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SUMMARY RECORD OF THE 65th MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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The meeting was called to order at 11.05 a.m.

AGENDA ITEM 130: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SIXTH SESSION (continued) (A/39/10, A/39/142, A/39/306; A/C.6/39/L.26)

1. Mr. AL-QAYSI (Iraq), introducing draft resolution A/C.6/39/L.26, announced that the sponsors had been joined by Barbados, Cape Verde, Honduras, Kuwait, Paraguay, Samoa, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Sri Lanka, Swaziland, United Arab Emirates and Zambia. He briefly summarized the draft resolution, which was non-controversial. Delegations would undoubtedly understand the importance of the appeal made in paragraph 6: the comments and replies of Governments and international organizations provided the basis for the Commission to complete its work on a particular subject before submitting the corresponding draft articles to the Sixth Committee. He also drew attention to the fact that the need, stressed in the second preambular paragraph, to pursue the development of international law as a means of implementing the purposes set forth in the Charter and of promoting friendly relations among States, was the raison d'être of the work of the International Law Commission, the Sixth Committee and the other legal forums of the United Nations.
2. The sponsors hoped that the Sixth Committee would adopt the draft resolution by consensus.
3. Mr. HARMAS (Bahrain) said that his delegation supported the draft resolution.
4. Draft resolution A/C.6/39/L.26 was adopted by consensus.

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; A/C.6/39/L.27, L.28)

5. Mr. KALINKIN (Secretary of the Committee) drew attention to an error in the English text of document A/C.6/39/L.28: in the last line of paragraph 4, the reference should be to the biennium 1986-1987, instead of 1984-1985.
6. Mr. FISCHER (Austria) said that he was pleased to announce that the Austrian Government had decided to invite the Conference to meet in Vienna for a five-week period starting on 18 February 1986. That invitation continued the tradition whereby Vienna had hosted numerous codification conferences of the United Nations, and in particular the International Conference of Plenipotentiaries on the Law of Treaties, the subject of which was closely related to the subject of the future Conference.
7. The subject of the future Conference was of relevance to Austria, which was one of the major centres of the United Nations and which was also host to other important international organizations. The Austrian Government hoped that, in response to its invitation, the General Assembly would decide on the venue and date of the Conference at the current session and that every effort would be made, prior to the Conference itself, to ensure its success. For its part, Austria would spare

(Mr. Fischer, Austria)

no effort to prepare and organize the Conference in such a manner as to create the best chances for its success.

8. Mr. AL-QAYSI (Iraq), introducing draft resolution A/C.6/39/L.27, announced that the delegations of the following countries had become sponsors: Bangladesh, Barbados, Cape Verde, Cyprus, Honduras, India, Kenya, Kuwait, Paraguay, Samoa, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Sri Lanka, Swaziland, United Arab Emirates and Zambia.

9. The sponsors of the draft resolution were grateful to the Legal Counsel for the consultations which he had diligently conducted and without which they would undoubtedly have been unable to solve the delicate problems posed by the drafting of the text of the resolution. It was based on General Assembly resolutions 37/112 and 38/139, which recalled the history of the topic by mentioning, in particular, that the Vienna Conference on the Law of Treaties had recommended in 1969 that the Commission should study the law of treaties between States and international organizations or between international organizations; in 1982, the Commission had recommended that a conference should be convened to study the draft articles which it had adopted on the subject and to conclude a convention.

10. The fifth preambular paragraph recognized the obvious link between the law of treaties between States and the law of treaties between States and international organizations or between international organizations. A number of delegations would have preferred the paragraph to make a specific reference to the 1969 Vienna Convention on the Law of Treaties but had agreed, in a spirit of compromise, to the wording which appeared in the draft resolution. Nevertheless, there was a general awareness that the future Conference would necessarily, as it considered the draft articles, take into consideration the corresponding provisions of that Convention, as well as possibly the relevant provisions of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character and the 1978 Vienna Convention on Succession of States in respect of Treaties. It was the overwhelming view that the consultations to be held under paragraph 8 of the draft resolution should address that question, with a view to determining whether a more definitive attitude could be ascertained on that point.

11. The sixth preambular paragraph noted with appreciation that the Austrian Government was continuing the tradition of inviting codification conferences to meet in Vienna. The sponsors expressed their gratitude to that Government for its devotion and fidelity to the cause of the progressive development and codification of international law.

12. Since the General Assembly had agreed in its resolution 38/139 to take a decision at its thirty-ninth session on the date and place for the Conference, paragraph 1 indicated that the Conference would be held from 18 February to 21 March 1986 in Vienna.

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(Mr. Al-Qaysi, Iraq)

13. Subparagraphs (a) to (d) of paragraph 2 reflected standard practice with regard to invitations to participate in conferences organized under the auspices of the United Nations.

14. The international intergovernmental organizations referred to in subparagraph (e) of the same paragraph were: (i) the specialized and related agencies of the United Nations system (15 in number); (ii) the international intergovernmental organizations which had a standing invitation to participate in the work of the sessions of the General Assembly (11 in number); and (iii) international intergovernmental organizations engaged in the progressive development of international law and its codification at the regional level, with which the International Law Commission maintained links of co-operation in accordance with article 26 of its statute and which were not covered by (ii), there being in fact only one such organization. As to the capacity in which such organizations would participate in the Conference, that question, in accordance with the second part of subparagraph (e), would continue to be considered in the consultations referred to in paragraph 8 of the draft resolution and at the fortieth session of the General Assembly. Lastly, he emphasized that, although the participation of the United Nations was not referred to in subparagraph (e), all those taking part in the consultations on the draft resolution had recognized the desirability of the Organization or the Secretary-General being represented at the Conference in some manner. Some delegations having expressed a wish to reflect further on the matter, it had been agreed to leave it for consideration within the framework of the consultations referred to in paragraph 8 with a view to enabling the General Assembly at its fortieth session to decide whether the United Nations itself should be represented at the Conference in the manner agreed upon in respect of the other international organizations referred to in subparagraph (e) and, if so, who should be designated as the Organization's representative. The draft resolution in no way prejudged the manner in which the Assembly would deal with those questions.

15. Paragraph 3 did not imply any criticism of governmental representation at codification conferences of the past but simply recalled, as the General Assembly had done in its resolution 2166 (XXI) on an international conference of plenipotentiaries on the law of treaties, the specialized nature of the conference and the desirability of including experts in the delegations.

16. Paragraph 6 stressed that the documentation to be presented relating to the Conference's rules of procedure and methods of work should take into account the importance of promoting general agreement on the final results of the work of the Conference, a provision which should be understood to mean that the Secretary-General was requested to bear in mind the results of the consultations referred to in paragraph 8 as well as any relevant decisions taken by the General Assembly at its fortieth session. The paragraph also implicitly authorized the Secretariat to submit, in accordance with standard practice, an analytical compilation of comments on the draft articles, a guide to those articles, a bibliography and the relevant chapter of the Commission's 1982 report (A/37/10).

17. The invitation addressed in paragraph 7 to the Special Rapporteur, Mr. Paul Reuter, would increase the chances of a successful outcome of the Conference.

(Mr. Al-Qaysi, Iraq)

18. Paragraph 8 was one of the draft resolution's most important elements. Not only the questions expressly mentioned therein but also those to which he had referred earlier (para. 14) would be considered at the consultations to be organized "prior to the convening of the Conference". In connection with that phrase, he explained that the fact that consultations were to continue during the fortieth session of the General Assembly would be without prejudice to whatever decisions might be taken at that session, in particular with regard to the organization of the work of the Sixth Committee at that session.

19. Under the item whose inclusion in the provisional agenda of the fortieth session of the General Assembly was proposed in paragraph 9, the General Assembly would be apprised of the results of the consultations referred to in paragraph 8 and would take a decision on the capacity in which international intergovernmental organizations should participate in the Conference, as well as on the question of United Nations participation and representation. Thus the General Assembly at its fortieth session would not review the basic provisions of the resolution to be adopted at the present session but only consider matters connected with the preparations for the Conference.

20. Although negotiations on the draft resolution had been difficult, success had been achieved thanks to the spirit of compromise and goodwill shown by all participants. A great deal still remained to be accomplished during the consultations to be held in 1985 but there was no doubt that, with goodwill and perseverance, it would prove possible to ensure the success of the Conference and thus take an important step towards closing the chapter of codification and progressive development of the general law of treaties. In view of the importance of that goal, the draft resolution's sponsors hoped that it would be adopted by consensus.

21. Mr. HARMAS (Bahrain) said that his delegation supported draft resolution A/C.6/39/L.27.

22. Mr. BERMAN (United Kingdom) said that his delegation would comment on the details of the draft resolution's financial implications when they were considered by the Fifth Committee. In view of the very large figures given in document A/C.6/39/L.28, he would already state that his delegation expected every possible step to be taken in order to reduce costs to a minimum. The last sentence of paragraph 6, to the effect that there was no potential for partially or fully absorbing the estimated costs totalling \$26,600, seemed to him highly surprising. That was the kind of question that should be considered closely by the Advisory Committee on Administrative and Budgetary Questions and by the Fifth Committee. Everything should be done wherever possible to cover costs arising from the draft resolution from appropriations under the regular budget.

23. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that his delegation had proposed that the Sixth Committee should draft the convention in question, which would have enabled the United Nations to save some \$3 million. In a spirit of compromise, however, it had decided not to oppose the consensus on the draft resolution, but that did not mean that it approved the programme budget implications set forth in document A/C.6/39/L.28. Those implications should be

(Mr. Ordzhonikidze, USSR)

duly reconsidered by the Fifth Committee, which should try to obtain the most rational possible utilization of appropriations under the regular budget.

24. Mr. ROSENSTOCK (United States of America) thanked those who had initiated the consultations which had taken place during the summer and the autumn, as well as those which had been held more recently concerning the draft resolution itself. Without them, the consensus would have been impossible.

25. With regard to the programme budget implications submitted in document A/C.6/39/L.28, his delegation endorsed the remarks made by the representatives of the United Kingdom and the Soviet Union. It also noted a contradiction between the second sentence of paragraph 4 and the last sentence of paragraph 6 of that document. If the necessary resources were to be requested in the proposed programme budget for the biennium 1986-1987, it was difficult to see how the sentence could already state that that expenditure could not be covered by appropriations.

26. Draft resolution A/C.6/39/L.27 was adopted by consensus.

27. Mr. SCHRICKE (France) paid a tribute to the role played by the representative of Iraq in preparing the draft resolution, which had greatly contributed to its adoption by consensus.

28. His delegation would, however, have preferred the draft resolution not to set definitive dates for holding the Conference at the current session, since many questions had still to be dealt with at the consultations. However, it was pleased that paragraph 8 provided for the resumption of those consultations, which had an important role to play in the preparation of the Conference, the identification of difficulties and the reconciliation of points of view. In particular, they should tackle the question of the participation of the United Nations itself in the Conference and that of the status of the international organizations, as well as various substantive problems. His delegation was ready to take an active part in them.

29. Lastly, in the light of France's traditional position concerning the United Nations Council for Namibia and its legal capacity to represent Namibia, his delegation would like to express reservations concerning paragraph 2 (b), which invited Namibia, represented by the Council, to participate in the Conference.

30. Mr. BERMAN (United Kingdom) expressed pleasure that the negotiations carried out under the chairmanship of the representative of Iraq had made it possible to adopt the draft resolution by consensus. His delegation, which attached the utmost importance to the results of the Conference, would play an active part in the consultations referred to in paragraph 8 of the draft resolution. It was particularly pleased that the process of codifying the law of treaties, which had started in Vienna in 1959, could be completed in that same city, and in that connection wished to express gratitude to the Austrian Government.

31. On behalf also of the delegations of Canada, the United States and the Federal Republic of Germany, the United Kingdom delegation expressed reservations

(Mr. Berman, United Kingdom)

concerning paragraph 2 (b) of the draft resolution. The fact that those delegations had joined in the consensus in no way meant that their Governments had changed their position concerning the legality of the participation of Namibia, represented by the United Nations Council for Namibia.

32. Mr. Sreenivasa RAO (India) expressed his gratitude to the Legal Counsel and the representative of Iraq for the consultations which they had organized during the year and during the current session. India, which had taken part in them, would participate equally actively in the future consultations and sincerely hoped that they would be just as productive.

33. Mr. MUDHO (Kenya) expressed pleasure that it had been possible to adopt the draft resolution by consensus and expressed his gratitude to the representative of Iraq and the Legal Counsel.

34. The reservation expressed on behalf of several delegations by the representative of the United Kingdom concerning paragraph 2 (b) of the draft resolution would have been welcome if it had meant that those delegations thought that by the date of the Conference, Namibia would have attained independence and would therefore not have to be represented by the United Nations Council for Namibia. However, if Namibia was still under foreign domination, as the Council was its legal Administering Authority, there was no reason why it should not be represented by it at the Conference.

35. Mr. BAKER (Israel) said that, even though it had joined in the consensus, his delegation continued to think that the Sixth Committee could have undertaken the work to be done by the Conference, which would cause excessive expenditure and unnecessary practical difficulties for Governments.

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; A/C.6/39/L.25)

36. Mr. KALINKIN (Secretary of the Committee) announced that Burkina Faso, Mozambique and Zambia had joined the sponsors of draft resolution A/C.6/39/L.25.

37. Mrs. SILVERA-NUÑEZ (Cuba), introducing draft resolution A/C.6/39/L.25 on behalf of its sponsors, pointed out that it differed very little from resolutions adopted previously by the General Assembly. The sponsors believed that participation by national liberation movements recognized by the Organization of African Unity or the League of Arab States in the work of international organizations would help to strengthen international peace and co-operation. They hoped that the draft resolution would be adopted without a vote.

38. Mr. AL-DUWAIKH (Kuwait) said that his delegation supported draft resolution A/C.6/39/L.25.

39. Mr. BAKER (Israel) said that for the same reasons which had led it to vote against resolutions on the same subject adopted in previous sessions, his delegation was asking that draft resolution A/C.6/39/L.25 should be put to a vote.

/...

(Mr. Baker, Israel)

40. Article 89 of the Vienna Convention on the Representation of States and their Relations with International Organizations of a Universal Character (A/CONF.67/16) provided that the Convention should enter into force following the deposit of the thirty-fifth instrument of ratification or accession. As of 31 December 1983, only 22 States had deposited such instruments, and they included none of the principal host States of United Nations bodies. As pointed out by the Office of Legal Affairs in an advisory opinion dealing with the applicability of that Convention (see document A/37/26, para. 33), such host States had either abstained or voted against the Convention.

41. The draft resolution was, in fact, devoid of all practical legal value. It was hardly opportune to ask the Committee to approve a proposal according to which States which were not parties to a Convention which was itself not in force were requested to apply that Convention to an entity which possessed none of the attributes of a State, and then to ask the Secretary-General to follow up on the implementation of what was an inapplicable resolution.

42. It should further be noted that, of the 21 co-sponsors of the draft resolution, only 5 had signed the Convention and only 3 had deposited instruments of ratification or accession (see ST/LEG/SER.E/2 and Add.1). States which had taken no steps to become parties to the Convention were in no position to propose resolutions of the kind now before the Committee.

43. The seventh preambular paragraph was particularly ironic: far from helping to strengthen international peace and co-operation, the so-called national liberation movement closest to the majority of the sponsors of the draft resolution had consistently shown itself, both in its declared principles and its terrorist activities, to be exactly the opposite - an obstacle to international peace and co-operation. The Committee had far better things to do than to find ways of gratifying a terrorist organization which was now seeking a quasi-diplomatic status, without offering any of the guarantees or meeting any of the essential requirements for such status, all in order to facilitate its nefarious activities.

44. Israel would vote against the draft resolution.

45. At the request of the representative of Israel, a vote by show of hands was taken on draft resolution A/C.6/39/L.25.

46. The draft resolution was adopted by 92 votes to 10, with 17 abstentions.

47. Mr. SCHRICKE (France), speaking in explanation of vote, said that his delegation had voted against the draft resolution primarily for legal reasons. The draft resolution invited States to ratify a Convention, which had not been adopted by a unanimous vote, which had been signed and ratified by only a few States and, furthermore, which did not reflect established law in the matter. Even if it were subsequently to enter into force, the Convention would apply only to States, and its field of application could in no way be enlarged by a General Assembly resolution, as the sponsors seemed to be trying to do in paragraph 2.

48. Mr. BERMAN (United Kingdom) observed that the draft resolution referred to a Convention which was still far from having general support. It had been signed by only 26 States and of those, very few were sponsors of the draft resolution. Almost 10 years after its adoption, it still had not obtained the number of ratifications or accessions needed for its entry into force. Under the circumstances, his delegation considered it strange that the General Assembly should put pressure upon States to ratify or accede to that Convention. It was up to each State, exercising its sovereign rights, to decide whether or not it wished to become a party to a given convention. His delegation found it particularly objectionable that the host States were placed in a special category since they, as much as any other State, had the right to decide in all freedom if they wished to ratify or accede to the Convention.

49. Furthermore, the 1975 Convention applied only to States. An entity other than a State could not be placed on an equal footing with the Government of a State, for it was not in a position to provide all the guarantees of good conduct which a host State had the right to demand of representatives. To alter that state of affairs, it was not enough to speak, as the drafters of the sixth preambular paragraph had done, of a "continued" and "uninterrupted" practice, an expression which, moreover, gave the false impression that such a relatively unimportant question was a matter of constant concern to the United Nations. His delegation therefore thought it unjustified for the draft resolution to call upon States to accord to delegations of national liberation movements any functional privileges and immunities. It felt particularly strongly that host States had as much right as other States to follow the practice generally accepted in international law with regard to privileges and immunities.

50. For all those reasons, his delegation had voted against the draft resolution. It furthermore considered that it would not be desirable for the Committee to take up the question again at future sessions.

51. Mr. KIRSCH (Canada) said that his delegation had voted against the draft resolution for a number of reasons, particularly those of a legal character put forward by the representatives of France and the United Kingdom. At the 1975 Vienna Conference, his country had not voted for the Convention and still had great difficulty with the question of becoming a party to it. Indeed, placing the representatives of entities other than States on the same footing as representatives of States with respect to the granting of privileges and immunities seemed to it to be particularly unwarranted.

52. Mr. HAYASHI (Japan) said that his delegation had abstained in the vote on the draft resolution. At the 1975 Vienna Conference, a number of States, especially those that were hosts to international organizations, had either abstained or voted against the Convention. His Government had abstained at that time and had not since acceded to the Convention which, since a large number of States had not ratified or acceded to it, had not yet entered into force. For those reasons, his delegation did not consider it appropriate for the General Assembly either to urge all States to consider ratifying or acceding to the Convention or to call upon the States concerned to accord to the delegations of certain national liberation movements privileges and immunities in accordance with the provisions of that Convention.

53. Mr. VAN LANSCHOT (Netherlands) associated himself with the remarks of previous speakers and said that he had voted against the draft resolution. At the 1975 Vienna Conference, his country had abstained in the vote on the adoption of the Convention. It had not signed the Convention and did not anticipate becoming a party to it since it considered that it did not take sufficient account of established practice and of the necessary balance between the interests of sending State and host State.

54. While considering that, before its entry into force, it would be irregular to grant to representatives of national liberation movements the privileges and immunities laid down in the Convention, his country was not, in principle, opposed to the granting of certain privileges and immunities in the case of national liberation movements to which observer status had been accorded. It nevertheless felt that such observer status did not carry the right to the same privileges and immunities granted to representatives of States. The question required careful study and thorough negotiation and could not be resolved merely by the adoption of a resolution.

55. Mr. MUDHO (Kenya) said that his delegation had voted for the draft resolution. His country, which acted as host country to a number of international organizations, accorded privileges and immunities to representatives to those organizations, including several observer missions of national liberation movements. An attempt had been made to give the impression that the States which had not yet become parties to the 1975 Convention were opposed to the granting of privileges and immunities to the representatives of national liberation movements. For his country, that was certainly not the case. The Vienna Convention on Diplomatic Relations had only entered into force after many years and some of those States which had opposed the draft resolution had only become parties to it in the previous year.

56. Mr. TREVES (Italy) said that his delegation had voted against the draft resolution, particularly for the legal reasons mentioned by a number of previous speakers. His country was not a party to the 1975 Convention and, like the principal countries which were hosts to international organizations of a universal character, it was unable to agree to its provisions.

57. Mr. SWINNEN (Belgium) said that his delegation had voted against the draft resolution for the legal reasons already set forth by other speakers and, in particular, because his country, one of the principal host countries, had not ratified the Convention. The Convention was, expressly, applicable only to States and it was therefore not advisable to widen its scope by means of a resolution. In those circumstances, his country could not comply with the request made in paragraph 2 to accord to the delegations of national liberation movements the same privileges and immunities granted to the representatives of States. It was, moreover, contrary to current international law for the General Assembly to bring pressure to bear on States to ratify a Convention which had not yet entered into force. Apart from any political considerations, his delegation had important reservations on the granting of privileges and immunities to persons who were not the emissaries of a State capable of assuming responsibility for their conduct.

58. Mr. ROSENSTOCK (United States of America) said that the fact that a fair number of States had refused to support the Convention at the time of its adoption indicated the futility of bringing up that kind of resolution over and over again.

59. His delegation associated itself with the remarks made on the preamble. It also wished to point out that it was opposed to paragraph 1 because it was opposed to the tenor of the Convention itself. The Convention did not reflect established law and its tenor would not be acceptable even if it was presented as a principle of de lege ferenda. It was even more unacceptable in the form of a convention. Paragraph 2 had no legal basis. The request made in paragraph 3 would only waste the time and energy of the Secretariat and might encourage the introduction, in two years' time, of a draft resolution of the same kind, thereby entailing another unfortunate waste of time for the Committee.

60. Resolutions of that kind only weakened the authority of resolutions on widely accepted conventions urging States that had not yet done so to accede to them.

The meeting rose at 12.55 p.m.