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held on  
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at 3 p.m.  
New York

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SUMMARY RECORD OF THE 63rd MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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10 December 1984

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The meeting was called to order at 3.30 p.m.

AGENDA ITEM 122: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/39/L.6/Rev.1)

1. Mr. BRING (Sweden), introducing draft resolution A/C.6/39/L.6/Rev.1, said that it was closely modelled on resolution 37/116. In the third preambular paragraph, however, the wording had been changed slightly to reflect that of article 1 of the Geneva Conventions and Protocol I, and the words "within the scope of the relevant international instruments" had been added to avoid differing interpretations. The main aim of the draft was to draw attention to the need to obtain the same virtually universal acceptance of the Protocols as was enjoyed by the four Geneva Conventions. It also brought out the need to ensure respect for the humanitarian rules relating to armed conflicts and the importance of protecting the civilian population, especially women and children, in armed conflicts. The draft was a very important one as it dealt with a matter that could mean the difference between life and death for victims of armed conflicts. He therefore hoped that it could be adopted without a vote.

2. Draft resolution A/C.6/39/L.6/Rev.1 was adopted without a vote.

3. Mr. ROSENSTOCK (United States of America), explaining his delegation's position, said the United States felt that the draft resolution was an important one. His delegation was pleased to have been able to take part in its adoption. It had done so, however, without prejudice to its position on the substance of the Protocols, which were currently being considered by his Government.

4. Mr. BAKER (Israel) said that Israel had played an active part in the negotiations preceding the adoption of the two Protocols and had even initiated several of their substantive provisions. However, despite the positive elements of Protocol I, political terminology and transient considerations had unfortunately been included in it, preventing Israel from participating in the consensus on the Protocol as a whole. The politically motivated provisions of article 1, paragraph 4, would give rise to unending claims and counter-claims as to the applicability of the Protocol, to the detriment of its genuine humanitarian provisions, and therefore constituted a significant step backwards in the development of international humanitarian law. The relative ease with which any group claiming to meet the political criteria of article 1, paragraph 4, could consider itself entitled to privileges and status under the Protocol would only serve to facilitate, encourage and license the activities of terrorists, at a time when the international community was making great efforts to stamp out the scourge of terrorism. The methods and objectives of terrorists - indiscriminate violence against innocent victims - ran completely counter to the notion and underlying aims of humanitarian law.

5. Article 44, which diluted the requirements for prisoner-of-war status universally accepted in the Third Geneva Convention, could only serve to increase the danger that the Protocol might be abused and invoked as a shelter for terrorist activity. Combatants must comply with all the laws of war and other applicable

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(Mr. Baker, Israel)

rules of international law, under all circumstances. The need for combatants to distinguish themselves clearly from non-combatants was vital both for genuine non-combatants and for the protection of combatants themselves who became war victims. By weakening the requirement for differentiating between combatants and the civilian population, article 44 intensified the danger to the life and safety of innocent civilians. It clearly did not reflect existing international law, but was an innovation towards which all States were free to determine their attitude in accordance with their own interests. The attempt to bring non-State elements within the scope of the Protocol had led to internal contradictions in a text based on the existence of organized States as subjects of international law, and had undermined the principle of reciprocity of legal rights and obligations necessary for the satisfactory application of international treaties.

6. His delegation saw no justification whatsoever for the arbitrary and politically motivated withholding of recognition of the red shield of David as a humanitarian emblem and the deliberate exclusion of the Magen David Adom Society from full participation in the International Committee of the Red Cross.

7. While the draft resolution was by and large unobjectionable, his delegation would have had to abstain if it had been put to the vote.

AGENDA ITEM 120: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/39/L.19)

8. The CHAIRMAN announced that Zaire had become a sponsor of draft resolution A/C.6/39/L.19.

9. Mrs. RAMIRO-LOPEZ (Philippines), introducing draft resolution A/C.6/39/L.19, said that it was a procedural text which provided for the continuation of the Sixth Committee's work on the progressive development of the principles and norms of international law relating to the new international economic order. The preambular paragraphs repeated those of earlier resolutions on the item. By adopting the resolution, the General Assembly would express its appreciation to UNITAR for the analytical study and would urge Member States to submit not later than 30 June 1985 their views with respect to the study, and proposals concerning further action. The sponsors were fully aware of the importance and implications of the draft. The elucidation of the legal scope and implications of the new international economic order was a clear and exciting challenge. Numerous legal principles and norms were involved, but the task had to be undertaken if international law was to be placed in the service of development, thus helping to improve the lives of millions. She hoped that the draft resolution could be adopted without a vote.

10. The CHAIRMAN said he understood that the Sixth Committee wished to put the draft resolution to a vote.

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11. Mr. ROSENSTOCK (United States of America), speaking in explanation of vote, said that, whereas his delegation could have accepted the adoption without a vote of a purely procedural text, it could not accept some of the preambular provisions of draft resolution A/C.6/39/L.19, which referred to the need for a systematic and progressive development of the principles and norms of international law relating to the new international economic order. His delegation did not recognize the existence of such norms and did not feel that there was sufficient political agreement to warrant an attempt to elaborate them. Nor could it agree with the enthusiastic expression of appreciation in paragraph 1 for a study that dealt with areas and régimes which his delegation did not consider appropriate in the context. The United States would therefore abstain.

12. Mr. SATELER (Chile) said that while his delegation had always supported the substance of the item, it had abstained in the vote in the past because it rejected the erroneous classification relating to Antarctica in the UNITAR study. The draft before the Committee was, however, procedural, and his delegation would vote in favour of it on the understanding that its reservations remained valid.

13. Mr. CULLEN (Argentina) said his delegation regretted that, at the two previous sessions of the General Assembly, it had had to abstain in the vote on the respective resolutions because it objected to the classification relating to Antarctica in the UNITAR study. It did, however, support the substance of the item and would vote in favour of the procedural text before the Committee, although it maintained its earlier objections.

14. Draft resolution A/C.6/39/L.19 was adopted by 92 votes to none, with 16 abstentions.

15. Mr. BENAVIDES (Spain), speaking in explanation of vote, said that, while his delegation had voted in favour of the draft, it felt that the deadline for the submission of views on the subject should be later. In addition, his delegation's vote did not prejudge its position with regard to the further action referred to in paragraph 2.

16. Mr. MAKAREWICZ (Poland) said that, although his delegation still had doubts as to whether UNITAR was the best body for conducting the study, it had voted in favour of the draft in order to express its satisfaction at the completion of the preparatory stage of the work. He was convinced that the development of the principles and norms of international law relating to the new international economic order would contribute to the promotion of the new order, the establishment of which was a task that required the active participation of all groups of States.

17. Mr. OUEDRAOGO (Burkina Faso), Mr. HOUFFANE (Djibouti) and Mr. LOULICHKI (Morocco) said that they would have voted in favour of draft resolution A/C.6/39/L.19 if they had been present at the voting.

AGENDA ITEM 125: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/39/L.21)

18. Mr. ABDEL KHALEK (Egypt), introducing draft resolution A/C.6/39/L.21, said that Zaire had joined its sponsors. They believed that the elaboration of the draft Code would contribute to strengthening international peace and security, thus promoting the implementation of the purposes and principles set forth in the Charter. They also believed that the International Law Commission should fulfil its task on the basis of early elaboration of draft articles on that topic.

19. The CHAIRMAN said that a recorded vote on the draft resolution had been requested.

20. Mr. WOKALEK (Federal Republic of Germany), speaking in explanation of vote, said that the draft resolution had some major flaws. It covered an item already dealt with in the regular work of the International Law Commission. The separate treatment of the item by the Sixth Committee could eventually jeopardize the consensus achieved so far on the work of the Commission itself. He wondered why priorities were being set in the mandate of the Commission for an item on which consensus had not yet been reached. Moreover, detailed instructions to the Commission on how the item was to be dealt with should be avoided. In order to fulfil its task, the Commission needed a climate of confidence and co-operation, undisturbed by short-term political manoeuvres. Otherwise, it was bound to fail in its primary objective of promoting the progressive development of international law and its codification.

21. The controversial discussion of the item endangered the continuation and delayed the conclusion of the Commission's work.

22. Mr. BERMAN (United Kingdom) said that his delegation would abstain in the vote out of regard for the African sponsors and in recognition of the fact that they regarded the item as one of considerable political importance. That was also the view of his own delegation, which, nevertheless, had severe reservations about the draft resolution as a whole.

23. The maintenance of the tradition of consensus on the annual resolution on the programme of work of the International Law Commission was something to which the United Kingdom was strongly attached. He therefore questioned the wisdom of plucking one item out of the programme and giving it a separate resolution as well as a separate place in the agenda of the General Assembly. It would be inconsistent with the whole notion of allowing the Commission to continue its work on the topic in its usual lawyer-like fashion if political pressure were put on the Commission. He therefore earnestly appealed to the sponsors to consider whether their own interests or the interests of all were well served by a continuation of the separate resolution/separate agenda item syndrome.

24. He also wished to recall the concern expressed by his delegation over certain phrases and paragraphs in resolution 38/132. Many of them had reappeared in the present draft resolution. He regretted that all sides of the debate which had taken place in the Sixth Committee had not been adequately reflected in the draft resolution.

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(Mr. Berman, United Kingdom)

25. His delegation had difficulties with the sixth and last preambular paragraphs and with paragraphs 1 and 3. The latter paragraphs gave the impression that the Sixth Committee lacked confidence that the International Law Commission would carry out the mandate conferred upon it. They also gave the impression that the General Assembly was not content with the ordering of priorities arrived at by the Commission.

26. Mr. SCHRICKE (France) said that his delegation had usually abstained in the vote on the resolution on the draft Code for reasons which had been expressed in previous years. It had reservations about the very existence of a separate resolution devoted to the draft Code when that topic had already been entrusted to the International Law Commission, on whose report there was a resolution traditionally adopted by consensus.

27. France's abstention was particularly justified at the present time since the Commission had referred to the question of nuclear weapons in its work on the topic. His delegation feared that the Commission would lose credibility, and therefore effectiveness, as a juridical body if it took up such an issue. Further, it did not seem realistic to be seeking consensus on the definition of offences against the peace and security of mankind, while including in the definition the use of nuclear weapons. A further consequence would be the undermining of the principle of deterrence and the jeopardizing of peace itself. His delegation would merely abstain in the vote on the draft resolution out of consideration for the Commission and so as not to call into question the consensus which was necessary for its continued work.

28. Mr. HAGEN (Norway) said that the delegations of Denmark, Finland, Iceland, Sweden and Norway, on whose behalf he was speaking, considered the work on the draft Code of Offences to be an appropriate task for the International Law Commission, and would vote in favour of the draft resolution.

29. However, they did not consider that the item should be accorded higher priority than many of the items on the agenda of the Commission, nor did they see any special reason for keeping the subject as a separate item on the agenda of the Sixth Committee. It could more usefully be discussed in the Committee under the general heading of the report of the International Law Commission. They therefore wished to express their reservations in respect of certain language in the draft resolution which might be interpreted as meaning that special priority should be given to that particular item. They also wished to express reservations about paragraph 3 of the draft resolution.

30. Mr. ROSENSTOCK (United States of America) said that his delegation was not prepared to break the consensus on the resolution on the International Law Commission in order to record its view that it would not be prudent to request the Commission to continue its work on the draft Code of Offences. There was no consensus on that topic, and the action to push the draft resolution to a vote was an irresponsible one. Some delegations supported that action out of a genuine belief in the importance of the topic, while others saw it as a means of side-tracking the Commission from its work on other topics, such as jurisdictional immunities of States and their property, State responsibility and international

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(Mr. Rosenstock, United States)

liability for injurious consequences arising out of acts not prohibited by international law. While he doubted that the Commission would be easily misled, the effect of such action was to jeopardize the basis on which it must work.

31. There was a long-standing tradition of adopting the resolution on the International Law Commission by consensus since that resolution provided the mandate for the delicate work of the Commission. A separate resolution would therefore be redundant or have a subversive effect on the Commission, its relationship with the Committee and, in the long term, the prospects for the codification and progressive development of international law.

32. The United States would abstain in the vote out of deference to the good intentions of the sponsors of the draft resolution.

33. Mr. TREVES (Italy) said that Italy was a sponsor of the draft resolution on the International Law Commission. It would therefore be inconsistent for his delegation to support the present draft resolution, which sought to alter the programme of work and the priorities of the Commission. Italy would therefore abstain.

34. Mr. BAKER (Israel) said that his delegation would abstain in the vote since the topic was already being considered by the Commission. The latter did not require separate instructions from the Sixth Committee.

35. A recorded vote was taken on draft resolution A/C.6/39/L.21.

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahrain, Benin, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, Finland, Gabon, German Democratic Republic, Ghana, Greece, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Ivory Coast, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malaysia, Maldives, Mali, Mauritania, Mexico, Mongolia, Morocco, Mozambique, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Senegal, Sierra Leone, Sudan, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: None.

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Abstaining: Belgium, Burma, Canada, France, Germany, Federal Republic of, Israel, Italy, Japan, Luxembourg, Malawi, Netherlands, Portugal, Spain, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

36. Draft resolution A/C.6/39/L.21 was adopted by 96 votes to none, with 16 abstentions.

37. Mr. HOLMES (Ireland), speaking in explanation of vote, said that his delegation had voted in favour of the draft resolution since it supported the elaboration of the draft Code of Offences and since the item would be examined at the fortieth session of the General Assembly in conjunction with the report of the International Law Commission. Ireland did not think that the topic should be included as a separate item and it would have preferred if the resolution did not refer to the early elaboration of the draft articles or to the urgency of the subject. It was important that the Commission should be given sufficient time to carry out its work so that it could produce a generally acceptable and therefore authoritative text.

38. Mr. NOLAN (Australia) said that his delegation's vote in favour of the draft resolution reflected its support for the consideration of the topic by the International Law Commission. Since the Commission had a packed agenda containing a wide variety of important issues, it would be unwise to give special priority to the draft Code.

39. His delegation had reservations about suggestions to the Commission on how it should organize its work. Moreover, if a separate vote had been taken on paragraph 3, his delegation would have voted against.

40. Mr. AKHTAR (Bangladesh) and Mr. VREEDZAAM (Suriname) said that their delegations would have voted in favour of draft resolution A/C.6/39/L.21 if they had been present during the voting.

AGENDA ITEM 133: 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.6/39/L.18 and Corr.1)

41. The CHAIRMAN announced that Brunei Darussalam, the Ivory Coast, Zaire and Zambia had become sponsors of draft resolution A/C.6/39/L.18 and Corr.1.

AGENDA ITEM 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)  
(A/C.6/39/L.7)

42. The CHAIRMAN announced that Zaire had become a sponsor of draft resolution A/C.6/39/L.7.



AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/C.6/39/L.13)

43. The CHAIRMAN announced that Burkina Faso, the Lao People's Democratic Republic, Zaire and Zambia had become sponsors of draft resolution A/C.6/39/L.13.

AGENDA ITEM 134: DRAFT DECLARATION ON SOCIAL AND LEGAL PRINCIPLES RELATING TO THE PROTECTION AND WELFARE OF CHILDREN, WITH SPECIAL REFERENCE TO FOSTER PLACEMENT AND ADOPTION NATIONALLY AND INTERNATIONALLY: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.6/39/L.23)

44. The CHAIRMAN announced that Colombia, Spain, Suriname and Uruguay had become sponsors of draft resolution A/C.6/39/L.23.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/C.6/39/L.9)

45. Mr. OUEDRAOGO (Burkina Faso) said that his delegation would have voted in favour of draft resolution A/C.6/39/L.9 if it had been present during the voting.

The meeting rose at 4.40 p.m.