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SUMMARY RECORD OF THE 32nd MEETING

Chairman: Mr. GASTLI (Tunisia)

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 132: CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS: REPORT OF THE SECRETARY-GENERAL (continued) (A/38/145 and Corr.1 and Add.1, A/C.6/38/4)

1. Mr. ROSENNE (Israel) said that, before final decisions were taken on the preparation of the proposed convention on the law of treaties, the Secretariat should submit a working paper on the methods of work of the conference to be convened for the purpose of concluding such a convention.

2. The comments, especially but not exclusively those of the different international organizations which were included in the report of the Secretary-General (A/38/145 and Corr.1 and Add.1), were, in some respects, disturbing. The International Law Commission had taken as its point of departure that "the preparation of draft articles on the law of treaties between States and international organizations or between international organizations cannot be divorced from the basic text on the subject, namely, the Vienna Convention" (A/37/10, para. 36). He was glad to see that one of the overriding concerns of the Administrative Committee on Co-ordination was not to disturb the overall standards established in that 1969 Convention (A/C.6/38/4, para. 15). In terms of methodology, the articles prepared by the Commission followed very closely those of articles of the Vienna Convention, but behind that methodological approach was the substantive decision not to disturb the delicate formulations of the 1969 Convention. Nevertheless, that could give rise to complex problems of interpretation and application in cases where States were parties to both conventions, create an even more difficult situation regarding the relativity of treaties, the relationship between two codification treaties dealing with the same topic and customary international law, and cause problems arising out of the incompatibilities between the legislative histories of the two conventions.

3. There were also other problems. In 1950 the Commission had decided that the object of its codification of the law of treaties was the formal instrument itself. It was the law relating to the instrument which was codified in the Vienna Convention, not the law relating to the obligations flowing out of the instrument. That had also been the approach followed in the 1982 draft articles currently under discussion.

4. The law regarding the obligations of States flowing out of the instrument to which States were parties came within the scope of the topic of State responsibility. In the case of international organizations, the question was what was the parallel topic dealing with the law governing the obligations of international organizations arising out of treaties to which those organizations were parties. Even if it were assumed that, parallel to the law on the responsibility of States, there existed a law on the responsibility of organizations, the question arose whether that was the only area of law to serve as a backdrop for the obligations of international organizations arising out of treaties with States to which they were parties. One of the unspoken elements on

(Mr. Rosenne, Israel)

which the whole law of treaties rested was the factor of reciprocity inherent in the concept of the juridical equality of States. That concept did not exist in a treaty between a State and an international organization.

5. It was his impression that the International Law Commission was fully aware of that problem, even if it was not able to deal with it in the context of its work on State responsibility. If, however, the General Assembly was to set in motion a process for concluding the proposed convention, such questions would have to be faced sooner or later.

6. Without calling into question the fundamental decision embodied in resolution 37/112, his delegation considered that the Sixth Committee would be well-advised to proceed cautiously in deciding what the next step should be.

7. Since the right to vote belonged to States, there could be no question of enabling international organizations to vote at any stage in the making of the new convention. His delegation was not sure that, at a conference of plenipotentiaries or in other diplomatic forums such as the General Assembly, international organizations should be entitled to submit amendments and proposals in their own name. How they would reach the necessary policy decisions was for them to determine by themselves, on the basis of their own constituent instruments, rules and practices. Experience at the United Nations Conference on the Law of Treaties did not show that international organizations needed to have the right to submit proposals and amendments.

8. Unless satisfactory alternative suggestions were advanced, standard United Nations practices should, in principle, form the basis for a decision as to which international intergovernmental organizations should be invited to participate in future work on a convention.

9. He supported the suggestions that a working group should be established to review the draft articles, in the light of the comments received, before their examination in the forum that was to adopt them, and that the General Assembly should first adopt them "as a standard of reference for action destined to harden into customary law" (A/38/145, p. 21, para. 10 (d). He understood those suggestions to refer to the draft articles themselves and not to their commentaries. If such an approach were adopted, the services of Professor Reuter should be engaged as expert consultant both for any small working group and for the forum which would adopt the articles.

10. His delegation firmly believed that, at the current stage, all decisions must be made by consensus.

11. Mr. ROBINSON (Jamaica) said that he was grateful to the International Law Commission for the extensive work it had done over the years on the question of treaties between States and international organizations or between international organizations, culminating in its 1982 draft articles. He supported the Commission's recommendation that the General Assembly should convene a conference to conclude a convention on that subject.

(Mr. Robinson, Jamaica)

12. He disagreed with much of the argumentation developed in the paper presented by the Administrative Committee on Co-ordination (A/C.6/38/4). There was a stronger case for the draft articles taking the form of a convention rather than a declaration. The draft articles constituted a companion instrument to the 1969 Vienna Convention on the Law of Treaties, and deserved parity of treatment with the subject-matter of that Convention.

13. In paragraph 19 of its paper, the Administrative Committee on Co-ordination made the point that compliance with a declaration "could be ensured by the members of these organizations, which for the most part are also Members of the United Nations". It might be argued, however, that compliance with a Convention could, by the same token, be ensured by the members of those organizations.

14. Some of the other points made in the paper were debatable. In paragraph 17, for example, it was stated that draft article 62 on fundamental changes of circumstances could raise questions in the event that changes in interest rates drastically increased a borrower's relative financial obligations. With the exception of two changes, that article was the same as article 62 of the 1969 Vienna Convention, which had been restrictively drafted in favour of the principle of the binding force of a treaty. The two conditions set out therein for the invocation of a fundamental change as a ground for terminating or withdrawing from a treaty were therefore cumulative, not alternative. It was difficult to see how, in the usual loan agreement with an international institution, a State could properly invoke a fundamental change of circumstances in the situation referred to by the Administrative Committee on Co-ordination.

15. One might therefore question whether that Committee's fears were warranted in that regard. While there might be difficulties in the transposition of treaty law principles to international organizations, such difficulties should not prevent the conclusion of the convention.

16. The Sixth Committee was not an appropriate forum for the adoption of an instrument on that subject because of its heavy work-load. By allowing for extensive participation by international organizations, a conference would be a better forum.

17. Mr. SINGH (India) said his delegation supported the International Law Commission's recommendation that a diplomatic conference should be convened to conclude an international convention on the law of treaties between States and international organizations or between international organizations. All international organizations with treaty-making capacity should be invited to participate fully in the work of the conference, without the right to vote. That practice had been followed at recent international conferences and took account of the esential differences between States and international organizations as "legal persons" in international law.

18. The formulations embodied in articles 305 and 306 of the United Nations Convention on the Law of the Sea, and in annex IX thereto, had been the outcome of

(Mr. Singh, India)

prolonged negotiations between the international organizations and States represented at the United Nations Conference on the Law of the Sea. They defined the conditions and circumstances under which international organizations could sign the Convention and submit instruments of formal confirmation or accession. They also dealt with the extent of participation and rights and obligations of international organizations, the effect of their declarations, notifications and communications, the responsibility and liability of international organizations, and the settlement of disputes. Those provisions could be adopted by the proposed convention to deal with the participation of international organizations.

19. There were a number of procedural and substantive questions referred to in document A/C.6/38/4 that required further consideration. His delegation did not agree that, as a first step, it might be desirable to set up a working group to review the draft articles or that a declaration should be adopted by the General Assembly endorsing them as principles or guidelines to be applied by all intergovernmental organizations before a convention could be concluded. Such an approach would be needlessly cautious and time-consuming. Furthermore, it might prevent the draft articles prepared by the International Law Commission from being transformed into an international convention in the near future. His delegation hoped that the existing problems could be solved and a convention concluded on the subject in order to promote international co-operation through the progressive development and codification of international law.

20. Mr. AKDAG (Turkey) said that Turkey maintained its objections to draft articles 53 and 64 relating to jus cogens. It was hard to justify those articles because jus cogens norms took a long time to emerge and had to be recognized by States, not by organizations.

21. Draft article 66 failed to refer to direct negotiations, which were the most effective means of settling disputes. The article, which also made provision for compulsory arbitration, was far from realistic.

22. Mr. BERNAL (Mexico) supported the convening by the General Assembly of an international conference of plenipotentiaries to conclude a convention on the law of treaties between States and international organizations or between international organizations, on the basis of the draft articles prepared by the International Law Commission.

23. The Commission itself had raised the question whether international organizations could become parties to the proposed convention, instead of merely being bound, tacitly or indirectly, by its provisions (A/37/10, para. 60). It should be noted that, in 1982, the international community had established a new precedent with regard to international organizations as parties to treaties. Articles 305 to 307 of the United Nations Convention on the Law of the Sea provided for the signature, ratification and accession of international organizations, in conformity with annex IX, which established a number of requirements for the participation of international organizations. Due account should be taken of that innovative precedent during consideration of the proposed convention.

24. Mr. MAKAREWICZ (Poland) said that his delegation welcomed the successful completion of the International Law Commission's work on the draft articles on the law of treaties between States and international organizations or between international organizations. The almost unanimous adoption of those draft articles, as well as the broad support they had gained in the Sixth Committee, provided ample evidence that they met the needs of the international community. Given the growing role of international organizations in international relations, the draft articles constituted a long awaited and indispensable supplement to what had already been accomplished in the codification and progressive development of international law governing treaties. They properly reflected and resolved the contradictions which might arise between consensuality based on the equality of contracting parties and the differences between States and international organizations.

25. The relationship between the draft articles and the Vienna Convention on the Law of Treaties safeguarded the logical consistency and coherence of the international law of treaties. However, that approach required further elaboration. Since the draft articles were to constitute a complete entity capable of producing legal effects independently of the Vienna Convention, there would be ample justification in restating in an initial paragraph of draft article 6 the rule laid down in article 6 of the Vienna Convention: "every State possesses capacity to conclude treaties". Furthermore, draft article 66 did not preserve the homogeneity of the law of treaties with respect to the settlement of disputes in cases concerning jus cogens. Nor did it provide a generally acceptable solution. Given the fundamental importance of jus cogens for the whole international legal order, the international community should continue its efforts to find a generally acceptable solution that would rule out the possibility of multiple competences and divergent jurisprudence.

26. His delegation supported the convening of a diplomatic conference to conclude a convention. Such an approach would be in line with established precedents, and a conference appeared to be the forum best suited for the comprehensive consideration that such a complex and important subject required. The arrangements governing the participation of international organizations in the conference should fully reflect the differences between such organizations and States as subjects of international law. In view of the nature of the proposed convention, international organizations should participate in the conference on an equal footing with States, but without the right to vote.

27. The convention would not be a treaty between States and international organizations within the meaning of draft article 9, paragraph 2, but a law-making treaty, with respect to which decision-making should remain the prerogative of States alone. It should be remembered that even a universal international organization such as the United Nations possessed the right, under Article 13, paragraph 1, of the Charter, only to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. For the same reason, only States should be entitled to become parties to the proposed convention. It seemed natural that international organizations should be allowed to be bound by the provisions of the convention,

(Mr. Makarewicz, Poland)

or, rather, to apply them. The legal character and form of the binding forte of the convention or of its application required further elaboration. However, since there already existed various mechanisms to ensure that the provisions of treaties were binding on international organizations, the search for a solution to that question did not seem to present insurmountable difficulties.

AGENDA ITEM 121: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER: REPORT OF THE SECRETARY-GENERAL (continued) (A/38/366 and Corr.1 and Add.1, A/38/106-S/15628, A/38/323, A/38/325-S/15905, A/38/329)

28. Mr. KAHALEH (Syrian Arab Republic) said that his delegation was grateful to UNITAR for its efforts in preparing the analytical studies on the progressive development of the principles and norms of international law relating to the new international economic order, and had noted the financial difficulties it had encountered in carrying out its work. However, it was unfortunate that, since UNITAR's latest paper had not been submitted until the Sixth Committee had begun its consideration of the item, delegations were able to take only a superficial look at it and voice a few general ideas. In addition, the greater part of the analytical studies on the entitlement of developing countries to development assistance, the right of every State to benefit from science and technology, and the common heritage of mankind was devoted to historical background and theoretical exposés. It would have been better if they had suggested some practical measures. It would also have been more appropriate if the studies submitted to the General Assembly at its thirty-seventh session on preferential treatment for developing countries, stabilization of export earnings of developing countries and permanent sovereignty over natural resources, all of which were of greatest importance to the developing countries, had been prepared by experts from such countries. It was, however, premature to give a final opinion on the analytical studies before they had all been completed. He supported the proposal to establish a small ad hoc group of experts in order to facilitate the consideration of the copious studies and to enable delegations to make more specific comments. He also felt that UNITAR's mandate should be extended to enable it to complete the final analytical study.

29. The establishment of the new international economic order was of the utmost importance for the developing countries, but would also be of benefit to the developed countries. It was essential to find remedies for the current economic crisis with a view to eliminating the disparities between the developed and the developing countries, eradicating the notion of economic hegemony, reactivating trade, reducing international tension and strengthening the basis for world peace. However, political differences and a lack of political will to find practical solutions had thwarted the efforts undertaken to date such as the North-South dialogue and global negotiations within the United Nations. The sixth session of UNCTAD had been characterized by criticisms and accusations, leading in turn to further isolationism and protectionist and coercive measures. The only steps forward made recently had been the adoption of the United Nations Convention on the Law of the Sea, the work on the draft articles on most-favoured-nation clauses, and

(Mr. Kahaleh, Syrian Arab Republic)

the proposals of the Seventh Conference of Heads of State or Government of Non-Aligned Countries and the Fifth Ministerial Conference of the Group of 77. It was essential to open the way towards the progressive development of the principles and norms of international law relating to the new international economic order.

30. Mr. YELCHENKO (Ukrainian Soviet Socialist Republic) said that his delegation considered the restructuring of international economic relations on a democratic, equitable and just basis to be in accordance with the laws of history. The international community could and should strive to bring about that restructuring. Unfortunately, the establishment of a new, just economic order was being impeded by the economic policies of certain countries which used economic blackmail, pressure and coercion to prevent many developing States from making progressive, internal economic and social changes. The creation of artificial obstacles to the development of economic and commercial relations and, above all, the use of various types of discriminatory measures such as sanctions, embargoes and economic blockades as means of exerting political pressure on independent States were unlawful and incompatible with the purposes and principles of the United Nations.

31. His delegation shared the justified concern of the developing countries at the lack of real progress towards the establishment of the new international economic order. The restructuring of international economic relations, taking into account the just demands of the developing countries, must be sought through détente, a general reaffirmation of the principles of peaceful coexistence and the establishment on that basis of equitable and mutually advantageous co-operation among all States. The Ukrainian SSR supported all efforts to ensure sovereignty over natural resources and to eliminate all forms of colonial and neo-colonial exploitation, as well as all discriminatory practices and artificial barriers in trade. The progressive development of the principles and norms of international law relating to the new international economic order would help in that process.

32. The United Nations could make a major contribution to the establishment of the new international economic order. It was therefore extremely important to select the body best able to deal with such a complicated task as the progressive development of the principles and norms of international law relating to the new international economic order. His delegation felt that the matter should be entrusted to the United Nations Commission on International Trade Law (UNCITRAL), which was already considering the legal aspects of the new international economic order through its Working Group on that topic. UNITAR should not be entrusted with such questions, since its status and position within the United Nations system meant that it was not sure to produce recommendations capable of gaining broad support among different groups of countries. The experience of negotiations on global problems such as the new economic order showed that generally acceptable solutions could be arrived at only in bodies composed of experts duly authorized by their respective Governments.

33. The UNITAR Panel of Experts included some senior United Nations officials who, being international civil servants, should not belong to such a body. It should also be noted that a number of the proposals in the study prepared by UNITAR were

(Mr. Yelchenko, Ukrainian SSR)

biased. The fact that the study dealt with questions governed by international agreements, such as the question of Antarctica, also gave rise to serious misgivings. In the light of that situation, the General Assembly would be well-advised to refer the topic to UNCITRAL, thus avoiding not only unnecessary duplication but also additional expense. His delegation trusted that its observations would be duly taken into account during the further consideration of the question.

The meeting rose at 11.55 a.m.