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SUMMARY RECORD OF THE 45th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 138: VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS (A/41/142)

1. The CHAIRMAN drew attention to document A/41/142 and to the explanatory memorandum annexed hereto.
2. Mr. FLEISCHHAUER (Legal Counsel) said that authorization was not normally sought from the General Assembly for the signing of international treaties and agreements which related to the activities of the United Nations. It was the first time, however, that the United Nations was eligible to sign such a codification Convention. It therefore seemed appropriate to seek the authorization of the General Assembly at the current session, since the time limit for signature would expire before the forty-second session.
3. Relations of the United Nations with States and other international organizations had always been guided by the general principles of the law of treaties as embodied in the 1986 Vienna Convention, which formalized those principles and practices. Support for the Convention was therefore in the interest of the Organization and the United Nations should demonstrate its leadership by signing it within the time limit. The question of formal confirmation did not arise at the current stage since no instrument of ratification had yet been submitted by any of the 13 States signatories to the Convention.
4. The General Assembly should defer its consideration of the administrative and financial implications of paragraphs 9 and 14 of the annex to the Vienna Convention until it came to consider whether to authorize the deposit of an act of formal confirmation or until the Convention came into force, if that happened earlier. At that time the General Assembly would also be required to consider the mechanism for nominating the two persons for the list of qualified jurists to serve on the Arbitral Tribunal or Conciliation Commission.
5. Mr. SCHRICKE (France) said that the French delegation had voted against the Convention as a whole because it contained a provision where treaties would become void if they were in conflict with a peremptory norm of general international law (jus cogens). It would be dangerous to jeopardize the rule pacta sunt servanda. Moreover, his delegation was opposed to organizations of which it was a member, and in the present case the United Nations, signing the Convention. There was little practical point in the United Nations signing the Convention, since in accordance with article 85 only the deposit of the instruments of ratification or accession of States was taken into consideration for determining the entry into force of the Convention. In the event that after the entry into force of the Convention, it should appear useful or necessary for the United Nations to participate, his delegation would accept such participation on the express condition that it should be accompanied by a reservation concerning jus cogens. For the time being, the United Nations should not sign the Convention.

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(Mr. Schricke, France)

6. With respect to paragraphs 9 and 14 of the annex to the Convention, his delegation had expressed its reservations at the time of their adoption. It still considered that the United Nations should not bear the burden of expenses which were unrelated to its own spheres of competence and which should, in accordance with the usual practice, be borne by the parties to the arbitration or conciliation procedure. The proposed system of financing would encourage irresponsibility since there would be no financial penalty for frivolous impeachment of the validity of a treaty. His delegation's concern with the security and stability of international commitments was an additional motive for objecting to the assumption by the United Nations of such expenses.

7. Mr. GAUDREAU (Canada) said that the will of the Organization in respect of the Convention had already been expressed in paragraph 5 of General Assembly resolution 37/112. Moreover, the General Assembly in paragraph 3 of its resolution 40/76, had approved the participation of the United Nations in the Conference on the Law of Treaties between States and International Organizations or between International Organizations. The way was therefore clear for the Secretary-General to sign the Convention on behalf of the United Nations, and it would be desirable if he did so within the time limit provided.

8. Mr. MARTINEZ (Mexico) said that the Convention had already been transmitted to the Mexican Senate for approval, after which it would be possible for his Government to deposit its instrument of ratification. He appealed to those States and international organizations with the capacity to conclude treaties to sign that important international juridical instrument as soon as possible if they had not yet done so. He also hoped that the United Nations Council for Namibia would take the necessary steps to ensure that Namibia became a party to the Convention.

9. Having regard to previous practice, and to its status as a subject of international law, the United Nations clearly had the legal capacity to conclude international treaties. It therefore fulfilled all the necessary requirements to sign the Convention and to submit its act of formal confirmation and his delegation would fully support the Secretary-General in taking such action on behalf of the Organization.

10. MR. BOSCO (Italy) said that the Vienna Convention on the Law of Treaties between States and international Organizations or between International Organizations was an important step in the codification of international law, just as the 1969 Convention on the Law of Treaties had been fundamental in the same field. His delegation welcomed the fact that the new Convention adhered closely to the text of the 1969 Convention.

11. With respect to the note by the Secretary-General in document A/41/142, his delegation considered that, as a body endowed with an international legal personality, the United Nations could sign a Convention. That position was confirmed by article 6 of the Convention which provided that the capacity of an international organization to conclude treaties was governed by the rules of that organization. Although there were no written rules to that effect in the Charter,

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(Mr. Bosco, Italy)

he felt that the practice of the past 40 years justified his delegation's conclusions and hoped that the Secretary-General would sign the Convention on behalf of the Organization. That would stimulate other international organizations to do likewise.

12. Italy had voted in favour of the resolution adopted at the conclusion of the Vienna Conference relating to the annex on arbitration and conciliation procedures, since the Convention should include adequate provisions for the settlement of any dispute concerning the interpretation or application of its articles. The annex completed the provisions of article 66 of the Convention. He therefore welcomed the Secretary-General's intention to make appropriate proposals to the General Assembly with regard to paragraphs 9 and 14 of the annex.

13. Mr. SCHARIOTH (Federal Republic of Germany) said that the Vienna Convention was a major achievement and a most valuable legal instrument, which his Government intended to sign within the time limit.

14. It was important that the Convention should be signed by the largest possible number of Governments and international organizations entitled to do so. The United Nations should therefore provide an example for other international organizations by signing the Convention.

15. He supported the proposal of the Legal Counsel to defer to a later date consideration of the question of the expenses of any arbitral tribunal or conciliation commission set up under article 66 of the Convention.

16. Mr. EDWARDS (United Kingdom) said that the Conference on the Law of Treaties between States and International Organizations or between International Organizations had been an undoubted success for the codification process. The new Convention should prove a valuable complement, in practice, to the 1969 Vienna Convention on the Law of Treaties, itself one of the main achievements in modern codification. It was striking that it had been possible to operate by general agreement at the Conference on all but a handful of the most intractable problems. That had been in no small measure the result of the painstaking intergovernmental consultations carried out in advance of the Conference. There were clearly lessons for the future to be drawn from the techniques that had been applied.

17. The United Kingdom was favourably disposed towards signing the Convention. With respect to whether the United Nations should itself sign, the United Kingdom delegation was generally in favour of allowing all international organizations with a substantial treaty-making practice to make use, with the approval of their governing organs, of the faculty of signature and formal confirmation for which the Convention provided. The United Nations was an organization which fell into that category.

18. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the 1986 Vienna Convention represented a landmark in the codification and progressive development of international law and reflected the increased importance of

(Mr. Orizhonikidze, USSR)

international organizations in the contemporary world. Noting with regret that, at the Conference, the Convention had received the support of less than half of the States Members of the United Nations, his delegation saw the reason for that situation in the failure of many States to agree with some of the new instrument's key provisions. Thus, article 66 and the annex, in providing for compulsory jurisdiction of the International Court of Justice and of an arbitration tribunal, ran counter to the principle of freedom of choice of peaceful means in the settlement of international disputes. The same article, and more particularly its paragraph 2 (e), contained provisions relating to advisory opinions of the International Court of Justice which were inconsistent with Article 65 of the Statute of the International Court of Justice. Those provisions modified the very nature of advisory opinions by making them mandatory. Under the same article of the Convention, international organizations were empowered, unilaterally and without the consent of the other party to the dispute, to initiate procedures leading to a request for an advisory opinion of the Court. It should be noted that the proposal concerning mandatory advisory opinions of the International Court had been submitted at the Conference by the delegation of the United Nations. Since no such position had at any time been authorized by the General Assembly, it was evident that the United Nations Secretariat had, on that occasion, exceeded its powers.

19. Articles 27, paragraph 2, and 46, paragraph 2, of the Convention also gave rise to serious objections. The provisions in question echoed the corresponding articles of the 1969 Vienna Convention on the Law of Treaties. But the legal nature of an international organization was not the same as that of a State. As an entity created by States, an international organization could not enter into treaty relations inconsistent with its constituent instrument or with decisions of its organs. The use of the expression "the rules of any international organization" in article 2, paragraph 2 of the Convention, could give rise to a situation where, for example, the United Nations might be precluded from invoking the Charter or a decision of the Security Council as grounds for refusing to abide by an agreement concluded by the Secretariat. Articles 27, paragraph 2, and 46, paragraph 2, also ran counter to the fundamental principle of international law embodied in Article 103 of the Charter that, in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter should prevail.

20. In that connection, he also drew attention to the definition of the term "rules of the organization" in article 2, paragraph 1 (j), which included "established practice of the organization" besides the organization's constituent instruments and decisions and resolutions adopted in accordance with them. In his delegation's view, the provision should on no account be interpreted to mean that the practice of an international organization did not necessarily have to be governed by its constituent instruments; on the contrary, it meant that the practice of international organizations should be in strict compliance with their constituent instruments.

(Mr. Ordzhonikidze, USSR)

21. Section 4 of part III of the Convention also gave rise to difficulties. The text of articles 34 to 37 again echoed the corresponding provisions of the 1969 Vienna Convention on the Law of Treaties and, once again, what was applicable to States was not automatically applicable to international organizations which owed their very existence to international treaties. Such treaties could certainly create obligations for an international organization without that organization's consent. Another important issue was that of the obligations and rights of States members of an international organization under a treaty to which that organization was a party. By deciding not to adopt article 36 as recommended by the International Law Commission providing for explicit consent of all States members of an international organization as an essential precondition for that organization's entering into treaty relations, and by adopting in its place an additional paragraph 3 in article 74 indicating that the Convention did not prejudice any question that might arise in that regard, the Conference had, in effect, merely skirted the issue.

22. In the light of statements by previous speakers, as well as of the fact that less than half of the States Members of the United Nations accepted the Convention, his delegation took the view that the United Nations should refrain from signing the Convention at the present stage, deferring a decision until at least a majority of States Members had signed the Convention. In that connection, the Soviet delegation could not agree with the view expressed in paragraph 3 of the Secretary-General's explanatory memorandum (A/41/142) that the United Nations would have to sign the Convention prior to 30 June 1987.

23. As to the issue raised in paragraph 4 of the explanatory memorandum, his delegation, while recognizing that a similar decision had been adopted in connection with the 1969 Vienna Convention on the Law of Treaties, considered that in view of the present financial difficulties of the United Nations the General Assembly should for the time being refrain from approving the provisions of paragraphs 9 and 14 of the annex to the 1986 Vienna Convention. The financial aspects of the matter required additional study, and his delegation agreed with the Legal Counsel's view that a decision should be deferred until the General Assembly submitted an act of formal confirmation or until the Convention's entry into force. The Committee might set up an ad hoc working group at the next session to deal with those issues as well as others arising in connection with the question of the United Nations becoming a party to the Convention.

24. Mr. ABDEL-RAHMAN (Sudan) said that his country had signed the Convention and hoped to join others in ratifying it in due course. It also hoped that the leading international organizations would soon sign the Convention which, for the first time, provided firm and clear mechanisms for the settlement of potential disputes arising out of treaty obligations in a previously unregulated field.

25. Mr. HARDY (Observer, European Economic Community) said that the European Community had taken part in the Vienna Conference and was now considering the position it should adopt with regard to the Convention. That process would take place in accordance with the Community's internal rules. As the Community was an entity with its own legal personality, the question whether or not it should become a party was of course separate from that of the position taken by individual member States. Participation by some or all of the member States would not imply that the Community was itself bound to become a party.

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LETTER FROM THE CHAIRMAN OF THE FIFTH COMMITTEE

26. The CHAIRMAN said that he had received a letter from the Chairman of the Fifth Committee relating to agenda item 111: Programme planning. By that letter, the Sixth Committee was invited pursuant to General Assembly resolution 36/228 A, section I, to express its views, if any, on the revisions proposed by the Committee for Programme and Co-ordination to the relevant chapter of the medium-term plan, namely chapter 3, entitled "International justice and law". He was communicating the text of the letter to the chairmen of the regional groups and proposed to revert to the matter at a subsequent meeting of the Committee once their views had been ascertained.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued)
(A/C.6/41/L.5, A/C.6/41/L.6)

27. Mr. SZELEI-KISS (Hungary) introduced draft resolution A/C.6/41/L.5 on behalf of its sponsors.

28. The CHAIRMAN said that he understood it to be the Committee's wish to adopt the draft resolution without a vote.

29. It was so decided.

30. Mr. BERNAL (Mexico), expressing his delegation's full agreement with the instructions to the Special Committee contained in paragraph 2, said that in endeavouring to complete the draft declaration the Special Committee should not proceed on the basis of regional differences but should adopt a global approach so that the result of its work might be beneficial to the whole community of nations.

31. Mr. ABDEL-RAHMAN (Sudan) said that his delegation had no difficulty in supporting the draft resolution just adopted but wished to put on record its view that the proposed declaration should be based on arrangements taking account of the needs of all Member States rather than on arrangements reached on a regional or interregional basis.

AGENDA ITEM 128: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/41/L.8)

32. Mr. BYE (Norway), introducing draft resolution A/C.6/41/L.8 on behalf of the sponsors, who had been joined by Sierra Leone, drew attention to those parts of the text which differed from that of resolution 40/73. The ninth and tenth preambular paragraphs had been added in order to take into account the Secretary-General's survey of the operation of reporting procedures, and the eleventh preambular paragraph also contained a reference to the survey. In paragraph 2, the word "cannot" had been replaced by the words "can never". The words "with diplomatic status" had been added in paragraph 9 (a), and in subparagraph (b) of the same paragraph the word "applicable" had been replaced by the word "possible". New

(Mr. Bye, Norway)

subparagraphs (c) and (d) had been added to paragraph 10 in order to request the Secretary-General to address reminders to States where serious violations had occurred and had been reported, if those States had failed to make a follow-up report within a reasonable period of time, and to send a circular note to all States asking them to indicate whether they had any serious violations to report for the preceding 12 months. Lastly, a new paragraph 11 had been added requesting the Secretary-General to prepare guidelines embodying the relevant questions which States might wish to consider when reporting. The sponsors recommended that, in view of its great importance to all Governments the item should be included in the provisional agenda of the forty-second session of the General Assembly.

33. The CHAIRMAN informed the Committee that the text of a related draft resolution concerning the twenty-fifth anniversary of the adoption of the Vienna Convention on Diplomatic Relations had just been handed to the Secretariat. He proposed to defer the adoption of draft resolution A/C.6/41/L.8 until that text became available.

34. It was so agreed.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/C.6/41/L.7)

35. Mr. KALINKIN (Secretary of the Committee) said that Zimbabwe had become a sponsor of draft resolution A/C.6/41/L.7.

The meeting rose at 4.55 p.m.