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SUMMARY RECORD OF THE 32nd MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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The meeting was called to order at 10.50 a.m.

AGENDA ITEM 121: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES: REPORT OF THE SECRETARY-GENERAL (continued) (A/39/437)

1. Mr. KOLOSOV (Union of Soviet Socialist Republics) said that many countries, including the USSR, had recognized liberation movements as the sole legitimate representatives of peoples fighting for national independence. The authority of such movements as the Palestine Liberation Organization (PLO) and the South West Africa People's Organization (SWAPO) was so great that they had been recognized by international organizations like the League of Arab States and the Organization of African Unity. The General Assembly decisions granting those organizations observer status at the United Nations were the legal consequence of such recognition.

2. The Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character had laid down rules governing the legal status of permanent observers to international organizations with a view, inter alia, to creating favourable conditions for their work. The USSR, as one of the first States to ratify the Convention, was convinced that its entry into force would help enhance the effectiveness of the work of permanent missions to international organizations and make the activities of the organizations themselves more productive.

3. The Convention had been prompted by a desire to enhance the role of multilateral diplomacy in international relations and by the need to develop friendly relations and co-operation among States. Since national liberation movements had become a real factor in multilateral diplomacy, the strengthening of international peace and co-operation inevitably required the creation of the necessary conditions to enable those organizations to participate in international affairs. Ratification by States of the Convention would, to a certain extent, be an expression of their attitude to such national liberation movements as the PLO and SWAPO, and would ensure that such movements genuinely participated in the work of the United Nations and, consequently, in the struggle for peace and international co-operation.

AGENDA ITEM 131: UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS: REPORT OF THE SECRETARY-GENERAL (continued) (A/39/491)

4. Mr. LACLETA (Spain) said that the Conference should be held in 1985 or 1986. His delegation would accept any decision on the venue adopted by the General Assembly.

5. The codification of international law could be effected only through the will of States, and international organizations, though subjects of international law, lacked the attributes of sovereignty and territory. They could not therefore be

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(Mr. Lacleta, Spain)

placed on an equal footing with States at the Conference; but neither should they be placed on the level of observers. He therefore suggested that they should be accorded a special status which would enable them to make proposals and comments without participating in decision-making or in voting. Spain would support any solution along those general lines and would be pleased to participate in further informal consultations, on the basis of the draft articles submitted by the International Law Commission, to ensure the success of the Conference.

6. Mr. HOLMES (Ireland), speaking on behalf of the 10 States members of the European Community, said that the convention to be adopted should be in harmony with the existing rules of general international treaty law.

7. The Ten appreciated the efforts of the Legal Counsel in facilitating consultations among potential participants in the Conference and were gratified that international organizations, including the European Community, had been involved in those consultations. The practice of holding consultations to prepare for a codification conference was a desirable one. The period between the completion of draft articles by the International Law Commission and the convening of a conference of plenipotentiaries should be long enough to allow the draft to be reviewed.

8. The consultations provided for in resolution 38/139 should be resumed before the fortieth session of the General Assembly. To achieve their goal of facilitating the successful conclusion of the Conference, the consultations should involve as many potential participants as possible. He hoped that, if States so wished, the Legal Counsel would again offer his services for the organization of a further round of consultations. It might be a good idea, at an appropriate time, to invite the Special Rapporteur on the topic to contribute to the consultations.

9. In the light of the consultations that had taken place since the thirty-eighth session, the Ten felt that the General Assembly should, at the current session, indicate a date for the Conference, which should be held as early as possible, taking into account all the relevant factors. The date could be reviewed at the fortieth session if the resumed consultations among potential participants suggested that further preparatory work was necessary for the Conference to reach a successful conclusion.

10. With regard to the venue, the Ten wished to express their appreciation to the Government of Austria, which had indicated that it was considering favourably the possibility of inviting the Conference to convene at Vienna.

11. He noted with satisfaction that there had been a movement towards agreement on the criteria for deciding which international organizations should be invited to participate in the Conference. A limited number of organizations which were usually invited to submit comments on draft texts prepared by the International Law Commission would be involved. International organizations, including the European Community, should participate on an appropriate basis, which would permit them to contribute effectively to the codification work.

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(Mr. Holmes, Ireland)

12. There was quite a range of views on the question of their participation: some believed that international organizations should be mere observers; others favoured full participation on an equal footing with States. The Ten remained prepared to seek an intermediate position on the subject. The decision taken would in no way prejudge the manner of participation, including the right to vote, of the European Community in its own right in other conferences dealing with matters within its competence.

13. Mr. ABDEL KHALEK (Egypt) said that in view of the significant role of specialized international organizations in international affairs, it was important to regulate the relations between States and international organizations or between international organizations. The fact that the International Law Commission had been requested to prepare draft articles on that matter was an indication that the international community had recognized that need.

14. Those articles afforded a solid basis for negotiations on a convention. Egypt believed that the convention should be open for signature and accession only to those international organizations whose practical operations required them to conclude treaties, excluding headquarters agreements. It would support a request to the Secretary-General, in his capacity as depositary of international conventions, to prepare a study on that matter.

15. He suggested that a specific number of ratifications by States, greater than the corresponding number by international organizations, should be required for the entry into force of the convention.

16. International organizations should not be allowed to formulate reservations on the provisions of the convention that were identical to those of the Vienna Convention on the Law of Treaties, so as to preclude a reopening of discussions on articles which had already been accepted. International organizations should be empowered to submit amendments by themselves or through States, since such amendments would be based on the will of the States members of the organization. International organizations should also be allowed to participate in deliberations on the adoption of decisions.

17. International intergovernmental organizations which were usually invited to discuss texts prepared by the International Law Commission should be invited to attend the Conference. They should have the right to submit amendments and to make proposals, but not the right to vote. Such participation was justified because the objective of the Conference was to adopt a convention to regulate relations between States and international organizations or between international organizations. If they were to be denied their rightful role, the Conference would adopt a convention which would completely ignore their interests, and they might refuse to ratify it or accede to it. The international community would then have failed in its task of elaborating a treaty to regulate relations between States and organizations or between organizations.

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(Mr. Abdel Khalek, Egypt)

18. His delegation welcomed the offer by Austria to host the Conference. A decision on the date and venue should be taken during the current session, as well as a decision on whether the Conference should discuss the text proposed by the International Law Commission or a shorter text without an extensive debate on the draft articles.

19. Mr. BERNAL (Mexico) said that in view of the important role of international organizations in international relations and the increasing number of treaties concluded between States and international organizations or between international organizations, there was an urgent need for a convention on that matter. His delegation therefore believed that a conference of plenipotentiaries should be convened during the first half of 1986. The negotiations at the Conference should be based on the draft articles submitted by the International Law Commission. All intergovernmental organizations with the legal capacity to conclude treaties could be invited to participate in the deliberations. They should have the right to speak and to submit proposals and amendments, but not the right to vote.

20. In order to ensure the success of the Conference, his delegation supported the idea of informal consultations among participants on the draft final clauses and other related questions.

21. Mr. HARDY (Observer, Commission of the European Communities) said that the European Economic Community had contributed to the development of international law and practice concerning treaties of international organizations. It had concluded some 800 international agreements since 1958 and was a party to over 300 international agreements, including 35 multilateral agreements with both States and international organizations. Reference could be made in that connection to the two Lomé Conventions concluded between the African, Caribbean and Pacific States and the European Community.

22. The Community therefore had a great interest in the codification of the legal régime relating to the capacity of international organizations to make treaties and the exercise of their powers in that respect. It had not encountered any difficulties as a result of uncertainty over existing law and practice. The Community welcomed, however, the effort to embody the law and practice which had emerged in that field in a general instrument. The adoption of a convention on the basis of the International Law Commission's draft articles would undoubtedly contribute to the process of codification. Although there were aspects of the articles which needed further improvement, they constituted a constructive and important contribution to the codification and development of public international law.

23. In view of the great variety of international organizations and the great differences between them, the draft articles represented a considerable achievement. They reflected an effort to achieve simultaneously the clarification of the rights and obligations of States and international organizations entering into treaty relations with one another and the need to take due account of the terms of the agreements establishing international organizations which had been

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(Mr. Hardy)

concluded by the member States concerned. The draft articles had taken into consideration the terms of the constituent instruments by which States members of certain international organizations, such as the Community, had agreed in advance to be bound by treaties made by the organizations in accordance with their powers and procedures.

24. The discussions which had taken place during the consultations had made it possible to see more clearly the wide variety of issues raised by the appearance of international organizations as subjects of international law. Those discussions had proved the value of involving the international organizations concerned more directly in the future in the preparatory process and in the elaboration of a convention. Since the international organizations would be called on to apply the convention in order to make its adoption meaningful, it was important that the convention should correspond to the existing rules and practices of the organizations and their member States and be acceptable to them.

25. Mr. LAMAMRA (Algeria) thanked the Legal Counsel for organizing the informal consultations called for in paragraph 6 of resolution 38/139. To the extent that the preliminary exchanges of views on the substance of the draft articles had made it possible to identify the most difficult questions and suggest solutions, and to the extent that the feelings expressed on the questions of organization and participation had reduced the range of options, the consultations had certainly been useful. However, in the final analysis, the consultations would have been truly productive only if they passed the test of credibility when the time came to take decisions on those questions mentioned in resolution 38/139 which had to be settled by the General Assembly at its thirty-ninth session. If delegations insisted on further inter-sessional consultations before a decision was taken even on the date and duration of the Conference, then questions on the real purpose which certain elements wished to assign to such consultations could legitimately be raised.

26. Informal consultations could neither prejudice the results of negotiations in a conference of plenipotentiaries nor transform such a conference into a forum for noting agreements achieved outside such a conference. Such consultations could in no way amend General Assembly resolutions, particularly, but not exclusively, in the matter of identification of the basis of the work of the Conference. During the consultations, it was important not to lose sight of the essentially pragmatic character of the initiative, which must be based only on the desire to facilitate the task of participants in the Conference. The suggestion that the fixing of a date for the Conference should be subordinated to reconciliation of points of view on questions of substance could only be detrimental to the climate of calm and understanding essential to success. In fact, the inclusion of the study of draft articles among the priority questions being dealt with by the legal services depended, in many countries of limited means, on reducing the waiting time before the Conference. Obviously, preparatory consultations in which not all views were expressed could not give an adequate idea of the positions that would be taken at the Conference.

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(Mr. Lamamra, Algeria)

27. In accordance with paragraph 2 of resolution 38/139, the General Assembly was supposed to take a decision at its thirty-ninth session upon the question of participation in the Conference. Participation by international organizations posed a problem, not so much from the point of view of the list of organizations concerned, but from that of the status to be enjoyed by organizations invited to the Conference.

28. An international organization derived its *raison d'être* from its capacity to articulate the common concerns of its member States as laid down in its constitution. In no case should an international organization be obliged to take a position against the interests of fairly major groups of member States. The participation of the representatives of international organizations in the conference would have to be organized in such a way that the collective and legitimate interests remained constantly in the minds of the representatives of States without matters of procedure being used to resolve any differences that might arise in points of view.

29. It was easy to understand the arguments in favour of maximum participation of international organizations and the advantages of giving such organizations the opportunity to contribute to the formulation of a treaty containing provisions they would have to abide by. At the same time, since sovereignty unquestionably constituted the fundamental basis for the status of primary subject of international law, national liberation movements, as depositaries of the sovereignty of the peoples whose struggle they were championing, enjoyed a status not enjoyed by international organizations. In the opinion of his delegation, any positive change in the status of international organizations in a codification conference should apply to observers from national liberation movements.

30. Mr. ROBINSON (Jamaica) said that his delegation did not oppose informal pre-Conference consultations on such matters as final clauses and the manner and extent of the participation of international organizations. It had, however, been surprised that the consultations had also touched on substantive issues which must be decided upon by the Conference itself. If a relationship was established between the outcome of the consultations on matters of substance and the convening of the Conference, those consultations could serve as a means of subverting the will of the General Assembly as expressed in resolution 38/139. For its part, his delegation hoped that a convention based on the draft articles prepared by the International Law Commission would be concluded in the very near future.

31. Mr. MUDHO (Kenya) said that while consultations among all potential participants were bound to facilitate the work and ultimate success of the Conference, such an endeavour should not undermine the work of the International Law Commission as reflected in the draft articles. Proposals aimed at improving the draft articles should not be excluded, but the draft must remain the main basis for the work of the Conference. He hoped that the consultations would continue, but felt that they must focus on areas such as final clauses and related matters where the Commission had not made specific recommendations. He hoped that the draft prepared by the Commission would not be discussed until the Conference was convened.

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32. Mr. KOLOSOV (Union of Soviet Socialist Republics) noted that the Observer for the Commission of the European Communities had made his statement before the list of delegations wishing to take the floor had been exhausted. He would like an assurance that the Committee had not thus set a precedent for its future work.

33. The CHAIRMAN said that the Observer for the Commission of the European Communities had been allowed to speak before the Algerian delegation, at the time the last delegation on the list, only after Algeria had consented to that arrangement. Therefore, no precedent had been set.

34. Mr. LAMAMRA (Algeria) concurred with the Chairman.

The meeting rose at 12.15 p.m.