



General Assembly

Distr.
GENERAL

A/44/765
22 November 1989
ENGLISH
ORIGINAL: FRENCH

Forty-fourth session
Agenda item 142

DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Sixth Committee

Rapporteur: Mr. Guillaume PAMBOU-TCHIVOUNDA (Gabon)

I. INTRODUCTION

1. The item entitled "Draft Code of Crimes against the Peace and Security of Mankind" was included in the provisional agenda of the forty-fourth session of the General Assembly pursuant to paragraph 5 of Assembly resolution 43/164 of 9 December 1988, for consideration in conjunction with the report of the International Law Commission.
2. At its 3rd plenary meeting, on 22 September 1989, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. In connection with the item, the Sixth Committee had before it the following documents:
 - (a) Report of the International Law Commission on the work of its forty-first session 1/ (paras. 73-217);
 - (b) Report of the Secretary-General (A/44/465) submitted pursuant to paragraph 4 of resolution 43/164, containing the views submitted by Member States under paragraph 3 of the resolution;
 - (c) Letters dated 9, 10 and 11 January 1989 from the Permanent Representative of Democratic Kampuchea to the United Nations addressed to the Secretary-General

1/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10).

(A/44/73-S/20381, A/44/75-S/20388, A/44/77-S/20389), and letter dated 10 February 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Democratic Kampuchea to the United Nations addressed to the Secretary-General (A/44/123-S/20460);

(d) Letter dated 19 July 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Zimbabwe to the United Nations addressed to the Secretary-General (A/44/409-S/20743 and Corr.1 and 2);

(e) Letter dated 2 November 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Panama to the United Nations addressed to the Secretary-General (A/44/706).

4. The Sixth Committee considered the item at its 24th to 38th and 45th meetings, held between 25 October and 10 November and on 21 November 1989. The summary records of those meetings (A/C.6/44/SR.24-38 and 45) contain the views of the representatives who spoke during the consideration of the item.

II. CONSIDERATION OF DRAFT RESOLUTION A/C.6/44/L.11

5. At the 45th meeting, on 21 November 1989, the representative of Guinea introduced a draft resolution (A/C.6/44/L.11) sponsored by: Algeria, Angola, Bulgaria, Cameroon, Cape Verde, Chad, Cuba, Cyprus, Czechoslovakia, Ethiopia, German Democratic Republic, Ghana, Guinea, Kenya, Mali, Mongolia, Philippines, Poland, Romania, Rwanda, Senegal, Tunisia and Viet Nam, later joined by Jamaica and Madagascar.

6. At the same meeting, the Committee adopted draft resolution A/C.6/44/L.11 by 95 votes to 5, with 13 abstentions (see para. 8). The voting was as follows: 2/

In favour: Afghanistan, Albania, Algeria, Angola, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Djibouti, Egypt, Ethiopia, German Democratic Republic, Greece, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Jamaica, Jordan, Kenya, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malaysia, Maldives, Mali, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nepal, New Zealand, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Somalia, Sri Lanka,

2/ The representatives of Australia, Brunei Darussalam, Kuwait, Lebanon, Liberia, Mauritania and Zaire announced later that, had they been present, they would have voted in favour of the draft resolution. The representative of Portugal announced that, had he been present, he would have abstained.

Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

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

Abstaining: Belgium, Canada, Denmark, Finland, Iceland, Italy, Japan, Luxembourg, Netherlands, Norway, Spain, Sweden, Turkey.

7. The representative of the United Kingdom of Great Britain and Northern Ireland made a statement in explanation of position before the vote. The representatives of the Federal Republic of Germany, the United States of America, France, Israel and Norway (on behalf of the Nordic countries) made statements in explanation of position after the vote.

III. RECOMMENDATION OF THE SIXTH COMMITTEE

8. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Draft Code of Crimes against the Peace and Security of Mankind

The General Assembly,

Mindful of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Recalling its resolution 177 (II) of 21 November 1947, by which it directed the International Law Commission to prepare a draft code of offences against the peace and security of mankind,

Having considered the draft Code of Offences against the Peace and Security of Mankind prepared by the Commission and submitted to the General Assembly in 1954, 3/

Recalling its belief that the elaboration of a code of offences against the peace and security of mankind could contribute to strengthening international peace and security and thus to promoting and implementing the purposes and principles set forth in the Charter,

3/ Official Records of the General Assembly, Ninth Session, Supplement No. 9 A/2693), para. 54.

Recalling also its resolution 36/106 of 10 December 1981, in which it invited the Commission to resume its work with a view to elaborating the draft Code and to examine it with the required priority in order to review it, taking into account the results achieved by the process of the progressive development of international law,

Bearing in mind that the Commission should fulfil its task on the basis of early elaboration of draft articles thereof,

Having considered chapter III of the report of the Commission on the work of its forty-first session, 4/

Taking note of the report of the Secretary-General on the subject, 5/

Taking into account the views expressed during the debate on this item at its forty-fourth session,

Recognizing the importance and urgency of the subject,

1. Invites the International Law Commission to continue its work on the elaboration of the draft Code of Crimes against the Peace and Security of Mankind, including the elaboration of a list of crimes, taking into account the progress made at its forty-first session, as well as the views expressed during the forty-fourth session of the General Assembly;

2. Notes the approach currently envisaged by the Commission in dealing with the judicial authority to be assigned for the implementation of the provisions of the draft Code, and encourages the Commission to explore further all possible alternatives on the question;

3. Requests the Secretary-General to continue to seek the views of Member States regarding the conclusions contained in paragraph 69 (c) (i) of the Commission's report on the work of its thirty-fifth session; 6/

4. Also requests the Secretary-General to include the views received from Member States in accordance with paragraph 3 above in a report to be submitted to the General Assembly at its forty-fifth session;

5. Decides to include in the provisional agenda of its forty-fifth session the item entitled "Draft Code of Crimes against the Peace and Security of Mankind", to be considered in conjunction with the examination of the report of the International Law Commission.

4/ Ibid., Forty-fourth Session, Supplement No. 10 (A/44/10).

5/ A/44/465.

6/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10 (A/38/10).