



SUMMARY RECORD OF THE 48th 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 (continued)

AGENDA ITEM 136: DEVELOPMENT AND STRENGTHENING OF GOOD-NEIGHBOURLINESS BETWEEN STATES (continued)

AGENDA ITEM 130: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued)

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The meeting was called to order at 11.25 a.m.

AGENDA ITEM 138: DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (continued) (A/C.6/43/L.17 and Corr.1)

1. Mr. TREVES (Italy), speaking on behalf of the sponsors of draft resolution A/C.6/43/L.17, which had been joined by Samoa, said that it had been decided, after consultations, to delete the word "unanimously" from the third preambular paragraph. After noting that a corrigendum had been issued in three working languages, he announced that he was prepared to convene an informal meeting of the Working Group to verify that all the corrections proposed, principally with regard to the French version, had in fact been made to the various versions of the text, and to ensure that they were in line with the English version, before the report on the item was submitted to the General Assembly. With regard to operative paragraph 4, he said that the main objective of the Body of Principles was to serve as guidelines to States in improving their domestic legislation.

2. Mr. VOICU (Romania) expressed satisfaction that the French version of the draft resolution had been corrected, and fully supported the proposal for an informal meeting made by the Chairman of the Working Group, whom he also thanked for accepting the Romanian suggestion regarding the third preambular paragraph. It would thus be easier to adopt draft resolution A/C.6/43/L.17 in its entirety.

3. Explaining his delegation's position on draft resolution A/C.6/43/L.17, he said that while the results obtained by the Working Group were on the whole satisfactory, the document did not fully address all the issues, particularly those raised in paragraph 69 of document A/C.6/42/L.12. Furthermore, the expression "Body of Principles" could be interpreted in a number of ways, as had been recognised by the Chairman of the Working Group, who had stated that the intention was that States should use the Principles as guidelines in improving national legislation. His delegation interpreted operative paragraph 4 of the draft resolution in the light of that statement. The Body of Principles could be used to improve domestic penal law, but domestic legislation remained an integral part of the exercise of national sovereignty. It was in that spirit that his delegation supported adoption of the draft resolution.

4. He appealed to the sponsors of draft resolution A/C.6/43/L.17 to manifest the same spirit of co-operation with regard to draft resolution A/C.6/43/L.20; if it was proper that there should be a consensus on a subject of criminal law not referred to in the Charter, consensus was all the more important on the question of good-neighbourliness, a principle expressly set forth in the Charter.

5. Draft resolution A/C.6/43/L.17 and Corr.1, as orally revised, was adopted without a vote.

6. Mr. TANG Chengyuan (China) said that his delegation had supported the draft resolution because the Body of Principles was designed to protect human rights. However, certain aspects of the latter text were incompatible with domestic Chinese

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(Mr. Tang Chengyuan, China)

legislation. It was important to take account of the differences between legal systems in force in various countries, which the draft Body of Principles did, in that it set forth guidelines which might serve as points of reference for States in improving the protection of persons in detention.

7. Mr. DELON (France) said that the Body of Principles represented a substantial step forward in the defence of human rights. His Government wished, however, to state that the text must not constitute an obstacle to application of specific rules of military discipline. It also interpreted principles 17 and 18 as not applying to persons held temporarily by the police for questioning.

8. Mr. ROSENSTOCK (United States of America) welcomed the adoption of the Body of Principles. While it was true that States were not legally bound by resolutions of the General Assembly, which were merely recommendations, the principles set forth in the Body of Principles should not be thought of merely as suggestions of which States might or might not take account in drafting their legislation.

9. Mr. AUST (United Kingdom) said that his delegation was pleased to support the adoption of the Body of Principles, which was a valuable addition to the international texts on human rights. His delegation was particularly gratified that agreement had been reached at the current session on broadening the scope of the Body of Principles to cover all persons under any form of detention or imprisonment, whether or not they were held in connection with a crime.

10. Although the Body of Principles was not a legally binding instrument, departure from it could be justified only where there was some compelling reason, such as a need to protect the human rights of others. United Kingdom legislation already conformed to the Body of Principles in all essential respects.

AGENDA ITEM 136: DEVELOPMENT AND STRENGTHENING OF GOOD-NEIGHBOURLINESS BETWEEN STATES (continued) (A/C.6/43/L.14/Rev.1, L.20)

11. The CHAIRMAN said that, under rule 131 of the rules of procedure of the General Assembly, the two draft resolutions before the Committee on item 136 should be considered in the order in which they had been introduced.

12. Mr. AUST (United Kingdom), introducing draft resolution A/C.6/43/L.14/Rev.1 on behalf of its sponsors, said that at the previous session a considerable number of Member States had objected to including in the mandate of the Sub-Committee on Good-Neighbourliness the drafting of an international document on the question; it had proved impossible to negotiate with the main sponsor of resolution 42/158 a text likely to command consensus. Consequently, the Sub-Committee had not been able to make progress in its work at the current session, and it was for that reason that, unlike draft resolution A/C.6/43/L.20, draft resolution A/C.6/43/L.14/Rev.1, which had been the subject of informal consultations with various delegations, did not envisage a further session of the Sub-Committee. If it was to be productive, the Sub-Committee must have a mandate meeting with general approval. In requesting that the debate on good-neighbourliness should be

(Mr. Aust, United Kingdom)

postponed to the forty-fifth session of the General Assembly, the sponsors of draft resolution A/C.6/43/L.14/Rev.1 were aiming to give the Sixth Committee time to reflect before deciding whether it wished the Sub-Committee to resume its work and, if so, what its mandate should be. They deplored the fact that the consultations that had taken place from the start of the current session on how item 136 was to be approached had not led to any concrete result, on account of the intransigence of the delegation responsible for inclusion of the item in the agenda. That intransigence was once again reflected in draft resolution A/C.6/43/L.20 since, under that draft, the Sub-Committee was to meet again with the same mandate. The only modification assented to by the sponsors of the draft resolution was the postponement of the work of the Sub-Committee to the forty-fifth session of the General Assembly. Substantively, one would therefore be in the same position at that time, as at the current session.

13. THE CHAIRMAN asked whether delegations wished to explain their vote before the vote on draft resolution A/C.6/43/L.14/Rev.1.

14. Mr. VOICU (Romania), after pointing out that no vote could be taken on draft resolution A/C.6/43/L.14/Rev.1 until the other draft resolution under item 133 had been introduced, said that the sponsors of draft resolution A/C.6/43/L.14/Rev.1 had never informed his delegation of their intention to present such a draft resolution and had never consulted it on that matter. Their conduct was a manoeuvre designed to put pressure on the sponsors of draft resolution A/C.6/43/L.20, which was hardly the most tactful way of approaching a subject such as good-neighbourliness. The position expressed by the representative of the United Kingdom, who clearly wanted neither a sub-committee on good-neighbourliness nor an international document on the question, was totally incompatible with General Assembly resolution 39/78, which had been adopted by consensus; paragraph 4 of that resolution provided that the elements of good-neighbourliness would be clarified and formulated "as part of a process of elaboration of a suitable international document on the subject". Draft resolution A/C.6/43/L.20, on the other hand, was entirely in line with that resolution. Regarding the order of introduction of the two draft resolutions, he pointed out that while draft decision A/C.6/43/L.14 had preceded draft resolution A/C.6/43/L.20, the latter document had been submitted one day before draft resolution A/C.6/43/L.14/Rev.1, which, furthermore, reproduced word for word several of its paragraphs and was only a fragment of the former draft. He welcomed the fact that draft resolution A/C.6/43/L.14/Rev.1 provided for the inclusion of the item under consideration in the agenda of the forty-fifth session of the General Assembly, and not of its forty-sixth session, as initially proposed in draft decision A/C.6/43/L.14.

15. Referring more specifically to the statement by the United Kingdom representative, he agreed that a consensus was necessary. However, it must be meaningful. He also thought that the Sixth Committee needed time for reflection, and that was why draft resolution A/C.6/43/L.20 did not call for the item under consideration to be included in the agenda of the forty-fourth session of the General Assembly. The consultations on draft resolution A/C.6/43/L.14/Rev.1 had apparently been restricted to its sponsors, since the majority of delegations had

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(Mr. Voicu, Romania)

become aware of the draft only after it had been distributed. As to the informal consultations held during the session, the United Kingdom representative had not indicated the real reasons for their failure. Lastly, a draft resolution which failed to provide any organizational framework to deal with good-neighbourliness could only be regarded as a further attempt to eliminate that item purely and simply. As the question which now arose was "to be or not to be good neighbours", he appealed to the sponsors of draft resolution A/C.6/43/L.14/Rev.1 to withdraw it in order to make a consensus possible. The sponsors of draft resolution A/C.6/43/L.20 could not be deprived of their right to introduce their draft before the vote on another draft resolution under the same agenda item.

16. The CHAIRMAN requested the representative of Romania to introduce draft resolution A/C.6/43/L.20.

17. Mr. VOICU (Romania) said that Malaysia and Burundi had joined the sponsors of draft resolution A/C.6/43/L.20. The French version, which was dated 22 December instead of 22 November, had to be corrected. With the exception of a few changes, the draft was based on General Assembly resolution 42/158. A correction also had to be made in the third preambular paragraph, where decision 40/419 of 11 December 1985 should be mentioned after resolution 38/78 of 13 December 1984. The fifth preambular paragraph was reproduced entirely in draft resolution A/C.6/43/L.14/Rev.1. As to the seventh preambular paragraph, which provided that the results of the work on good-neighbourliness "could be included, at an appropriate time, in a suitable international document", he drew the attention of the sponsors of draft resolution A/C.6/43/L.14/Rev.1 to the fact that the Sixth Committee had already adopted an identical paragraph by consensus on several occasions. The most important operative paragraph was paragraph 5, which provided that the Sub-Committee would begin the elaboration of an international document at the forty-fifth session of the General Assembly. He urged all members of the Sixth Committee to adopt draft resolution A/C.6/43/L.20 by consensus, or at least without a vote, and announced that he had some proposals to make to the sponsors of draft resolution A/C.6/43/L.14/Rev.1 if they refused to withdraw their draft.

18. Mr. AUST (United Kingdom) said that the Committee found itself in a dilemma at present because the sponsors of draft resolution A/C.6/43/L.14/Rev.1 and the delegations which supported them had been faced with the intransigence of the main sponsor of draft resolution A/C.6/43/L.20 during the consultations which had been held throughout the session on the way to deal with agenda item 136. It was incorrect to claim that the sponsors of draft resolution A/C.6/43/L.14/Rev.1 did not want a sub-committee on good-neighbourliness. What they did not want was a sub-committee with a non-consensus mandate. Furthermore, while it was true that some provisions of draft resolution A/C.6/43/L.14/Rev.1 and draft resolution A/C.6/43/L.20 were identical, and that they both allowed the Committee time for reflection, the two drafts - contrary to the impression which the representative of Romania had sought to give - were very different: draft resolution A/C.6/43/L.14/Rev.1 did not prejudge the final decision of the Committee with regard to consideration of the question of good-neighbourliness, whereas draft resolution A/C.6/43/L.20 provided for the Sub-Committee to meet again with the same

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(Mr. Aust, United Kingdom)

mandate as at the current session. Lastly, the insinuations that the sponsors of draft resolution A/C.6/43/L.14/Rev.1 and their supporters did not follow the precepts of good-neighbourliness were without any foundation whatever.

19. Mr. ZENENGA (Zimbabwe), supported by Mr. OULD EL-GAOUTH (Mauritania), requested that voting on draft resolutions A/C.6/43/L.14/Rev.1 and A/C.6/43/L.20 should be postponed until the afternoon meeting.

20. The CHAIRMAN said that if there was no objection, he would take it that the Committee wished to postpone voting on draft resolutions A/C.6/43/L.14/Rev.1 and A/C.6/43/L.20 until the afternoon meeting.

21. It was so decided.

AGENDA ITEM 130: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND
(continued) (A/C.6/43/L.21)

22. Mr. HANAIFI (Egypt) announced that the Sudan had joined the sponsors of draft resolution A/C.6/43/L.21. The draft, which he was introducing on behalf of its sponsors, was based on General Assembly resolution 42/151. However, operative paragraph 2, which dealt with possible solutions concerning "the judicial authority to be assigned for the implementation of the provisions of the draft Code", was new. The sponsors of the draft resolution hoped that it would be adopted by the Sixth Committee.

23. Mr. ROSENSTOCK (United States of America), speaking in explanation of vote before the vote, said that his delegation would vote against draft resolution A/C.6/43/L.21 because there was no longer any reason at the current stage to continue to have the draft Code of Crimes against the Peace and Security of Mankind as a separate agenda item from that concerning the report of the International Law Commission. It was entirely irrational to give the Commission directives on the same topic in two different resolutions. If the intention of the sponsors was to press the Commission to accord a higher priority to the draft Code - which his delegation resolutely opposed - draft resolution A/C.6/43/L.21 was all the more confusing since it encouraged the Commission to continue its work along the lines it itself had indicated.

24. Draft resolution A/C.6/43/L.21 was adopted by 104 votes to 5, with 13 abstentions.

25. Mr. TARUI (Japan), speaking in explanation of vote after the vote, said that his delegation had abstained because, apart from its reservations concerning the sixth and tenth preambular paragraphs, which destroyed a carefully worked out balance between the various topics dealt with by the Commission, it seemed that to continue to make the draft Code of Crimes against the Peace and Security of Mankind a separate agenda item from that concerning the report of the Commission ran counter to the rationalization of the work of the General Assembly. The draft resolution already adopted by consensus on the latter item would have been amply sufficient.

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26. Mr. HAREL (Israel) observed that in violation of rule 120 of the rules of procedure of the General Assembly, draft resolution A/C.6/43/L.21 had just been circulated earlier in the day.

27. Despite the great importance which Israel could not fail to attach to the item under consideration because of the acts of genocide against the Jewish people, his delegation had had to vote against the draft resolution because the approach which the text adopted was based on political motives and lacked the objectivity required for the elaboration of an effective legal document. There was no reason to make the draft Code a separate item on the agenda of the General Assembly; it could very well be dealt with within the general framework of the report of the Commission. It was to be hoped that a more legal and less political approach would prevail in the future debates on the question.

28. Ms. BJOERKLUND (Norway), speaking on behalf of the Nordic delegations, said that they had abstained because the draft Code should not have a higher priority than the other topics dealt with by the Commission, and it would be more in keeping with the objective of rationalizing the work of the General Assembly not to make it a separate agenda item, but to deal with it within the more general framework of the work of the Commission. That position should not, however, be interpreted as meaning that the Nordic countries thought that the Commission should not continue its work on the elaboration of such an instrument.

29. Mrs. STORZ-CHAKARJI (Federal Republic of Germany) said that her delegation had voted against draft resolution A/C.6/43/L.21 for the following reasons: (a) the draft Code did not deserve to have special priority in the work of the Commission and should therefore be dealt with, like the other topics considered by the Commission, within the framework of the resolution on the work of that body, otherwise there was the danger that the balance concerning the Commission's mandate might be disturbed, causing confusion in the Commission regarding the interpretation of that mandate; and (b) it was dangerous to become involved in a debate on substantive questions concerning the draft Code outside the framework of the Commission.

The meeting rose at 1.10 p.m.