engrossed in economic development. His delegation particularly welcomed the concern of ILC to ensure a more just application of that clause to third world countries. There was no doubt that if the most-favoured-nation clause was applied alike to economically strong and weak nations, it would result in serious disadvantages for the latter. As ILC had stated in paragraph 112 of its report, while States were bound by the duty arising from the principle of non-discrimination, they were nevertheless free to grant special favours to other States. It was precisely with that aim that ILC had drafted article 16, which his delegation considered of particular interest.

25. He stressed the value of the international law seminars which ILC organized annually.

The meeting rose at 12.15 p.m.

1543rd meeting

Monday, 20 October 1975, at 10.45 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1543

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session *(continued)* (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General *(continued)* (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. RASHID (Afghanistan) congratulated the Chairman of the International Law Commission (ILC) on his excellent introduction of its report (A/10010) and said that he would confine himself to commenting on a number of the draft articles prepared by it concerning succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D). It would be useful to repeat the invitation to States to submit their comments and observations on the draft articles, in view of the limited number of observations and comments received thus far.

2. With regard to article 7, his delegation considered that, in the light of the wording of article 6, it was necessary to specify that the draft articles would have no retroactive effect. The inclusion of article 7 might encourage a number of States which would otherwise abstain to accede to the instrument. It was entirely unnecessary to make any reference to the Vienna Convention on the Law of Treaties,[1] which was not accepted by a sufficient number of States. Article 7 should be retained in the position next to article 6.

3. Regarding articles 11 and 12, he recalled that his delegation had already expressed its views at the twenty-eighth session (1406th meeting). He noted that a number of delegations, including those of Madagascar, Somalia and the United Republic of Tanzania, had stated they found it difficult to accept those two articles as currently worded. The categorical statements made in the current version were at variance with the evolution of contemporary international law and might have detrimental consequences for its future. As ILC itself had acknowledged in paragraph (1) of the commentary on article 11, the question of territorial treaties was a most delicate one, since such treaties were important, complex and controversial. The opinions of modern writers on the subject differed widely. His delegation shared the view that the doctrine of *rebus sic stantibus* should apply in the case of territorial treaties whenever a fundamental change in circumstances had occurred. It could be argued that the dissolution of the colonial empires in the first half of the twentieth century had brought about a fundamental change in circumstances with vast juridical implications for State boundaries. According to that line of reasoning, all agreements concerning the territorial possessions and sovereignty of the colonial Power were no longer valid. Some States, in fact, had suffered grave losses not only as a result of colonization but also as a result of decolonization, because it had allegedly not been possible to apply the doctrine of *rebus sic stantibus* with respect to them. ILC had put forward another argument based on article 62, paragraph 2, of the Vienna Convention on the Law of Treaties, to which many States had not acceded. It had also attempted to justify articles 11 and 12 by arguing that the application of the "clear-slate" principle with regard to territorial treaties might create dangerous friction between States instead of becoming an instrument for peaceful development. His delegation, however, believed that relations between neighbouring States, which otherwise might live in concord and mutual respect for each other's sovereignty, were only complicated by such considerations.

4. The question of treaties establishing boundaries from the angle of the principle of self-determination had also been considered by ILC. Its views in that regard were given in paragraph (10) of the commentary on articles 11 and 12, in a quotation from its commentary on what had become article 62 of the Vienna Convention on the Law of Treaties, which stated that the Commission had taken the view that " 'self-determination', as envisaged in the Charter of the United Nations, was an independent principle and that it

* *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.*

1 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), document A/CONF.39/27, p. 287.

might lead to confusion if, in the context of the law of treaties, it were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the present article would not exclude the operation of the principle of self-determination in any case where the conditions for its legitimate operation existed". His delegation considered those comments to be excessive and disjointed.

5. His delegation therefore shared the view that it would be going too far to exclude territorial treaties completely from the rule of fundamental change in circumstances and that such an exclusion would be inconsistent with the principle of self-determination laid down in the Charter. Needless to say, the principle of self-determination as set forth in the Charter was accompanied by another principle of equal importance, namely that of the equal rights of peoples. In their accession to independence, the majority of African States, like those of South America, being confronted with the existence of arbitrary colonial boundaries, had not been able to find any other solution but to accept them as they were. However, such a solution was difficult to apply in Asia, where long-established States had existed prior to the relatively short colonial period and where colonial boundaries had been nothing more than imaginary lines separating peoples and régimes whose political cohesion was greater than that which had existed in other colonialized continents.

6. Against that background, ILC had adopted the majority view that the boundaries of the newly independent States and others were inviolable, thus setting itself at variance with the will of peoples living in border areas, who were extremely jealous of their independence. Moreover, in opting for the principle of the continuity of boundary treaties, ILC had cast aside the principle of the equal rights of peoples and their right to self-determination as set forth in the Charter of the United Nations.

7. The application of the principle of continuity with respect to colonial territorial treaties had in a number of cases resulted in the replacement of the colonial system by alien and foreign domination, which was condemned by the United Nations, and in that perspective the current wording of articles 11 and 12 was not consistent with United Nations practice or the democratic concept of progressive international law. His delegation was not opposed to the application of the principle of continuity with respect to territorial treaties; however, it did believe that that principle was only valid to the extent that it passed the test of self-determination. In that connexion, he drew attention to the new peremptory norm of international law known as *jus cogens,* which was designed to promote the liberation of subject peoples and which maintained that any legal view to the contrary was null and void. Thus, the application of the "clean-slate" principle with regard to territorial treaties was entirely justified, as it afforded an opportunity for all those who had suffered under colonialism to regain their rights, their property and their territorial integrity. Without such a reservation, the liberation of a State would only perpetuate unequal treaties or those imposed by force, which lay at the heart of many international tensions. His delegation therefore felt in duty bound to request ILC to reconsider its position on that matter.

8. With regard to the settlement of disputes, his delegation agreed with those who felt it necessary to provide for a satisfactory procedure. In view of the importance of the matter covered by the draft articles, it would be most helpful to have a conciliation procedure for cases where a dispute could not be settled by direct negotiation. ILC should be encouraged to continue its study of that question and to submit its results to Member States for their comments.

9. On the question of social revolution, referred to in paragraph 66 of the report, his delegation was inclined to support the line of reasoning advanced by ILC and considered that phenomenon as a succession of governments rather than a succession of States.

10. As for future action to be taken with regard to the draft articles, his delegation shared the general view that it was necessary to continue studying them so as to elaborate practical and coherent rules, taking into account the observations of Governments. More work was needed to refine the draft articles and to remove the current contradictions, which were apparent from the fact that no consensus had been reached on the draft. Once that was achieved, a decision could be taken as to what forum would be appropriate to finalize the draft.

11. Mr. MELESCANU (Romania) congratulated the members of ILC and the Special Rapporteurs for the admirable work incorporated in the Commission's report.

12. The matter of State responsibility was of great importance to his delegation as it was the only legal guarantee for the *bona fide* implementation of agreements entered into by subjects of international law. It was no longer merely the legal expression of the "big stick policy" practised by colonial States but had become an institution which guaranteed to each State, regardless of its size and strength, the possibility of asserting its rights in relation to other States. His delegation found acceptable the step-by-step approach of ILC whereby the codification of the rules relative to responsibility deriving from wrongful acts would be followed by the codification of the rules concerning objective responsibility, based on the risk created. ILC must ensure that the formulation of the earlier articles did not prejudge the future articles.

13. It was important that the difference between various types of responsibility—material, political, civil and penal—be recognized and reflected in the draft articles on State responsibility (see A/10010, chap. II, sect. B). Covering both the penal and civil responsibilities of States in the same articles implicitly put both types of responsibility on the same footing, despite the special seriousness of acts against peace, independence and the territorial integrity of States. Article 12, for example, provided that the conduct of an organ of a State acting in that capacity, which took place in the territory of another State should not be considered as an act of the latter State. He could accept such an exemption from the State's material responsibility but not from its political responsibility. He cited, in support of his view, the definition of aggression in article 3 *(f)* of the annex to General Assembly resolution 3314 (XXIX). It would, therefore, be advisable to review the article.

14. His delegation was in general agreement with the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), and in particular with the principle of unconditionality embodied in article 9. The question of preferential treatment, however, raised certain problems in view of current development problems and the need to equalize the levels of development of various countries. His delegation agreed that ILC should undertake the codification of rules regulating preferential treatment for developing countries, in accordance with the resolutions adopted at the sixth and seventh special sessions of the General Assembly. Preferential treatment should apply not only to trade relations but also to the transfer of technology, the exploitation of resources constituting the common heritage of mankind and all areas of economic life and international economic relations.

15. On the draft articles on treaties concluded between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he felt that a distinction should be made between States and international organizations, which were two distinct types of subjects of international law. Article 11, for instance, dealt with them in very similar terms with respect to consent to be bound by a treaty. The concept of an "act of formal confirmation", embodied in paragraph 2, seemed forced and was not sustained by legal thinking or international practice. Moreover, it was superfluous, since the words "or by any other means" would cover any procedure used by international organizations in that connexion.

16. With regard to the programme of work of ILC, he felt that there were possibilities, as yet unexplored, for accelerating its work and increasing its productivity. It might be useful for ILC to use all of its members actively in the preparation of reports and draft articles. Members might submit their comments on reports and drafts in writing and resort to oral discussions only when formulating draft articles in their final form. In his view, priority items for ILC were State responsibility and the most-favoured-nation clause, which should also include rules on a generalized system of preferences.

17. Mr. CASSESE (Italy) said his delegation was gratified that ILC had made considerable headway in codifying and developing areas of international law.

18. He wished to join the other representatives who had praised the Special Rapporteur for the topic of State responsibility for his outstanding work. On the whole, his delegation supported the draft articles on that subject.

19. With regard to specific articles, he said that articles 14 and 15, concerning the possible attribution of internationally wrongful acts to insurrectional movements, correctly disregarded the political or ideological characteristics of such movements. He did not share the view expressed by the representative of the German Democratic Republic (1539th meeting) that the legitimacy of a successful insurrectional movement should be taken into account in determining the attribution of responsibility so as not to treat a fascist coup d'état in the same way as a national liberation movement. In his view, the political or ideological nature of insurrectional movements should have no bearing whatsoever on the attribution of responsibility. If such movements caused damage by acting contrary to international law, reparation must be made regardless of the political goals of the insurgents. The purpose of international codification, especially in the area of State responsibility, was not to pursue short-term goals but to restate and develop the law in such a way that it could govern international relations over a long period of time. It would therefore be inappropriate to inject political or ideological values into international rules, since such values changed rapidly with time and were difficult to define properly.

20. The commentary on article 15, paragraph 1, as his delegation understood it, meant that in certain exceptional situations, such as a major social revolution brought about by a successful insurrectional movement, the wrongful conduct of the former government could not be attributed to the new State which resulted from the revolution. That qualification of article 15, paragraph 1, was justified, since in such exceptional cases the rationale of *de facto* continuity, which lay behind the general rule, no longer held true, and there was instead a complete break in the social structure as well as in the government machinery of the State. Non-attribution to the State of acts committed during the conflict by the former governmental apparatus was also warranted by common sense. For instance, if insurgents overthrew a pre-existing racist and authoritarian government in order to introduce democracy and equality and accordingly changed the whole fabric of the State, it could surely not be claimed that they were responsible for acts of genocide or other gross and large-scale violations of human rights of foreigners perpetrated by the pre-existing government during its attempt to put down the rebellion.

21. It might be objected that the exception to article 15, paragraph 1, to which he had referred did not lend itself to a definition covering all cases of political and social revolution. That objection could, however, be dismissed, since ILC could try to achieve such a definition by pointing to some basic and objective requirements that a change of government should fulfil in order for it to fall within the exception. Since the definition should be objective, the ideological or political goals of both the "lawful" government and the rebellious movement would only come into play as objective elements to be taken into account in verifying whether a hiatus between the old State machinery and the new government had actually come about.

22. A second possible objection to the exception was that the victims of internationally wrongful acts committed by the pre-existing government during the struggle for power could be left without redress. That consequence, although no doubt very regrettable, would be nothing new, because in the case of wrongful acts committed by insurgents, injured persons were also left unprotected in the event of the insurgents' failure. That irremediable drawback was common to all systems of law. It stood to reason that a victim had no redress if the person against whom the claim was lodged had disappeared and could not be reached through legal channels.

23. He wished to pay tribute to the Special Rapporteur for the topic of the most-favoured-nation clause for his excellent work. His delegation supported the suggestion by ILC that it should endeavour to consider the articles on that subject in first reading for submission to the thirty-first

session of the General Assembly, and hoped it would conclude its first reading in 1976, taking into consideration the remarks made in the Committee.

24. In response to the query by ILC addressed to the General Assembly in paragraph 108 of the report, his delegation believed that the draft articles should not extend further in relation to national treatment and national treatment clauses. ILC had already pointed out, in its commentary on article 17, how many practical difficulties arose when an attempt was made to link the standard of national treatment with the most-favoured-nation clause. For the sake of clarity and simplicity, it would therefore be preferable for ILC to concentrate on formulating draft rules specifically concerning the most-favoured-nation clause.

25. After stressing that most-favoured-nation treatment was but a corollary of the principle of non-discrimination, ILC had rightly pointed out that most-favoured-nation clauses should not be applied without taking due account of the striking inequalities between developed and developing States. Otherwise, for the sake of ensuring formal equality, implicit discrimination would arise against the weaker members of the international community. His delegation therefore welcomed article 21, which provided for the special needs of the developing countries. As rightly stressed by ILC itself, the wording of that article needed to be improved, but the basic idea underlying the article was sound and his delegation fully supported it.

26. By contrast, his delegation had some misgivings about article 15, which did not allow for another necessary exception to the most-favoured-nation clause. That article did not exclude from the operation of the clause multilateral treaties which set up customs unions, free trade associations, and similar State groupings. The exception was strongly needed, as already pointed out by the representatives of Peru *(ibid.)* and Argentina (1540th meeting). The reasons why his delegation took that view would be explained at a forthcoming meeting in a statement on behalf of the European Economic Community.

27. With regard to succession of States in respect of treaties, there was merit in the view that the two aspects of the question which had not been discussed by ILC, namely the proposed articles on multilateral treaties of universal character and on the settlement of disputes, should be sent back to ILC for its consideration. His delegation would be ready to support such a procedure if that were the view of the majority of the Committee, but it was also aware of the heavy workload of ILC and of the consequent need to avoid delay in its work. Moreover, if ILC re-examined the question of succession of States in respect of treaties, it would risk embarking on lengthy debates, which could even lead to reopening the discussion of certain key provisions that had already been adopted. His delegation therefore felt that the most suitable solution would be to reiterate the request to Governments to submit comments on the articles. Since as yet only a few Governments had complied with the previous year's request for comments, it would be appropriate to wait for more Governments' reactions before deciding how to proceed with the proposed articles.

28. Doubts had been expressed as to whether the programme of work of ILC suggested in paragraph 143 of the report met the General Assembly's recommendation in resolution 3315 (XXIX) that work on State responsibility be continued on a high-priority basis. However, he felt that to hasten excessively the work by ILC on that subject could jeopardize the excellent results already achieved. The topic was of great magnitude and touched on many sensitive areas of international law; the pace of work could therefore not be exceedingly rapid. Consequently, it would be sufficient progress for the forthcoming year if ILC could satisfactorily resolve the crucial question of whether there existed a special category of particularly serious internationally wrongful acts. His delegation trusted that ILC would continue to live up to its tradition of scrupulous and careful drafting without neglecting the need to enact new legislation as soon as possible in certain crucial areas of international law.

29. Mr. ALTING VON GEUSAU (Netherlands) said that the progressive development and codification of international law was no easy task in an organization like the United Nations, which was confronted with continuous changes in international relations and profound political and ideological divisions between its Members. In view of the challenges facing it, ILC had made commendable progress, its work on State responsibility and the most-favoured-nation clause being especially outstanding examples of scholarly excellence. Ultimately, however, the accomplishments of ILC depended on the willingness of Member States to approve the final texts adopted by ILC. Consideration of several important topics referred to ILC had had to be postponed or abandoned. Even in those cases in which its work had led to the adoption of conventions, the pattern of acceptance by Member States had not been altogether promising, as the representatives of Norway *(ibid.)* and Australia (1541st meeting) had pointed out.

30. Among the conventions adopted as a result of drafts produced by ILC, the Vienna Convention on Diplomatic Relations was the only one which had thus far been ratified or acceded to by a majority of Member States. Moreover, many important conventions and declarations had been adopted in the General Assembly over the past 30 years, without the participation of either ILC or the Sixth Committee. Some of those instruments might be regarded as contributions to the progressive development of international law, although that may not have been their primary purpose. An objective analysis of the work of ILC and the way in which it had been followed up by the General Assembly and Member States could not but lead to the conclusion that the scope for the progressive development and codification of international law was indeed limited. The broad acceptance of the Conventions on Diplomatic Relations and on Consular Relations would seem to indicate that ILC had been most successful in the domain of formulating formal rules of international law.

31. His delegation commended the approach adopted by ILC with regard to the question of State responsibility. ILC had wisely maintained a strict distinction between the task of determining the rules governing responsibility and that of stating the rules which imposed on States obligations violation of which might be a source of responsibility. That distinction had enabled ILC to formulate a generally clear set of draft articles dealing with the act of the State under international law.

32. Commenting on articles 10 to 15, his delegation supported the explicit enumeration, in articles 11 to 14, of conduct that should not be considered as an act of the State under international law. The conduct of private persons, organs of another State or organs of an insurrectional movement, as covered by articles 11, 12, and 14, could not be attributed to a State either directly or indirectly. Nevertheless, such conduct might entail certain duties for States. His delegation therefore supported paragraph 2 of articles 11, 12 and 14, although it had reservations as to the desirability of the identical formulation of those paragraphs. The conduct of private persons, as referred to in article 11, paragraph 1, must be presumed to take place in the territory over which the State exerted exclusive control. Consequently, the State might be presumed to be able to perform its international duties in cases where it was under an obligation—under general international law or under special treaties—to prevent unlawful acts by private persons, to protect potential victims or, if it failed to do so, to arrest the offenders concerned and bring them to justice. It was indeed difficult to define more comprehensively the responsibility of the State in such a situation for its own omission or for lack of due diligence on the part of its organs. That question deserved close attention and further study.

33. In the case of article 12, paragraph 2, the State could be presumed not to be fully able to exert exclusive control over the territory in question and hence to comply with its international duties in respect of the unlawful conduct of organs of another State.

34. Article 14 apparently dealt with two distinct situations. On the one hand, paragraph 2 of that articles adequately expressed the responsibility of the State with regard to the conduct of organs of an insurrectional movement operating from within the territory of the State against the government in power. On the other hand, article 14 also dealt with the conduct of the organs of an insurrectional movement operating from within the territory of the State against the government of another State. His delegation would like ILC to consider the possibility of drafting a separate article to deal with the latter situation, in which it might be presumed that the specific aim of the insurrectional movement was to do injury to the organs of the other State or its citizens. In the former situation, injury done to aliens might be merely one of the consequences of the conduct of organs of the insurrectional movement.

35. Regarding the future plans of ILC for the completion of the draft articles on State responsibility, his delegation feared that the profound disagreements between States on the content, forms and degrees of international responsibility were likely seriously to impair further progress on parts 1 and 3 of the proposed draft, not to mention the contentious issue of the objective element of an internationally wrongful act. Accordingly, his delegation would suggest that part 1 should be completed as a separate instrument for adoption by the Sixth Committee.

36. His delegation had examined with particular interest chapter IV of the report of ILC, dealing with the most-favoured-nation clause. Its particular interest stemmed from the fact that the Netherlands was a Contracting Party to the General Agreement on Tarrifs and Trade (GATT), a member of the European Economic Community and a proponent of a generalized system of preferences in trade in favour of developing countries. In its report, ILC indicated that it did not wish to confine its study to the operation of the clause in the field of international trade but to extend it to as many fields as possible. In practice, however, ILC had focused primarily on the operation of the clause in the field of trade, the regulation of which as part of a broader effort to develop rules of international economic law was complicated by continuous and fundamental changes in economic relations between States. After the Second World War, a number of fundamental changes had taken place in international trade. First, GATT had marked the beginning of a new period in which the most-favoured-nation clause had become an instrument for promoting multilateral trade relations on the basis of non-discrimination. Secondly, the emergence of State-owned trading enterprises had created new problems in the application of the most-favoured-nation clause between countries with different economic systems. Thirdly, customs unions and free trade areas had established a new trend, which might be seen as constituting exceptions to the operation of the clause. Fourthly, the needs of developing countries had necessitated new rules to facilitate the access of their products to the markets of developed countries. In his delegation's opinion, ILC had neglected most of the above-mentioned post-war changes and had attempted to reaffirm traditional, pre-war rules of international law.

37. With respect to article 15 and the observations of the Special Rapporteur, on the case of customs unions and similar associations of States, his delegation endorsed the statement that would be made in the Committee on behalf of the nine members of the European Economic Community.

38. His delegation had serious doubts as to the desirability of ILC drafting articles on the most-favoured-nation clause in an area in which the rules governing international economic relations were still subject to continuous change.

39. Regarding the future programme of work of ILC, he recalled that at the twenty-ninth session (1494th meeting) his delegation had requested that ILC should give priority to studying the topic of the non-navigational uses of international watercourses. It was to be hoped that that topic would be taken up as soon as a sufficient number of replies from Governments of Member States had been received.

40. Mr. NICOL (Sierra Leone) thanked the Chairman of ILC for his lucid introduction of its report.

41. With regard to State responsibility, his delegation was in general agreement with the draft articles, noting with satisfaction that ILC, in drafting them, had rejected certain obsolete conceptions. With reference to articles 14 and 15, dealing with acts committed by insurrectional movements, his delegation had noted with interest the comments and suggestions by the representative of the United Republic of Tanzania (1542nd meeting) concerning the distinction that should be made between ordinary insurrectional movements and liberation movements. For the present, his delegation could accept the general principle of making

successful insurrectional movements responsible for acts committed during their struggle.

42. With regard to succession of States in respect of matters other than treaties, he urged ILC to conclude its work on the subject rapidly, in view of the current stage of the decolonization process. He noted with satisfaction that in the draft articles on that topic (see A/10010, chap. III, sect. B) ILC had resisted the temptation to draw a distinction between the public and private domain in the passing of State property to the successor State. He felt that the provisions of article 9 were mainly residual and left plenty of room for whatever special arrangement might be deemed necessary, such as just and adequate compensation. His delegation agreed with those who had expressed misgivings about the necessity for article 11, questioning in particular the justification for singling out debts for special treatment.

43. With regard to the most-favoured-nation clause, he said that his country welcomed with particular interest the inclusion of article 21 in the draft. ILC had thus given due regard to the generally accepted fact that the application of the most-favoured-nation clause could create difficulties, not only in the field of economic relations but also in other areas, where the parties concerned were not on equal levels of development. Further careful study of the question would be advisable, so as to arrive at the formulation of further articles, if necessary, to protect the interests of the economically weaker nations.

44. With regard to the organization of the work programme of ILC, his delegation associated itself with the comments and suggestions of the Australian representative. He welcomed the establishment of a planning group within the Enlarged Bureau of ILC which was to take into account proposals of Member States with a view to drawing up a reconsidered plan for research and drafting by ILC. The Committee should be careful not to overburden ILC by referring additional items to it for consideration, unless that was found absolutely necessary due to current international developments.

The meeting rose at 12.10 p.m.

1544th meeting

Tuesday, 21 October 1975, at 10.50 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1544

AGENDA ITEM 108

Report of the International Law Commission on the work of its twenty-seventh session *(continued)* (A/10010)

AGENDA ITEM 109

Succession of States in respect of treaties: report of the Secretary-General *(continued)* (A/10198 and Add.1-4, A/9610/Rev.1*)

1. Mr. NYAMDO (Mongolia) expressed his gratitude to the Chairman of the International Law Commission (ILC) for his presentation of its report (A/10010).

2. With regard to the important matter of State responsibility, he noted that many members of the Committee had expressed their dissatisfaction with the slow rate of progress made by ILC. The draft articles (*ibid.*, chap. II, sect. B) could nevertheless be seen as still another step towards the formulation of rules governing State responsibility. His delegation supported in principle the basic idea of article 10, on the attribution to the State of conduct of organs acting outside their competence or contrary to instructions, but the concept "territorial governmental entity", introduced into the article by ILC, was unclear. If such governmental entities could act as organs of the State, then they were covered by the latter concept. If they could act as private individuals, then States bore responsibility for their actions in accordance with another rule, namely connivance at their actions. Noting that the article established the important rule that the State should not be exempted from responsibility for the *ultra vires* actions of its organs, he said that his delegation was in complete agreement with paragraph (18) of the commentary on the article.

3. Article 11 contained a restatement in negative form of the principle in article 8 on the attribution to the State of the conduct of persons, with which his delegation had expressed its complete agreement during the twenty-ninth session (1488th meeting), and he had no objections to article 11, despite its somewhat redundant character.

4. With regard to article 12, he noted that ILC, in its commentary, had stated that it had wished to eliminate any thought of responsibility on the part of the territorial State for the conduct of organs of other States which took place in its territory. He felt that that clarification should have been included in the text of the article itself, as had been done with article 13. It must also be remembered that there were cases when a State placed its territory at the disposal of another State for the commission of wrongful acts. In such cases, the territorial State was, of course, guilty and must therefore bear responsibility.

5. Articles 14 and 15 dealt with problems demanding careful study. His delegation shared the views of other members of the Committee who insisted that a clear

* *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.*