zations were too sharp. Article 7, for example, provided that for the purpose of authenticating the text of a treaty between one or more States and one or more international organizations, the representative of a State must produce "appropriate full powers", whereas the representative of an international organization must produce "appropriate powers", and article 11 provided that a State could express its consent to be bound by a treaty through "ratification", while an international organization did so through an "act of formal confirmation". While recognizing that it might be necessary in certain areas to make distinctions between States and international organizations, his delegation saw nothing to be gained through the use of artificial distinctions and, indeed, something to be lost in seeking to diminish the stature of international organizations through the use of such distinctions.

41. On the whole, the work accomplished by ILC at its twenty-seventh session was highly satisfactory and it was to be hoped that it would be able to meet the schedule of work which it had laid down for itself in chapter VI of its report and to move ahead with its work on the law of the non-navigational uses of international watercourses, in view of the great importance of that subject at a time when there was a continually increasing demand upon all natural resources.

The meeting rose at 4.40 p.m.

1546th meeting

Wednesday, 22 October 1975, at 10.50 a.m.

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

A/C.6/SR.1546

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. JACHEK (Czechoslovakia) expressed appreciation to the Chairman of the International Law Commission (ILC) for his introductory statement (1534th meeting) and fully endorsed his comments regarding the successes achieved in the codification and progressive development of international law and the momentous positive changes that had taken place in the composition of United Nations bodies dealing with questions relating to international law. The strengthening and further development of the system of modern international law, which was firmly based on the Charter of the United Nations, was one of the foremost tasks facing the Organization and all its Member States.

2. The twenty-seventh session of ILC had been one of its most productive. Progress had been made on all the topics under consideration, including the need to rationalize its work. His delegation in principle approved of the programme of work recommended by ILC but hoped that its efforts to rationalize its work would focus on the speediest possible completion of the work on such important topics as the draft articles on State responsibility and the most-favoured-nation clause. Completion of the work on succession of States was also very important and there was a danger that, as the years passed, the drafts under consideration might lose their relevance.

3. Commenting on the draft articles on State responsibility (see A/10010, chap. II, sect. B), he emphasized the importance of a more accurate definition of the concept of a "breach of an international obligation". The definition in article 3 was too general. In defining the various categories of breaches of international obligations, it might be useful to distinguish a category of internationally wrongful acts that could be described as international crimes, such as aggression, war crimes, crimes against humanity, *apartheid* and the like. With regard to articles 14 and 15, concerning which some important observations had been made by the representative of the German Democratic Republic (1539th meeting), his delegation shared the view that the concept of an "insurrectional movement" should be clarified so as to obviate any possibility of attributing responsibility for internationally wrongful acts committed by a predecessor State to a new State of an entirely different character, which might have been formed as a result of social revolution or a struggle for national liberation against colonialism or fascism.

4. His delegation was pleased to note the substantial progress made in the work on the draft articles on the most-favoured-nation clause (see A/10010, chap. IV, sect. B) at the twenty-seventh session of ILC and hoped that ILC would be able to complete that important draft the following year. The sixth report by the Special Rapporteur on the topic,[1] which had been excellently prepared, provided an eminently adequate basis for codification of the legal principles relating to the most-favoured-nation clause, which were of great importance for peaceful coexistence between States with different social systems and for the strengthening of international co-operation on the basis of equal rights and mutual benefits. The importance of most-favoured-nation treatment had been underscored in one of the most significant political documents of recent times, namely the Final Act of the Conference on

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

1 A/CN.4/286 and Corr.1.

Security and Co-operation in Europe. In its future work on the most-favoured-nation clause, ILC should also give attention to the question of national treatment since, as a number of delegations had pointed out, both clauses had many elements in common. His delegation would have no objection to those two issues being considered simultaneously, if that was deemed appropriate. ILC should continue to concentrate on the most-favoured-nation clause, which was of great importance for the promotion of commercial and political relations between States and the elimination of discrimination. His delegation would suggest that, in its work on the question of national treatment, ILC should include a saving clause so that contracting parties would have the opportunity to include any stipulations they might wish in an agreement involving the most-favoured-nation clause. His delegation supported the idea underlying article 21, namely that developing countries should be granted a special exception with regard to the most-favoured-nation clause so that they could receive preferential treatment. However, that should be the only exception to the clause; any other exceptions would be inadmissible and would detract considerably from the effectiveness of the clause.

5. Commenting on the draft articles on treaties between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he noted that articles 7 to 18 had been modelled on the corresponding articles of the Vienna Convention on the Law of Treaties.[2] ILC had rightly pointed out that from the legal point of view international organizations could not be assimilated to States and that whatever juridical personality they possessed was conferred on them by their member States. In its future work on that topic, ILC should proceed from the premise that international organizations could not be regarded as having any supranational powers and could not become parties to general multilateral treaties on an equal footing with States. International organizations must not usurp the prerogatives of their member States in becoming parties to multilateral treaties of a universal character.

6. He expressed his delegation's gratitude to the members of the ILC and, in particular, to the Chairman of its twenty-seventh session, the Special Rapporteurs on the various topics dealt with by ILC and all those staff members of the Secretariat who had contributed so greatly to the success of the work accomplished by ILC at that session.

7. Mr. SABEL (Israel) expressed appreciation for the extremely thorough and valuable work done by ILC at its twenty-seventh session.

8. The question of succession of States in respect of treaties, referred to in the report of ILC on its twenty-sixth session (A/9610/Rev.1), in particular, was a subject of more than academic interest to his country. Upon the termination of the British Mandate in Palestine, the problem had arisen as to how far, if at all, treaties to which the Mandatory Power had been a party were binding on Israel. Israel had adopted the position that, as a new international personality, it was not automatically bound by the treaties to which Palestine had been a party and that its future treaty relations with foreign Powers were to be regulated directly between Israel and the foreign Powers concerned. With reference to paragraph 75 of the report of ILC, his delegation believed that it would be almost impossible to reach agreement on a list of multilateral conventions having special status in relation to the "clean-slate" principle. As to the settlement of disputes, his delegation was of the view that an article on that issue should be included in the draft. His delegation was not sure whether the time was right for the convening of a conference of plenipotentiaries, particularly in view of the already heavy calendar of international legal conferences scheduled for the near future.

9. The subject of succession of States in respect of treaties was largely of academic interest to most Governments. In view of the provisions concerning the non-retroactive effect of the proposed convention set forth in draft article 7 (*ibid.*, chap. II, sect. D), it was difficult to foresee any situation in which the proposed convention could be applied. Accordingly, it was unlikely that many States would participate in a conference on that subject or be willing to sign and ratify such a convention. His delegation therefore tended to sympathize with those who favoured a declaration of principle on the topic, which might well be of more lasting value than a convention with a very limited number of parties. However, it was doubtful whether the Committee had the means or the time necessary for the detailed article-by-article examination of the draft which would be essential to ensure an acceptable text. In the circumstances, the best solution would be to defer further action on the question until such time as ILC had completed its work on the question of treaties concluded between States and international organizations or between two or more international organizations. Thus, those questions could be dealt with by a single diplomatic conference which would have the task of drafting a new instrument to complement the Vienna Convention.

10. Regarding the draft articles on State responsibility, his delegation accepted the principle of attributing to the State responsibility for the conduct of its organs which acted contrary to the provisions of internal law. Israel agreed with ILC that there was no room for considering the question whether or not the act had been *ultra vires* and that it would be inappropriate to make a distinction between manifest lack of competence and apparent competence. In the field of internationally wrongful acts, the presumed or inferred state of mind of the entity suffering the wrong was irrelevant. Negation of the international responsibility of the State involved would entail the negation of any liability vis-à-vis the victim, who by definition remained without means to obtain redress. The general rule laid down in article 12 required very careful study. Paragraph 2 of the article, which was referred to by ILC as the "saving clause", was a vital and integral part of the rule as a whole. The responsibility which a State might incur by its act, omission, action, negligence or passive behaviour in relation to a wrongful act by the organ of a foreign State in its territory could in some circumstances be comparable to the responsibility of the foreign State itself. Furthermore, the question whether there was any presumption as to liability in such matters needed careful examination. In so far as article 13 was concerned, ILC had probably quite wisely

2 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.

left unexplored a tremendous amount of legal territory. His delegation looked forward to a full study by ILC and the Sixth Committee of the various aspects of relations between international organizations, participating members and host States, but that would have to be a study in depth exceeding the limited scope of the Vienna Convention on the Representation of States in their Relations with International Organizations of Universal Character.[3]

11. Like others, his own delegation found it a tremendous strain to have to study within a very short period so voluminous a report as that of ILC. Any measure to relieve that pressure would be greatly appreciated; however, care must be taken not to introduce changes in procedure that could lead ILC to feel that the quality of its work was not appreciated or that the Sixth Committee did not require the current high standards of legal scholarship. One helpful step might be to have the report published well in advance of the Sixth Committee's meetings so that delegations could study it in detail. His delegation supported the suggestion that the annual report of ILC should be limited strictly to the additional work done by it during the year in question and that references to previous work and research material should be confined to foot-notes. Such a condensation of the report might create some slight practical problems for those studying it; however, that would be outweighed by the great advantage of having a considerably shorter report and would prevent the problem of repetitiveness referred to by the Australian representative (1541st meeting).

12. His delegation welcomed the proposal that the United Nations should consider taking a comprehensive look at the whole system of international treaty-making, including the role of the Sixth Committee and ILC in that process. Such a study would be timely and of benefit to the United Nations as a whole.

13. Mr. MOGENSEN (Denmark) noted with satisfaction that ILC had continued its priority consideration of the questions of State responsibility and succession of States in respect of matters other than treaties at its twenty-seventh session.

14. With respect to State responsibility, it seemed to be widely agreed that States should be held responsible only for acts of their own organs and not for acts of private individuals. That principle underlay several of the articles adopted thus far. Article 14, for example, provided that an act of an insurrectional movement in the territory of a State should not be regarded as an act of that State under international law. Nevertheless, the State might incur responsibility for such acts if it had neglected its duty to do whatever was within its power to protect the persons and property of aliens. In that event, the responsibility of the State would arise out of omissions on the part of organs of the State. That whole problem, however, did not belong within the context of articles relating to acts of insurrectional movements.

15. In article 15 ILC had taken a position on the controversial question whether an act of an insurrectional movement which *ex post facto* seized power in a State should be regarded as an act of that State. The answer by ILC was in the affirmative and that was in keeping with existing practice on that issue. It might seem peculiar that the prospects of an injured party obtaining from the insurrectional movement the satisfaction or reparation to which it considered itself entitled should depend on whether the insurrectional movement defeated the government in power. It would, however, be unreasonable and inconsistent with the principle embodied in article 14 if a State, having put down an insurrectional movement, should be held responsible for acts of the insurgents, except of course such responsibility as might result from the negligence of its organs. In his delegation's view, the solution envisaged in article 15 was appropriate in that it preserved the continuity of responsibility. If the insurrectional movement was victorious, a claim could be presented to the new régime, but if it failed, there would be no possibility of obtaining reparation from the movement or from others for its wrongful acts.

16. Following the provisional adoption, in 1973, of eight articles of the draft convention on succession of States in respect of matters other than treaties, of which the last three were based on the premise of *de facto* passing of public property from the predecessor State to the successor State, the need had arisen for an article explicitly establishing that principle. That important general rule, which was now embodied in article 9 (see A/10010, chap. III, sect. B), might be more appropriately inserted as a direct continuation of article 5, so as to make clear the basis for the more detailed provisions of articles 6 to 8. The definition given by the Special Rapporteur of public property to be passed to the successor State had been based on the concept of sovereignty, which was politically difficult to interpret in a generally acceptable way. His delegation agreed, however, that some form of definition was necessary and considered the revision of article 9 undertaken at the twenty-seventh session to be a significant improvement. The limitation of the scope of applicability of the provision to public property situated in the territory to which the succession related provided a clear and generally reliable point of departure. The provision, as currently worded, if supplemented with provisions relating to public property situated outside the territory concerned, would take adequate account of the multifarious problems involved in the various forms of succession.

17. With regard to article 11, it would seem to be logical and consonant with the general principle enunciated in article 9 that the successor State should succeed to the outstanding debts of the predecessor State. As in the case of article 9, greater clarity could probably be achieved by leaving out the references to the concept of sovereignty and activity. His delegation would have no objection to the incorporation in the draft convention of an explicit rule concerning the property of third States in cases of succession, provided that no exceptions were made to such a rule, as had been done for instance in the draft of the Special Rapporteur,[4] which included a reference to the *ordre public* of the successor State. Such an exception would be out of place in articles relating to succession, if only for the reason that the legal system of the successor

3 See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

4 See A/CN.4/282.

State and consequently the concept of *ordre public* emerged after the succession when the successor began to exercise State authority over the territory in question. Any measure which a successor State might take with regard to the property of third States could not therefore be regarded as being an effect of succession; it would merely be a manifestation of the jurisdiction which every State was entitled to exercise within its territory.

18. Turning to the draft articles on the most-favoured-nation clause, his delegation commended ILC on the substantial progress achieved at the twenty-seventh session. The articles adopted thus far contained valuable provisions regarding the effect as between parties of the most-favoured-nation clause. In connexion with commercial treaties, it had been argued that the application of the most-favoured-nation clause in relations between States at different levels of economic development was of questionable value in the eyes of the third world. Although formally the rule met the requirement of equality, in its traditional form, based on the principle of reciprocity, the clause would be of limited value to developing countries because they were rarely able to compete on an equal footing with the industrialized countries and therefore required preferential treatment. His Government was fully aware of those problems and had repeatedly supported the adoption of preferential treatment schemes. ILC should concentrate on the juridical aspects of the clause, however, leaving the question of its application in commercial treaties between States at different levels of economic development to other international organs, notably the United Nations Conference on Trade and Development (UNCTAD).

19. With respect to article 15, his delegation endorsed the statement made by the representative of Italy (1544th meeting) on behalf of the European Economic Community and its nine members.

20. Noting that ILC had not had an opportunity at its twenty-seventh session to consider the question of the non-navigational uses of international watercourses, his delegation expressed the hope that at its next session, when the replies of Governments would be available, it would find time to consider that important topic, which involved problems of an urgent character. It would be of great value to have a convention establishing the main principles for legal regulation of the exploitation of international watercourses.

21. He announced that his Government, as in previous years, would make scholarships available to cover the expenses of participants from developing countries attending the International Law Seminar in Geneva.

22. Mr. YOKOTA (Japan) paid tribute to ILC for its accomplishments and to its Chairman for his lucid introduction of the report.

23. Noting that some criticism had been voiced concerning the method of work of ILC, he said that the preparation of a legal document which would be viable for years to come and acceptable to a wide segment of the international community must proceed on the basis of careful study of State practice, precedents and legal opinions and the current trend of their development. Such thorough study took time but was absolutely necessary if ILC was to maintain its authority. He therefore supported the current method of work of ILC, given the nature of the task entrusted to it. It was doubtful whether much could be gained by reducing the number of topics to be dealt with by ILC at each session, as that might place an excessive burden on the Special Rapporteurs concerned.

24. With regard to the draft articles on State responsibility, his delegation attached considerable importance to the part of the draft dealing with the act of the State under international law and the problem of the attributability of conduct, and eventually of responsibility, to the State. Noting that there had been many cases in which conflicts of view on the matter had led to tension in the relations between States, he said that clarification of the question was sure to help States in their conduct of international relations. Although his delegation had no difficulty in endorsing articles 5 to 9 in substance, article 10, dealing with the most controversial issue, namely the attribution of *ultra vires* conduct of organs, presented certain problems. While his delegation had no theoretical difficulty in accepting the formulation by ILC that the only criterion to be applied in attributing *ultra vires* conduct to the State should be that the organs in question had "acted in that capacity", it was concerned about the difficulty which was sure to be encountered in applying the rule in practice. It was not always easy to establish in a specific case whether the person had acted as an organ or as an individual. Even the commentary did not seem to be successful in setting out a clear delimitation of those acts which fell within the scope of article 10 and those which did not. His delegation hoped that ILC would undertake further study on the matter with a view to developing a clear-cut rule based on one or several criteria. His delegation had no practical difficulty in accepting the principle contained in article 15.

25. With regard to the draft articles on succession of States in respect of matters other than treaties, his delegation attached considerable importance to article X. It had some doubts regarding the appropriateness of the reference to the internal law of the successor State. It would be more consistent to use the formulation "in the territory to which the succession of States relates", which was used in article 9, instead of another formulation which might give rise to misunderstanding. With regard to articles 9 and 11, his delegation had some reservations but wished to see how the work of ILC on the formulation of more specific rules on the subject would proceed before commenting on the articles.

26. His delegation welcomed the work by ILC on the most-favoured-nation clause, which would greatly help to clarify the often controversial situations arising out of the interpretation of that clause. With regard to the relationship between national treatment and most-favoured-nation treatment, his delegation considered that they were two different questions. The draft articles on national treatment proposed by the Special Rapporteur in his sixth report would not, however, cause much difficulty in the elaboration of draft articles on the most-favoured-nation clause, because the former treated only the mechanism in which the national treatment clause operated, without entering into the substance of the treatment itself. With regard to

the very controversial question of the *"clause reservée"* and its "implied exception", he felt that ILC had succeeded in drawing up a clear-cut rule on some aspects of the matter in articles 14 and 15. As to the question of customs and other economic unions, he noted that ILC had not reached a final conclusion at its twenty-seventh session. His country had in the past expressly made customs unions an exception to the operation of the most-favoured-nation clause in most of its treaties and fully understood the concern of certain countries regarding the adverse effect which that clause might have on the formation of customs and other economic unions. He suggested that a rule of non-retroactivity, such as the one in article 4 of the Vienna Convention on the Law of Treaties, might be incorporated in the current draft articles, which would then not directly affect the interests and positions currently maintained by States in respect of customs unions. A formulation of a clear-cut provision on the question of customs and other economic unions would, moreover, make States more cautious in formulating a most-favoured-nation clause and would help to clarify the situation. His delegation appreciated the attitude of ILC in considering the generalized system of preferences as an exception to the application of the most-favoured-nation clause and had no particular difficulty in accepting the substance of article 21 on the matter. From a legal point of view, however, his delegation preferred a formulation such as that in paragraph (15) of the commentary, namely a provision to the effect that nothing in the articles prejudiced the special régimes which might prevail in the relations between developing and developed countries. The current system of generalized preferences, envisaged on a temporary basis for a period of 10 years, might be modified in the future, probably in favour of developing countries. In that case, the current wording of article 21 might not be sufficient to cover the new situation. It would be desirable to avoid adopting a formulation of a rule of law that was unstable and might require modification at a later stage.

27. With regard to the draft article on succession of States in respect of treaties, he noted that there were certain difficult questions involved in the two proposals set out in foot-notes 57 and 58 of the report of ILC on its twenty-sixth session. His delegation was not entirely satisfied with the formulation of the term "multilateral treaties of universal character" as proposed in the report and considered that the application of the principle of continuity to such treaties should be studied with particular care because of the vagueness of the scope of the term. If those treaties already had the character of customary international law, there was no need to talk about succession.

28. His delegation had always preferred a clear and, if possible, compulsory procedure for the settlement of disputes and believed that the addition to the draft of such a clause would certainly improve it. The question might admittedly be seen as highly political and might, therefore, better be dealt with at a plenipotentiary conference or in the Sixth Committee, when either one of them set out to finalize the draft on the succession of States in respect of treaties. It would nevertheless be useful to have the proposal of ILC on the matter.

29. With regard to the finalization of the draft articles on succession of States in respect of treaties, his delegation favoured the convocation of a plenipotentiary conference. In view of the possible difficulties in obtaining legal experts for such a conference in the near future, consideration of the matter might be deferred to the next session of the General Assembly, when there might be a clearer picture of the demand for such experts for other conferences.

30. His delegation did not see much reason to defer the finalization of the draft for a long time, for example, until the draft on succession of States in respect of matters other than treaties had been prepared by ILC. The close relationship between the two drafts was undeniable, but when ILC had decided to consider the question of the succession of States in respect of treaties in the framework of the Vienna Convention on the Law of Treaties, rather than in the framework of the general theory of State succession, the subjects had become virtually separate. With regard to the final form of the draft, his delegation had not yet taken a firm stand but had found the proposal of the representative of the United Kingdom (1536th meeting) concerning a study by ILC of modalities by which new States could be associated with the rules on succession of States in respect of treaties to be of great interest.

31. Mr. STARČEVIĆ (Yugoslavia) congratulated the Chairman of ILC on his excellent introductory statement of the report on the work of ILC at its twenty-seventh session.

32. On the question of State responsibility, he noted that ILC had provided general rules as to what could be considered as an act of the State, without prejudging the question of the responsibility of that State; it was to be expected that ILC would in the course of its future work define precisely the rules for determining the existence of responsibility. Viewed in that light, articles 10 to 15 adopted at the twenty-seventh session became more acceptable and his delegation would make specific comments on them at a later stage. However, if it were to be assumed that the chapter of which those articles were a part, namely chapter II, entitled "The act of the State under international law", constituted, *per se,* a basis for determining the responsibility of States, he might be tempted to emphasize in connexion with article 12, for example, that in view of the existence of military-political bloc organizations the responsibility of a State might exist even if the act of the organ of another State operating in its territory was not formally attributed to it in the sense of that article. It might also be stressed, in connexion with article 15 and in view of article 3, paragraph *(b),* that in the case of a new State emerging from an insurrectional movement the determination of responsibility for acts committed in the course of the movement remained a rather complicated matter. His delegation agreed, generally, to the orientation by ILC of its future work on the matter outlined in paragraphs 42 to 45 of the report. Updated and codified replies to questions relating to State responsibility would be in the interest of small and medium-sized States and would at the same time be of inestimable importance for the development of international law on a comprehensive system of compulsory legal rules.

33. On the complex question of succession of States in respect of matters other than treaties, he hoped that ILC could speed up the consideration of the matter, with a view to completing its work on the whole matter of the

succession of States. He felt that the comments made by the representative of Australia (1541st meeting) concerning article 9 deserved the attention of the Committee.

34. On the matter of the most-favoured-nation clause, it was necessary to bear constantly in mind the position of the developing countries and the absolute need to provide for an exception to the application of the clause in respect to those countries, since application of the clause to them would amount to implicit discrimination against them. Article 21 showed that ILC had borne those considerations in mind. In addition to the decisions of UNCTAD and GATT mentioned in the commentary on that article, it was also necessary to take into account the resolutions adopted at the sixth and seventh special sessions of the General Assembly and the relevant provisions of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)), all of which emphasized that the principles of non-reciprocity, non-discrimination and preferential treatment for developing countries constituted the foundation on which trade between the developed and the developing countries should be based; the draft rules on the most-favoured-nation clause should reflect that. Article 21 might not be sufficient to exclude completely the application of the most-favoured-nation clause to the developing countries and ILC might consider the possibility of adopting at least one more article for the purpose of protecting those countries, possibly along the lines of article 21 of the Charter of Economic Rights and Duties of States. Such an article would provide protection for the developing countries against the application of article 15, the provisions of which should apply only to agreements concluded between developed countries. In his view article 15 should apply also to customs unions and other economic communities. The new article he proposed should be drafted along the same lines as article 15, bearing in mind that it would not apply to associations of developing countries.

35. He stressed the need for further intensive work on the topic of treaties concluded between States and international organizations or between two or more international organizations, since the ever-increasing number of such treaties necessitated the application of uniform rules.

36. He wished to renew the appeal to States to submit their views on the question of the non-navigational uses of international watercourses, so that ILC might continue its work on that important question at its next session.

37. He supported the proposed general programme of work for ILC and noted with satisfaction the efforts by ILC to accelerate its work with regard to the questions currently on its agenda. He likewise commended the holding of the latest International Law Seminar, the continued co-operation between ILC and regional bodies active in the field of international law and the holding of the third Gilberto Amado Memorial Lecture.

38. Mr. AL-KINDI (Oman) said that the report of ILC was an important statement of legal principles which demanded the Committee's careful study. He thanked the Chairman of ILC (1534th meeting) and the representative of Brazil (1538th meeting) for their excellent analyses of the report.

39. Although some representatives had expressed concern about the length of the report and had made worthwhile suggestions in that regard, he would not support the omission of the sources of the conclusions of the reports. Instead, he would suggest that summaries of the reports should be issued for immediate use, earlier than the reports themselves. Highlights such as those given by the Chairman of ILC could be contained in such summaries. That would increase the Committee's ability to discuss the reports, while allowing those with the time and interest to do so to read the full reports.

40. His delegation would not assess in detail the draft articles on State responsibility. It considered it essential, however, that sovereign States should assume responsibility for the wrongful acts of their organs, whether or not those organs acted outside their competence or contrary to their instructions. Their competence or instructions were relevant to the internal laws of States; not to international law. Other States were not expected to know or inquire whether State organs had the power to bind their State.

41. The provision that the conduct of organs not acting for a State should not be attributed to the State, although it stated the obvious, was acceptable. He presumed that ILC had its reason for including such an obvious provision, but wondered whether it was really necessary.

42. With regard to article 15, his delegation welcomed the suggestion of some representatives that there was a need to draw a clear distinction between, on the one hand, acts of a national liberation movement which was struggling legitimately against colonial or racist régimes for the attainment of self-determination and the overthrow of foreign domination and, on the other, acts of aggression by outlaws whose sole aim was destruction, whatever label they might adopt.

43. He thanked the Special Rapporteur for the topic of State responsibility for his excellent work.

44. He also thanked the Special Rapporteur for the topic of succession of States in respect of matters other than treaties for his expert work on the tricky subject of succession to State property. The approach to that question was correct and his delegation approved of it, especially since the provisions allowed the parties to reach their own agreements. But he urged further development of the draft articles so as to include the question of succession of States to property outside their jurisdiction. Moreover, he doubted the wisdom of including debts as inheritable property, as that could cause untold complications to the successor and predecessor States if such liabilities were incurred at the time when the successor State was incapable of expressing itself.

45. The Special Rapporteur for the topic of the most-favoured-nation clause and the related question of national treatment deserved the Committee's gratitude for his masterly work. His delegation would make its views known later on draft articles 16 and 17 concerned with that topic and in the meantime would welcome further study of the matters covered by those articles. His delegation shared the concern that had been expressed concerning the applicability of the most-favoured-nation clause to States with different levels of economic development. Special treat-

ment could achieve better results than equal treatment in an unequal situation, as there was a need to adjust the imbalances in the economies of third world countries brought about by previous practices. His delegation therefore approved of article 21 and urged further development of similar provisions which gave due weight to the comments already made in the Committee in that regard.

46. He thanked the Special Rapporteur for the question of treaties between States and international organizations or between two or more international organizations for his detailed work. As a result of that work, ILC had been able to adopt articles 7 to 11 and improve article 2. The proliferation of international legal bodies should not be allowed to obscure the purpose for which those bodies were created. They were granted certain powers, rights and duties in order to carry out the functions assigned to them. Therefore, although the question should be studied further, some suggested distinctions such as that between powers and full powers did not seem justifiable. When international legal bodies were given powers to enter into legal relationships with other bodies, such powers were complete in themselves even if some form of confirmation was required from another juridical person.

47. His delegation found it somewhat difficult to accept the notion that ratification applied only to States and that confirmation applied to international organizations as indicated in article 14. If that distinction arose only because ratification necessarily implied a certain procedure within the State, then it seemed rather artificial. An act of confirmation was an act of ratification, whatever terminology was employed. The international community had moved away from old concepts, and the equal treatment of States and international organizations in that regard was reasonable.

48. His delegation welcomed the establishment of a planning group within the Enlarged Bureau of ILC. Serious thought should be given to completing studies on subjects which had been on the agenda of ILC for a long time, and to limiting the number of subjects studied.

49. His delegation wished to express its gratitude to those States which had made possible the International Law Seminar and the Gilberto Amado Memorial Lectures and hoped they would continue to make them possible.

50. He urged continued co-operation between ILC and regional legal bodies, which could only lead to fruitful results.

51. Mr. RAKOTOSON (Madagascar) thanked the Chairman of ILC for his clear introduction of its report.

52. He would confine himself to preliminary observations on the report, as his Government would submit its final views at a later stage.

53. In considering the important question of State responsibility, which was closely related to the maintenance of international peace and security, ILC should bear in mind the provisions of the Charter of the United Nations and of pertinent United Nations resolutions regarding the characterization of internationally wrongful acts and the attribution of such acts to a State. Such General Assembly resolutions as 2625 (XXV), 1514 (XV) and 3314 (XXIX) included respectively the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, (particularly paragraph 3 of the annex), the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Definition of Aggression. Those instruments were the foundation of modern international law and the international community should follow their spirit in defining internationally wrongful acts and attributing responsibility. Many examples of wrongful conduct mentioned in those instruments were more appropriate as a source of International law on State responsibility than the legal history of past centuries. They included interference in the domestic affairs of another State, acts aimed at partial or total disruption of the national unity and territorial integrity of another State, acts aimed at partial or total disruption of the national unity or territorial integrity of another State, the threat or direct or indirect use of force, resistance to exercise by a people of the right to self-determination and independence, direct or indirect aid to such resistance, the policy of *apartheid,* which was a crime against humanity, and the plundering of a country's natural resources.

54. In the light of the instruments he had mentioned, a clear distinction should be made between two kinds of insurrectional movement. A national liberation movement struggling against colonialism, *apartheid,* or foreign domination was exercising a legitimate right recognized in the instruments to which he had referred, and the consequences of such action could not be considered as giving rise to responsibility even when the movement became a new State. But if the territory was not linked to a metropolitan country, the problem of attributing responsibility arose. Those considerations should underlie articles 14 and 15 on State responsibility.

55. With regard to the draft articles on succession of States in respect of matters other than treaties, he observed that paragraph (10) of the commentary on article 9 indicated that only movable property situated in the territory to which the succession related passed to the successor State, whereas movable property situated elsewhere did not. He wondered what would happen if the administering Power, in order to deprive the future new State of its rights transferred movable property to the metropolitan country shortly before the territory achieved independence. In his delegation's view, the fact that movable property was situated in the territory to which the succession related should not be the sole criterion for the passing of such property to the successor State. The saving clause "unless otherwise agreed or decided" would, in certain cases, be of little help in solving that problem.

56. In its work on the draft articles on the most-favoured-nation clause, ILC should likewise take into account the letter and spirit of the resolutions adopted at the sixth and seventh special sessions of the General Assembly. The principles of those resolutions, particularly in the field of international trade, included preferential treatment and non-reciprocity for developing countries and treatment of imports from developed countries that was no more favourable than that accorded to imports from developing

countries. Those principles were reiterated in articles 18 and 26 of the Charter of Economic Rights and Duties of States. In other words, law on the most-favoured-nation clause should take into account the special interests of the developing countries and contribute to efforts to establish a new economic order. To impose the same obligation on the rich and the poor would sometimes be unjust.

57. His delegation wished ILC success in its work of developing and codifying international law. It was because of that sentiment that he wished to comment on the method of work of both ILC and the Sixth Committee. His delegation supported the observations on that subject made by the representative of Australia and others. The report could profitably have been made more concise without being too brief. Furthermore, the work of ILC would have been more effective if the Committee and the General Assembly had carefully set priorities for the topics to be considered. The Committee had a tendency to require that a number of subjects considered by ILC be given priority, as could be seen from General Assembly resolution 3315 (XXIX), which referred to at least five such topics. ILC had faithfully followed those recommendations, and the Committee was therefore in part responsible for the excessive length of the report, of which it was now complaining.

58. Another resulting problem was that the members of the Committee had to consider in a very short time a number of questions which had nothing in common, and it could not do so in depth while at the same time supervising the work of ILC. It might well fail in the latter task if it continued to require priority for most of the topics referred to ILC and should therefore assign priority to one topic only. If it did so, ILC would be able to finish its programme earlier and would be able to complete in the near future the draft articles on State responsibility or on succession of States in respect of matters other than treaties. The draft articles on one of those two subjects should be completed in 1976, since the first subject was a useful supplement to the Definition of Aggression and the second, in the view of many delegations, supplemented that of the succession of States in respect of treaties.

59. It would perhaps be appropriate to require that the report of ILC reach Member States at an earlier date so that they would have enough time to examine it before the General Assembly session. Because the twenty-seventh session of ILC had not begun until early May and had ended in late July, the report had in actual fact not been distributed until the current session was already under way. Although he realized that the members of ILC had other duties, it might be well for ILC to begin its session earlier, in order to enable the Committee to perform its functions properly.

60. Just as ILC had established a planning group to study its functioning and formulate suggestions regarding its work, so the Sixth Committee might well undertake some self-criticism; in his delegation's view, the Committee should accord priority to one topic only. In that connexion, he drew attention to the cautionary example of the topic of state responsibility, which the General Assembly had first recommended for study in 1955 and on which work would not be completed until 1981.

61. Mr. LOPEZ BASSOLS (Mexico) complimented the Chairman of ILC on his lucid introduction of the report.

62. His delegation had often stated Mexico's great interest in the subject of State responsibility. Indeed, the history of Mexican international relations could perhaps be written in terms of international claims. From the earliest days of Mexican independence until 1940, Mexico's application of its legislation to alien residents in its territory, though the acts of a sovereign State, had been subject to review by various claims commissions. That belonged irrevocably to the past, now that the sovereignty of weaker States had triumphed over the "unlimited protection" practised by the great Powers, but the history of those commissions explained the many and not altogether fortunate references to them in the report. Two examples were the Mexico City Bombardment Claims case and the United States claim concerning the detention of certain sailors in Tampico in 1914, referred to in paragraphs (18) and (28) respectively of the commentary on article 14. In connexion with the former claim, the Mexican Commissioner had stated that a State was not responsible for damage caused by a military uprising if it was proved that it had taken the necessary steps to restore order. With regard to the second claim, his Government's position had been that it was not responsible for damage caused by armed forces which did not succeed in establishing a government. Reparation in that case would be made only on an *ex gratia* basis. On the other hand, the Government would assume responsibility for lawful governmental acts or for acts of revolutionary forces which had succeeded in establishing governments. The principles contained in articles 14 and 15 of the draft articles on State responsibility conformed to the Mexican position as stated in connexion with the two cases he had mentioned and his delegation was therefore in complete agreement with those articles.

63. The fact that the international community would soon adopt a body of rules governing the responsibility of States for internationally wrongful acts was of particular importance to Mexico. A study of that subject should go hand in hand with study of other aspects of responsibility for internationally wrongful acts, including responsibility for possible damage resulting from certain lawful activities, from activities which international law had not yet definitely prohibited, or from activities in the grey area between lawfulness and wrongfulness. Such activities were becoming more and more frequent in the areas of navigation, space and nuclear power, particularly in connexion with protection of the environment. The more specialized and technical aspects of that new field continued to be the subject of special agreements and of regulations worked out in technical gatherings, but the time might come when it was necessary to identify the essential principles in that new field of law and establish them as juridical norms. Thus, it might be appropriate for ILC to use its well-known technical competence and creativity to study new subjects within its terms of reference, other than State responsibility, succession of States and aspects of the law of treaties.

64. His delegation therefore felt that the Committee could recommend that the General Assembly, at the current session, should go beyond its usual recommendation that ILC continue studies already begun. It felt that the

resolution to be adopted by the Assembly should reflect the lively interest of at least some Member States in giving priority to the study of State responsibility for internationally wrongful acts and in supplementing that study with all possible urgency.

65. Turning to chapter IV of the report, he said that the subject of the most-favoured-nation clause was of vital importance to international economic relations. The Committee did not yet have a complete draft and could therefore not analyse the draft articles in detail. However, his delegation believed that ILC, in its work on the most-favoured-nation clause, should take into account the fundamental changes which were taking place in economic relations, which had important effects on the application of the clause. In that connexion, he wished to refer to the resolutions adopted at the sixth and seventh special sessions of the General Assembly and to the Charter of Economic Rights and Duties of States. The development and codification of legal norms in that field would thus be adapted to present-day reality.

66. Recognition of the existence of various levels of development and of the need for a world trade system based on a system of preferences was one of the important elements of developing international law. In that connexion, he recalled that General Principle Eight of the recommendations adopted at the first session of UNCTAD[5] was based on the theory that the trade needs of a developing economy were very different from those of a developed economy. Consequently, those two types of economies should not be subject to the same rules in their international trade relations. Application of the most-favoured-nation clause to all countries regardless of their level of development would mean formal equality, but in fact would entail implicit discrimination against the weaker members of the international community. That did not mean permanent rejection of the most-favoured-nation clause. Recognition of the needs of the developing countries simply meant that for a certain period the most-favoured-nation clause should not be applied to certain types of international trade relations.

67. He also wished to point out that articles 18, 19, 21 and 26 of the Charter of Economic Rights and Duties of States contained provisions designed to establish a system of generalized non-reciprocal and non-discriminatory preferences for the benefit of the developing countries.

68. His delegation had already sent to ILC its comments on the subject of succession of States in respect of treaties (see A/10198). With regard to the procedural aspects of that topic, his delegation felt that the draft was final, except for two articles which should be returned for consideration by ILC, perhaps in the light of comments by States. It could then be decided what the appropriate procedure was for the last step in the codification process.

69. He wished to congratulate ILC for its excellent work during the current year and to wish it success in the future.

The meeting rose at 1.05 p.m.

5 See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

1547th meeting

Thursday, 23 October 1975, at 10.50 a.m.

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

A/C.6/SR.1547

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. HAFIZ (Bangladesh) said that the report of the International Law Commission (ILC) (A/10010) was a valuable document which bore eloquent testimony to its monumental work in promoting the progressive development and codification of international law.

2. The role of ILC was assuming greater importance as new international relations developed as a result of the changing structure of international society brought about by the end of colonization and the birth of new States. The newly independent States and developing countries were facing complex international economic and political problems. The fundamental principles regulating the international community needed to be translated into legal terms in establishing the new economic order which had been accepted by the vast majority of Member States.

3. The main problems facing the developing countries were chronic food shortage and over-population. Food could no longer be treated as charity or as a purely commercial commodity of international trade. It was therefore the moral and political duty of the international community, particularly the developed countries, to extend economic co-operation to solve permanently the problem of under-production of food in the developing countries. A new concept of international food law had to be reflected

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