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New York

SUMMARY RECORD OF THE 50th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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ORGANIZATION OF WORK

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The meeting was called to order at 3.05 p.m.

AGENDA ITEM 133: DEVELOPMENT AND STRENGTHENING OF GOOD-NEIGHBOURLINESS BETWEEN STATES (A/C.6/41/L.14 and L.17)

1. Mr. VOICU (Romania), speaking as Chairman-Rapporteur of the Sub-Committee on Good-Neighbourliness, introduced the Sub-Commission's report (A/C.6/41/L.14), noting that draft resolution A/C.6/41/L.17 on the item had already been circulated and would be introduced by its sponsors in due course. The prompt distribution of basic documents was one of the fundamental aspects of the rationalization of work.

2. In compliance with General Assembly resolutions 39/78 of 13 December 1984 and 40/419 of 11 December 1985, the Sub-Committee had drawn up a four-part list of the elements of good-neighbourliness (A/C.6/41/L.14, para. 7). In the course of its work, the Sub-Committee had found that the question of the development and strengthening of good-neighbourliness between States aroused great interest, in view of the fact that most problems and disputes arose between neighbouring countries. The phenomenon of geographical proximity was becoming increasingly complex because of the development of political, economic, technological and human relations. Advances in science and technology were posing the same problems, in the relations between countries not so close geographically, as had previously occured only in cases of geographical proximity.

3. The maintenance and expansion of friendly relations and co-operation between neighbouring States and between States in the same geographical area were essential for the peaceful solution of any problem and as a way of preventing further disputes from developing or existing disputes from being exacerbated. The promotion of good-neighbourliness was a prerequisite for solving the problems currently confronting mankind as a result of serious tensions produced by the threat or use of force, the consolidation or establishment of zones of influence and interference in the internal affairs of other countries, as well as by the continuation of long-standing conflicts or the emergence of new ones, underdevelopment, and the occurrences underlying the international economic crisis.

Good-neighbourliness was a complex subject around which many bilateral, subregional and regional concerns converged. Ample experience had been gained in the field of good-neighbourliness at those levels and in international organizations, and many common elements and parallel or similar approaches could be discerned in the practice of States.

5. Given the scope of the topic, it should not be surprising to find a variety of views and points reflected in the Sub-Committee's report. Good-neighbourliness comprised a virtually unlimited series of bilateral relations, which must be based on strict observance of generally accepted principles and rules guaranteeing a climate of mutual respect, understanding, co-operation and peace between States.

6. The approach could not be one-sided, based on purely political, legal, technical or practical concerns. The relevant principles and norms must be

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(Mr. Voicu, Romania)

translated into effective co-operation, for their violation could give rise to relations totally contrary to good-neighbourliness.

7. Some principles and norms were of particular and immediate interest in relations between neighbouring countries. They included respect for the sovereignty of States; inviolability of frontiers; non-use of force, particularly in settling territorial questions and other problems arising from geographical proximity; peaceful settlement of disputes; and non-interference in the internal affairs of States. Although the general duty to co-operate applied to all States, it involved special requirements where neighbouring States were concerned, in which case some forms of co-operation were vital. It was for the countries concerned to deal with the various practical aspects of the co-operation such as, for instance, its scope and the ways of maintaining it. However, all the elements of good-neighbourliness should be considered and clarified so that they could be further developed in an open-ended process that would reveal new aspects and elements at each stage and shed more light on them.

8. As was clear from the report, the order in which the elements of good-neighbourliness were considered and clarified did not matter so much as the recognition of the unbreakable link between their legal, practical and political aspects and of their common basis in the principles of international law. Good-neighbourliness must be built on those principles in all regions of the world and between States of different size with differing socio-political systems. A practical, well-ordered approach would make it possible in the future to elaborate a suitable international document on the subject. For that purpose, the guidelines provided in earlier General Assembly resolutions should be reaffirmed, and the task should be approached in a flexible way so as to deal with all aspects of good-neighbourliness.

9. He expressed his gratitude to all delegations which had participated in the proceedings of the Sub-Committee, and especially to the Secretary of the Sub-Committee for his valuable contribution to its work.

10. The debate in the Committee should involve as many speakers as possible because, owing to lack of time, not all those who had wanted to do so had been able to express their views. Comments on the preliminary list of elements contained in document A/C.6/41/L.14 would provide a basis for the elaboration of a suitable international document on good-neighbourliness.

11. Mr. TCHEKO (Niger) said that, since becoming a sovereign State, the Niger had always professed a deep attachment to the ideals of peace and international security. Its foreign policy was based on maintaining good relations with all the States of the world, near or far, regardless of their socio-political systems. In that spirit, the Niger had subscribed to the Charter of the United Nations and the charter of the Organization of African Unity (OAU), had ties with all its neighbours through separate bilateral and multilateral economic, political, legal and other agreements, and participated in various regional associations and agreements.

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(Mr. Tcheko, Niger)

12. For the Niger, a land-locked country, the question of good-neighbourly relations between States had very special meaning and merited consideration by the General Assembly. Although the elements of good-neighbourly relations were to be found in the Charter of the United Nations, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Declaration on the Strengthening of International Security, the Manila Declaration on the Peaceful Settlement of International Disputes and other instruments, it would be useful to draft a single document on the question. It would be a kind of code of conduct governing clearly and sharply the relations between neighbouring countries, since neighbours, unlike friends, could not be chosen.

13. The delegations of Romania and Poland, and especially the Chairman-Rapporteur, had distinguished themselves in the work of the Sub-Committee, which had been very productive. However, the results had not been conclusive for various reasons. In general, it had not been possible to delimit the notion of good-neighbourly relations or even good-neighbourliness, by determining whether it was space-related or time-related. There had been a problem of organization, which explained the many repetitions and the confusion among separate elements and even among separate parts. That could have been avoided if the work had proceeded in accordance with General Assembly resolution 39/78, which had indicated that the elements of good-neighbourliness should be identified first and then clarified.

14. In identifying the elements of good-neighbourliness, two essential poles must be borne in mind: the rules which States must respect in their relations with neighbours, and the action which they must take to develop, strengthen and reaffirm their relations.

15. The Sub-Committee had not known how to chose between going into details or holding only to general principles. In part I.A, entitled "Generally accepted principles and norms of international law concerning good-neighbourliness relations", the Sub-Committee included the "Observance of generally accepted principles and norms of international law as a basic requirement of good-neighbourliness", but did not specify what principles were involved. In the absence of a definition of good-neighbourly relations, that ought to have been specified. In part II, entitled "Areas of co-operation for developing and strengthening good-neighbourliness", the Sub-Committee should have limited itself to outlining general principles without entering into pointless detail, since it was not possible to be exhaustive.

16. It had not been possible to reach general agreement on several of the elements to be borne in mind, given the differing viewpoints among delegations, since the Sub-Committee had not set criteria for choosing them. It should have begun by saying what was meant by a particular element or by indicating its features. Such elements could not be universally applied, since neighbouring regions did not have the same features throughout the world.

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(Mr. Tcheko, Niger)

17. The settlement of border disputes should be included among the political elements. That was a specific and real problem experienced by States in Africa, where nearly all the issues undermining relations between States originated in the vulnerability of frontiers. Aware of that problem, the Organization of African Unity (OAU), had included the inviolabitity of frontiers as one of the fundamental principles of its Charter. The Niger had embarked on a process of delimiting its frontiers and, at the latest Conference of the OAU Council of Ministers, held at Addis Ababa, had proposed a resolution inviting all African States to examine that question.

18. It was also surprising that the list of elements of good-neighbourliness examined by the Sub-Committee contained no element relating to financial and monetary co-operation between neighbouring States.

19. He hoped that at the following session all the constructive remarks made by various delegations would be borne in mind, in order to provide the international community with a document governing neighbourly relations as soon as possible.

20. Mr. GOUNDJI (Central African Republic) said that the emergence of modern States, as an expression of sovereignty and of the diversity of civilizations throughout the world, might have given rise to a collective awareness of the need for those States to live in harmony, solidarity and good-neighbourliness. On the contrary, not a moment went by without accusations by one State against its neighbour or even conflicts between bordering States which threatened to spread owing to the intervention of the allies of each of the parties. For that reason, the question being considered by the Committee was of fundamental importance to the Central African Republic.

21. Although its consequences could not be sufficiently deplored, the Second World War had had the merit of revealing serious deficiencies in relations between States during that era. Therefore, the founders of the United Nations had rightfully included that question among the essential means of achieving their objectives, especially that relating to the maintenance of international peace and security.

22. That meant that, in the framework of the international co-operation institutionalized in the Charter, States should first make every effort to eliminate every factor endangering peace and behave in such a way as to infuse international relations with the spirit of peace.

23. From that viewpoint, the Central African Republic believed that, in addition to the usual bilateral arrangements, international bodies offered an ideal forum for settling disputes between States and even for bringing States into agreement on problems of mutual interest, such as disarmament and the new international economic order. At times when the interdependence of States was already a proven reality, the need for international co-operation was more obvious than ever. Nevertheless, despite a coinciding of wills, international co-operation could not be achieved when bilateral or regional relations were being weakened by divergence of

(Mr. Goundji, Central African Republic)

interests, lack of trust, tension and other situations opposed to the principle of sovereign equality of States and the spirit of good-neighbourliness.

24. The maintanence of good-neighbourly relations was a factor not only of peace but also of development. To that end, the various elements mentioned in the report of the Sub-Committee on Good-Neighbourliness (A/C.6/41/L.14), such as diplomatic and consular relations, visits, projects of mutual interest, meetings and conferences, should be put into practice. Although his delegation acknowledged that relations of good-neighbourliness between States had improved somewhat, there was a need for greater efforts, imbued with tolerance, equity and acceptance of the right to be different, to eliminate the obstacles affecting the balance of international co-operation.

25. Since the remarkable development of science and technology contributed considerably to fostering understanding between human beings, his country could not but disapprove of anything which weakened the scope of that understanding.

26. In that line of thought, the Central African Republic had devoted itself to establishing good relations with its neighbours. It maintained diplomatic and consular relations with all of them and was a party to joint agreements governing co-operation in different areas, by means of a permanent co-operation body, the Joint Commission. It also participated in large regional groups such as the Central African Customs and Economic Union (CACEU) and the Economic Community of Central African States (ECCAS), whose activities were aimed at the strengthening of good-neighbourliness between member States.

27. His delegation commended the work of the Sub-Committee to identify the elements of good-neighbourliness. It also trusted that the results of that hard work would receive the full agreement of the international community and inspire the future behaviour of States in their mutual relations.

28. Mr. TUERK (Austria) said that his delegation had taken note with interest of the report of the Sub-Committee on Good-Neighbourliness (A/C.6/41/L.14). The list of possible elements pertaining to good-neighbourliness seemed quite ambitious, and it was hardly a surprise that no general agreement had yet been possible. The principle of good-neighbourliness was particularly cherished by a country that was permanently neutral, despite its location at the crossroads of States with different economic and social systems. The principle of good-neighbourliness was therefore one of the basic tenets of Austrian foreign policy. His delegation also believed that the term "good-neighbourliness" should be understood in a wider sense and not restricted to adjoining countries.

29. The Conference on Security and Co-operation in Europe provided a good example for the improvement of relations among the States of a region. Despite the ideological differences among its participants, it was the merit of that Conference to have laid down ways and means for finding generally acceptable solutions to deal with threats to the natural, human and economic environment.

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(Mr. Tuerk, Austria)

30. With regard to the legal and other elements relating to the development and strengthening of good-neighbourliness, his delegation considered part I, section B, subsection 5, which should be viewed in conjunction with subsection 7, to be especially important. In 1986 ecological catastrophes had demonstrated the urgent need to define the rights and obligations of States in connection with activities not prohibited by international law but which might nevertheless cause injury to other States. In its present form, it was not sufficiently precise, since instead of referring to measures to "eliminate or minimize" the effects of some domestic activities on other States, it should stipulate the duty of the source State to avoid, minimize or repair any appreciable or tangible physical transboundary loss or injury caused by an activity involving risk. The obligation in subsection 7 was obvious. Furthermore, the question of consultation and co-operation mentioned in part II, section A, subsection 6, should be considered in depth and it was therefore difficult to understand why that point had been placed in square brackets.

31. Regarding the nuclear field, which was of special concern to his country, he pointed out once again that Austria welcomed the IAEA Conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of Nuclear Accident or Radiological Emergency. His country had promptly signed both instruments. However, too little attention had been paid to the question of international liability and compensation for damages suffered on account of nuclear accidents occurring on foreign territory. There was an urgent need to consider the question of elaborating an instrument on that subject, perhaps along the lines of the 1972 Convention on International Liability for Damage Caused by Space Objects.

32. Concerning bilateral questions arising from the use of nuclear energy for peaceful purposes, Austria had signed an agreement with Czechoslovakia in 1984, which had entered into force, and it was envisaging the conclusion of similar agreements with all adjoining countries. There were other important areas which should be regulated by bilateral or regional agreements in the framework of good-neighbourly relations, such as the non-navigational uses of international watercourses. In that respect he mentioned the 1954 agreement between Austria and Yugoslavia concerning the hydroelectric energy of the river Drau.

33. Austria was also interested in co-operation in the humanitarian and other fields (document A/C.6/41/L.14, para. 7, part II C). In that regard, he recalled the statement made by the Austrian Federal Chancellor in opening the current Conference on Security and Co-operation in Europe to the effect that permanent peace was inconceivable without the observance of human rights and unimpeded contacts between nationals of countries with different political, economic and social systems. Co-operation in the protection and promotion of human rights must also include the rights of persons belonging to "ethnic groups", a term preferable to that of "national minorities", which was used in the report. He therefore proposed that the brackets in part II, point L.17, should be removed.

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(Mr. Tuerk, Austria)

34. In part III, the obligation of States to take into account, when enacting national laws, the legitimate interests of neighbouring countries had been omitted from the ways and means of developing and strengthening good-neighbourliness.

35. Lastly, his delegation felt that in its future work the Committee should concentrate on the legal aspects of the question and not deal with other questions which might not fall within its sphere of competence.

36. Mr. SENE (Senegal) said that in enshrining the principle of good-neighbourliness in the preamble of the Charter its authors had not forgotten that failure to observe that principle had been one of the direct causes of the Second World War, which had begun as a result of conlicts between neighbouring States. The practice of good-neighbourliness could not be separated from the maintenance of international peace and security. The international situation was alarming precisely in that regard. Forty years after the signing of the Charter, there were innumerable armed conflicts and tense situations between neighbours.

37. As in the preceding year, the Sub-Committee on Good-Neighbourliness had concluded its work in 1986 noting that it was unable to reach agreement on the way to approach the question. The Sub-Committee admitted that in paragraph 4 of its report (A/C.6/41/Add.14). It was necessary that the differences of opinion should be reconciled with the participation of all the countries concerned, because there could be no progress unless the question of methodology was first resolved.

38. Senegal enjoyed excellent relations with its neighbours by applying a practice based on the norms of good-neighbourliness laid down in its Constitution. Senegal had never been involved in armed conflicts with its neighbours. The differences of opinion which it had had with some of them had always been settled by peaceful means. Recently, a dispute over maritime borders with Guinea-Bissau had been submitted, on the basis of common agreement, to international arbitration.

39. Senegal, which viewed good-neighbourliness as an active concept applicable to specific acts, had rich, varied and very positive experience in that regard. An example of that was the Organization for the Development of the Senegal River, established by Mali, Mauritania and Senegal for the purposes of an integrated project for the construction of two retention dams, one in Mali and the other between Mauritania and Senegal. That project would ensure food self-sufficiency in the area through the development of agriculture and a high level of hydro-electrical energy production. Senegal had developed excellent relations with the Gambia. Since 1968 a joint co-operation organ arranged exchanges of all types between the two countries. That long practice of good-neighbourliness had culminated in 1982 with the signing of the Agreement establishing the Confederation of Senegambia. The same spirit guided relations between Senegal and Guinea. Thousands of Guineans had settled in Senegal and were currently working there. The integration was such that it would be difficult for a foreigner to distinguish the nationals of Guinea, Guinea-Bissau, the Gambia, Mauritania and Mali from the Senegalese. The Senegalese received the same treatment in the neighbouring countries.

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(Mr. Sene, Senegal)

40. Although the concept of good-neighbourliness had an important regional aspect, in view of the concrete experience of each group of States, that did not exclude the possibility of a broader concept which transcended geographical boundaries. To enable the Sub-Committee to achieve positive results, priority should be given to the concrete elements of good-neighbourliness, taking the experience of each State and each group of States as a starting-point in order to arrive ultimately at a suitable legal framework for governing the relations of good-neighbourliness between the States. The Sub-Committee should first identify the areas in which neighbouring States should maintain relations of good-neighbourliness: security along borders, the movement and settlement of persons, measures to cope with natural disasters, the exploitation of common resources and other areas. That was why his delegation attached particular importance to part II of the list included in the report of the Sub-Committee. At the current stage, the Sub-Committee should carry out exploratory work by gathering as much information as possible on the experience of each State or group of States in the field of co-operation. On the basis of that information, it could then begin the work of drafting by reporting on the results in a document whose nature would be determined at the appropriate time.

41. Mr. EDWARDS (United Kingdom), speaking on behalf of the 12 States members of the European Community, said that the strengthening and development of relations between neighbouring States could make an important contribution to the cause of international peace and security, as demonstrated by the close co-operation within the framework of the European Community. Nevertheless, the Twelve questioned whether the notion itself of good-neighbourliness corresponded to any separate principle of international law. There was little practical use in continuing attempts to identify a concept that might somehow be considered as the basis for a new legal principle, when all the necessary laws already existed. The task of identifying the elements of good-neighbourliness had not been completed, and many delegations were unhappy with the elements listed in the working paper submitted by Romania and Poland (A/C.6/41/SC/CRP.1) and were concerned at the repetitions in it. Moreover, although it was still incomplete and agreement on it had not been reached, the list raised doubts as to whether that kind of approach could provide a basis for the preparation of an international document or, indeed, whether drawing up such a list was the appropriate objective to pursue in considering the item in the context of the efforts to rationalise the work of the United Nations, because existing principles and norms should not be repeated or reformulated. What was important was the fulfilment by States of their international obligations, particularly those laid down in the Charter of the United Nations. Thought should be given to what should be done to complete consideration of the item, in the context of general consideration of how to make the best use of the resources of the Sixth Committee. It was necessary to adopt a brief resolution, similar to General Assembly resolution 40/419, to the effect that the consideration of that agenda item should continue and should be completed next year within the framework of a sub-committee of the Sixth Committee. It was hoped that agreement could be reached on draft resolution A/C.6/41/L.17.

42. Mr. ROMPANI (Uruguay) said the view had prevailed within the Sub-Committee on Good-Neighbourliness that a comprehensive list of examples of good-neighbourly conduct among States should be prepared. Such examples could, however, be listed only if there was a provisional definition. He therefore proposed the following: the term "good-neighbourliness" covered the whole range of relations existing between different States by reason of contiguity, proximity or affinity, in accordance with the specific principles of the Charter of the United Nations and the principles of international law generally accepted by the international community. A distinction should be drawn between "contiguity" and "proximity", while "affinity" - which could exist between States which were neither contiguous nor close to one another - could refer to a community of interests, ideals or historical destiny.

AGENDA ITEM 130: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-EIGHTH SESSION (continued) (A/C.6/41/L.18)

43. The CHAIRMAN announced that China, France, Mexico, Pakistan and Paraguay had become sponsors of draft resolution A/C.6/41/L.18.

AGENDA ITEM 121: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/41/L.4)

44. Mr. SENANAYAKE (Sri Lanka) said that in the adoption of draft resolution A/C.6/41/L.4 at the 47th meeting, his delegation's vote had been recorded as an abstention. Sri Lanka had intended to vote in favour, and requested that the appropriate correction should be made.

AGENDA ITEM 125: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/41/L.16)

45. The CHAIRMAN said that Guatemala had withdrawn its request for a separate vote on paragraph 1 of draft resolution A/C.6/41/L.16. A recorded vote had been requested.

46. Mr. EDWARDS (United Kingdom) said that his delegation would vote against draft resolution A/C.6/41/L.16 as in 1985, owing to the reservations which the United Kingdom had on the resolution as a whole and on certain formulations. An item should not be taken from the regular programme of work of the International Law Commission and included as a separate item on the agenda of the General Assembly. Neither should the Assembly exert any kind of political pressure on the Commission. He had reservations regarding the sixth and seventh preambular paragraphs and operative paragraphs 1 and 3, and also regarding the method of identifying offences in particular, before general criteria had been elaborated.

47. Mr. BYE (Norway), speaking on behalf of Denmark, Finland, Iceland, Sweden and Norway, said that it was appropriate for the International Law Commission to prepare the draft Code of Offences against the Peace and Security of Mankind. The Nordic States would therefore vote in favour of draft resolution A/C.6/41/L.16.

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(Mr. Bye, Norway)

They considered, nevertheless, that the item should not be given special priority in the Commission's agenda, and that there was no reason why it should be a separate item on the agenda of the General Assembly. Given the objective of rationalizing work, the item could be more usefully considered under the general heading of the report of the International Law Commission. The Nordic States had reservations on parts of the text of the draft resolution which could be interpreted as giving special priority to work on the topic. They also had a reservation regarding the first part of operative paragraph 4.

48. Mr. ROSENSTOCK (United States of America) said that, for several reasons, draft resolution A/C.6/41/L.16 was a classic example of the superfluous. The position of the United States regarding the Commission's work on the item was well known. Nevertheless, the United States would not object to a resolution which would approve, in a broad and affirmative manner, the continuation of work on all the topics under consideration by the Commission. But it could not accept the need for a separate resolution simply because of the lengthy period during which work on the topic had been suspended; nor should the Commission be told how to proceed, as was proposed in operative paragraph 1 and in parts of the preamble. Furthermore, operative paragraphs 2 and 3 were repetitive, could lead to considerable expenditure, and were unlikely to serve any useful purpose. He doubted whether it would be useful for the Commission to work on that item at the expense of other, more promising topics. The United States would have no difficulty in approving a simple, standard resolution instructing the Commission to continue its work, but faced with a request for a separate resolution, it would have no alternative but to vote against.

49. Ms. CHOKRON (Israel) said that her delegation attached great importance to the draft Code of Offences against the Peace and Security of Mankind, bearing in mind, particularly, that the Jewish people had been the victims of genocide. Her delegation would nevertheless vote against draft resolution A/C.6/41/L.16 because it was not an effective and objective legal text and because there was no need for a resolution separate from the one adopted on the report of the Commission.

50. Mr. SCHRICKE (France) said that his delegation would vote against draft resolution A/C.6/41/L.16 for the same reasons which had caused it to cast a similar vote in 1985 on the corresponding draft resolution. As circumstances had not changed, his delegation would merely refer to the reasons which it had given in 1985 on the same issue.

51. Mr. GÜNEY (Turkey) said that his delegation would have preferred the item to have been dealt with in connection with the consideration of the report of the International Law Commission. Turkey saw no reason to give the item priority over other topics considered in connection with the Commission's report. It would therefore abstain in the vote.

52. A vote was taken by roll call on draft resolution A/C.6/41/L.16.

53. Nigeria, having been drawn by lot by the Chairman, was called upon to vote first.

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In favour: Albania, Algeria, Angola, Argentina, Austria, Bahrain, Bangladesh, Benin, Bhutan, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, Ethiopia, Finland, German Democratic Republic, Greece, Grenada, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mexico, Mongolia, Morocco, Mozambique, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: France, Germany, Federal Republic of, Israel, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Belgium, Canada, Italy, Japan, Netherlands, Portugal, Turkey.

54. Draft resolution A/C.6/41/L.16 was adopted by 102 votes to 5, with 7 abstentions.

55. Mr. JAMA (Somalia) said that if it had been present, his delegation would have voted in favour of draft resolution A/C.6/41/L.16.

56. Mr. HAYASHI (Japan) said that his delegation had abstained in the vote on draft resolution A/C.6/41/L.16 as it had certain misgivings regarding several paragraphs, the last preambular paragraph, in particular, and because it considered that, in view of the importance of rationalizing the work of the Organization, the item should have been included with the other topics considered in connection with the Commission's report.

57. Mrs. STORZ-CHARCARJI (Federal Republic of Germany) said that her delegation had voted against the draft resolution (A/C.6/41/L.16), as it had done the previous year, since it considered that the item currently before the Committee did not merit priority over the other topics referred to in the resolution on the report of the International Law Commission. The draft resolution just adopted caused confusion about the manner in which the International Law Commission was to interpret its mandate. The need to rationalize the work of the Organization required the adoption of a practical method. The draft resolution just adopted was defective; the request in paragraph 2 seeking the views of Member States on the conclusions contained in paragraph 185 of the report of the International Law Commission was premature, since the Commission had not yet finished its work.

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58. Mr. ROMPANI (Uruguay) said that, if his delegation had been present, it would have voted in favour of the draft resolution.

59. Mr. VAN WULFFTEN PALTHE (Netherlands) said that his delegation had abstained in the vote, since it considered that the item did not have precedence over the topics which were the subject of the resolution on the report of the International Law Commission.

AGENDA ITEM 122: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued) (A/C.6/41/L.10)

60. The CHAIRMAN announced that Colombia had joined the sponsors of draft resolution A/C.6/41/L.10, and said that, if there was no objection, he would take it that the Committee wished to adopt the draft resolution by consensus.

61. Draft resolution A/C.6/41/L.10 was adopted.

62. Ms. CHOKRON (Israel) said that she considered draft resolution A/C.6/41/L.10 ac ptable as a whole and had therefore not objected to the consensus. However, she wished to voice some reservations. Israel had participated in the negotiations leading to the adoption of the Protocols Additional to the Geneva Conventions of 1949. Protocol II strengthened the humanitarian law applicable to internal armed conflicts, while preserving the right of Governments to maintain order and legality by all legitimate means. Protocol II reflected the status of customary law. At the twenty-first Conference of the Red Cross, held in Geneva in October 1986, her delegation had expressed its intention to become a party to Protocol II with one reservation: Israel considered unacceptable the fact that the Red Shield of David was not mentioned, in either article 18 or article 12 of Protocol II, as one of the distinctive emblems of the different units of the International Red Cross. At its last conference, the Red Cross had decided to adopt in future the name of Red Cross and Red Crescent, thereby stressing further the exclusion of the Israeli emblem. Her delegation expressed once again a strong protest.

63. Additional Protocol I contained, together with positive elements, negative elements of a purely political nature which served to increase the dangers that civilian populations faced in time of war. Subjective and political elements had been introduced in determining the scope of application of Protocol I and its general principles, particularly in article 1, paragraph 4. That induced groups dissatisfied with the régime under which they lived to claim the protection of the provisions of the Protocol and they were encouraged to use all means of struggle, to resort to terrorist acts, and to utilize violence against innocent persons in the civilian population. That fact was all the more serious, since individuals and groups were treated under article 50 as civilians until such time as they killed.

64. Protocol I entirely ignored in its article 44 the distinction between combatants and non-combatants - a cornerstone and fundamental distinction of military law - in regard to both the granting of the status of prisoner of war and the protection of civilian populations. By extending the scope of application of

(Ms. Chokron, Israel)

Protocol I to non-State elements incapable of exercising sovereign functions, contradictory provisions were maintained and the proper balance between rights and obligations was disrupted.

65. For those reasons, Israel would have abstained if a vote has been taken.

66. Mr. MARTINEZ (Mexico) welcomed the fact that agreement had been reached, and announced that his country had ratified Protocol I and was considering the ratification of Protocol II.

67. Upon instructions from his Government, he observed that, as in all cases where it was announced that a resolution had been adopted by consensus, that meant, in accordance with the Charter and the rules of procedure of the General Assembly, that the resolution had been adopted without a vote, for reasons which his delegation had already given on another occasion.

68. Miss WILLSON (United States of America) said that in a letter sent to the Government of Switzerland exercising depositary functions in respect of the Protocols Additional to the Geneva Conventions of 1949, her country's Government had expressed its intentions with regard to ratification of the Protocols.

69. Although Protocol I contained some appropriate provisions, it also had fundamental defects which could not be eliminated either through reservations or interpretative declarations. Provisions such as article 1, paragraph 4, and article 44 undermined the basis of humanitarian law, endangered civilian populations and recognized as combatants groups which were not authorized to carry out the obligations imposed by the Government. That Protocol contained a series of unacceptable provisions from the military standpoint.

70. On the other hand, the Government of the United States planned to submit shortly Protocol II to the Senate for its consideration, and intended to ratify it with an appropriate reservation or interpretative declaration.

71. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 122.

AGENDA ITEM 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/C.6/41/L.2)

72. Mr. ALI (Democratic Yemen) said that, if he had been present during the vote on draft resolution A/C.6/41/L.2, he would have voted in favour.

ORGANIZATION OF WORK

73. The CHAIRMAN said that the chairmen of the regional groups had not yet provided him with comments on the letter received from the Chairman of the Fifth Committee in connection with item 111, "Programme planning" regarding the section of the budget on international law and justice. If there was no objection, he

/...

(The Chairman)

would take it that he was authorized to reply that the Sixth Committee had no comments to make on the revisions proposed by the Committee for Programme and Co-ordination to that section.

74. It was so decided.

75. The CHAIRMAN announced that the General Assembly had approved the General Committee's proposal whereby attention should be drawn to paragraphs 18 and 19 of General Assembly decision 34/401, which appeared in annex VI of the rules of procedure of the General Assembly (A/520/Rev.15). Accordingly, he called on the regional groups to take the necessary steps to facilitate the work of the Assembly at its forty-second session.

The meeting rose at 5.20 p.m.