusive direction and control, and not on instructions from the sending State.

134. Reference was likewise made to the complexity of the points involved in the article. Some felt that one of the drafts submitted to the Commission was more adequate or preferable than the text adopted, because it contained most of the considerations set forth in the Commission's commentary, but not included in the article itself. It was likewise said that further clarification was needed in defining the organs concerned and that the article should not cover persons not empowered to exercise prerogatives of governmental authority, such as doctors and technical assistance personnel.

135. Certain representatives expressed the view that the Commission should explicitly state in the draft articles that a State could not evade international responsibility for breaches of international law committed by its organs by saying that it had placed them at the disposal of another State. Reference was made in this connexion to article 3 (f) of the definition of aggression, 5/ according to which the action of a State in allowing its territory, which it had placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State is qualified as an act of aggression.

5/ Official Records of the General Assembly, twenty-ninth session, Supplement No. 19 (A/9619 and Corr.1), para. 22.

D. Question of treaties concluded between States and international organizations or between two or more international organizations

136. Many representatives welcomed that the International Law Commission had been able to discuss the question of treaties concluded between States and international organizations or between two or more international organizations, despite the short time available to it. They congratulated the Commission and the Special Rapporteur, Mr. Paul Reuter, for the progress made in the study of the question and, in particular, for having begun the preparation of the corresponding draft articles.

137. The importance of the question for contemporary international relations was underlined by some representatives who referred to the relevant resolution adopted by the United Nations Conference on the Law of Treaties, 6/ as well as to General Assembly resolution 2501 (XXIV), whereby the Assembly requested the International Law Commission to study the question in consultation with the principal international organizations. The conclusion of treaties between States and international organizations or between international organizations had become a normal practice in international life which called for a uniform solution. The United Nations needed to base itself on precise rules for the conclusion of treaties with States and other international organizations.

138. Tribute was paid to the Special Rapporteur for his valuable efforts to assist the Commission in arriving at a solution. It was likewise said that the secretariats of international organizations were in the position of providing the Commission and its Special Rapporteur with important materials for the work to be done on the topic.

139. Some representatives considered it premature to comment at this stage on the draft articles. Other representatives made, however, preliminary remarks on general aspects of the draft, as well as on specific provisions embodied in the first articles so far adopted.

1. General remarks on the draft articles

140. The first articles of the draft provisionally adopted by the Commission at its twenty-sixth session were considered as a whole acceptable by the representatives who referred to the matter during the discussion. It was stated that the articles stood out for their clarity and simplicity of expression and constituted an excellent point of departure for further work of the Commission on the subject.

141. The method followed by the Commission in the preparation of the draft articles

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6/ Ibid., Twenty-fourth Session, Annexes, agenda item 94 a, document A/7592, para. 8.

was also widely supported. Several representatives emphasized that, in view of the close relationship between the two subjects, the highest possible degree of homogeneity was required between the Vienna Convention on the Law of Treaties and the present draft articles. The Commission was, therefore, right in relying upon the Vienna Convention on the Law of Treaties as a model to be followed as closely as possible in its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations. But, in doing so, it was added, the Commission should bear in mind the difference between the nature of a State and of an international organization and give due consideration in the preparation of the draft articles, as appropriate, to that basic difference.

142. In this connexion, it was also said that, although the link between the Vienna Convention on the Law of Treaties and the present draft articles should not be ignored, the analogy should not be pressed too far. The further one studied the question, the clearer it became that numerous points justified separate treatment of the two subjects. By having asked the Commission to take up the question separately, the United Nations Conference on the Law of Treaties and the General Assembly had both recognized the special characteristics of the topic.

143. The capacity to conclude treaties, defects which could prevent a treaty from being concluded and the procedures for the conclusion of treaties were mentioned as examples of questions involving considerable differences between the law applicable to treaties concluded between States and the law applicable to treaties included under the present topic. Another point referred to was the question of the principle embodied in the general law of treaties that treaties between States applied only inter partes. In this connexion, it was said that it must be established whether that principle was equally valid for treaties concluded with international organizations "behind" which there were the individual Member States.

144. Certain representatives underlined the difference between the two main categories of treaties studied under the topic, namely, treaties concluded between States and international organizations and treaties concluded between two or more international organizations. One representative stated that there was no urgency in the treatment of the latter of those two categories.

145. The view was also expressed that, in addition to examining the articles of the Vienna Convention on the Law of Treaties, it would be useful for the Commission to bring within the scope of its investigation the draft articles on succession of States in respect of treaties.

146. As to the form of the draft, some representatives approved expressly the Commission's intention to present the results of its work on the topic in the form of a set of draft articles capable of constituting a convention, without prejudice to what the ultimate decision might be. The final form of the draft should be decided upon at an appropriate time. It was also pointed out by one representative that, if a convention on treaties between States and international organizations or between two or more international organizations were concluded in the future, it might be necessary to examine how that new convention and the Vienna Convention on the Law of Treaties could be harmonized in view of their close relationship.

147. Finally, the manner in which the Commission had decided to present the draft articles was noted with approval. Such presentation would assist Governments in identifying the similarities and differences between the draft articles and the provisions of the Vienna Convention on the Law of Treaties.

2. Comments on the various draft articles

Article 1

148. The distinction made in this article between "treaties concluded between one or more States and one or more international organizations", on the one hand, and "treaties concluded between international organizations", on the other hand, was, according to certain representatives, a correct point of departure. In their view, "treaties between international organizations" would have to be governed by specific and perhaps different provisions. It was also noted, by another representative, that "treaties" between international organizations constituted only a small percentage of the legal arrangements between them, the majority of such arrangements being less formal.

Article 2

149. It was suggested that the term "acceptance" should be used in a broad sense to include "ratification" as well as "accession". Thus, the relevant portion of paragraph 1 (d) of the article would read "... when signing or accepting a treaty ...". In support of the suggestion, it was said that there seemed to be sufficient United Nations practice to justify that simplification of terminology.

Article 3

150. Recalling that, from a legal point of view, agreements could be concluded only between subjects of international law, one representative doubted the necessity of incorporating article 3 of the Vienna Convention on the Law of Treaties in the present draft articles. Another representative considered that the Commission had rightly excluded from its study agreements to which entities other than States or intergovernmental organizations were parties. Although some such agreements might be international in character, their characteristics were very different from those of treaties in the proper sense of the term. It was also indicated that the wording of the article was somewhat heavy, but the Commission had preferred precision to simplicity.

Article 6

151. A certain number of representatives referred to the text adopted by the Commission for this article, according to which "the capacity of an international organization to conclude treaties is governed by the relevant rules of that organization" (A/9610, vol. II, p. 365). The importance of the provision embodied in the article was generally recognized.

152. Several representatives who referred to the matter considered satisfactory the solution proposed by the Commission as well as the wording of the article. It was pointed out that, by virtue of its sovereign nature, any State had the capacity to conclude treaties, but the same was not true of international organizations. Furthermore, international organizations were not equal, but constituted a whole spectrum of different types. At the present stage of development of international law, it was not possible to accept the thesis of the existence of a general rule of international law granting capacity to conclude treaties to any international organization. All that could be maintained, on the basis of international practice, was that international law contained no rule opposing the idea that international organizations might have the capacity to conclude treaties. It was for the international organizations to determine themselves that capacity on the basis of criteria to be found in their status as subsequently developed. Those representatives felt, therefore, that the Commission had chosen the right solution in merely recognizing the capacity of international organizations to conclude treaties without attempting to attribute such a capacity to them as well as in referring, for that purpose, to the "relevant rules" of the organization in question.

153. The need for the article to spell out a general principle conferring upon international organizations the capacity to conclude treaties was, however, underlined by one representative. While it might be consistent with practice to base the capacity of an international organization to conclude treaties on its own constitution, or, as the article said, on "the relevant rules" of the organization concerned, such a solution was somewhat ambiguous and could give rise to legal uncertainty on the part of States in their relations with international organizations having different purposes and structures.

154. Another representative stated that international organizations had full capacity to enter into agreements unless they were clearly and specifically denied that authority in their respective constitutions and that that fact should be reflected in the draft articles.

155. Recalling that international organizations, unlike States, had only a limited capacity to conclude treaties, certain representatives wondered whether the text of the article should be made more precise by defining additional criteria supplementary to that of "the relevant rules" of the organization in question. Thus, it was said by one representative that the present wording of the article might suggest that an international organization could extend its treaty-making capacity at will by adopting or developing through practice rules to that effect, regardless of the object and purpose of the organization as set forth in its constituent instrument.

156. Another representative underlined that "practice" must in no case develop irrespective of, or contrary to, the constituent instrument of the organization as agreed upon by the Member States on the basis of sovereign equality. In his view, the question of how far "practice" could play a part in the capacity of an international organization to conclude treaties depended on the highest category of rules of the organization, namely, those which formed the constitutional law of the organization and which governed, in particular, the source of the organization's

rules. It was also said that the Commission should explore further whether the latitude allowed to international organizations in the conclusion of agreements or treaties was liable to lead to the establishment of conventional relations contrary to their constituent instruments and to the interests of the international community.

157. Finally, one representative mentioned the advisability of including in the article a reference to the exercise of inherent powers of international organizations. In his view, it would be appropriate to know whether or not the legal personality of an organization established within the framework of a regional or subregional economic integration plan should be recognized at the universal level. He referred also to the difficulty of determining whether a multinational public enterprise could be qualified as an international organization.

E. The law of the non-navigational uses of international watercourses

158. Several representatives expressed satisfaction that the Commission, in pursuance of the recommendation made by the General Assembly in resolution 3071 (XXVIII), had begun its work on the law of the non-navigational uses of international watercourses by setting up a Sub-Committee to consider the question and by appointing Mr. Richard D. Kearney to be Special Rapporteur thereon. The report submitted by the Sub-Committee and adopted by the Commission was a valuable contribution towards the codification and progressive development of the subject. Appreciation was also shown to the Secretariat for having prepared a report (A/9732, vols. I and II) on legal problems relating to the subject, supplementary to the report by the Secretary-General (A/5409 of 15 April 1963) pursuant to General Assembly resolution 1401 (XIV). In this connexion, the wish was expressed that, now that the Commission had begun its work, the Secretariat would take the necessary steps so that both reports could be published together in the Yearbook of the International Law Commission, as the Commission itself had decided at its twenty-third session. 7/

159. Several representatives addressed themselves to the points raised in the Sub-Committee's report and in particular to the concrete questions which had been formulated with the intention of eliciting the views of Governments. The idea of requesting comments from Governments by means of a questionnaire was deemed very useful as it would enable the Commission to take into account the different points of view and draw up an effective plan for its future work on the topic. Most representatives who spoke on the matter expressly indicated that their views were of a preliminary character. Other representatives reserved their position until their Governments had had the opportunity to examine the questionnaire of the Commission.

1. Importance and need of the codification of the topic

160. Several representatives stressed the interest which a study of the subject had for their countries, specially for those which shared a number of watercourses with other States. The progressive development and codification of the law of the non-navigational uses of international watercourses was a task of great importance also for the international community as a whole. The increase in the uses of water for purposes other than navigation gave rise to increasingly frequent clashes of interest between States. The energy crisis, it was said, had generated renewed interest in the use of water resources for the production of hydroelectric power. Also the increasing pollution of rivers had highlighted the question of the rights and duties of the riparian States. One of the most pressing aims for the rational management of natural resources for the benefit of humanity was the equitable use of water. The international community would greatly profit from speedy action towards the legal regulation of the problem.

7/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), para. 122.

161. Most representatives who spoke on the matter stressed that the subject was one of great complexity; there was need to elaborate rules which would take into account not only legal, but also geographical, technical and other aspects. In addition, it was underlined that international watercourses were governed by legal régimes which varied widely. The matter, therefore should be approached with great caution.

162. Several representatives, referring to paragraph 141 of the Commission's report (A/9610, vol. I), stressed that the Commission's purpose was to undertake substantive work on the topic with a view to its progressive development and codification on a world-wide basis. On the other hand, in the opinion of some representatives, the multitude of problems involved could hardly be regulated once and for all by a universal treaty. Nevertheless, codification would help clarify the present state of international law on the subject and would form a general framework for the conclusion of bilateral treaties. A body of law on the subject should aim at enhancing international co-operation, particularly at the regional and subregional level. The Commission should provide a legal framework for the optimum utilization of water resources by the countries concerned in the interest of their economic development. The optimum utilization of the water resources should be so arranged that, while taking due account of the sovereignty of the States concerned, co-operation in development is promoted among those countries directly interested in these water resources, and that each country gets an equitable share of these resources.

163. In the view of one representative, the Commission, in its work on the subject, should take a certain number of principles into consideration, among which were the following: the right of all States bordering on a watercourse to use that watercourse and the extent of such a right; the geographical and hydrological characteristics of the expanse of water; past and present utilization of the watercourse and its importance from the social point of view and from that of the over-all development of the country; the present and future needs of each State with regard to the watercourse; the need to use other watercourses; what priority should be accorded to States whose economic development depended largely on a watercourse; and the possibility of paying compensation to settle disputes about watercourses.

164. Some representatives expressed in particular the hope that the interests of small, poor, developing countries should be given special attention in the codification of that subject. Water had become a major economic resource for some countries; the formulation of rules would not serve a useful purpose if their implementation would adversely affect the economic development of individual countries.

165. Some representatives recalled that the General Assembly, by resolution 2669 (XXV), had recommended that the Commission should take into account intergovernmental and non-governmental studies on the matter. Some significant drafts, recommendations and rules relating to certain parts of the law of international watercourses had been prepared by competent international bodies and could be used as a basis for codification. The Commission should start by

studying the existing texts, irrespective of the nature of the body which had prepared them, in order to avoid repeating studies already made by other bodies. In this connexion, reference was made with approval by some representatives to the work carried out by the International Law Association and, in particular, to the Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Commission on 20 August 1966. On the other hand, reservations were expressed concerning the value of those "Rules", since they did not always provide equitable solutions to the very complex problems which arose.

2. The nature of international watercourses

166. A number of representatives commented on the nature of the term "international watercourses" and in particular reference was made to the geographical concept of "international drainage basin". In the opinion of one representative, some of the non-navigational uses outlined by the Commission seemed to have an important bearing on the question of the meaning and scope of the term "international watercourses". Another representative recalled that the term had been used in General Assembly resolution 3071 (XXVIII) because it had been regarded as broad enough to cover all the problems that had to be considered and yet was not too technical in nature. Its scope was wider than that of "international rivers", because it also covered lakes, but it might be regarded as a synonym for "international drainage basins", provided that the underground waters covered by the latter term were excluded. Some representatives considered that the scope of the term should be determined in a comprehensive manner. The term chosen should cover the range of problems relating to international watercourses which needed legal regulation. On the other hand, some representatives, while deeming it essential to define precisely the meaning and scope of the term "international watercourse", considered that it should not be conceived in too wide a sense.

167. In the view of one representative, two main factors had international legal relevance as regards the meaning of the term: the term should be understood as indicating that a watercourse or system of rivers and lakes (the hydrographic basin) was divided between two or more States and that the basin possessed a hydrographic coherence irrespective of political borders. Owing to that coherence, there was an interdependence of legal relevance between the various parts of the watercourse or basin belonging to different States, which concerned not only the different uses of the watercourse and its water, but also problems of pollution. There was therefore no need to make a distinction concerning the scope of the definition with regard to the legal effects of fresh water uses, on the one hand, and of fresh water pollution, on the other.

168. In the opinion of some representatives, the concept of "international drainage basin", which had great appeal to engineers and planners, as well as to lawyers, was very relevant to the requirements of economic development and integration, as well as pollution control. It was stated, however, that, although that concept had been given some prominence in recent research in law, none of the

many treaties dealing with the problem of non-navigational uses of rivers made any reference to a "drainage basin". The concept of "drainage basin" was important for studies regarding economic development, which were bound to take into account the system of waters forming a basin as a geographical reality, but the inclusion of the several types of waters within the whole system forming such a basin would raise enormous difficulties in the field of law. Moreover, water was now envisaged as a natural resource and, if the uses of underground water extending from the territory of one country to the territory of a neighbouring country sharing the same basin were to be made subject to international legal rules, it could lead to an analogy for the treatment of other underground liquid national resources, such as oil, with all the problems that entailed. It was also said that the concept of hydrographic basin should be used only when it was a question of limiting flooding.

169. In the opinion of one representative, the Commission, if it would take into account the unity of hydrographic basins, should consider to what extent the legal régime it was seeking to establish would apply only to what he considered were strictly international stretches of watercourses and in what cases that régime would remain applicable when a watercourse ceased to be international in character. If the unity of hydrographic basins was recognized, it seemed that the theory of sovereignty was not fully applicable.

3. Non-navigational uses of international watercourses

170. Some representatives referred to the activities which should be included within the term "non-navigational uses". The opinion was expressed that the systematic classification of uses provided by the Sub-Committee might be applied as a framework for codification. That list of uses could not be regarded as exhaustive or as establishing any order of priority. For instance, uses such as "touristic" might be added to the enumeration. The term "non-navigational uses" was meant to comprise all kinds of uses of international watercourses with the single exception of navigation, which had been excluded because some States could not agree to its inclusion at the present stage. The exclusion of navigation did not, however, mean that all matters relating to it should be ignored by the Commission. The exception concerned only navigation in itself, its freedom and the rights and obligations of flag and riparian States, as well as vessels. The fact that a watercourse was used for navigation was one of its characteristics, and the interaction between use for navigation and other uses of the watercourse could not be excluded from the work of codification. It could be well within the Commission's mandate to examine navigational uses within that context.

171. In this connexion, one representative recalled that his delegation had been among those which had favoured the exclusion of navigational uses from the study to be undertaken by the Commission, since it attached importance to the notion of freedom to navigate on international rivers and was unable to agree that further work on the question should be based on a more restrictive approach such as that embodied in the Helsinki Rules. He did not mean thereby to indicate that his Government would necessarily wish to return a negative answer to the question whether the Commission should take into account in its study the interaction between use for navigation and other uses, but merely wished to indicate that his Government would have to study the implications of the question carefully.

172. Some representatives considered that the Commission should include in its study the questions of flood control and erosion caused by international rivers which were important aspects of "fluvial law" and were of great concern to developing countries. Flood-control and questions relating to regulation of water-flow of an international watercourse were among the most important of the matters requiring international legal regulation. The hope was also expressed that the Commission would clarify the law on tapping underground water which extended from the territory of one country to that of a neighbouring State.

173. Certain representatives answered in the affirmative to the question whether or not the Commission should take up the problem of pollution of international watercourses as the initial stage in its study. In this connexion, one representative reiterated his delegation's acknowledgement of the force of the view that the Commission's study on the topic might fit in very well with the attention which the international community was currently giving to the problems of the environment and the prevention of pollution.

174. In the opinion of another representative, the priority to be given to the question of pollution, while justified, should be only a procedural priority since, from the material point of view, the study of uses in general was equally important and should not be delayed.

175. Several other representatives, however, while recognizing the seriousness of the problem of pollution and the need of international legal regulation, expressed doubts as to the appropriateness of giving priority to it and some indicated expressly their opposition to such a course of action. In this connexion, it was pointed out that, as pollution was an inevitable consequence of use, it would be better to study the uses first and to deduct from that study the underlying principles which could then be applied to pollution. Further, given the understandable uncertainty concerning the meaning and scope of the expression "international watercourses", it might perhaps be better first to establish the norms on which the study would be based and then, if necessary, deal with pollution. Moreover, to give priority to the question of pollution would place emphasis on an element which had not been mentioned in General Assembly resolution 2669 (XXV). The study of pollution should not be allowed to delay the work of the Commission on the general uses of watercourses. In the opinion of some representatives, from the point of view of the developing countries, it was more important to give priority to the regulation of the uses of water. It was said in this connexion that it hardly seemed appropriate to study, at the world-wide level, a problem which had very different aspects depending on the latitude involved and the economic development of the country concerned. Moreover, the problem was being dealt with in other forums, national, regional and international, such as UNEP, the Council of Europe and OECD. Many attempts had been made by different international organizations to develop and codify rules relating to pollution of international waters, and there were also numerous bilateral and regional treaties on the same subject. But consideration of the problem by even a limited number of countries with similar concerns had shown the difficulty of identifying common legal principles in connexion with a question which was only now beginning to be studied and on which State practice was scarce. A study at the world-wide level could lead only to agreement at the level of the lowest common

denominator and might prejudice regional efforts. Furthermore, the problem of pollution could lend itself to specific approaches; since each river or drainage basin had its own peculiar characteristics, its particular régime should be developed by agreement between the States concerned, bearing in mind the general principles formulated by the Commission. The Commission should be expected to devote itself to selection and co-ordination with a view to establishing the basic principles and closing the gaps that still existed, for example, with regard to State responsibility for pollution damages. In view of the many other important questions still requiring international legal regulation, the problem of pollution might best be studied in connexion with the general principles of the law of international waters.

4. Organization of work

176. Some representatives favoured co-operation between the Commission and other bodies engaged in studies of international watercourses. Also, several representatives referred to the special arrangements for ensuring that the Commission was provided with the necessary technical, scientific and economic expertise. In the opinion of some representatives, such expertise was necessary, since the lawyers of the Commission required competent advice available on a permanent basis from specialized organs and individual experts in dealing with problems in which technical aspects were of paramount importance; the establishment of a special committee of experts might be a suitable solution. It was considered, nevertheless, that the terms of reference and working methods of such a Committee be carefully studied 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. Some representatives would defer to the Commission's decision on the point. Other representatives, however, expressed doubts as to the advisability of establishing such a group.

F. Other decisions and conclusions of the Commission

1. Succession of States in respect of matters other than treaties

177. A number of representatives made reference to the Commission's work on succession of States in respect of matters other than treaties in connexion with its organization of future work (see para. 183 below) and regretted that the Commission had been unable to consider the topic at its twenty-sixth session. Certain representatives laid stress on the inseparable connexion in substance between succession of States in respect of treaties and succession in respect of matters other than treaties and advocated the elaboration of a single convention or at least the establishment of uniform principles governing the two topics. It was brought out that the approach followed by the Commission in drafting the final articles on succession of States in respect of treaties would provide certain guidelines for its future work on succession in respect of matters other than treaties (see para. 68 above). One representative deemed it advisable to postpone consideration of the question of the form which the draft articles on succession of States in respect of treaties should take, pending the outcome of the study to be done on the question of treaties involving financial burdens in connexion with the topic of succession of States in respect of matters other than treaties.

178. Concerning public debts, it was one delegation's view that international law and current State practice indicated that a successor State which had obtained the benefit of public loans by the fact of taking over the territory was responsible for the public debts of the predecessor State relating to the territory that had passed. He added that the same principle should apply where the visible benefits of a loan were directly associated with the territory that has passed. On the other hand, one representative deemed such a position unjustifiable: to ask territories which had gained independence after years of exploitation to assume responsibility for the predecessor State's debts would merely perpetuate injustices to which they had been subjected. In his view, the principles of justice on which the Charter of the United Nations was based required that the predecessor State should compensate the successor State for all the benefits it had gained from its exploitation of the territory concerned.

2. The most-favoured-nation clause

179. Several representatives referred to the Commission's work on the most-favoured-nation clause in connexion with its organization of future work (see para. 183 below) and regretted that the Commission had been unable to consider the topic at its twenty-sixth session. Certain representatives stressed the importance of the codification of the topic for developing countries and urged that the interests of those countries be safeguarded. It was stressed that one of the serious problems encountered by the developing countries in their trade relations with the industrialized countries consisted precisely in the operation of the clause. The Commission was urged to take into account the Declaration and Programme of Action on the Establishment of a New International Economic Order, adopted by the General Assembly at its sixth special session (resolutions 3201 (S-VI) and 3203 (S-VI) of 1 May 1974). One representative said that the scope of the draft articles on the most-favoured-nation clause should contain provisions on agreements between

international organizations, and provisions covering the principle of the unconditional nature of the clause, unless otherwise provided. In addition, that representative was of the view that the draft articles should contain unambiguous provisions governing the period during which most-favoured-nation treatment was to be accorded and should provide that such treatment should be extended de facto, and not merely de jure, to arrangements with third parties, unless otherwise agreed.

3. Long-term programme of work

(a) International liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts

180. Several representatives noted with approval that the Commission, following the recommendation of the General Assembly in resolution 3071 (XXVIII), had decided to place in its general programme of work the topic of international liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts. A number of representatives, while recognizing that "responsibility for risk" and "responsibility for internationally wrongful acts" were different in nature and should not be dealt with in one and the same draft, nevertheless expressed the hope that the Commission would be able, in due time, to undertake work on the topic. (For other comments on the relationship between the two topics, see paras. 106 and 107 above). In this connexion, the view was expressed that attention should be given to the new rules which may be laid down in the Charter of Economic Rights and Duties of States and those set forth in the Declaration on the Establishment of a New International Economic Order, which recognized the full permanent sovereignty of every State over its natural resources and all economic activities. Other representatives endorsed the Commission's view that consideration of the subject be deferred until further progress had been made in the study of the topic of State responsibility. It was said, in this connexion, that it was still premature to start drafting general rules on State responsibility for highly hazardous activities. Hitherto the problem had been solved by means of special international conventions and national laws in each particular field, and general international law in that area was still in the process of development. Careful study of international practice was therefore necessary before the Commission started to codify rules on that subject.

(b) Other topics

181. Some representatives deemed it desirable for the Commission to undertake the preparation of a draft on succession of Governments. It was said, in this connexion, that the question of succession of Governments was a matter of obvious significance and one which in many respects could be the source of more problems than the succession of States. The present time was the twilight of the colonialist era and the succession of States would progressively diminish in importance, whereas the same could not be said of the question of the succession of Governments. It was recalled that, although the International Law Commission had given priority to succession of States, a decision which had been endorsed by the Assembly, the topic had originally been entitled "Succession of States and

Governments". Now that progress had been made on the codification of the rules relating to succession of States, the question might be asked whether the time had not come to take up the question of succession of Governments.

182. One representative considered that the Commission might take up the question of the juridical implications under international law of the measures envisaged in the historic documents adopted by the General Assembly at its sixth special session, particularly the Declaration and Programme of Action on the Establishment of a New International Economic Order. Both the Declaration and the Programme repeatedly mentioned the new rules that should govern future relations among States. In his view, the juridical implications in international law of such documents did not concern trade alone, but had much more far-reaching implications embracing the whole of the new relations and international co-operation that should be established between the developed and the developing countries.

4. Organization of future work

183. Most of the representatives who spoke on the organization of the Commission's future work approved the Commission's intention to continue, at its twenty-seventh session, as a matter of priority, its preparation of draft articles on the topic of State responsibility for internationally wrongful acts, as well as the consideration of the three other topics in its current programme of work on which a first set of draft articles had already been prepared, namely, succession of States in respect of matters other than treaties, the most-favoured-nation clause, and the question of treaties concluded between States and international organizations. Among those three topics, succession of States in respect of matters other than treaties was singled out by several representatives as a topic which should be dealt with by the Commission on the basis of priority. The view was also expressed by several representatives that the Commission should complete its work on the most-favoured-nation clause in the near future. Support was likewise expressed for the continuation of the Commission's work on the law of the non-navigational uses of international watercourses. Finally, it was considered that the Commission should take up, as soon as appropriate, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law.

184. Although some reservations were expressed based on administrative and budgetary considerations, the Commission's recommendation that 12 weeks be approved as the period of work for its annual sessions was endorsed by the Committee. In this regard, several representatives considered that the question should be subject to review from time to time by the General Assembly.

185. Many representatives referred to the remarks made by the Commission in paragraphs 192 to 212 of its report (A/9610, vol. II) concerning the report of the Joint Inspection Unit on the pattern of conferences of the United Nations (A/9795). The Commission's conclusion that its present composition, procedures, methods of work and organizational pattern, including its seat, are correct and appropriate and also represent the most effective means to carry out its task met with the approval of most of the representatives who spoke on the matter. They

underlined that the composition of the Commission and its procedures and methods of work, set forth in the Commission's statute, approved by the Assembly and evolved in practice, as well as the organization of the sessions of the Commission, had been conceived and were applied bearing essentially in mind the very special nature and requirements of the task entrusted to the Commission by the Assembly in the process of codification and progressive development of international law under Article 13, subparagraph 1 (a), of the Charter. The accomplishments of the Commission during its 26 years of existence were the best proof of the soundness of the established system, characterized by its essential unity and the interconnexion existing between its elements. However, some representatives, concerned at making the Commission's work more effective in the light of contemporary realities, stressed that constant and careful consideration should be given to improving the Commission's methods of work so as to make fuller use of its possibilities. Reference was made in this connexion to the suggestion that the Commission should appoint a Special Rapporteur to be entrusted with the task of reporting to the Commission on existing practices and the modifications that might be required.

5. Co-operation with other bodies

186. The Commission's continuing co-operation with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee was welcomed by several representatives. Such co-operation allowed the Commission to be fully informed of trends prevailing in the main legal systems and forms of civilization of the world, an essential element for the drafting of rules intended to be acceptable to the entire international community. Some representatives emphasized that the established relationship between the Commission and those regional bodies should be further strengthened in the common interest of developing international law.

187. It was also said that, in its scientific and technical research, the Commission should seek to trace a line of demarcation in international law between the regional and universal aspects. An exchange of views between the Commission and the regional bodies concerned should reveal to what extent regionalism could usefully be pursued. Such an approach would not be in conflict with the fundamental principles of the international community.

188. Finally, the view was expressed that the Commission should also establish close links with universities and other academic centres engaged in research and analysis in the field of international law.

6. International Law Seminar

189. Many representatives noted with appreciation that the tenth session of the International Law Seminar, named the "Milan Bartos session" in memory of Mr. Milan Bartos, had been successfully organized by the United Nations Office at Geneva. Like the first nine sessions, the tenth session of the Seminar provided an opportunity for an exchange of views between members of the Commission and young jurists. The participation of a number of jurists from developing countries was particularly welcomed. Thanks were expressed to the members of the Commission and other persons who generously gave their services as lecturers, as well as to the Governments which had made scholarships available for participants from developing countries. Four representatives announced that their Governments would again make financial contributions to enable nationals of developing countries to attend the forthcoming session of the Seminar. Reference was made by one representative to the contribution made by his Government to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

IV. DECISIONS

190. At its 1509th meeting, on 28 November, the Committee adopted by consensus the draft resolution (see para. 7 above) contained in document A/C.6/L.996 (see para. 193 below).

191. At the same meeting, the representatives of France, the Union of Soviet Socialist Republics, the German Democratic Republic, the Byelorussian Soviet Socialist Republic, Mongolia and Bulgaria made statements in explanation of vote.

192. At its 1519th meeting on 6 December, the Committee decided to include in its report a recommendation (see para. 14 above) concerning the practices of depositaries of multilateral treaties referred to in paragraph 14 above (see para. 194 below).

V. RECOMMENDATIONS OF THE SIXTH COMMITTEE

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

Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-sixth session, 8/

Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 9/ and to give increased importance to its role in relations among States,

Noting with appreciation that, at its twenty-sixth session, the International Law Commission, in the light of comments received from Member States, completed the second reading of the draft articles on succession of States in respect of treaties, as recommended by the General Assembly in resolution 3071 (XXVIII) of 30 November 1973,

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8/ A/9610, vols. I and II.

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

Taking note of the draft articles prepared at the same session by the International Law Commission on State responsibility and on treaties concluded between States and international organizations or between international organizations,

Welcoming the fact that the International Law Commission commenced its work on the law of non-navigational uses of international watercourses by adopting the required preliminary measures,

Bearing in mind that the outstanding achievements of the International Law Commission during its 26 sessions in the field of the progressive development of international law and its codification, in accordance with the aims of Article 13, subparagraph 1 (a), of the Charter, contribute to the fostering of friendly relations among nations,

I

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

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

3. Approves the programme of work planned by the International Law Commission for 1975;

4. Recommends that the International Law Commission should:

(a) Continue on a high priority basis at its twenty-seventh session its work on State responsibility, taking into account General Assembly resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2400 (XXIII) of 11 December 1968, 2926 (XXVII) of 28 November 1972 and 3071 (XXVIII) of 30 November 1973, with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts at the earliest possible time and take up, as soon as appropriate, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law;

(b) Proceed with the preparation, on a priority basis, of draft articles on succession of States in respect of matters other than treaties;

(c) Proceed with the preparation of draft articles on the most-favoured-nation clause;

(d) Proceed with the preparation of draft articles on treaties concluded between States and international organizations or between international organizations;

(e) Continue its study of the law of the non-navigational uses of international watercourses, taking into account General Assembly resolutions 2669 (XXV) of 8 December 1970 and 3071 (XXVIII) of 30 November 1973 and other resolutions concerning the work of the International Law Commission on the topic, and comments received from Member States on the questions referred to in the annex to chapter V of the Commission's report; 10/

5. Approves, in light of the importance of its existing work programme, a 12-week period for the annual sessions of the International Law Commission, subject to review by the General Assembly whenever necessary;

6. Recognizes the efficacy of the methods and conditions of work by which the International Law Commission has carried out its tasks and expresses confidence that the Commission will continue to adopt methods of work well suited to the realization of the tasks entrusted to it;

7. Expresses its appreciation to the Secretary-General for having completed the supplementary report on the legal problems relating to the non-navigational uses of international watercourses, requested by the General Assembly in resolution 2669 (XXV) of 8 December 1970;

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

9. Requests the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-ninth session of the General Assembly.

II

1. Expresses its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of treaties and to the Special Rapporteurs on the topic for their contribution to this work;

2. Invites Member States to submit to the Secretary-General, not later than 1 August 1975, their written comments and observations on the draft articles on succession of States in respect of treaties contained in the report of the International Law Commission on the work of its twenty-sixth session, 11/ including comments and observations on proposals referred to in paragraph 75 of that report, which the Commission was prevented from discussing by lack of time, and on the procedure by which and the form in which work on the draft articles should be completed;

10/ A/9610, vol. II.

11/ Ibid., vol. I, chap. II.

3. Requests the Secretary-General to circulate, before the thirtieth session of the General Assembly, the comments and observations submitted in accordance with paragraph 2 above;

4. Decides to include in the provisional agenda of its thirtieth session an item entitled "Succession of States in respect of treaties".

194. The Sixth Committee also recommends to the General Assembly the adoption of the following recommendation:

The General Assembly recommends to States that are depositaries of multilateral treaties to include automatically the United Nations Secretariat in the list of addressees for reporting notifications that such States are called upon to send as depositaries.
