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SUMMARY RECORD OF THE 63rd MEETING

Chairman: Mr. FERRARI-BRAVO (Italy)

CONTENTS

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The meeting was called to order at 11 a.m.

AGENDA ITEM 123: CONSOLIDATION AND PROGRESSIVE EVOLUTION OF THE NORMS AND PRINCIPLES OF INTERNATIONAL ECONOMIC DEVELOPMENT LAW (A/31/172)

1. Mr. VERCELES (Philippines) said that there had so far been no consolidation of the principles and norms of international law relating to international economic relations, which had been collectively described as "international economic law" or "international economic development law". International economic law had been defined as the branch of international public law which was concerned with the ownership and exploration of natural resources, the production and distribution of goods, international invisible transactions of an economic or financial character, currency and finance, related services, and the status and organization of the entities engaged in such activities. International economic development law, on the other hand, had been called the most important field of international law to have emerged in the post-war world and was understood to comprise the complex of international economic transactions in which Governments, public international organizations and private corporations participated as parties to bilateral and multilateral transactions designed to promote the economic and general development of the less developed countries. There was a common thread running through both concepts, and he would use the term "international economic law" throughout his statement.

2. Work on the consolidation and progressive development of the norms and principles of the new international economic relations was being carried out in a manner that was at once unsystematic and diverse. The first formulations of the principles and objectives of the new international economic order were contained in General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), the Charter of Economic Rights and Duties of States adopted by the General Assembly in resolution 3281 (XXIX), General Assembly resolutions 3362 (S-VII) on development and international economic co-operation and 2622 (XXV) on the International Development Strategy for the Second United Nations Development Decade, and the Lima Declaration and Plan of Action on Industrial Development and Co-operation. In addition, other resolutions and decisions on the subject had been adopted by the Economic and Social Council, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization and numerous subsidiary bodies of the General Assembly and the Economic and Social Council, and by specialized agencies and other organizations of the United Nations system. For instance, work was being carried out under the auspices of UNCTAD on codes of conduct for international liner conferences and for the transfer of technology, and on rules and principles concerning restrictive business practices, and on a common fund for commodities, while the Commission on Transnational Corporations was drafting a code of conduct and the Conference on the Law of the Sea was elaborating the concept and implications of the principle of the "common heritage of mankind" with respect to the non-territorial sea beyond the limits of national jurisdiction. Specialized agencies were also concerned with such matters, each within its respective sphere of competence - the International Labour Organisation with regard to international occupational protection, the World Intellectual Property Organization in the area

(Mr. Verceles, Philippines)

of industrial and intellectual property, the General Agreement on Tariffs and Trade with regard to tariffs and trade matters, the Inter-Governmental Maritime Consultative Organization in the field of international maritime law and marine pollution, and the United Nations Environment Programme in the field of pollution of the natural environment and natural resources shared by two or more States.

3. From all that work a number of principles had evolved, such as the sovereignty of peoples over their natural resources, special preferential and non-reciprocal treatment of the interests of developing countries in international trade, and equity, interdependence and co-operation in global economic, social and cultural relations, and in the field of science and technology. In the view of his delegation, the time had come to consolidate the principles and norms of international economic law relating, in particular, to the legal aspects of the new international economic order. In that connexion, the fifth Conference of Non-Aligned Countries, held at Colombo in 1976, had noted that the fundamental objective of the new international economic order was the establishment of balance in international economic relations based on justice through co-operation and respect, and that without the appropriate legal instruments the Programme of Action on the Establishment of a New International Economic Order could not be applied in practice.

4. It might be contended that the United Nations Commission on International Trade Law (UNCITRAL) had already decided at its eleventh session to study the legal implications of the new international economic order and that, accordingly, it was no longer necessary to consider the matter. However, the study planned by UNCITRAL would of necessity be limited in scope, dealing only with the subject-matter which the Commission deemed suitable for its consideration. In fact, international trade law was concerned primarily with transactions or relations of a private nature in world trade and not with the principles and objectives of the new international economic order, in which context political decisions of States were brought to bear on international economic relations.

5. His delegation had intended to submit a draft resolution relating to the item under consideration, but in view of time constraints, would instead propose that the Committee should adopt a decision to include in its agenda for the thirty-fourth session an item entitled "Consolidation and progressive development of the principles and norms of international economic law relating in particular to the legal aspects of the new international economic order", to accord due priority to the item, and to have the summary records of meetings at which that question had been discussed at the thirty-second and thirty-third sessions form part of the documentation for the Committee's consideration of the item at the following session.

AGENDA ITEM 124: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/33/247)

6. Mr. GOERNER (German Democratic Republic) emphasized the importance of adopting a code of offences against the peace and security of mankind as an essential

(Mr. Goerner, German Democratic Republic)

contribution to the realization of the fundamental task facing all States and peoples, which was, as was stated in the Declaration adopted at Moscow on 23 November 1978 by the States Parties to the Warsaw Treaty, the renunciation of the use of force or the threat of force in international relations, the peaceful settlement of all disputes, the unconditional condemnation of aggressive wars, the complete elimination of wars between States, the cessation of the arms race and the final eradication of the vestiges of the cold war.

7. The code of offences against the peace and security of mankind should be based on the generally recognized principles of international law, as laid down in the charter of the International Military Tribunal of Nuremberg and the judgement of that Tribunal. The German Democratic Republic, for its part, endeavoured to ensure that all persons who had committed offences against peace, war crimes or crimes against humanity were duly punished by the competent courts. Article 91 of its Constitution stipulated that the generally accepted norms of international law relating to the punishment of crimes against peace and humanity were directly valid law and that such crimes did not fall under the statute of limitations. That principle was specifically embodied in the penal code of the German Democratic Republic.

8. The General Assembly in resolution 177 (II), of 21 November 1947, had directed the International Law Commission (ILC) to prepare a draft code of offences against the peace and security of mankind on the basis of the principles of international law recognized in the Charter of the Nuremberg Tribunal. The draft code submitted by ILC in 1951 and 1954 had not adequately taken those principles into consideration. In his delegation's view, the principles of international law laid down at Nuremberg, together with all conventions and international agreements, General Assembly resolutions and other relevant documents aimed at the prevention of offences against the peace and security of mankind should be taken into account in preparing the proposed code. The code should, in particular, cover such categories of international offences as the crime of genocide, as defined in the Convention on the Prevention and Punishment of the Crime of Genocide, the crime of apartheid, as defined in the International Convention on the Suppression and Punishment of the Crime of Apartheid, the crime of racism and colonialism, all acts punishable under the Geneva Conventions of 1949, the crime of international terrorism, particularly in cases in which a State was involved, warmongering and manifestation of racial and national hatred, and crimes against internationally protected persons, as defined in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. It should also reflect the principles of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In addition, it should cover other serious crimes which were a threat to peace, international security or the peaceful coexistence of States and which had not yet been defined in universal international agreements. On the other hand, it should exclude offences which were not directed against the peace and security of mankind, so as not to restrict its effectiveness.

9. In compliance with the principles stipulated in the Charter of the Nuremberg Tribunal, persons guilty of any of the offences mentioned in the code should be held fully responsible regardless of the category of the offence. The prosecution and punishment of natural or juridical persons who had committed one of the offences listed in the code should be carried out by the bodies competent for criminal prosecutions in the State concerned. The co-operation of all States was a prerequisite for the universal and effective prosecution and punishment of such serious violations of international law.

(Mr. Goerner, German Democratic Republic)

10. In conclusion, his delegation considered that it would be useful to request the Secretary-General to invite Governments to submit to him their comments or proposals on the item in time for them to be taken into account by the Committee at the thirty-fourth session of the General Assembly.

11. Mr. CUEVAS CANCINO (Mexico) said that his delegation had been fully aware, when drawing attention to the item, which had been virtually forgotten for more than 20 years, of the difficulties it raised. There was no need to remind members of the basic characteristics that differentiated civil law and the law of nations: under the law of nations the individual was subsumed in the great masses which formed the subjects of international law. The Charter of the United Nations, the Nuremberg judgements and the definition of the crime of genocide had created new approaches in accordance with which the draft code of offences against the peace and security of mankind could properly be considered. The General Assembly had always considered the subject to be a fundamental one, and had therefore refused in 1954 to consider the draft code until aggression had been defined. The draft code submitted in 1954 by ILC was incompatible with contemporary realities 24 years later, notably in the case of most of the provisions contained in article 2. Specifically, the draft code made no reference to the struggle against colonialism whereas the United Nations had, ever since the Declaration on the Granting of Independence to Colonial Countries and Peoples, considered that the struggle of peoples for freedom took precedence over other international norms. He reminded the Committee of the decree on war to the death issued by Bolívar in 1813 during the decolonization of Latin America, which might still be valid for groups fighting for independence. It might well be that what was taking place was the subordination of traditional international law, which he held to be individualist, to values considered more important in the long run, and if that was indeed the case, the Committee should take the greatest care in considering the draft document before it.

12. Another item of concern to his delegation was civil strife, which the Charter of the United Nations barely mentioned. Like other regions, Latin America was currently experiencing outbreaks of civil strife in which the laws and customs of war were being ignored and national armies were committing abuses against their own peoples which would merit condemnation had they been committed against foreigners. In particular, the provisions of article 2, paragraphs 2, 4, 5, 6, 10, 11 and 12 of the draft code seemed irrelevant in the contemporary context.

13. While it was appropriate and expedient that the General Assembly should take up consideration of the item, his delegation did not believe that it should do so immediately since it was important to ensure that the resulting code would be a viable instrument. The revision proposed by ILC itself was probably necessary, and, above all, further consultations were needed with Member States since only 15 of them had expressed opinions on the matter in the original survey.

14. Mr. ARNOUSS (Syrian Arab Republic) said that his delegation had been among those which had requested that the item on the draft code of offences against the peace and security of mankind, which had been on the agenda of the second session, should be included in that of the thirty-second session. The General Assembly had decided to postpone consideration of the draft code until aggression had been defined, and that had been done in Assembly resolution 3314 (XXIX). Subsequently, ILC, in the report on the work of its twenty-ninth session (A/32/10), had recommended that the 1954 draft code should be revised.

(Mr. Arnouss, Syrian Arab Republic)

15. The revised draft code of offences against the peace and security of mankind would contribute to the development and codification of international criminal law which was under way in several international forums as a result of the adoption of resolutions such as those on the crimes of genocide and apartheid and of the definition of aggression itself. Given the increase in the membership of the United Nations and the adoption of such important international instruments as those he had mentioned since the drafting of the code 24 years earlier, the code would have to be reconsidered. His delegation therefore proposed that the draft code of offences against the peace and security of mankind and the observations and comments received from Governments should be resubmitted to Governments for further comments and observations on the question, and that the item should again be included in the agenda of the following session.

16. Mr. KOSTOV (Bulgaria) said that drafting a universal code on the liability of persons who had committed international crimes would contribute substantially to the progressive development and codification of international law, in accordance with Article 13 of the Charter of the United Nations, and would assist in the implementation of the Organization's aims.

17. The International Law Commission's draft, which was nearly a quarter of a century old, had some shortcomings which, in the view of his delegation, could be avoided at the stage since reached in the development of international relations. To that end, account should be taken of the definition of aggression (resolution 3314 (XXIX)) and the Conventions on genocide and apartheid, which could be of great assistance in the formulation for a code of offences against the peace and security of mankind. However, the task awaiting completion was exceptionally complicated and all States which had been unable to participate in the debates of 1951-1954 should be enabled to do so. To that end Member States should be allowed to submit their comments and observations on the subject. His delegation therefore supported the proposal to include the item on a draft code of offences against the peace and security of mankind in the agenda of the thirty-fourth session of the General Assembly.

18. Mr. MARTINOV (Byelorussian Soviet Socialist Republic) said that in view of the fact that aggression had been defined in 1974, the time had come to discuss the draft code of offences against the peace and security of mankind, which the General Assembly had been unable to consider in 1954. His country was especially interested in the matter because during the Fascist occupation it had been the victim of many crimes similar to those covered by the draft code.

19. His delegation felt that the Committee should consider the draft code forthwith in the light of the definition of aggression, the International Convention on the Suppression and Punishment of the Crime of Apartheid and other international instruments which imposed on States obligations the violation of which constituted an international offence.

20. Therefore, in view of the fact that there was no time left at the current session to consider the matter properly, his delegation was prepared to support a draft resolution aimed at deferring consideration of the draft code of offences against the peace and security of mankind until the thirty-fourth session of the General Assembly.

21. Mr. SANDERS (Guyana) outlined the historical background to the preparation of the draft code of offences against the peace and security of mankind, and said that many legal and practical difficulties still lay ahead. In particular, it seemed unduly idealistic to believe that the code could be applied without the enforcement power of a court. However, it should not be forgotten that international law, despite its lack of the enforcement machinery possessed by municipal law, worked satisfactorily, thanks to world opinion, domestic public opinion and sanctions.

22. In view of the fact that the draft code prepared in 1954 was out of date and was inadequate from the legal point of view and of the fact that the number of Member States of the United Nations had increased since 1954 from less than 60 to 150, his delegation felt that Governments should be given another opportunity to express their comments and observations on the draft code, which could represent a first step towards a genuinely international legal order.

23. Mr. STEPANOV (Ukrainian Soviet Socialist Republic) said that it was a matter of priority to ensure peace and friendly relations between States, slow down the arms race and put an end to aggression and all forms of discrimination. Actions which threatened peaceful coexistence, together with the oppression of other peoples, should be designated international offences; typical instances were aggression, colonialism, genocide, apartheid, racial discrimination and destruction of the environment. That view was sanctioned by a whole series of international instruments, but those instruments had been adopted at different times and in different circumstances. Those instruments differed in various respects, and that led to difficulties in their application. The codification and progressive development of international law would assist in overcoming such difficulties if international offences were defined in clearly stated rules in a single international agreement.

24. The International Law Commission had attempted such a task in 1954 on the basis of the judgements of the Nurermberg and Tokyo Tribunals, but only for the purpose of establishing rules on the liability of persons implicated in the commission of international offences committed by States. There was no doubt in his mind as to the need to draw up a code which would not be restricted to such a narrow aim, since the punishment by international courts of persons responsible for offences against the peace and security of mankind constituted only one aspect of State responsibility for criminal acts. Work in connexion with preparing the code had been greatly delayed because the competent bodies had been concentrating on the definition of the more serious offence of attacking international peace and security, namely aggression. Given that a definition of aggression adopted by the General Assembly had become available, the time had come to resume consideration of the draft code of offences against the peace and security of mankind.

25. The conclusion of a treaty clearly defining the most serious international offences would be an effective legal and political means of preserving the international legal order. In the view of his delegation, such a treaty could be prepared by the Committee itself or it could be delegated to the International Law Commission.

26. Mr. MONTENEGRO (Nicaragua) said that his delegation took a favourable view of the draft code of offences against the peace and security of mankind and believed that the item should be given priority item in the agenda of the thirty-fourth session of the General Assembly. His delegation would support the draft code when it was studied at that time.

27. He noted that the text proposed by the International Law Commission was extremely brief. Although much of the definition of aggression had been incorporated, there was no specification of the individuals liable. The code would remain a dead letter unless it stated the penalties applicable to perpetrators of the offences and their fellow-perpetrators, accomplices and accessories.

28. In the existing circumstances of mankind, such a code would have the virtue of exposing the duplicity of some States which boasted in international forums of fulfilling their international obligations and in practice violated those principles and were open or hidden aggressors, fomenting the worst offences against the sovereignty and independence of other States.

29. In Latin America serious violations were being committed through a conspiracy of many States which were trying to impose by means of treacherous alliances their political, ideological or economic systems on those who differed from them. Human rights were being violated in many of the States which pretended to be their standard-bearers and so-called liberation fronts were committing acts of terrorism that violated human rights and the self-determination of peoples.

30. It had been stated during the debate that article 2 of the draft code should not apply to the right of peoples to struggle against colonial régimes and for their liberation. In the view of his delegation, there could be no good terrorism or bad terrorism, because terrorism violated all rules of ethics and decency and the principles of conventional warfare. The categories of offences to be specified in the proposed code could not exclude violations of international law which involved acts of aggression, since those who sought to impose their own systems, tainted by errors and violations, on other countries which did not share their views had to be stopped.

31. He held that justice required that those who took part in a civil war, acts of terrorism or any type of conflict in which violent methods were used in violation of the rules applicable to conventional warfare should be designated as offenders. It was absurd to describe the savage and cruel acts committed by terrorists as measures to bring people to justice while acts of self-defence carried out by the State through its army were described as murders or violations of human rights. Such an attitude was discriminatory, and his delegation would oppose it. His delegation would, however, be gratified if the General Assembly gave priority to the item at the following session and so exposed the spurious Puritans who preached principles which they did not practise.

The meeting rose at 12.35 p.m.