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New York

SUMMARY RECORD OF THE 52nd MEETING

Chairman: Mr. GUNA-KASEM (Thailand)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 108: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-FIRST SESSION (continued) (A/34/10 and Corr.1, A/34/194; A/C.6/34/L.2)

1. Mr. SAHOVIC (Chairman of the International Law Commission) said that the International Law Commission now had to examine thoroughly the comments made and the questions raised during the discussions in the Sixth Committee; it would do so at its next session or during the second reading of the relevant drafts. For his part, he wished to commend the Committee on the effort it had made to read, examine and discuss in a few weeks the immense report which the Commission had taken three months to prepare.
2. During the discussions, a number of questions had been raised concerning the methods used by the Commission, the basic principles of specific drafts and the length of the commentaries and their relation to the sources of international law. Such questions not only reflected the diversity of opinion concerning a series of solutions proposed by the Commission, but were also related to the basic question of understanding the Commission's mandate and its role in the codification and progressive development of contemporary international law.
3. In principle, there were no differences of opinion on that basic question either among States or in the writings of jurists. The Commission was a permanent subsidiary organ of the General Assembly, composed of experts participating in their personal capacity and representing various legal systems, who, in the light of political, legal, economic and other imperatives, had the task of formulating draft articles, after examining items approved by Member States and the General Assembly, and of making proposals with a view to their codification and progressive development. Although it was an autonomous organ, it was in constant contact with the Sixth Committee, where the Member States which had to take decisions were represented.
4. In examining the various items, the Commission had to bear in mind the trends in the development not only of the question being considered but also of international law as a whole, and had to try to reflect those trends in the drafts in the most appropriate manner. In reaching its conclusions, it had to meet two conditions: on the one hand, it had to be guided by the views of the vast majority of Member States, and, on the other, it had to follow the general trend in the development of international law and, on the basis of the Charter of the United Nations, move towards the establishment of a system of legal principles and rules which could serve as a basis for the construction of a better world. In many cases, the Commission's proposals had initially been considered too daring, but they had eventually been approved and included in international conventions. The fact that the Commission could not always satisfy all shades of opinion was due to the fact that international law was in the midst of change and transition and also to the present state of international political relations.
5. He had described the conditions in which the commission functioned with a view to better responding to the questions raised with regard to its report. Although

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the commentaries on the draft articles on succession of States in respect of matters other than treaties could undoubtedly have been shorter, it was not feasible to omit a whole host of historical, economic and other points or to fail to explain that the Commission, in examining the practice of States, had to take into account the relevant conclusions for the solution of problems of succession emanating from various United Nations declarations and resolutions. The Commission was also concerned with the status of the formal sources of contemporary international law and had therefore turned its attention towards the formulation of draft articles which could serve as a basis for the conclusions of international conventions. Without prejudice to the importance of customary law, it must be recognized that the purpose of codification and progressive development as ways of drafting legal rules could only be the adoption of conventional formal instruments, which alone had a direct bearing on positive international law. Accordingly, although the Commission had never insisted that its draft articles must absolutely result in international agreements, the present method was clearly the most effective way for it to realize its objectives in the present state of affairs in the international community.

6. With respect to the question of the responsibility of States for wrongful acts, the Commission was considering the responsibility of States as such, as the primary subjects of international law, and was seeking to develop the idea of establishing a comprehensive and objective international legal order that would be outside the control of individual States. The same applied to the question of treaties concluded between States and international organizations or between two or more international organizations. The transposition of the provisions of the Vienna Convention on the Law of Treaties was the means or even the pretext. The main point was the development of the international legal personality of international organizations as subjects of international law. It had been pointed out that the draft suffered from a certain lack of clarity and that there was overlapping between some of its provisions. That, however, was no more than the reflection of the doubts which had already become apparent during debates on the subject in the Commission. It should also be borne in mind that international law had not been sufficiently crystallized in that area.

7. Generally speaking, it could be argued that the Commission should take some step towards a possible reorganization of the presentation of its work in its reports. Although there were several options open to it, it was essential, in any event, to retain the commentaries on articles, which were of exceptional theoretical and practical value.

8. As to the comments made concerning the section of the Commission's report on the review of the multilateral treaty-making process, if the General Assembly requested the Commission to make a new contribution to the examination of that question, the Commission would do its utmost to comply with that request.

AGENDA ITEM 118: RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

- (a) RESOLUTION RELATING TO THE OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES
- (b) RESOLUTION RELATING TO THE APPLICATION OF THE CONVENTION IN FUTURE ACTIVITIES OF INTERNATIONAL ORGANIZATIONS (A/10141)

9. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that, although the item under consideration had been on the agenda of the General Assembly at its three previous sessions, consideration of it had been deferred for lack of time. His delegation, like many other delegations, felt that the time had come to consider the item, given the importance it had recently acquired. Two major questions were involved: the participation of national liberation movements as observers in the work of international organizations and international conferences held under the auspices of the United Nations or its specialized agencies, and the need for States in whose territory international organizations of a universal character had their headquarters or where international conferences were held to accede to the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

10. The resolution relating to observer status was in keeping with recently established practice in international relations, according to which national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States had participated in the work of international organizations and conferences such as the World Population Conference, held in Bucharest in 1974, and World Conference of the International Women's Year and the Third United Nations Conference on the Law of the Sea. It should also be noted that, in accordance with resolution 3237 (XXIX) of 22 November 1974, the General Assembly had invited the Palestine Liberation Organization to participate in the sessions and work of the General Assembly and of international conferences convened under the auspices of the General Assembly in the capacity of observer; the Assembly had also considered that the Palestine Liberation Organization was entitled to participate as an observer in the sessions and the work of all conferences convened under the auspices of other organs of the United Nations. In resolution 31/152 of 20 December 1976, the Assembly had granted similar rights to the South West Africa People's Organization (SWAPO). In accordance with resolution 3280 (XXIX) of 10 December 1974, the Assembly had decided to invite as observers representatives of the national liberation movements recognized by OAU to participate in the relevant work of the Main Committees of the General Assembly and its subsidiary organs concerned, as well as in conferences, seminars and other meetings held under the auspices of the United Nations which related to their countries. The participation of the national liberation movements in international activities afforded the international community an opportunity to gain a better understanding of the problems of those movements and was helpful in the search for more equitable solutions to their problems. The legitimate struggle of peoples under the yoke of colonialism and racism and under foreign domination was consistent with the Charter of the United Nations and the relevant United Nations declarations and

(Mr. Kolesnik, USSR)

resolutions, which recognized the principle of the equality of peoples and their right to self-determination.

11. Despite criticism from some quarters claiming that national liberation movements did not have any of the characteristics of States and that, accordingly, their representatives should not be entitled to the privileges and immunities which diplomatic representatives needed for the performance of their tasks, it was certain that the movements recognized by the Organization of African Unity and the League of Arab States represented the legitimate interests of their peoples in the struggle for national independence and sovereignty and that they took an active part in international affairs.

12. The second resolution adopted by the Conference related to the application of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character in future activities of international organizations. In his delegation's opinion, that Convention constituted another step in the progressive development of the rules of international law governing relations among States and supplemented the relevant provisions adopted previously in the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on Special Missions. One of the distinctive features of the Convention was that it applied to relations among States and relations between States and international organizations, to the maintenance and functioning of delegations to international organizations and conferences and to the privileges and immunities necessary for duly accredited diplomatic agents to perform their functions. The entry into force of the Convention would foster the development of relations of friendship and co-operation between States, whatever their political, economic and social systems. However, it was regrettable that only 16 States, including the Soviet Union, had so far ratified that Convention and that the 35 ratifications needed for its entry into force had still not been received.

13. Mr. QUATEEN (Libyan Arab Jamahiriya) observed that consideration of the item relating to the resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations had not been postponed because of a lack of interest. On the contrary, because that item was so important, it had been advisable to proceed very cautiously and to collect enough information to serve as a basis for comprehensive consideration of that item and for the adoption of a final decision. Moreover, interest in that item had grown steadily with each session of the General Assembly during which it had been on the agenda.

14. The Conference had adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, which contained detailed provisions governing relations among States and between States and international organizations but which did not apply to a reality of the modern world, namely, national liberation movements. The active presence and participation of such movements was felt throughout the international community, which viewed their cause with growing sympathy. That could be seen from one of the resolutions adopted by the Conference, which reflected the opinion

(Mr. Quateen, Libyan Arab Jamahiriya)

of the majority of States Members of the United Nations. It should not be forgotten, moreover, that the participation of the national liberation movements recognized by the Organization of African Unity or by the League of Arab States was a well-established fact and, accordingly, the 1975 Vienna Convention should cover those movements; their representatives should receive the same privileges, immunities and facilities as the representatives of States duly accredited to international conferences or organizations.

15. Mr. HAMMAD (United Arab Emirates) said that one of the resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations referred to the observer status of national liberation movements recognized by OAU or by the League of Arab States. However, only 84 States had participated in that Conference and, accordingly, the referral of that item to the General Assembly for consideration by all Member States had been justified. During the Conference, the Arab Group had submitted a document containing background information on invitations extended to liberation movements to participate as observers in the work of international conferences and organizations. Despite the opposition of Israel and its supporters, the Conference had adopted a resolution (document A/10141) requesting the General Assembly of the United Nations at its thirtieth regular session to examine that question without delay and recommending, in the meantime, that the States concerned accord to delegations of national liberation movements which were recognized by the Organization of African Unity and/or by the League of Arab States in their respective regions, and which had been granted observer status by the international organization concerned, the facilities, privileges and immunities necessary for the performance of their tasks and to be guided therein by the pertinent provisions of the Convention adopted by the Conference. The contents of that resolution clearly implied that it had been the intention of the majority of the participants in the Conference to extend such privileges and immunities to national liberation movements and that the General Assembly, echoing the near-unanimous wishes of the Conferences, should adopt a resolution to that effect. It should be borne in mind that privileges and immunities should be accorded not only to the representatives of States but also to observers, since such privileges and immunities were functional, not personal, and since their purpose was to facilitate the task of those to whom they were accorded. Moreover, the representatives of national liberation movements were more vulnerable to harassment and attacks of all kinds than the representatives of States, and, accordingly, they should enjoy equal or greater protection.

16. He drew attention to the fact that the Vienna Convention on the Law of Treaties did not expressly exclude the possibility that entities other than States could be parties to treaties or conventions, and he reminded members of the Committee of Dr. Kelsen's views on the composition of the United Nations. In that connexion, he said that it was not clear that the authors of the Charter had wished expressly to exclude from the United Nations entities that were not States in the traditional sense of the word.

17. United Nations practice revealed that the decisions of the highest organs tended to place national liberation movements on an equal footing with States and

(Mr. Hammad, United Arab Emirates)

even to accord them the privileges and rights enjoyed by States. For example, resolution 3237 (XXIX) had invited the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer; it had invited it, in the same capacity, to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly; and it had considered that the Palestine Liberation Organization was entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations. It was therefore obvious that the General Assembly had wished to treat PLO as a State but, in order to dispel any remaining doubt, he drew attention to the statement made by the representative of the United Kingdom during the discussion of the draft resolution which had subsequently been adopted as resolution 3237 (XXIX). In explaining the reasons why he had opposed it, the representative of the United Kingdom had said that its provisions would place PLO in the same situation as a State Member of the United Nations, the only difference being that PLO would not have the formal right to submit proposals or to vote.

18. Similar provisions had been adopted in resolution 3280 (XXIX), in which the General Assembly had decided, among other things, to invite as observers, on a regular basis and in accordance with earlier practice, representatives of the national liberation movements recognized by the Organization of African Unity to participate in the relevant work of the Main Committees of the General Assembly and its subsidiary organs concerned, as well as in conferences, seminars and other meetings held under the auspices of the United Nations, and had requested the Secretary-General to ensure that the necessary arrangements were made for their effective participation, including the requisite financial provisions. In his opinion, those provisions spoke for themselves.

19. The Security Council, too, recognized PLO. Every year some aspect of the Palestinian question was considered by the Council and each year PLO asked to be heard. Rules 37 and 39 of the Security Council's provisional rules of procedure laid down the conditions on which those who were not members of the Council could be invited to take part in the discussions, to provide information and to assist in the consideration of items. In recent years, PLO had made periodic requests to be heard by the Council; such requests had been submitted through a State, both documents being distributed as Security Council documents. Subsequently, PLO had requested that, as the legitimate representative of the Palestine community, it be granted the same right of participation as a Member State. The United States delegation had opposed that request but PLO could in any event be heard by the Security Council under rules 37 and 39 of the provisional rules of procedure. In practice, PLO and the national liberation movements were constantly present in international organizations. It was therefore only right that they should be accorded the same privileges and immunities as those granted to States. There was no provision which debarred entities other than States from being signatories to treaties or conventions, provided that the other signatories to the treaty agreed, and experience had shown that entities that were not States had become parties to many treaties.

(Mr. Hammad, United Arab Emirates)

20. His delegation would therefore recommend that the General Assembly, at its current or its next session, should grant to national liberation movements recognized by the League of Arab States or OAU the same privileges and immunities as those accorded to States.

21. Mr. ELARABY (Egypt) said that his delegation was fully aware of the position in regard to the ratification of the Vienna Convention on the Representation of States in Their Relations with International Organizations. Anybody who had closely followed the 1975 Conference would remember the controversy which had arisen at that time, when the majority of delegations had shown that they were in favour of granting privileges and immunities to national liberation movements. It should be remembered that many countries in the third world, particularly those in Africa and the Middle East, had not ratified the Convention; that was because a satisfactory solution regarding the observer status of national liberation movements had still not been found. In his view, they would do so when agreement had been reached on the matter.

22. It should also be noted that, in practice, the United Nations had on many occasions granted national liberation movements the right to take part in its discussions. In that regard, it sufficed to recall, inter alia, resolution 3376 (XXX). Moreover, at Egypt's initiative, the Palestine Liberation Organization had been admitted as a full member of the League of Arab States in 1976. In the circumstances, the status of observer to the United Nations should be granted to national liberation movements recognized by the relevant regional organizations, and official recognition given to a situation which already existed in practice, with a view to facilitating the work of bodies and organs within the United Nations system.

23. Mr. ROSENNE (Israel) said that the so-called legal arguments advanced by previous speakers, in which reference had been made to the Charter, to various regulations and to other relevant United Nations instruments, were unacceptable to his delegation. Israel's position had been officially made known on many occasions, for instance at the 1975 Conference, in the General Assembly, in the Security Council and in other organs and specialized agencies of the United Nations.

24. Although he would not reply to all the tendentious and evasive statements made by previous speakers, he would not wish anybody who might consult the records in future to gain the false impression that the kind of legal theories which had been assiduously expounded at the current session in regard to a certain terrorist organization reflected a universally accepted legal position. The fact of the matter was that the so-called Palestine Liberation Organization had none of the recognized attributes of the States to which the 1975 Convention, and international law in general, applied.

25. Mr. ARMALI (Observer, Palestine Liberation Organization) said that all the speakers, except for the previous one, had given a clear and full account of the practical and legal reasons why the General Assembly should adopt a decision without delay regarding the rights of national liberation movements recognized by

(Mr. Armali, Observer, PLO)

the League of Arab States and OAU; there was therefore no need for him to cite further reasons. He wished, however, to exercise his right of reply regarding the statements made by the representative of Mr. Menachem Begin who had, as usual, described PLO as a terrorist organization. PLO, which represented the just and legitimate aspirations of the Palestinian people, who had been brutally oppressed first by the Zionist bands of the terrorist entity created by the same Mr. Begin and by the entity that had replaced it, the Zionist State of Israel, could not be described as a terrorist organization. Born out of the suffering of the Palestinian people and the repository of their hopes for national dignity and sovereignty, PLO stood for quite the opposite.

26. Like many representatives, PLO had already had occasion to state in the Sixth Committee that State terrorism, of which Israel was the arch exponent, was the most degrading and lethal form of terrorism. PLO had told how an unarmed people was fighting against the sophisticated weapons made available to Israel thanks to United States help and how, in that just fight, it had won the sympathy of the international community. The last person qualified to speak of terrorism was the representative of the founder of the Irgun Zvei Leumi who, behind a screen of legal terminology, never failed to make plain the Zionist entity's perpetual opposition to any kind of existence for the Palestinian people other than that of the oppressed or the refugee. That was a kind of existence which PLO had rejected in the past and would continue to reject in the future.

AGENDA ITEM 117: REGISTRATION AND PUBLICATION OF TREATIES AND INTERNATIONAL AGREEMENTS PURSUANT TO ARTICLE 102 OF THE CHARTER OF THE UNITED NATIONS: REPORT OF THE SECRETARY-GENERAL (continued) (A/34/466; A/C.6/34/5)

27. The CHAIRMAN recalled that at its 17th meeting, held on 15 October 1979, the Committee had decided to appoint an informal working group to consider the Secretary-General's report on the registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations (A/34/466) and to report to the Committee on the results of its work. The report of the informal working group had been submitted in document A/C.6/34/5.

28. Mr. GANA (Tunisia), speaking as chairman of the informal working group appointed to consider the question of the registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations, said that the Committee would not be required to take any substantive decision that year. The Secretary-General's report on the matter recounted the favourable results obtained through the implementation of General Assembly resolution 33/141 A, pursuant to which the rules for the registration and publication of international agreements had been modified.

29. On 9 October 1979, the Secretariat had sent a questionnaire, regarding activities in the field of international agreements, to all States and intergovernmental organizations concerned. The working group trusted that the Secretariat would be able to assemble sufficient material before 31 March 1980 so that a report on the best ways of using the United Nations computerized system for treaty data could be submitted to the General Assembly at its thirty-fifth

(Mr. Gana, Tunisia)

session. He drew attention in that regard to paragraphs 3 and 4 of the draft resolution recommended in document A/C.6/34/5.

30. Lastly, the Secretary-General had formulated, or would formulate, a number of proposals within the framework of the draft programme budget for the biennium 1980-1981, with a view to strengthening the Secretariat's methodology in regard to the registration and publication of treaties and international agreements. In that connexion, he drew attention to the recommendation which appeared in paragraph 6 of the working group's report.

31. The CHAIRMAN said that, should the Committee approve the working group's report, he would orally inform the Chairman of the Fifth Committee of the substantive part of the recommendations incorporated in it.

32. Mr. POTOCKI (Poland) said that his delegation, which was a member of the informal working group, would participate in the consensus on the draft resolution in paragraph 7 of document A/C.6/34/5 on the understanding that, if the Secretary-General submitted a report in accordance with paragraph 4 of the draft resolution, the item in question would be included for consideration in the provisional agenda of the thirty-fifth session of the General Assembly. That would depend, on the one hand, on the quantity and quality of the reports to be submitted by Governments and intergovernmental organizations and, on the other, on the Secretariat's compliance with the provisions of paragraph 2 of the draft resolution.

33. If the Secretariat was unable to prepare its report in time, his delegation would assume that the item would be included in the agenda of the thirty-sixth session, so that the Committee would have an opportunity to consider the matter in detail.

34. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted the draft resolution in paragraph 7 of the informal working group's report (A/C.6/34/5).

35. It was so decided.

The meeting rose at 4.55 p.m.