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Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 99

Aerial hijacking or interference with civil air travel *(continued)* (A/8091, A/C.6/403, A/C.6/L.803)

1. Mr. ZOTIADIS (Greece) said it was imperative for Governments and the United Nations to take effective measures to protect international civil aviation. Greece had ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo in 1963,[1] and had prepared national legislation to make the unlawful seizure of aircraft a specific criminal offence to which severe penalties applied.

2. It was a matter of regret that both General Assembly resolution 2551 (XXIV) and the Tokyo Convention had so far failed to achieve their aims. With minor exceptions, domestic legislations did not provide for effective legal measures against hijacking mainly because the legal régime of air transport was still basically governed by the principle of State sovereignty over the air space above its territory. That principle could not contribute to the effective implementation of the rule of law for various reasons, such as the fact that aircraft often flew above the high seas, that their speed and height made it difficult to determine over which State's territory an act of hijacking had occurred, and that offences might be committed over State boundaries. In so far as municipal law was concerned, only the State of the aircraft's nationality could effectively exercise jurisdiction over offences committed on board.

3. Great importance was attached to the recognition and denomination of the unlawful seizure of aircraft in flight as a separate offence. The standard municipal law practice was that States did not denominate and punish aircraft hijacking as such, despite the fact that the unlawful seizure of an aircraft and forcible diversion of its flight constituted not one but several offences ordinarily punishable under domestic law.

4. With regard to international efforts to curtail hijacking, the Tokyo Convention had a number of serious shortcomings. Its scope was unfortunately limited to the restoration of property and resumption of flight, although it was clear that the most drastic means of achieving the desired end was the prosecution, extradition and punishment of offenders. It was a matter of regret that aircraft hijacking, although recognized as an offence, was not declared to be a crime under international law. A further shortcoming of the Convention was the provision that the definition of hijacking was to be determined by the municipal law of the contracting parties, while no mandatory provision was made for taking offenders into custody and holding them for criminal proceedings or extradition.

5. Those weak points of the Tokyo Convention had been recognized by the International Civil Aviation Organization (ICAO), and the draft convention it had prepared,[2] based on the extradition, criminal prosecution and punishment of offenders, would be the subject of a diplomatic conference at The Hague in December 1970. It therefore seemed important to examine the existing legal possibilities for the international criminal prosecution of persons charged with unlawful interference with civil aviation. The first requirement was an internationally accepted definition of aircraft hijacking. In that respect the ICAO definition, which clearly distinguished hijacking from piracy and underlined its two main elements—the unlawful seizure of aircraft in flight and the forcible diversion of the itinerary—was a great improvement over the Tokyo Convention. A second requirement was the recognition of hijacking as a crime under international law, for which there was ample legal justification.

6. Both the ICAO draft convention and the draft resolution before the Committee (A/C.6/L.803) tended to focus attention on extradition as the solution to the hijacking problem. In that connexion, certain problems were bound to arise. In the first place, the majority of States had concluded treaties which stipulated the non-extradition of their nationals. Secondly, the problem of political asylum had to be considered, as in the recent incident involving the Soviet Union and Turkey. Thirdly, the draft convention did not take into consideration the principle of double criminality, which required the extraditable act to be a crime in both the State asked to extradite and the requesting State. In that connexion, a universally accepted terminology was most important. A fourth problem was the possibility that the principle of speciality might come into play.

7. Adoption of the draft resolution by the General Assembly and of the draft convention by the diplomatic conference at The Hague would discourage the practice of hijacking but would not put an end to it. The only drastic solution was to declare aerial hijacking a crime against humanity under international law. That procedure, simple though it was, would reduce the shortcomings of extradition and guarantee control of hijacking by extending criminal prosecution of it throughout the world.

8. There was a clear and urgent need for the General Assembly to express once again its deep concern over acts

[1] United Nations, *Treaty Series*, vol. 704 (1969), No. 10106.

[2] See ICAO document 8877-LC/161.

of unlawful interference with civil aviation. Mainly for humanitarian reasons but also in view of the extensive negotiations that had taken place, his delegation would support the draft resolution despite its weaknesses.

Mr. Houben (Netherlands), Vice-Chairman, took the Chair.

9. Mr. PRATT DE MARÍA (Uruguay) said that free communication between men of all latitudes, systems and cultures was an essential element in the development of a world community; hence the many laws enacted at all times and in all countries to secure non-interference with navigation. The problems raised by interference with air travel through acts of violence were very serious; indeed, their implications extended to the international community as a whole. Any violent interference with normal air traffic was not only an offence under domestic law but an international crime. Hijacking constituted a breach of article 13 of the Universal Declaration of Human Rights, jeopardized the lives of passengers and crew, and created a sense of collective insecurity that made it tantamount to an act of terrorism.

10. For all those reasons it could not be regarded as a matter which fell essentially within the domestic jurisdiction of a State and hence it was not covered by the provisions of Article 2 (7) of the Charter. Furthermore, article 14 (2) of the Universal Declaration of Human Rights stated clearly that the right to asylum might not be invoked in the case of prosecutions genuinely arising from acts contrary to the purposes and principles of the United Nations. His delegation was pleased to note the existence of a consensus on the hijacking question and supported the draft resolution.

11. Mr. BAYONA ORTIZ (Colombia) said that his delegation was gravely concerned by the increasing frequency of acts of aerial hijacking or interference with civil air travel, which had affected Colombian aviation among others, and it had accordingly decided to sponsor draft resolution A/C.6/L.803. He felt that the discussion should be kept free from political considerations and that the sole aim should be to seek ways of putting an end to such acts. The United Nations could not remain indifferent to such acts, which affected the whole international community. Appeals from the United Nations and resolutions of the General Assembly and the Security Council had so far failed to achieve the international co-operation required to put an end to such incidents. As His Imperial Majesty Haile Selassie I had stated (1882nd plenary meeting), sabotage and hijacking of civil aircraft, unless halted immediately, would not only jeopardize the lives of passengers and crews, but would also affect the very fabric of international society.

12. It was urgently necessary that the General Assembly should emphatically condemn aerial hijacking and its use as an instrument of international blackmail, and urge States to take appropriate measures at the national and international levels to put an end to such acts and punish the offenders. Draft resolution A/C.6/L.803 had the merit of calling for full support for the efforts being made by ICAO to produce international instruments which would be a valuable contribution to the development of law and could play an important role in the elimination of hijacking.

13. His delegation hoped that draft resolution A/C.6/L.803 would be adopted by an overwhelming majority and that States Members of the United Nations would implement its recommendations. Otherwise, radical measures would be needed, such as the suspension of international civil aviation services as a sanction against States which detained aircraft, passengers and crew following a hijacking or failed to prosecute or extradite the offenders. He sincerely hoped, for the sake of international harmony and co-operation, that such action would not be required.

14. Mr. KLAFKOWSKI (Poland) said that his delegation had supported General Assembly resolution 2551 (XXIV) and Security Council resolution 286 (1970), although they represented only a small contribution to the solution of the hijacking problem. It had to be borne in mind that hijacking was a crime regardless of whether political motives were involved, by virtue of the penal law principle that a crime was a crime irrespective of the offender's motivation. Hijacking should be punished accordingly; there could be no question of the right of asylum operating in cases of hijacking. The two resolutions he had mentioned rightly called for appropriate municipal law measures to be taken, but international law was concerned as well, since hijacking affected international relations and the interests of all peoples. Yet international law was inadequately equipped to deal with the problem. The time had come for effective international action to remedy that situation in an effort to end the present state of insecurity in international air transport.

15. Technical ingenuity and elaborate safety precautions were no substitute for the lack of law. The Secretary-General, in the introduction to his report on the work of the Organization, had drawn attention to various moves designed to fill the legal gap (A/8001/Add.1, paras. 154-156). At present the only international instrument which dealt with hijacking was the Tokyo Convention, the effect of which, despite the useful obligations established in articles 5 and 11, was crippled by its failure to provide for the mandatory extradition of offenders. There would be no effective restraint of hijackers unless the principle of compulsory extradition, involving the threat of punishment, was laid down in an international legal instrument. The criterion of the State of registration of the aircraft was sufficiently well defined in international law to form the legal basis for extradition demands. His delegation was actively participating in all attempts, and particularly in those of ICAO, to establish a mandatory régime for the extradition of hijackers and so overcome the vital flaw in the Tokyo Convention.

16. Mr. ALVAREZ TABÍO (Cuba) said that his delegation had voted against General Assembly resolution 2551 (XXIV) on the grounds that it would not be conducive to an adequate solution to the problem of hijacking, which had to be seen in the broad context of international piracy as a whole. Piracy had traditionally signified a threat to the freedom of the seas. It was therefore relevant not only to stress, as many had done, the increase in the number of cases of piracy in the air, but also to point to the recurrence of acts of piracy at sea, in those very waters in which it had once been rife. Acts of that kind were directed against Cuba's shores and Cuban fishing vessels by persons in the service of the United States of America, an imperialist

Power in whose territory the pirates went unpunished. The United Nations had taken no steps to check such manifestations of piracy and put an end to the worsening climate of lawlessness. In such a situation it was pointless to seek legal measures designed to deal only with piracy in the air. Because of the atmosphere of violence and illegality which resulted from a consistent policy of blockade and aggression against Cuba, his country lived under the constant threat of attack. It was unjust that international penal law should apparently recognize the right of imperialists to engage in piracy but deny Cuba the right to seek assistance in connexion with specific cases of piratical action.

17. The problem was serious and complex, and its solution lay in the establishment of a system of reciprocal assistance between States which would ensure that appropriate punitive justice was done. There would be no proper basis in international penal law for the repression of piracy in all its present forms unless every State was made to bear identical responsibilities for assistance on a territorial basis. The principle of sovereign equality of States lent support to the view that penal law was territorial in character; States assisted each other, by virtue of bilateral extradition treaties, in returning offenders to the territory in which the offence was committed. Because of the principle of territoriality, cases of piracy could be dealt with only by extradition, which was an institution of international juridical reciprocity, at present based primarily on treaties. The only exceptions to the rule of extradition were the non-extradition of nationals and the non-extradition of political offenders. Cuba, in the exercise of its sovereignty, reserved the right to grant asylum to political offenders, irrespective of how they reached the country. That position was consistent with contemporary law and doctrine generally and, in particular, reflected the provisions of article 355 of the Bustamente Code,[3] which had been ratified by the majority of Latin American States.

18. If all States rigorously applied the principle of territoriality, the interests of every State would be safeguarded in every other State and bilateral treaties would be unnecessary. Unfortunately that was not the case; piracy continued to go unpunished in the international community. Cuba had therefore taken concrete steps, in its Act No. 1226 of 1969, to legislate against all forms of piracy at sea or in the air. That measure was intended to contribute towards ending the present state of insecurity in air and sea transport. The manner in which the Cuban authorities applied it would depend on the attitude adopted by other States. Cuba was prepared to discuss bilateral agreements on air and sea piracy with any State that was prepared to act on a basis of complete reciprocity in those matters, but it would not accept any arrangements concerning hijacking unless they specifically covered other forms of piracy. It would therefore abstain on draft resolution A/C.6/L.803.

19. Mr. METSÄLAMPI (Finland) said that the safety of air travel had been the primary consideration throughout the history of civil aviation. Great efforts had been devoted to it, particularly under the auspices of ICAO. The high level of safety achieved had been seriously jeopardized in recent years by hijacking and similar acts, and States, jointly or separately, should therefore take all possible steps to suppress such activities. Though responsibility for appropriate measures lay with each State individually, any action should be based on internationally accepted rules, in order to ensure maximum effectiveness and uniformity. ICAO had done useful work in that respect during the last two or three years. It was common knowledge that although the Tokyo Convention condemned hijacking, its provisions were inadequate to solve the problem as a whole. The two draft conventions being prepared within the framework of ICAO therefore deserved continuing support, in the interests of all concerned. His delegation had become a sponsor of the draft resolution before the Committee because the draft contained the elements that seemed essential, particularly the condemnation of acts of interference irrespective of motivation, the duties urged upon States, and the encouragement to ICAO to continue its efforts to suppress interference with civil air travel.

20. Mr. SEATON (United Republic of Tanzania) said that the impatience of individuals in pursuing what they regarded as just ends had assumed dangerous proportions. However, their actions were understandable; they saw no help coming to them from the national or international community. No international convention banning hijacking would convince them that such actions were misguided. But that did not mean that the United Republic of Tanzania condoned hijacking: the United Nations should take action against it but should continue to strive for the implementation of the principles of justice for political and other refugees laid down in article 14 of the Universal Declaration of Human Rights, article 31 of the 1951 Convention relating to the Status of Refugees[4] and articles 1 and 3 of the Declaration on Territorial Asylum (General Assembly resolution 2312 (XXII)).

21. With regard to the draft resolution before the Committee, paragraph 1 should perhaps be worded a little less positively as far as its exclusion of any consideration of pretext or motive was concerned. In paragraph 2, it would be appropriate to add, at the end, wording along the lines of the safeguard expressed in the final preambular paragraph of the Declaration on Territorial Asylum. Finally, in paragraph 8, the word "blackmail" was out of place in a document which otherwise maintained such a high level of style and sentiment.

Mr. Engo (Cameroon), resumed the Chair.

22. Mr. CAVALCANTI (Brazil) said that draft resolution A/C.6/L.803 was of great importance for the large section of the world's population, whose safety and peace of mind was threatened by the criminal practice of aerial hijacking, and he was glad to see that ICAO was giving the matter careful study. Close international co-operation especially at the level of the competent airport authorities was required to put an end to such unlawful and unjustified acts, which constituted violations of human rights, and his delegation supported the draft resolution and the motives which had inspired it. The draft resolution recognized the right of freedom of air travel and the part civil aviation played in the promotion and preservation of friendly relations among States. It also provided for the punishment or extradition of hijackers but did not preclude the conclusion of separate

3 League of Nations, *Treaty Series*, vol. LXXXVI, 1929, No. 1950.

4 United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

agreements between States on the latter question. He hoped that the moral force of the draft resolution would promote concerted action by the United Nations to put an end to such criminal acts.

23. The CHAIRMAN announced that Guatemala had become a sponsor of draft resolution A/C.6/L.803.

24. Mr. TESLENKO (Secretariat) recalled that at the 1198th meeting of the Committee, the representative of Lebanon had proposed that all statements relating to the item under consideration should be reproduced *in extenso* in the summary record, and that the summary records relating to the item should be circulated within twenty-four hours after the end of each meeting. Since reproduction of statements *in extenso* would amount to verbatim records, and in view of the decisions taken by the General Assembly at the beginning of the current session with respect to verbatim records, it had been necessary to consult the Office of Conference Services on the matter. He had now received a memorandum from the Office of Conference Services stating that the Office would not be able to furnish verbatim records of meetings of the Sixth Committee on a current basis. Although it might be possible to do so occasionally, the decision taken by the General Assembly at its 1843rd meeting gave priority to the production of the records of plenary meetings, meetings of the First Committee and, on request, those of the Special Political Committee, so that delays might result in issuing the records of the Sixth Committee. The memorandum drew attention also to paragraph *(d)* of the annex to General Assembly resolution 2292 (XXII), concerning the strict limitation of the provision of verbatim records. The Office had stated further that if fuller records than those normally provided were required, it would not be possible to meet the forty-eight-hour deadline for distribution of the records in languages other than the original without delaying production of urgent documentation or records of other committees. The Office would, however, endeavour, to maintain the normal schedule for such expanded records, i.e., two working days for the record issued in the language in which it was prepared and three working days for the records issued in the other languages. Paragraph *(a)* of the annex to General Assembly resolution 2292 (XXII) provided that the length of summary records for any single two and a half hour meeting should not exceed fifteen pages unless exceptional circumstances so required. Accordingly in order to undertake to provide fuller records, the Office of Conference Services would need a specific decision to that effect by the Sixth Committee. The financial implications of such a decision might be estimated at $150 per additional page. Thus, for example, if an expanded summary record had twenty-five pages instead of the usual fifteen, the additional expenses incurred would be $1,500 for that record, including the preparation, translation, reproduction of the provisional record in all languages, as well as the editing and printing in all languages of the final summary record.

25. Mr. CHAMMAS (Lebanon) expressed appreciation for the Secretariat's clarification. What had actually happened was that the Liberian representative had proposed (1198th meeting) that the two introductory statements on aerial hijacking be produced *in extenso* in the summary record; and he himself, out of regard for the principle of equity, had proposed that all statements on that item should appear *in extenso* in the summary records. He had requested a statement of the financial implications of both proposals. In view of the financial implications, and since no further request had been made for expanded coverage of the item, he would be satisfied with summary records of the normal kind.

26. Mr. HOUBEN (Netherlands), clarifying certain points raised by the representative of the United Republic of Tanzania in connexion with draft resolution A/C.6/L.803, said that the condemnation in its paragraph 1 was a moral condemnation and must be distinguished from actual punishment. In paragraph 2, it was not stipulated that the offender must be punished, but rather that he must be prosecuted, whatever the outcome of the prosecution. The paragraph offered two alternatives–punishment on the basis of prosecution or extradition. When introducing the draft resolution, the sponsors had made it clear that paragraph 2 should not be interpreted as prejudicing the application by a State of its domestic law and practices in the matter of extradition.

27. The sponsors had purposely not included any reference to asylum in the draft resolution, because such a provision might give the impression that hijackers might in certain cases evade prosecution. There were instances where a State had given a hijacker asylum but had nevertheless gaoled him. For similar reasons, the Sixth Committee had decided not to insert any provision relating to asylum in resolution 2551 (XXIV) which the General Assembly had adopted on the item the preceding session. He recalled, however, that the Committee had decided to include in its report[5] a statement of understanding to the effect that the adoption of the draft resolution could not prejudice any international legal rights or duties of States with respect to asylum. It might perhaps be advisable to include a similar statement in the Committee's report to the General Assembly at the current session.

The meeting rose at 5 p.m.

5 See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 105, document A/7845, para. 9.