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SUMMARY RECORD OF THE 40th MEETING

Chairman: Mr. TUERK (Austria)

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 152: INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS AND ENTITIES ENGAGED IN ILLICIT TRAFFICKING IN NARCOTIC DRUGS ACROSS NATIONAL FRONTIERS AND OTHER TRANSNATIONAL CRIMINAL ACTIVITIES: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT WITH JURISDICTION OVER SUCH CRIMES (continued) (A/44/195, A/44/694)

1. Mr. DELON (France), speaking on behalf of the 12 States members of the European Community, said that important work had been undertaken in recent years under the auspices of the United Nations to combat the scourge of narcotics trafficking. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances had marked an important step, and multilateral and bilateral co-operation had also increased.
2. Within the European Community, activities had been focused on increased co-operation between specialized services in order to counter the threat stemming from the elimination of frontiers, and on the establishment of a European network for health data and medical research. The Twelve had also emphasized bilateral co-operation with developing countries. The battle against the transnational, organized type of crime generally associated with drug trafficking must be aimed at decreasing the production of illicit drugs and restricting their use. Hence, it must have both preventive and repressive aspects.
3. The proposal put forward by Trinidad and Tobago to establish an international criminal jurisdiction was a complex question which had provoked much discussion. Recent initiatives in that regard had not borne fruit. There were serious difficulties connected with the establishment of an international criminal court, including unresolved legal issues.
4. First, according to the principle of legality which formed the basis of criminal law, it was not sufficient to create an international court to try "international offences". Such offences must also be clearly defined, and the definitions must be approved at the international level, in accordance with the principle of "nullum crimen, nulla poena sine lege". Secondly, with regard to the issue of conflicting laws, rules must be laid down in order to determine which law was applicable in specific cases, and to settle conflicts between international and national jurisdictions. Such conflicts might enable drug traffickers to engage in dilatory procedures which could undermine the credibility of the international jurisdiction. Lastly, the question of enforcing the international court's decisions was certain to arise.
5. The Twelve were convinced that the requisite legal measures should be taken at the international level. At the current stage in the development of international law, the Twelve were favourable to initiatives which could promote success in the "all-out war" against drug traffickers, provided that they were likely to bring about real progress and quick results. The system set up by the 1988 Convention was a case in point.

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(Mr. Delon, France)

6. The proposal put forward by Trinidad and Tobago should be taken into consideration in the conduct of the preparations for the forthcoming special session of the General Assembly. The proposal could also be submitted to the International Law Commission for its opinion. As many of the questions raised by the proposal were related to the work on the draft Code of Crimes against the Peace and Security of Mankind being undertaken by the Commission, its comments, particularly on the establishment of an international criminal court, would be extremely valuable. The Twelve commended Trinidad and Tobago for its initiative and its role as a catalyst in the opening of a wide-ranging debate on the fight against trafficking in drugs.

7. Mr. KOROMA (Sierra Leone) said that the dimensions of the threat posed to national States and the international community by illicit drug trafficking had brought to the fore the issue of establishing an international criminal court to try certain offences. Although the need for such a jurisdiction had been evident for many years, the international community had been unwilling or unable to translate that need into reality.

8. Illicit drug traffickers not only mocked the laws which held societies together, but challenged the very institutions of the State. Unfortunately, not all States were in a position to cope with the increased threat to their stability and security. In such a situation, the Government of Trinidad and Tobago should be commended for its timely and courageous initiative. The establishment of an international criminal court to try drug-related and other similar offences not only would strengthen international law, but would give young States, whose existence was threatened by such illicit activities, the confidence to deal with them. Accordingly, his delegation would favour the adoption by the General Assembly of a resolution calling upon the International Law Commission to give urgent consideration to the matter and submit concrete proposals to the General Assembly.

9. Mr. ABRAMS (United States of America) said that his delegation looked upon the proliferation of transnational criminal activities with revulsion and concern, and applauded the spirit of the proposal put forward by Trinidad and Tobago. While any initiative to enhance the international community's ability to combat illicit narcotics trafficking was welcome, the potential benefits and problems of establishing an international criminal court must be carefully weighed, to avoid the risk of doing more harm than good.

10. The idea of establishing an international criminal court had a long and largely disappointing history. The reason for the lack of success stemmed largely from the enormously complex nature of the endeavour. Consensus would be required on many difficult issues, such as the means of obtaining evidence, the rules of procedure to be applied, the question of who would conduct the investigation and prosecution, and the site for the incarceration of offenders. Even if broadly acceptable solutions could be found, the very existence of those issues argued in favour of careful deliberation.

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(Mr. Abrams, United States)

11. The question also arose as to whether the very concept of an international criminal court, and the derogation from State sovereignty which it implied, would prevent such a court from receiving the broad acceptance necessary to make it effective. The Nürnberg and Tokyo International Military Tribunals should not necessarily be seen as auguring acceptance, since they had been an outgrowth of a unique set of circumstances.

12. It was also necessary to consider whether an international criminal court would contribute significantly to existing legal mechanisms for bringing international criminals to justice. He asked whether it could be known with certainty that States would be more willing to hand offenders over to an international court than to prosecute them or extradite them to another State. He also wondered whether an international criminal court might not glamourize the crimes over which it had jurisdiction. It was important that narcotics traffickers and terrorists should be treated as common criminals and not accorded special status. If a court, once established, proved to be ineffective, it might well be harmful to that which had already been achieved. It would be unfortunate and antithetical to the good intentions of the proponents of the measure if its implementation created merely an expedient dumping-ground for politically sensitive cases, or had the effect of diverting attention or resources from more practical means of combating narcotics trafficking and other international criminal activities.

13. Despite his questions, he recognized that the potential contribution which such a court might make merited a sober and thoughtful study of the concept. Accordingly, he agreed that the matter should be referred to the International Law Commission, which should be asked to study the feasibility and usefulness of an international criminal court and to prepare a report on its views. The Commission was in the best position to address the complexities of the proposal, and could draw upon the work in which it was already engaged in the context of the draft Code.

14. He also agreed with the representative of Brazil that the Committee's agenda was already crowded and that it would be inadvisable to add the topic to it now as a separate item.

15. Mr. INSANALLY (Guyana) said that Governments, especially those of small countries, were hard pressed to defend their sovereignty against the onslaught from international drug traffickers. Their political and legal systems were being subverted by proceeds from the illicit drug trade. The rule of law was being undermined, leading to public cynicism about the State's ability to maintain peace and order. Many Governments lacked the resources to deal with the growing threat of "narco-terrorism". While bilateral assistance could be useful, it was often unreliable. Extradition could be an effective form of judicial co-operation, but experience had shown that it could be fraught with difficulties.

16. In such a situation, it was natural to think that certain crimes, such as international drug trafficking, would be better dealt with in an international framework. It was that consideration which had led the Government of Trinidad and

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(Mr. Insanally, Guyana)

Tobago to call for the establishment of an international criminal court with jurisdiction over persons engaged in such activities.

17. The adoption of the 1988 Convention had been an important step in dealing with the drug problem. However, while the Convention clearly defined drug trafficking as an international criminal offence, it stopped short of establishing institutional machinery which would guarantee the prosecution and punishment of offenders. That omission must be remedied if the Convention was to be fully enforced.

18. There were obvious merits to the proposal put forward by Trinidad and Tobago. In the first place, a central international forum would be equipped with specialized machinery to deal with such criminal offences competently and expeditiously. It would have the added virtues of being less costly than a multiplicity of individual jurisdictions, and of addressing the question of extraterritoriality of jurisdiction which often arose in purely bilateral arrangements. Those were advantages for States which, for one reason or another, were not able to maintain effective machinery on their own.

19. The reservations which had been expressed concerning the desirability and feasibility of the proposal were understandable, since it did touch on national jurisdiction and sovereignty. Such doubts should not, however, prevent consideration of the idea on its merits. The representative of Trinidad and Tobago had mentioned several procedural safeguards which could ensure the proper functioning of the court. In that connection, the operation of the International Court of Justice might be instructive and should be studied with a view to determining accepted practice. The work previously undertaken on the subject by the International Law Commission would also be relevant.

20. Mr. MIRZAEI-YENGEJEH (Islamic Republic of Iran) said that drug abuse and trafficking had so widely affected the international community that no country, large or small, was immune from its adverse effects. The struggle against such a phenomenon must be carried out at the international level, since campaigns at the national level alone could not yield the desired results.

21. His country, which was located in a major drug-trafficking region, had taken steps to thwart drug traffickers and safeguard the health of Iranian society. Through co-operation with neighbouring countries, it had blocked the access routes for illicit drugs. Those measures, supplemented by strict laws and penalties, had within a short time considerably curtailed drug abuse and trafficking in his country.

22. The international community had demonstrated its resolve to combat and eradicate such criminal activities, and any further practical initiatives would be welcome. Accordingly, his delegation had carefully studied the proposal put forward by Trinidad and Tobago. With regard to the criminal responsibility of individuals, the signing of the 1988 Convention had been a great achievement. However, the Convention did not contain provisions relating to offences committed

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(Mr. Mirzaee-Yengejeh, Islamic
Republic of Iran)

by individuals as representatives of States. State responsibility, a complicated issue which had been before the International Law Commission for some time, appeared to have been deliberately excluded from the scope of the Convention in the interest of its early conclusion. The Commission was also considering the feasibility of establishing an international criminal court in the context of the draft Code of Crimes against the Peace and Security of Mankind. In view of those considerations, and in the interest of rationalizing the work of the Committee, his delegation suggested that the question of an international court should be referred to the Commission for scrutiny. He recalled that the proposal to include international drug trafficking in the list of crimes against the peace and security of mankind had received considerable support during the discussion of the Commission's report.

23. His delegation's suggestion was in no way intended to undermine the necessity of strengthening efforts at the international level. None the less, his delegation was of the view that at the current stage, the campaign against international drug trafficking required remedies other than legal ones, which should be sought through other organs of the United Nations system. That was why it believed that the special session of the General Assembly in March 1990 could yield fruitful results.

AGENDA ITEM 140: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued)

24. The CHAIRMAN announced that Burundi, China, Pakistan and Suriname should be added to the list of sponsors of draft resolution A/C.6/44/L.6.

AGENDA ITEM 141: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)

25. The CHAIRMAN announced that Cameroon, Cyprus and the Libyan Arab Jamahiriya should be added to the list of sponsors of draft resolution A/C.6/44/L.7.

The meeting rose at 11 a.m.