1526th meeting

Monday, 29 September 1975, at 3.20 p.m.

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

A/C.6/SR.1526

AGENDA ITEM 109

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

1. The CHAIRMAN said that the list of speakers wishing to make statements on the item under consideration would be closed at the end of the current meeting. After the meetings planned for the following day, the Committee would suspend consideration of the item in order to begin consideration of agenda item 108, concerning the report of the United Nations Commission on International Trade Law.

2. Mr. KLAFKOWSKI (Poland) said that his delegation wished first of all to congratulate the International Law Commission (ILC) and its two Special Rapporteurs on the question of the succession of States in respect of treaties on the draft articles they had prepared and the very extensive commentary accompanying them to be found in section D of chapter II of the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1). Ten multilateral codification conventions had already been concluded on the basis of the drafts prepared by ILC, so that the draft articles under consideration would therefore become the eleventh convention prepared in that way. Such success was due above all to ILC's method of work, as described in paragraphs 45 to 47 and 51 to 56 of its report. In that respect his delegation supported the conclusions appearing in paragraph 83 of the report regarding the work of ILC on the succession of States in respect of treaties.

3. Secondly, his delegation noted with satisfaction that ILC had taken into account some of the observations made by his Government. It considered that the draft articles were generally acceptable and constituted a good basis for the preparation of a convention. ILC had done well to incorporate articles 11 and 12 in the first part of the draft (General provisions). His delegation supported articles 11 (Boundary régimes) and 14 (Succession in respect of part of territory) of the final version of the draft articles. His Government had already in its observations[1] explained its attitude in that respect. The new article 13 (Questions relating to the validity of a treaty) was certainly useful from the point of view of the draft as a whole. His delegation considered that the new articles 31, 32, 35, 36 and 37 derived from the practice of States, which could facilitate their application.

4. Thirdly, his delegation noted that some problems had not yet been resolved; they concerned, *inter alia,* article 7, the distinction referred to in paragraph 72 of the report, and the two texts proposed by members of ILC (*ibid.,* paras. 75 to 80). In his delegation's view, those questions could be studied by an international conference convened to prepare and adopt a convention on the matter.

5. Finally, his delegation believed that the draft articles could be submitted to a diplomatic conference of plenipotentiaries and that their juridical and political value justified consideration at an early date, bearing in mind also the importance of the subject and the interest of the security of international juridical relations.

6. Mr. ROSENSTOCK (United States of America) said he considered that ILC had successfully completed a difficult task in preparing draft articles which constituted a satisfactory basis for codification. The manner in which the draft had been harmonized with the Vienna Convention on the Law of Treaties[2] was an important aspect of that work. However, some improvements could be made to the draft; his Government had already made specific suggestions in that respect, which appeared in document A/10198, so that there was no need to go into them in detail.

7. In the view of his Government, the draft's handling of the question of non-retroactivity needed further examination. There did not seem to be any reason for preventing a State which gained independence prior to the entry into force of the proposed convention from becoming a party thereto after it had entered into force and making full use of its provisions in regulating its treaty relations in the light of the situation existing at the time when the articles became applicable to the successor State.

8. With regard to the proposals concerning multilateral treaties of a universal character, he understood the motivation in seeking the widest possible application of the fundamental norms frequently found in such treaties. There were, however, a number of objections to including provisions on that question in the draft. First, there was no consensus as to what was meant by "multilateral treaty of a universal character". The definition that had been suggested, instead of clarifying the problem, seemed rather to reflect the lengthy and inconclusive discussions on the matter at the Vienna Conference on the Law of Treaties. There were so many treaties whose status would be uncertain under the proposed definition that it would be likely to cause more trouble than it was worth. Moreover, it was liable to impose a wide range of obligations on newly independent States, including financial obligations of which they might not be fully aware. The most important aspects of treaties which might be referred to as "multilateral treaties of a universal character" were those aspects which

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

1 Subsequently distributed as document A/10198/Add.2.

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.

codified existing law or which were now regarded as norms of international law binding on all, such as for example the provisions of Article 2 of the Charter and virtually all the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations and on the Law of Treaties. Those norms would in any event apply to all States, new and old.

9. With regard to the question of notification of succession to multilateral treaties, he regarded the approach taken in the draft as satisfactory. His delegation, however, continued to believe that provisions should be included regarding the effect of objections to a notification of succession on the grounds that that succession would be incompatible with the object and purpose of the treaty. In that respect his delegation maintained the views which its Government had already expressed (see A/10198).

10. With regard to the question of the settlement of disputes, he considered that it was essential that the proposed convention should provide for a procedure in that respect. The convention could stipulate that all questions relating to its interpretation or application be subject to the jurisdiction of the International Court of Justice. Only the Court would be able to ensure equality of treatment for all countries, rich and poor, large and small, and create a body of jurisprudence which could guide the actions of all States. Since the draft had been prepared in the light of the observations of so many Governments and since it was to become an instrument open for the signature of all States, he did not believe that the objections raised by some to the application of a binding procedure for the settlement of disputes would be valid. He believed that, should the international community consider that it was not at a sufficiently advanced stage of development to accept that solution, there would be grounds for adopting, as a bare minimum, the conciliation and arbitration procedure provided for in the Vienna Convention on the Law of Treaties.

11. His delegation considered that the subject matter of the draft articles was important and that the text constituted an excellent basis for codification. It therefore believed that a diplomatic conference should be convened to deal with the matter. That conference should be held either in the spring of 1976 or, if that was not possible in the light of the calendar of conferences, in the early spring of 1977.

12. Mr. BUSSE (Federal Republic of Germany) said that his Government's observations on the draft articles had just been circulated in document A/10198/Add.1. He would therefore confine himself to mentioning the main points.

13. In his Government's opinion, the draft articles provided an appropriate basis on which to continue to elaborate a convention on the succession of States in respect of treaties. ILC had acted wisely in deciding to model the draft on the structure and terminology of the Vienna Convention on the Law of Treaties, thus ensuring the emergence of a uniform and coherent body of law in that important field of international relations.

14. His Government had proposed that, parallel with its work on the draft articles, ILC should undertake a codification of the law of the succession of States in respect of matters other than treaties. It might therefore be advisable to postpone a final decision on the contents of a convention on succession of States in respect of treaties until clearer concepts had emerged concerning the legal basis for the succession of States in respect of matters other than treaties.

15. His Government welcomed the suggestion that the draft should include rules governing the settlement of disputes. Such clauses were indispensable in view of the considerable number of complex and insufficiently defined terms and rules which might give rise to differences in interpretation. Mr. Kearney's proposal of a new article 32 (see A/9610/Rev.1, foot-note 58) should meet with the approval of all States, even those which were opposed to a mandatory settlement of disputes. It would, however, be necessary to examine whether the settlement procedure suggested by him would be adequate in all cases of dispute or whether, under certain conditions, a more cogent procedure might have to be followed. Provision might be made for the issue to be referred to an arbitration tribunal or to the International Court of Justice.

16. With regard to Mr. Ushakov's proposal on article 12 *bis* (*ibid.*, foot-note 57), his Government considered it inadvisable to accord a different treatment to multilateral treaties of a universal character. It did not appear possible to make a satisfactory differentiation between such multilateral treaties as deserved a guarantee of survival and other treaties. The concept of general multilateral treaties had been clearly rejected during the elaboration of the Vienna Convention and should not therefore be incorporated in a convention on the succession of States.

17. His Government doubted whether draft articles 29 and 30 had been sufficiently clarified to be ready for codification. They should be given further consideration so as to avoid any confusion and misunderstanding in the event of their implementation.

18. He stressed that his Government shared the general conviction that further efforts must be made to work out practicable rules on the succession of States in respect of treaties. It seemed too early to think of convening an international conference. He thought that it would be desirable, therefore, to ask ILC to re-examine the draft articles on the basis of the written observations of States and to discuss the additional proposals made by Messrs. Kearney and Ushakov.

19. Mr. NOLAN (Australia) said that, as ILC had noted in its report on the work of its twenty-sixth session, the principal problem involved in codifying the rules applicable to the succession of States in respect of treaties was to establish a balance between the principle of continuity and that of the "clean slate". The result to date of the Commission's work was far from perfect, as was inevitably the case with a set of compromises. It had obviously been necessary to bow frequently to practical and political considerations at the expense of precedent or purely legal principles. Nevertheless, his Government considered that the draft articles were generally acceptable.

20. While his delegation recognized the importance of the principle that newly independent States should have the

right to determine their own treaty commitments, it was pleased to see that certain reservations had been placed on that principle in the draft articles. The "clean-slate" principle, if rigidly applied, would not only jeopardize the stability and continuity of international relations but would also deprive newly independent States of the provisions of those treaty arrangements applying to them before independence which had been beneficial to them and which they still saw to be beneficial. It would be a mistake to assume that all treaties entered into by a colonial Power and applicable to its dependent Territories were motivated purely by self-interest and were therefore to the disadvantage of those Territories. In that regard, it might be useful to draw the Committee's attention to the position adopted by the new State of Papua New Guinea in a letter addressed to the Secretary-General. Papua New Guinea stated that it recognized the desirability of maintaining, so far as practicable, continuity in treaty relations with other States. It also recognized the need to examine all treaties previously applicable to it in order to determine whether they should continue in force. The Government of Papua New Guinea proposed to examine all previous bilateral and multilateral treaties with the intention of making a statement of intent in respect of each. Meanwhile, the Government of Papua New Guinea, on the basis of reciprocity, would honour all treaties applicable to its Territory prior to independence.

21. While it recognized the need to safeguard the legitimate interests of newly independent States, his Government was firmly of the opinion that a certain degree of continuity in international obligations was important. Australia, which had itself once been a colony, had considered itself bound by the imperial British treaties applicable to it before independence. Since then it had carefully examined such treaties and those which now appeared in the Australian treaties list were considered as continuing in force, while those not so listed were regarded as no longer applying to Australia. In that way, at the outset of its involvement in international affairs, Australia had inherited a wide range of useful treaties which would otherwise have required renegotiation. As an example of some of the difficulties which might arise if the "clean-slate" principle were adopted without qualification, a State not wishing to be bound by an imperial British treaty could regard it as inapplicable between itself and Australia. As there was no provision for acts of novation in some imperial treaties appearing in the Australian treaties list, the acceptance of the "clean-slate" principle without qualification might call into question the continuing applicability of those treaties. For that reason, Australia could not endorse retrospective application of principles which could prejudice long-established treaty relations.

22. His delegation felt that the obvious advantages of a continuity of international obligations and the understandable desire of newly emerging States to review their treaty commitments must be balanced in order to achieve a universally accepted framework for treaty succession. ILC's general approach was perhaps, as a matter of practical politics, the most universally acceptable. Some States might consider that the draft did not go far enough in taking into account the principle of self-determination, whereas others might think that it did not lay sufficient stress on the principle of continuity; his delegation regarded the draft as constituting an acceptable balance between those two opposing views.

23. Mr. SETTE CÂMARA (Brazil) welcomed the delegations of the three new Member States–Mozambique, Cape Verde and Sao Tome and Principe–which had enlarged the community of Portuguese-speaking Member States.

24. He recalled that ILC, since the nomination of the first Special Rapporteur, Sir Humphrey Waldock, in 1967, and the submission of the final draft articles on succession of States in respect of treaties, had devoted seven long years to the study of that question. The procedure provided for in article 16 of the statute of ILC had been carefully complied with, and Member States had had an opportunity to submit their comments and observations on the draft articles both after the first and second readings. The comments and observations submitted by Governments after the first reading had been punctiliously examined by the new Special Rapporteur, Sir Francis Vallat, in his first report,[3] and the Special Rapporteur had accepted and embodied in the draft articles many of the suggestions made by Governments. The articles in their final form had been adopted by ILC, with one single abstention, and submitted to the General Assembly in compliance with the express recommendation contained in resolution 3071 (XXVIII). It was therefore beyond doubt that the draft articles submitted by ILC and its report on the work of its twenty-sixth session represented the final form of the draft articles. In paragraph 84 of the report in question, ILC had recommended that, in conformity with article 23 of its statute, the General Assembly should invite Member States to submit their written comments or observations on the final draft articles and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject. It was therefore with some surprise that his delegation had noted, in reading the report of the Secretary-General (A/10198), that some Member States seemed to favour the idea that ILC should undertake a sort of "third reading" of the draft articles. In his delegation's view, such a procedure would be a subversion of the traditional methods of work of the ILC and would imperil the future work of codification. Moreover, States were not bound to accept the findings of ILC and were free to change in whole or in part the text prepared by its members, who served in their individual capacities as experts and not as representatives of Governments. It would be wrong to send back to ILC for reconsideration a set of draft articles already presented in final form.

25. In fact, there were two questions relating to the draft articles which remained unresolved. For lack of time, ILC had not been able to discuss the proposals put forward on those questions. The first dealt with multilateral treaties of universal character, and ILC favoured their continuity *ipso jure*. That proposal was in line with the problems raised by the so-called law-making treaties, which several Governments considered as possible exceptions to the "clean-slate" rule. The difficulties with that proposal would be the same as those which had prompted ILC to reject the suggestions of Governments for the exceptional treatment of the

3 See *Yearbook of the International Law Commission, 1974*, vol. II, document A/CN.4/278 and Add.1-6.

"law-making treaties", on the ground that problems might arise with regard to the definition of that expression. The concept of a "multilateral treaty of universal character", like the concept of a "law-making treaty", was rather vague. Moreover, if States other than newly-independent States were not regarded as automatically bound by "law-making treaties" or by "treaties of universal character", why should the newly-independent States be limited in their right to opt in? Should such a proposal be adopted, the newly-independent States would emerge into international life with a huge load of treaty commitments imposed upon them without their having been consulted in the matter. No member of the international community should be forced automatically to be party to any Convention, unless it had freely expressed its will to do so.

26. His delegation endorsed article 12 in the form in which it had been proposed by ILC and believed that it was not necessary to provide for exceptions in the case of certain types of treaties. However, it respected the right of any delegation to propose, at a future conference convened for the purpose of elaborating a convention on the succession of States in respect of treaties, a departure from the basic criteria of the draft articles prepared by ILC, which purported to preserve the integrity of the "clean-slate" rule. His delegation believed that it would be an error to send back to ILC the draft presented in final form for the examination of a proposal which was contrary to the philosophy of the draft.

27. The other pending question dealt with a machinery for the settlement of disputes. ILC had been right to leave that problem open. It would be up to the future conference of plenipotentiaries to choose the appropriate machinery for that purpose. The conciliation procedure provided for in the Annex to the Vienna Convention on the Law of Treaties was one possibility; the one embodied in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents[4] was another; other avenues could be explored. In any event, the provisions relating to the settlement of disputes could be adopted independently of the body of the draft itself. Inasmuch as ILC had declared its readiness, if so requested by the General Assembly, to consider at its next session the question of the settlement of disputes for the purpose of the draft articles, his delegation would hope that such a decision would not imply that ILC would be required to reconsider the draft articles as a whole. His delegation would prefer to leave the problem open for discussion at the time of the elaboration of the convention itself. In his delegation's view, the Sixth Committee should for the time being confine itself to the procedural questions raised by the draft articles and at a later stage take up the consideration of substantive questions, which might be referred to the Sixth Committee or to an international conference of plenipotentiaries: any of those two solutions would be acceptable to his delegation.

28. Mr. HAGARD (Sweden) said that, in his delegation's view, the draft articles on the succession of States in respect of treaties was important from both the political and legal viewpoints. The draft articles reflected the rapid changes in the world resulting from the process of decolonization and were important for the development of international law, particularly since they covered a field not fully dealt with by customary law. Moreover, there were conflicting doctrinal views as to the most suitable way of codifying the unresolved issues. During the debate at the twenty-ninth session of the General Assembly on the report of ILC on the work of its twenty-sixth session, there had been a consensus that it would have been premature at that time to take decision to convene a conference to finalize the draft or to entrust that task to some other forum. Complying with part II, paragraph 2, of resolution 3315 (XXIX), which the General Assembly had adopted by consensus, a number of countries, including Sweden, had submitted their comments and observations on the draft articles on succession of States in respect of treaties and on the two proposals referred to in paragraph 75 of the report of ILC, one dealing with multilateral treaties of universal character and the other with settlement of disputes, as well as the procedure to be followed and the form in which work on the draft articles should be completed. Those comments, which were reproduced in the report of the Secretary-General (A/10198), as well as the comments made earlier, ought to be further considered. The proposal regarding multilateral treaties of universal character was a very interesting one and deserved thorough study. As to the second proposal, his delegation deemed it essential that provisions on that subject should be included in the draft articles. ILC was particularly well qualified to evaluate the two proposals in the context of the draft articles.

29. His delegation therefore hoped that the General Assembly at its current session would request the ILC to continue its work on the draft articles and also to examine the questions of multilateral treaties of universal character and the settlement of disputes. Once that work was completed, it would be for the General Assembly to decide on the forum and time for finalizing and adopting the text, preferably in the form of a convention.

30. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) welcomed the delegations of the three new States which had just been admitted to the United Nations, the Republics of Mozambique, Cape Verde and Sao Tome and Principe.

31. The question of the succession of States in respect of treaties appeared on the Sixth Committee's agenda for the first time, although the Committee had already discussed it during several previous sessions when considering the reports of ILC. During those discussions, the Committee had shown general agreement on the complex nature of the succession of States in respect of treaties and the quality of the draft articles drawn up by ILC after many years of effort. Each set of draft articles relating to international law must be considered by the Sixth Committee since they were to become an essential part of contemporary law and would contribute to the progressive development of international law in general. It was even more necessary to observe those criteria when dealing with the succession of States, because that question was closely linked to the principles of the sovereign equality of States and self-determination of peoples as well as to the right of new States to decide which treaties should remain in force for them and which should not, in the interest of balanced and stable international relations. The ILC draft met those demands; it embodied a

4 General Assembly resolution 3166 (XXVIII), annex.

just concept of the succession of States and was aimed at facilitating access to international treaty relations for many new States. The draft took into account the major trends of modern treaty law as well as the general rule, embodied in articles 11 and 12 of the draft, to the effect that the succession of States did not affect boundary régimes or certain territorial régimes established by a treaty.

32. For those reasons, the draft constituted a useful basis for continuing work on codification in that subject. However, that did not mean that it was sufficiently advanced to make it possible at the current stage to solve the problem of the procedure to be followed for the final phase of codification. Work on the draft must be continued, particularly since the different opinions expressed in 1974 in the Sixth Committee revealed quite serious disagreement on certain fundamental questions concerning the basic principles.

33. She agreed with the representative of Brazil that ILC had respected all the phases of the procedure provided for, but could not agree to sacrifice the substance to procedure. The profound differences which were revealed during the discussions could not be allowed to pass without comment. For example, the matter of which cases were covered by the draft posed difficult problems. The draft did not mention cases of social revolution and dealt particularly with cases of accession to independence following the fall of a colonial régime. Yet the process of decolonization was nearing its end, whereas cases of succession as a result of merging, unification or separation of territories might well become more numerous; but such cases were dealt with in less detail in the draft articles.

34. The two new draft articles proposed—12 *bis* and 32—had not been studied in depth and markedly divergent views on those questions had been expressed in the comments reproduced in the report of the Secretary-General. Moreover, her delegation wished to draw the Committee's attention to the fact that only a few States had submitted comments on the draft which testified to the complexity of the problems raised and might well imply that many States needed more time to study the draft in depth. Furthermore, the majority of States which had submitted observations felt that it was premature to consider the question of convening a conference.

35. Attention should also be drawn to the close link between succession in respect of treaties and succession in respect of matters other than treaties. In both cases, the general provisions should be identical, particularly with regard to the concept and date of succession. A satisfactory drafting of the provisions common to these two aspects of the succession of States could be achieved only if decisions were taken on the basis of a detailed consideration of both aspects.

36. Her delegation therefore felt that a decision on the procedural question would be premature and that ILC should reconsider the draft articles in the light of the observations of Governments and discussions in the Sixth Committee at the twenty-ninth and thirtieth sessions of the General Assembly.

37. Mr. SADI (Jordan) said that his delegation had already expressed its point of view on the question at the previous session (1492nd meeting) and did not consider it useful to repeat it now. His Government had not yet been able to submit written observations. He felt that the time-limit for submitting comments should be extended.

38. Mr. GOBBI (Argentina) congratulated ILC and the Special Rapporteurs on having produced a legal instrument which took into account the needs of new States entering international life. The time had come to co-ordinate differing views so that the draft could be submitted to an *ad hoc* conference at the diplomatic level. However, at the present stage the Committee should not consider only the question of procedure and his delegation would like to make some substantive comments.

39. Article 7 on non-retroactivity was not in the right place and its wording could give rise to certain difficulties in the future. The observations of the Austrian Government on paragraph 2 of article 19 (see A/10198) were entirely valid because, even if that provision did not exist, it would be possible to formulate reservations through the appropriate machinery without prejudice to the "clean-slate" principle. His delegation felt that articles 38 and 39 could be deleted since that kind of situation should be governed by the general principles applicable to each case.

40. As for the uncertainty prevailing with regard to multilateral treaties, only a conference of plenipotentiaries could find the appropriate formula since that problem could not be fully solved by a body of experts. The conference could also deal with the problem of the settlement of disputes by establishing a new procedure or falling back upon article 66 of the Vienna Convention on the Law of Treaties.

41. His delegation shared the view of those delegations which considered that the work already accomplished by ILC together with the detailed analysis of that work to be carried out by the Sixth Committee could serve as a basis for the codification of that material within the framework of a conference of plenipotentiaries.

42. Mr. MEISSNER (German Democratic Republic) welcomed the progress achieved between the first ILC draft of the articles[5] and that which was being considered, but felt that the text should be reconsidered before it was referred to another body. In the succession of States, the aim must be to ensure stability and security in treaty relations in accordance with the basis principles of international law and to facilitate the entry of the successor State into international relations so that the latter could make use of its rights without hindrance or delay, on the basis of sovereign equality and self-determination, and re-examine the treaties concluded by predecessor States.

43. To maintain world peace and foster international co-operation, the principle of continuity must apply to all multilateral treaties of a universal character, irrespective of the type of succession involved. Examples of such treaties, which were open to all States and were of world-wide interest, were the Treaty on the Non-Proliferation of Nuclear Weapons, the Human Rights Covenants and the

5 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chapter II, section C.

Red Cross Conventions. His delegation therefore strongly endorsed article 12 *bis* proposed by Mr. Ushakov. Some delegations had pointed out that it was difficult to differentiate between what were called law-making treaties and non-law-making treaties. But such a distinction was not required for that purpose. The universal character of a treaty sufficed as a criterion to judge the applicability of the principle of continuity. Similarly, his delegation could not endorse the view expressed in the commentary on article 15 that the continuity of multilateral treaties of universal character was not necessary because the rules they contained also formed part of customary law. Since at present treaties, especially those of universal character, were the main source of international law, it appeared useful to proceed from that solid foundation. The very purpose of the codification of international law was to eliminate the ambiguities inherent in customary law. His delegation felt that the time would not be ripe for convening a conference on the codification of that subject at least until the above-mentioned problems and others still outstanding had been solved by ILC.

44. Mr. LAMPTEY (Ghana) said that his country's views on the draft articles on succession of States in respect of treaties would be presented during the final formulation of the convention. For the present, his delegation felt that the draft prepared by ILC was satisfactory, on the whole, and that its adoption would contribute to the development and codification of international law. The definition of "newly independent State" contained in article 2, paragraph 1 *(b)* was very important, since it determined the circumstances in which the "clean-slate" principle would apply to successor States. In effect, it would limit that principle to States emerging from colonialism and similar processes of emancipation. However, when it was read in conjunction with article 33, paragraph 3, there would appear to be a need to be more precise and to complete the criteria laid down in article 2. While appreciating the rationale behind article 6, in the absence of more positive criteria for determining illegality his delegation could foresee the possibility of treaty vacuums with respect to certain successor States flowing from that provision. Article 9 was a useful codification of a practice quite common with newly independent States and was complementary to article 26. Articles 11 and 12 dealt with treaties establishing "local obligation". Article 11 safeguarded boundaries from the effects of succession of States and would facilitate international stability. Article 12, however, was less acceptable. In effect, the territorial régimes protected by that article would seem to include naval bases established by treaty in perpetuity, or at least for a considerable length of time, as well as demilitarized zones and territories that had been originally demilitarized in the interest of the predecessor State and its allies. The effect of that article was that the successor State was bound by servitudes on its territory which were not necessarily in its political or military interest. The compromise intended by article 13 would not always prove a safeguard, since such a treaty might be perfectly legal and valid.

45. The free choice inherent in the "clean-slate" principle enunciated in article 15 should be maintained, even in respect of "law-making treaties". Article 18, although not based on solid State practice, was a natural corollary to articles 15 and 16 and contributed to the development of international law.

46. The purpose of article 22, paragraph 1, was not clear. The provisions of that paragraph apparently were intended to resolve the conflicts that might arise from retroactivity and the likelihood of a hiatus between the time of succession of States and notification. However, the establishment of a legal nexus in paragraph 1 between the newly independent State and the treaty was unnecessary, first, because under the "clean-slate" principle the newly independent State was not obligated to participate in the treaty and, secondly, because pursuant to the provisions of paragraph 2 the treaty remained inoperative until the date of notification, which was the more important date for the States parties. Whether the newly independent State became party to a treaty as from the date of succession or as from the entry into force of the treaty was largely irrelevant, since what it thus became party to was a treaty which was considered suspended vis-à-vis other States parties.

47. In article 26 there appeared to be a distinction between the provisional application of treaties already in force in respect of a territory and that of treaties not yet in force. In the former case, dealt with in paragraph 1, the newly independent State might notify its intention to have the treaty provisionally applied in respect of its territory. In the latter case, dealt with in paragraph 2, such notification might be made only if at the date of succession the treaty was being provisionally applied to the territory. That could mean that a State which became a party to a treaty under article 17 could not provisionally apply such a treaty unless it was already being so applied to its territory. The intention behind article 17 was to make it possible for newly independent States to participate in treaties not yet in force with respect to them at the date of succession.

48. It might have been expected that under article 26 a newly independent State would be able to seek to have such a treaty apply to it provisionally pending its notification of succession to the treaty under article 17. The effect of article 26, however, seemed to be that a State wishing to apply provisionally a treaty not yet in force would first have to notify its succession either as a contracting State or as a party, unless the predecessor had provisionally applied the treaty before. His delegation saw no need for that distinction and feared that in the case of paragraph 2 it might result in forcing the hand of a newly independent State which would have liked a provisional application pending its decision whether or not to participate fully in the treaty. It ought to be possible to drop paragraph 2 without objection, since under article 28 the provisional application of a treaty terminated on the notification of an intention not to become party to the treaty.

49. Article 33, paragraph 3, created an exception to the general rule that where a State separates from another State, treaties applicable to the whole territory of the latter State remain in force with regard to the former. In that paragraph the "clean-slate" principle was applied under circumstances presenting essentially the same characteristics

as those which existed in the case of the formation of the newly independent State. That provision, although acceptable, would inevitably give rise to problems unless there was a more precise definition of the circumstances under which that paragraph was applicable.

50. On the question of the settlement of disputes it would appear reasonable to adopt a system analogous to the one provided in the Vienna Convention on the Law of Treaties, which the proposed convention was designed to supplement. However, his delegation had no fixed opinion on that matter as yet.

51. On procedural matters, it would have no objection to a reconsideration of the draft articles by ILC and felt that the convention would have to be adopted at a diplomatic conference of plenipotentiaries.

52. Mr. URIBE (Colombia) said that his delegation had carefully studied documents A/10198 and Add.1 and did not feel that the number of comments and observations by Member States received by the Secretary-General was sufficient to indicate a consensus which would justify convoking an international conference in the immediate future. It believed that a new appeal should be made to those Member States which had not yet done so to submit their observations on the draft articles of ILC. In the light of those new observations, ILC could improve its draft articles and the result, after a reasonable time, could be the convoking of an international conference, possibly in 1977. The instrument to be adopted might, in his delegation's view, take the form of an additional protocol to the Vienna Convention on the Law of Treaties.

The meeting rose at 5.05 p.m.

1527th meeting

Tuesday, 30 September 1975, at 10.45 a.m.

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

A/C.6/SR.1527

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (A/10017)

1. The CHAIRMAN invited the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) to introduce its report (A/10017).

2. Mr. LOEWE (Chairman, United Nations Commission on International Trade Law) made a statement.[1]

3. The CHAIRMAN proposed that, since Mr. Loewe's statement contained many important points not dealt with in the report of UNCITRAL, it should be reproduced *in extenso.*

4. Mr. RYBAKOV (Secretary of the Committee) said that the cost of producing the statement as a document of the Committee in the six working languages would be approximately $250 per page. Furthermore, to produce the statement *in extenso* as part of the summary record of the meeting, rather than as a separate document, would entail additional costs of $80 per page, since final summary records were published in printed form. If no text of the statement was available, the cost of transcribing it from tape recordings would be approximately $400. The total financial implications, therefore, would be from $6,650 to $8,650.

5. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished Mr. Loewe's statement to be reproduced *in extenso* by the least expensive method possible.

It was so decided.

The meeting rose at 11.55 a.m.

[1] The full text of the statement was subsequently issued as document A/C.6/L.1017.

1528th meeting

Wednesday, 1 October 1975, at 3.25 p.m.

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

A/C.6/SR.1528

In the absence of the Chairman, Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

Organization of work

The CHAIRMAN said that no delegation present had requested to speak on item 110. Since the number of speakers for the coming meetings was relatively small, he suggested that the Committee should take up concurrently that item and item 109. Delegations wishing to speak on the latter item were therefore requested to have their names entered on the list which would be opened for that purpose.

The meeting rose at 3.35 p.m.