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SUMMARY RECORD OF THE 37th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. SANDOVAL (Ecuador)

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The meeting was called to order at 3 p.m.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued) (A/46/10, A/46/405)

1. Mr. LOULICHKI (Morocco), referring first to chapter V of the report of the International Law Commission, concerned with international liability for injurious consequences arising out of acts not prohibited by international law, said it was encouraging that the English title of the draft articles was to be aligned with the French version, since the word "activities" reflected the subject-matter more appropriately than the word "acts".

2. As to the question of whether the Commission's work should include, in addition to activities causing transboundary harm, activities involving risk of causing such harm, it would be useful to combine activities involving risk - especially in respect of prevention - and activities of harmful effects in respect of compensation and reparation.

3. On the question of identifying activities or dangerous substances, his delegation had reservations about the value of a list which, at all events, would inevitably be restrictive; moreover, the Commission did not have the necessary technical information for the preparation of such a list. A general definition seemed better suited to the evolving and complex nature of the subject.

4. There had not been unanimity within the Commission regarding the inclusion in the topic under consideration of spaces that were not under the jurisdiction or control of States "global commons". It would be premature to try to establish general principles of international law on the subject in the absence of sufficient background information.

5. The principles of prevention and reparation had been of particular concern to the Commission and had given rise to differences of view. From the point of view of prevention, the procedural obligations (the obligation of due diligence, the peaceful settlement of disputes) which were incumbent on the State of origin of the dangerous activity seemed well established in general international law and did not need to be reaffirmed in detail in the draft articles.

6. The Commission had considered two main aspects of reparation for damage: in respect of the first, assignment of liability, Morocco maintained the position it had expressed at the forty-fifth session, namely, that it was in favour of primary liability of the operator, with State liability entering into play only if the victim could not secure satisfaction or if the insurance of the operator was inadequate. As to the second aspect, compensation, it must be ensured that all significant harm was compensated, whether or not the cause was a dangerous activity; there should be provision for reduction in the

(Mr. Loulichki, Morocco)

amount of compensation in the light of the factors and circumstances of the specific situation, including the economic situation of the States concerned.

7. On the question of the nature of the instrument to be prepared by the Commission, his delegation felt that a framework convention could serve as a guide to States, which would be left to formulate their detailed obligations in bilateral or regional agreements.

8. The Commission's work on the topic, begun more than 10 years previously, was of clear importance for the international community because it aimed to establish general norms which would safeguard the regional and international environment. It was therefore a priority topic. Further consideration should be given to the Commission's idea of establishing a working group to consider certain aspects of topics that were in course of codification, and of splitting its annual session into two parts. At the same time the Sixth Committee should continue its consideration of modalities for consideration of the Commission's report with a view to greater rationalization and a more fruitful dialogue between the International Law Commission and the General Assembly.

9. Mr. RAYA (Philippines), referring to the topic "Jurisdictional immunities of States and their property", said that the Philippines supported the theory of restrictive, as opposed to absolute, immunity of States. On the question of characterizing a contract or transaction as "commercial" in nature for the purposes of recognition of immunity, his delegation shared the concerns of some delegations over the test of purpose. If that secondary test was meant to safeguard the interests of developing countries, the correct standard for appraising the test was not the motivation, no matter how noble, but the logic, the practicability and the fairness of such a test. However, while it could legitimately be feared that a private party dealing with a sovereign State could be at a disadvantage when the purpose of the transaction was not made clear to him or when the contract did not specify that the State was acting in a sovereign as opposed to a commercial capacity, it could not be concluded on the basis of that concern that the secondary test was flawed. It would be ignoring the lessons of history and the evolution of jurisprudence on contract law to restrict the test to the nature of a transaction.

10. Instead of assuming that a private party dealing with a sovereign State was ipso facto in a disadvantaged position, it should be postulated that, whether States or private parties were involved, the agreement to enter into a contract was free and voluntary, with both parties to the contract capable of adequately protecting their rights and recourses under the contract.

11. The State must be clear and forthcoming with the private party that contracted with, but there was no reason why the private party could not ask or demand, as a condition to agreement, that the nature and purpose of the transaction be made clear. In the same vein, the private party could be expected to negotiate for provisions which delineated clearly what waivers of

(Mr. Raya, Philippines)

immunity, what laws and what courts or arbitration procedures would govern the transaction or contract.

12. In view of the complexity of contracts or transactions, particularly when contested issues or disagreements came about after they were entered into, it would be prudent and logical to leave room for a secondary test of purpose when determining the characterization of a contract or transaction.

13. His delegation welcomed the work that had been accomplished so far on the draft Code of Crimes against the Peace and Security of Mankind but had some reluctance about considering the question of establishing an international criminal court in the absence of clear consensus on the need for such a court, the powers and jurisdiction to be conferred on it, the laws by which it was to be governed and the precise role of such a court in relation to national courts.

14. While recognizing the need for prosecution and punishment of crimes against the peace and security of mankind, his delegation saw value in entering into bilateral or multilateral treaties and encouraging States to adhere rigorously to them, and in establishing strong cooperation among States with respect to matters covered by those agreements. It was concrete examples of agreement and cooperation, as a series of precedents, that would in the long run bring about the consensus necessary for the establishment of an international criminal court.

15. His delegation commended the work that had been done on the difficult but important topic "State responsibility" and considered that it was necessary to address the key issues of transboundary harm and compensation.

16. With regard to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", his delegation agreed that the word "activities" was more appropriate than the word "acts" used in the English title. In that respect, the extent of liability of the State for transboundary harm caused by private entities must be further clarified.

17. Lastly, his delegation supported the view of the United Kingdom representative that the topics considered by the Commission should correspond to practical needs and offer reasonable prospects of agreement. The Commission's work did not have to result in draft articles to be approved in the form of conventions by a conference. The formulation of guidelines instead of rules of a binding nature could be sufficient in some cases.

18. Mr. VILLAGRAN-KRAMER (Guatemala), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that the Special Rapporteur had been correct in seeking common ground between the concept of responsibility, as it existed in Roman law, and the twin concepts of "responsibility" and "liability" in Anglo-Saxon law.

(Mr. Villagran-Kramer, Guatemala)

19. However, the Special Rapporteur had somewhat overemphasized the principle of fault, which placed the burden of proof on the victim, to the detriment of the principle of strict liability, or liability for activities involving risk, which placed the burden on the author of the harm.

20. Given modern technological advances and the attendant proliferation of risks, the theory of risk assumed great importance. That was so, for example, in cases in which a private enterprise located in country A engaged in activities which, by their nature, were capable of causing harm in country B. It was therefore easy to understand the concern to which the subject gave rise in the developing countries, which were most likely to suffer harm caused by the highly industrialized countries when they were host to enterprises whose activities included a high element of risk.

21. Like harm caused to watercourses, to territorial seas, to the high seas, or to watercourses used for non-navigational purposes, for which precise rules had been established, transboundary harm arising from industrial activities was quite capable of legal regulation and codification. The question remained, however, as to whether the Commission should follow the growing trend towards considering that harm could be imputed to a party only when there was fault on the latter's part, the slight, serious or very serious nature of which could be measured, or whether it should follow the principle of liability for activities involving risk.

22. In any event, in so doing, the Special Rapporteur should attach due importance to the problem created for the developing countries by the clash between the concept of responsibility in the classical sense and the concept of liability in Anglo-Saxon law.

23. Turning to the topic "Relations between States and international organizations", he said that, while it was true that international organizations were not States and did not possess the attributes, rights, immunities and privileges granted to States, they nevertheless operated in the international sphere and were subjects of international law and should therefore be granted the attributes and privileges conferred on States.

24. In its report, the Commission proposed many formulas and solutions to the very complex problems which international organizations faced daily. In that connection, a more flexible approach should be adopted when considering the question of the documents and archives of organizations. In view of the advances in modern technology, for example, computers and computer files could be considered part of the archives of international organizations. Consequently, the text being prepared should propose technical criteria for determining the property, assets and archives of an international organization.

25. It was to be regretted, however, that the Commission had not considered the question of the status of international organizations vis-à-vis the courts or authorities of a State which was not a member of the organization. Indeed,

(Mr. Villagran-Kramer, Guatemala)

there were many cases in which the jurisdictional immunity of international organizations vis-à-vis the courts of a State had been invoked, and cases in which courts were reluctant to acknowledge that international organizations provided such immunity. The question deserved to be considered for two important reasons: firstly, if the Commission had not proposed in the draft articles on the jurisdictional immunities of States and their property a special provision on contracts of employment, then it could not do so in respect of the relations between international organizations and their locally recruited staff or agents. Secondly, States tended to extend their competence to areas which up to that point had been in the domain of international law and, far from being limited to the immunities of States, the phenomenon of expanding sovereignty also encroached on the privileges and immunities of international organizations.

26. Mr. KOROMA (Chairman of the International Law Commission) said he had been very impressed by the detailed and thought-provoking debate on the Commission's report in the Sixth Committee. By giving special rapporteurs the possibility of attending from time to time the debates of the Committee on their respective topics, the General Assembly had taken a very felicitous decision which the Commission could only welcome. Many representatives had praised the Commission for having completed the second reading of a set of draft articles and the first reading of two other sets of draft articles. They had also recognized the quality of the work accomplished. At the same time, a host of constructive ideas had been presented.

27. The draft articles on the jurisdictional immunities of States and their property had been generally viewed as offering a good basis for the elaboration of a convention on the subject. In his view, that was a good indicator of both the quality of the draft and its topicality in a world in which the intensification of international relations, particularly of commercial relations, was a primary goal.

28. The work on the draft Code of Crimes against the Peace and Security of Mankind had also elicited a great deal of interest. A number of representatives had indicated that their comments on the various provisions of the draft were without prejudice to the written observations their Governments would submit at a later stage. Both the oral comments and the written observations of Governments would be extremely useful to the Commission in the fine tuning of the draft on second reading, as well as in devising acceptable solutions to the outstanding issues, including that of penalties, on which a most interesting exchange of views had taken place in the Committee.

29. The question of the establishment of an international criminal jurisdiction had similarly given rise to an interesting exchange of views. It seemed to be viewed by many as worthy of further consideration, even though some had struck a note of caution in that connection. He hoped that the Committee would find it possible to give the Commission as clear guidance as possible on the future orientation of the work in that area and thereby enable it to meet as closely as possible the expectations of the General Assembly.

30. The draft articles on the law of the non-navigational uses of international watercourses had generally met with a favourable response, although some questions had been raised on a variety of issues, such as the concept of framework agreement, the definition of an international watercourse and the exact content of the notion of appreciable harm. Exchanges of views, which had already taken place in the Commission, had been resumed in the Committee, thereby providing additional proof of the intellectual cross-fertilization between the two bodies. He wished to emphasize that the second reading of the draft on international watercourses and on the draft Code of Crimes required that Governments should strictly abide by the deadline of 1 January 1993 for the submission of their written comments. It would be a great shame if valuable comments failed to receive attention on account of their lateness.

31. The Commission's work on State responsibility and on international liability for injurious consequences arising out of acts not prohibited by international law had been of an interim or exploratory nature. Yet, the debate in the Sixth Committee had been extremely rich and interesting, which was a clear indication of the international community's interest in the two topics and of its desire to see the work in those areas proceed as expeditiously as possible.

32. The Special Rapporteur for the topic "Relations between States and international organizations" had been deservedly praised by delegations, some of whom, nevertheless, had expressed doubts about the advisability of treating the topic as a priority one. The Commission would no doubt give due weight to all views expressed on the matter.

33. With regard to its programme of work, the newly-elected Commission would no doubt devote special attention to the consideration of its methods of work, taking special account of the suggestions made in that respect by the Committee. No clear consensus had emerged as to the topics which might be considered by the Commission in the immediate future. However, the tentative list contained in paragraph 330 of the report had served as a useful reminder that the time had come to identify new subjects to be included in the Commission's agenda.

34. Lastly, he referred to the International Law Seminar. The Commission attached great importance to the Seminar sessions because they enabled young professors, lawyers and diplomats the world over, especially from the developing countries, to familiarize themselves not only with the work of the Commission, but also with the activities of the many specialized agencies located in Geneva, as well as with general and current topics of international law. He hoped that the General Assembly would appeal to States that were able to do so to make financial contributions for the seminar to be held in 1992. He thanked the United Kingdom delegation, which had announced at the 36th meeting that its Government would make a contribution for that purpose.

35. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 128 on the report of the International Law Commission on the work of its forty-third session.

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/46/79, A/46/317-S/22823, A/46/335, 372, 383 and Add.1 and 587; A/C.6/46/4; A/C.6/46/L.8)

36. Mr. FLEISCHHAUER (Under-Secretary-General, the Legal Counsel) introduced the report of the Secretary-General on the United Nations Decade of International Law (A/46/372). The report contained an analysis of replies received on the implementation of the Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law, in the annex to General Assembly resolution 45/40, as well as a general review of activities of the United Nations relevant to the progressive development of international law and its codification.

37. The Secretary-General attached particular importance to the Programme as a means of promoting a decisive role for international law in international relations. In his annual report on the work of the Organization (A/46/1), the Secretary-General had expressed the view that certain events connected with the emergence of a new world order would test the capacity of nations to cooperate in the United Nations in developing effective global strategies and in the evolution of respected - even enforceable - international law.

38. Mr. FARRUKH (Chairman of the Working Group on the United Nations Decade of International Law), introducing the report of the Working Group on the United Nations Decade of International Law (A/C.6/46/L.8), said that the Working Group had held five meetings during which it had considered, section by section, the report just presented by the Under-Secretary-General (A/46/372). He outlined the main features of the Working Group's comments, as contained in the six sections of the report.

39. The CHAIRMAN recalled that the Committee had decided at its 11th meeting on 8 October 1991 to invite the Secretary-General of the Permanent Court of Arbitration to speak during the debate on the United Nations Decade of International Law.

40. Mr. JONKMAN (Secretary-General of the Permanent Court of Arbitration) thanked the Committee for giving him the opportunity to speak, since the Permanent Court of Arbitration, whose International Bureau he headed, had not yet obtained observer status with the General Assembly and was not part of the United Nations system.

41. It was appropriate for him to be speaking because of the special relationship between the Permanent Court and the item under discussion. In fact, the Permanent Court was the oldest intergovernmental institution dedicated to the task of resolving disputes between States. Since 1935 its facilities had been available for resolving disputes between States and

private parties. Seventy-five States were parties to the Hague Conventions of 1899 and 1907, nearly half of them represented on the Committee. The Court was the only institution other than the League of Nations and the United Nations to be mentioned in the Charter by name.

42. The United Nations Decade of International Law offered an opportunity to recall the purposes and functions of the Permanent Court, which were essentially to promote the peaceful settlement of disputes between States and obviate, as far as possible, recourse to force in relations between States. The settlement mechanism to which the States parties to the Hague Conventions were most inclined was arbitration, as was clear from the name of the Court.

43. But the Court offered other solutions: good offices, mediation, fact-finding commissions and conciliation. It currently had available a panel of some 250 legal experts of recognized competence and impartiality, representing all the geographical regions with which the United Nations was familiar. The parties to a dispute were completely free to agree upon a settlement mechanism and on the procedures that would govern it. The arbitration rules prepared by the United Nations Commission on International Trade Law (UNCITRAL) and endorsed by the General Assembly on the recommendation of the Sixth Committee entrusted to the Secretary-General of the Permanent Court of Arbitration a function of high responsibility for the integrity of the arbitral process: they authorized him to designate the members of a tribunal in specified circumstances when the party or person entitled to make an appointment failed to do so.

44. Since 1937 the facilities of the Permanent Court of Arbitration had been available for conciliation proceedings. The Sixth Committee was examining the subject on the basis of draft United Nations rules for the conciliation of disputes between States placed before it by the Government of Guatemala (A/C.6/45/L.2). The draft rules incorporated, through article 23, paragraph 3, several articles from the Hague Convention of 1907 concerning commissions of inquiry. They provided, among other things, that conciliation commissions should meet at United Nations Headquarters, but the International Bureau would be ready and willing to offer its premises as an alternative neutral location. The Bureau could also offer, at a modest cost, documentation, secretarial and communications services and could in general relieve the parties of administrative burdens. The expenses of the Court were paid by means of regular contributions to an annual budget, so that parties using the facilities need pay only for outside services arranged at their request.

45. After nearly a hundred years of operations the International Bureau of the Court had accumulated a substantial fund of experience which it was prepared to make available to all States, whether they were parties to the Hague Conventions or not, and to private parties, whether or not they were nationals of States parties to the Conventions.

(Mr. Jonkman)

46. The Permanent Court of Arbitration also wished to draw the Committee's attention to action recently approved by its Administrative Council. Having noted the revolutionary changes that were currently taking place in international politics, particularly a willingness among States to cooperate in re-evaluating hitherto strongly held convictions, the Administrative Council had concluded that the time had come to remind States of the dispute-settlement services available to them through the Court. It had accordingly decided to ask its member Governments how the functioning of the Court could be improved, and to obtain views from experts in the field of international dispute settlement. As to the first initiative, the Bureau was now collating observations received from Governments, which it would publish in due course. As to the second, it had published a booklet entitled New Directions, which contained the results of a preliminary meeting of legal experts held at The Hague, conveying the very positive and constructive spirit of the views expressed at the meeting. But the Sixth Committee was obviously the most competent body in the matter and the Court needed its advice. It would therefore be very pleased to know the Committee's views on the booklet.

47. The Permanent Court of Arbitration had, since its inception, responded to an ideal, the vision of an institution competent to deal with all cases, accessible at all times, and capable of contributing effectively to the friendly settlement of international disputes. He hoped that during the Decade of International Law it would pursue the fulfilment of that vision and, by the dawn of the second millenium, would play a major role in preventing or resolving conflicts.

48. Mr. SEIN (Myanmar) said that the United Nations Decade of International Law should highlight the key role of the rule of law in enabling mankind to enjoy in peace the fruits of technological progress. He then reviewed the aspects of the programme of activities for the Decade to which Myanmar attached particular importance.

49. Regarding acceptance of and respect for the principles of international law, Myanmar had in 1991 acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to the Convention on the Rights of the Child.

50. Concerning means and methods for the peaceful settlement of disputes between States, Myanmar was convinced that the International Court of Justice had a pivotal role in that field, where a number of options could be explored, including conflict prevention, negotiation, good offices and conciliation.

51. At a time when a "new international law" was beginning to take shape and in which environmental law was to play a very important role, it was essential for developing countries to participate actively in the progressive development and codification of international law.

(Mr. Sein, Myanmar)

52. Myanmar devoted great attention to the teaching and study of international law, which was a compulsory component of law courses at the University. New postgraduate courses had been introduced in 1991, along with refresher courses for officers of the Attorney-General's Office. Trainees had been sent abroad for postgraduate studies and to attend seminars. Lastly, it was gratifying to note that all the judgments and advisory opinions of the International Court of Justice were to be translated into all the official languages of the Organization. That measure was bound to contribute to a wider appreciation of international law.

53. Mr. Sandoval (Ecuador) took the Chair.

54. Mr. VUKAS (Yugoslavia) said that the first term (1990-1992) of the United Nations Decade of International Law should make it possible to review the development of international law and to commence activities to give a new impetus to its role in the international community.

55. In looking at the replies received from States and international organizations concerning implementation of the programme of activities, as reproduced in the Secretary-General's report (A/46/372), he was particularly encouraged by the data concerning publication of periodical reports on the status of ratifications of and accessions to multilateral treaties, as well as on assistance and technical advice provided to States, particularly developing countries, to facilitate their participation in the process of multilateral treaty-making.

56. With regard to means and methods for the peaceful settlement of disputes between States, the Permanent Court of Arbitration and the Institute of International Law had indicated that they were considering undertaking studies of some important aspects of that question.

57. Concerning encouragement of the progressive development of international law and its codification, care would have to be taken to avoid any duplication between the programmes of international institutions and the long-term programme of the International Law Commission.

58. Of the long list of activities to encourage the teaching, study, dissemination and wider appreciation of international law, he would single out two: the course on the law of the sea which had been held in Dubrovnik a few weeks before the commencement of hostilities in Yugoslavia and which had been attended by 30 participants from 11 countries; and the symposium on developing countries and international environmental law held in Beijing in August 1991, the final report on which was contained in document A/C.6/46/4.

59. It was disappointing that only three countries - Mexico, Romania and Uruguay - had established national committees for the implementation of the programme for the Decade and that no financial support had been promised. Nevertheless, the first year of implementation of the Decade was a major step in the right direction.

60. Mr. VAN SCHAIK (Netherlands), speaking on behalf of the European Community and its 12 member States, said that the Twelve wished to reaffirm their endorsement of General Assembly resolution 45/40 of 28 November 1990, which they had sponsored. It appeared from the replies reproduced in the Secretary-General's report (A/46/372) that the Programme for the activities to be commenced during the first term (1990-1992) of the Decade had prompted States and international organizations to think about specific ways of strengthening the role of international law in the years ahead. The time had come to take action and to ask what specific contribution the Sixth Committee itself should make in that regard.

61. Concerning means and methods for the peaceful settlement of disputes between States, there was a need to examine the possibility of a wider resort to third party intervention and further strengthen the role of the International Court of Justice. Regional mechanisms for the settlement of disputes should also receive the full attention they deserved.

62. The Twelve remained convinced that priority should be given to the increased use, where necessary, of existing international organs and mechanisms, rather than to the setting up of new bodies and the development of new international instruments, although an exception should be made for questions relating to the environment. In that regard, the Twelve expected the United Nations Conference on Environment and Development in 1992 to contribute to the strengthening of international environmental law.

63. Encouragement of the teaching, study, dissemination and wider appreciation of international law was one of the main purposes of the Decade. The Twelve placed emphasis on teaching, as could be seen from the European Community's reply quoted by the Secretary-General (A/46/372), which indicated that the acceleration of the process of European integration and the establishment of the expanded internal market in 1993 had prompted universities to pay particular attention to the teaching of Community-related subjects, particularly in the field of law. European inter-university cooperation was another important tool for the development of studies in international and Community law. Under the ERASMUS programme, institutions of higher education within the European Community could receive support from the Commission for the establishment of inter-university cooperation programmes, transnational structures that fostered student and teacher mobility and the joint development of teaching programmes and intensive courses. International law was particularly well represented in those programmes, especially in intensive courses of relatively short duration, which allowed institutions to pool their expertise in new and highly specialized fields.

64. The Twelve encouraged the International Law Commission to continue its work, focusing its main contribution in the framework of the Decade on the progressive development of international law and its codification.

65. Mr. SZENASI (Hungary) welcomed the changed orientation and attitude which was perceptible in the field of human rights and which the Secretary-General had reflected in his report on the work of the Organization (A/46/1). It was

(Mr. Szenasi, Hungary)

to be hoped that that trend would continue as the programme for the Decade was implemented.

66. Hungary, which had long been a party to numerous multilateral treaties covering all fields of contemporary international law, was endeavouring to promote acceptance of and respect for the principles of international law. Thus, in 1989, the whole range of norms relating to human rights and fundamental freedoms had been incorporated into the Constitution, and it had been stipulated that measures should be taken, wherever necessary, to harmonize domestic law with international legal obligations. By the end of 1989, furthermore, Hungary had withdrawn all the reservations it had made in respect of multilateral treaties stipulating recognition of the compulsory jurisdiction of the International Court of Justice or of any other method involving a third party in the settlement of disputes. In addition, it had acceded to the Optional Protocol to the International Covenant on Civil and Political Rights, thereby recognizing the competence of the Human Rights Committee to receive and consider complaints from Hungarian citizens who claimed to be victims of a violation of rights set forth in the Covenant. Similar steps had been taken with regard to recognizing the competence of the monitoring bodies established by other treaties for the purpose of verifying compliance by States parties. Lastly, in 1990 Hungary had become a member of the Council of Europe and on that occasion had signed the European Convention for the Protection of Human Rights and Fundamental Freedoms.

67. With regard to the promotion of means and methods for the peaceful settlement of disputes between States, the Hungarian Parliament would consider in the near future the question of recognizing the compulsory jurisdiction of the International Court of Justice. Furthermore, Hungary had decided to contribute also in 1991 to the Secretary-General's Trust Fund to Assist States in the Judicial Settlement of Disputes through the International Court of Justice, as it contributed on a yearly basis to the budget of the Hague Academy of International Law.

68. His delegation welcomed the initiative undertaken to organize informal consultations of the heads of international legal departments in the Ministries of Foreign Affairs of Member States. Those officials were the principal sources of information at the national level regarding the work of the General Assembly and the Sixth Committee on the codification and progressive development of international law and were, at the same time, primarily responsible for the dissemination of information on the ideas and goals of the Decade of International Law.

69. Mr. ELIASSON (Sweden), speaking on behalf of the five Nordic countries, said that the report of the Secretary-General (A/46/372) served as a good basis enabling Member States and the Sixth Committee to make suggestions and recommendations for continuing the Decade of International Law. In fact, it would be of great value to Member States and the Secretariat itself to have a yearly survey of the norm-setting activities in the field of public

(Mr. Eliasson, Sweden)

international law within the international community. The report also gave a good idea of the teaching, training and dissemination of knowledge in the field of international law carried out by many international organizations. He hoped that their activities would be further developed during the Decade. In particular, the Swedish delegation supported the suggestion made by the International Court of Justice to publish in all the official languages the analytical summaries of the Court's judgments and advisory opinions as well as new thematic summaries, even if that had financial implications. Since very few States had as yet reported on their contribution to the implementation of the programme for the first term of the Decade, Sweden urged Member States to take part in the dialogue which was necessary in order to achieve substantive results.

70. In November 1989, the Nordic countries had stressed that the Decade should be based on four essential elements: (a) respect for the rule of law at the national level; (b) respect for the rule of law at the international level; (c) readiness to settle international disputes by peaceful means; and (d) cooperation among States to achieve general agreement on the outcome of the Decade. The focus should essentially be on what could be done at the national level, even though the incorporation of international legal obligations into national law was not always an easy process. Although it would of course be desirable to make further contributions to the codification of international law in the course of the Decade, it was even more imperative to enhance respect for the law in its current state. The Nordic countries therefore reiterated their plea for respect for the rule of law at both the national and international level.

71. The legal departments in the Ministries of Foreign Affairs had an important coordinating role in the implementation of the programme for the Decade at the international level. They could, for example, ensure that the reports prepared by the Secretary-General and all other documentation relating to the Decade were widely disseminated, make law faculties aware of the programme for the Decade and progress made in carrying it out, and promote the holding of conferences or the writing of articles on the Decade. States could also establish national committees to assist in the implementation of the programme of the Decade.

72. Legal departments had the responsibility to see to it that the political decision-makers were aware of their country's undertakings and the legal implications of the decisions that they made, particularly foreign-policy decisions. If there was too great a discrepancy between treaty obligations, on the one hand, and reality, on the other, international law might fall into disrepute. For that reason, States should not ratify conventions until they were convinced that they would fulfil their commitments. In many cases - particularly in the human rights area - commitments were obviously not carried out. It was also necessary to put an end to the practice of ratifying conventions subject to general reservations which subordinated the obligations undertaken to national law and made ratification an illusion. It would be

(Mr. Eliasson, Sweden)

more honest to delay ratification until it was possible to implement the convention under national law. Furthermore, states parties to a treaty should not accept reservations by other parties which were not in conformity with the object and purpose of the treaty. Otherwise, the practice of generally phrased reservations might spread, which would also bring international law into disrepute.

73. The resolution to be adopted on that agenda item should (a) recommend that Member States should ensure the widest possible circulation of the reports contained in document A/46/372, particularly among bodies engaged in legislative work in order to facilitate the coordination of efforts at both the national and international level; (b) request the Secretary-General to update the report before the forty-seventh session of the General Assembly, when a decision on the next term of the Decade was to be taken; and (c) encourage Member States to respond to the Secretary-General's request for information on their contribution to the implementation of the programme for the Decade. Active participation by the non-aligned countries, whose initiative had led to the Decade, in carrying out the programme would be particularly welcome.

74. With regard to the need to promote popular understanding of the role of international law, the Nordic countries proposed that the United Nations Secretariat - and perhaps even the Legal Counsel himself - should write a short text on the Organization and international law, which States could translate into their own languages and use not only in universities but also in secondary schools. The heads of international legal departments in the Ministries of Foreign Affairs of Member States should also be consulted.

75. Lastly, the Nordic countries wished to stress that the Decade need not be spectacular in nature. The best way to enhance respect for international law would be to organize a large number of different activities, essentially at the national level, whose cumulative educational effect would make it possible to achieve the objectives of the Decade.

76. Mr. SUN Lin (China) said that at a time when the establishment of a new international order was giving rise to heated discussion, it was particularly important to strengthen the role of international law.

77. His Government noted with satisfaction that two of the four proposals that it had submitted in 1990 with respect to the activities for the Decade of International Law had been included in the programme adopted by the General Assembly for the first term of the Decade. In order to contribute to the implementation of the programme, China had held in Beijing in August 1991, with the cooperation of the United Nations Environment Programme (UNEP) and other agencies, a symposium on developing countries and international environmental law, attended by 32 experts and scholars from 17 developing and developed countries and from relevant international organizations, including the Executive Director of UNEP, representatives of the United Nations Office

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of Legal Affairs and a judge from the International Court of Justice. The discussion had focused on four major issues: (a) common concerns of mankind, including sovereign rights of States, sustainable development, the special needs of developing countries and environmental protection of "global commons"; (b) sharing of burdens on the basis of equity, including the principle of equity, international cooperation, funding and technology transfer; (c) human rights and environmental protection, including the right to a healthy environment, the right to development, the nature of collective human rights, non-discrimination and due process of law; and (d) the settlement of disputes, including institutional arrangements in that field. The final report of the symposium (A/C.6/46/4, annex) contained suggestions on seven aspects which deserved further consideration for the development of international environmental law.

78. Also within the framework of the programme of activities for the first term of the Decade, his Government intended to host a symposium on third-world countries and international law in 1992. The third-world countries, long excluded from the process of formation and development of contemporary international law and victims of certain discriminatory norms, had recently given fresh vitality to international law by participating actively and positively in its development. An in-depth study of their influence in that regard, along with action to encourage the teaching, study, dissemination and wider appreciation of international law in the third-world countries, would undoubtedly help international law play a more positive role in international relations.

79. With regard to the strengthening of the role of the International Court of Justice and means for the peaceful settlement of disputes between States, his Government had proposed encouraging States not only to study the question of recognizing the Court's compulsory jurisdiction by making declarations under Article 36, paragraph 2, of the Statute of the Court, but also to explore other ways of accepting its jurisdiction (special agreements; inclusion of dispute settlement clauses in treaties; referral of cases to an ad hoc chamber or requests for advisory opinions). Concerning the trust fund proposed by the Secretary-General, despite his country's limited financial resources the Government of China had sought to make a contribution to demonstrate its commitment to strengthening the role of the Court. In addition, it was continuing its efforts to advance the consultations with the other permanent members of the Security Council on the agreement on peaceful settlement of disputes by the Court, and was prepared to conduct discussions in that regard with other interested countries on a bilateral or multilateral basis.

80. If a third peace conference was to be held at The Hague at the end of the Decade, it should adopt a declaration on the principles of international law relating to peace and development.

(Mr. Sun Lin, China)

81. Now that a first step had been taken in implementation of the programme of activities for the first term of the Decade, that programme should be continued and the future programme should be formulated in the light of the common interests and needs of the international community so that the Decade would make a tangible contribution to the strengthening of international law and the maintenance of international peace and stability.

82. Mr. AFONSO (Mozambique) resumed the Chair.

83. Mr. AL-BAHARNA (Bahrain) said that the Secretary-General's report (A/46/372) on the item under consideration was most instructive and useful. Since the establishment of the United Nations, a strong impetus had been given to the codification and development of international law, particularly through the work carried out by the International Law Commission. Nevertheless, States had been slow in ratifying or acceding to the conventions emanating from the work of the Commission or agencies of the United Nations family. The proposal to consider the question of treaties which had not achieved wider participation or entered into force after a considerable lapse of time and the circumstances causing that situation (ibid., p. 9, footnote) therefore deserved support. In that regard, it would be useful for the agencies of the United Nations family to follow the example of the International Labour Organisation (ILO) and adopt a procedure whereby the Member States would report periodically on steps they had taken to ratify or accede to multilateral treaties elaborated under the auspices of those agencies. Such a procedure would expedite the acceptance of multilateral treaties by States. Likewise, the United Nations should consider adopting a procedure similar to the one applied by ILO in monitoring the implementation of multilateral treaties concluded under its auspices.

84. Furthermore, while the adoption in the second half of the twentieth century of international instruments in a large number of fields that had not previously been governed by international law was to be welcomed, those developments would have to be made more widely known to States, research institutes and universities, particularly in the developing countries. The agencies of the United Nations family were already endeavouring in various ways to disseminate information on legal developments in their respective fields of competence, but that information did not seem to be reaching the universities of the developing countries to a sufficient extent. His delegation therefore suggested that the United Nations or UNESCO should consider constituting a body of experts to produce a compilation of documents on contemporary developments in the new fields of international law.

85. It was also important to improve the expertise of the developing countries. In that connection, the programme of activities rightly emphasized the need for training in international law for legal professionals, judges and the personnel of ministries of foreign affairs and other ministries. The United Nations Institute for Training and Research, UNESCO, ILO and other international agencies from time to time organized training and refresher

(Mr. Al-Baharna, Bahrain)

courses for such people, but their efforts in that regard were constantly hampered by lack of funds. The suggestion to set up a trust fund for the implementation of the programme for the Decade (ibid., p. 41, footnote) therefore deserved support. The resources of the trust fund could be used to carry out studies and training activities, for which funding could not be ensured solely by very irregular voluntary contributions.

86. His Government was firmly committed to the cause of international law and would contribute, according to its capacity, to the success of the programme of activities for the decade.

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued) (A/C.6/46/L.6/Rev.1)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/46/L.7)

87. The CHAIRMAN announced that Niger had joined the sponsors of draft resolution A/C.6/46/L.6/Rev.1 and that Mali, Nicaragua and the Niger had joined the sponsors of draft resolution A/C.6/46/L.7.

The meeting rose at 6 p.m.