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President: Mr. Foss SHANAHAN (New Zealand).

Present:

Representatives of the following States: Afghanistan, Brazil, Bulgaria, Denmark, El Salvador, Ethiopia, France, Italy, Japan, Jordan, New Zealand, Poland, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Observers for the following Member States: Austria, Belgium, Hungary, Iraq, Ireland, Portugal, Yugoslavia.

Representatives of the following specialized agencies: International Labour Organisation, United Nations Educational, Scientific and Cultural Organization.

CREDENTIALS OF REPRESENTATIVES

1. The PRESIDENT informed the Council that the report of the President and Vice-Presidents on the credentials of the representatives to the thirty-second session of the Council had been distributed as document E/3544.

AGENDA ITEM 9

Report of the Commission on Permanent Sovereignty over Natural Resources (E/3511 and Add.1; E/L.914 and Corr. 1, E/L.915, E/L.918) (*resumed from the 1177th meeting*)

2. Mr. KLUTZNICK (United States of America) said his delegation was deeply concerned at the trend of the Council's debate on the report of the Commission on Permanent Sovereignty over Natural Resources (E/3511 and Add.1). The subject matter of resolution I A in the annex to that report involved complex and historic legal principles, practices, and usages. The Council's difficulties in dealing with it were unfortunately being increased by the numerous amendments proposed, accompanied as they were by attacks upon exploitation, colonialism and the alleged misuse of capital.

3. His delegation welcomed the last operative paragraph of resolution I A requesting the International Law Commission to speed up its work on the codification of the topic of responsibility of States; that was the proper forum for the discussion of that problem.

4. The dual nature of the problem posed by the report was emphasized in General Assembly resolution 1314 (XIII) by which the Commission had been established, operative paragraph 1 of that resolution stipulating that, in considering "the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard shall be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries". Any United Nations action which failed to recognize that duality might do irreparable harm to the cause of the under-developed countries; a step in the wrong direction by the Council at that stage could undo the whole work of that session and frustrate for many years the achievement of the common goal.

5. Where aid to less developed nations was concerned, the developed countries themselves must realize that such aid was in their own enlightened self-interest; it was not until the battle against poverty, illiteracy and disease had been won that real peace would become possible. There were two major difficulties to be faced. The first was the limited capacity of the less developed countries to absorb aid and capital due to lack of the necessary economic structure and institutions. The second was the limited amount of public and private capital which could be generated in a given period without impairing the ability of the developed countries to continue to provide what was needed. It was thus clear that all nations, developed and developing, must work together for their mutual good; any step which delayed them and distracted them from their common aims was the common enemy.

6. The fact was that there was not enough public capital available in the world to meet existing needs. The United States of America and the western world as a whole were stepping up their public aid programmes to the less developed countries, but without the healthy participation of private capital, the task of raising levels of living in those countries could not be accomplished in the foreseeable future. Examination of United Nations studies such as that on the flow of private capital (E/3513) provided evidence of the vital importance of such capital to the less developed areas of the world; it brought not only financial and technical resources, but also "know-how", a characteristic feature of private enterprise which could mean the difference between success or failure in the building of any economy. The lion's share of aid came from Member States whose economic strength derived from private capital. There was a tendency to speak disparagingly about huge companies, but those companies depended on resources provided by innumerable private individuals, and it was their investments that constituted the capital which stimulated the achievements of those

great institutions. When efforts were made to assure just treatment for private investments, it was not for the sake of some amorphous company but for that of the private individuals who made modern capitalism possible by investing their life savings. The problem before the Council had to be faced in the light of the realities of the twentieth century and the approach to it should not be governed by outworn clichés.

7. He did not think that there was any real difference of opinion among members of the Council on the purpose behind the resolution. His government, like others, defended its permanent sovereignty over its natural resources. It also believed that its reliance on the processes of law and order as reflected in international law represented an idea that was acceptable to the majority of the members of the Council. The problem was not what the Council collectively believed the resolution to mean, but what others might be led to believe it meant. It had been suggested that the resolution was intended to make a substantial change in international law; that seemed unlikely, and would in any case be an unwise step. A great deal of hard work had gone into the drafting of the resolution, and his delegation had therefore refrained from introducing many amendments; however, the text required some clarification in order to avoid any possibility of its discouraging private capital. His delegation had therefore submitted an amendment (E/L.918), proposing the deletion of the last two sentences of operative paragraph 4 and the addition of a new operative paragraph 9. The new paragraph should be taken as a clear statement of what the majority of States accepted as sound policy and good law; he hoped it would help to eliminate the serious doubts which might deter the involvement of private capital in the challenging task of helping the less developed countries.

8. Mr. REVOL (France) said that his delegation attached great importance to the question of the permanent sovereignty of States over their natural resources. The number and nature of the amendments before the Council showed how complicated the question became once an attempt was made to go beyond the mere affirmation of a principle. Some of those amendments were designed to make permanent sovereignty over natural resources an absolute right. His delegation wondered whether the spirit of such proposals was in keeping with that of the draft resolution the Economic Committee had just adopted on item 5 (E/3549, para. 7). At all events, the emphasis placed on the idea that the right of expropriation or of nationalization must not be subject to any limitations or reservations, even to those stemming from international law, was hardly calculated to create a climate of confidence conducive to national or international private investments. It was difficult to ascribe that refusal to treat the exercise of the right of permanent sovereignty over natural resources within the framework of international law to any other cause than a desire to discourage private investments. So far as the French delegation was concerned, the principle of permanent sovereignty over natural resources derived its validity from the very fact that it had a basis in international law.

9. From the procedural standpoint, it should be noted that the Council's efforts to define the content of the right

to permanent sovereignty over natural resources had not been co-ordinated with the work of the International Law Commission on the codification of the topic of State responsibility. The Commission on Permanent Sovereignty over Natural Resources would have been well advised to have given careful consideration to the discussions taking place in the International Law Commission. It would be difficult to proceed further with the examination of the main aspects of the right to permanent sovereignty over natural resources, especially with regard to the settlement of disputes, before the International Law Commission had reached a sufficiently advanced stage in its work on the international responsibility of States.

10. Mr. BRANICHEV (Bulgaria) said that the question before the Council was the most important item on the agenda of the session.

11. While it was plain that the day was not far off when all the peoples of the world would have won their independence, the forces of colonialism were seeking to pursue their evil ends by other means, through exploiting the economic weakness of the developing countries. Consequently, those countries could not consider themselves truly independent until the United Nations had taken effective steps to enable them to own, exploit and utilize their natural wealth freely, to accept or refuse aid from abroad, and to control or prohibit the activities of foreign companies in their territory — in a word, to deal with other States on a footing of complete equality.

12. The Council had just heard a panegyric on the role of private capital in economic development. The evil consequences of private investment, however, were too well known to need re-statement — he need only refer in that connexion to the Congo, Cuba, Tunisia and the Sahara — and no blame could attach to those who sincerely wished to prevent further plundering of the developing countries and who were striving to ensure that the utilization of private capital was subject to strict legal safeguards. It was in that spirit that his delegation would support the Soviet Union amendments (E/L.914 and Corr. 1).

13. Mr. NAEGELI (Denmark) said that resolution I A proposed by the Commission on Permanent Sovereignty over Natural Resources came close to his delegation's ideas on the subject. His delegation believed that sovereignty and ownership of natural resources were two distinct concepts. Sovereignty implied that a State possessed the power to formulate rules and enforce them in its territory; it thus had the possibility of enacting legislation governing natural resources and their utilization. In consequence, the situation varied widely from country to country: the exploitation of natural resources might be open to both domestic and foreign investors; there might be a system of government concessions, or the government might set up its own enterprises, limiting foreign participation to financing. Sovereignty also implied that a State was competent to amend existing legislation on the participation of foreign investors in the utilization of natural resources if there were special reasons for doing so. But whenever there was any interference with the rights of foreigners, appropriate compensation should be paid. Those principles corresponded to generally accepted concepts of justice and equity. It followed that any inter-

national instrument should be drafted in such a way as to embrace all the different arrangements under which foreign capital participated in the exploitation of natural resources; since it could not set out detailed rules in respect of all those arrangements, it should be drafted in general terms and should be supplemented by specific clauses dealing with particular cases.

14. Under agenda item 5, the Council had discussed the closely related question of the movement of private capital and its role in the development of the non-industrialized countries. That role largely depended on how far agreement could be reached on the terms on which foreign private capital could be invested in the exploitation of the natural resources of those countries.

15. His delegation considered it essential to find a well-balanced solution to the problem under discussion. It considered that, by and large, the Commission had dealt satisfactorily with the main points of the Danish approach and it would support any proposal for the further study of the question along the lines of the text before the Council. It also supported the proposal that the International Law Commission be requested to speed up its work on the codification of the topic of State responsibility.

16. His delegation had no objection to resolution I B, requesting the publication of the secretariat study and the Commission's report.

17. Mr. MELLER-CONRAD (Poland) said that his delegation did not object in principle to the under-developed countries using private foreign capital to finance their economic development, but objected to their being forced to do so through a lack of alternative resources; it therefore held that it was incumbent upon the United Nations, and more particularly upon the Economic and Social Council, to do everything in its power to prevent foreign capitalists from imposing conditions harmful to the countries in which they invested their capital, even if those countries were to derive some temporary advantage from the investment. The need to safeguard the political independence of the beneficiary countries and to ensure an equitable distribution of the profits derived from the exploitation of their natural resources was implicit in the concept of sovereignty.

18. The concept of sovereignty also implied the right of a State to exploit its resources on the terms most favourable to itself, and to seek some compensation, if only partial, for the losses sustained by the national economy as a result of the inequitable distribution of the profits derived from the exploitation of its natural resources. One of the methods it could adopt was nationalization. Some delegations, while recognizing that the under-developed countries were entitled to resort to nationalization, felt that the undertakings nationalized should be paid compensation in accordance with international law. His own delegation took the view that the conditions governing nationalization were exclusively a matter for national legislation. Although the relevant Polish legislation made provision for compensation, his delegation was convinced that there was no rule of international law compelling States to include such provision in their legislation on nationalization. Western international lawyers were, moreover, themselves not unanimous on that point.

19. With regard to the report before the Council and to the resolutions contained in it, it was to be regretted that it had not included a study of the impact of foreign capital investments on the development of the under-developed countries. Such a study would have proved or disproved the validity of the arguments of those who contended that the under-developed countries derived great advantages from private capital investments. The failure to deal with that point was not surprising. Research into the flow of foreign private capital was, however, essential to the under-developed countries in order to provide them with guidance in the use of that potential instrument of development. His delegation therefore unreservedly supported resolution III, in which it was recommended that the United Nations work on permanent sovereignty over natural wealth and resources should be continued on a permanent basis. Resolution I A, on the other hand, although it embodied a series of important and equitable decisions, reflected the tendency of certain countries to seek to conceal the full extent of the activities of private capital in the under-developed countries, and to secure for their investments conditions which would be tantamount to a limitation of the sovereignty of the under-developed countries. The clearest proof of that tendency was the attempt made in resolution I A to make the principle of compulsory compensation into a rule of international law. In view of the need to combat that tendency, his delegation would support the amendments proposed by the Soviet Union (E/L.914 and Corr. 1).

20. Mr. EL-FARRA (Jordan) said that, as the resolutions before the Council were the result of the careful and constructive deliberations of the Commission, he would confine his remarks to one or two points which needed clarification before the Council proceeded to a vote. One was the question of whether self-determination was a right or a principle. Article 1, paragraph 2, of the United Nations Charter referred to the "principle" and not to the "principles" of "equal rights and self-determination of peoples"; that being the case, it could not be argued that equal rights were one of the fundamental human rights mentioned in the Preamble to the Charter, whilst self-determination was not. He would even venture to say that human rights were a sub-division of a category of rights falling under the principle of self-determination. The realization of those rights was and would remain for a long time to come the primary goal of the United Nations. The interpretation of self-determination as a right was not new; it had been recognized as such long before the creation of the United Nations and had in fact been treated as such in the practice of the United Nations. Peace could not be achieved by denying to peoples a right to which they were entitled, on the ground that it was not a right, but a principle. His delegation therefore proposed that the fourth preambular paragraph of resolution I A should refer to the principle, not the principles, of equal rights and self-determination, in keeping with the text of Article 1, paragraph 2, of the Charter.

21. As for the Soviet Union amendments (E/L.914 and Corr. 1), his delegation was unable to accept the amendment to operative paragraph 1, since, by calling for independent national development, it would have the effect of discouraging regional development.

The meeting rose at 12.30 p.m.