

United Nations  
**GENERAL  
ASSEMBLY**

**FIFTH SESSION**

**Official Records**



**SIXTH COMMITTEE 241st**

**MEETING**

**Friday, 17 November 1950, at 11.15 a.m.**

**Lake Success, New York**

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*Chairman:* Mr. V. OUTRATA (Czechoslovakia).

**Discussion regarding the convening of the meeting**

1. Mr. FITZMAURICE (United Kingdom) protested against the suddenness with which the meeting had been convened. He recalled that during the 240th meeting, the members of the Committee had decided to undertake a preparatory study before continuing the discussion on part IV of the report of the International Law Commission (A/1316). In those circumstances, he felt that it would be difficult for the members of the Committee to resume the discussion profitably.

2. The members of the Sixth Committee had not been expecting, the day before, that a meeting would be called. Mr. Fitzmaurice saw no justification for the unexpected convening of the present meeting and asked that his observations should be communicated to the section of the Secretariat responsible for convening meetings.

3. Mr. KURAL (Turkey), Rapporteur, also considered that such a procedure with regard to the Sixth Committee was unacceptable. He further remarked that the Rapporteur ought to have sufficient time at his disposal for drawing up his reports.

4. Mr. AMADO (Brazil) stated that he had been due to attend another conference and that, owing to the sudden convening of the present meeting, he had not been able to give notice that he would be unable to attend it. Such an atmosphere of uncertainty was annoying and he therefore added his protests to those of the preceding speakers.

5. Mr. MOROZOV (Union of Soviet Socialist Republics) shared the view of his colleagues. The members of the Sixth Committee were among the most active in the United Nations. The Sixth Committee would certainly complete its work in due time and accordingly there seemed no need for it to be the object of special measures on the part of the Secretariat. Moreover, the unexpected convening of meetings in that manner made it impossible for members of the Committee to study the documents and to take part in the discussions with a proper knowledge of the matters involved.

6. The CHAIRMAN stated that he himself had been notified of the meeting the day before and that he had asked that it might be fixed for the afternoon. He understood the feelings of members of the Committee and he hoped that such a situation would not recur.

7. Mr. MAURTUA (Peru) said he had been somewhat surprised by the wording of the letter addressed to the Chairman of the Sixth Committee by the President of the General Assembly, and which was read out by the Chairman at the beginning of the 237th meeting. The Sixth Committee had in fact held as many meetings as possible, and could certainly not be blamed for any delay in the work of the General Assembly.

8. As a compromise, Mr. Maúrtua proposed that, since there was not a quorum, the meeting should be adjourned pending the arrival of further representatives.

9. Mr. VAN GLABBEKE (Belgium) was equally unable to see the need for asking the Sixth Committee to speed up its work.

10. He pointed out that the delegations had asked to be allowed to study the documents before continuing the study of part IV of the report of the International Law Commission.

11. Turning to the other questions on the agenda of the meeting, he remarked that, with regard to the question of the provision of a United Nations distinguishing ribbon or other insignia of the United Nations for personnel participating in Korea in the defence of the principles of the Charter of the United Nations, the members of the Committee were without any precise directions and it would seem to be a mistake to ask them to discuss the question in those circumstances.

12. Finally, as regards the question of the registration and publication of treaties and international agreements, the Belgian representative remarked that there, too, the Committee did not have at its disposal all the necessary documents, and that it ought not to enter into discussions for which it was unprepared and which would therefore run the risk of being fruitless.

13. Mr. MOROZOV (Union of Soviet Socialist Re-

publics) regretted that he was unable to support the Peruvian representative's proposal. He thought that the number of representatives who might arrive during the adjournment of the meeting would certainly not be sufficient to reach a quorum. Furthermore, as the Belgian representative had pointed out, the members of the Committee had not yet been able to study the documents submitted to them. Mr. Morozov himself had not yet read the text of the United Kingdom amendment (A/C.6/L.153) and normally he was the first speaker on the list. He therefore formally proposed that the Committee should rise and reconvene on the following morning in order to continue and perhaps even to complete the study of part IV of the report of the International Law Commission.

14. He pointed out that the inclusion in the agenda of the meeting of the question of the provision of a distinguishing ribbon in Korea involved a change in the Committee's general agenda. He wished to emphasize that only the Committee itself could make changes in its agenda; it could of course accept or reject the suggestions of the Secretariat on the subject, but it ought to be consulted.

15. Mr. MAURTUA (Peru) said he wished to clarify the proposal which he had made. It was, of course, for the Committee to determine the order of the questions to be discussed by it. But regarding the problem from a practical point of view, he had considered that advantage should be taken of the present meeting to allow those representatives who wished to do so to present their comments on part IV of the report of the International Law Commission.

16. On the other hand, if no representative wished to speak on the matter, the Committee could proceed at once to the item of its agenda concerning the provision of a United Nations distinguishing ribbon or other insignia of the United Nations for personnel participating in Korea in the defence of the principles of the Charter of the United Nations. That question offered no difficulties of such a nature that it could not be examined without previous preparation. Those were the considerations which had led Mr. Maúrtua to propose a short adjournment of the meeting in order to await the arrival of further representatives which would make it possible to reach a quorum.

17. The CHAIRMAN decided, under rule 77 of the rules of procedure, to put to the vote the motion of adjournment of the representative of the Soviet Union. He first gave the floor to the Assistant Secretary-General in charge of the Legal Department, in order that he might explain certain points regarding the circumstances in which the meeting had been called.

18. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said he perfectly understood the reasons for the protests of several representatives regarding the convening of the present meeting, since it had been decided at the 240th meeting that the Committee would not meet again before 18 November, in order to give the delegations time to study the matter under discussion. The Secretary-General, however, in response to the requests from many delegations which were anxious for the General Assembly to be able to finish its work within the prescribed period, was taking measures designed to speed up the work of the Committees of the General Assembly, and

accordingly was convening the Committees whenever physically possible. However, the Committee was of course entirely free to decide whether, by meeting later, it would in fact be able to make more progress with its work than by continuing with the present meeting for which the delegations were not prepared.

19. Regarding the questions which had been put on the agenda of the meeting as it stood in the Journal of the General Assembly, the Secretariat had thought it possible that the Committee might conclude the matter of part IV of the report of the International Law Commission and had therefore included the succeeding item of the agenda.

20. The reason why the question of the provision of a distinguishing ribbon had also been included was that it might have financial consequences and it would therefore be advisable to discuss it quickly, so that the Fifth Committee might examine it in its turn; but that was merely a suggestion on the part of the Secretariat.

21. The CHAIRMAN, before putting to the vote the motion of adjournment presented by the representative of the Soviet Union asked him if he had any objection to the United States representative's speaking before the vote was taken, in accordance with a request by that representative.

22. Mr. MOROZOV (Union of Soviet Socialist Republics) willingly agreed out of courtesy, although it was contrary to the rules of procedure.

23. Mr. MAKTOS (United States of America) thanked the representative of the USSR and suggested that he should withdraw his motion of adjournment. A number of representatives were now present and perhaps wished to speak. By not adjourning, the Committee would no doubt be able to make sufficient progress in its work to obviate the need for a meeting on the following day.

24. The CHAIRMAN asked if there were any representatives who wished to speak.

25. Mr. PETREN (Sweden) said that he wished to speak.

26. Mr. MOROZOV (Union of Soviet Socialist Republics) requested the Chairman to make a list of representatives wishing to speak, and stated that he reserved the right to maintain or withdraw his motion of adjournment according to the result of that consultation.

27. The CHAIRMAN consulted the Committee and found that the Swedish representative alone wished to speak.

28. Mr. MOROZOV (Union of Soviet Socialist Republics), not wishing to prevent the Swedish representative from putting forward the observations which he desired to make, withdrew his motion of adjournment and said that he would possibly present it again after the Swedish representative had spoken.

### **Report of the International Law Commission on the work of its second session (A/1316) (continued)**

[Item 52]\*

29. Mr. PETREN (Sweden) thanked the Chairman and the Soviet Union representative, and explained that

\* Indicates the item number on the General Assembly agenda.

the reason he had asked to speak was that he had to return to his own country on 19 November.

30. He said that the Swedish Government had not yet decided its attitude with regard to the creation of an international penal tribunal. His government would like, however, to express its point of view at the present stage of discussion with regard to the draft resolution jointly presented by Cuba, France and Iran (A/C.6/L.151).

31. Since the creation of a code of offences in international law had been decided upon, it was logical that the creation of an international penal tribunal should also be considered. But in regard to the appropriateness of setting up such a tribunal in the near future, the Swedish delegation had certain doubts for the reasons adduced before the International Law Commission by the minority in that Commission and by certain delegations during the 240th meeting of the Sixth Committee.

32. In this connexion Mr. Petren drew the Committee's attention to two points.

33. In the first place, before an international penal tribunal could function, there would have to be an international executive authority; but such an authority did not yet exist.

34. Secondly, the Nürnberg principles applied to a criminal war in which the aggressor had been defeated and his territory occupied. But the new code would also apply to wars which misfired, and to attempts against the peace. Considering the present world situation and the fact that States were accusing each other of warmongering, it was questionable whether they would agree to subject their leaders to the jurisdiction of an international criminal court. It was therefore probable that such a court would in practice be unable to function in peace-time, and that situation would have a disastrous effect on the observance of international law. And what would be the situation after a war? The sole likely possibility was that only those who had lost the war would be brought to trial. But obviously those who began a war did not expect to lose it, and the establishment of an international penal tribunal would therefore have no preventive effect.

35. The punishment of war criminals could best be secured in the present state of affairs by setting up *ad hoc* courts.

36. In general, it would be dangerous to create any illusions; the illusion in the case under consideration would be that there already existed a perfect and effective system of international law. It was necessary at the present stage to decide whether a conference should be called to study the question. The delegation of Sweden would not oppose such a course, but would enter into no commitments with respect to its final attitude regarding the establishment of an international penal tribunal in accordance with the outcome of such a conference.

37. Mr. ORTIZ TIRADO (Mexico) noted that in pursuance of resolution 260 B (III) of the General Assembly, the International Law Commission had decided after discussing the reports of the special Rapporteurs, Mr. Alfaro and Mr. Sandström, that it was desirable and possible to establish an international judicial organ for the trial of persons charged with genocide

or other crimes, jurisdiction over which would be conferred upon that organ by international conventions. That being so, it clearly rested with the Sixth Committee, as the representative of France had pointed out, to decide both on the substance of that question and on the best procedure to be followed.

38. As far as the substance was concerned, he had only one observation to make. Since the existence of international crimes had been recognized, the logical consequence was to establish an international tribunal empowered to punish them. With regard to the procedure, however, it would be preferable, as the sponsors of the joint draft resolution (A/C.6/L.151) had proposed, to set up a committee for the purpose of preparing a preliminary draft convention relating to the establishment and the statute of the international tribunal contemplated. Mr. Ortiz Tirado shared the opinion of the representative of Peru that that question bristled with difficulties, and that sufficient time should be allowed to ensure that the future international criminal tribunal would be established under the best possible conditions.

39. For those reasons, the delegation of Mexico supported the joint draft resolution, subject to the necessary modifications. The resolution would make it possible to assemble the basic materials necessary to enable the Sixth Committee to take a decision in the matter at a later date.

#### Future work of the Committee

40. Mr. MAKOTOS (United States of America) admitted the justice of the Assistant Secretary-General's remarks with regard to the circumstances in which the present meeting had been called. In his opinion, however, the Sixth Committee was sufficiently advanced in its work to make it unnecessary for a meeting to be called at a moment's notice.

41. He still believed that the meeting called for Saturday, 18 November, could be cancelled without any inconvenience. That was merely a suggestion.

42. Mr. CHAUMONT (France) asked the Assistant Secretary-General in charge of the Legal Department what was the final date on which the Sixth Committee would be required to complete its work.

43. Mr. ROBERTS (Union of South Africa) formally moved that the proposal to adjourn the meeting should be put to the vote. In addition, he supported the United States representative's suggestion that the meeting called for 18 November should be cancelled.

44. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said in reply to the question raised by the representative of France that since the General Assembly had set 30 November as the approximate time-limit by which it should complete its work, the Committee should conclude its discussions about a week before that date.

45. Mr. CHAUMONT (France) doubted in those circumstances whether the Committee would be able to terminate its work in time if the meeting called for Saturday, 18 November, was cancelled.

46. Mr. TARAZI (Syria) supported the proposal of the United States representative to hold the next

meeting of the Committee on Monday, 20 November. Most delegations had not yet had time to study the documents relating to the items on the agenda; moreover, in view of the rate at which the Committees of the General Assembly were proceeding with their work it was unlikely that the Assembly would be able to conclude its deliberations by 30 November, as had been proposed.

47. Mr. MOROZOV (Union of Soviet Socialist Republics) believed that the Committee would be able to complete its work in time without meeting on Saturday, since apart from the question under consideration, the remaining items of the agenda were purely formal matters which would probably not require lengthy discussion. If necessary, the Chairman might even decide to limit the time for speeches.

48. It was regrettable that some delegations had a habit of submitting their proposals at the last moment. He therefore requested all delegations which had proposals to submit to do so at the earliest possible moment, unless, of course, it was essential for them to ascertain the views of other delegations beforehand.

49. Mr. GARCIA AMADOR (Cuba) also considered that the meeting called for Saturday, 18 November, should be cancelled, unless any representatives wished to speak on that day.

50. The CHAIRMAN said that no representative had asked to speak on Saturday, and that the meeting called for that day would therefore be cancelled.

51. Before concluding the meeting, he invited the Committee to decide whether, after discussion of item 54 of the general agenda, "Registration and publication of treaties and international agreements", consideration should be given to item 74, "Provision of

a United Nations distinguishing ribbon or other insignia for personnel participating in Korea in the defence of the principles of the Charter of the United Nations", since the Assistant Secretary-General in charge of the Legal Department had pointed out that that item might have financial implications.

52. Mr. MOROZOV (Union of Soviet Socialist Republics) considered that there was no question to be decided. The Secretariat had clearly been wrong in placing on the agenda the question of the provision of a distinguishing United Nations ribbon, following the question of registration and publication of treaties and international agreements. No representative had asked for the agenda as adopted to be changed. After the question of registration and publication of treaties had been discussed, any representative would, of course, be entitled to propose a change in the agenda, and such a change would require the requisite two-thirds majority for adoption.

53. Mr. FITZMAURICE (United Kingdom) formally moved that in view of its possible financial implications the Committee should take up the question of the provision of a distinguishing United Nations ribbon after that of the registration and publication of treaties and international agreements.

54. The CHAIRMAN put to the vote the proposal that the Committee, after completing its discussion of the report of the International Law Commission, should proceed to discuss the question of the registration and publication of treaties, and then the provision of a distinguishing United Nations ribbon, in that order.

*It was thus decided, by 23 votes to none, with 12 abstentions.*

The meeting rose at 12.10 p.m.