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SUMMARY RECORD OF THE 34th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10 a.m.

AGENDA ITEM 142: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SECOND SESSION (continued) (A/45/10, A/45/469)

AGENDA ITEM 140: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/45/437)

1. Ms. GAO Yanping (China), referring to chapter II of document A/45/10, said that the Commission should give priority to accelerating its work on the draft Code of Crimes against the Peace and Security of Mankind.

2. The concepts of complicity, conspiracy and attempt originated in domestic criminal law and often had different meanings under different legal systems, or even within the same system. For instance, in some countries, conspiracy was always linked to crimes against the State, such as treason, while in other countries that was not the case. If the concepts were to be transposed to international criminal law, they must be given a new content, so as to meet the requirements of such law and become universally acceptable. Given the nature of the crimes in question, many countries, including China, placed complicity and attempt in the part of their criminal codes dealing with general principles, and that approach might be advisable in the case of the draft Code.

3. The new version of draft article 15, on complicity, submitted by the Special Rapporteur was generally acceptable. First, however, it was necessary to define the concepts "principal" and "accomplice", as that would be of practical significance to the court in determining penalties. Of course, given the specific nature of the draft Code, it would be difficult under certain circumstances to differentiate a principal from an accomplice. That did not mean, however, that such a distinction was not needed. Secondly, while physical and non-physical complicity had been dealt with adequately in subparagraphs (a) and (b) of the second paragraph, the wording could still be improved. Thirdly, the concept of complicity after the commission of a crime as set out in subparagraph (c) was controversial. In her view, an agreement prior to the commission of the offence was the key element of complicity after the offence. An act which did not help the principal to perpetrate an offence did not constitute complicity after the offence, but rather a separate crime.

4. She agreed with the Special Rapporteur that conspiracy should be the subject of a separate article. As pointed out in paragraph 57 of document A/45/10, one element of conspiracy was an agreement between two or more individuals to plan and commit a crime. Another element was the physical acts performed to carry out the crime planned. In the light of those two elements, the new version of draft article 16 submitted by the Special Rapporteur was generally acceptable.

5. She also favoured the new version of draft article 17, on attempt, submitted by the Special Rapporteur. The article should refer to that concept in general terms and leave it to the discretion of the court to determine its applicability on a case-by-case basis.

(Ms. Gao Yanping, China)

6. As to whether breach of a treaty designed to ensure international peace and security should be included in the draft Code as a crime against peace, she inclined towards a negative view. In the first place, its inclusion would violate the principle of universality of international criminal law. At its previous two sessions, the Commission had unsuccessfully endeavoured to provide for a balance of obligations governing relations among parties to a treaty and between those parties and a third party. Secondly, the treaty obligations mentioned in the report concerned very complicated and sensitive issues, such as disarmament and arms control. To include such provisions in the draft Code prematurely would have a negative impact on the efforts undertaken by the international community. The article could also affect the universal acceptance of the draft Code. She therefore supported the Special Rapporteur's proposal that it should be withdrawn.

7. Turning to the draft articles provisionally adopted by the Commission (A/45/10, chap. II, sect. D), she noted that draft article 16 characterized international terrorism as a crime against peace. If the article could provide a precise and practical definition of international terrorism as a crime against peace, it would not only be of practical significance in deterring acts of international terrorism, but would also contribute to the progressive development of international law. The article properly limited the concept to terrorism carried out by a State against another State. As explained in paragraph (2) of the commentary, internal terrorism came under internal law and did not endanger international relations.

8. While agreeing with the general thrust of draft article 18, on the recruitment, use, financing and training of mercenaries, she felt that paragraph 1 was too limiting. A State might not directly involve itself in such activities, but might resort to encouraging or tolerating their promotion by private organizations. The encouraging or tolerating of mercenary activities also constituted a crime against peace. In that connection, it was necessary to bring the draft Code into line with the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

9. The growing seriousness of the drugs problem had aroused the concern of the international community. She welcomed the fact that the draft Code characterized illicit drug trafficking as an international crime and a crime against humanity. However, some members of the Commission were of the view that illicit drug trafficking should also be characterized as a crime against peace, and she hoped that their views would be taken into consideration.

10. As to the establishment of an international criminal jurisdiction, the fact that the question had been raised but not acted upon on several occasions showed that it was both significant and complex. In the contemporary world, some international crimes had become so rampant as to endanger the security of some countries. In 1989, Trinidad and Tobago had proposed that an international criminal court should be established in order to try international drug traffickers. It was to be hoped that a degree of consensus could be reached during the current discussions.

(Ms. Gao Yanping, China)

11. At the same time, the question entailed political, legal and practical difficulties. For instance, there was the question as to the crimes over which an international criminal court should exercise jurisdiction. While it was realistic to limit application to individuals without involving States for the time being, the question of what kind of rules should be formulated with regard to legal persons remained to be decided, for the debates on the draft Code had shown that a legal person could be a perpetrator. Furthermore, whatever the form in which an international criminal court exercised its jurisdiction, difficult questions would arise, such as the question of co-ordination between national and international jurisdictions, and the question of the international obligations undertaken by the State under a system of universal jurisdiction, as well as the complex issues of pre-trial examination, prosecution and the international enforcement of judgements.

12. Mr. NGUYEN TRUONG GIANG (Viet Nam), referring to draft articles 15, 16 and 17, as set out in the Special Rapporteur's eighth report on the draft Code of Crimes against the Peace and Security of Mankind (A/CN.4/430), said his delegation agreed that complicity, conspiracy and attempt should be dealt with as separate offences. The relevant provisions should be placed in the part of the draft Code dealing with general principles. The definitions of complicity, conspiracy and attempt included in the new versions of the draft articles submitted by the Special Rapporteur needed to be drafted in a more precise manner.

13. The draft Code covered the most serious crimes against the peace and security of mankind, crimes that could not be committed by an isolated individual or a group of isolated individuals. The offences in question were organized crimes, and those who directed, planned and organized them played a decisive role in making their commission possible. Accomplices and conspirators also played an important role in the commission of such crimes and in helping perpetrators escape punishment. Complicity and conspiracy should therefore be treated as crimes against the peace and security of mankind. However, the draft Code should give the competent courts the power to decide on the gravity of the crimes committed by perpetrators, accomplices and conspirators on a case-by-case basis.

14. Viet Nam was in favour of including illicit traffic in narcotic drugs in the draft Code as a crime against the peace and security of mankind. Since illicit drug trafficking was taking place on a global scale, all countries should participate in global co-operation to deal with that offence. However, inclusion of that offence in the draft Code was but one of a comprehensive series of measures that needed to be taken in order to prevent illicit traffic in narcotic drugs. In order to eliminate that dangerous practice, the international community should reinforce the existing relevant international mechanisms so as to control production of and illicit trafficking in drugs in accordance with the conventions on narcotic drugs adopted so far. Viet Nam supported the Special Rapporteur's approach in dealing with illicit drug trafficking, whereby article X treated it as a crime against peace and article Y treated it as a crime against humanity. In fact, illicit drug trafficking should be considered a crime against both peace and humanity.

(Mr. Nguyen Truong Giang, Viet Nam)

15. Viet Nam welcomed the three additional draft articles provisionally adopted by the Commission. However, one of the most serious crimes, genocide, was still not included, even though it had previously been described by the Special Rapporteur as the prototype of a crime against humanity, and remained a matter of great concern to the international community.

16. As to the establishment of an international criminal jurisdiction, Viet Nam, while welcoming the various options put forward by the Commission, believed that it would be premature to elaborate the statute of a court before the draft Code had been completed. Further in-depth consideration of the matter should be encouraged.

17. Mr. ALZATE (Colombia) said that attempt and conspiracy, which were crimes against the peace and security of mankind, must be given due attention by the international community. The various acts in question must be given objective consideration with a view to producing a code that would be sufficiently broad in scope. The concept of attempt covered commencement of execution of a crime that had failed or had been halted only because of circumstances independent of the perpetrator's intention; but it must also be clearly linked to the objective pursued. A similar assertion could be made in respect of conspiracy. There was even greater justification for such an interpretation if account was taken of such factors as the possible political significance of the involvement of a State's nationals in criminal action outside its territory.

18. Colombia particularly welcomed the submission by the Special Rapporteur of the draft articles on illicit traffic in narcotic drugs, both as a crime against peace and as a crime against humanity. Colombia endorsed the statement in paragraph 77 of the Commission's report (A/45/10) that such trafficking could affect international peace by giving rise to a series of conflicts, for example, between the producer or dispatcher State, the transit State and the destination State. The destination State was the State where narcotic drugs and psychotropic substances were delivered, distributed, sold and consumed. Obviously, great care must be taken to de-politicize any action to be taken in respect of individuals or legal persons, whether or not they were agents or representatives of a State. In principle, Colombia agreed that private groups or public officials could be perpetrators or accomplices in respect of illicit traffic in narcotic drugs, and thus be a threat to international peace.

19. As Colombia knew only too well, a State's stability could be undermined as a result of acts committed by individuals engaged in narco-terrorism. Moreover, failure by some States to co-operate in dealing with such acts in their territory as the transit and distribution of narcotic drugs and psychotropic substances, and money-laundering could lead to social and economic breakdown in those States, which would inevitably have an impact on their relations with the other members of the international community.

20. Paragraph 85 of the Commission's report referred to the importance of international co-operation with a view to eliminating illicit traffic in narcotic drugs. While Colombia fully endorsed that opinion, it also recognized that without a true commitment on the part of all States, it would not be possible to control

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narco-terrorism. The problem of illicit traffic in narcotic drugs would never be solved until effective measures were taken to eliminate or at least reduce drug consumption.

21. Direct perpetrators and individuals who provided advice and training in connection with the activities in question, who directed or tolerated such activities, who engaged in trafficking, or who consumed narcotic drugs and psychotropic substances should all share equal criminal responsibility under a code of crimes against the peace and security of mankind. Narco-terrorism was financed solely from the proceeds of sales to consumers. The relationship between traffickers, terrorists and consumers must therefore be taken into account when the degree of responsibility was determined and when the relevant rules were prepared.

22. Widespread consumption of narcotic drugs and psychotropic substances was a serious threat to the health of all mankind. Similarly, the crimes associated with drug addiction and with the social environment in which drugs were consumed were also a serious threat to all mankind. Illicit traffic in narcotic drugs and psychotropic substances could thus unquestionably be regarded as a crime against the security of mankind, and should therefore be included as such in the draft Code.

23. Since the Vienna Convention of 1988 covered both narcotic drugs and psychotropic substances, it was desirable that the draft Code should also do so. In article X adopted by the Commission at its forty-second session (A/45/10, chap. II, sect. D.2), paragraph 3 should become paragraph 1, thus facilitating the interpretation of current paragraphs 1 and 2. His delegation noted with appreciation the scope of current paragraph 3. As to current paragraph 1, his delegation considered that activities carried out "within the confines of a State" could not be regarded as crimes against the peace and security of mankind, since they had no international consequences. In order to be regarded as such crimes, the activities in question would have to take place in a transboundary context. Activities carried out within a State that were not linked in any way to other types of activities should not be covered by the draft Code. In taking that approach, the Commission would be fulfilling the mandate entrusted to it by the General Assembly in resolution 44/39, which referred to "persons engaged in illicit trafficking in narcotic drugs across national frontiers". States could take domestic measures to regulate their citizen's activities in such a way as to ensure respect for the sovereignty, territorial integrity and political independence of other States.

24. The term "on a large scale" used in current paragraph 1 of article X, was vague, so that paragraph should be reworded. In current paragraph 2, the terms "who knows" and "in order to conceal" were too subjective. Colombia saw no reason why a distinction should be drawn between individuals who undertook, organized, facilitated, financed or encouraged illicit traffic in narcotic drugs and individuals who were involved in such activities through financial institutions, banks and investment companies. One category of individuals would be punished for having committed the crime itself, whereas in the case of the other category of individuals, it would be necessary to prove that they had known that the property in question had been derived from the crime. The individuals in the first category

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were generally nationals of developing countries, whereas the second category involved individuals and institutions in developed countries. The terms in question must therefore be deleted from current paragraph 2.

25. Illicit traffic in narcotic drugs and psychotropic substances should be subject to the jurisdiction of a universally accepted international court or mechanism, under a code governing the various international criminal activities constituting a threat to all mankind. The establishment of an international criminal court was of particular importance in connection with narco-terrorism. Colombia therefore took a keen interest in the relevant discussions in the Commission.

26. A number of other interesting proposals had been put forward, such as the proposal made by Greece that failure to implement Security Council decisions should be included in the draft Code as a crime against world peace. Colombia believed that the same approach could be taken in respect of those who violated the principles of international law, particularly the principles laid down in the United Nations Charter. Furthermore, disregard for the Judgments of the International Court of Justice could also be characterized as a crime under the draft Code.

27. Mr. SZÉKELY (Mexico), commenting on chapter II of the Commission's report (A/45/10), concerning the draft Code of Crimes against the Peace and Security of Mankind, said that the Commission had appropriately reviewed earlier discussions by the United Nations on the possibility of establishing an international criminal jurisdiction. No concrete recommendations had emerged from any United Nations body which had considered the question, nor had Member States seemed very interested in expressing their views in those few cases where specific proposals had been made. That suggested that there was not enough support for establishing an international legal mechanism to ensure strict compliance with the draft Code.

28. Despite the improvement in international relations, profound differences still divided States with respect to various aspects of the issue, particularly the jurisdiction of the proposed court. Moreover, even if such differences were overcome, under the domestic legislation of many States, including his own, jurisdiction could not be transferred from domestic courts to an international court, and the establishment of special courts was not permitted.

29. At the time of the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it had not been possible to agree on the establishment of a universal jurisdiction to deal with such trafficking, because that offence had not been described as an international crime. The signatories to the Convention had therefore simply agreed to take the necessary steps in accordance with their domestic legislation to promote international co-operation in that field, while strictly adhering to the principle of the sovereign equality of States. His delegation would be more willing now to consider the establishment of an international criminal jurisdiction if the vast dimension of the drug problem and the need to mount an integrated, global attack on

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it were widely acknowledged. Moreover, a complete definition of the crime and of its active subject must include the final user of the drugs.

30. His delegation, while recognizing the merit of including a text along the lines of draft article X as provisionally adopted by the Commission, did not agree with the Chairman of the Commission who, in introducing the report, had stated that the draft article represented further progress since it defined illicit drug trafficking as an international crime. Moreover, the draft article referred to trafficking "on a large scale". His delegation could accept the inclusion of the draft article in the draft Code only if it also qualified drug use as an international crime and covered small nd medium-size producers and intermediaries, and not only those operating on a large scale.

31. With regard to article 18, on the recruitment, use, financing and training of mercenaries, his delegation regretted that the definition of "mercenary" had been derived from article 1 of the 1989 Convention on the subject. His delegation had not signed that instrument because it had reservations regarding the text.

32. Since the Commission was about to conclude its work on some of the items before it, it was appropriate to give some thought to its long-term programme of work. In general, his delegation agreed with the suggestion by the Working Group established to consider the subject, to the effect that new topics should be manageable with regard to their time requirements. His delegation also felt that the time-frame should not exceed the term of office of the Commission's members. The Commission should submit detailed reports to the General Assembly only after it had completed a global assessment of particular items before it, while recognizing that further work would be needed in the relevant drafting committees. Member States would thus have an opportunity to provide the Commission with general guidelines based on a broader perspective.

33. As to specific items which the Commission might address, his delegation agreed that the long-term programme of work should take into account the objectives of the Decade of International Law and the programme of action relating thereto. The views of Member States on the programme for the Decade would be of great importance, particularly those pertaining to the progressive development of international law and its codification. Two issues in particular were ready for codification: the legal principles regulating the protection of the environment and the legal aspects of international traffic in weapons. His delegation welcomed the suggestion that the Commission should consider requests for legal opinions on some pressing legal issues before the international community. In providing that very valuable service to the General Assembly, the Commission could use methods of work such as that followed in the handling of the question of an international criminal jurisdiction.

34. In conclusion, he stressed that the views expressed by the representative of Germany at the 33rd meeting, ideas shared in informal discussions among representatives in the Committee, and the work relating to the Decade of International Law would provide valuable contributions to the future work of the Sixth Committee and the International Law Commission.

35. Mr. GUEVORGIAN (Union of Soviet Socialist Republics) said that his Government would welcome the early completion of the Commission's work on the draft Code, whose main purpose was to enhance international co-operation in the prevention of crimes most dangerous to peace and mankind as a whole, and to ensure that those responsible for such crimes did not escape severe punishment. The Code was needed as an effective instrument to be used in the joint efforts by States to prevent the preparation and waging of nuclear war, and to combat such crimes as aggression, apartheid, international terrorism and illicit traffic in narcotic drugs. His delegation noted with satisfaction the positive work done on the draft at the Commission's forty-second session, and extended its thanks to the Special Rapporteur for his eighth report on the topic.

36. His delegation took a positive view of the Commission's provisional adoption of draft articles 16 (International terrorism), 18 (Recruitment, use, financing and training of mercenaries) and X (Illicit traffic in narcotic drugs), which represented a new and significant contribution towards the struggle against serious international crimes. It regretted, however, the Commission's failure to reach agreement on the draft article concerning breach of a treaty designed to ensure international peace and security, an issue directly related to the strengthening of law and order in international relations, and one which should on no account be left out of the draft Code.

37. With regard to questions of methodology arising in connection with complicity, conspiracy and attempt, his delegation took the view that the specific nature of the crime should be taken into consideration in each separate case; it might suffice, however, to adopt a general provision declaring complicity and conspiracy in the commission of international crimes to be punishable, leaving it to the court to determine the specific content of those crimes. In his country, complicity was viewed as a form of commission of a crime and as an aggravating circumstance. His delegation took the view that participants in international crimes should be classified as perpetrators, organizers, instigators or accomplices, depending on the specific role played by them in the commission of the crime. The degree and nature of participation should also be reflected in the sentence.

38. His delegation was pleased that an overwhelming majority of the Commission's members had expressed support for the establishment of an international criminal court in relationship to the United Nations, and that the Commission as a whole had noted that recent developments in international relations were conducive to such establishment. With regard to the scope of jurisdiction, he remarked that if the court was established as an organ of the United Nations, the Charter of the United Nations would have to be amended accordingly. If, on the other hand, the court was established as an autonomous body, its jurisdiction would be recognized only by States parties to its statute in respect of the crimes covered by the statute and by States parties to particular international conventions in respect of the crimes covered by those conventions.

39. As to the respective spheres of competence of national courts and of the international court, his delegation considered that concurrent jurisdiction would not be impossible, provided the respective spheres of competence were clearly delimited. At the same time, the possibility should not be excluded of the

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international court's acting as a court of first instance where national courts failed to take up a case involving the commission of an international crime. In that connection, he emphasized that none of the crimes recognized as such by the international community should be omitted from the draft Code. As to the court's jurisdiction over persons, his delegation noted that a number of complex issues still remained outstanding and would have to be considered at a later stage.

40. The preparation of the Code could be conducive to the establishment of a stable and peaceful world, and his delegation therefore considered that the Commission and the Sixth Committee should continue to give priority to the topic.

41. Mr. TÊTU (Canada) said that the Commission should strive, in its work on the draft Code, to elaborate a clear and comprehensive instrument based on existing customary and treaty law. A code listing offences taken directly from the major accepted international instruments would be most likely to receive broad support. To the extent that consensus could be reached on customary international law on the most heinous of international crimes, that, too, would provide an important contribution to the Charter system of collective security. In the process of elaborating a code the Commission also should aim to provide for the practical application of penalties.

42. Stressing the importance of the obligation of States to prosecute or extradite international criminals within their jurisdiction, he noted that some of the worst offences dated back to the Second World War. The international community should strive harder to ensure the effective application of existing international law in such cases. In the context of the United Nations Decade of International Law, his delegation urged more consistent prosecution of terrorists and other international criminals in domestic courts, pursuant to existing laws and agreements.

43. His delegation welcomed the constructive efforts made by the Commission in its work on general parameters for an international criminal court. While there was not yet an international consensus on the need for such a mechanism, the fact that there was now an international definition of aggression, and that the Commission had made considerable progress in the elaboration of an international code of crimes, suggested that it was appropriate to review the question. Crimes against peace, particularly the planning and waging of wars of aggression, generally had not been addressed in domestic law, and it was thus difficult for national courts to deal with them. Such crimes were most amenable to trial by an international court.

44. The Commission's proposals on a possible international court should not stray too far from existing customary and treaty law, or from what States had indicated they were prepared to implement. Perhaps the most logical approach would be to provide the International Court of Justice with additional jurisdiction to deal with international criminals. The Court might well be able, under its existing mandate, to determine in individual cases whether a crime was covered by international law, thus obviating the need to elaborate a code of crimes.

45. Mr. PUISSOCHET (France) congratulated the Commission's members and, in particular, the Special Rapporteur on the draft Code upon the scholarly skill which they had brought to the consideration of extremely complex issues in international penal law. Commenting first on the three articles in part one of the Special Rapporteur's eighth report he said that, so far as questions of methodology were concerned, his delegation would hesitate to agree with the approach which consisted in treating complicity as a separate offence. The general rule under French law was that an act of complicity derived its criminal nature from the principal crime; attempt did not constitute a separate offence, but was punishable, while complot constituted a separate offence in certain cases. Referring to the views reflected in paragraphs 74 and 75 of the report (A/45/10), he remarked that, given the very exceptional nature of the crimes covered by the Code, it would not seem appropriate to include attempt as a crime in each hypothetical case. The correct way for the Commission to proceed would be to consider, in connection with each crime which it intended to include in the Code, whether the concept of attempt was applicable to that crime. Similarly, the Commission should consider whether the general rules relating to complicity were appropriate in the case of each of the crimes concerned, and also whether the concept of complot could be usefully applied. Only after such an exercise would the Commission be in a position to decide upon the future fate of the articles it had considered at its forty-second session.

46. With regard to the text of the new version of the article on complicity, he agreed with the Special Rapporteur and with those members of the Commission who had argued that there was no need to try to define the principal perpetrator of the offence; the distinction between co-perpetrator and accomplice was sometimes difficult to draw, and it should be left to the judge to determine the responsibility of each of the accused. On the other hand, he could not agree with the statement in paragraph 2 of the original version of draft article 15 that "complicity may mean both accessory acts prior to or concomitant to the principal offence and subsequent accessory acts", nor accept without further in-depth consideration the passage appearing in square brackets in the new version of the draft article. In French law, complicity arose only as a result of accessory acts prior to or concomitant with the principal offence, and he could see no good reason for extending the concept to include assistance given to the perpetrator after the commission of a crime. With the exception of that point, the new version of draft article 15 was on the whole acceptable to his delegation.

47. As for the inclusion in the draft Code of a reference to conspiracy, his delegation had no objection of principle, provided that the concept was applied only to crimes against peace in accordance with the principle adopted by the Nürnberg Tribunal, and to conspiracy to commit genocide as punishable under article III of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; any other application would have to be considered and debated with the utmost care.

48. Discussions had taken place in the Commission on the question of whether the draft Code should include articles on international illicit traffic in narcotic drugs and on breach of a treaty designed to ensure international peace and security. His delegation was seriously concerned at the direction which the Commission's work was taking in regard to the list of crimes to be covered by the

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Code. The credibility of the project as a whole depended on the intellectual rigour applied in determining what acts could be considered crimes against the peace and security of mankind. Not all illicit acts, however serious, and not all morally condemnable acts, however repugnant, fell into that category. The Code should include only breaches of legal rules accepted by States that were considered sufficiently serious to constitute crimes against the peace and security of mankind; the constituent elements must be defined with the utmost clarity. The current list of offences failed to meet those requirements.

49. In that connection, he endorsed the views of one member of the Commission as reflected in paragraph 84 of the report. As for the proposed wording of article X as provisionally adopted, his delegation did not consider it sufficiently precise to serve as a basis for the competence of an international jurisdiction.

50. Likewise, his delegation continued to believe that the inclusion of an article concerning breach of a treaty designed to ensure international peace and security would be unfounded and unwise, and he could only urge the Commission to drop the idea once and for all.

51. Turning to the question of the establishment of an international criminal jurisdiction, he said that the implications of the various options envisaged required more thorough analysis by the Commission before States could express an informed opinion. Noting that interest in the idea had increased recently, he emphasized the importance of carefully analysing the problems involved. As to the efficacy of the proposed jurisdiction, it was necessary to determine, for example, what types of offences could not be adequately punished under existing national procedures, and what the advantages would be of bringing a case before an international jurisdiction. Many complex issues pertaining to the functioning of such a jurisdiction had yet to be resolved.

52. Two major considerations must be taken into account with respect to the competence of the proposed jurisdiction. Firstly, such a jurisdiction was justified only in the case of particularly heinous crimes which by their very nature constituted an affront to the world's conscience and a threat to the functioning of international society; and secondly, its competence must be established with the utmost clarity and must be thoroughly spelt out in a very carefully drafted instrument. Major technical difficulties would arise if efforts were made to bring before an international court acts covered by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, since that instrument, as well as the articles proposed by the Special Rapporteur, did not clearly define the crime. The content and definition of the crime were determined by national legislation. An international court faced with an international drug-trafficking case might first have to lay down rules in the event of a conflict of legislation, which was not the role of such a jurisdiction. The efficacy of recourse to an international court was also questionable unless an international system also existed to govern the execution of sentences. Moreover, it was illusory to assume that criminals would be treated equally, given the diversity of legislation.

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53. With regard to the three models proposed, his delegation had very serious doubts as to the possibility of establishing an international jurisdiction with a review competence over national courts. Such an arrangement would, inter alia, undermine the authority of national courts. An international criminal court with exclusive jurisdiction would be more logical, notwithstanding all the difficulties to which it would give rise. As to the institutional structure, serious thought should be given to the possibility of establishing specialized ad hoc international criminal jurisdictions.

54. Criminal justice had thus far depended on the strength, organization and legitimacy of the State, attributes which did not necessarily have equivalents in international society. Nothing would be worse than to establish a system which had not been adequately studied and which, instead of strengthening the repression of the most heinous crimes, created confusion and undermined the concept of international justice. By analysing precedents and doctrine, particularly as developed between the two world wars, the Commission should be able to shed light on the complex issues involved.

55. Mr. HANAFI (Egypt) said that despite initial disagreement between Member States as well as members of the International Law Commission over the draft Code of Crimes against the Peace and Security of Mankind, the Commission had now nearly completed the first reading of the draft Code. It was time to seek a consensus in the General Assembly by allaying the misgivings of some Member States, which he thought were related more to procedural than to substantive matters.

56. It was important that draft article 15 on complicity should stress that the acts constituting the crime had to be carried out in concert, a point which was insufficiently clear in the proposed text. It was also important to make clear distinctions between complicity, attempt and conspiracy. In addition to a definition of complicity, the text should contain a general definition of the principal perpetrator of the crime.

57. Draft article 16 on conspiracy covered what were known in some legal systems as criminal agreements. The proposed text did not clarify the basic elements of conspiracy; rather, it gave rise to confusion between the concepts of conspiracy and complicity. He reiterated the need for a clear distinction, even if more detailed formulations were required. Regarding draft article 17 on attempt, he supported the definition in the report, provided that it excluded mere intent and preparatory acts not followed by execution.

58. Illicit traffic in narcotic drugs was clearly a crime against humanity; in view of the violence, robbery and threats to stability recently associated with it, his delegation did not object in principle to considering it also a crime against peace. However, the text should clearly distinguish between what made it a crime against peace and what made it a crime against humanity.

59. The Drafting Committee had held a long discussion on the draft article concerning breach of a treaty designed to ensure international peace and security, but had been unable to reach agreement. One problem lay in determining which

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treaties were in that category. In addition, it was feared that such an article would discriminate against States which had entered into the treaties concerned as compared to States which had not done so, and would also raise fundamental questions of treaty law. There might be room for such a provision if the treaties in question were of universal application, but that was far from being the case for all such treaties.

60. The establishment of an international criminal court was still a matter for much discussion in the international legal community. At its forty-second session, the International Law Commission had put forward ideas and alternatives in an attempt to find common ground between the supporters and opponents of such a court. His delegation would examine the issue carefully and hoped for a solution which would meet with the approval of all the parties and the various legal systems.

61. Mr. BENMEHIDI (Algeria) said that the Commission had achieved considerable progress on the draft Code of Crimes against the Peace and Security of Mankind. That was in no small measure due to the efforts of the Special Rapporteur to overcome the hesitations members of the Commission had expressed at the outset in view of the complexity and political scope of the topic. At its forty-second session, the Commission had paid particular attention to the questions of complicity, conspiracy and attempt. With regard to methodology, it had been asked whether such acts should constitute a distinct class of offences within the draft Code, or whether they should be regarded as accessory to the principal crime. In view of the extremely serious nature of crimes against the peace and security of mankind, complicity, conspiracy and attempt must be regarded as separate offences in order to strengthen the deterrent aspect of the Code.

62. The distinction between being the principal and the accomplice had been rendered extremely difficult by the sheer scale of organized crime and its internationalization. He was pleased to note that the revised version of draft article 15 proposed by the Special Rapporteur seemed to have taken into account the common concern of members of the Commission to make a provision for the criminal liability of individuals carrying out official functions.

63. His delegation could not share the view, referred to in paragraph 61 of the Commission's report (A/45/10), that the draft Code should not contain separate provisions on complicity and conspiracy. It agreed with the Special Rapporteur that, in the case of conspiracy, no distinction was made between direct perpetrators and indirect perpetrators, perpetrators and co-perpetrators, or perpetrators and accomplices, since all were acting in concert (para. 66). The draft Code should not have a scope more limited than that of the Conventions on genocide, apartheid, narcotic drugs and slavery, which had tended to confirm the trend towards distinguishing between conspiracy and complicity. The revised version of article 13 as proposed would, in his delegation's opinion, provide a definitive definition of conspiracy under international law.

64. The Commission could give greater priority to attempt in order to arrive at a more rigorous definition of the notion. His delegation took issue with the view expressed in paragraph 71 of the report that attempt was more easily conceivable in

(Mr. Benmehidi, Algeria)

the case of a crime against humanity than in the case of a crime against peace. In his delegation's view, the two were closely linked. Article 17 should include a definition of commencement of execution, while explicitly mentioning preparatory acts, which were of cardinal importance in a case involving an attempt against peace.

65. In general, his delegation was in favour of the draft. At the same time, it adhered to the principle of nullum crimen sine lege. It therefore considered it necessary to restrict the substantive competence of the proposed court to the crimes listed in the draft Code. Such a choice would undoubtedly have the drawback of rendering the establishment of the court subordinate to finalisation of the draft Code. None the less, his delegation remained reasonably optimistic with regard to the outcome of the Commission's efforts. With respect to individual criminal responsibility, and in particular the possibility of extending the scope of application of the draft Code to States, Algeria considered that attribution of criminal responsibility to States would be an essential aspect of the draft. The best way to ensure that the future legal instrument was both credible and effective would be for the Code to provide for a dual régime, with criminal responsibility attributable to physical persons or to legal persons, including States.

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/C.6/45/L.7)

66. The CHAIRMAN introduced draft decision A/C.6/45/L.7.

67. Draft decision A/C.6/45/L.7 was adopted.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/45/L.3, L.4)

Draft resolution A/C.6/45/L..

68. The CHAIRMAN announced that Mexico had joined the sponsors of the draft resolution.

69. Mr. MADI (Egypt), introducing the draft resolution, drew the Committee's attention to paragraph 3, which was the most important element of the text in that it concerned the mandate of the Special Committee on the Charter for its 1991 session. The informal consultations on the draft resolution had been conducted in a very constructive atmosphere, all participants endeavouring in a spirit of co-operation and understanding to reach a generally agreed text. The sponsors hoped that the draft resolution would be adopted without a vote.

70. The CHAIRMAN said that a vote had been requested by the Libyan Arab Jamahiriya.

71. Draft resolution A/C.6/45/L.3 was adopted by 94 votes to none, with 1 abstention.

72. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation was pleased to note the almost unanimous adoption of draft resolution A/C.6/45/L.3, which underscored the fact that the overwhelming majority of States had a positive approach to the work of the Special Committee. There seemed to be general agreement that it should endeavour to complete its consideration of the proposal on fact-finding as soon as possible, preferably at the Special Committee's next session. His delegation also welcomed the broadening of the Special Committee's agenda to include such matters as co-operation between the United Nations and regional organizations, the strengthening of the role of the Secretary-General, and sanctions against States which had violated international peace.

73. It would not be in the best interests of the Special Committee's mandate to expand the membership.

74. Mr. ELHUNI (Libyan Arab Jamahiriya) said that his delegation had abstained from voting since the draft resolution contained no new proposals which would encourage the Special Committee to take an active part in strengthening the role of the United Nations in maintaining international peace and security. The end of regional blocs in Europe, the end of the cold war and the new-found international harmony were welcomed by the small countries, which had been the objects of competition and had provided a testing-ground for weapons of the major Powers. Account should be taken of those new circumstances, which differed from those obtaining at the time of the adoption of the Charter.

75. His delegation had drawn attention to the danger of the right of veto in the Security Council, which created tension in international affairs and thwarted the safeguarding of international peace and security. It had proposed at various bilateral, regional and international meetings that that privilege should be abolished. Its initiative had received clear support from the Movement of Non-Aligned Countries, the Organization of African Unity and the Organization of the Islamic Conference.

76. The Sixth Committee should have adopted a serious draft resolution directing the Special Committee away from irrelevant theoretical discussion and encouraging it to take practical and positive steps to draft provisions which would ensure equality, equal participation and justice for Member States without discrimination in terms of responsibility for strengthening international peace and security. His delegation continued to urge that the Special Committee should consider four sets of measures: measures to strengthen the role of the Security Council and to eliminate the adverse effects of misuse of the principle of consensus among the permanent members; measures to emphasize that international peace and security should be the joint responsibility of all Member States on the basis of equality, sovereignty, democracy and equal participation in the management of international affairs; measures to enhance the role of the General Assembly in the maintenance of international peace and security; and measures to expand the membership of the Special Committee and to adopt the principle of rotation and equitable geographical representation. When those just demands were reflected in a draft resolution, his delegation would be foremost among its supporters.

77. Mr. KUFUOR (Ghana) said that while he had gladly supported the draft resolution, his understanding of paragraph 4 was that the procedures for arriving at decisions, as set out in the Charter of the United Nations and the rules of procedure of the General Assembly, remained intact and would also govern decision-making within the Special Committee.

78. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel) informed the members of the Committee that, in accordance with paragraph 6 of draft resolution A/C.6/45/L.3, the Secretary-General would submit a final report on the draft handbook on the peaceful settlement of disputes between States to the Special Committee at its next session, currently scheduled for 4 to 22 February 1991. The report would contain a composite text of the draft handbook, not including the annexes, indexes and bibliography, which would be included at a later stage. It would be possible for the Secretary-General's report to be circulated towards the end of January 1991.

79. During the preparation of the draft handbook, each section and chapter had been reviewed by a consultative group at eight meetings convened for that purpose. He expressed appreciation to the group for the professional manner in which it had approached its task and for its suggestions, which had been taken into account in the composite text. As that text would not be available until January 1991, he did not anticipate that it would be resubmitted to the group. It would be for the Special Committee to decide, in considering the composite text at its next session, whether to recommend to the General Assembly at the forty-sixth session that it should be published.

Draft resolution A/C.6/45/L.4

80. Mr. DELON (France), introducing the draft resolution on behalf of its sponsors, said that it was based on the work of the Special Committee at its previous session, which had led to an agreement on the draft document reproduced in paragraph 36 of document A/45/33. The conclusions of the Special Committee, which were set out in the annex to document A/C.6/45/L.4, would facilitate the work of the United Nations on the basis of modest, but practical, recommendations on the rationalization of its procedures. The sponsors hoped that the draft resolution could be adopted without a vote.

81. The CHAIRMAN said that Cuba had requested a vote.

82. Mrs. SILVERA (Cuba), speaking in explanation of vote, said that her delegation had requested a vote because of reservations concerning paragraph 1 of the annex. The approach suggested in that paragraph would tend to institutionalize decision-making by consensus in the General Assembly, a practice which Cuba regarded as unacceptable. The economic capacity and political strength of the major Powers enabled them to influence decision-making, a situation which did not favour third-world countries. While her delegation was not opposed to consultations, it felt that they should not be a vehicle for introducing a mandatory rule of consensus into the function of the General Assembly.

83. A recorded vote was taken on draft resolution A/C.6/45/L.4.

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, China, Colombia, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany, Ghana, Greece, Grenada, Guatemala, Guinea-Bissau, Guyana, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kuwait, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Madagascar, Malawi, Mali, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Peru, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Singapore, Spain, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire.

Against: None.

Abstaining: Cuba.

84. Draft resolution A/C.6/45/L.4 was adopted by 92 votes to none, with 1 abstention.

The meeting rose at 1 p.m.