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**SIXTH COMMITTEE, 1223rd
MEETING**

Wednesday, 11 November 1970,
at 3.15 p.m.

NEW YORK

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.803-805)**

1. Mr. FRASER (Guyana) said that hijackings of civil aircraft should not be dismissed as pathological acts; they were the almost inevitable result of a general drift towards international lawlessness. Aerial hijacking was simply the assertion by individuals of a claim to unilateral action, and was morally no more reprehensible than unilateral action taken by States which ignored accepted international procedures in the pursuit of national goals. His delegation did not condone hijackings, but it felt that States should act with caution before condemning them without qualification and punishing conduct which their own behaviour appeared to justify. In examining hijacking from the humanitarian point of view, the claims of innocent passengers needed to be balanced against those of individuals who genuinely sought to vindicate their right to human dignity.

2. Commenting on draft resolution A/C.6/L.803, he said that the first preambular paragraph asserted too categorically that international civil aviation was a vital link in the promotion and preservation of friendly relations among States. That idea was debatable, and he suggested that the sponsors give consideration to deleting the word "friendly" from that paragraph, or replacing the word "is" by "can be".

3. In the fourth preambular paragraph "freedom of air travel" was a principle which surely was not recognized in international law. The various conventions on aviation law adopted in the past had rejected the concept of freedom of the air, and had recognized the absolute sovereignty of States over their superjacent air space and other restrictive principles.

4. The wording of paragraph 1, in his delegation's view, was both dangerous and redundant. Wrongful intent was an indispensable factor in determining whether aircraft piracy had been committed, as was shown, for example, by the United States statute on the subject. As it stood, the broad condemnation in the paragraph would include the actions of even a responsible person who sought to deter a mentally ill pilot from intentionally causing his plane to crash. Moreover, since aerial hijacking implied force or violence, the words "through the threat or use of force and all acts of violence" appeared to be tautological. His delegation therefore suggested that the phrase "irrespective of the pretext or motive for which they are perpetrated" should

be deleted, and that the words "aerial hijacking" should be replaced by "wrongful seizure".

5. His delegation also had difficulty in accepting paragraph 2. If the same act of interference with civil air travel was committed in two or more States, it was inappropriate to call upon States to take measures "at every stage of the execution of those acts". The text would be more precise if the word "stage" was qualified by the adjective "relevant" or "appropriate". Moreover, he agreed with the representative of the United Republic of Tanzania (1220th meeting) that the paragraph failed to express in clear terms the sovereign right of States to determine unilaterally whether there were adequate grounds for granting political asylum.

6. With regard to paragraph 5, his delegation doubted whether every Government of a State to which an aircraft was hijacked would be in a position to provide for the care and safety of the passengers and crew. It therefore suggested that the words "if possible" should be inserted after the word "provide". Another problem with the paragraph was that it seemed to imply that the State to whose territory an aircraft had been hijacked bore the burden of determining which persons were "lawfully entitled to possession". His delegation felt that a State's responsibility was limited to returning the aircraft and cargo to the operator of the aircraft or his duly appointed representative.

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

7. Mr. PINTO (Ceylon) said that Ceylon shared with the people of France their grief and sense of loss at the death of General de Gaulle. Charles de Gaulle was a leader of great eminence and devotion. Few men had given such great service to their country and to the world.

8. While his delegation condemned all acts of interference with civil air travel, it felt that the political aspects of the problem made it a difficult field for international legislation at the present time. However, it hoped that the forthcoming diplomatic conference at The Hague would be successful in dealing with the many problems involved, and it supported the efforts of the International Civil Aviation Organization (ICAO) towards finding just and effective solutions.

9. His delegation felt that the Committee had exercised insufficient care in choosing terms to describe interference with air travel. While forcible diversion of aircraft superficially resembled piracy, the use of the term "piracy in the air" which has been used in the debate implied too exact an analogy, and ignored entirely the political motives of most such offenders. The term "hijacking" was being used in a new way, and new meanings given to words should be

accepted only after careful consideration. It was possible that the forcible diversion of aircraft was an offence covered by existing national criminal law, and not a distinct offence requiring special legal provisions.

10. With regard to paragraph 1, he agreed with the representative of the United Republic of Tanzania that it was questionable whether acts of interference with air travel should be condemned irrespective of the motives for which they were perpetrated. Another problem was that of deciding which State or States had jurisdiction to prosecute and punish an offender, and whether they should be under an internationally enforceable obligation to exercise such jurisdiction. Serious consideration should be given to the suggestion of the representative of the Soviet Union (1221st meeting) that, as a rule, an offender should be extradited to the country of the aircraft's registration, subject to the exception that the country of the offender's nationality would not be obliged to return him. It should be recalled, however, that some States might have difficulty in assuming jurisdiction for offences committed outside their territory. Complicated questions could also arise in relation to reciprocity of extradition and to exemption from coverage in the case of offenders seeking political asylum.

11. While the General Assembly should act as a forum for the mobilization of public opinion in order to prevent further acts of interference with air travel, the detailed measures to be taken should be worked out by ICAO. His Government intended to take all appropriate measures toward ending such acts. However, the draft resolution before the Committee raised too many problems, and his delegation could not support it as it stood. It was prepared to vote in favour of the amendment submitted by the delegation of the United Republic of Tanzania (A/C.6/L.804).

12. Mr. OTSUKA (Japan) said that his delegation wished individually to pay its tribute to the memory of Charles de Gaulle and asked the French delegation to convey Japan's condolences on the occasion of his death.

13. His delegation fully shared the view of the previous speakers on the very nature of the hijacking question. The aggravation of the hijacking situation demanded strong and urgent measures as was generally agreed. For that purpose concerted action on a global scale was required, and that had been facilitated by discussions in the United Nations and ICAO and by tasks engaged in by them. Japan was participating actively in such international activities to cope with hijacking. As international joint action could also be realized by means of international legislation, Japan had ratified the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo in 1963,¹ and would urge those States which had not yet acceded to or ratified it to do so. However, it shared the general view that the Tokyo Convention alone was insufficient to solve the hijacking problem and it would therefore co-operate fully at the forthcoming Hague conference in the hope that a strengthened convention on the unlawful seizure of aircraft would be adopted. In addition to international measures, all possible judicial and administrative action

should be taken by States at the national level to prevent their citizens or residents from perpetrating the crimes referred to in the draft resolution before the Committee. His own country had enacted a law against the unlawful seizure of aircraft and related acts which went beyond Japan's obligations under the Tokyo Convention and anticipated the expected outcome of the Hague conference. All efforts to fight against hijacking should be made on the basis of the interest of mankind and only that humanitarian approach could permit all the members of the Committee to form an indomitable resolve for their common objective.

14. Mr. JAZIĆ (Yugoslavia) said that his country wished to convey to the French delegation and people its deep sympathy and sorrow at the passing of General de Gaulle.

15. Because of the growing incidence of acts of hijacking and unlawful detention of aircraft passengers and crew, further concerted international and national action was needed. The humanitarian and legal aspects of the hijacking problem were uncontroversial: all were concerned to safeguard human life and were agreed as to the need for further elaboration of the international legal régime for international civil aviation. His delegation strongly supported all activities in that field, particularly those within the framework of ICAO. It endorsed the solemn declaration adopted by the ICAO Assembly in June 1970 and was keenly aware of the importance of national legislation to ensure the security of civil aviation. The mere condemnation of hijacking was not enough; all States should adopt measures to prevent or suppress it within their jurisdiction and should provide for the appropriate punishment or extradition of those guilty of it, without prejudice, of course, to legal provisions on asylum.

16. But there was a political aspect to hijacking as well. A basic cause of hijacking incidents was the inability of the international community to solve political conflicts deeply affecting man, and especially young people, throughout the world. In that situation, many were taking the law into their own hands. Not all hijackers fell into that category, of course; some were real criminals, engaging in the crime of air piracy. All those aspects needed to be taken into account in envisaging any international action to deal with hijacking. As far as the present draft resolution was concerned, his delegation supported its main provisions in principle but was ready to consider any improvements that might secure it more widespread acceptance.

17. Mr. RAKOTOSON (Madagascar) said that document A/8091 set out the pertinent reasons why the problem of hijacking deserved the renewed attention of the United Nations. Despite General Assembly resolution 2551 (XXIV), acts of violence and banditry in aircraft in flight and on the ground had increased in number and gravity. Such acts were both a violation of human rights and an unlawful infringement of the freedom of the air. His delegation was resolutely opposed to them and urged all States Members of the United Nations to join in condemning them unreservedly and in implementing any recommendations on the subject. The draft resolution under consideration was a suitable opportunity for concerted action of that kind. His delegation's decision to co-sponsor it had stemmed in particular from the vigour and scope of its condemnation of hijacking, its respect for

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

the rules of international law on asylum and its enunciation of aims designed to remedy the defects in the Tokyo Convention and further the valuable work of ICAO to combat hijacking. His delegation hoped that the draft resolution would command wide if not unanimous support.

18. Mr. SHITTA-BEY (Nigeria) said that the present increase in hijacking threatened to disrupt air travel completely. If it was to be checked, there would have to be universal observance of the principles that international law and order must be preserved and that no one could derive any advantage from the unlawful act of hijacking an aircraft. The Tokyo Convention failed to define the act of unlawful seizure of aircraft or to oblige States to make such an act a criminal offence. The basic aim should be to remedy those defects and thus provide a strong deterrent to hijackers. His delegation therefore whole-heartedly supported the efforts of ICAO towards the adoption of a convention on the unlawful seizure of aircraft which would fill the gaps in the Tokyo Convention in that area. Nigeria would participate fully in the forthcoming Hague diplomatic conference. In addition, it hoped that the present work in the Sixth Committee would lead to the strongest possible condemnation of hijacking by the General Assembly.

19. Mr. OFSTAD (Norway) said that his delegation wished to express its personal and deepest sympathy and that of his country at the death of Charles de Gaulle.

20. His delegation had sponsored the draft resolution before the Committee because the Norwegian Government regarded hijacking as a serious threat to air transport and a matter of the utmost concern to the world community. He was doubtful whether any law, municipal or international, could fully solve the problem; what was needed were international arrangements which made it impossible for any advantage to be derived from hijacking anywhere in the world. His delegation hoped that the forthcoming Hague diplomatic conference would move much nearer to an adequate solution. In anticipation of its outcome, the Norwegian Government was about to introduce a bill providing for penalties for hijackers ranging from one year's imprisonment to imprisonment for life, according to the gravity of the offence. However satisfactory the future convention proved, it would be of little value unless implemented by all nations. Therein lay the crux of the hijacking problem: as long as some nations failed to punish hijackers, crime would pay in those countries and hijackers would have an attractive field of operation. It was therefore essential that the draft resolution before the Committee should receive the widest possible support. In it, the General Assembly had an opportunity to adopt a measure which was commensurate with the gravity of the present situation.

21. Mr. FREELAND (United Kingdom) said that the desire of the United Kingdom Government for further measures to bring the new and dreadful illegality of hijacking under control had already been made clear at the current session. His country had a major interest in international air transport and a corresponding concern for the safety of all those who used that means of travel. It had suffered its share, if not more than its share, at the hands of hijackers and therefore naturally wished to participate

actively in the promotion of measures to defeat this menace. It had therefore ratified the Tokyo Convention and played its full part in the work of ICAO in connexion with hijacking; and it would spare no efforts to ensure that ICAO's activities reached a successful conclusion. The United Kingdom attached great importance to the achievement of a successful outcome at the forthcoming Hague diplomatic conference. It was right that the United Nations should itself not only show support for the endeavours of ICAO but also express its own concern at the grave form of illegality represented by hijacking. The problem involved important humanitarian issues and concerned the whole world. His delegation was glad that there had been so much support for constructive United Nations action unimpaired by unnecessary political dispute.

22. Draft resolution A/C.6/L.803 adequately covered all the points referred to by the Foreign and Commonwealth Secretary of the United Kingdom in the 1848th plenary meeting and also rightly condemned all acts of hijacking or violence in relation to civil air transport. In addition, with ample justification it singled out for particular condemnation the exploitation of unlawful seizure of aircraft to take hostages. His delegation had therefore been pleased to join in sponsoring it.

23. Criticism had been expressed at the inclusion of the words "irrespective of the pretext or motive for which they are perpetrated" in paragraph 1 of the draft resolution; but his delegation shared the view that pretext or motive, while of possible relevance to the prosecution and punishment provided for in paragraph 2, should not be allowed to qualify the condemnation of the acts referred to in paragraph 1. It had also been suggested that more precise provisions should be included on extradition, but, as the New Zealand representative had pointed out (1221st meeting), extradition was a complex question and if specific rules on the subject were to be worked out this would be more properly a task for the forthcoming Hague diplomatic conference. On the question of asylum, his delegation considered that the concern which had been expressed could best be met in the form proposed in document AC.6/L.805. There had been criticism of the use of the words "international blackmail" in paragraph 8 of draft resolution A/C.6/L.803; in his delegation's view the term was not to be taken in any strictly technical sense, but it served well to convey the essence of what was involved — the extortion of advantage by the threat or use of force. The United Kingdom therefore favoured the retention of the words. His delegation commended the draft resolution to the Committee and hoped it would receive overwhelming support.

24. Mr. CHAMMAS (Lebanon) paid a tribute to the memory of General de Gaulle, recalling the special place which Lebanon had occupied in General de Gaulle's heart and mind, and expressed his delegation's sympathy and condolences to the French delegation on the loss of France's great leader.

25. Lebanon strongly endorsed the principle that international civil aviation was a vital link in the promotion and preservation of friendly relations among States and that its safe and orderly functioning was in the interest of all peoples; and it was at present taking measures in support of

that principle. The Lebanese authorities had endorsed the ICAO declaration of June 1970, and the Arab delegations had taken an active part in the drafting. The Lebanese Government supported the convening of the forthcoming Hague diplomatic conference. It would participate in the work of the conference and consider itself bound by the resulting convention. It had begun the necessary procedures for ratification of the 1963 Tokyo Convention and was drafting legislation which would make acts of violence directed against international civil aviation punishable by sentences ranging from imprisonment to death. Strict security measures had been applied at Beirut International Airport, and the Lebanese Government had ordered the closure of the airport to any aircraft unlawfully seized, except where technical or humanitarian reasons made it necessary to permit a landing. The action taken and envisaged by his Government was thus well in advance of the recommendations contained in draft resolution A/C.6/L.803.

26. His delegation commended the inclusion of the present item in the agenda of the current session, and welcomed the fact that it had been referred to the Sixth Committee, so that the issue would as far as possible be treated non-politically. The sponsors of the draft resolution seemed to have submitted in good faith a document which appeared, on the surface, to be apolitical. Certain paragraphs, however, involved purely political points, and he questioned the language used, the approach adopted and the degree of stress placed on those issues.

27. He agreed with the representative of Guyana that the words "irrespective of the pretext or motive for which they are perpetrated" in paragraph 1 were redundant. Moreover, they implied a moral judgement; penal law could not be formulated on the basis of intent. There might be cases where, on moral grounds, it was inappropriate to punish a hijacker—for example, where an individual having committed no crime but regarded as undesirable politically in a certain country resorted to the diversion of an aircraft in order to escape summary execution. In such a case it might be questionable whether the offender should be condemned. The deletion of the controversial words in paragraph 1 would not reduce its scope, which his delegation interpreted as applying also to acts committed by States against the civil airports of other States.

28. With regard to paragraph 2, he pointed out that extradition was subject to a special régime. His delegation had no objection to the suggestion of the Tanzanian representative (1220th meeting) to insert a reference to asylum.

29. Paragraph 3 appeared to have been drafted with specific past events in mind. That ran counter to the principle that the Committee's consideration of the item should be non-political. If any reference to hostages was included, it should be made clear that the reference was general and related to the future.

30. His delegation had considerable difficulties in accepting the language used in the draft resolution. He hoped that it would be possible, through negotiations, to arrive at a generally acceptable text, and he hoped that the sponsors would not press for an early vote on the present text. The

wording of paragraph 8, in particular, was highly questionable. The words "joint and separate action in co-operation with the United Nations and the International Civil Aviation Organization" might be interpreted as meaning that a State might take any political action it wished in relation to a hijacker provided that it had informed the United Nations and ICAO beforehand. Similarly, the words "international blackmail" were hardly the precise legal language which should be employed by the Committee. It would be better to use some more specific term such as "the extortion of advantages". The paragraph should either be deleted or else reworded so as to lay stress on the safety of passengers and crew rather than on the action to be taken by States. The General Assembly might, for example, call upon all States to take all necessary measures to ensure the effective safety of passengers and crew. He reserved the right to propose a formal amendment to paragraph 8 if the sponsors insisted on retaining it in its present form.

31. Mr. SEATON (United Republic of Tanzania), introducing document A/C.6/L.804 containing his delegation's amendments to draft resolution A/C.6/L.803, said that United Nations resolutions could not solve the problem of hijacking. The roots of the problem lay in the dissatisfaction of individuals. Not every act of hijacking was prompted by evil motives. The purpose was sometimes to draw world attention to basic issues such as political oppression or to counteract the distortions of the press or to express a general feeling of dissatisfaction concerning aspects of international life. For example, a freedom-fighter might hijack an aircraft as an act of protest against colonialism. His delegation in no way condoned hijacking but felt that each incident must be dealt with on its own merits. It was for that reason that his delegation had proposed the deletion of the words "irrespective of the pretext or motive for which they are perpetrated" in paragraph 1 of the draft resolution. If an act of aerial hijacking was committed for political motives, the hijacker should be able to claim asylum in accordance with existing laws.

32. The questions of asylum and extradition were governed by national legislation and international agreements, and the provision in paragraph 2 for mandatory sanctions was unacceptable. His delegation had accordingly proposed the inclusion of a statement concerning asylum in paragraph 2. The proposal in document A/C.6/L.805 to relegate such a reference to the Committee's report to the General Assembly was an unsatisfactory solution, because the report would not receive the same wide publicity as a resolution of the General Assembly. Justice must not only be done but must be shown to be done.

33. His delegation had proposed the deletion of paragraph 8 of the draft resolution which was vague and redundant. Its subject matter was already adequately covered in paragraphs 2, 7 and 9. The term "international blackmail" was difficult to define in international law or even in the traditional language of international relations.

34. There was merit in the suggestion of Guyana to replace the words "aerial hijacking" by "wrongful seizure". The latter term was clear and precise and, moreover, free of the tone of vulgarity discernible in some of the terms used in the draft resolution.

35. The Sixth Committee had sometimes been regarded as the most reactionary committee of the General Assembly, but his delegation believed that the development of international law had always been characterized by liberality. It was the duty of the Committee to ensure that international law should be not only specific and literal but also equitable and balanced.

Mr. Owada (Japan), Rapporteur, took the Chair.

36. Mr. HOUBEN (Netherlands), commenting on the proposed amendments (A/C.6/L.804) on behalf of the sponsors of draft resolution A/C.6/L.803, said that the sponsors would find it very difficult to agree to delete the words "irrespective of the pretext or motive for which they are perpetrated" from paragraph 1 of the draft resolution. A clear distinction was drawn in the draft resolution between the act of hijacking and the national legislative measures taken to deter, prevent or suppress it. Paragraph 1 contained a general moral condemnation of all such acts, while paragraph 2 called upon States to take the appropriate measures within their jurisdiction. Nothing in those paragraphs could prejudice the decision to be reached by national courts when presenting and punishing offenders. World public opinion might find it odd if the words in question were deleted, thereby giving the impression that certain acts of hijacking were good while others were bad. The draft resolution should firmly establish the fact that all hijacking was to be condemned, leaving it to the national authorities concerned to determine the degree of punishment.

37. The sponsors agreed with the idea underlying the second Tanzanian amendment, but felt that the insertion of a reference to asylum in the body of the resolution itself might give the impression that certain categories of hijacker deserved asylum. Furthermore, the inclusion of the words in question might suggest that the granting of asylum was incompatible with punishment. Therefore, sharing the Tanzanian representative's concern lest extradited persons might be prosecuted for offences other than those for which extradition had been requested, the sponsors thought it would be adequate to include in the Committee's report on item 99 the passage which had been used in its 1969 report.² He hoped that in the light of the similar proposal contained in document A/C.6/L.805, the Tanzanian representative would agree to withdraw his second amendment.

38. With regard to the amendment to delete paragraph 8 of the draft resolution he wished to explain that while paragraph 7 reproduced paragraph 5 of the solemn declaration adopted by the Assembly of ICAO in June 1970,³ with the addition of the words "in accordance with the Charter", paragraph 8 followed the text of the resolution adopted by the Council of ICAO on 1 October 1970 which employed the term "international blackmail". The representative of Lebanon had asked for a definition of that term, which the United Kingdom representative had already tried to provide. In adopting its resolution, the ICAO Council had had in mind that passengers, crew and aircraft engaged in civil aviation should not become subjects of

exploitation designed to obtain advantages at any time. World opinion was more likely to understand the meaning of the words "international blackmail" than a cumbersome legal definition.

39. The representative of Sierra Leone (1222nd meeting) had suggested the addition of the words "and entry into force" after the word "adoption" in paragraph 10 of the draft resolution. While approving the idea underlying that addition, he thought that the suggestion might give rise to constitutional problems, since the purpose of the diplomatic conference was solely to adopt a convention, although no doubt all hoped that it would subsequently enter into force as rapidly as possible. The sponsors would, however, attempt to find suitable wording to express the same idea.

40. He was pleased to note that all delegations were endeavouring to find common ground leading to the unanimous adoption of a draft resolution. He wished to repeat that it was not the intention of the sponsors to refer to any particular incident and they rejected the suggestion that their draft resolution was a political one. Their only purpose was to seek joint action by all States to deter acts of aerial hijacking.

41. Mr. CHAMMAS (Lebanon) asked whether the deletion of the words "irrespective of the pretext or motive for which they are perpetrated" from paragraph 1 of draft resolution A/C.6/L.803 would in any way diminish its scope. Without them the paragraph contained a flat condemnation of hijacking; any qualification of that attitude could only detract from its force. He therefore wondered why the words had been inserted in the first place. Since he would like to vote in favour of the draft resolution, he appealed to the sponsors not to insist on retaining the present wording.

42. With regard to paragraph 8, in spite of his Government's high esteem for ICAO, which had used the expression "international blackmail", he could not agree with the Netherlands representative that it was a legal term. The objection of the sponsors of the draft resolution to referring to asylum in paragraph 2 and their insistence on retaining the term "international blackmail" in paragraph 8 were political acts, which his delegation could not accept. Unless it was amended he would vote against the draft resolution. It should be noted that he was not asking the sponsors to dilute the force of their draft resolution, but to avoid the use of loose terms. He supported the Tanzanian proposal to delete paragraph 8; if that amendment was not adopted, he would propose the following text:

"Calls upon States to take joint and separate action, in accordance with the Charter of the United Nations, in order to ensure that passengers, crew and aircraft are not used for the extraction of special advantages."

43. Mr. HOUBEN (Netherlands), replying to the representative of Lebanon, said that the words relating to pretext or motive were already in the draft resolution, and their deletion would surely tend to imply that the General Assembly considered certain acts of hijacking to be good, others bad. He appealed to the representative of the United

² See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 105, document A/7845, para. 9.

³ See resolution A17-1.

Republic of Tanzania and the representative of Lebanon not to press their amendments. The Lebanese representative had proposed an alternative text for paragraph 8 of the draft resolution. If the Tanzanian representative agreed, he

would consult the other sponsors of the draft resolution about the possibility of adopting the new wording.

The meeting rose at 5.50 p.m.