United Nations
GENERAL ASSEMBLY
FORTIETH SESSION
Official Records*

SIXTH COMMITTEE
46th meeting
held on
Monday, 25 November 1985
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 46th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

CONTENTS

85-58014 8769S (E)

Distr. GENERAL
A/C.6/40/SR.46
29 November 1985

ORIGINAL: ENGLISH

The meeting was called to order at 10.50 a.m.

AGENDA ITEM 130: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER: REPORT OF THE SECRETARY-GENERAL (continued) (A/40/446 and Add.1 and Add.1/Corr.1; A/C.6/40/L.9 and L.17)

1. Mr. RASSOL'KO (Byelorussian Soviet Socialist Republic), emphasizing his country's consistent advocacy of the restructuring of international economic relations on a just and democratic basis, referred to the declaration adopted at the top-level Economic Conference of the Council for Mutual Economic Assistance (CMEA) in June 1984, to a statement issued by the parties to the Warsaw Treaty in October 1985 and to the new programme of the Communist Party of the Soviet Union, as well as to the Charter of Economic Rights and Duties of States, the Declaration and the Programme of Action on the Establishment of a New International Economic Order, and General Assembly resolution 34/138 calling for the launching of global negotiations under the auspices of the United Nations. As his Government had stated, the establishment of equitable economic relations between States, the elimination of discrimination and diktat, and the renunciation of all forms of exploitation and of the use of commercial and economic ties to exert political pressure were the issues that must form the basis of the new international economic order and must become the subject of broad discussion in international forums (A/40/446/Add.1, p. 2, para. 2).

2. The present world economic situation gave rise to serious concern. The socialist States actively promoted the restructuring of international economic relations on a just and democratic basis and consistently practised a new, socialist type of relations with other countries, especially developing ones. On the other hand, ruling circles in the capitalist States were trying to exploit international economic relations for their own political ends, violating agreements, organizing blockades and resorting to sanctions and other methods of exerting pressure. Moreover, they were intensifying the neo-colonialist exploitation of developing countries, reducing financial assistance to them and erecting new barriers against exports of their industrial products, thus seriously hampering and, in some cases, paralysing their economic development. The developing countries' astronomic indebtedness to the capitalist States, one of the sequels of colonialism and neo-colonialism, was doing increasing harm to their economies and complicating international economic life.

3. The halting of the arms race, the essential pre-condition for the maintenance of peace, would release the resources needed to finance development and to solve the economic and social problems facing mankind.

4. In his delegation's view, the task of codifying the principles of law upon which the new international economic order ought to be based might well be entrusted to the International Law Commission, which was a representative body and had the necessary machinery, expertise and experience. It should not be entrusted

(Mr. Rassol'ko, Byelorussian SSR)

to the United Nations Institute for Training and Research (UNITAR), which, being a research institute, had no powers or competence to reach conclusions on problems requiring decisions by States.

5. Mr. KHALIK (Egypt) said that the reports and papers on the progressive development of the principles and norms of international law relating to the new international economic order prepared in response to the four resolutions adopted by the General Assembly since its thirty-fifth session had succeeded in establishing a number of general principles. The analytical study carried out by UNITAR (A/39/504/Add.1, annex III) had left no doubt as to the importance and urgency of the topic.

6. His Government was examining the analytical study with a view to submitting comments thereon at the earliest opportunity. It should be noted, in that connection, that the fact that only a few Governments had submitted views and comments in response to General Assembly resolution 39/75 should not be interpreted as a lack of interest on the part of Member States. The third and final phase of the UNITAR analytical study had been completed only during the thirty-ninth session of the General Assembly, and a large number of Governments, including his own, had not yet had time to analyse it in depth. His delegation did not therefore believe that it was appropriate for any specific procedures to be adopted by the Sixth Committee at the current session with regard to that study.

7. There were distinct differences of view within the Committee as to the procedure that should be followed with regard to the UNITAR study. Some delegations wished to refer the study to a working group of the Committee, some to a group of governmental experts and some to the International Law Commission for the formulation of draft articles for a future convention.

8. Regardless of what forum was most appropriate for the topic, the Committee would have to decide on the ultimate goal of the final phase of the study, such as the drafting of a convention, a declaration or a body of principles governing international economic relations, and on the mandate it would entrust to the chosen forum. In order to enable the Committee to take such decisions, informal consultations should be held before the forty-first session of the General Assembly with a view to reaching agreement on the matters involved. It would not be easy to reach consensus on the appropriate forum and its mandate as long as certain States failed to show the necessary political will for the completion of an important exercise in legal codification that would have far-reaching effects by improving economic and political relations between industrialized States and the developing countries.

9. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) noted that his country's views and comments on the subject under consideration were reproduced in document A/40/446/Add.1. It was a regrettable fact that at a time when the socialist countries were endeavouring to promote the establishment of a new international economic order, some Western States were undermining international economic co-operation and, by incessantly stepping up the arms race, not only aggravating

(Mr. Kachurenko, Ukrainian SSR)

the international situation but also expending vast resources which could otherwise be used for solving urgent economic problems. The Ukrainian Soviet Socialist Republic consistently supported the developing countries' struggle for the elimination of all forms of colonial and neo-colonial exploitation and for the establishment of just and equitable international economic relations. One of the most important aspects of United Nations activities in that field was the consolidation and expansion of the legal basis for the new international economic order.

10. An important step in that direction would be the elaboration of international legal norms based on the provisions and principles set forth in the Charter of Economic Rights and Duties of States, the Declaration and the Programme of Action on the Establishment of a New International Economic Order, and other United Nations resolutions. The expansion of co-operation among all countries, including developing countries, in the drafting of legal norms on global problems such as the world food supply, the rational use of natural resources, the peaceful exploration of outer space and the oceans and seas, and the preservation of the environment would also be of considerable importance. The task of creating a basis in international law for the restructuring of international economic relations was, of course, a most difficult and complex one. His delegation therefore shared the view that the consideration of the topic could be conducted to good effect only within a United Nations body possessing the appropriate competence and powers. The International Law Commission could, in his delegation's opinion, be entrusted with the task.

11. Mr. SHERVANI (India) said that the efforts of UNITAR in the area under consideration had to be seen in the context of current issues which underscored the need for the establishment of a new international economic order. Since 1980, the developing countries' economies had been in a particularly poor state. Growth rates in most of those countries had sharply declined, and the problem was further aggravated by the fall in commodity prices, the increase in protectionist barriers, the much heavier burden of debt-servicing and the decrease in the flow of concessional finance for development. Although the immediate effects of the drought in Africa seemed to have somewhat abated, the development crisis there persisted in all its dimensions. Because of the diversion of resources to debt-servicing, the indebted countries had been unable to address their real problems. Instability and uncertainty in the financial, monetary and trading systems and scarcity of resources were preventing developing countries from tackling mass poverty. In an unhelpful external environment, the strenuous adjustment efforts undertaken by developing countries were proving to have unacceptably high economic and social costs. Regrettably, it had not been possible to launch global negotiations under United Nations auspices. The need for the developed world to review its position was becoming increasingly urgent.

12. His delegation greatly appreciated the UNITAR study (A/39/504/Add.1, annex III) and regarded it as a step towards the establishment of the new international economic order. The right to development was a counterpart to the right to self-determination in international political relations, and any attempt

(Mr. Shervani, India)

to deny it its proper place in international law would ultimately lead to the weakening of the entire United Nations system. The only way to achieve peaceful coexistence - which, in turn, was the only alternative to nuclear catastrophe - was to halt the spiralling arms race and to release for world economic development the vast resources being wasted on building up nuclear arsenals.

13. So far as practical action was concerned, the Sixth Committee had several choices open to it. It could recommend the establishment of an intergovernmental working group backed by a support unit or of a commission with appropriate machinery and expert resources. Some delegations had suggested that the task of codification should be entrusted to the International Law Commission. Whatever method was finally adopted, the important thing was to avoid delay and to initiate the actual work as soon as possible, thus expediting the attainment of the goals of the new international economic order.

14. Mr. TOLENTINO (Philippines) said that, in principle, the objectives of the new international economic order remained uncontested. Economic development was essential to the attainment of international peace and security. The developing countries' efforts were, however, being undermined by present international policies, especially those relating to international trade and development. In the field of trade, support should be given to measures which would lead to the removal of tariff and other barriers, the enlargement of the scope of the generalized system of preferences, and the formulation of commodity arrangements. In the field of development, priority should be given to the provision of more adequate international financing, technical assistance and essential equipment on terms compatible with the independence and legitimate national interests of developing countries. His delegation had encouraged a system of collective self-reliance among developing countries in the hope that mutual co-operation would enhance each country's capabilities for meeting its own development needs and, at the same time, strengthen the bargaining position of developing countries as a whole. Unfortunately, the developed countries' response had failed to take account of the reality of interdependence, and attention was given to the developing countries' views in the decision-making process.

15. International law, if placed at the service of development, had a genuine and substantial contribution to make in improving the present economic situation. Documents already adopted by the United Nations, such as the International Development Strategy for the Third United Nations Development Decade, the Charter of Economic Rights and Duties of States, and the Declaration and the Programme of Action on the Establishment of a New International Economic Order, still lacked the full status of international law.

16. At the previous session, his delegation had expressed its thanks to UNITAR for its final analytical study on the subject (A/39/504/Add.1, annex III). Among the principles and norms identified in the study, his delegation had placed emphasis on three, namely, preferential treatment for developing countries, participatory equality of developing countries in international economic relations, and the common heritage of mankind. The adoption of those principles as specific rules of

(Mr. Tolentino, Philippines)

international law would greatly advance the attainment of the objectives of the new international economic order.

17. The next step was to proceed with the task of progressive development proper, by dealing with subjects 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. The task amounted to blazing a legal trail in an area of extreme relevance and importance, and, for that reason, should receive careful consideration. Draft resolution A/C.6/40/L.17 reflected that approach.

18. Introducing the draft resolution on behalf of the sponsors, he said that the seventh and eighth preambular paragraphs had a direct bearing on the operative paragraphs. The sponsors were fully aware that the analytical study submitted by UNITAR had provided the tool for creating a legal framework for the establishment of the new international economic order. They therefore proposed an extension of time to allow Member States to submit their reactions to the study.

19. Operative paragraph 2 proposed a deferment of the decision on the procedural mechanism for continuing the process of progressive development of the relevant principles of international law, and on the forum which would be entrusted with that task. The appropriate procedure would necessarily determine the appropriate forum. The sponsors were of the view that it would be premature to take such a decision before the comments and proposals of other Member States were made known.

20. The draft resolution was the product of co-operation and understanding among the sponsors. It was both open and definite. Open in the sense that it allowed freedom of choice; definite in the sense that a choice had to be made. The intention was not to delay the process of work, but rather to give importance to what other Member States had to say with regard to that process. The international community should be open to new concepts and new approaches in the international economic field. It should be progressive and forward-looking, for international law was dynamic.

21. The sponsors hoped that the draft resolution would be adopted without a vote.

22. The CHAIRMAN said that action would be taken on draft resolution A/C.6/40/L.17 at a later stage. Viet Nam had joined its sponsors.

AGENDA ITEM 127: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (continued) (A/40/444; A/C.6/40/L.20)

23. Mrs. DIAGO ULACIA (Cuba) said that Cuba attached great importance to the elaboration of principles to govern the application of most-favoured-nation clauses. The current international economic situation was leading to the steady worsening of the economies of developing countries despite the efforts of the latter to secure the establishment of a new international economic order based on justice and respect for the sovereignty and independence of all States.

(Mrs. Diago Ulacia, Cuba)

24. Developed countries should grant third-world countries most-favoured-nation status. The draft articles under consideration could be of great benefit to developing countries since they complemented the General Agreement on Tariffs and Trade.

25. Her delegation was concerned that a number of developed capitalist countries continued to show a clear preference for bilateralism in their trading relations. That practice imposed serious limitations on poor countries and increased the difficulties they encountered in meeting their foreign debt payments. The liberalization of trade with the developing countries would increase their export earnings and enable them better to fulfil their international obligations. In that regard, the adoption of draft resolution A/C.6/40/L.20 would be helpful.

26. The draft articles could be an acceptable basis for the elaboration of an international convention either by UNCITRAL or by a conference of plenipotentiaries. Her delegation would support any initiative aimed at relieving the heavy burden of third-world countries, and wished to reiterate its readiness to work towards that objective.

27. Mr. GILLET (Chile) said that the draft articles prepared by the International Law Commission were based on the most widely accepted doctrine and practices. Of particular interest was the study of the relationship between most-favoured-nation clauses and the principle of non-discrimination. That principle was a general rule arising from the equality of States, and most-favoured-nation clauses could be considered as an instrument for promoting that general rule. Chile recognized the principle of non-discrimination as a norm of international law not only in the field of economic activity, but also on social matters. It was convinced that most-favoured-nation clauses were a means of enhancing that principle. It therefore supported their strengthening and their codification. The codification of the principles governing most-favoured-nation treatment had both political and legal significance. The strengthening of those principles was, therefore, of great importance for developing countries like Chile, whose interests had been duly taken into account in the draft articles.

28. Chile had always supported most-favoured-nation clauses in keeping with its espousal of free trade. The privileges granted to the newly created American republics, under the clause known as the Bello clause, had forshadowed the modern-day integration movements of Latin America. Chile was one of the Latin American States which had called for the establishment of a free-trade area, not by an automatic system of proportional and uniform reduction of tariffs on all products, but through a gradual and selective process which would allow countries to negotiate every year which products would be taxed and the level of tariffs. The principal aim of the 1960 Treaty of Montevideo signed by Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay had been the establishment of a free-trade area among States parties. The system established by that Treaty appeared to have been based on the principle of reciprocity and most-favoured-nation clause treatment.

(Mr. Gillet, Chile)

29. While the implementation of the 1960 Treaty had been of great benefit to Latin America, the major changes in international trade had made it necessary to conclude a new legal instrument incorporating certain basic provisions of the 1960 Treaty as well as certain new juridical and economic provisions reflecting the current system of international economic relations. The 1980 Treaty of Montevideo had been elaborated in response to that need. The Latin American Integration Association (ALADI) established an area of economic preferences including a regional tariff preference, agreements of regional scope and agreements of partial scope. Its long-term objective was the establishment of a Latin American common market. The 1980 Treaty included an automatic and unconditional most-favoured-nation clause which, by complementing the other provisions of the Treaty, gave greater flexibility to trading relations among member countries, and between member countries and Latin American countries which were not members of the Association or as well as other developing countries outside Latin America. While the Treaty did not modify the text of article 18 of the 1960 Treaty, which had enshrined the most-favoured-nation clause, it contained other provisions which modified the differential treatment and the conditional application provisions of the 1960 Treaty.

30. Article 17 of the International Law Commission's draft did not envisage a norm to resolve the question of whether economic integration treaties did or did not constitute exceptions to the obligations arising from the most-favoured-nation clause. In the view of his delegation, the system envisaged in the 1980 Treaty resolved that question since the unconditional character of the clause provided a wider coverage. Any advantages, favours, rights, immunities or privileges that a member country granted to another member country or to another neighbouring member country, outside the framework of the instruments establishing the area of economic preferences, must be automatically and unconditionally granted to the other member countries or to the other neighbouring member countries. Those privileges were also granted to non-member countries, whether developing or developed, apart from those exceptions provided for in articles 24, 25 and 27 of the Treaty itself. However, the benefits granted by a member country to another member country under the instruments establishing the area of economic preferences were not granted to a non-member State benefiting from a most-favoured-nation clause under a treaty linking it to the member country that had granted the privilege. Not only did the 1980 Treaty refer to that exception, but it was also expressly provided for in article 24 of the General Agreement on Tariffs and Trade (GATT) with respect to customs unions and free-trade areas.

31. The most-favoured-nation clause could lead the way out of blind protectionism and provide an opportunity for developed countries to demonstrate their interest in the less developed geographical areas.

32. With respect to the efforts being made to conclude a treaty on the subject under discussion, his delegation believed that a formal international instrument would perhaps not be the best solution. His delegation had certain specific reservations concerning the situation that might arise when the time came to define the relevant statute for regulating relations between States parties and other

(Mr. Gillet, Chile)

States. Chile would therefore support the adoption of a resolution by the General Assembly approving the draft articles of the International Law Commission and reproducing them in an annex. His delegation was optimistic that the application of the most-favoured-nation clause would play an important role in international economic relations both within the wider framework of the activities of GATT and within the framework of integration systems.

33. Mr. ROMPANI (Uruguay) said that the draft articles under consideration were indispensable for the promotion of just and mutually beneficial economic relations among States, irrespective of differences in social systems and levels of development.

34. The 1980 Treaty of Montevideo had created an area of economic preferences. The long-term objective was the establishment of a Latin American common market, which would take into account the various degrees of economic development of the countries of Latin America. The 1980 Treaty had introduced significant modifications to the most-favoured nation clause in respect of "differential treatment" and "conditional application".

35. In its unconditional form, the most-favoured-nation clase in the 1980 Treaty applied to any advantage which a member country granted to another member country, to a neighbouring member country, or to non-member countries, whether developed or developing. Such an advantage must be granted automatically and unconditionally to other member countries. However, it was not granted to a non-member State which benefited from a most-favoured-nation clause contained in a treaty linking it to the member country that had granted the privilege. Against that background, draft article 17 did not give a clear response to the question of whether treaties of economic integration did or did not constitute exceptions to the obligations imposed by a most-favoured-nation clause.

36. According to the provision adopted at the 1969 Edinburgh meeting of the Institute of International Law, States to which the clause applied could not invoke it to claim treatment identical to that which the States participating in a regional integration system granted one another. Moreover the exception had been expressly recognized in article 24 of the General Agreement on Tariffs and Trade. According to ALADI a solution which did not allow for exceptions would oblige States acceding to a treaty on the most-favoured-nation clause to enter reservations.

37. The dynamic nature of the norms of international law in relation to developing countries should be recognized. In dealing with developing countries, the European Economic Community, in most cases, granted preferential treatment which was more favourable than the treatment accorded to countries benefiting from the most-favoured-nation clause.

38. States needed to be assured of their right to exist on the planet. Once that right had been acquired, men and States should be allowed to act with freedom. The law of survival of the fittest was both morally and politically unacceptable.

39. Mr. KHALIK (Egypt) said that consideration of the draft articles on most-favoured-nation clauses was a matter to which his delegation accorded particular importance because of its close link with the progressive development of contemporary international law in vital areas relating to economic and legal co-operation on the basis of the sovereign equality of States, non-discrimination and mutual advantage.

40. Further postponement of a decision on the procedure to be followed with respect to the draft articles could only lead to their obsolescence. There was already a need for supplementary provisions in order to keep pace with developments in international economic relations. The draft articles should be referred back to the International Law Commission for revision in the light of the requirements of the new international economic order and the special situation of the developing countries. An appropriate procedure for completing work on the draft articles should be adopted immediately following completion of the Commission's review. Progress in the work of codification depended on a constructive attitude on the part of those States that were impeding its completion.

41. Mr. KAHALEH (Syrian Arab Republic) said that his delegation wished to reaffirm its comments and reservations with regard to the draft articles on most-favoured-nation clauses. It wished, in particular, to reaffirm its reservations with regard to draft articles 17, 18 and 19. The Arab States accorded one another special treatment, either bilaterally or collectively, and that treatment could not be extended to non-Arab parties in view of the special relations existing between Arab States. There was a customary norm of international law that established exceptions for members of regional organizations, and that norm could be embodied in a special provision incorporated in the draft. The draft articles, revised in the light of the comments of Member States, would constitute a step towards the progressive development of the principles and norms of international law relating to the new international economic order.

42. Mr. HARDY (Observer, Commission of the European Communities) said that, for a number of reasons, the European Community had a considerable interest in the topic under discussion. The most-favoured nation clause did not apply within the Community, which constituted the largest customs union in existence. The community received most-favoured nation treatment in its external trade relations with third States and offered similar treatment to its trading partners. In the case of developing countries, however, preferential treatment was given in most instances.

43. The draft articles of the International Law Commission were defective in that they did not reflect that practice. The fact that they were restricted to clauses contained in treaties between States also appeared to be an inadequate way of proceeding.

44. The Community, therefore, would have preferred not to continue work on the International Law Commission's draft articles. Its preference would have been for the General Assembly to take note of the Commission's work and to bring the draft articles and the various proposals to the attention of States and others, such as regional integration bodies, for their consideration and use in appropriate cases.

(Mr. Hardy)

The Community, however, accepted the proposal in draft resolution A/C.6/40/L.20 that further consideration by the Sixth Committee should be postponed until the forty-third session. The Community would consider submitting comments and information on its practice, as requested in the draft resolution, in due course.

AGENDA ITEM 139: PREPARATION FOR THE UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS (A/C.6/40/L.16)

45. The CHAIRMAN said that, as the members of the Committee were aware, the General Assembly had decided, in resolution 39/86, that the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations should be held at Vienna from 18 February to 21 March 1986, and had referred to the Conference, as the basic proposal for its consideration, the relevant draft articles adopted by the International Law Commission at its thirty-fourth session. In that resolution, the General Assembly had also appealed to participants in the Conference to organize consultations "primarily on the organization and methods of work of the Conference, including rules of procedure, and on major issues of substance, including final clauses and settlement of disputes, prior to the convening of the Conference in order to facilitate a successful conclusion of its work through the promotion of general agreement".

46. In response to that appeal, three rounds of informal consultations had been held in 1985 under the co-chairmanship of the Legal Counsel and himself. The first round of consultations had been held from 18 March to 1 May 1985 and the second from 8 to 12 July. Informal statements by the co-Chairmen summing up those two rounds of consultations had been duly circulated to all the missions accredited to the United Nations and would be issued as part of the records of the Sixth Committee under agenda item 139. The third round, comprising some 25 meetings, had taken place during the fortieth session of the General Assembly, from the end of September to the middle of November. In the course of those consultations, participants had addressed such issues as the organization of the Conference, methods of work, including consideration of the draft rules of procedure, participation in the Conference by the United Nations and other international organizations, and the question of final clauses, with emphasis on participation by international organizations.

47. As a result of those efforts, the co-Chairmen were now in a position to submit to the Committee draft resolution A/C.6/40/L.16, together with three annexes. It had been decided in the course of the consultations that once the draft resolution had been finally adopted by the General Assembly, it should be issued as part of the official records of the Conference. It was proposed in paragraph 3 that, in addition to the organizations to be invited to participate in the Conference in accordance with General Assembly resolution 39/86, the United Nations should participate.

(The Chairman)

48. Annex I to the draft resolution contained a complete set of draft rules of procedure, whose adoption was recommended to the Conference in paragraph 4 of the draft resolution. Those draft rules of procedure had been worked out specifically for use by the Conference, in the light of the particular nature of the Conference and the subject-matter to be considered by it. They differed from the traditional rules of procedure in the following three respects. Firstly, draft rule 28 provided that the draft articles of the basic proposal should be divided into drafts that required substantive consideration by the Committee of the Whole, owing to their specific content, and drafts that would have to be dealt with only in plenary meeting and by the Drafting Committee, owing to the parallelism between the 1969 Vienna Convention on the Law of Treaties and the draft articles. Such a division of the draft articles would diminish the risk of encroachment by the new Convention on the 1969 Convention; moreover, only such a division would make it possible to deal with the basic proposal in the five weeks scheduled for the Conference. Secondly, draft rule 60 contained specific provisions relating to participation in the Conference by representatives of the organizations to be invited in accordance with General Assembly resolution 39/86, paragraph 2 (e). Thirdly, draft rule 63 contained a specific provision on the promotion of general agreement. The participants in the consultations had agreed that it was understood that the draft rules of procedure, in the final form that they were taking following extensive negotiations, should not be reopened for negotiations at the Conference.

49. Annex II contained a list of draft articles that, it was suggested, the Conference should refer to the Committee of the Whole for substantive consideration. Of course, that list of draft articles constituted a proposal that would require further consideration by the Conference. A safeguard mechanism that would permit the recall of certain additional draft articles to the Committee of the Whole was incorporated in draft rule 28.

50. Lastly, annex III contained a set of draft final clauses for the proposed Convention. They had been prepared by the co-Chairmen at the request of participants in the consultations and had been received with interest. It had been found that they merited consideration in the future. The exchange of views held on them had remained inconclusive. They were referred to the Conference for the purpose of providing assistance in finding a generally acceptable solution.

51. The end of paragraph 5 of the draft resolution should read: "a list of draft articles on the basic proposal, for which substantive consideration is deemed necessary (annex II)"; the title of annex II should consequently read: "List of draft articles on the basic proposal, for which substantive consideration is required".

52. Mr. BERNAL (Mexico) said that in the consultations that had been held, the need to make provision for participation by both States and international organizations in the work of the forthcoming Conference had led to extensive changes in the rules of procedure traditionally used for such conferences. Right from the outset, his delegation had been in favour of active participation by

(Mr. Bernal, Mexico)

international organizations in their capacity as subjects of international law, subject to the restrictions inherent in their legal status. The draft rules of procedure set forth in annex I to draft resolution A/C.6/40/L.16 largely contained provisions allowing for participation by the international organizations invited to attend the forthcoming Conference. His delegation noted with satisfaction that the United Nations had been invited to participate in the Conference in its capacity as an international organization.

53. His delegation considered it acceptable to require the presence of representatives of two thirds of the States participating in the Conference for any decision to be taken. However, unnecessary complication of the draft rules of procedure would not automatically ensure success. The problem currently confronting the international community in the codification and progressive development of international law was one of effectiveness and political will, rather than one of procedural efficiency. Draft rule 63 would not be effective without the necessary political will and must be interpreted in good faith. The commitment undertaken under that draft rule was solely to make every effort to reach general agreement, not necessarily to achieve unanimity, on matters of substance. His delegation regarded consensus as the outcome of negotiations held in good faith, not as a form of vote. The terms "matters of substance" and "general agreement" had not been defined in the draft rules of procedure, and there was therefore no clear-cut agreement on their meaning. His delegation had accepted the wording of draft rules 63 and 34. That, however, did not mean that draft rule 63, for example, constituted a binding precedent for the adoption of United Nations resolutions and decisions. Moreover, draft rule 63, paragraph 3, could not be regarded as a derogation from the right to vote or be interpreted as meaning that the question whether that sovereign right should be exercised was to be left solely in the hands of the President of the Conference. His delegation reserved the right to request the President to use the decision-making mechanism provided for in that paragraph in cases where it was not possible to reach general agreement.

54. Mr. MIMOUNI (Algeria) said that his delegation welcomed the holding of the forthcoming Conference.

55. It must be recognized that some international conventions had not entered into effect owing to a lack of the necessary political will on the part of States. The adoption of international conventions by consensus did not necessarily mean that the instruments in question enjoyed extensive support, and a convention whose significance and scope had been seriously restricted by the rule of consensus could not be fully effective. It must therefore be acknowledged that there were major drawbacks to the systematic implementation of the principle of seeking general agreement, as had been demonstrated in the case of a recent conference, which had not led to the adoption of the draft convention in question, owing to the position taken by certain delegations in the final stages.

56. In the case currently under consideration, it was desirable that international organizations should participate in the Conference, owing to its specific nature. The draft rules of procedure conferred a new status on international

(Mr. Mimouni, Algeria)

organizations. The sole justification of the provisions of the draft rules, particularly those relating to the promotion of general agreement, lay in the particular nature of the Conference and the subject-matter. They could not therefore be regarded as setting a precedent.

57. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the informal consultations among participants in the forthcoming Conference had once again demonstrated the complexity of the problems to be considered. At the same time, the draft rules of procedure prepared as a result of the consultations would, in his delegation's view, help to save time at the Conference, so that maximum attention might be devoted to matters of substance.

58. The specific nature of the questions to be considered at the Conference made it necessary to give due consideration, on the one hand, to the special status of States, which were the primary subjects of international law and direct participants in the processes of codification and progressive development of various branches of the law, and, on the other hand, to the status of international organizations, which were invited to conferences as observers. Only States could create norms in international law which were universally binding upon all subjects of international law. It was States, as participants in the codification of various branches of international law, that had brought every international organization into being. In inviting international organizations to attend a codification conference as observers, States hoped to benefit from their experience and possible recommendations; but the codification and progressive development of international law remained exclusively a matter to be agreed among States. The statute of the International Law Commission, like the Charter itself, was based on that principle. The Commission's members were nominated only by States and not by international organizations, and all its activities were preparatory in nature, being confined to the drafting of articles, which was the first stage of codification. Neither the Commission, nor indeed the United Nations as a whole, took part in the second, decisive stage of codification, that of the recognition of norms as binding standards in force in international law. Only States, as sovereign subjects of law, could do that. To minimize the role of States in the codification process or to equate them with international organizations was to ignore the objective realities of the development of international law.

59. There were no legal grounds for making an exception in the case of the convention to be elaborated at the forthcoming Conference. Like all previous conventions, it should be an agreement among States. For the same reason, official acceptance or accession by international organizations should not be included among the ratifications or accessions necessary for the convention's entry into force. They were not so included, for example, in the case of the United Nations Convention on the Law of the Sea.

60. It was difficult to accept the argument that international organizations should be granted a greater role in the codification process because the proposed convention directly concerned their rights. So far as the substance of the codification process was concerned, the draft under consideration was in no way

(Mr. Ordzhonikidze, USSR)

different from other codification instruments, including those which had a bearing upon the rights of international organizations. In that connection, he referred to the 1975 Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. The fact that international organizations had not been granted the right to sign that Convention had not violated their rights as subjects of international law. International organizations had other means of expressing their agreement with the provisions of a convention. His delegation would have no objection to their being allowed to accept rights and obligations under the proposed convention by a special declaration lodged with the depositary, as in the case of the Convention on International Liability for Damage Caused by Space Objects and the Convention on the Registration of Objects Launched into Outer Space.

61. In conclusion, he remarked that the informal consultations would be still more efficient if all those participating in them, including representatives of some international organizations invited to attend the final stage of the consultations, refrained from complicating the proceedings by raising issues of an artificial nature.

62. Mr. HARDY (Observer, Commission of the European Communities) said that a number of the draft rules of procedure had rightly been prepared with the specific needs of the forthcoming Conference in mind. The subject that was to be dealt with at the Conference was of direct concern to international organizations, and it would therefore have been difficult for such organizations to make their views known and to associate themselves with the work of the Conference as active participants without appropriate provisions in the draft rules of procedure. The European Community would have preferred somewhat different solutions to various problems, so as to reflect more fully the status of the Community. However, it accepted the draft rules of procedure in their current form, in a spirit of compromise.

63. The draft rules of procedure made provision for active participation by international organizations, and it was interesting to note that the Conference would be the first such law-making conference involving subjects of international law other than States in that manner. The proposed convention sought to deal with international organizations in a single instrument, even though such organizations varied greatly in character and in the nature and range of their treaty practice. A certain amount of self-discipline would therefore be required, if the desired results were to be achieved. He believed that the measures adopted so far provided a good basis for the Conference.

64. Ms. WILLSON (United States of America) said that her delegation did not share the view that the sole justification for the inclusion of draft rule 63 was to be found in the subject-matter that was to be dealt with at the Conference and in the fact that international organizations were to be participants. It must be borne in mind that the Conference was a codification conference.

65. Ms. LAFRANCE (Canada) said that the draft rules of procedure would permit the Conference to enter into the substance of the matter immediately. Draft rule 59 and the following draft rules struck a good balance between the interests of States and those of international organizations. Her delegation particularly welcomed draft rule 63.

66. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/40/L.16 without a vote.

67. It was so decided.

AGENDA ITEM 138: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SEVENTH SESSION (continued)

Draft resolution A/C.6/40/L.19

68. Mr. CALERO-RODRIGUES (Brazil) introduced draft resolution A/C.6/40/L.19 on behalf of the sponsors, which had been joined by Pakistan and Qatar.

69. He pointed out that the text before the Committee was based on the corresponding draft resolution adopted by consensus at the previous session. Paragraph 3 contained the recommendation that the International Law Commission should continue its work on the topics in its current programme, bearing in mind the clear desirability of achieving as much progress as possible in the preparation of draft articles on specific topics before the conclusion of the present term of membership. At the end of paragraph 8, an appeal was made to States that could do so to make voluntary contributions that were urgently needed for the holding of seminars in conjunction with the Commission's sessions.

70. It had been proposed that the following operative paragraph should also be included: "Encourages the Commission to organize its work by staggering the consideration of some of the topics in its current programme of work, which would enable a more in-depth consideration of its reports." However, it had been concluded that it would be appropriate to defer consideration of that useful suggestion until the next session of the General Assembly.

The meeting rose at 1.25 p.m.