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CONTENTS

Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 86

Law of treaties (continued) (A/6309/Rev.1, A/6827 and Corr.1 and Add.1 and 2, A/C.6/376, A/C.6/L.619)

1. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) observed that it was generally agreed that a convention should be drawn up on the basis of the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II). Indeed, the General Assembly had decided, in its resolution 2166 (XXI), that a conference should be convened to perform the task. The Byelorussian SSR welcomed that decision as an encouraging step towards the codification and progressive development of the law of treaties, which was very important for the maintenance of world peace and the strengthening of friendly relations. His delegation fully appreciated the complexity of the task and shared the general concern for the success of the conference. However, it thought that with goodwill and genuine co-operation, having due regard to the equality and sovereign rights of all States, the goal would be achieved.

2. The obstacles to successful codification of the topic lay, not in the fact that certain provisions were not ripe for codification, as the representative of the United Kingdom maintained, but in the efforts of certain States to preserve outmoded colonial privileges and treaties that were not in keeping with the spirit of the times or with developments in international law. Happily, the draft articles represented a complete break with the old colonial practice of concluding unequal treaties imposed by force. Moreover, the draft articles confirmed the existence in international law of peremptory norms — in other words, basic principles that States must respect and could not evade by means of bilateral agreements. Only a general treaty could abrogate or alter the principles of jus cogens. Unequal treaties were a typical violation of those principles, and the recognition that such treaties were invalid from the moment of their conclusion was a great victory for the peoples newly liberated from colonial rule and was quite rightly reflected in the draft articles. The convention should also include an article making it possible to denounce a treaty containing no provision regarding its termination, recourse to which would be very helpful in the case of treaties not freely concluded by a State with the support of the people. The adoption of such a rule was especially important at a time when the colonial system was collapsing. Moreover, contemporary international law made it possible for States not merely to annul an unfair treaty unilaterally but also to declare it invalid from the outset and demand full restoration of the pre-existing conditions.

3. In view of the threat to peace and security resulting from the aggressive actions of the United States in Viet-Nam and of Israel in the Middle East, there was a need to reappraise the significance to the world community of the principle of pacta sunt servanda, stated in article 23 of the International Law Commission's draft. A treaty was binding on the parties and must be faithfully implemented by them, and it was the task of the United Nations collectively to ensure absolute respect for that important principle. A basic phenomenon of the contemporary international scene was the existence of sovereign States; that gave rise to the important principle of good faith, stated in article 23, whereby in their mutual dealings States were bound only by their own will. Accordingly, international treaties must be interpreted in such a way as to ensure that they achieved the effects desired by the contracting parties themselves. The basis for any such interpretation must be the principle of pacta sunt servanda, and the text of a treaty must be taken as the main proof that it reflected the intent of the parties. Any other approach to the interpretation of a treaty might result in the violation of the rights of a party. Unfortunately, article 27 (General rule of interpretation), paragraph 1, did not contain either a general provision to the effect that the interpretation of a treaty must clarify the intentions of the parties or a provision stating that a treaty must be interpreted in accordance with the generally recognized norms of international law. There undoubtedly existed, with respect to the legitimacy of international treaties, a principle that no treaty could conflict with recognized norms and principles of international law.

4. The Byelorussian SSR did not subscribe to the view that a treaty in force had an existence of its own, independent of its contracting parties, and that it should therefore be interpreted not in accordance with the will of the parties but in the light of changing world conditions.

5. The draft articles established the general legal norms to which States should adhere in concluding, not all treaties without exception, but only those treaties which were international in character. However, the prospective title of the convention did not

reflect that distinction and went beyond the scope of the subject to be dealt with. It would therefore be better to use the title "Convention on the law of international treaties". In order to avoid repetition, the word "international" need not be mentioned in the individual articles.

6. His delegation still felt that the forthcoming convention would enjoy greater authority and prestige if all States, without discrimination, could take part in its elaboration and adoption. Unfortunately, not all States had been invited to the important conferences held in the past for the adoption of instruments of international law. As a result of such discrimination, the conferences had lacked the necessary universality. Imperialist circles in a number of States were trying to make participation in international conventions conditional upon mutual recognition and the existence of diplomatic relations. There was no legal basis for such a position, and the joint signing of multilateral treaties by States not recognizing one another was certainly not tantamount to official recognition. That was clearly demonstrated both by international practice and by international law. It was time for the United Nations to give urgent consideration to its attitude towards State participation in multilateral treaties of general international interest. The question should be settled once for all at the coming conference on the law of treaties, for a solution would be in the interests of the entire international community. His delegation could not but deplore the fact the International Law Commission had abandoned the stand it had originally taken in favour of universality. In view of the latest developments and trends in international life, his delegation felt obliged to insist that article 2 (Use of terms) should include a definition of the term "general multilateral treaty", together with a stipulation that all States might become parties to such treaties, without discrimination of any kind.

7. Mr. CADALSO (Honduras) said that, of all the work accomplished by the International Law Commission and considered by the Sixth Committee, the codification of the law of treaties presented the greatest complexities. The Commission was to be commended on its magnificent achievement in preparing the draft articles, which took ample account of the aspirations and realities of the contemporary world. The ultimate codification of the topic would certainly make it easier to solve most problems in international law, since the law of treaties was, in a sense, the master-key to many extremely urgent problems.

8. A question arose, however, as to the status of an international convention on the subject in relation to the constitutional law of individual countries. There were at present two main trends, whereby a treaty could either become secondary municipal law—as in most of Latin America—or take precedence over the constitutional provisions themselves. To avoid difficulties, it would be wise to include a specific statement concerning the scope and effects of the proposed convention, establishing at once whether its provisions would become secondary law or whether they would remain at the constitutional level. In Honduras, a treaty, once ratified, became secondary municipal law. However, the Honduran Constitution contained some clauses authorizing the conclusion of special covenants or treaties, which could be on a par with the provisions of the Constitution. Those clauses were applied in matters which related to alliances or which were of continuing concern to the countries of Central America.

9. His delegation considered that, in its definitions, the convention should be more explicit, and at the same time more flexible, in referring to a "State". The definition of the term "Party" should also be carefully reconsidered, in order to take account of systems prevailing in different parts of the world. In Central America, for example, there was a trend towards the establishment of joint diplomatic missions; that innovation would result in joint negotiations of a new kind, for which some provision should be made in any international instrument on the law of treaties.

10. In that connexion, it might be of interest to recall some of the contributions made by Central American statesmen and legislators to the development of international law. For instance, in April 1823, José del Valle had been the first author of a treatise to condemn interference by States in the affairs of others on the ground that such a practice could create bad feeling, culminating in armed conflict. There, certainly, was the precursor of the Monroe Doctrine. Another valuable contribution had been the adoption of a decree in 1824 abolishing slavery, thanks to the initiative of Father Cañas of the Republic of El Salvador. The year 1839 had seen the first appearance, in a convention between countries of Central America, of a clause prohibiting the use of armed force as a means of settling international disputes, and in 1842 the Diet of Chinandega had instituted arbitration as the means for settling such disputes. That innovation had considerably antedated the Plan of Arbitration, prepared at Washington in 1889. It was also at the Diet of Chinandega that the principle of equality of States had been enunciated for the first time, almost a century before the adoption by the Seventh International Conference of American States, meeting at Montevideo in 1933, of a Convention on Rights and Duties of States. Another important milestone had been the adoption in 1907 of the "Washington Pacts", which had included an agreement on the protection of workers' rights and a General Treaty of Peace and Friendship, introducing among other juridical innovations the rights of political asylum on board merchant ships. Even more important had been the institution of a Central American Court of Justice, the undoubted precursor of the Hague Court, which had functioned in Costa Rica for ten years.

11. The Organization of Central American States and the Central American Common Market were further examples of successful machinery for interstate co-operation in the political, economic, social and cultural fields. The special régime to which Fonseca Bay had been subjected and the use of the Uti Possidetis of 1821 attested to the existence of a Central American law to settle domestic problems within that area.

12. With regard to the draft articles on the law of treaties contained in the report of the International

Law Commission on the work of its eighteenth session (A/6309/Rev.1, part II, chap. II), his delegation felt that the topic still required further study. For example, the Commission had touched only lightly on the question of excess of power, but it was a factor which could badly disrupt international negotiations, and always required special attention. Article 47, concerning the corruption of a representative of a negotiating State, should perhaps be omitted, because it was almost tantamount to a recognition and acceptance of an ignominious action which by its nature was a very rare occurrence and should therefore not be taken note of in a convention of such nobility as the one under discussion. States would undoubtedly be careful to select as delegates men with high ethical standards; if they failed to do so, it was just that they should bear the responsibility for their lack of care. As a small country, Honduras strongly supported the prohibition of the threat or use of force to procure the conclusion of a treaty, contained in article 49. With regard to the amendment and modification of treaties, an article on additional protocols should be added, since they were the regulatory instruments which made the successful performance of treaties feasible. Article 42 should include a provision specifying the time-limit within which the invalidity of a treaty could be claimed by any of the parties. A period of two to five years would be sufficient for the detection of any error or fraud which might give rise to such a claim. After the expiry of the period laid down, any claim of invalidity would be considered illegal.

13. At the previous meeting, a number of comments had been made on the question of so-called perpetual treaties. His country had had painful experiences with such treaties and felt that they not only gave rise to injustices but were inappropriate to the rapidly changing circumstances of modern life. Some national constitutions stipulated that the State could not conclude treaties with a term of more than twenty-five or fifty years. The Commission had shown a clear appreciation of the problem in its commentary of article 59 (Fundamental change of circumstances), but his delegation felt that it should be stated specifically that treaties should never be perpetual, but might be revised or renewed as necessary by mutual agreement of the parties. That principle was tending to become an essential norm of jus cogens.

14. Mr. SAHOVIC (Yugoslavia) said his delegation considered that the text of the draft articles on the law of treaties would provide an excellent basis for the work of the forthcoming conference. The fact that it covered all or nearly all aspects of the law of treaties gave grounds for hoping that the States participating in the conference would be able to approve a final version of it in the form of a convention.

15. The work on the law of treaties was nearing its end, and attention should now be devoted to finding a wording that would be acceptable to the greatest possible number of future signatories of the convention. His delegation was willing to give careful consideration to all the comments submitted by Governments and the statements made in the Committee, and it had itself some observations to make on certain points raised by the draft articles. Nevertheless, whatever comments were made should not in any way affect the preparation of the conference, which should proceed in accordance with the provisions of General Assembly resolution 2166 (XXI). The comments already made had touched on well-known issues and had given a general indication of the positions which States would assume at the conference. Moreover, the questions raised were of a kind which could be resolved only by a conference of plenipotentiaries.

16. His delegation felt that the circumstances were propitious for the conclusion of an international convention on the law of treaties, which seemed to be a logical consequence of the course of the development of international law since the Second World War. The United Nations had been extremely active in the field of international law, in fulfilment of its obligations under Article 13 (1) of the United Nations Charter. In so doing, it had responded to the pressing need for the establishment of a system of legal rules and principles better suited to the needs of all the members of the international community, the composition of which had completely changed as a result of the fight against colonialism. International conventions had already been concluded on the important topics of the law of the sea and diplomatic and consular relations. The conclusion of the convention on the law of treaties would be a further step towards the realization of the objectives set forth in the Charter in respect of international law. The law of treaties, which had developed over the centuries as contractual law, would thus become one of the decisive factors in the creation of legal limits within which treaty obligations would have to be assumed.

17. Although the need for such a convention was clear, its preparation would not be an easy task. The drafting of a text acceptable to all States would require general agreement on the methods of codification and progressive development of international law. Codification could not be divorced from progressive development; article 15 of the Statute of the International Law Commission[1] expressly stated that the two expressions were used "for convenience", and the question should not create difficulties, either in practice or in theory. A more important issue was the role which State practice should play in the progressive development of international law, which was concerned with the establishment of new legal rules. It remained to be seen at the conference how far States were prepared to accept new solutions in the case of questions which had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States. He wished, however, to express his delegation's general approval of the way in which the Commission had applied the methods of codification and progressive development when formulating the draft articles.

18. With regard to the details of the text now before the Committee, his delegation approved in principle the mention of jus cogens in part V, section 2 of the draft articles, relating to the invalidity of treaties.

[1] A/CN.4/4/Rev.1 (United Nations publication, Sales No.: 62.V.2)

The provisions contained in article 50, and also in articles 49 and 61 were most valuable, in that they represented an adaptation of the traditional law of treaties to contemporary international law. Jus cogens laid down the general legal limits for the conclusion and life of treaties based on the obligation to respect the Charter of the United Nations, and underlined the fact that the law of treaties was not independent of general international law. At the same time, his delegation felt that consideration must be given to the effects of jus cogens on the law of treaties. In that connexion, the Yugoslav Government, in its written comments on article 23 (see A/6827, p. 29), had asked for more detailed explanations concerning the relationship between the principle pacta sunt servanda and other fundamental principles of international law laid down in the United Nations Charter and other international instruments, particularly where jus cogens was concerned. In its comment on article 49 (ibid., p. 30), his Government had pointed out that, in the case of economic or political coercion, a treaty might be void as a result of the violation, not only of the principles of the Charter, but of other generally recognized principles of international law. That question should be studied more closely.

19. Most of his Government's comments were aimed at clarifying specific aspects of the draft articles and would be further explained at the conference, but two were of a more general nature. Firstly, while agreeing with the underlying principle embodied in article 59, his Government had requested a more precise explanation of the expression "fundamental change of circumstances" and an indication of its relation to the principle pacta sunt servanda. Secondly, his Government felt most strongly that multilateral treaties should be open to signature by all States. That was in the interest not only of the international community but of all States parties to such treaties. The exclusion of certain States from participation in general multilateral treaties was not only contrary to the principle of the sovereign equality of States, but was also a kind of discrimination which was in contradiction with the Purposes and Principles of the United Nations Charter.

The meeting rose at 12 noon.

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