



SUMMARY RECORD OF THE 45th MEETING

Chairman: Mr. DENG (Sudan)

CONTENTS

AGENDA ITEM 138: DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT

AGENDA ITEM 129: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)

AGENDA ITEM 134: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTIETH SESSION (continued)

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

AGENDA ITEM 138: DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (A/C.6/43/L.9)

1. Mr. TREVES (Italy), Chairman-Rapporteur of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, introduced the report of the Working Group (A/C.6/43/L.9). He was pleased to announce that agreement had been reached on the draft being submitted to the Sixth Committee for consideration and adoption.

2. With regard to the text, he noted that two questions had remained open at the end of the forty-second session of the General Assembly: firstly, there had been a feeling that the principles concerning communication of the detained or imprisoned person with the outside world, and in particular the exceptions to the right to such communication, could be abused; and secondly, the definition of the term "arrest" had not been agreed upon, partly because delegations had felt that the definition could have implications for the scope of the draft Body of Principles.

3. The first problem had been resolved by introducing a new principle, now numbered 15, which stated that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days", notwithstanding the exceptions to the right to communicate set forth in principles 16 and 18. The principle introduced a further guarantee against abuses of detention incommunicado, and ensured that the exceptions to the right could not be abused, since their cumulative application could not account for more than "a matter of days". That formulation, although imprecise, clearly indicated the necessary brevity of the incommunicado detention under the cumulative application of the exceptions in principle 16, paragraph 4, and principle 18, paragraph 3.

4. With regard to the definitions, attention had been focused on the definition of "arrest". The discussion had shown that some apprehensions as to the implications of the definition for the scope of the draft Body of Principles were not as strongly felt as they had previously been. The relatively limited occurrence of the word "arrest" in the draft had been duly noted, and a definition which merged the two competing formulations considered at the previous session had been adopted. In that formulation, "arrest" meant the act of apprehending a person for the alleged commission of an offence or by the action of an authority; it was clear that the meaning of "authority" did not necessarily coincide with the meaning of "other authority" as defined in the expression "a judicial or other authority". The other changes suggested were duly recorded and explained in the report, and had been adopted in the interest of broadening the consensus on the draft Body of Principles.

5. It was important to point out that the text prepared by the Working Group should be read as a whole, and that it was intended to provide guidelines for national legislation and basic legal and humanitarian concepts. Although it had

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(Mr. Treves, Italy)

much in common with the Standard Minimum Rules for the Treatment of Prisoners and the International Covenant on Civil and Political Rights, it differed in various ways from those two instruments. Unlike the Covenant, which had been presented in the form of a treaty, the Body of Principles had been drafted with a view to being adopted by the General Assembly in a resolution to which it was to be annexed. It differed from the Standard Minimum Rules in that those Rules had never been adopted by the General Assembly in the form of a resolution, although their texts were contained in the final report of the United Nations body that had drafted them.

6. It should also be emphasized that the draft Body of Principles was more detailed than the Covenant on Civil and Political Rights as far as legal guarantees were concerned, but was less detailed than the Standard Minimum Rules with regard to specific aspects of the treatment of detained and imprisoned persons. In short, it was a balanced draft in which legal guarantees and substantive provisions for the protection of the human rights of persons in detention or imprisonment were equally represented and developed. While principles 1, 6, 24 and 25 could properly be described as substantive, principles 9 and 37 could more suitably be described as belonging to the category of legal and procedural guarantees.

7. It should, however, be stressed that legal and procedural guarantees were amongst the most effective and important ways of ensuring that the substantive principles were observed. That was particularly true in respect of human rights, and still more so in respect of detention and imprisonment, where the freedom and physical integrity of human beings were in the hands of the State.

8. The draft Body of Principles was admittedly far from perfect from the point of view of protecting the human rights of detained and imprisoned persons. However, although some provisions might be considered imprecise, it should not be overlooked that the Working Group had had to establish a balance between the need to protect "all persons under any form of detention or imprisonment" on the one hand, and the need of all societies to fight against crime, including organized crime and terrorism, on the other.

9. It should be borne in mind that an international legal instrument dealing with questions which elicited differing responses from States according to their legal traditions, concepts and terminology was bound to incorporate elements which were not present in the same terms in all domestic legal systems. However, the draft Body of Principles, if adopted, could usefully serve to protect people under any form of detention and imprisonment. At the same time, States could resort to the Principles as guidelines or sources of inspiration for legislative reform. They would constitute a worthwhile contribution to the development of international law in the field of human rights. He therefore recommended adoption of the text in the form of a draft resolution of the Sixth Committee.

10. In conclusion, he drew the Committee's attention to some corrections to be made in the report of the Working Group (A/C.6/43/L.9). The first sentence of paragraph 22 should refer to principle 20 (renumbered 21 in the final draft), and paragraph 23 should refer to principle 21 (renumbered 22 in the final draft).

11. Mr. STROHAL (Austria) said that the Working Group's successful completion of the draft Body of Principles was a particular source of satisfaction for his delegation. Reviewing the background to the consideration of the subject at the United Nations, he recalled that in 1976 the Commission on Human Rights had referred the question of the human rights of all persons subjected to any form of detention or imprisonment to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which had in turn appointed the representative of Austria, Mr. Erik Nettel, Rapporteur, with the task of elaborating a draft body of principles. The resulting draft had become known as the "Nettel principles". The success now finally achieved by the Working Group of the Sixth Committee would not have been possible without the willingness to accept compromises and the good will displayed by the members of the Working Group over the years.

12. In general, the draft before the Committee was acceptable to Austria. What was important was the clear understanding, as expressed in principle 3 and the general clause, that the Body of Principles did not in any way take away any rights that States granted to detained or imprisoned persons under their national legislation or under any international agreements to which they were parties, particularly the International Covenant on Civil and Political Rights. The Body of Principles was a useful compilation and catalogue of human rights that persons under any form of detention or imprisonment must enjoy under all circumstances, irrespective of the gravity of the criminal offence they might have committed or were charged with.

13. The compromise formulation concerning the scope of the Principles that had finally emerged at the current session was very satisfactory. It was interesting to note that in adopting its final formulation concerning the use of terms, the Working Group had returned to the original intention of the Sub-Commission's members, whose view had been, *inter alia*, that the question of prolonged and often indefinite detention of large numbers of persons without formal charges brought against them was of particular concern. From the very beginning, it had been the objective of the Commission on Human Rights and the Sub-Commission to establish general principles of law for any form of arrest, detention or deprivation of personal liberty. Austria had always supported that broad approach.

14. All States must now implement the Principles and make them both applicable in their national legislation and meaningful for individual human beings. It was the individual who was at the centre of all human rights. Austria regarded the success that the Principles represented as a challenge to continue improving the legal framework for the better observance of human rights and fundamental freedoms everywhere in the world.

AGENDA ITEM 129: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)
(A/C.6/43/L.8)

15. The CHAIRMAN said that the list of sponsors of draft resolution A/C.6/43/L.8 also included Burkina Faso, Haiti, India, Malaysia, Mozambique and Singapore.

16. Mr. ROSENSTOCK (United States of America), speaking in explanation of vote, said that undesirable aspects of the draft resolution made it impossible for his

(Mr. Rosenstock, United States)

delegation to support it. The United States doubted whether a separate resolution on the item made sense, since the topic was also being considered by the Special Committee on the Charter. The text itself posed a number of difficulties, particularly in the fourth and fifth preambular paragraphs. In addition, paragraph 1, which urged all States to observe and promote in good faith the provisions of the Manila Declaration, seemed to misinterpret the recommendatory nature of that Declaration. The provisions in paragraphs 2 and 3 could best be described as gratuitous. His delegation would vote against paragraphs 4 and 5, and would abstain in the voting on the draft resolution as a whole.

17. A vote was taken by roll-call on paragraph 4 of draft resolution A/C.6/43/L.8.

18. Morocco, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Afghanistan, Albania, Algeria, Angola, Argentina, Bahrain, Barbados, Benin, Bolivia, Botswana, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Ethiopia, Fiji, Gabon, German Democratic Republic, Ghana, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Oman, Panama, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Singapore, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Viet Nam, Yugoslavia, Zaire, Zambia.

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

Abstaining: Australia, Austria, Brazil, Canada, Central African Republic, Denmark, Finland, Iceland, Ireland, Israel, Italy, Jordan, Mexico, New Zealand, Norway, Peru, Portugal, Qatar, Senegal, Spain, Sweden, Turkey, Venezuela.

19. Paragraph 4 of draft resolution A/C.6/43/L.8 was adopted by 78 votes to 7, with 23 abstentions.

20. Mr. BILAL (Qatar) said that his delegation had in fact intended to vote in favour of paragraph 4, not to abstain.

21. A vote was taken by roll-call on paragraph 5 of draft resolution A/C.6/43/L.8.

22. Democratic Kampuchea, having been drawn by lot by the Chairman, was called upon to vote first.

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In favour: Afghanistan, Albania, Algeria, Angola, Bahrain, Barbados, Benin, Bolivia, Botswana, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Ethiopia, Fiji, Gabon, German Democratic Republic, Ghana, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Oman, Panama, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: Australia, Canada, Denmark, Finland, France, Germany, Federal Republic of, Iceland, Israel, Italy, Japan, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Argentina, Austria, Belgium, Brazil, Ireland, Jordan, New Zealand, Peru, Turkey, United Republic of Tanzania.

23. Paragraph 5 of draft resolution A/C.6/43/L.8 was adopted by 82 votes to 17, with 10 abstentions.

24. A vote was taken by roll-call on draft resolution A/C.6/43/L.8 as a whole.

25. Benin, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Afghanistan, Albania, Algeria, Angola, Argentina, Austria, Bahrain, Barbados, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Ethiopia, Fiji, Gabon, German Democratic Republic, Ghana, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Jamaica, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mexico, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Suriname, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: None.

Abstaining: Australia, Belgium, Canada, Denmark, Finland, France, Germany, Federal Republic of, Iceland, Israel, Italy, Japan, Jordan, Netherlands, Norway, Portugal, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

26. Draft resolution A/C.6/43/L.8 as a whole was adopted by 90 votes to none, with 20 abstentions.

27. Mr. JAMA (Somalia) said that, had his delegation been present, it would have voted in favour of draft resolution A/C.6/43/L.8.

28. Mr. ROUCOUNAS (Greece), speaking in explanation of vote on behalf of the 12 States members of the European Community, said that the Twelve belonged to the small category of States which had accepted binding dispute-settlement procedures, such as those of the International Court of Justice. They were strongly in favour of any constructive step which might strengthen the principle of peaceful settlement of disputes. Nevertheless, owing to the content of paragraphs 4 and 5 and of some preambular paragraphs, most of them had been unable to support draft resolution A/C.6/43/L.8.

29. With regard to paragraph 4, most members of the Community failed to see the merits of establishing a questionnaire procedure on the implementation of the Manila Declaration, because it was obvious that written replies could not remedy the widespread lack of political will to use well-established procedures for the peaceful settlement of disputes.

30. What was needed was a strong appeal to Governments to be aware of and to utilize the existing procedures referred to in the Charter. The logical place for such an appeal was in the resolution on the Special Committee on the Charter. A separate agenda item and a separate resolution concerning the peaceful settlement of disputes, as envisaged in paragraph 5, seemed therefore to be superfluous.

31. Mr. TARUI (Japan) said that his delegation had abstained in the vote on the draft resolution because the Manila Declaration was not the type of document whose implementation should be closely monitored, as called for in paragraph 4. Nor did Japan consider paragraph 5 appropriate, since the question of peaceful settlement of disputes was central to the mandate of the Special Committee on the Charter. Japan's position in the voting should not, however, be interpreted as a change from its deep commitment to the principle of peaceful settlement of disputes, to which it had always attached great importance.

32. Mr. GARRO (Peru) said that his delegation reiterated its statement during the forty-second session of the General Assembly as recorded in document A/C.6/42/SR.28.

33. Mr. BERNHARD (Denmark), speaking on behalf of the Nordic countries, said that although they were strong supporters of the principle of peaceful settlement of

(Mr. Bernhard, Denmark)

dispute their concern about the need for a rationalisation of United Nations procedures had led them to abstain in the vote on the draft resolution as a whole.

34. With regard to paragraph 4, they continued to be unconvinced of the desirability of establishing an extensive reporting procedure on the implementation of the Manila Declaration. What was needed was for States to resort to the available, effective methods for the peaceful settlement of disputes. In respect of paragraph 5, the Nordic delegations believed that the question of peaceful settlement of disputes should be covered only under the item on the Special Committee on the Charter, in line with current attempts to rationalise procedures. They had therefore abstained in the vote on paragraph 4 and voted against paragraph 5. Lastly, the Nordic delegations felt that the content of the seventh preambular paragraph was not relevant in the context of the draft resolution.

AGENDA ITEM 134: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTIETH SESSION (continued) (A/C.6/43/L.12)

35. Mr. BERNAL (Mexico), introducing draft resolution A/C.6/43/L.12 on behalf of the sponsors, announced that they had been joined by China. The text had been thoroughly considered by many delegations in the ad hoc working group envisaged in paragraph 6 of General Assembly resolution 42/156, and was largely based on that resolution.

36. The draft resolution expressed satisfaction with the efforts of the International Law Commission to improve its methods of work, and welcomed the useful informal discussions held in the framework of the working group. The Sixth Committee was called upon to bear in mind the possibilities of reserving time for informal exchanges of views on matters relating to the Commission. The text also recommended the continuation of efforts to improve the ways in which the Commission's report was considered.

37. Draft resolution A/C.6/43/L.12 was adopted without a vote.

The meeting rose at 4.55 p.m.