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SUMMARY RECORD OF THE 13th MEETING

Chairman: Mr. DENG (Sudan)

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

AGENDA ITEM 127: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued) (A/43/532)

1. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that in the present-day world, armed conflicts were unfortunately still a reality. The temptation to resort to force too often got the better of legal principles and considerations of humanity or common sense. Until such time as recourse to force could be avoided and armed conflicts eliminated, care should be taken at least to preserve the applicable humanitarian principles in time of war and, in particular, to ensure that civilian populations and targets were protected.

2. Strict application of the principles of international law regarding armed conflicts should be an effective means of putting an end to hostilities and restoring peace. The Geneva Conventions of 1949 and the Additional Protocols of 1977 still did not play a sufficiently important role in that regard. Their lack of effectiveness was partly attributable to the fact that a number of States had not yet ratified them, which constituted a considerable obstacle to their application. For its own part, the Soviet Union continued to give them careful consideration, from every aspect and in the light of the new political thinking, with the firm intention of ratifying them as soon as possible. His delegation hoped that the largest possible number of States would ratify or accede to the Protocols, so that they might enter fully into force and work with the other instruments of humanitarian law to halt the escalating cruelty of conflicts and facilitate reconciliation between parties.

3. Mr. ARMSTRONG (New Zealand) said that the item appeared again on the agenda of the United Nations at a time when a new spirit of peace was breaking out in many regions. However, until the goal was firally reached, rules of international law were needed which might help to minimise the suffering caused by warfare. New Zealand was a firm supporter of the role of international humanitarian law in limiting the suffering brought about by armed conflicts and in helping to resolve such conflicts. Recognising that the Protocols were a significant addition to the régime established in the Geneva Conventions, it had recently ratified both Protocols and hoped thereby to have contributed to the process of strengthening the international community's commitment to the great principles embodied therein. It also hoped that the Protocols would soon become as universally accepted as the 1949 Geneva Conventions.

4. Mr. CAMPBELL (Australia) confirmed Australia's intention of ratifying the Protocols. A decision by ministers to that effect had been announced on 11 March 1986, and enabling legislation was shortly to go before Parliament. The decision was consistent with Australia's active participation in the diplomatic conference which had adopted the Protocols in 1977. It also reflected Australia's firm and continuing commitment to the development and application of international humanitarian law for the protection of all victims of armed conflicts.

(Mr. Campbell, Australia)

5. As it looked forward to joining the other 77 parties to Protocol I and the 69 parties to Protocol II, Australia urged those States which had not yet done so to take the necessary steps to become parties to the Protocols, in order to achieve the widest possible adherence to the humanitarian principles they embodied.

6. The CHAIRMAN announced that the general debate on agenda item 127 was concluded.

AGENDA ITEM 125: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES (A/43/526)

7. The CHAIRMAN invited the Committee to consider agenda item 125, the Secretary-General's report on which bore the symbol A/43/526.

8. Mrs. VALDES (Cuba) said that the articles on most-favoured-nation clauses would be very beneficial to the developing countries in so far as they would contain norms and principles taking due account of the interests of the third world. Some countries, however, continued to give precedence to bilateral negotiations, and, before according most-favoured-nation treatment, first considered whether the legislation of the country involved coincided with their own interests, a practice which ran counter to the interests of the developing countries.

9. It was extremely important that the developed countries should grant developing countries trade advantages enabling them to honour their international commitments. For that reason, the draft articles should be updated or used as a basis for future work, both in UNCITRAL and in the International Law Commission, with a view to institutionalising the most-favoured-nation clause. Cuba was entirely willing to participate in that task, and would collaborate in all activities by the international community to prevent a further deterioration in the developing countries' economies.

10. Mr. HAMPE (German Democratic Republic) said that his country had always favoured universal recognition and application of the principle of most-favoured-nation treatment in trade and economic relations, as a means of securing equitable and mutually advantageous relations and eliminating economic discrimination.

11. The draft articles constituted a solid basis for further work on that topic. At the previous session, his delegation had submitted proposals on ways of improving the existing texts. It was in favour of the International Law Commission continuing its work on the topic with a view to eventually finalising an appropriate legal instrument on the basis of the draft articles. Regarding the procedure to be followed, he said that the draft articles might, for example, be referred to a working group of the Sixth Committee for consideration.

12. Mr. GUPTA (India) recalled that the International Law Commission had been considering the topic for 11 years, and that it had concluded that the most-favoured-nation clause, while often encountered in trade agreements, had not become a rule of customary international law. Nevertheless, a State should avoid all forms of discrimination: it should not make the performance of its obligations conditional on the fulfilment by its partners of requirements whose nature was completely alien to the treaty concerned, and it should not invoke its internal legislation to justify failure to perform its treaty obligations.

13. The International Law Commission had pointed out that the draft articles on most-favoured-nation clauses constituted both codification and progressive development of international law. In fact, international trade was currently conducted under rules formulated by the original negotiators of the General Agreement on Tariffs and Trade, and there was discrimination at both general and bilateral levels.

14. His delegation noted with satisfaction the work of the International Law Commission, and hoped that a convention would be concluded on the subject. It urged the Sixth Committee to bear in mind that such a procedure would help it to realise the desired goal.

15. Mr. KAKOLECKI (Poland) said that the most-favoured-nation clause was a sine qua non for the development of just and mutually advantageous international trade. It would mean the introduction of the principle of equal rights of States in economic relations and, by extension, in the political sphere also.

16. Poland thus supported the draft articles under consideration, which remained, in its view, a sound basis for further deliberations. In addition, the scope of application of the draft articles should be extended to relate also to international organisations. Work on the draft articles should be continued, either in the International Law Commission or in a working group of the Sixth Committee.

17. The CHAIRMAN invited Mr. Derisbourg, head of the delegation of the Commission of the European Communities, to address the Committee.

18. Mr. DERISBOURG said that there had been considerable structural changes in international trade in recent years. The many free-trade areas and customs unions had facilitated the development of regional integration in the world, first of all between developed countries (the European Community, the European Free Trade Association), and subsequently between developing countries (ASEAN in South-East Asia, the Andean Group and SELA in Latin America, and negotiations between Argentina, Uruguay and Brazil). Other developed countries, such as Australia and New Zealand and recently Canada and the United States, had adopted that approach. All those cases constituted more or less major derogations from the scope of the most-favoured-nation clause. Each such derogation was carefully considered in GATT.

19. In the late 1960s and early 1970s, the developed countries had established, without reciprocity, a generalised system of tariff preferences in favour of the

developing countries. Within GATT, a number of developing countries had made reciprocal concessions in connection with the so-called "Protocol of the Sixteen", without extending those concessions to the other members of GATT. Finally, in 1988 the developing countries, with the assistance of UNCTAD, had established between them the GSTP, which was a system of preferences that did not extend to countries not parties to that arrangement. The upsurge of such one-way or two-way systems of preferences had led the Tokyo Round negotiators to incorporate the "enabling clause" in the Agreement at the end of 1979. The clause sanctioned, as it were, all those derogations which were not covered by the most-favoured-nation clause.

20. The GATT system established at the end of the Second World War was based on a system of fixed rates of exchange, known as the Bretton Woods system; in recent decades, it had been severely undermined as a result of the proliferation of economic emergencies created by balance-of-payments difficulties. Some developed countries had been obliged to resort, fortunately on a temporary basis, to article XII of the Agreement. Many developing countries continued to invoke article XVIII in order to limit their imports and thus restore balance-of-payments stability. Admittedly, that did not bring the principle of the most-favoured-nation clause into question, but the very large number of cases in which articles XII and XVIII had been invoked had seriously undermined the results anticipated, within GATT, from the reciprocal extension of concessions to all signatories to the Agreement.

21. In such circumstances, it might be asked whether it was necessary to legislate on the matter. The increasing number of signatories to the Agreement should be taken into account, for example. GATT was no longer a club of a few dozen Contracting Parties, as had been the case in the 1950s or 1960s. There were 96 States parties but more than 120 countries were applying the GATT rules on a de facto basis. China was currently negotiating its return to the organisation, while certain other countries were currently examining their relations with GATT. Such progress towards universalisation of the Agreement and towards a more pragmatic approach provided food for thought and should be taken into consideration by the General Assembly.

22. Finally, the Contracting Parties to GATT, and also a number of countries which had pronounced themselves in favour of accession, were currently engaged in a round of multilateral trade negotiations, the Uruguay Round. Their ministers would meet in December at Montreal to carry out a mid-term review of the negotiations, which were due to finish in 1990. A negotiating group, one of the 15 groups established for the Uruguay Round, was specifically concerned with consideration of certain articles, including article XXIV concerning customs unions and free-trade areas, and articles XII and XVIII concerning derogations resulting from balance-of-payments difficulties. The negotiators were aware of the considerable development of all the free-trade areas, customs unions, systems of preferences and derogations from the Agreement already mentioned by way of example.

(Mr. Dorisbourg)

23. In view of that development, and taking into account the current negotiations in the Uruguay Round, the European Community continued to believe that the articles on the most-favoured-nation clauses as drafted by the International Law Commission, although interesting, were not in line with the development of practice or with the new forms of international trade. It proposed that the Sixth Committee should take note of the Commission's report and bring the results of its deliberations to the attention of States and the international organizations, including regional organizations.

24. The CHAIRMAN said that the Committee had concluded the general debate on agenda item 125.

The meeting rose at 3.30 p.m.