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SUMMARY RECORD OF THE 54th MEETING

Chairman: Mr. EL-BANHAWY (Egypt)

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The meeting was called to order at 3.25 p.m.

AGENDA ITEM 121: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-THIRD SESSION (continued) (A/36/10 and Corr.1, A/36/428)

1. Mr. GARCIA-MORENO (Colombia) said that the fruitful co-operation existing between the International Law Commission (ILC), the International Court of Justice and the Inter-American Juridical Committee was gratifying. While the work accomplished by the Commission had rightly been praised by most delegations, concern had been expressed about what some considered its lack of vitality, attributable to its methods of work and the excessive number of topics it had under consideration. It was true that since the Commission was established the world had undergone changes that had induced the international community to turn its attention to may matters that were entirely new to it. Legal rules had become necessary to govern, for example, the equitable use of the seas, the sea-bed and as yet poorly-known resources, or the peaceful uses of outer space, or again energy and the environment. There was likewise an urgent need to draw up provisions for the orderly and equitable conduct of international relations among States and for their rights and obligations.

2. His delegation believed that the contribution made by the ILC and other legal organs of the United Nations had been extremely useful. It hoped that the new members of the Commission would display the same enthusiasm as the outgoing members.

3. He endorsed the suggestion of the Indian delegation to the effect that the Commission should, if possible, draw up a five year plan so to be able to perform its functions effectively and reasonably quickly. He also supported the proposal on enlarging the membership of the Commission. It was essential that it should plan its work in such a way that there was no delay in dealing with priority topics.

4. With regards to the succession of States in respect of property, archives and State debts, he said that the Commission had been right to change the heading of that topic. He was gratified that it had chosen balanced formulae which took into account all the interests involved and had considered the various categories of succession separately. He noted that the Commission had relied on the principle of equity as a balancing factor, and found the recommendations of the Special Rapporteur remarkably well-balanced and cogent.

5. His delegation supported the approach adopted by the Commission to the topic of succession of States as it affected newly-independent States and was gratified that their legitimate interests were being recognized. In

(Mr. Garcia-Moreno, Colombia)

that connexion, articles 14, 26 and 36 deserved to be whole-heartedly supported, particularly article 14, paragraph 4, in which the principle of the permanenet sovereignty of every people over its wealth and natural resources was properly stressed.

6. With regard to the difficult issue of archives, the Commission had taken account in articles 26, 28 and 29 of the right of every State to be master of its archives and the right of every people to information on its history and cultrual heritage. His delegation had observed the legitimate interest taken by the Commission in the unity of archives, which facilitated scientific and historical research.

7. It supported the recommendation of ILC on convening a conference of pleni potentiaries to consider the draft articles and conclude a convention on the subject.

8. He was gratified by the progress made by the Commission with regard to the question of treaties concluded between States and international organisations or between two or more international organisations. In that connexion, he pointed out that, apart from the diviersity of international organisations, to treat them as identical with States was an approach which was soon shown to be wrong and even dangerous. The sovereignty of States resulted from their being equal in international law, whereas international organisations owed their existence to the will of States, which set bounds to their competence and their sphere of action. His delegation realized that the Commission was aware of those problems, and he believed that relevant studies should be organised on the subject. His delegation would in due course make durther comments on that question.

9. With regard to State responsibility, the Special Rapporteur had listed three parameters of the new legal relationships that might arise from the internationally wrongful act of a State. His delegation believed that the first two were relevant and necessary but that, in the case of the third, the circumstances in which a wrongful act affected a third state should be specified. Uncalled for interference by the third State in disputes to which it was not a part would thereby be avoided. It was stated in the report that there was general recognition of the fact that the principle of proportionality was the foundation of the whole question of the content, forms and degrees of reponsibility. Opinions obviously differed on that issue and some kind of balanced agreement would therefore have to be reached, bearing in mind the fact, as the Chairman of the Commission had said, that in any dodification project it was essential to keep in mind not only the general principles but also, and primarily, practical situations specific solutions to those situations were being sought. Since the draft articles had been referred to the Drafting Committee, his delegation would prefer to put forward its comments at a later stage.

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10. With regard to the jurisdictional immunities of States and their property, he noted that because of the interdependence of States, which itself was a product of international co-operation and the expansion of the international community, the concept of jurisdictional immunity needed to be clarified. State practice in that sphere was not uniform, but solutions would have to be found to a question that was especially important for the peaceful course of international relations. The Commission had chosen the inductive method in handling the question and had tried to identify the rules commonly applied in that sphere by States. His delegation believed that the draft articles should be reviewed more thoroughly; it had reservations about articles 6, 7 and 8, among others. It reserved the right to speak on the subject in greater detail at the 1982 session.

11. With regard to chapter VII of the report, he shared the reservations expressed by the members of the Commission (A/36/10, paras. 246-247) and believed it would be dangerous to combine separate provisions into a single article covering all official communications, given that most of the problems were already very clearly dealt with in existing conventions. Moreover, great care should be taken in considering the question of whether the draft articles should apply also to international organisations. He would submit his observations on that subject in due course.

12. His delegation had already stated its point of view on the topic of the law of non-navigational uses of international watercourses at earlier sessions. It regretted that the topic had had to be deferred because of the election of the Special Rapporteur to the International Court of Justice. The high priority to be given to that topic had been underlined by the representative of India, who had stated that his country wished its dispute on that subject with Bangladesh to be settled peacefully.

13. In conclusion, his delegation said that it was gratified by the success of the International Law Seminar.

14. Mr. LAVINA (Philippines) said that his delegation was satisfied with the drafting of the articles concerning succession of States in respect of State property, archives and debts which could be formalized in the form of a convention.

15. As for the distinction between movable and immovable property, the Commission had been right not to follow too rigidly the principles obtaining in only one legal system. Linkage of property to territory seemed to be the ideal criterion. However, the principle of equity allowed of some exceptions.

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16. He was pleased to see that the Commission had linked the principle of the permanent sovereignty of peoples over their wealth and natural resources with the concept of newly independent States. By including that principle in the draft articles, the Commission had duly taken into account the relevant General Assembly resolutions and other United Nations instruments, more specifically the Charter of Economic Rights and Duties of States and the Declaration on the Establishment of a New International Economic Order.

17. His delegation was in general agreement with the draft articles regarding State archives. The Commission had done well in recommending, in article 22, that the passing of archives should be without compensation. It was likewise gratified that, in the formulation of the "archives-territory" link, the principles of "territorial origin" and "territorial or functional connexion" had been carefully taken into account.

18. He drew attention to the provisions on odious debts which had been proposed by the Special Rapporteur and reproduced in paragraph 41 of the commentary on draft article 31, provisions with which he fully agreed and which were of particular importance in the case of newly independent States. The commentary on article 36 concerning decolonialization since the Second World War was well documented; by citing that as a source of legal enlightement, he was not injecting a political element into the discussion but rather emphasizing the legal significance of the rules on succession of States in respect of State debts involving newly independent States. The particular case of the Philippines was mentioned in paragraph 14 of the commentary, where it was stated that the predecessor State had "declined all responsibility for those post-1943 debts of the archipelego." That case represented, without doubt, a glaring example of "odious debts."

19. With regard to the question of treaties concluded between States and international organization or between two or more international organizations, it was difficult for his delegation to accept the concepts embodied in the draft articles and especially the terminology used. In the first place, the term "treaty" had a well-established meaning in international law: it referred only to relations among States. It had traditional connotations pertaining to the sovereignty of States which justified their capacity to enter into treaties. The case of international organizations was different in that that capacity was lacking, even for developed organizations such as the European Economic Community or the United Nations. Although it was true that States members of some organizations had delegated the exercise of sovereignty, so long as the level of a union of States or a federation had not been reached, the use of the term "treaty" was inappropriate for designating the agreements to which they were parties. Arguments might be advanced that, according to article 2,

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for the purposes of the draft articles the term "treaty" referred only to an "international agreement.....concluded in written form.....whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its practical designation." But the requirement "governed by international law" presented a substantial problem. To his mind, therefore, international organizations could be parties only to "international agreements", not to be confused with treaties which, unlike most agreements, were subject to ratification.

20. He therefore urged the Commission to reassess the use or definition of certain terms in the draft articles. Bearing in mind, in the case of international organizations, the absence of capacity eminating from sovereignty, the Commission had seen fit to withhold the use of the term "ratification" from international organizations and to use instead the expression "act of formal confirmation." It should show equal caution not only regarding the term "treaty" but also regarding, for example, the terms "reservations" and "accession." It might, however, prove difficult to find acceptable substitute expressions applicable to international organizations, but the progressive development of international law should not imply violating existing precepts.

21. After emphasizing that, if the draft articles were not reconsidered, it would be difficult for some States to ratify the proposed convention, he said that his delegation would have difficulty if international organizations were to participate not as observers but as full participants on the occassion of the final consideration of those articles.

22. Contemporary economic development and the efforts to establish the new international economic order justified adjustment of the concept of State responsibility. He shared the concern of other delegations that the Commission did not seem to have fully responded to the needs of the developing countries. Moreover, the Commission appeared to have devoted a substantial amount of time to the study of only a few topics.

23. Referring to international liability for injurious consequences arising out of acts not prohibited by international law, he appreciated the work done so far and sympathized with the Special Rapporteur's difficulty in concretizing the elusive notions germane to that topic.

24. Increasing the membership of the Commission, as proposed by some delegations, might help to remedy the delay in some of the Commission's work. The Commission's membership would then be closer to that of the Committee and of the United Nations as a whole.

25. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) recalled that the need to enhance the effectiveness of the work of the Commission and make its membership more representative had often been emphasized in the Committee. For that purpose the General Assembly had recently adopted resolution A/36/39. He regretted that the participation of the members was no longer covered in the Commission's reports as it had been before. The reports on the work of the thirty-second and thirty-third sessions merely gave the membership of the Commission without indicating whether all the members had actively participated in its work. Whatever the reason for that choice, his delegation wished the Commission to resume providing information on the participation of its members, a matter which had a direct bearing on its effectiveness.

AGENDA ITEM 119: CONSIDERATION OF DRAFT ARTICLES ON MOST FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (A/36/145 and 146)

26. Mrs. BRUSASCO-MACKENZIE (Observer of the Commission of the European Economic Communities) said that the observations from Governments, organs of the United Nations and from international organizations which were reproduced and analysed in the reports of the Secretary-General on the item under consideration (A/36/145 and A/36/146) added important elements on several points for the evaluation of the draft articles on most-favoured nation clauses. In its written observations (A/CN.4/308, A/35/203 and A/36/145), and in earlier statements made in the Committee (A/C.6/35/SR.65), the Community had regretted the absence of certain provisions concerning reciprocal treatment as a precondition for according most-favoured-nation treatment. It had also tressed the need to include an exception for customs unions, free trade areas and equivalent arrangements of economic integration, such as those allowed for under article XXIV of the General Agreement on Tariffs and Trade (GATT). She drew attention to the draft of a new article 23 bis and, having recalled, in particular, paragraph 3 of the observations made by the Community (A/36/145), she pointed out that the failure to include such an exception was all the more difficult to understand since the draft articles drew up a number of exceptions which were less important or which represented departures from existing international law. If the list of exceptions in a systematic regime was regarded as an exclusive enumeration, the non-inclusion of customs unions and equivalent arrangements of economic integration amounted to an adverse prejudgement. The Community's acceptance of the draft articles was therefore subject to the inclusion of a new article containing the said exception.

AGENDA ITEM 120: REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS: REPORT OF THE SECRETARY-GENERAL (A/36/553 and Add.1 and 2)

27. Mr. SUY (Under-Secretary-General for Legal Affairs, The Legal Counsel) recalled that the report of the Secretary-General submitted to the General Assembly at its thrity-fifth session (A/35/312 and Add.1 and 2), had dealt with the general features of multilateral treaty-making within the United Nations and within intergovernmental organizations and with ways of accelerating and enlarging participation in treaty-making. Section IV

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of that report had set out a series of questions that could be taken into account in the examination of agenda item 120. After recalling the provisions of General Assembly resolution 35/162, he drew the Committee's attention to annexes II and III to the latest report of the Secretary-General (A/36/553), which contained the relevant information regarding possible publication of the materials which had been received pursuant to resolutions 32/48 and 35/162, and regarding the new editions of the Handbook of Final Clauses and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements, and indicated the financial implications of implementing paragraphs 4 and 5 of resolution 35/162.

28. Mr. DE STOOP (Australia) recalled that his delegation had already referred, at the thirty-second and thirty-fifth sessions of the General Assembly, to the issues that might arise at the different states of the multilateral treaty-making process. As had been pointed out in the explanatory memorandum which had been attached to the request for inscription of the item on the agenda, by 1977, the United Nations had been responsible for the conclusion of at least 80 major multilateral treaties. The multilateral treaty-making process could be very slow. The Vienna Convention on the Law of Treaties, for example, had been adopted some 20 years after the subject had first been studied by the International Law Commission. Similarily, the International Covenants on Human Rights had been adopted approximately two decades after they had been conceived.

29. The overloaded agendas of Committees and subsidiary organs involved in the elaboration of major treaties was bound to further delay the adoption of such treaties. In that connexion, it should be pointed out that the General Assembly and its subsidiary organs had been concering themselves in recent years with about a dozen emergent conventions each year. Everyone had an interest in ensuring that the multilateral treaty-making process was carried out as effectively and economically as possible.

30. The International Law Commission occupied a pivotal place in the United Nations law-making system but a number of other subsidiary organs had also been entrusted with functions in that area. He mentioned, in particular, the United Nations Commission on International Trade Law, the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space and the Commission on Human Rights.

31. The abundance of draft multilateral treaties and the tendency to decentralize the treaty-making process were closely related phenomena which were causing certain problems. Aside from the delays he had already mentioned, there was also the danger of overlap in the work of the various organs. The Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisionment (A/C.3/35/14 and Corr.1), which had initially been considered in the Third Committee, was now being

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considered in a Working Group of the Sixth Committee. The Working Group had re-examined the six draft articles provisionally adopted by the Third Committee with little information on how the issues had been perceived by that Committee and what considerations had led it to adopt certain concepts.

32. One of the major problems posed by the diffusion of responsibility for the preparation of treaties and the large increase in the number of multilateral treaties was that the recording and publication of such treaties was decentralized and inadequate. There was, for example, no comprehensive and easily accessible information concerning the existence of provisions in treaties or draft treaties on particular subject-matters. Nor was there readily available information on how Governments had implemented particular provisions in a treaty after they had become a party to the treaty.

33. Moreover, if Governments decided to go ahead with the negotiation of a new international instrument, they might well find it useful to have a check-list of procedural methods which had been used for similar exercises and to have background information on how certain legal concepts and issues concerning the same or related subject-matters had been treated in the past. Most countries, particularly developing ones, did not have the financial, technical or human resources needed to collect and compile existing information. Those difficulties were aggravated by problems of communication due to the ever-growing number of participants in the treaty-making process. His delegation believed that a regularly updated manual of practices might ease the burden of Member States.

34. The Secretary-General's report on the review of the multilateral treaty-making process (A/35/312), which provided an outline of the treaty-making process in various international organizations, suggested that the differences of approach derived from the variety of the subjects dealt with and of the objectives and activities of the organs concerned. The report hinted, however, that the increase in the number of multilateral treaties increased the risks of conflict at the international or regional level between treaties already in force and the new instruments envisaged.

35. According to part IV of the report, it seemed that the Committee was invited to consider a number of important questions raised by the examples of treaty-making listed in the report and the comments of Governments and the International Law Commission. The observations made by Governments since 1977 showed the dissatisfaction which the multlateral treaty-making process caused a good number of them in all geopgraphical groups. In the topical summary of the debate in the Sixth Committee at its thirty-fifth session (A/35/553, part IV, para. 1), it was noted that the representatives

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of some developing countries had mentioned the financial, technical and personnel difficulties which had prevented them participating fully in treaty-making and that they had expressed the hope that a review might come up with solutions which might reduce their burden.

36. His delegation believed that the time had come to study more closely the mass of elements and useful information contained in the reports of the Secretary-General and the documents of Governments and international organizations, in order to study methods that might improve the treaty-making process. Because of its complexity, that question should be studied in a smaller body than the Committee. His delegation hoped, therefore, that the Committee would agree to establish a working group at the thirty-seventh session of the General Assembly, and it noted that the Working Group on Peaceful Settlement of Disputes would, undoubtedly, have completed its tasks by then. The working group whose establishment was proposed would consider first the question raised in the 1980 and 1981 reports of the Secretary-General (A/35/312 and A/36/553). It could assess aspects of the process of multilateral treaty-making used in conferences held under the auspices of the United Nations and make recommendations on the subject of the improvements which could be made to current methods.

37. He wished to emphasize that the review should deal with the procedures for making ultilateral treaties and not with the substance of such treaties. Nor was it a question of reforming the organs of the United Nations which were competent in that field, to lay down fixed rules of procedure or to assert the rights of sovereign States in that field. The purpose of the exercise was, in fact, to ensure that States were involved in the treaty-making process and were equipped to carry out that task as economically and effectively as possible.

38. He recalled that his delegation had agreed at the previous meeting to delete, in its draft resolution, a paragraph on the establishment of a working group at the thirty-sixth session, in order to give Governments more time to make known their views on the report of the Secretary-General; it was nevertheless understood that the idea of establishing a working group was justified and would be studied again at the current session. He, therefore, hoped sincerely that the Committee would follow up his delegation's proposal to establish a working group to continue work in that field.

39. Mr. VAN DIJK (Netherlands) recalled that his delegation had been one of the sponsors of the proposal to include the item under consideration in the agenda of the General Assembly and that his Government had, since that time, always given its support to measures aimed at determining whether the methods of multilateral treaty-making employed in the United Nations or under its auspices were as effective and economical as possible. The

(Mr. van Dijk, Netherlands)

reports of the Secretary-General and the International Law Commission and the replies of Governments and international organizations contained a great deal of very valuable information, and the time had now come to analyze that information and to evaluate the various treaty-making processes in order for the Committee to examine possibilities for improvement.

40. In the report which he had submitted to the thirty-fifth session, the Secretary-General had laid the gound for such an analysis and evaluation but had stated that an overall evaluation was not feasible within the compass of a report of reasonable length (A/35/312, para. 20). His delegation considered, however, that an overall evaluation and a comparison at least of the most relevant treaty-making processes were indispensable in order to enable the Committee to assess what procedures had proven most appropriate in what circumstances and in relation to what subjects and to investigate to what extent they could be applied to other treaty-making processes. Since such an evaluation would deal not only with the methods used within the framework of the United Nations, it would seem that additional information on the various processes and procedures were necessary, as well as further observations from Governments, international organizations, the International Law Commission and United Nations organs. Above all, there should be an exchange of views between representatives of Governments and those of international organizations in greater depth than would be possible at the current session. The Netherlands Government, therefore, strongly favored the establishment of a working group of the Sixth Committee which would meet during the thrity-seventh session to consider, following the list of questions included in annex I to the report of the Secretary-General (A/36/553), the methods used in the United Nations or under its auspices and consider the possibilities of improvement, taking into account also methods employed in other international organizations. His delegation suggested that the Secretary-General should consult Governments, before the thirty-seventh session, in order to determine whether an open-ended working group should be established or a working group of limited composition on the basis of equitable geographical distribution and representing the principle legal systems of the world. It considered, for its part, that a relatively small group composed of representatives of Governments with special expertise in the field of international legislation might have certain advantages and that it would also be desirable if international organizations, the International Law Commission and the competent organs of the United Nations participated in its work. Moreover, the working group should receive assistance from the Secretariat before and during its session. In that regard, the Netherlands Government favored the publication of the documents listed in annex II of the report of the Secretary-General (A/36/553). In addition, it would be desirable for the Secretary-General to invite Governments, the International Law Commission, the competent organs of the United Nations and international organizations to submit their observations and replies to the questions

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included in the above report and to make suggestions concerning the functioning of the working group.

41. Without wishing to prejudge the discussions in the working group, his delegation submitted that special attention should be paid to the following issues: firstly, what procedure should be followed to determine, before the decision to draw up any particular treaty, the necessity, the political feasibility and the desirable scope of the treaty envisaged, and also whether in the circumstances of each individual case, it would not be preferable to draw up a declaration, a code of conduct or some other instrument not having legally binding force? In which cases should those questions be considered by representatives of Governments and in which should that be done first by a group of experts such as the International Law Commission? What special role, if any, could be accorded to the Sixth Committee in that respect?

42. Secondly, what were the different steps to be taken to draft the treaty? At what stage should a first draft be submitted and should it be formulated by the Secretariat, by representatives of Governments, by an independent expert or a group of experts? At what stage should Government observations be gathered; before the drafting of a text, on the basis of a single draft or on the basis of alternatives? Before which authorities should the draft text be discussed and at what stage? Finally, should intersessional meetings of groups of limited membership be held?

43. Thirdly, in which cases should the text be submitted for adoption to the General Assembly and in which was the convening of a diplomatic conference preferable? In the latter case, in what way should the conference be organized and what rules of procedure should be applied? Finally, in which cases should the procedure of adoption by consensus be chosen? (As for the role of the Sixth Committee, due consideration should be given to the General Assembly's rules of procedure, annex I, paragraph 14, and annex II, paragraph 1.).

44. Fourthly, in what respects could the organization and functioning of the International Law Commission be improved? In that regard, it should be considered in particular whether the Special Rapporteurs should receive specialized assistance on a larger scale so that they could concentrate on drafting texts and commentaries and speed up the preparation of their reports; whether the International Law Commission, instead of examining all the items on its agenda at each of its session, should concentrate on one or two items, which would allow for a more complete and profound discussion; and lastly, whether the inclusion of a subject in the International Law Commission's work programme should be preceded by a discussion in the Sixth Committee on the priority to be accorded to that subject.

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45. Fifthly, members of the working group should exchange views on the desirability of updating the Handbook of Final Clauses and of formulating other sets of model cluases, and of model rules of procedures both for bodies involved in the treaty-making process and for pleni potentiary conferences. In that regard, a simple compilation of model clauses and reules without some kind of evaluation would have only limited value.

46. The working group should not restrict itself to studying the technical aspects of treaty-making. That was not an end in itself and was not worth doing unless it met and satisfied clearly defined needs. Consequently, the entry into force and implementation of treaties were both of the utmost importance. In that connextion, while insisting on the fact that there was no question of encroaching in any way on the freedom of Member States to choose the methods and procdures which they considered appropriate for the preparation, adoption and entry into force of treateies, his delegation wished to observe that it was necessary: (a) to take into account, from the beginning, the possible obstacles to timely ratification by some States arising from their domestic alw or from other treaties to which they were parties: (b) to examine the feasiblity, in certain urgent cases, of the opting-out procedure, with due consideration of the question whether the domestic law of each State would allow such a procedure in a way that a real speeding-up effect could be expected; (c) to discuss the desirability of including in the treaty express provisions concerning reservations and of providing for collective decision-making as to the admissibility of reservations, taking due account of the possibility of a special role, through the Committee, for the General Assembly, which could, if necessary, ask for advisory opinions from the International Court of Justice; (d) to examine if States would be willing to undertake to submit the treaty to their competent authorities within a specified time-limit so that they could take the necessary steps for ratification, and to report at the international level on the action taken and on the position of their domestic law and practice regarding the matter to which the treaty related; (e) to discuss whether it would be possible for States to undertake a commitment to implement the provisions of a treaty provisionally, in whole or in part, pending its entry into force (see article 25 of the Vienna Convention on the Law of Treaties).

47. His delegation hoped that others would share its opinion that the establishment of working group was the best solution and it appealed to all Governments to submit their comments and suggestions on the subject to the Secretary-General and to arrange for their delegations to the thirty-seventh session to be composed in such a way that the proposed working group could have the benefit of the necessary expertise.

48. Mr. DANELIUS (Sweden) said that it would not be easy to lay down any general rules on the subject under consideration since circumstances differed from treaty to treaty. Nevertheless, the documents before the

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Committee contained a number of interesting suggestions which merited further study.

49. Multilateral treaty-making was, generally speaking, a slow process and the time available for negotiations was not always used in the most efficient manner. It was important that States hould have the opportunity of indicating their wishes and views on the proposed treaty from the beginning of the process and they were in fact normally invited, sometimes repeatedly, to submit their written observations on it. However, although the comments were generally reproduced in a Secretariat document, in many cases they had only a limited impact on the course of further work. The possibility should therefore be envisaged of making better use of the valuable suggestions which they often contained.

50. It was normally desirable that the preliminary work should be entrusted to a body with a limited membership which met for a certain number of consecutive days to discuss the proposed treaty exclusively. That was why an intersessional committee meeting for few weeks was certainly more efficient than a working group set up by the Sixth Committee or some other main Committee of the General Assembly, which had only a few hours now and then during the Committee's sessions to do its work. If nevertheless such working groups were set up, it would be preferable to give them the opportunity to meet on a number of consecutive days.

51. Another important question which ought to be examined was whether decisions should be taken on a consensus basis or by majority votes. In recent years, there seemed to have been a trend towards the consensus procedure in treaty negotiations. However, that often prolonged negotiations and since a treaty adopted by consensus was based on the lowest common denominator, it risked being deprived of much of its substance. If it was true that, in some cases, it was of vital importance to have a truly universal treaty despite all the drawbacks of the consensus procedure, a treaty which for the time being was not acceptable to everyone might be preferable to a treaty which was generally accepted only because it involved no significant commitment by the contracting parties.

52. A further problem arose from the fact that national authorities often needed a great deal of time to complete the necessary procedures for the State to become a party to the treaty. In some cases, those procedures might be expedited if national authorities could receive advice from experts of the United Nations Secretariat or any other competent international organization, concerning the legislative or other measures that they needed to take to comply with their obligations under the treaty. When appropriate, the Secretariats of international organizations might provide Governments with model provisions for national laws while, in other cases, their consultative activities might be of a more general character.

(Mr. Danelius, Sweden)

53. In connexion with the revision or amendment of a treaty, it might in some cases be possible to employ a simplified procedure. One example of such a procedure was that by which an amendment became binding on all contracting parties which did not object to it within a certain time-limit.

54. Lastly, since treaty provisions were often based on compromises, it was sometimes necessary, in order to understand them correctly, to refer back to the negotiations which had preceded the adoption of the treaty. However, it was often difficult to find the relevant passages amid the mass of documentation relating to the travaux preparatoire and it would therefore be most useful to have compliation of the travaux preparatoire on each article. In some cases, that compilation might be prepared by the Secretariat of the international organization under whose auspices the treaty had been concluded, on the understanding that it would merely serve as an aid in the event of practical problems arising in the application of the treaty.

55. In conclusion, he emphasized that the agenda item was worthy of further consideration, and expressed the hope that that consideration would result in guidelines or principles which would help to improve the treaty-making process in the future.

56. Mr. MAZILU (Romania) said that the expansion of international economic relations and cultrual exchanges had led to a proliferation of international conventions and agreements, and the new ideas and fresh approaches which they had brought to light had in turn enriched multilateral treaty-making practice. The positive practice which had been accumulated in the field was of immense interest, making the exchanges of views on the matter in the Committee particularly significant.

57. The multilateral treaty-making process had to fulfil one fundamental requirement: it must produce a text which accurately reflected the views and interests of all States, regardless of their size or power. Thus it was not simply a matter of finding technical methods of expediting the process of drafting and adopting multilateral treaties, but also of desiring improved machinery which would effectively guarantee that the legitimate interests of all States and peoples would be taken into consideration and would not be damaged.

58. In earlier debates, speakers had emphasized the merits of the multilateral treaty-making process as it operated within the framework of the International Law Commission, but had also highlighted the peculiar suitability of diplomatic conferences with broad international participation for the direct eleaboration of such treaties. Neither of those methods of treaty-making should be specifically favoured a priori, for the procedure used should depend primarily on the subject to be regulated. For example, the results of the work of the International Law Commission on the question of succession of States in respect of matters other than treaties had reached a stage where it was possible to consider convening a

(Mr. Mazilu, Romania)

diplomatic conference to finalize the text. By contrast, in the area of the law of the sea, work had been carried out from the very beginning in the context of a conference of plenipotentiaries; even so, the debates, particularly the early ones, had remained very general in nature and the draft texts had been prepared by the chairmen of the committees rather than by the Conference itself: the procedure had thus not facilitated the process of finalizing the draft convention, which in fact only partiallly reflected the positions of principle of certain States. That being so, it had been questioned whether it might not be better to entrust the finalization of texts prepared by conferences of plenipotentiaries to a specialized body such as the International Law Commission.

59. His delegation believed that the procedure to be followed should be selected on the basis of the facts of each specific case and that a variety of procedures could be combined, provided that as a result it was possible to produce a treaty which safeguarded the legitimate interests of all States. Furthermore, it had been observed that the preparation of a text by a specialized body often made the elaboration and adoption of multilateral instruments by a conference of plenipotentiaries a simpler process.

60. The travaux preparatoires should be recorded in writing, so as to facilitate the interpretation of each provision at a later stage; the method of exclusively oral debate was acceptable only in the very early stages of the elaboration of a text, and then only when the representatives of all States had decided by consensus to adopt it.

61. The idea of restricting the right of States to make reservations contravened a fundamental principle of international law, namely, that of the sovereignty of States, and was therefore unacceptable.

62. The procedure used for preparing and adopting amendments to a multilateral treaty should be the same as that which had governed its preparation in the first place, and the idea of a simplified procedure, which carried with it the risk of encouraging substantive amendments to the benefit of specific States, should be rejected.

63. Similarly, the number of annexes should be restricted, and every question of substance should be covered by provisions contained in the main body of the treaty.

64. In conclusion, his delegation considered that the multilateral treaty-making process was a problem which should continue to be examined in the Sixth Committee, so as to bring about improvements while respecting the fundamental principle of the participation of all States in that process on an equal footing. That requirement was based on the sovereign right of States to choose freely what international commitments they would undertake,

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and on the need for treaties to be universal.

65. Ms. OLIVEROS (Argentina) said that work on the item under consideration should be directed towards identifying the most economical and efficient treaty-making methods.

66. The major difficulty involved in rationalizing those methods lay in their diversity, as became clear, for example, from a study of the procedures employed by the International Law Commission or the Third United Nations Conference on the Law of the Sea or, indeed, in the fields of disarmament or human rights. There was in fact ample justification for that diversity, since it was important that States and international organizations hould be free to choose, in each case, the method most suited to their needs, as well as most appropriate to the character of the contracting parties and the subject-matters of the treaty.

67. The consideration of agenda item 120 should serve to strengthen the role of the Sixth Committee in the multilateral treaty-making process; in that contest it was worth calling to mind paragraph 1 (d) of the first part of the Rules of Procedure of the General Assembly, a regulation which the other Committees tended frequently to disregard. While that did not imply that the Sixth Committee was the only body able to elaborate treaties, it should nevertheless be consulted before such an enterprise was undertaken.

68. Similarly, his delegation supported the preparation of a manual on the techniques and practices of the treaty-making process and stressed the need to publish new editions of the Handbook of Final Clauses and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements. In that connexion, a system for continual updating at the lowest cost, such as loose leaves, should be devised.

69. Since his delegation felt that the contribution of intergovernmental organizations were very useful, it would prefer them to be published separately.

70. Finally, it was essential that, before a multilateral treaty was drafted, it should be determined whether it was really necessary. Such questions should be discussed in the Sixth Committee regardless of the origin of the treaty and even if it was to be drafted by another agency which belonged or did not belong to the United Nations. Considerable loss of time and funds could thus be avoided.

71. His Government, which had submitted a lengthy analysis in pursuance of General Assembly resolution 35/162 (A/36/553), felt that it was of the highest importance that, at the thirty-seventh session, the Sixth Committee should establish a working group to examine all the questions raised in order to made recommendations thereon. His delegation therefore

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supported the inclusions in the provisional agenda of the thirty-seventh session of the General Assembly of an item entitled "Review of the multilateral treaty-making process."

72. Mr. PIRIS (France) said that his delegation was glad that the Sixth Committee was continuing its considerations of the multilateral treaty-making process because such a study, which was within the scope of article 13 of the Charter, would no doubt encourage the progressive development of international law and its codification.

73. Although the method followed until now, namely the drafting of a report by the Secretary-General and the communication, by Member States and international organizations of their comments thereon was good, it would be desirable, in order to make further progress and give the work a more specific form, to entrust its preparation to a working group at the thirty-seventh session.

74. Most of the comments transmitted to the Secretary-General in response to his questionnaire pointed out that it would be neither desirable nor possible to lay down a single multilateral treaty-making process. On the contrary, there was a need for flexibility and methods had to be tailored to the objectives pursued in view of the variety of subjects, the number of negotiating bodies and the diversity of interests at stake.

75. Similarly, many Governments had rightly stressed in their comments, that before undertaking any drafting, it would be desirable to ensure that the conventional instrument envisaged was really needed, to specify its objectives and assess the chances of success of the negotiations.

76. With regard to the over-all co-ordination of the multilateral treaty-making process, his delegation was of the opinion that the General should not have the responsibility of co-ordinating the normative activities of all the organs of the United Nations system. On the other hand, with respect to the United Nations proper, the Sixth Committee should play a more important co-ordinative role; in that connexion, however, it was neither useful nor effective to institutionalize a single and rigid treaty-making process. There was a need for pragmatism in that field.

77. With regard to the work of the International Law Commission, the question of modifying its structures and procedures did not come within the scope of agenda item 120; in any case, such modifications were unnecessary.

78. The final negotiations and adoption of multilateral treaties should be assigned to plenipotentiary conferences. As far as the procedures leading to the ratification, by States, of the instruments drafted was concerned, they came under the domestic law of those States and no external intervention should be tolerated. He advocated caution in

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formulating any approach related to the provisional entry into force of treaties because of the constitutional problems that would arise. With regard to procedures for amendments, they could vary according to the objectives of the instrument and the States which were parties thereto. In that connextion too, all generalizations should be avoided and each case should be studied individually.

79. His delegation welcomed the study undertaken by the Sixth Committee with regard to agenda item 120 and supported the establishment of a working group to make a more thorough study of the issue during the thirty-seventh session of the General Assembly.

80. Mr. KAREV (Union of Soviet Socialist Republics) said that both the discussions that were held at the thirty-fifth session of the General Assembly as well as the comments submitted by Governments in response to the questionnaire of the Secretariat, led to the conclusion that it would not be adviseable to try to set up a rigid multilateral treaty-making system. In practice, a flexible system had prevailed because it was only a diversity of procedures tht offered a rational means of choosing the one most suitable for the nature and objectives of the treaty envisaged; it would therefore be impossible to standardize the existing procedures.

81. He was also not convinced that the effectiveness of the multilateral treaty-making process could be improved by artificcially limiting the number of instruments elaborated. The development of international realtions inevitably involved the proliferation of problems and therefore required new regulations and establishment of generally accepted international legal norms. Multilateral treaties were currently the most prevalent and most appropriate legal instruments for regulating all aspects of international co-operation.

82. Concerning treaties elaborated within the Organization of the United Nations, he believed that the Organization's existing machinery allowed Governments to reach agreement on priorities in that field, but that effectiveness of the treaty-making process could be increased by improved utilization of personnel resources, and that such an improvement could be made by the General Assembly in a co-ordinating role.

83. Concerning treaties concluded within other intergovernmental organizations, he thought that consideration could be given to recommending that the General Assembly urge the Secretariat to provide the Sixth Committee with all the relevant information on the elaboration of such treaties.

84. Although there was no doubt that the Secretariat's role was to facilitate the task of Governments at all stages of the elaboration of multilateral treaties, it was hardly realistic to establish a priori rigid and universal rules determing the body which must be responsible for preparing treaties

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or limiting the number of such bodies or the selection of procedures.

85. Similarly, it was hardly desirable to establish a time-table for the consideration of certain matters and such a decision could not be taken except by mutual agreement among the representatives of Governments participating in the work of United Nations bodies or conferences responsible for elaborating instruments.

86. It was quite possible that the Sixth Committee's role in the multilateral treaty-making process could be expanded and that, inter alia, draft treaties elaborated by the International Law Commission could be put into final form within the framework of the Sixth Committee and be adopted by the General Assembly without the need for the covening of a diplomatic conference for that purposes. However, such a procedure could not be adopted for the elaboration of all treaties, and the procedure actually used for the elaboration of treaties on important political matters, for example, disarmament, should not be changed.

87. He believed that any General Assembly resolution convening a plenipotentiary conference should contain provisions concerning the length of the conference and other matters, but that the conference's rules of procedure should be established by the plenipotentiaries themselves.

88. With respect to the work of the International Law Commission, his delegation believed that practice had shown that its structure and procedures were well suited to its functions. The changes envisaged in annex I to the report of the Secretary-General (A/36/553), such as the conversion of the Commission into a full-time organ or the nomination of full-time Special Rapporteurs, were not necessary. With regard to the Commission's priorities, they had been established at the thirty-fifth session by the Sixth Committee, and the Commission, in its efforts to complete the consideration of certain questions, should not go against the General Assembly's recommendations on that subject.

89. His delegation opposed all proposals aimed at allowing the United Nations to become involved in procedures by States to ratify treaties and to take action in that field, for such a possibility would constitute interference in the internal affairs of States. It would likewise be unacceptable for an international organization to be able to ask Governments to explain the reasons why they had chosen not to ratify an agreement. Measures to facilitate the automatic entry into force of treaties in respect of States which had not agreed to be bound by a given treaty and, in general, all of the measures envisaged in the report of the Secretary-General (A/36/553), annex I, section I, were likewise unacceptable. His delegation believed that the inclusion in a treaty of provisions envisaging the provisional entry into force of that treaty was the exclusive prerogative of representatives of States parties, and that the same was true with regard to amendments.

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90. In conclusion, he noted that the two reports of the Secretary-General (A/35/312 and A/36/553) faithfully reflected current practice in multilateral treaty-making, and although his delegation did not oppose the updating of the Handbood of Final Clauses in conformity with General Assembly resolution 35/162, paragraph 5, it doubted that the practical results to be expected from such an endeavour justified the expenditure and efforts which would be devoted to it.

91. His delegation opposed the establishment of a working group, since there was no need to consider the matter further.

92. Mr. ROSENNE (Israel), noting that the questionnaire in document A/36/553, annex I contained questions on the elaboration of mode rules of procedure for plenipotentiary conferences and recalling that, in a previous statement, his delegation had raised certain questions concerning the draft standard rules of procedure for United Nations conferences (A/36/199) which had been submitted to the Fifth Committee, asked what progress the Fifth Committee had made in its consideration of that matter and whether the Sixth Committee's point of view should not be established before a final decision was taken on the subject.

93. The CHAIRMAN said that the matter was still being considered by the Fifth Committee and that the Secretary of the Sixth Committee would seek further information on the subject.

The meeting rose at 6 p.m.