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Chairman: Prince WAN WAITHAYAKON (Thailand).

Measures to limit the duration of regular sessions of the General Assembly: memorandum by the Secretary-General (A/2206, A/C.6/339/Add.1) (concluded)

[Item 50]*

1. Mr. MOROZOV (Union of Soviet Socialist Republics) explained that he had voted against the preamble to, but for the operative part of draft resolution A (A/C.6/L.287), which the Committee had adopted at its preceding meeting. He wished to point out, however, that the request contained in paragraph 3 of the operative part was improperly addressed to the Secretary-General, who held his post illegally, and should instead refer to the Secretariat of the United Nations.

Request of the Government of China for revision of the Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide (A/2221)

[Item 56]*

2. Mr. HSU (China) thanked the Secretary-General for his detailed memorandum (A/2221) on the item before the Committee. That memorandum showed that the changes proposed by China were linguistic and did not alter the substance of the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III)), and that, consequently, it was sufficient for the General Assembly, if it so desired, to adopt the changes by resolution.

3. As explained in the 400th plenary meeting of the General Assembly, the main reason for the Chinese Government's request was that the existing Chinese text was not entirely in harmony with the other official texts of the Convention. For example, the expression "genocide" had been rendered into Chinese as "en-

dangering a race", "attempt" to commit genocide as "intent" to commit that crime and "complicity" as "plotting together".

4. The Chinese text of the Convention was actually a translation from the English text approved by General Assembly resolution 260 (III). He did not wish to criticize the Chinese translation section of the United Nations; it was particularly difficult to translate from a European language such as English into Chinese, for the two belonged to totally different language groups. The revised text had been worked out by the Chinese translation section in consultation with the Chinese delegation at the sixth session of the General Assembly, and, in the opinion of Chinese experts, came much closer to the other official texts.

5. In reply to certain comments which had appeared in a letter to the Editor of *The New York Times*, published in that newspaper's issue of 17 December 1952, he pointed out that the Chinese request had nothing whatever to do with the question of the possible inclusion of genocide in the draft code of offences against the peace and security of mankind. The sole purpose of the proposed changes was to bring the Chinese text into conformity with the other official texts of the Convention on Genocide.

6. He added that there were some questions he wished to raise in connexion with Annex IV to the Secretary-General's memorandum; perhaps arrangements could be made for a representative of the competent section of the Secretariat to be present at a meeting of the Sixth Committee.

7. Mr. IBRAHIM KHAN (Pakistan) said the Secretary-General's memorandum (A/2221) was a very thorough study of the linguistic question raised by the Chinese Government's request.

8. In considering the proposed changes in the Chinese text, the Committee must make sure that those changes would not alter the definition of genocide contained in

* Indicates the item number on the agenda of the General Assembly.

article II of the Convention. Any discrepancies between the five official texts might give rise to misinterpretation, misunderstanding, and even international tension. He therefore welcomed the opportunity to study the question in the Sixth Committee.

9. The definition of genocide contained in article II of the Convention was exhaustive. At the General Assembly's third session, the Sixth Committee had deliberately made that definition exhaustive, rejecting¹ a Chinese amendment² which had proposed a non-exhaustive definition. Hence, any linguistic changes which would have the effect of enlarging that definition would be contrary to the intentions of the authors of the Convention.

10. It was that possibility which troubled the delegation of Pakistan in connexion with the Chinese request. For example, article II of the Convention referred to destruction of various groups "as such". The revised Chinese text did not, any more than the existing text, contain the words "as such". As a result of that omission, and of the new ideogram suggested for the crime, genocide might be interpreted as the total or partial destruction in a ruthless manner of any human group. That would widen the scope of the concept in one way—it might, for example, include masses and populations as well as national, ethnic, racial or religious groups as such—while restricting it in another by introducing the element of ruthlessness.

11. He feared that the revised text might lead to the confusion of genocide with the category of crimes defined in the Charter³ and Judgment⁴ of the Nürnberg Tribunal. It was precisely in order to maintain the distinction between genocide and persecutions on political, racial or religious grounds in execution of or in connexion with any crime within the Tribunal's jurisdiction that the Sixth Committee, at the first part of the General Assembly's third session, had not adopted⁵ amendments⁶ to the preamble to the Convention whereby genocide would have been described as a crime against humanity and the Nürnberg Judgment would have been referred to as a precedent. As one of the opponents of the amendment, the representative of Pakistan had pointed out at the time⁷ that if genocide were described as a crime against humanity it would be limited to the three fixed categories of crimes falling within the jurisdiction of the Nürnberg Tribunal; and that such a restriction would be contrary to article I of the Convention on Genocide, which declared that genocide was a crime under international law, whether committed in time of peace or in time of war. He had further noted that reference to the Judgment of the Nürnberg Tribunal as a precedent would be unjustified for the following reasons: first, the principle underlying the Convention did not coincide with the Nürnberg principles, and, secondly, whereas the Nürnberg Charter had had the backing of force, the Convention on Genocide was based on voluntary acceptance by independent, sovereign States.

12. The International Law Commission⁸ had also recognized the difference between the concept of "crimes against humanity", as defined in article 6, paragraph (c) of the Nürnberg Charter, and the concept of genocide and had devoted a separate paragraph to each of those concepts in the draft code of offences against the peace and security of mankind⁹. The General Assembly should therefore beware of any changes in the Convention on Genocide which might destroy that distinction and lead to international controversy.

13. The delegation of Pakistan would be only too happy to have its doubts dispelled so that it could vote for the Chinese draft resolution (A/C.6/L.283).

14. Mr. ROBINSON (Israel) said that China, one of the forty States which had ratified or acceded to the Convention on Genocide, had accepted the original Chinese text, despite certain misgivings about the accuracy of that text. The Chinese delegation had now submitted a revised Chinese text (A/2221) and a draft resolution (A/C.6/L.283). In that draft resolution, the General Assembly was requested to approve the revised Chinese text and to recommend to States signatories of or parties to the Convention to accept that revised text; and the Secretary-General was requested to transmit the resolution and the revised Chinese text to the States concerned in order to elicit their reactions.

15. He appreciated the difficulties of adjusting the ancient Chinese language to the requirements of modern life and to such new concepts as genocide. The Chinese Government's request, however, raised far more complicated issues than had been indicated. The remedies proposed for the removal of so-called linguistic discrepancies were based on two assumptions: that there now existed a Chinese text which could be regarded as authentic and that the linguistic modifications constituted a revision of the Convention within the meaning of its article XVI. He contended that those two assumptions were unfounded.

16. The problem of the authenticity of the Chinese text was of great importance since, under article X of the Convention on Genocide, it could be relied on against another authentic text in case of controversy. In his opinion the Chinese Government had by its own actions, both explicit and implicit, reduced the status of the Chinese text from that of an authentic original to that of an official translation. In fact, in a controversy between China and another State relating to the interpretation of the Convention, the original Chinese text could hardly be invoked after the public statement that it contained no fewer than sixty-nine errors and did not correctly reflect the ideas of the Convention; nor could the Chinese Government invoke the revised text, for other governments were under no obligation to accept it. It should be noted that during the long process of drafting the Convention, Chinese had not been used in the discussion nor had an agreed Chinese text been ready on 9 December 1948 when the General

¹ See *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 78th meeting, p. 145.

² *Ibid.*, Third Session, Part I, Sixth Committee, Annexes, document A/C.6/232/Rev.1.

³ See *Trial of the Major War Criminals before the International Military Tribunal, Nürnberg, 1947*, vol. I, p. 10.

⁴ *Ibid.*, p. 171.

⁵ See *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 110th meeting, p. 509.

⁶ *Ibid.*, Third Session, Part I, Sixth Committee, Annexes, document A/C.6/267.

⁷ *Ibid.*, Third Session, Part I, Sixth Committee, 110th meeting, pp. 502 and 503.

⁸ *Ibid.*, Fifth Session, Supplement No. 12, part III, para. 120.

⁹ *Ibid.*, Sixth Session, Supplement No. 9, chap. IV, para. 59.

Assembly, by adopting resolution 260 (III), had approved the text of the Convention. In the circumstances, it could hardly be claimed that the Chinese text had the status of an authentic text. Mr. Robinson's view was supported by the statement of the representative of China at the 400th plenary meeting of the General Assembly to the effect that the revised Chinese text was intended to achieve greater conformity with the other official texts, greater similarity to the terminology used by the executive and judicial organs of China and greater intelligibility to the Chinese people. Clearly, the revised version had been prepared primarily for internal consumption. The very purpose of making one text conform to others implied that the others were of a higher standard. The conclusion to be drawn was that the Chinese Government itself considered the original Chinese text as a defective translation and was now satisfied that the revised text was a better translation. The attitude of the chief Chinese representative had just been confirmed by the Chinese representative in the Sixth Committee.

17. The second unfounded assumption was that China had presented a request for revision within the meaning of article XVI of the Convention on Genocide. It was significant that in international treaties revision was usually construed to mean modifications of substance or modifications of language which were substantive in nature. Reference to the debate during the preparatory stages of the drafting of the Convention confirmed the fact that the classical meaning of revision was contemplated by the authors and that the machinery provided for in article XVI was not applicable to the present case. Accordingly other methods should be sought. The two precedents referred to in paragraphs 11 and 12 of the Secretary-General's memorandum (A/2221) were not analogous because in the present case a supposedly authentic text was to be replaced by a completely new text.

18. Commenting on paragraph 1 of the operative part of the Chinese draft resolution (A/C.6/L.283), he said that the Committee was being asked to arbitrate between two Chinese texts when it was completely ignorant of the Chinese language.

19. He felt, in conclusion, that the Committee was not yet prepared to act on the Chinese request. The matter did not seem urgent. The proper procedure might be to request the Secretary-General to give further study in the light of the Committee's discussions and of all relevant facts, to the problems arising out of the Chinese request, the implications of those problems and the best possible method for solution. Alternatively, since the law of treaties was on the agenda of the International Law Commission (General Assembly resolution 374 (IV)), the latter body might be consulted. At the present stage, the delegation of Israel had no preference in the matter and would await the views of other members of the Committee.

20. Mr. MOROZOV (Union of Soviet Socialist Republics) noted that at the 79th meeting of the General Committee, the USSR delegation had opposed the inclusion of the item under discussion in the General Assembly's agenda. At the 400th plenary meeting, it had opposed the draft resolution (A/L.123) to refer the item to the Sixth Committee. It now objected to the

draft resolution (A/C.6/L.283) which had been submitted to the Sixth Committee.

21. The General Assembly could consider the question of the revision of the Chinese text of the Convention on Genocide only if it consulted the one legal Government of China, that of the People's Republic of China. In the absence of such consultation, the USSR delegation would not participate in the debate on the substance of the item, nor would it consider as legally valid any decision reached without that Government's participation.

22. Mr. PETREN (Sweden) said that, although it sympathized with the Chinese delegation's difficulties, the Swedish delegation was of the opinion that the Chinese request raised an important question of principle. In the case of a convention drafted and ratified in the five official languages of the United Nations, it would be a serious step to open the door to changes in any text without observing the procedures for revision which the Convention prescribed.

23. Unfortunately, he had no knowledge of Chinese and therefore could not enter into the substance of the linguistic question. Similar cases, however, might arise in connexion with any of the other official languages. He therefore wished to indicate the Swedish delegation's position on the principle involved in such changes in the text.

24. There were two possibilities. The first was that the proposed changes were purely stylistic, in which case the matter was not very important. Drafting should properly be verified in the course of the preparation of any convention. If, nevertheless, an imperfect text emerged, it was best to accept it with its imperfections in order to avoid reopening a discussion of substance. The second possibility was that the proposed changes involved alterations of substance affecting the meaning of the text. In that case the text could be revised only if the procedures for revision which the Convention prescribed were observed.

25. Furthermore, it should be noted that, although the inadequacy of the Chinese text might be regrettable, the text could be interpreted in the light of the four other official texts.

26. Accordingly, the Swedish delegation would be unable to support and would vote against the Chinese draft resolution (A/C.6/L.283). It also saw no reason for referring the matter to the Secretariat or the International Law Commission.

27. Mr. SERRANO GARCIA (El Salvador) explained that the delegation of El Salvador, jointly with the delegations of Costa Rica, Guatemala, Honduras and Nicaragua, had proposed (A/L.123) that the item should be referred to the Sixth Committee because legal questions were involved. There had been no intention to obstruct the request of the Government of China, but in principle legal matters should be considered by the Sixth Committee. Moreover, it had been felt that while the Secretary-General's memorandum (A/2221) referred to in the Chinese draft resolution (A/C.6/L.283) stated that the revised Chinese text introduced only changes which were "in the main of a linguistic nature", some of those changes might relate to substance. For the sake of a consistent and uniform procedure, it had seemed desirable that the

item should be carefully considered by the Sixth Committee before final action was taken by the Assembly.

28. He congratulated the Secretariat on the memorandum it had presented. He was concerned about and could not agree to the introduction into the revised Chinese text of the new element of "ruthlessness" since the term did not appear in the other official languages. Ruthlessness was not a constituent element of the crime of genocide. There were other discrepancies, to which attention was drawn in paragraphs 5, 7, 21, 38 and 41 of the Secretary-General's memorandum. In most cases, however, the proposed changes related only to drafting. Nevertheless, it was important to note that the introduction of new concepts in the Chinese text might later lead to requests for corresponding revisions in the other official languages.

29. In view of the difficulties involved, he suggested that a small working group of five or seven members should be designated to meet with the representative of China, clarify all doubtful points relating to the proposed revisions and report back to the Sixth Committee. Alternatively, members of the Committee might wish to put questions to the Chinese representative concerning the proposed changes.

30. Mr. NISOT (Belgium) expressed doubts as to the legal validity of the Chinese draft resolution.

31. In interpreting article XVI of the Convention on Genocide, the spirit of the United Nations Charter, which was the General Assembly's basic statute, must be borne in mind. According to the Charter, the General Assembly had, in principle, only powers of recommendation; its recommendations were not binding on States. How, then, could the Assembly declare, with binding effect, that contracting States would be deemed to have accepted the revised Chinese text unless they had signified objections? He was inclined to think that the Assembly would not be competent thus to give the silence of States the legal effect of subjecting those States to changes in the text of a treaty already in force. The procedure he would prefer would be for the Assembly to prepare a protocol and declare it open to signature by the States concerned.

32. Mr. EL-TANAMLI (Egypt) declared that it had always been the Egyptian delegation's conviction that the Committee should act in all good faith and mutual confidence in dealing with a question such as the one now before it. The Chinese Government had declared the Chinese translation of the Convention on Genocide to be inaccurate, and the Egyptian Government would not think of accusing it of bad faith. It was on the basis of that principle, which he would elaborate later in the discussion, and of the Secretary-General's memorandum (A/2221), showing that the changes requested by the Chinese Government were purely linguistic and not substantive, that the Egyptian delegation would support the Chinese Government's request.

33. Mr. MAKTO (United States of America) said that as Chairman of the United Nations *ad hoc* Committee on Genocide,¹⁰ which had drafted the Convention, he was particularly devoted to that instrument. He hoped, therefore, that the remarks he was about

to make would be taken in good part by those with whom he differed.

34. It would be most unfortunate if the Chinese request were to be rejected. Since the Convention did not grant its signatories any rights but rather imposed certain obligations on them, it was obvious that the Chinese Government had nothing to gain personally by the acceptance of its request, but was prompted by a genuine desire to replace an inaccurate by a correct text. He hoped the Committee would bear in mind the Chinese Government's sincere and disinterested intentions in that connexion.

35. The USSR representative had again raised the question of Chinese representation; since, at its 389th plenary meeting, the General Assembly had already decided that question (resolution 609 A (VII)), there was no need to dwell any further on that aspect of the matter.

36. Turning to the General Assembly's competence to grant the Chinese Government's request, he agreed with the Belgian representative that there could be no question of revision of the Convention by the Assembly, since the machinery for any such revision was expressly provided for in article XVI of the Convention itself. All the Chinese Government was requesting, however, was a correction of certain inaccuracies in the Chinese translation of the Convention. It might, therefore, clarify the situation if the Chinese delegation were to agree to delete from the preamble to its draft resolution (A/C.6/L.283) the reference to article XVI of the Convention.

37. The representative of El Salvador had suggested that the question should be referred to a small working group for further study. He failed to see what progress such a group could make, since the Chinese representative, who had already declared the revised Chinese text to be more accurate than the existing one, would be the only member of the group who understood the Chinese language. The revised text had been studied by the competent services of the Secretariat, which had reported (A/2221) that it introduced nothing but linguistic revisions and did not in any sense alter the substance or meaning of the Convention, as conveyed by the four other official texts.

38. The representative of Pakistan had attacked the Chinese request on the basis of an alleged relation between that request and the principles of the Nürnberg Judgment. Such an argument, however, was devoid of any substance, for there was no connexion whatever between the Nürnberg Judgment and the revised Chinese text. The representative of Pakistan had also said that the words "as such" did not appear in the revised Chinese text and had alleged that that omission served to enlarge the Convention's scope. Those words, however, did not appear in the existing Chinese text either.

39. Turning to the comments of the representative of Israel, he pointed out that if the Secretariat had declared, before the approval of the Convention in 1948 (General Assembly resolution 260 (III)), that the Chinese text was inaccurate and had produced a revised text, no objections would have been raised. Yet that was simply what the Chinese Government was now doing. The representative of Israel had said that,

¹⁰ See *Official Records of the Economic and Social Council, Seventh Session, Supplement No. 6.*

before accepting the corrections, it would be necessary to inquire from every party to the Convention which of the five texts it had ratified; surely that was irrelevant, in view of the fact that the Chinese Government itself, as well as the competent officials of the Secretariat, had declared the Chinese translation to be inaccurate.

40. The Swedish representative had said that no changes could be made in the text of the Convention except through the machinery provided therein. That would be true if a revision of the Convention had been requested, but, as Mr. Maktos had pointed out, it was only a matter of bringing the Chinese text into conformity with the four other texts.

41. He congratulated the Egyptian representative on his attitude, adding that were it a question of inaccuracies in the Arabic language he would not hesitate to accept the Egyptian delegation's judgment on the matter.

42. In conclusion, Mr. Maktos said his delegation would support the Chinese draft resolution. Its rejection could not fail to harm the Convention on Genocide and might well arouse the justifiable resentment of the Chinese Government.

43. Mr. BANERJEE (India) did not intend to offer any comments with regard to the merits of the request before the Committee, for his delegation was of the opinion that a discussion at that juncture would not be a useful contribution to the Convention.

44. The main criterion was whether the question would have any application as far as the Chinese people were concerned. The Indian delegation deplored the absence of any representative of the 400 million Chinese people and considered that the matter before the Committee should be deferred until the question of Chinese representation in the United Nations had been realistically and equitably settled. It therefore urged that there should be no further discussion of the Chinese Government's request at the current session.

45. Mr. HENAO Y HENAO (Colombia) stressed the difficulty of the question before the Committee, since it involved a decision as to whether a Chinese text was or was not correct. Had it been a matter of any substantive revision of the Convention, the countries of the American Continent could have suggested a system of reservations, as adopted by the Organization of American States.¹¹ Under that system, any country wishing to be excluded from the applica-

tion of any given clause of a convention made a reservation to that effect at the time of signature or ratification; the reservation was then communicated by the secretariat to all the parties to the convention, which had to give their views in writing, and those views were in turn communicated to the State making the reservation. Since, however, the question before the Committee simply concerned the accuracy of a translation, all that representatives were called upon to do was to trust the Secretary-General to have made all the necessary inquiries in the matter.

46. Hence, the Colombian delegation would support the Chinese draft resolution (A/C.6/L.283) but would ask the Chinese delegation to consider certain amendments.

47. In paragraph 1 the General Assembly was called upon to "approve" the revised Chinese text; it could not do so, however, since the majority of its Members were not familiar with the Chinese language. Again, paragraph 3 would create a rather serious precedent whereby any State failing to notify its acceptance of or objection to the revised text would be deemed to have accepted it. The principle that silence constituted consent in such a serious matter as the revision of the text of a convention was fraught with danger, for the silence of a government was frequently due to the delay caused by the necessity to consult the legislature before communicating its reply.

48. He therefore proposed the deletion of paragraph 1 of the operative part of the Chinese draft resolution, as well as of the last phrase of paragraph 3, beginning with the words "it being understood".

49. Mr. BELAUNDE (Peru) proposed that wherever the words "revised" or "revision" occurred in the Chinese draft resolution, they should be replaced, by "corrected" and "correction", respectively, since any revision of the Convention was within the exclusive competence of the parties thereto and not of the General Assembly.

50. Mr. MENDEZ (Philippines) supported the oral amendments proposed by the Colombian representative and suggested, further, that paragraph 2 of the Chinese draft resolution should be redrafted to read: "Submits to States signatories of or parties to the Convention the proposed new official Chinese text of the Convention, for their consideration". That would be in conformity with the deletion of the paragraph in which the General Assembly was called upon to approve the revised Chinese text.

The meeting rose at 1.10 p.m.

¹¹ See *Final Act of the Eighth International Conference of American States*, resolution XXIX, para. 2.