



SUMMARY RECORD OF THE 48th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

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The meeting was called to order at 3.35 p.m.

AGENDA ITEM 132: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)  
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A/C.6/40/L.21)

AGENDA ITEM 141: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)  
(A/40/33, A/40/77, A/40/308, A/40/377, A/40/726 and Corr.1; A/C.6/40/L.10 and L.13)

1. Mr. DIACONU (Romania), introducing draft resolution A/C.6/40/L.21 on agenda item 132, said that Morocco and the Dominican Republic had become sponsors.
2. The draft requested the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, during its session in 1986, to continue the consideration of the proposal contained in the working papers on the establishment of a commission on good offices, mediation and conciliation, submitted to the General Assembly by Nigeria, the Philippines and Romania (A/38/343 and A/C.6/39/L.2). In that connection, the sponsors of the proposal were prepared to work together with the other delegations to find a basis that would have general acceptance. In addition, it requested the Special Committee to examine the report

(Mr. Diaconu, Romania)

of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States. Of course, in the interval, consultations would be held and when the Special Committee met in 1986 the draft handbook would be sufficiently advanced. The draft resolution again urged all States to observe and promote in good faith the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes. Since it was a principle of fundamental importance, that request was particularly appropriate on the occasion of the fortieth anniversary of the United Nations. In addition, the draft resolution stressed the need to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations in that field. It also proposed the inclusion in the provisional agenda for the forty-first session of the General Assembly the item entitled "Peaceful settlement of disputes between States", which was of fundamental concern to the Organization. He hoped that the draft resolution would be adopted by the Sixth Committee without a vote.

3. Mr. OMAR (Libyan Arab Jamahiriya), introducing draft resolution A/C.6/40/L.13/Rev.1 on agenda item 141, said that the matter covered by the draft was not new. The Sixth Committee had studied it over the past six years. Since there was another draft resolution on the item (A/C.6/40/L.10), whose sponsors were still discussing its content, and in order to facilitate the work of the Committee, some amendments had been made to the original draft. The current draft contained some new elements. The most important was in the fifth preambular paragraph which took note of the views expressed by members of the Security Council at its meeting held on 26 September 1985 under the item "United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security". At that meeting, the members of the Security Council had recognized that the Council had not fully complied with the objectives of the Charter and that it had not been able to adopt effective measures to deal with the violations of international peace and security. For that reason, paragraph 2 of the draft, which was in line with the sentiments expressed by many members of the Security Council, requested the Special Committee, at its next session, to accord priority to the question of the maintenance of international peace and security in all aspects in order to strengthen the role of the United Nations; that necessitated the examination, inter alia, of: strengthening the role of the Security Council in the light of past experiences and considering the elimination of the adverse effects on the maintenance of international peace and security arising from the abuse of the unanimity rule of the permanent members of the Security Council, and strengthening the role of the General Assembly in the field of maintaining international peace and security.

4. The draft resolution, in its amended version, complemented draft resolution A/C.6/40/L.10. There was no contradiction between the two drafts, nor were there any repetitions. The consultations held with some of the sponsors of draft resolution A/C.6/40/L.10 in order to elaborate a unified proposal had not been successful. If the Sixth Committee adopted both drafts, the vagueness which existed in paragraph 3 of draft resolution A/C.6/40/L.10 would disappear, as

(Mr. Omar, Libyan Arab Jamahiriya)

pointed out by various delegations. He hoped that there were no obstacles to the adoption of both drafts, as had occurred in the past six years, because if there were, the weakness and paralysis of United Nations bodies, in particular the Security Council, would continue, to the detriment of the democratic character of the Organization. In the event that the consultations on draft resolution A/C.6/40/L.10 should bring about a radical change in the situation, he reserved the right to submit amendments which might be necessary.

5. The CHAIRMAN said that, in his opinion, the negotiations on draft resolution A/C.6/40/L.10 were still continuing and that Morocco had become a sponsor.

AGENDA ITEM 142: DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (A/C.6/40/L.18 and L.22)

6. Mr. TREVES (Italy), introducing the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/C.6/40/L.18), said that during the current session there had been the widespread feeling that the task of the Working Group could be concluded soon. Several delegations had made that clear at the beginning of the session and a resolution adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders had contained an invitation to do so. Moreover, all the delegations had worked in good faith towards that end. However, the Working Group had been unable to conclude its work during the current session; the reason was that the subject needed careful consideration and there had not been enough time for such consideration.

7. During the year, the Working Group had completed the general discussion on all the principles, by examining principles 29 to 35. On the basis of that discussion, he, as Chairman-Rapporteur of the Working Group, had prepared a set of proposals on the above-mentioned seven principles, and the Working Group had decided to give precedence to negotiations aimed at reaching a preliminary agreement on those principles, leaving for a later stage the consideration of the Chairman's proposals on principle 22, paragraph 2, to principle 28. That could not have been accomplished during the previous year's session. Consequently, the Working Group had examined and agreed provisionally on principles 29 to 35.

8. As to what remained to be done, he pointed out that the Working Group still had to consider, with a view to reaching a provisional agreement, the text of the proposals made the previous year by the Chairman. When that phase was completed, in other words, when a provisional agreement was reached on principle 22, paragraph 2, and principles 23, 24, 25, 26, 27 and 28, the Working Group would have provisionally agreed on the whole set of draft principles. None the less, some other tasks would still have to be undertaken. First of all, agreement would have to be reached on questions that were still pending, as evidenced by the use of square brackets. Secondly, the Working Group would have to agree on some definitions. In particular, as reflected in paragraphs 3, 72 and 81 of the report, certain concepts such as "arrest", "detention" and "imprisonment" required clarification. Those terms evoked different concepts in different legal systems,

(Mr. Treves, Italy)

and it was not always practical to use them all together, as was done in some principles. In his view, a rule on the use of such terms was needed, and such a rule should not try to make compromises between the various meanings of those terms in various legal systems, but should employ neutral terms which gave to the terms used in the principles a specific meaning, autonomous from domestic legal systems.

9. Agreement was also needed on the use of such expressions as "judicial or other authorities" or "judicial or other authorities prescribed by law", that were found in various principles. As reflected in paragraph 81 of the present report, an appropriate way of indicating the meaning of those expressions would be to refer to article 9, paragraph 3, of the International Covenant on Civil and Political Rights, in which reference was made to "a judge or other officer authorized by law to exercise judicial power". Moreover, a general polishing of the text was required in order to standardize the expressions used and perhaps to eliminate some overlaps. The task of the Working Group would be facilitated if the Secretariat or the Chairman could prepare a document to pave the way for deliberations on the meaning of terms and the identification of drafting problems. When that task was completed, the text would be ready for adoption by the Sixth Committee and the General Assembly. The activities of the Working Group were not an academic endeavour, but concerned the protection of suffering people. It was his hope that, with the co-operation of all, the draft Body of Principles could be completed and adopted as early as possible.

10. Mr. LINDHOLM (Sweden) said that, when adopted, the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment would be a significant contribution to the international standard-setting work of the United Nations. The draft prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities had been a solid basis for the work on that subject. All the Working Groups which had dealt with the matter, first under the Third Committee and later under the Sixth Committee, had also made useful contributions. The Sixth Committee currently had before it the latest report (A/C.6/40/L.18) produced by the Working Group at the current session.

11. During the year the Working Group had concluded its first reading of principles 29 to 35, which had been provisionally adopted. It was, however, essential that a working group of the Sixth Committee should be established in 1986 in order to continue the preparation of a final text. Paragraph 2 of principle 22, and principles 23 to 28 had not yet been approved in first reading. A final polishing of the draft Body of Principles was necessary.

12. Introducing draft decision A/C.6/40/L.22, he said that in the first paragraph, the General Assembly would take note with appreciation of the report of the Working Group, and in the second paragraph, would decide that an open-ended working group of the Sixth Committee should be established at the next session of the General Assembly. He also made reference to the third and fourth paragraphs of the draft decision and expressed the hope that the draft would be adopted without a vote.



13. Mr. KHALIK (Egypt) said that five years previously, when the General Assembly had adopted the resolution referring to the Sixth Committee for its consideration the final version of the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/34/146, annex), prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, there had been no certainty that the Sixth Committee would make progress in its consideration of that subject, owing to its nature and, in particular, its relationship to questions governed by the domestic penal systems of States.

14. As a result of the substantive consideration of various draft articles within the Working Group on the question, significant progress had been made, and most of the draft articles had been provisionally adopted. That achievement would not have been possible without the co-operation of all participants in the Working Group.

15. During the current session, the Working Group had been able to consider principles 29 to 35, prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The results were extremely encouraging, for those principles had been provisionally adopted, partly because of the new versions prepared by the Chairman of the Working Group in the light of the opinions expressed during consideration of the question.

16. His delegation supported the establishment, at the forty-first session of the General Assembly, of an open-ended working group of the Sixth Committee for the purpose of expediting the completion of the draft Body of Principles.

17. Mr. HERRON (Australia) said that the Working Group on the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment had operated as a technical body, uncorrupted by political factors, and was a model for the way that consideration should go forward on Sixth Committee topics.

18. Australia attached great importance to the draft Body of Principles and was pleased with the progress made. His delegation understood that the Chairman of the Working Group now intended to review the draft articles, paying attention to consistency in the use of terms, necessary definitions, the structure and order of the principles, and editorial points generally. It encouraged the Chairman to do so. Australia hoped that the draft Body of Principles could be adopted in 1986.

19. Mr. VAN LANSCHOT (Netherlands) said that the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment had made considerable progress. That would not have been possible without the collaboration of all the participants. He hoped that the draft would be adopted at the next session.

20. Mr. MORAGA (Chile) welcomed the work done by the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and expressed the hope that the Committee would have a more precise text available at the next session.

21. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft decision A/C.6/40/L.22 without a vote.
22. Draft decision A/C.6/40/L.22 was adopted without a vote.
23. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 142.

AGENDA ITEM 148: 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 (A/C.6/40/7; A/C.6/40/L.8)

24. The CHAIRMAN said that Paraguay had become a sponsor of draft resolution A/C.6/40/L.8.
25. Mr. VAN LANSCHOT (Netherlands) said that, even after intensive consultations, he was afraid that the draft Declaration contained in document A/C.6/40/L.8 could not be adopted by consensus.
26. In 1972, Liberia had requested the General Assembly to include in its agenda an item entitled "United Nations conference for an international convention on adoption law". In its resolution 3028 (XXVII), the General Assembly had requested the Commission on Social Development to consider the question and to present its recommendations. The Economic and Social Council had thereupon recommended that, as a less ambitious project, a group of experts should draft a declaration containing broad guidelines. The group, composed of representatives of all geographical regions, had met in Geneva in 1978. In 1979, the Economic and Social Council had submitted the draft Declaration to the General Assembly. In 1980, 1982 and 1983, the Secretary-General had invited Member States to submit their comments on the draft, and replies had been received from 57 Governments.
27. The draft Declaration before the Committee was the outcome of the informal consultations held at the beginning of the current session. In its present form, the text was as close to a common denominator as could be reached on the issue, and the scope for new changes was very limited. Several delegations had stressed the incompatibility between the precepts of Islam and the concept of adoption.
28. Although it contained a description of two possible methods for the protection of children who could not be cared for by their own parents, the text of the Declaration in no way sought to impose on States the obligation to adopt national legislation establishing such legal institutions as adoption or foster placement. The draft was based on the idea that, if those institutions existed, States should consider the principles as relevant. When adopted, the draft would be annexed to a General Assembly resolution and would as such have the status of a recommendation.
29. There was also a very important humanitarian aspect. In 1982, UNICEF had published a report (E/ICEF/L.1440) in which the number of children who lived without their families had been estimated at 70 million, equivalent to five times the total population of the Netherlands. Moreover, it was a group that could not

(Mr. Van Lanschot, Netherlands)

make its voice heard because it consisted exclusively of children unsheltered by a family.

30. Mr. ABDEL-RAHMAN (Sudan) said that the Sudan's legal system did not recognize the institutions of adoption and foster placement. His delegation had already noted in the informal consultations that, in its view, it would be premature at the current session to take a decision on the draft Declaration before the Committee. It was not a purely political decision, because the question had important legal and social implications. That was why it had to be studied more thoroughly.

31. If the item was included in the agenda of the forty-first session of the General Assembly, the Committee would have to consider the most suitable way of achieving the adoption of the draft Declaration by consensus. His delegation supported the idea that the item should be considered at the next session.

32. The CHAIRMAN said that a draft decision on procedures relating to the item under consideration by the Committee was being prepared. He trusted that the draft would be ready by the following Friday, so that the Committee could take action on it early the following week.

AGENDA ITEM 127: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURLED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (continued) (A/40/444; A/C.6/40/L.20)

33. Mr. WILLEMARCK (Belgium), speaking on behalf of the 10 States members of the European Community, as well as Portugal and Spain, made reference to draft resolution A/C.6/40/L.20, introduced earlier. In view of the fact that the draft articles as a whole were not completely in harmony with the development of international trade practices and the new forms which international trade was currently taking, the item should remain on the agenda of the General Assembly.

34. However, with a view to finding a compromise solution, the Ten, Portugal and Spain, could accept a resolution which was limited to drawing States' attention to the draft articles of the International Law Commission, postponing the study of the problem until the practices in that area were so well established that the work could be successfully completed.

35. Draft resolution A/C.6/40/L.20 was adopted without a vote.

36. The CHAIRMAN announced that the Committee had concluded its consideration of agenda item 127.

AGENDA ITEM 137: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/40/43, A/40/60-S/16873, A/40/61-S/16875, A/40/62-S/16876, A/40/63-S/16879, A/40/67-S/16882, A/40/69-S/16883, A/40/71-S/16885, A/40/79-S/16890, A/40/80-S/16891, A/40/81-S/16892, A/40/82-S/16893, A/40/83-S/16894, A/40/86-S/16895, A/40/94-S/16912, A/40/95-S/16904, A/40/110-S/16915, A/40/111-S/16916, A/40/120-S/16944,



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37. The CHAIRMAN announced that Cameroon, Fiji and India had become sponsors of draft resolution A/C.6/40/L.12/Rev.1. He drew the Committee's attention to document A/C.6/40/L.23 containing a statement of the financial implications of draft resolution A/C.6/40/L.12/Rev.1.

38. Mr. ZAMANINIA (Islamic Republic of Iran) said that his delegation reaffirmed the need for the elaboration and adoption of an international convention on the question of mercenaries. It believed that mercenary activities were contrary to fundamental principles of international law and that those who recruited, used, financed and trained mercenaries should be held internationally responsible. Regrettably, the draft resolution had very little substance. His delegation therefore did not wish to take the floor and explain its position on the text.

39. Nevertheless, it should be noted that the sponsors of the draft resolution included Iraq, at a time when the Iraqi régime was practising mercenarism. During the war imposed on the Islamic Republic of Iran, the Iraqi régime had been financing a number of mercenaries from various countries for military operations against the Islamic Republic of Iran. Many of those mercenaries had been captured. Recently, as a result of mediation by the Sudan, there had been negotiations regarding the repatriation of Sudanese elements who had been recruited and financed by the Iraqi régime for mercenary activities.

40. By co-sponsoring the draft resolution, the Iraqi régime was seeking to cover up its record of recruiting mercenaries and to deceive the international community. Such practices by Iraq undermined the work of the United Nations on the convention and, in general, constituted a misuse of the United Nations and the Sixth Committee for cheap political objectives.

41. His delegation supported draft resolution A/C.6/40/L.12/Rev.1 but would like its remarks to be reflected in the official record of the meeting.

42. Mr. AENA (Iraq), speaking in exercise of the right of reply, rejected the Iranian delegation's allegations as totally unfounded. That delegation's statement reflected the obvious fact that it was attempting to engage the Committee in a sterile debate.

43. The Arabs who were participating in the war were doing so solely in order to defend Iraq from the acts of aggression against its territorial integrity perpetrated by the Islamic Republic of Iran. In attempting to label them as mercenaries, the Islamic Republic of Iran was only trying to evade its responsibility to treat the captives as prisoners of war in accordance with the Geneva Conventions. The Iraqi Government held the Iranian Government responsible for the treatment of the Arab prisoners.

44. Mr. ZAMANINIA (Islamic Republic of Iran), speaking in exercise of the right of reply, said that the Iraqi representative had said nothing new; not surprisingly, he was using specious arguments to defend his Government's policy of aggression. That did absolutely nothing to change the fact that the Iraqi régime used mercenaries.

45. Draft resolution A/C.6/40/L.12/Rev.1 was adopted by consensus.

46. Mr. SWINNEN (Belgium), explaining the position of the 10 States members of the European Community, as well as Portugal and Spain, said that the delegations of those countries had joined in the consensus on the draft resolution because they endorsed its basic objective, namely the renewal of the mandate of the Ad Hoc Committee to enable it to continue its work on the drafting of a universally acceptable convention.

47. It had to be pointed out, however, that the wording of the fifth preambular paragraph had extremely serious implications. Of course mercenary activities were contrary to international law when, for example, there was interference in the internal affairs of a State at the instigation or with the assistance of another State. In other cases, however, while the crimes or offences of individuals acting on their own behalf were reprehensible, they could not be attributed to States or be regarded as violations of international law.

48. With respect to the eighth preambular paragraph, it was worth noting that the Ad Hoc Committee's five sessions had produced rather meagre results. It would therefore be useful to make another appeal for every possible effort to be made at the next session to achieve major progress.

49. In order for a convention on the question of mercenaries to be successful, it must be adopted by consensus. The Ad Hoc Committee should proceed on that basis. The States members of the European Community, as well as Portugal and Spain, were prepared to make a constructive contribution to that Committee's work.

50. Mr. SKIBSTED (Denmark), explaining the position of the delegations of Finland, Iceland, Norway, Sweden and Denmark, said that they had joined in the consensus on

(Mr. Skibsted, Denmark)

the draft resolution because they were in general agreement with its content and objectives.

51. However, they had difficulty in accepting the fifth preambular paragraph. Its formulation was too far-reaching in that it declared the activities of mercenaries to be contrary to fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence. Since such principles applied exclusively to relations between States, they could not be violated by individuals acting in a personal capacity.

52. Mr. ROSENSTOCK (United States of America), explaining his delegation's position, said that the adoption of draft resolution A/C.6/40/L.12/Rev.1 did not imply any change in his country's approach. The United States could not accept the fifth preambular paragraph, for the reasons given by the representative of Denmark.

53. The CHAIRMAN announced that the Committee had concluded its consideration of agenda item 137.

The meeting rose at 4.50 p.m.