



SUMMARY RECORD OF THE 61st MEETING

Chairman: Mr. CALLE Y CALLE (Peru)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 111: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (continued) (A/36/416 and 535)

1. MR. EMKHSAIKHAN (Mongolia), after recalling that his delegation's position on the item under consideration had been put forth at the thirty-fifth session of the General Assembly (A/C.6/35/SR.11) and that the comments of his Government had been published in document A/35/210/Add.1, said that his Government fully supported the idea of drafting a Code of Offences against the Peace and Security of Mankind. Mongolia, which had made a concrete contribution to the struggle against facism and which had participated directly in the restoration of peace in Asia and the Middle East 36 years earlier, considered that the elaboration and adoption of such a Code could contribute to strengthening international peace and security and achieving the noble aims enshrined in the Charter of the United Nations.
2. At the present time, when the international situation was deteriorating and the arms race escalating and when some were trying to put forward the concept of limited nuclear war, it was most timely to resume the work of the General Assembly on the question of the speedy elaboration of a Code. The Code envisaged should not only specify which acts should be considered the greatest offences against the peace and security of mankind but should also provide for more effective punitive measures for persons guilty of such acts and their accomplices. .
3. The draft Code submitted to the General Assembly in 1954 by the International Law Commission could serve as a basis for formulating such a Code. In order to produce such a draft, it was necessary to take into consideration legal instruments such as the Definition of Aggression approved by the General Assembly in 1974 [resolution 1314 (XXIV)], the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, the 1977 Additional Protocols to the 1949 Geneva Conventions, the Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity, adopted by the General Assembly in 1968, General Assembly resolution 3074 (XXVIII) on the same question and other international legal instruments designed to combat offences against the peace and security of mankind.
4. With regard to the analytical paper prepared by the Secretary-General (A/36/535), his delegation found particularly useful the parts dealing with the analysis of the comments of Member States, the scope of the proposed Code, the question of the attribution of responsibility and that of the implementation of the proposed Code. However, since that document had been issued only during the month of October, when his delegation had been engaged in studying the voluminous report of the International Law Commission, it had not been able to study it thoroughly, and it would therefore be prepared to wait for the thirty-seventh session of the General Assembly to make known its views on the subject.
5. With regards to continuation of the work on the question, his delegation believed that, in view of its political connotations, the best course would be to begin with a general exchange of views in the Sixth Committee, with a view to formulating guidelines. The question might then be referred to the International Law Commission, to which the guidelines and other relevant documents would be transmitted.

6. MR. SHAH (Pakistan) said that, since the submission of the draft Code of Offences against the Peace and Security of Mankind by the International Law Commission in 1954, there had been radical changes in the international situation, and the nature of such offences had also changed significantly. Direct military aggression had been replaced by types of indirect aggression, such as economic aggression, internal subversion and interference in the internal affairs of States, racial discrimination, foreign occupation and non-recognition of the right of peoples to self-determination, which necessitated a re-examination of the draft Code.

7. Furthermore, new instruments relating to international relations had been adopted within the framework of the United Nations, for example, the Convention on the Prevention and Prosecution of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, the Definition of Aggression adopted by the General Assembly in 1974, the two 1977 Additional Protocols to the 1949 Geneva Conventions and various other legal instruments.

8. In order for the Code to be effective, it was essential that it should be adapted to the realities of the current international situation and that account should be taken of those new instruments. Moreover, the draft Code under consideration did not contain any provisions on criminal proceedings, the forum before which such proceedings would be instituted, the nature of punishment and the execution of sentence. Those lacunae should therefore be filled.

9. With regard to the attribution of criminal responsibility, it was not clear from the draft Code whether its field of application would extend to State authorities or only to the individuals constituting those authorities and, in the latter case, how the individuals responsible would be determined under article I. In that regard, it should be noted that the question of State responsibility and the effective engagement of that responsibility at the international level was currently being considered by the International Law Commission, and it would perhaps be desirable to know the latter's viewpoint on the subject of the nature or extent of State responsibility for offences against the peace and security of mankind before taking up consideration of the draft Code.

10. His delegation suggested that the draft Code should be referred back to the International Law Commission for further consideration in the light of observations made in the course of the current debate.

AGENDA ITEM 120: REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS: REPORT OF THE SECRETARY-GENERAL (continued)

11. THE CHAIRMAN announced that Mali had become a sponsor of draft resolution A/C.6/36/L.13/Rev.1.

The meeting rose at 3.30 p.m.