

GENERAL ASSEMBLY

TWELFTH SESSION

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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 55

Draft Code of Offences against the Peace and Security of Mankind (concluded)

1. Mr. LACHS (Poland), speaking on a point of order, said that the text of the draft resolution approved by the Sixth Committee at its 546th meeting, as it appeared in document A/C.6/L.421, did not take into account an amendment presented at that meeting by his delegation. His amendment, which had been accepted by the sponsor of the draft resolution (A/C.6/L.418), had called for the omission of the word "all" in the phrase "all Member States" in operative paragraph 2—a paragraph which had been added to the original text in consequence of an amendment submitted by Colombia and Spain (A/C.6/L.419).

2. The CHAIRMAN said that the Polish representative's comment was justified, and that the text in question would be corrected accordingly.

AGENDA ITEM 56

International criminal jurisdiction (A/3649; A/C.6/ L.420) (concluded)

3. Mr. ROLING (Netherlands) said that he would vote against the joint draft resolution (A/C.6/L.420) as a mark of protest against the manner in which the Sixth Committee dealt with such important questions as the draft Code of Offences against the Peace and Security of Mankind and international criminal jurisdiction. The Committee had decided not to debate either of those questions, although it was a matter of carrying into effect the principles established in the judgements of the International Military Tribunals at Nuremberg and at Tokyo. He had been a member of the Tokyo Tribunal and could not forget the difficulties experienced by the judges of those *ad hoc* bodies in endeavouring to perform the revolutionary task of applying new law. Their one consolation had been the thought that universally applicable laws would subsequently be formulated and that an international criminal jurisdiction, governed by a permanent statute, would be established. The Nether-

lands delegation believed that the adoption of the joint draft resolution would amount to a betrayal of the principles contained in the judgements of the Tribunals at Nuremberg and Tokyo and would consequently vote against it.

4. Mr. BASTIEN (Haiti) regretted that the work of the Sixth Committee was not more constructive. Most of the agenda items had, in fact, been buried, and it was now proposed, on the basis of General Assembly resolution 898 (IX), to defer the question of an international criminal jurisdiction until such time as the General Assembly took up the question of defining aggression and that of a draft Code of Offences against the Peace and Security of Mankind. That proposal gave the impression that the Committee had lost all interest in those matters and overlooked resolutions 260 A and B (III), which had envisaged the possibility of establishing an international judicial organ for the trial of persons charged with genocide.

5. The Haitian delegation felt that the question of an international criminal jurisdiction was not linked with that of defining aggression to the same extent as the question of the draft Code of Offences against the Peace and Security of Mankind. It would therefore be unable to vote in favour of the joint draft resolution.

6. Mr. CHAUMONT (France) said that his delegation would vote in favour of the joint draft resolution for reasons of logic.

7. By the resolutions which it had adopted at its ninth session, the General Assembly had established a connexion between the three questions of defining aggression, of the draft Code of Offences against the Peace and Security of Mankind and of international criminal jurisdiction. That position had not been reversed, as was proved by the almost unanimous adoption, at the preceding meeting, of the draft resolution on the draft code. Consideration of the first two questions having been deferred, logic demanded that the discussion of the third question should also be adjourned.

8. The French delegation did not share the view of the Netherlands representative. The attitude taken at the current session by some delegations was not prompted by any desire to abandon or repudiate positions adopted previously. Nobody could dispute the part played by the French delegation in the movement to confirm the Nuremberg principles and to establish an international criminal jurisdiction. The French delegation's vote in favour of the joint draft resolution should therefore not be construed as a change of views. France was always in favour of the development of international law, but its present attitude was based on the same considerations as those that had influenced its decision on the question of defining aggression. It believed that it would be unrealistic to contemplate the establishment of an international criminal juris-

diction in the present international atmosphere. In its view, the deferment of consideration of the question would in fact even contribute to the ultimate establishment of such an organ.

9. The French delegation also could not share the views of the Haitian representative. The question of defining aggression had not been buried, and the same applied to the questions of international criminal jurisdiction and the draft Code of Offences against the Peace and Security of Mankind; the General Assembly had merely ruled at its ninth session that the three questions were linked, and the existence of that link had been reaffirmed at the current session.

10. The Sixth Committee's work had admittedly yielded no positive results. But the same could be said of the other Committees of the Assembly. There had been hopes that the current session would be the disarmament session, but unfortunately all the important questions had had to be deferred. The Sixth Committee could not ignore facts and act differently from the Assembly's other Committees. The French delegation was convinced that the time would come when the various Committees, including the Sixth, would be in a position to do truly constructive work.

11. In conclusion, he said that, in voting for the joint draft resolution, the French delegation was in no way rejecting the important ideas contained in the draft code and in the draft statute of an international criminal court.

12. Mr. LUNA (Spain) said that, besides the link between the three questions, there was yet another reason for deferring consideration of the question of international criminal jurisdiction. It was not merely a question of preparing a set of rules applicable to a judicial organ responsible for judging acts of States and international crimes, but also, and even primarily, a matter of recognizing a sociological phenomenon. In order to do that, it was obviously necessary for the international community to have developed sufficiently and to have accepted that phenomenon for a certain length of time. If world public opinion was not ready to accept the notion of an international criminal jurisdiction, if it had no clear ideas on international justice and the rules of international law which should be applied, it was unrealistic to try to establish such a judicial organ.

13. The Spanish delegation did not share the views of the Haitian delegation. It believed that juridical rules had to be established with due regard to situations of fact. Law was a political instrument and had to be applied in the light of circumstances. That was as true of international law as of national law. Jurists could not disregard realities, and had to admit that it was impossible, at the present time, to discuss the question of an international criminal jurisdiction, which was essentially dependent on world political thought.

14. Mr. MALOLES (Philippines) said that, in presenting the joint draft resolution, his delegation had had no intention of betraying the Nuremberg principles, any more than it had sought to bury the question. It had proposed a rational and empirical approach, which seemed to be the only one possible in the circumstances. The procedure contemplated took into account, among other things, the views already expressed by the General Assembly on the link between the three questions.

15. International law had not developed much since Grotius, and the code which was to be drawn up would have to be a body of rules of international law applicable to all circumstances. That work could only be undertaken at a time when the international situation allowed some possibility of success. It would be illogical to establish an international criminal jurisdiction before adopting a code of offences against the peace and security of mankind, as the court would then have no law that it could apply. The need to postpone the question of international criminal jurisdiction whenever there was a postponement of the question of defining aggression—and consequently also of the draft code—had been recognized in paragraph 9 of the Secretary-General's note (A/3649).

16. Mr. BASTIEN (Haiti) said that he could not accept the Spanish representative's assertion that law was a political instrument, as he found it difficult to admit that judgements as far-reaching as those of the Tribunals at Nuremberg and Tokyo had a purely political basis and not a legal one.

17. Mr. VAZQUEZ CARRIZOSA (Colombia) said that the joint draft resolution was in no way meant to bury the question. Mention could have been made in the text of the draft resolution of efforts already made, but those efforts were known to all. Clearly, the establishment of an international criminal court could not be envisaged until after aggression had been defined and a draft code adopted. As the Secretary-General's note (A/3649) showed, the question had already been discussed by the United Nations and it was only the lack of a code which had led to postponement of consideration of the report of the 1953 Committee on International Criminal Jurisdiction (A/2645). The fact that no agreement had been reached regarding the article of the code dealing with the definition of aggression proved that it would be impossible to reach agreement on the code as a whole.

18. Existing international courts had been established gradually, and it was impossible to create a new court without first ascertaining the nature of its task. He could not agree with the representative of Haiti that the joint draft resolution would prevent further study of the question at a later date. It was not easy to reconcile the views of eighty-two Member States, but it was to be hoped that a pause would prove beneficial. Consequently, the Colombian delegation would vote in favour of the joint draft resolution.

19. Mr. EL-ERIAN (Egypt) recalled that his delegation had always supported every attempt to promote the development of international law. As he had said during the debate on the definition of aggression, the emergence of international criminal law constituted one of the most important advances of the post-war period, and Egypt was very much in favour of widening the scope of that new branch of the law of nations. However, the decisions taken at the twelfth session of the General Assembly proved that it was not at present possible to reach an agreement on questions linked with the establishment of an international criminal court. Consequently, the Egyptian delegation would vote in favour of the joint draft resolution, although the text could be improved by the addition of a second preambulatory paragraph worded in the same way as the third preambulatory paragraph of the draft resolution on the draft Code of Offences against the Peace and Security of Mankind (A/C.6/L.421) adopted by the Committee at its 546th meeting.

20. Mr. LUNA (Spain), replying to the Haitian representative's observations, said that justice had to conform to certain overriding criteria, but that political interests could never prevail over law provided that law was based on reality.

21. Mr. KLUTZNICK (United States of America) approved the verbal amendment to the joint draft resolution proposed by the Egyptian delegation. He said that all were aware of the views held by his delegation and by all the other delegations. As the joint draft resolution was merely procedural in nature, its adoption would not affect the positions of delegations on the substance of the question.

22. Mr. GEORGIEV (Bulgaria) said that he was sorry to have witnessed the solemn interment of international law. Some of the mourners had unfortunately brought about the disaster themselves. Despite its desire to contribute to the development of international law, the Bulgarian delegation now felt obliged to vote in favour of the joint draft resolution, as it had voted in favour of the draft resolution adopted by the Committee at its 546th meeting (A/C.6/L.421). Nevertheless, the contention that such questions should be postponed until a more favourable time was a poor contribution to the cause of peace. While the results at the legal level were merely negative, at the political level the records of the session would show that a minority had succeeded in imposing its will on the majority which still strove to develop international law.

23. Mr. BRAVO (Chile) accepted, on behalf of the sponsors of the joint draft resolution (A/C.6/L.420), the verbal amendment submitted by the Egyptian representative.

24. The CHAIRMAN put to the vote the draft resolution submitted by Chile, the Philippines and Spain (A/C.6/L.420), as amended.

The draft resolution, as amended, was adopted by 54 votes to 2, with 2 abstentions.

25. Mr. VALLAT (United Kingdom) said that he did not share the pessimistic attitude of the Bulgarian representative, and thought that the draft resolution for which he had voted did in fact contribute to the development of international law. Greater emphasis should always be placed on the development of the law of peace than on the law of war.

26. Mr. ROSENNE (Israel) said that his delegation had abstained from voting on the joint draft resolution because it did not believe that the establishment of an international criminal court was so absolutely dependent as some had claimed on a definition of aggression and on the draft Code of Offences against the Peace and Security of Mankind. However, the Israel delegation recognized that the present atmosphere was not suitable for a discussion of the question.

27. Mr. BRAVO (Chile) said that, by sponsoring the joint draft resolution and voting in its favour, his delegation had wished to stress that the question was closely connected with the draft code of offences and the definition of aggression. As agreement on those questions could only be reached subject to a considerable number of reservations, it was preferable to postpone consideration for the time being.

28. Mr. MAURTUA (Peru) said that he had voted in

favour of the joint draft resolution as that was the only realistic course to adopt. It was clearly impossible to envisage the establishment of an international criminal court which had no code that it could apply.

AGENDA ITEM 53

Report of the International Law Commission on the work of its ninth session (A/3623; A/C.6/L.400, A/C.6/L.405) (concluded)*

29. The CHAIRMAN recalled that the Sixth Committee had postponed taking a decision on the report of the International Law Commission (A/3623) pending the Fifth Committee's decision regarding payments to members of the International Law Commission and the duration of the Commission's next session.

30. As the Fifth Committee had taken a decision that was in keeping with the views expressed by the Sixth Committee, he invited members to vote on the joint draft resolution before the Committee (A/C.6/L.400), as amended by Ceylon (A/C.6/L.405); the sponsors of the draft had accepted the Ceylonese amendment.

The draft resolution, as amended, was adopted unanimously.

Completion of the Committee's work

31. The CHAIRMAN said that the Sixth Committee had completed its agenda.

32. Mr. MALOLES (Philippines); Mr. VAZQUEZ CARRIZOSA (Colombia), speaking on behalf of a group of Latin American delegations; Mr. KLUTZNICK (United States of America); Mr. HSUEH (China); Mr. EL-ERIAN (Egypt), speaking on behalf of the Arab countries; Mr. PERERA (Ceylon), speaking on behalf of the countries of the British Commonwealth; Mr. MAURTUA (Peru); Mr. CHAUMONT (France), speaking also on behalf of the delegations of Belgium, Greece, the Netherlands, Spain, Portugal and the Scandinavian countries; and Mr. ALVARADO (Honduras), paid a warm tribute to the brilliance, generosity, impartiality and efficiency displayed by the Chairman, Mr. Pérez Pérez. They also paid a tribute to the outstanding ability displayed during the proceedings by the Vice-Chairman, Mr. Georgiev, and the Rapporteur, Mr. Tabibi. They expressed their appreciation to Mr. Stavropoulos (Legal Counsel) and Mr. Liang (Secretary of the Committee) for their valuable co-operation, and thanked all those members of the Secretariat who had contributed to the efficient dispatch of business. They congratulated the Chairman and all the representatives for having maintained the standards of mutual respect and harmony that were traditional in the Sixth Committee.

33. Mr. USACHEV (Union of Soviet Socialist Republics), speaking also on behalf of the Ukrainian and Byelorussian delegations; Mr. LACHS (Poland), speaking also on behalf of the Czechoslovak delegation; and Mr. GLASER (Romania), associated themselves with the tributes paid to the Chairman, the Vice-Chairman and the Rapporteur as well as to representatives of the Secretary-General and to staff members of the Secretariat.

34. Mr. TABIBI (Afghanistan), Rapporteur, also paid a tribute to the Chairman, the Vice-Chairman and all the members of the Committee, as well as to Mr.

*Resumed from 529th meeting.

Stavropoulos, Mr. Liang and all the staff members of the Secretariat who had rendered valuable service to the Committee.

35. Mr. GEORGIEV (Bulgaria), Vice-Chairman, wished to associate himself with the tributes paid to the Chairman, the Rapporteur, Mr. Stavropoulos, and Mr. Liang, who deserved thanks for their spirit of co-operation which had greatly facilitated the work of the Committee's officers. The Chairman and the Rapporteur had throughout demonstrated great human qualities, which were essential for all those wishing to contribute to the political development of their countries and the world. He wished to express his feelings of warm friendship towards all members of the Committee, regardless of any divergencies of views. Argument was indeed the life-blood of the Committee's work.

36. Finally, Mr. Georgiev wished Mr. Morozov a speedy recovery.

37. The CHAIRMAN asked the Soviet Union representative to communicate to Mr. Morozov his best wishes for a swift recovery.

38. He said that he greatly appreciated the kind words addressed to him as Chairman, and he associated himself unreservedly with the tributes paid to the Vice-Chairman, the Rapporteur and all members of the Committee, as well as to the staff members of the Secretariat, whose spirit of co-operation, sense of responsibility and competence he had greatly appreciated.

The meeting rose at 1.40 p.m.

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