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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. GOTLIEB (Canada) said that the draft articles on the law of treaties (A/6309/Rev.1, part II, chap.II) represented the culmination of almost two decades of outstanding efforts on the part of the International Law Commission. States must now complete that work, at the plenipotentiary conference to be convened pursuant to General Assembly resolution 2166 (XXI) through the conclusion of a successful international convention.

2. Since divergent views existed on even the most basic questions, as the Commission's Special Rapporteur on the topic had pointed out in his statement at the 964th meeting of the Committee, it would not be easy to obtain broad international agreement on the rules of law and the procedures which were in future to govern treaty relations, and to produce a convention acceptable to all States. If the conference did not succeed in that task, the consequences would be very serious. However, the very willingness of Governments to join together in a conference for that purpose was in itself an indication that they were confident that it could achieve its aim.

3. One of the tasks of the conference would be to discover a satisfactory method of applying the principles of international law enunciated in the draft articles to the everyday treaty activities of States. Some of the articles, such as those dealing with peremptory norms of international law and those dealing with the effect of changing circumstances, would possibly call for highly subjective judgements in their application and might give rise to misunderstandings and disputes. It was essential that the convention should contain a provision for effective means of settling such disputes.

4. Among the articles which would require particular attention in that respect were articles 50 and 61 concerning jus cogens. Canada was wholly in agreement with the important and significant principles embodied in those two articles. However, in the absence of any provision for the adjudication of differences relating to the application of the articles in particular cases, the conference would have either to attempt to define criteria for applying jus cogens or consider carefully the implications of failure to do so. The conference must also consider carefully the relationship between article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) and a number of other articles and sub-articles, including articles 10 (2) (a), 11 (1) (b), 12 (b), 24, 25, 27 (4), 33 (1) and (2), 39 (1), 53 (1), 56 (1) (a), 56 (2) and 61, all of which required that a fact or facts should be "established" before the provision in question took effect. Indeed, article 39 (Validity and continuance in force of treaties) extended that requirement to all the articles in part V of the draft. The concept of establishing a fact or facts, as contemplated by the articles in question, required further definition. It should be specified whether it meant nothing more than the assertion of a given fact by only one party to the treaty or whether it implied some form of objective determination of the fact to be established and, in the latter case, whether the provision of the article concerned would not take effect until the fact in question had been thus determined.

5. Other articles raised questions which could perhaps be resolved by drafting changes. Articles 16 and 17, for example, dealing with reservations and objections to such reservations, required further clarification. It should be made clear, in article 16 (c) and in related articles on treaties which contained no provisions for reservations, whether a reservation which was incompatible with the object and purpose of a particular treaty had any legal effect in connexion, for example, with the coming into force of a multilateral treaty. Again, in the case of a multilateral treaty containing no provisions for reservations, it should be made clear what were the legal consequences of an objection by one State to a reservation made by another, and whether a treaty relation existed between the reserving State and the objecting State or whether the existence of the treaty relation depended upon the consent of the objecting State.

6. As a number of delegations had already pointed out, article 5, on capacity to conclude treaties, appeared to be incomplete. It ignored such elements as recognition and State responsibility concerning performance. Moreover, the use of so fundamental a term as "State" in the articles in this part of the draft did not seem to be wholly consistent. With respect to the relationship between the provisions of article 62 (3) of the draft, and Article 33 of the United Nations Charter, which itself applied only to disputes likely to endanger international peace and

security, it should be made unmistakably clear that article 62 (3) referred to the means indicated in Article 33 of the Charter and that it was not the intention to limit the application of that paragraph to disputes likely to endanger international peace and security.

7. The forthcoming conference would have to deal in detail with some of the great and fundamental doctrinal issues in international law. The convention on the law of treaties, if successfully concluded, would be a major landmark in the history of international law and would serve as a guide both to the older States, whose treaty practices might need to be updated and rationalized, and to those newer States which had only recently entered into formalized international relationships as expressed in treaty form.

8. His delegation welcomed the invitation of the Government of Austria to hold the conference at Vienna and was prepared to defer to the wishes of the majority of the Committee with regard to the dates of the first session. It would be particularly important for the conference to adopt efficient procedures, so as to ensure the completion of its Herculean task of reviewing seventy-five articles at the rate of more than one a day. Canada, for its part, would do all in its power to ensure the success of the conference.

9. Mr. SUCHARITKUL (Thailand) said that his delegation attached primary importance to the codification and progressive development of the law of treaties; for the generic term "treaties" comprehended not only the traités-contrats which created binding obligations between the contracting States but also the traités-lois which provided a copious material source of international law. Thus, the law of treaties had a crucial bearing, in its practical application, on the realities of international life and daily intercourse between nations.

10. Since the draft articles prepared by the International Law Commission would receive full consideration at the plenipotentiary conference shortly to be convened, his delegation would confine itself to submitting some observations of a general nature, which it hoped would facilitate the ultimate conclusion of a general convention on the law of treaties.

11. The successive drafts submitted by the Commission, in the light of the comments made by delegations in the Sixth Committee and the written comments of Governments, showed a progressive improvement, reflecting the growing recognition of the principle of the sovereign equality of States in international relations in general and in treaty relations in particular. The development of international law in favour of greater equality afforded better protection to the interests of smaller and weaker nations, and although the progressive trend might cause some dissatisfaction on the part of traditionalists within the larger and stronger Powers, it was equally beneficial to those Powers. In the interest of peaceful relations and harmonious co-operation among nations, his delegation urged those who persisted in opposing the progressive development of the law to allow it to take its natural course.

12. His delegacion found the draft articles generally acceptable, since they came close to meeting the minimum requirements which it considered necessary for the protection of the interests of smaller and weaker nations in the process of their national development. The present text could well serve as the basic working document for the preparation of a convention at the forthcoming conference.

13. Too often, in the colonial past, the principle pacta sunt servanda had been imbued with an unwarranted sacrosanctity and had been invoked by more powerful nations to impose their will on smaller and weaker ones, to the detriment of the latter's vital interests or natural growth. Article 23 of the draft commendably brought the inflated concept of the principle pacta sunt servanda back to its proper proportions.

14. Although the principle rebus sic stantibus had been used in the past, it had operated mainly to the detriment of Asian and African nations. In several instances where an Asian nation had tried to invoke the doctrine of pacta sunt servanda against a Western Power which had agreed in an earlier treaty to a frontier line, the expansionist Power had been able to rely on an implied rebus sic stantibus clause in the treaty in alleging that, owing to a fundamental change of circumstances, the frontiers so fixed by treaty should be moved further into the territory of the Asian nation. Such cases belonged to the colonial past, however, and the big Powers now tended to favour a more restricted application of rebus sic stantibus, maintaining, contrary to their past habit, that there had been no clear precedent or judicial application of the doctrine of rebus sic stantibus which could give any meaningful effect to it. It was gratifying, in that respect, to see that the principle rebus sic stantibus was clearly stated in article 59, paragraph 1, and that paragraph 2 (a) had been appropriately added to that article for the protection of Asian and African countries. Paragraph 2 (b) might also be said to serve a similar purpose.

15. While his delegation considered that rebus sic stantibus, as stated in the draft, provided adequate protection for smaller and weaker nations, more sweeping and fundamental limitations on the doctrine of pacta sunt servanda were contained in articles 50 and 61, both of which touched upon the essential validity of treaties that conflicted with a peremptory norm of general international law, or jus cogens. Although a number of delegations had considered that the identification of such norms might present difficulties, his delegation did not see any inconvenience in the fact that the rules of jus cogens were not precisely defined or clearly fixed. The existence of such peremptory norms was indisputable, and the commentary on article 50 gave some interesting illustrations of the principle of jus cogens.

16. Article 49, concerning invalidity of a treaty owing to coercion of a State by the threat or use of force, was a further safeguard for the weaker nations and could be said, in most practical cases, to provide another illustration of the application of the rule of jus cogens. The application of article 42, concerning loss of a right to invoke a ground for

invalidating, terminating, withdrawing from or suspending the operation of a treaty, had rightly not been extended to cases coming under article 49, so that the illegal use of force could not be subsequently rewarded by validation of an otherwise invalid treaty on the ground of acquiescence or of the subsequent conduct of the parties.

17. With regard to the other draft articles, on the substance of which there seemed to be little divergence of opinion, he wished only to point out that a line of distinction was not always clearly drawn between the circumstances of the conclusion of a treaty as a supplementary means of interpretation under article 28 and the possibility of the modification of treaties by subsequent practice under article 38. His delegation endorsed the strict interpretation of the privity of treaties, as set out in article 30, and considered that articles 31-34 adequately stated its qualifications. His delegation did not think that State succession could be an exception to article 30.

18. Mr. SMEJKAL (Czechoslovakia) said it was generally accepted that the contemporary history of international treaties mirrored the history of political and economic relations among States. The right of a State to conclude international treaties was one aspect of State sovereignty. Indeed, jus contrahendi was considered a fundamental right of the State, and the international treaty was the principal source of the juridical regulation of relations among States. Hence the importance of completing the codification of the law of treaties.

19. His delegation approved of the essentially pragmatic approach of the International Law Commission in endeavouring to seek practical solutions compatible with the general nature of treaties and extensive State practice. Although the subject-matter lent itself to controversy, the Commission had largely succeeded in its task. Both in content and in form, the draft articles on the law of treaties represented a noteworthy contribution to the progressive development of that branch of international law and provided a sound basis for a convention.

20. Czechoslovakia's written comments on the final draft articles (see A/6827 and Corr.1) fell into three main categories: first, comments concerning the relation of certain articles to the draft as a whole (articles 62-64); second, comments on matters of substance; and third, comments concerning drafting. At the present stage, his delegation would merely draw the attention of the Committee to certain points of a general nature. In principle, Czechoslovakia agreed with the scope accorded to the draft articles and thought it wise to remain on firm ground and expand the codification of the law of treaties by subsequent additions or adaptations. As the Chairman of the International Law Commission had remarked, the Commission seemed to have been right in thinking that the draft articles already covered as much ground as was likely to be manageable at the present initial stage of the codification of the topic.

21. In his delegation's view, the reference in article 4 to treaties which were constituent instruments of an international organization was not warranted. Did adequate rules governing such an organization exist even before the latter was established under its constituent instrument? That instrument should accordingly be subject, pleno jure, to the rules laid down in the convention. Moreover, since international treaty negotiations between States, as well as the rules of the organization, were determined by the States represented in the organization, it would be as well to make it clear that the convention should take precedence over the rules of the organization. Czechoslovakia felt that only the treaties actually drawn up within an organization should be covered by the provisions of article 4. However, its position was not rigid and it intended to give the matter further study in the light of document A/6827/Add.1.

22. With regard to the provisions on reservations to multilateral treaties in part II, section 2 (articles 16-20), it would seem advisable, in the interests of the best possible development of treaty relations, to draft article 17 in such a way as to provide that an objection against a reservation should preclude the entry into force of the treaty between the objecting and reserving States only if the objecting State made that intention expressly clear. Generally speaking, the procedure for objections should be similar to that applicable to reservations.

23. Czechoslovakia naturally regarded the rule of pacta sunt servanda as a fundamental principle of international law, but one closely related to other such principles; it also had to be taken in conjunction with jus cogens.

24. Article 24 dealt exclusively with the question of retroactivity of treaties, without settling the question of the date on which they took effect. It would be advisable to insert an article stipulating that, unless otherwise provided in the treaty, it should become effective on the date of its entry into force.

25. Czechoslovakia supported the principles stated in articles 30-32 concerning the rights and obligations of third States, on the understanding that the rules were based on the principle pacta tertiis nec nocent nec prosunt. It would therefore be best consistently to apply the general principle that treaties had no effect on third States without the latter's explicit consent, and his delegation would propose the deletion of article 32, paragraph 1, last sentence.

26. His delegation attached great importance to part V of the draft articles (Invalidity, termination and suspension of the operation of treaties), and was pleased to note the inclusion of provisions for the annulment of treaties concluded as a result of coercion. Czechoslovakia would recommend that article 49 should be amplified to provide that coercion, for the purposes of the article, should include other pressures, such as economic pressure, including economic blockade. Another very important development was the inclusion of an article—article 50—ruling invalid those treaties whose contents conflicted with a peremptory norm of international law. Czechoslovakia found that there were peremptory norms of international law which States must respect. A similar finding was recorded in the report of the International Law Commission on the subject. Exam-

ples of jus cogens were the right to self-determination, and the pacific settlement of disputes. Generally speaking, treaties should not be incompatible with those norms, and the States which had helped to institute the norms as a part of the international order should uphold them. The Commission had rightly refrained from enumerating examples of jus cogens, in order to avoid giving rise to any misunderstanding. He recalled the late Mr. de Luna's comment, during the discussions of that provision, that the contractual conception of international law, which did not recognize jus cogens, belonged to the time when international law had been only a law for the great Powers. Modern international law had become universalized and socialized, and article 50 therefore enunciated one of the major legal rules of contemporary international life.

27. His delegation feared that the general formulation of the rules of procedure to be followed in cases of invalidity ab initio, termination, withdrawal from or suspension of a treaty could give rise to some misunderstanding. The procedure laid down in article 62 would surely not apply to all cases of termination of or withdrawal from a treaty governed by the convention (for instance, under article 51). Article 62 could not be fully applied in case of the invalidity of a treaty under article 50. The proposed procedure placed the party invoking grounds for annulment at a disadvantage and favoured the party responsible for the existence of such grounds. Czechoslovakia therefore proposed that articles 62-64 should be deleted and that separate rules of procedure should be drafted for each case stated in article 62, ensuring that they related directly to the pertinent article. On that basis, the possibility of a general section on procedure might be reconsidered.

28. The aim of his delegation's preliminary comments was simply to help to improve the text submitted by the Commission. Any radical change in the structure of the draft might lead to a deadlock and delay the work of codification indefinitely. The convening of a conference to adopt a convention on the subject would undoubtedly contribute to the development of friendly relations among nations and place the law of treaties on a sound basis. In the real, long-term interests of all countries, however, participation in such conferences must be universal. Accordingly, and in keeping with the principle enunciated in article 5 (1), it would be advisable to include a provision—possibly in article 12—that multilateral treaties of a general nature should be open to accession by all States.

29. Mr. CHEN (China) said that his Government would state its views on the draft articles in detail at the conference of plenipotentiaries. He would therefore confine his observations to questions of general principle.

30. First, he wished to confirm his Government's approval of the inclusion of the principle of pacta sunt servanda in article 23. China's approval reflected not only the ethical teachings of its sages and the moral traditions of its people but also its firm belief that the principle represented the main stabilizing force in the legal order of the international community. However, China's advocacy of that principle did not prevent it from supporting the doctrine of rebus sic stantibus, as set out in article 59. The latter doctrine should provide a balance to the principle of pacta sunt servanda, so that the international community could enjoy stability and progress simultaneously.

31. His Government was well aware of the risks presented by article 59 and by part V generally. However, on the grounds of equity and justice and for the sake of peaceful change, it believed that the risk would be worth taking if more adequate procedural checks than those provided in article 62 were afforded. The risk could be further reduced if more precise definitions of such terms as "fraud" in article 46 and "corruption" in article 47 could be devised.

32. His delegation had already signified its approval of article 49 and would merely endorse the Commission's view that the invalidity of a treaty concluded by force was a principle that was lex lata in contemporary international law.

33. There were two schools of thought concerning the applicability of jus cogens in the law of treaties. China supported the International Law Commission's view that there were certain rules from which no State could derogate and which could be changed only by the introduction of new rules of the same character. The provisions of articles 50 and 61 were therefore correct. However, the difficulty lay in selecting the criteria for determining whether a rule had the character of jus cogens. Unfortunately, the draft articles provided no key to the problem, other than a reference in article 62 to Article 33 of the United Nations Charter.

34. Another problem arose concerning the obligation of a State not to frustrate the object of a treaty before its entry into force, as provided in article 15. While there was no doubt of the need for such a provision, the obligation, according to article 15 (a), started at a much earlier stage, namely, as soon as a State had agreed to enter into negotiations for the conclusion of a treaty. It was surely over-optimistic to assume that such gentlemanly conduct could always be expected. For example, if the many States that had participated in the negotiations of the Conference for the Reduction and Limitation of Armaments in Geneva in 1932 had stopped their armament race upon their agreement to enter into negotiation, there might have been no Second World War. His Government therefore thought that the provisions contained in article 15 were very premature.

35. While article 75 indicated that the registration of treaties was mandatory, there was no provision for the enforcement of that rule. In view of the popular feeling against secret diplomacy, from which his country had suffered considerably during the past 100 years, his Government felt strongly that some remedy similar to that contained in Article 102, paragraph 2, of the United Nations Charter should be incorporated in article 75.

36. Mr. SECARIN (Romania) stressed the valuable contribution which the codification of international

law made to the development of international relations, and the importance of the codification of the law of treaties, in particular. As Nicolas Titulesco had said, the purpose of law as a social science was to determine the relations among the members of a society so that they might live together in such a way as to ensure the satisfaction of the interests of each individual and of the community as a whole. That definition applied also to international law.

37. The scientific and technological revolution of modern times had given peoples vast opportunities to increase their material and spiritual wealth and to develop their natural resources for the benefit of society. Relations among States became very dynamic in a world where all countries were neighbours. For every State, large or small, development of its relations with other States and participation in the international division of labour was a command derived from the needs of human progress. The institutions of international law must serve the peaceful development of relations among States; they must reflect the realities and the rich diversity of international life and deep historical trends.

38. The law of treaties was a body of legal rules which served to guide the treaty practice of States in accordance with the needs of international relations. Considered in those terms, the draft articles on the law of treaties prepared by the Commission had the merit of offering a solution which, while based generally on custom and on State practice, could be termed not only codification in the classic sense of the word but also progressive development of the law. The progressive elements strengthened the draft articles by bringing them closer to the realities of contemporary international life.

39. His delegation considered the final text of the draft articles a sound basis for discussion by the conference on the law of treaties. The Commission had been correct in deciding to limit the scope of the draft articles to treaties concluded between States in written form (article 1 and article 2, subparagraph 1 (a)) and in recommending that related topics, such as the application of the general law of treaties to international organizations (article 4), succession of States in respect of treaties, State responsibility and the most-favoured-nation clauses in the law of treaties, should be the subject of study at a later stage. As the Chairman of the Commission had said, the draft articles had been limited to the central core of the law of treaties because the Commission had felt that, once the central core had been settled successfully, it should be easier to expand the codification of the law of treaties by additions or adaptations, as had happened in the case of diplomatic law.

40. The draft articles, although sound, were not free of defects. At the current stage, however, he would comment on only a few aspects of the text. Firstly, the preamble of the convention should lay down ethical and legal guidelines for the conduct of States by restating the principles which ought to govern international relations, namely, respect for the right of self-determination, non-intervention in the domestic affairs of States, equal rights of States, independence and national sovereignty. Secondly, the precise determination of the relations between States and international organizations and of the position of the general law of treaties in relation to the relevent rules of international organizations was a complex matter which had certainly not been exhausted by the rules laid down in article 4. A more thorough consideration of the question was required, in order to determine whether that text should be retained. Thirdly, the forthcoming conference would have to pay special attention to the fundamental question of universality. The problem was threefold: first, a convention laying down rules on the law of treaties—a subject of a universal character—should be the product of the co-operation of all States and, consequently, the conference that drew up the convention should be open to all States; secondly, the convention should accord to all States, without discrimination, the right of accession to it, since a treaty was governed by general international law, which was established by the international community as a whole and not by organizations having a limited membership; thirdly, the convention should make the universality of general multilateral treaties one of its basic rules, by expressly proclaiming the right of all States to become parties to such treaties. The adoption of the principle of universality in the codification of the law of treaties would promote the development of international relations, help to reaffirm the prestige and effectiveness of the United Nations, and make a very important contribution to peace.

41. The Commission had done wise and realistic work on the question of reservations to multilateral treaties; however, some further adjustments would make the reservations machinery even more flexible and permit the greatest possible number of States to participate in international co-operation. His delegation, as it had stated at previous sessions, considered that an objection to a reservation should not prevent the reserving State from becoming a party to the treaty in relation to the objecting State unless such an intention was expressed by the latter State. A provision to that effect, which his delegation thought should replace draft article 17, paragraph 4 (b), would be more in accord with the needs of international relations and the principle of State sovereignty. The International Court of Justice, in its advisory opinion on reservations to the Convention on Genocide,[1] had said that, as no State could be bound by a reservation to which it had not consented, it necessarily followed that each State objecting to it would or would not, on the basis of its individual appraisal within the limits of the criterion of the object and purpose of the Convention, consider the reserving State to be a party to the Convention.

42. Part V of the draft articles reflected the Commission's desire to strengthen the validity and stability of treaties. To that end, penalties had been established for violations of those principles and rules of international law which were intended to ensure the free expression of the will of States at the

[1] Reservations to the Convention on Genocide, Order of December 1st, 1950: I.C.J. Reports 1950, p. 406.

time of the conclusion of treaties. That was a progressive approach which should be retained. Article 49 declared a treaty void if its conclusion had been procured by the threat or use of force in violation of the principles of the Charter of the United Nations; in his delegation's view, the draft articles should penalize all acts, including economic and political pressure, which were such as to tarnish the consent of States to be bound by treaties. The international community had taken a strong position against such manifestations of force in General Assembly resolution 2131 (XX), which declared in operative paragraph 2 that no state might use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.

43. The procedure laid down in article 62 was in accord with the general principle of the pacific settlement of international disputes, which, as formulated by the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in its report,2/ endorsed the free choice of means and respect for State sovereignty and equality.

44. Mr. KHASHBAT (Mongolia) said that the draft articles on the law of treaties prepared by the International Law Commission were, on the whole, a sound basis for an international convention. His delegation shared the hope, expressed by many other delegations, that the conference would take place at the appointed time and would advance substantially the task of drawing up a convention on the law of treaties.

45. In the past, his delegation had commented on the articles dealing with capacity of States to conclude treaties, observance of treaties, and the nullity of treaties where their conclusion was in violation of internal law or was procured by fraud or by the coercion of a State's representative or the use of force against the State itself. He would now comment briefly on some additional points in the draft articles which were of particular interest to Mongolia.

46. His delegation considered that the scope of draft article 50, which declared that a treaty was void if it conflicted with a peremptory norm of general international law, should be defined more precisely on the basis of the main principles of the Charter of the United Nations.

47. On the question whether treaties should be divided into various categories, his delegation wished to point out that the classification of treaties as bilateral or multilateral was not exhaustive. Bilateral treaties could themselves be divided into treaties in which there was only one party on each side and treaties in which there were several parties on one side and one or more parties on the other, while multilateral treaties could be divided into general universal treaties and group treaties with a limited number of participants. Moreover, it would be preferable to draw a distinction between multilateral treaties in which the parties should be bound to recognize one another, and multilateral treaties whose participants might be States which did not recognize one another. There were some forms of multilateral political and economic agreements, such as treaties of alliance and instruments establishing common markets, which were inconceivable without close ties among all the participants and which presupposed mutual recognition.

48. The Commission had touched on the question of the connexion between recognition and treaties, mainly in relation to the right of participation in multilateral treaties. General multilateral treaties, as a rule, were based on the principle of universality, since the vast majority of States were interested in their conclusion. In his delegation's view, the fact of participation in a general multilateral treaty did not in itself constitute official recognition, but the situation was somewhat different with respect to bilateral treaties.

49. On the other hand, the relation between recognition and international treaties should not be considered unchangeable. Under the old international law, when the bourgeois States had made wide use of non-recognition as a political and juridical weapon to isolate new States, the formula that recognition was a necessary condition for participation in international treaties had been widely applied and the signing of any international treaty in which a new State participated had signified recognition. The present situation was entirely different. The recognition of the Governments of the Soviet Union and other socialist countries had introduced many new features into the institution of recognition in international law, and the recognition of the many sovereign States of Asia and Africa had opened a new page in its history.

50. In those circumstances, there had, of course, been substantial changes in the relation between recognition and treaties: those changes had been confirmed in the United Nations Charter, which had solemnly proclaimed the principles of the sovereign equality of States, equal rights and self-determination of nations, and respect for the obligations arising from treaties and other sources of international law, and had been expressed in many resolutions and decisions of various international conferences and of the General Assembly. In that connexion, it should be noted that the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water (Moscow, 1963)3/ had been open to all States for signature and was open for accession at any time, in accordance with article III, paragraph 1, of the Treaty. The fact that his own country had still not been recognized by one great Power had not prevented it from becoming a party to the Moscow Treaty, with equal rights.

51. Thus, the contemporary practice of international law demonstrated convincingly that non-recognition by particular States was no obstacle to the participation of a given State in general multilateral treaties, and therefore in the preparation of such an instru-

2/ See Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 248, recommendation 5, and para. 272.

3/ United Nations, Treaty Series, vol. 480 (1963), No. 6964, p. 43.

ment on the law of treaties. Furthermore, to bar a non-recognized State from participation in multilateral treaties would be prejudicial to international co-operation. His delegation was sorry that the Commission had not found it possible to include article 8 of the 1962 draft[4] in the final text. If that article was adopted, it would follow that, whenever an international treaty was open for signature or accession, any State might become a party in accordance with the procedure provided in the treaty, whether or not that state was recognized by the other parties to the treaty.

The meeting rose at 12.30 p.m.

[4] See Official Records of the General Assembly, Seventeenth Session, Supplement No. 9, chap. II.

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