Enclosed and Semi-Enclosed Seas : One participant had serious reservations as to whether a chapter on enclosed and semi-enclosed seas should be included in the comprehensive Convention on the Law of the Sea. He was of the view that there was no special rule of International Law justifying a special regime in regard to such seas. The other view was that the special characteristics of enclosed and semi-enclosed seas as well as principles of justice and equity demanded the inclusion of special provisions which would be applicable to such areas and a separate chapter in the Convention ought to be incorporated for this purpose.

One of the important issues discussed with regard to the enclosed and semi-enclosed seas was the question of delimitation of maritime boundaries in such areas. This matter has, however, been dealt with under Delimitation in general. There was also some discussion on the need for terms such as "enclosed seas" and "semi-enclosed seas" to be clearly defiined in the proposed Convention. A view was expressed that provision should be made in the ICNT to guarantee unimpeded freedom to ensure overflight in and over outlets beyond the limits of territorial sea which would otherwise be excluded from the application of special rules applicable to straits used for international navigation.

ISSUES BEFORE THE THIRD COMMITTEE OF UNCLOS-III AND SETTLEMENT OF DISPUTES

At the three sessions of the Committee under review the issues before the Third Committee and the Plenary of UNCLOS III, could not be discussed owing to the Committee's preocupation with matters relating to First and Second Committees, especially the evolution of generally acceptable international regime for the exploitation of the mineral resources in the International Seabed Area. The documentation prepared by the Secretariat for the three sessions of the Committee contained exhaustive analyses of the provisions of the various Negotiating Texts formulated

at the Fourth, Fifth and Sixth Sessions of UNCLOS III on these issues, focussing on the changes that each revision of the Negotiating Text had effected and the consequences of these changes for the developing countries of Asia and Africa.

It may be recalled that the Explanatory Memorandum to the Composite Text stated that the provisions relating to Third Committee matters constituted a generally accepted package in which a delicate balance had been maintained between the various interests involved with regard to marine pollution and marine scientific research. Although absence of discussion on these issues at these three sessions of the Committee should in no way be construed as an acceptance of the provisions of the Negotiating Texts, it might very well be indicative of the intention of member Governments to continue the negotiating process with regard to these issues within UNCLOS III itself.

III. SUCCESSION OF STATES IN RESPECT OF TREATIES

SUCCESSION OF STATES IN RESPECT OF TREATIES

The International Law Commission, at its twenty-sixth session held in 1974, adopted a set of 39 draft articles on "Succession of States in respect of Treaties" and recommended to the U.N. General Assembly to convene an international conference of plenipotentiaries for the purpose of establishing a Convention on Succession of States in Respect of Treaties on the basis of those draft articles. The General Assembly convened a first session of the plenipotentiary conference in April-May 1977 and a resumed session in July—August 1978 which adopted a Convention on Succession of States in respect of Treaties.

Under Article 3(a) of its Statutes, this Committee is required to review the work of the International Law Commission from the Asian-African perspective and to make such recommendations to its member governments as it may deem fit. In furtherance of this objective, the Committee's Secretariat also takes upon itself the task of assisting the Delegations of its member States attending the legal conferences convoked by the United Nations and its bodies by submitting to them relevant studies and other documentation. Accordingly, the Committee's Secretariat had been keeping under review the work of the Commission on the subject of State Succession in respect of Treaties until its culmination in the draft articles on the subject. The draft articles were discussed in depth at the Baghdad and Doha Sessions of the Committee on the basis of the studies prepared by the Committee's Secretariat. The Committee's Secretariat also prepared special studies for the assistance of the Asian-African Delegations who attended the plenipotentiary Conference on this subject.

Since the discussions at both the Baghdad and Doha Sessions of this Committee were concentrated on some of the most controversial of the draft articles, namely Articles 2, 6, 7, 12, 22 *bis*, 33 and 39 *bis*, a summation of the discussions at both the sessions is set out as below ;

On Article 2 on "Use of terms" the main controversy centred around its paragraph 1 (a), (b) and (f) and paragraph 2.—Sub-paragraph (f) defined a "newly independent State." It was stated that the basic principle of the draft was that a newly independent State was born free and began its life with a 'clean slate'. With one or two exceptions, that principle had been accepted by all the governments and it was fully consistent with the general law of treaties, according to which the will of the State was the decisive element in treaty-making procedure, i.e. the principle of self-determination and the rule of equality.

Many delegations were of the view that the term "newly independent State" in sub-paragraph (f) which determined the circumstances in which the 'clean slate' principle would apply to successor States, had a rather restrictive meaning. It excluded cases of a 'new state' emerging as the result of separation of part of an existing State or the union of two or more existing States to which the rule of *ipso jure* continuity of treaty obligations wou'd apply. The definition of 'newly independent State' should include all new successor States. Further, the adoption of the principle of *ipso jure* continuity in some cases and of the 'clean slate'principle in others needed further careful consideration. As regards the extension of the definition of the term 'newly independent State' to cover cases of States becoming independent in circumstances other than decolonisation, the general consensus that emerged was that paragraph 1 (f) should be reformaluted to take account of the varions types of dependencies and the stages of their progress towards independence.

As regards Article 2 (1) (a) and (b) defining the terms 'treaty' and 'succession of States' respectively, a few delegates at the Baghdad Session were of the view that the definition of the term 'treaty' was inadequate in that it did not sufficiently highlight the subjective element present in any treaty, namely the will of the State to assume obligations,

and consequently the term 'valid' should be inserted before the word 'treaty' since Article 2 dealt only with 'valid' treaties, not with colonial or unequal treaties.

Some delegates sought to expand Article 2 (1) (b) by replacing the words "in the responsibility for the international relations of territory" by "in the rights and obligations resulting from the international relations of territory".

As regards paragraph (2) of Article 2, some delegates suggested its deletion as they considered that in any case it would not be possible to prevent States from using terms other than those embodied in the draft Convention and many contracting States might refuse even to use the terms adopted in the draft Convention. On the other hand, those who favoured retention of paragraph (2), contended that that provision ensured respect for the sovereignty of all States and that such a provision would enable many State members of the U.N. to overcome their constitutional problems.

At the Baghdad Session, opinions were divided as to the necessity for the inclusion of Article 6 which dealt with "cases of succession of States covered by the present articles". Those who favoured its inclusion were of the view that the article was needed because some of the States desired to underline that only succession occurring in conformity with International Law should fall within the ambit of the draft articles.

When this article was further discussed at the Doha Session, it was generally agreed that the article, as presently worded, was fairly limited since it implied that the draft Convention would not apply when a State came into being in a manner contrary to the principles of International Law as embodied in the U.N. Charter. It was contended that it would be too difficult to decide who was competent to pronounce on the lawfulness or unlawfulness of any given situation. It was, therefore, suggested that the concept of a

lawful situation must be defined in the draft Convention. In addition, the word 'only' should be replaced by the word 'normally', in order to give a wider scope to the draft article.

At the Doha Session, discussion also focussed on the following questions-Would acceptance of Article 6 in its present form not entail sometimes a successor State as having committed an act of aggression? To what extent were certain political realities to be recognized ? Should the Conference draft an article which appeared to sanction the replacement of one State by another in circumstances that did not conform with International Law? Some delegates suggested that the article should be redrafted in such a way as to clarify that although the benefits of the draft Convention could not be enjoyed in 'unlawful cases', obligations should apply in all cases. Many delegates were of the view that the inclusion of this article might bring in some element of subjective judgment with regard to the question of applicability of the draft Convention to the particular case of State succession, falling within the scope of draft article 2 (1) (b). It was, however, felt that the basic idea contained in Article 6 was unobjectionable and was worth retaining; it was right in principle to restrict the application of the draft Convention to situations occurring in conformity with International Law, for an imperfect draft was preferable to one shorn of so vital a provision.

Article 7 on "non-retroactivity" was the subject of some controversy at both the Baghdad and Doha sessions. One view was that this article should be deleted altogether as it tended to cast doubt on the customary practices particularly in the context of the experience of the African and the Latin American State practice, and further shrank the usefulness of the 'clean slate' principle.

The other view was that a text on the lines of the present draft Article 7 ought to be a necessary part of the

proposed Convention, whatever form the provision might take, if the effect of the rule of non-retroactivity contained in Article 28 of the Vienna Convention on the Law of Treaties was to be avoided. The adherents of this view felt that the principle of continuity of treaty relations should also play an important role in promoting stability in the international society. State practice being divergent, the issue should be treated in the nature of progressive development of international law but careful deliberation was necessary so that the outcome should not prejudice the existing treaty relations among States or negate or confuse the effects of a State sucession which had occurred in the past.

At the end of the discussion it was felt that the need was to work out a Convention responsive to the current pre-occupations of many States and the long-term needs of the international community.

Article 22 on "Other territorial regimes" provoked some debate, but the general trend was in favour of its retention for maintaining a balance between the 'clean slate' principle and the principle of continuity in the context of territorial regimes.

Some of the delegates expressed the view that succession of States as such did not affect the boundary and other territorial regimes established by treaties because they were matters relating to legal situations resulting from the dispositive effects of treaties, but at the same time it should be ensured that treaties with dispositive effects were not necessarily confined to those concerning boundary and territorial regimes. According to these delegates, the rules contained in Article 12 reflected rules of customary international law recognized both by jurists and State practice and that the approach taken by the International Law Commission, namely to formulate the rule so as to relate it to the legal situation obtaining as the result of treaties rather than to treaties themselves was commendable. In their view, Articles

11 and 12 made a distinction between treaties establishing boundaries and other types of treaties and made the former an exception to the rule of 'clean slate' as provided in Article 15.

Favouring the adoption of Article 12, some of the delegates, however, felt that some of the amendments suggested by the Latin American countries (Mexico and Argentina) at the Conference elaborating its application to situations of military bases and permanent sovereignty over natural resources, deserved careful consideration.

The consensus that emerged out of this discussion stressed the need to strike a balance, or to find some common denominator, between the views of those who favoured the expansion of the text and those who favoured its retention without any change.

Article *22 bis* on "Notification by a depositary" proposed for inclusion in the draft Convention at the first session of the Conference was intended to fill a lacuna by entrusting the depositary of multilateral treaties with a new task of informing the competent organs of a newly independent State of the fact that a treaty applied to the territory of that State and providing them with all the necessary information concerning that treaty. Although a majority of the delegates were agreed on the usefulness of this article, some delegates felt that this provision would impose an unduly heavy burden on the U.N. Secretary-General. Further, doubts were raised with regard to the somewhat peremptory wording of paragraph 1 of this article which stipulated that the depositary "shall notify" a newly independent State that the treaty had been extended to the territory to which the succession of State relates. In this connection, it was questioned whether the Conference was legally competent to impose such an obligation on depositaries of multilateral treaties.

Against the inclusion of Article *22 bis*, the view was expressed that Article 17, paragraph 1 (a) to (f) of the Vienna

Convention on the Law of Treaties was a sufficiently clear statement of the obligations of the depositary and that the International Law Commission had itself indicated that the Secretary-General of the United Nations, as a depositary of international treaties, should comply with that provision. In this context, it was also doubted whether an official character should be attached to those particular functions of the depositary.

At the Baghdad Session, there was a general discusssion on Articles 30 to 37 of the draft articles which dealt with "Uniting and Separation of States". These draft articles, unlike the draft articles on newly independent States, were based on the rule of *ipso jure* continuity, subject to an exception for the case where a separated part of a State became a State in circumstances akin to those leading to the formation of a newly independent State. Article 33(3) provided this exception and applied the 'clean slate' principle as in the case of newly independent State where the successor State came into existence in similar circumstances. In this regard, two viewpoints were expressed at the Baghdad Session. First, in the case of a State coming into existence as a result of the process of decolonization, it could be said that the existing treaties were imposed by administering powers without the territory having any say in the matter, but this consideration did not apply to the case when a part of an existing sovereign State attained independence because the territory was associated in the treaty-making process of the State. Second, if a part of a State territory broke away and formed itself into a new State in circumstances similar to those of a colonial territory attaining independence, the new State should have the option to continue or not to continue the existing treaty regimes. At the Doha Session, these views were reiterated, but some of the delegates expressed dissatisfaction over the exception contained in Article 33(3) as they thought that it introduced a subjective assessment and would give rise to contradictions and complications in determining whether the particular circums-

tances were "essentially of the same character as those existing in the case of the formation of a newly independent State". In their view, the article needed some improvement.

Two more articles had been submitted at the twenty-sixth session of the Commission, but as there was not sufficient time to discuss them, the Commission had mentioned them in the introductory part of the report. The first was a draft article 12 *bis* entitled "Multilateral treaties of universal character" proposed by Professor Ushakov (U.S.S.R.) and the second was draft article 32 entitled "Settlement of disputes" proposed by Mr. Kearney (U.S.A.).

At the Baghdad Session, some of the delegates were in favour of including Article 12 *bis* proposed by U.S.S.R. which sought to ensure that multilateral treaties of a universal character (as defined in Article 2) should continue in force for a newly independent State until such time as that State gave notice of termination. Some other delegates, however, advocated a cautious approach to this proposal owing to the inherent difficulties in distinguishing between law-making and other treaties.

As regards the proposal made by Mr. Kearney on settlement of disputes (Article 32 of the I.L.C. draft, later renumbered as Article 39 *bis*), at the Baghdad Session, some delegates referred to the need for a procedure for the settlement of disputes as several articles of the draft convention might lead to difficulties in their application. It was noted that the draft article was based on Article 66 of the Vienna Convention on the Law of Treaties. On the other hand, several of the delegates were of the opinion that settlement of disputes should be effected by agreement between the States concerned. The latter view was reiterated at the Doha Session.

IV. ENVIRONMENTAL LAW

ENVIRONMENTAL LAW

The subject of "Environmental Law" was first discussed in some detail by the Committee at its Teheran Session in 1975 on the basis of a preliminary study prepared by the Secretariat.[1] At this session, a number of delegates made general observations regarding the future programme of work of the Committee on this subject.[2] Finally, the Committee decided to appoint a Study Group on Human Environment, composed of the representatives of Arab Republic of Egypt, Bangladesh, Ghana, India, Iran, Pakistan and Sri Lanka and further directed that it should meet after the relevant documentation had been prepared by the Committee's Secretariat.

The Committee's Secretariat prepared another study on the subject for circulation just before the Seventeenth Session of the Committee which was held at Kuala Lumpur from 28 June to 5 July 1976. The object of the study was to enable the member governments of the Committee to discuss the subject in greater detail and to direct the Secretariat as to the manner in which it should organize its preparatory work.

The second study embodied a detailed commentary on the developing legal principles of international environmental law. It was pointed out, among other things, that international environmental law was still in the process of development and that the phenomenon of environmental pollution posed a variety of legal problems of national and international significance; that the existing national legislations dealing with environmental problems were in general so weak, or their scope so limited, that they were unable to deal with various environmental problems effectively; and that it was useful to consider those established general principles of law which may well be applied in the evolution of an

1. See AALCC Report of the Sixteenth Session, held in Teheran from 26 January to 2 February 1975, PP. 103.
2. Ibid. PP. 172-177.