1550th meeting

Tuesday, 28 October 1975, at 10.50 a.m.

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

A/C.6/SR.1550

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. MHLANGA (Zambia) welcomed the representatives of Cape Verde, Mozambique and Sao Tome and Principe and thanked the Chairman of the International Law Commission (ILC) for his very useful and lucid introduction of its report (A/10010).

2. The draft articles on State responsibility (*ibid.*, chap. II, sect. B), he said, were generally acceptable. Article 10, however, seemed too categorical in its attribution to a state of conduct of State organs acting *ultra vires* with regard to internal law. His delegation would have preferred to have the word "presumed" replace the word "considered" in that article. Although the current text would provide for situations where the conduct in question was that of organs such as multinational enterprises, it was equally important to take into account the possibility that such multinational enterprises could be under the control of some entity other than the State concerned.

3. With regard to article 15, concerning the acts of insurrectional movements, his delegation would prefer to see a clear distinction made between acts of insurrectional movements and those of liberation movements. The latter, being legitimate, should not be subject to subsequent international responsibility. A third paragraph might be inserted in article 15, defining insurrectional movements in such a way as to exclude liberation movements specifically.

4. With regard to the draft articles on succession of States in respect of matters other than treaties (*ibid.*, chap. III, sect. B), he said that his delegation was not satisfied with the reasoning of ILC in article 11 that the passing to the successor State of debts owed to the predecessor State was not relevant to the topic. Such debts could very well be closely tied to State property as defined in article 5. Article 11 should be retained, although a reformulation of the text might be preferable.

5. With regard to the draft articles on the most-favoured-nation clause (*ibid.*, chap. IV, sect. B), his delegation was pleased to know that ILC was increasingly taking cognizance of the problem which the application of the clause created in the field of economic relations in a world consisting of States whose economic development was strikingly unequal. He was glad to note that in formulating article 21 ILC had taken into account General Principle Eight adopted at the first session of the United Nations Conference on Trade and Development (UNCTAD),[1] which stipulated, with reference to most-favoured-nation treatment, that developed countries should grant concessions to all developing countries, land-locked or not. He suggested that a similar draft article should be formulated and adopted by ILC taking into account the problems of land-locked States in relation to the exercise of the right of transit to and from the sea. It would be unsatisfactory if treatment relating to those transit facilities afforded to land-locked States were to be claimed by beneficiary States relying solely on the most-favoured-nation clause. He suggested that similar provisions be made with reference to articles 16 and 17, so as to avoid the anomaly of having national treatment granted to land-locked States relating to transit facilities to and from the sea made subject to claims by beneficiary States relying solely on the application of the most-favoured-nation clause.

6. With respect to the draft articles on treaties between States and international organizations or between international organizations (*ibid.*, chap. V, sect. B), he was glad to note that ILC had largely followed the provisions of the Vienna Convention on the Law of Treaties[2] and not overlooked the fact that international organizations could not, at the current stage of development of international law, be assimilated to States.

7. Concerning the law on the non-navigational uses of international watercourses, his delegation looked forward to future work by ILC on that important topic.

8. With reference to the draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D), he was pleased to note that ILC had based its work on the "clean-slate" principle. He was also gratified to see that ILC had sought to give effect to the decision of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) with respect to boundaries, wherein all States members of OAU had pledged themselves to respect the borders existing on the achievement of national independence.

9. He supported the decision by ILC to establish a planning group in the Enlarged Bureau to study the

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

1 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.

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.

functioning of ILC and formulate suggestions regarding its work. The increasing co-operation of ILC with other international legal consultative bodies was very welcome, as was the continuing series of International Law Seminars, which benefited young jurists from developing States.

10. Mr. ROSSIDES (Cyprus) noted that the work of the Committee was acquiring increasing importance in the current era of growing international insecurity and anarchy. It was vital to make effective progress towards a world legal order, without which there could never be international security or peace. In that respect the work of the Sixth Committee was vitally linked to, and as important as, the work of the First Committee. The Chairman of ILC (1534th meeting) had rightly emphasized the close relationship between ILC and the Sixth Committee, those two bodies being the main pillars of the system devised by the General Assembly for the fulfilment of its responsibility under Article 13, paragraph 1 *(a)*, of the Charter of the United Nations to encourage the progressive development of international law and its codification. Noting the role of the Committee in guiding the work of ILC, in providing an opportunity for Governments to express their opinions on the direction and progress of that work, and in determining the final form for the codification of a topic, he reminded the Committee that it was its duty to proceed expeditiously to take the necessary decisions regarding the final stage of codification, once a final draft or report had been submitted by ILC. Final drafts submitted by ILC were the outcome of a long process of careful and balanced study in that body, combining scientific expertise with political awareness of the realities of international life. The Committee should take into account the increasing demands for international legal order in a rapidly changing and expanding world. He therefore disagreed with the suggestion that the draft articles on succession of States in respect of treaties should be sent back to ILC for further study.

11. Another equally, if not more, pertinent instance of a topic suspended in its progress towards codification by the United Nations was the draft Code of Offences against the Peace and Security of Mankind,[3] to which his delegation attached the greatest importance and whose consideration had been delayed since the adoption of General Assembly resolution 1186 (XII), pending the preparation of a definition of aggression. Since the General Assembly had adopted the Definition of Aggression at the twenty-ninth session (resolution 3314 (XXIX), annex), it should now resume consideration of the draft Code of Offences without further delay in the interests of world legal order and international security. The Committee should take the initiative and make concrete suggestions with a view to completing the progressive development and codification of the subject, particularly at a time when aggression, military intervention and the use of force were becoming more and more prevalent in the life of nations, in violation of the most basic rights of sovereignty, territorial integrity and national independence. The draft Code of Offences was furthermore of relevance to the law of State responsibility, currently the highest priority topic on the agenda of ILC.

12. One of the essential questions that would arise in further work by ILC on the latter topic was whether it would be necessary to recognize the existence of a distinction based on the importance to the international community of the obligation breached and, accordingly, whether international law should acknowledge a separate and more serious category of internationally wrongful acts which could be described as international crimes. Noting the significant distinction between "primary" and "secondary" rules on which ILC had based its work, he said his delegation agreed with the view that the study of the objective element of the internationally wrongful act would render plainly apparent the need to take into consideration the content, nature and scope of the obligations laid on the State by the "primary" rules of international law and to distinguish on that basis between different categories of international obligations. In order to be able to assess the gravity of the internationally wrongful act and determine the consequences attributable to that act, it would be necessary to take into consideration the fact that the importance attached by the international community to respect for some obligations—for example, those concerned with peace-keeping—would be of a completely different order from that attached to respect for other obligations. In that connexion, the completion of the work on the draft Code of Offences against the Peace and Security of Mankind would help to clarify the determination of the degree of gravity and the different consequences attributable to an internationally wrongful act. Such a determination was fundamental to ensure the political viability of the final draft on the topic of State responsibility.

13. He was disturbed by signs in recent discussions in the Committee of changing attitudes towards the value of and need for work on the progressive development and codification of international law. There seemed to be a certain undercurrent, in apparently harmless or even well-intentioned suggestions and initiatives, which favoured slowing down the process of development and codification, as if the modern international law being developed and codified with the participation of all newly independent States was to play a lesser role in the ordering of conduct among nations in the contemporary world and in future. That tendency was regrettable; it reflected negatively on the important work of ILC and ran counter to the ideas of the Charter. Developments such as the accession to independence of many new States, changes in traditional economic and social relations and the scientific and technological revolution had demonstrated the inadequacy of the international law created in the past and had shown that only the progressive development and codification of international law by all members of the international community could ensure the universal and strengthened application of that law as one of the most effective means of achieving international security and durable peace.

14. He welcomed the suggestion of the representative of the Philippines (1547th meeting) that the General Assembly should refer to ILC the Charter of Economic Rights and Duties of States and other related instruments for the purpose of translating their provisions into an enforceable legal convention. That appeal had been made at a time when the United Nations had become the focus of negotiation and debate aimed at the establishment of a new international economic order. The law relating to economic development was a topic which cut across traditional categories of international law and its study by ILC would

3 See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, chap. IV.

be an acknowledgement of the growing emphasis, both within the United Nations and outside, of that emerging body of law as a part of and a complement to the objectives of the United Nations as stated in the Preamble to and Article 1, paragraph 3, of the Charter.

15. He expressed his constant belief and hope that the Committee would not fall behind the march of events and would respond with renewed vigour to the great challenges of the current era, with a view to the establishment of a world legal order in the wider interests of the international community.

16. Mr. TABIBI (Chairman of the International Law Commission), speaking at the invitation of the Chairman, thanked the Committee for the illuminating debate which it had just concluded. He appreciated the words of praise that had been expressed, and felt that the criticism, such as that concerning the length of the report of ILC and its method of work, had been constructive.

17. He observed that ILC was the greatest United Nations scientific body concerned with international law, but its work also had diplomatic aspects and the contribution of the members of the Committee, who sat both as jurists and as representatives of States, was therefore greatly needed. ILC was well aware of the nature of its relations with the Committee, and each year fashioned its programme of work in line with the Committee's decisions, giving careful attention not only to the written comments submitted by Governments but also to the views expressed orally in the Committee, as reported by the Chairman of ILC and by its members who sat in the Committee and as they appeared in the summary records and the Committee's report on the item. It was the spirit of openness and co-operation between the Committee and ILC which had made possible great achievements by the United Nations in the field of international law in less than three decades.

18. Although he had no authority to speak on behalf of ILC concerning the points raised during the debate, he would try to summarize those points briefly. Members had expressed satisfaction at the progress made by ILC on various topics and had also made useful suggestions for further improvement in the methods of work employed by ILC. In that connexion, they had noted with approval the establishment of a planning group to rationalize those methods further.

19. With regard to chapter II of the report on State responsibility, several representatives had approved of the plan of work for the draft articles, which covered responsibility for the breach of any international obligation. Some representatives had stressed the importance of obligations relating to the maintenance of international peace and security, which would be taken into account by ILC in formulating the relevant rules as would the different categories of international obligations. The provisions of the draft articles had, generally speaking, received the support of many delegations, although improvements had been suggested and differing views expressed on some of the saving clauses.

20. Most representatives appeared to have considered the underlying principles of the rules in articles 10, 11, 12, 13 and 14 as basically sound. Articles 13 and 14 did not try to solve the problem of the status and legal capacity under international law of international organizations and insurrectional movements, but rather presupposed that such capacity existed in the concrete cases in which its application was called for. It was obvious that a draft devoted to State responsibility could not be over-extended so as to include the topic of "subjects of international law".

21. With regard to article 15, some had spoken of non-attribution of responsibility in respect of any act committed during the activities of a national liberation movement. The draft article specified what kind of conduct was attributable to the pre-existing and the new State when an insurrectional movement triumphed.

22. With regard to the question of damage referred to by the representative of France (1549th meeting), he wished to recall the position of principle that had been expressed by ILC in paragraph (12) of the commentary on article 3 adopted in 1973.[4] In that commentary ILC had considered whether damage should be considered a third constituent element of an "internationally wrongful act", in addition to the elements of conduct attributable to the State and breach of an international obligation. It had concluded that the term "damage" included "moral damage" and that the "damage" inherent in any internationally wrongful act was inherent in any breach of an international obligation and was therefore already covered by the existing formulation of article 3. In reaching that conclusion, however, ILC had not overlooked the fact that "economic or patrimonial damages" caused by the State's conduct might be an important factor in determining the form and extent of reparation for an internationally wrongful act, a matter which belonged to the second phrase of the study plan (see A/10010, para. 43). It should be added in that regard that when the purpose of the international obligation concerned was to prevent injury, such as damage to a foreign embassy or to a foreigner and his property, negligent conduct of State organs did not constitute an actual breach of an international obligation unless the conduct was combined with material "damage" which the State should have prevented. Unless that occurred, the objective element of an "internationally wrongful act" was lacking. As indicated in paragraphs 45 and 49 of the report on the twenty-seventh session, ILC would examine the matter in chapter III in so far as it was relevant for purposes of the draft under preparation and would make the necessary distinctions between breach of an "obligation of conduct", an "obligation of result" and an obligation brought to light through an external event.

23. In the report on the twenty-seventh session, distinction was also made in paragraph (10) of the commentary on article 11, between the problem of non-attribution of actions of private persons to the State and the problem of determining the amount of the reparation which might be due by the State for its own conduct. That paragraph made it clear that States could be considered obliged to make reparation only as a result of breaches of international obligations attributable to them under international law. It also established that although the extent of the damage could be taken into account in fixing the amount of the

4 *Ibid., Twenty-eighth Session, Supplement No. 10*, p. 21.

reparation, that amount did not necessarily have to be tied to the "economic or patrimonial damage". The fact that financial losses resulting from actions committed by private persons were sometimes used as a yardstick for calculating the indemnity to be paid by the State as a result of its own wrongful act did not mean that the State had endorsed such private acts as its own conduct.

24. Although members of the Committee had generally recognized the outstanding contribution of the Special Rapporteur for the topic of State responsibility, some had expressed uneasiness about the slowness of the pace of the work done by ILC on that topic. He too wished to see codification of that important topic achieved as soon as possible, but believed that success in that field should not be measured mainly by the number of articles adopted at each session of ILC or by the time required to complete the draft. What actually mattered was that Member States should generally support each step forward, having fully understood all its implications. Only if one realistically assessed the difficulties involved and the time required to overcome them would it be possible to codify the law on that topic. In the future, ILC might be able to approve a few more articles at each session, but no significant over-all change could reasonably be expected and such a change would in any case not be very advisable because States needed more time than usual to study the far-reaching rules and commentaries submitted to them by ILC. Indeed, a full study by States before the second reading was the best means of avoiding further total or partial readings in ILC and of facilitating general agreement in the diplomatic body entrusted with preparing a final international instrument. He was therefore glad that some delegations, including delegations which had consistently supported the idea of speeding up preparation of the draft articles, had referred to the goals of ILC as reasonable. In that regard, he observed that although State responsibility had been selected as a topic for codification as early as 1949, ILC began to consider that topic in 1963 on an entirely new basis. Because of the work on other topics, it had not begun preparation of the draft articles until 1973, but since then, work on State responsibility had proceeded systematically, and the Committee should avoid jeopardizing the important progress toward codification that had been made. It should not be forgotten that all previous attempts, both in the United Nations and the League of Nations, had not resulted in an international instrument and that failure could be repeated unless all appropriate technical diplomatic safeguards were taken.

25. With regard to chapter III of the report, on the succession of States in respect of matters other than treaties, the comments made concerning article 9 would help ILC in finalizing that important rule, which had been adopted provisionally. As to article X, the views expressed in the Committee confirmed the division of views within ILC and a careful study of the article in the light of the Committee's observations seemed to be required.

26. With regard to chapter IV of the report, on the most-favoured-nation clause, many representatives had expressed general support of the 14 additional articles on the question prepared at the twenty-seventh session. Some had agreed with the Special Rapporteur that the national treatment clause should be dealt with as well, because of its interaction with the most-favoured-nation clause and because the two clauses often appeared together in treaties. Some delegations, on the other hand, had supported consideration of the national treatment clause only on condition that it did not prevent conclusion of the first reading during the next session of ILC, while others had stated that that question was beyond the terms of reference of ILC and should therefore be put aside.

27. A large number of representatives had considered that the rule in article 21 should be expanded by ILC in order to cover the interests of the economically weaker nations. Most members, including all representatives from the third world, had said that such expansion was part of the law of development, was supported by world public opinion, and was in line with General Assembly resolutions 3281 (XXIX) and 3362 (S-VII) and decisions of GATT and UNCTAD. In the view of those members, the rules contained in the instruments he had mentioned should be explored by ILC in the coming year in order to include appropriate provisions in the future draft convention.

28. Representatives had also declared themselves in favour of saving clauses which underlined the residual character of rules, such as that inserted at the beginning of article 16. Strong objection had been made by the supporters of customs and economic unions that the trend towards such associations should not be curtailed, but supporters of article 15 had observed that no existing rule recognized an exception for such associations and that the matter should be studied in connexion with article 7 rather than article 15. Third world representatives had stated that to apply the most-favoured-nation clause to all countries regardless of their level of economic development involved implicit discrimination against those countries and widened the gap between rich and poor countries.

29. Representatives of the land-locked States who had participated in the discussion had without exception supported article 14 in the light of paragraphs (8) to (10) of the commentary on that article. It was natural that the fundamental right of a land-locked State to free access to the sea, which was a special right derived from the principle of freedom of the high seas and belonging only to that State because of its geographical position, could not be invoked by any third State by virtue of a most-favoured-nation clause. All those points would be studied by ILC.

30. With regard to chapter V of the report on the question of treaties concluded between States and international organizations or between two or more international organizations, he noted that the members of the Committee approved of the approach taken by the Special Rapporteur and ILC that the draft should reflect, as appropriate, the provisions of the Vienna Convention on the Law of Treaties, but should also take into account the specific characteristics of those treaties.

31. With reference to the questions dealt with in chapter VI, some delegations had expressed the wish that ILC should speed up its work on the question of the law of the non-navigational uses of international watercourses, while others had stated that the priorities approved by the General Assembly in resolution 3315 (XXIX) should not be disturbed.

32. Those members of the Committee who had spoken on the question had given unanimous support to the exchange of observers between ILC and regional legal bodies such as the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the European Committee on Legal Co-operation, exchanges which enabled those bodies and ILC to benefit mutually. During the past session of ILC representatives of each of the regional bodies he had named had made useful statements and he intended, in accordance with the request of ILC, to participate in meetings of those bodies in the near future.

33. The International Law Seminar, which was closely related in purpose to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, was of great benefit to young jurists from all Member States, including the third world countries, and he was glad that some generous nations whose representatives had spoken during the debate would make further contributions towards that programme. He supported the suggestion by the Swedish representative (1545th meeting) that that programme should be included in the regular United Nations budget and hoped that members of the Committee would take the appropriate steps to carry out that proposal, since the budgetary support of the United Nations would be of great help in providing to jurists in the developing world the training that they needed in order to lay the legal foundations of their society.

34. Both the Sixth Committee and ILC could play a decisive role in preparing legal documents relating to the new international economic order, and he therefore agreed fully with those representatives, including the representative of the Philippines, who had said that there were gaps in the decisions concerning economic rights and duties of States taken by the General Assembly which made it necessary to translate those economic rights and duties into binding legal rules. That was vital in the face of the population explosion, most of which was taking place in the third world, particularly in Asia, where the dire need of the people for food, shelter and health care posed a serious problem for world peace.

35. With regard to the method of work of ILC and proposals for its improvement, he appreciated the detailed and scholarly comments made by the representatives of Norway, Australia and the United Kingdom (1540th, 1541st and 1548th meetings, respectively). Replying to the points raised, he pointed out first of all that each chapter of the report of ILC was prepared on an *ad hoc* basis, taking into account a series of factors which differed from topic to topic. Drafts based on well-established principles or rules did not require the same treatment as drafts based on an analysis of State practice. Moreover, in some fields international law was very rich in relevant precedents while in other cases such precedents were lacking or not so abundant. The procedural stage reached in the study of a given topic was also an important factor in the presentation of the corresponding chapter. Generally speaking, a chapter containing a final draft could be presented in a more consolidated manner, avoiding repetitions which were sometimes necessary during a first reading. Secondly, the task of codification was not the same in the 1970s as it had been in the 1950s, when the majority of Member States were old States which had participated, directly or indirectly, in the formation of international law. For those States, which had rich documentation on State practice, judicial decisions and doctrine, the information included by ILC in some commentaries might appear to be superfluous. But that was not true in the case of the many newly independent States which constituted two thirds of the membership of the United Nations. For the new States, express references to precedents were very helpful, particularly in the preparation of their written and oral observations on the drafts prepared by ILC. Even if the price was high and the report voluminous, the repetition of historical background and detailed commentary was of practical importance, inasmuch as all States were entitled to know the legal background of the rules proposed by ILC. Only with the informed support of States could a given rule be codified so as to be implemented effectively in international relations. Full knowledge of precedents was, moreover, the best way of facilitating the progressive development of the law and its adjustment to current needs of the international community. Thirdly, the current needs of States called for a codification wider in scope and more detailed in content than in the past. With the increasing pressure for more precise codification, drafts had become longer and fuller, entailing much more elaborate commentaries in order to avoid misunderstanding. Lastly, the length of the report of ILC was also attributable to the increasing number of articles adopted at each session and, in particular, to the fact that ILC was working on several important topics at once.

36. The current situation was not due to any initiative of ILC but rather to the recommendations adopted by the General Assembly on the proposals of the Sixth Committee itself. For instance, during the preparation of the draft articles on the law of treaties, ILC had put aside the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations, but subsequently the General Assembly had recommended (resolution 2501 (XXIV)) that ILC should take up the study of those two topics. It was also on the recommendation of the Assembly (resolution 2669 (XXV)) that the law of the non-navigational uses of international watercourses had been referred to ILC and included in its programme of work. The Assembly had further recommended (resolution 3071 (XXVIII) that ILC should appoint a Special Rapporteur for that topic, notwithstanding the fact that four other topics were still under active consideration. A few years before, the Assembly had recommended that the work of ILC on State responsibility should continue on a high-priority basis and that recommendation had been repeated the previous year (resolution 3315 (XXIX)), but at the same time the Assembly had asked ILC to proceed with the preparation of the draft articles on succession of States in respect of matters other than treaties on a priority basis. Finally, at the current session, a suggestion had been made in the Sixth Committee that ILC should codify the principles embodied in the Charter of Economic Rights and Duties of States on a priority basis. All of that was quite understandable in the light of the eagerness of States to make progress in areas of interest to them, but not all were interested in giving priority to the same topics. The Sixth Committee must recognize that the inevitable result was that ILC had no alternative but to divide its available time

among several topics. If it was deemed advisable to limit the number of topics under active consideration, it was incumbent upon the Sixth Committee to so indicate to the Assembly by making the necessary choices. The question of codification policy had to be decided by the Sixth Committee, which was the diplomatic body in control of the codification process. Of course, ILC would endeavour to make improvements in its future reports, where reasonable and possible, without harming the codification process. Some of the suggestions advanced in the current debate could be useful and were worthy of consideration by the planning group established by ILC. Nevertheless, if the reports of ILC were more complex than in the past, the reason was that the codification of international law as a scientific and diplomatic undertaking was currently a more complicated technical and political endeavour than in the 1950s or under the League of Nations. All the members of ILC, as well as the Sixth Committee, would have to work still harder if the *corpus juris* of codified international law was to continue to be enriched in the future as it had been since the establishment of the United Nations.

37. As to the suggestion that the report of ILC should in future be sent to Member States much earlier, he pointed out that, because of the duties of the members of ILC, particularly those with academic and professional commitments, it was impossible for ILC to change the date of the convening of its session. The draft report of ILC was always ready at the end of July or early in August, but the translation and reproduction of such a highly technical and scientific report posed difficulties if it was needed by the end of August for submission to Member States. The best way of meeting that problem might be to postpone consideration of the report to a somewhat later stage in the work of the Sixth Committee, thereby giving delegations more time to study and digest the contents of the report.

38. One other point he wished to mention was the continued underestimation of the work of ILC by the Fifth Committee and its related organs and officers. ILC had faced that difficulty ever since its establishment under the statute elaborated by the Sixth Committee and approved by the General Assembly. That statute being in force, administrative and budgetary arrangements could not be made without duly taking into account the letter and spirit of its provisions. He recalled that the previous year the Joint Inspection Unit had raised certain questions[5] without consulting ILC, but thanks to the support of the Sixth Committee, the Assembly had endorsed by consensus the position maintained by ILC. At the current session, the Secretary-General had been kind enough to heed the request made by ILC and to propose to the Fifth Committee (see A/C.5/1677 and Corr.1) a small increase in the allowance received by Special Rapporteurs for preparing reports, which had remained unchanged since the establishment of ILC in 1949 and an even smaller increase in the allowance for members of ILC. However, the Secretary-General's proposal for an increase in those allowances had been rejected by the Advisory Committee on Administrative and Budgetary Questions (see A/10008/Add.3). He (Mr. Tabibi) had sent a letter explaining in detail the relevant factual points for the information of the Fifth Committee but had been told that that letter would not be circulated. He had also been told that despite the consensus decision of the Sixth Committee and the General Assembly in support of the statutory provisions concerning the place of meeting of ILC (resolution 3315 (XXIX)), in the current year's report of the Committee on Conferences reference had been made (see A/10032, para. 53) to the effect that that matter might be reopened. The previous year's decision by the Sixth Committee and the General Assembly should be reconfirmed, and he requested that his letter on the honoraria, which represented the views of ILC, should be circulated as a document.

39. He expressed appreciation to the secretariat of ILC and said that he was gratified by the scholarly debate that had taken place at the current session. Both ILC and the Sixth Committee were engaged in the same noble task of establishing the rule of law and he hoped that the next 30 years would be even more productive and satisfactory in furthering the rule of law in the interests of world peace and human happiness.

40. The CHAIRMAN thanked the Chairman of ILC for his very scholarly summary of the debate on the report on the work of ILC at its twenty-seventh session. He hoped that the Chairman of ILC would convey the Committee's regards to the members of ILC and would report on the deliberations held in the Committee. Regarding the matter of honoraria, he felt that the Sixth Committee had an obligation, considering the great importance of the work of codifying and progressively developing international law, to ensure that ILC was given the tools to do its job properly, including adequate financial allocations to enable its members to perform their duties. ILC was at least entitled to due process and to have its views considered in the competent budgetary bodies. He therefore proposed that the Sixth Committee should decide to circulate the letter referred to by the Chairman of ILC as a document and to refer it to the Fifth Committee, which was competent to deal with the matter.

41. Mr. FRANCIS (Jamaica) endorsed the proposal just made by the Chairman but suggested that supplementary action should also be taken as quickly as possible to bring the views of ILC to the attention of the Fifth Committee, which was considering a draft resolution (A/C.5/L.1236/Rev.1) that would have the effect of deferring the question of allowances and honoraria for further study. The treatment accorded to the letter from the Chairman of ILC was not only an affront to him but to the whole legal fraternity in the Sixth Committee. He therefore suggested that consultations should be undertaken as expeditiously as possible with a view to achieving an amicable solution of the matter at issue.

42. Mr. VANDERPUYE (Ghana) said that the request of the Chairman of ILC would have had more weight behind it if it had been routed through the Chairman of the Sixth Committee instead of directly to the Fifth Committee. He agreed with the previous speaker that the whole situation was an affront to the legal fraternity and that fast action should be taken. To that end, he urged the members of the Sixth Committee to contact their opposite numbers on the Fifth Committee with a view to finding a way of accommodating the request made by the Chairman of ILC.

5 See A/9795 and Add.1 and 2.

43. The CHAIRMAN said that the Sixth Committee was obviously not competent to deal with the matter in its financial aspects but, without encroaching on the prerogatives of the Fifth Committee, it could make sure that in considering the matter the Fifth Committee would have before it the relevant facts as presented by the Chairman of ILC.

44. Mr. TODOROV (Bulgaria) said that, as he understood the situation, the Fifth Committee had taken the position that it did not wish to circulate the letter of the Chairman of ILC. Consequently, if the Sixth Committee decided to circulate the letter as an official document, an undesirable confrontation might arise between the two Committees. He therefore felt it would be best for the Chairman of the Sixth Committee to take the matter up personally with the Chairman of the Fifth Committee before a decision was taken to circulate the document in question.

45. Mr. TABIBI (Chairman of the International Law Commission) agreed with the representative of Bulgaria that it might be appropriate for the Chairman of the Sixth Committee to make an effort to contact the Chairman of the Fifth Committee to discuss the situation.

46. Mr. FRANCIS (Jamaica) supported the idea that members of the Sixth Committee should contact their counterparts on the Fifth Committee in an effort to obtain more favourable consideration for the request made by ILC. If a few delegations were allowed to carry the day without dissent, a decision might be adopted based on false premises.

47. The CHAIRMAN said that he would enter into formal consultations with the Chairman of the Fifth Committee, as had been suggested, and hoped that in the meantime the members of the Sixth Committee would pursue parallel consultations with their respective delegations' representatives to the Fifth Committee.

The meeting rose at 1.10 p.m.

1551st meeting

Tuesday, 28 October 1975, at 3.20 p.m.

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

A/C.6/SR.1551

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General (A/10139, Part I and Add.1 and Part II)

1. The CHAIRMAN recalled that it was at the request of the Government of Australia that the question of diplomatic asylum had been included in the agenda of the twenty-ninth session of the General Assembly[1] and that the latter had decided to refer it to the Sixth Committee for consideration. As a result of the Committee's consideration of the matter, the General Assembly had adopted on 14 December 1974 resolution 3321 (XXIX), in which it had invited Member States to communicate their views on the question to the Secretary-General and requested the Secretary-General to prepare a report containing an analysis of the question of diplomatic asylum.

2. Mr. LAUTERPACHT (Australia) said that since the preliminary exchange of views in the Committee in 1974, two documents had been issued on the question of diplomatic asylum. One (A/10139, Part I and Add.1) contained the views that 25 States had communicated to the Secretary-General in accordance with General Assembly resolution 3321 (XXIX). The other (*ibid.*, Part II) contained the detailed report that the Secretary-General had prepared pursuant to that resolution and gave a thorough and informative survey of the available materials on diplomatic asylum. When in 1974 his delegation had introduced the item on diplomatic asylum in a working paper[2] it had referred to the utility of initiating a preliminary examination of the humanitarian, legal and other aspects of diplomatic asylum. In so doing, Australia had been motivated exclusively by a concern to foster what it regarded as a beneficial concept, namely the idea that an embassy might give sanctuary to a fugitive, on condition that, first, the person in question was not a common criminal but was being pursued for political reasons or political purposes and that, secondly, the case was urgent because the individual's life was endangered, for example in the case of political commotion or uprisings. Coupled with that concept of asylum was the idea that it was temporary and that in due course the asylee would be able to leave the embassy confident about his future safety.

3. There were a number of factors involved in the institution of diplomatic asylum, the foremost being the humanitarian element. The grant of sanctuary, which interposed a temporary physical barrier between a fugitive and a situation dominated by extra-legal characteristics, performed an immediately valuable social function. Everyone was fundamentally affronted when seeing life destroyed which could have been saved or witnessing suffering caused which could have been avoided through immediate physical protection.

4. Against that humanitarian element must be balanced the consideration of the sovereignty of the State within whose territory the issue of asylum arose. Everyone

1 See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 105, document A/9704.

2 A/C.6/L.992.