

United Nations  
GENERAL  
ASSEMBLY

TWENTY-THIRD SESSION

Official Records



THIRD COMMITTEE, 1605th  
MEETING

Tuesday, 12 November 1968,  
at 3.20 p.m.

NEW YORK

CONTENTS

	Page
<i>Agenda item 50:</i>	
<i>Draft Declaration on Social Development (concluded) . . . . .</i>	1
<i>Agenda item 55:</i>	
<i>Question of the punishment of war criminals and of persons who have committed crimes against humanity: report of the Secretary-General (continued)</i>	
<i>Draft optional protocol to the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity (continued) . . . . .</i>	1

Chairman: Mr. Erik NETTEL (Austria).

AGENDA ITEM 50

**Draft Declaration on Social Development (concluded)**

1. Mr. CABANAS (Spain) replied to the comments made about Gibraltar at the preceding meeting by the United Kingdom representative. As far as the question of sovereignty was concerned, Gibraltar was a colonial Territory which must be decolonized, as provided for in a number of General Assembly resolutions, which the United Kingdom was refusing to implement. The Spanish workers in Gibraltar were truly victims of discrimination, no matter what social advantages they might enjoy; they worked in Gibraltar because Gibraltar had always been their place of work and belonged to their country, and they asked nothing more than humane treatment and satisfactory living conditions. In education, the imposition of English as the language of instruction on a Spanish-speaking population created difficulties which held up social development. As for the children of United Kingdom nationals residing in Spanish territory who attended school in Gibraltar, the United Kingdom should be grateful to Spain for giving them the opportunity to do so.

2. Lady GAITSKELL (United Kingdom) wished to reaffirm that the United Kingdom had sovereignty over Gibraltar. She had already refuted with facts and figures the allegations that Spaniards were being subjected to discrimination in Gibraltar. As recently as October 1968, moreover, a Spanish newspaper had stated in connexion with the development programme undertaken by Spain that the education budget was very small, both in absolute terms and as a percentage of the total budget, and that Spain was one of the countries in which education was given the least importance.

AGENDA ITEM 55

Question of the punishment of war criminals and of persons who have committed crimes against humanity: report of the Secretary-General (continued) (A/7174 and Add.1-3, A/7203, chap. XI, sect. H; A/C.3/L.1559, A/C.3/L.1568, A/C.3/L.1570/Rev.1, A/C.3/L.1571, A/C.3/L.1572, A/C.3/L.1574, A/C.3/L.1618)

DRAFT OPTIONAL PROTOCOL TO THE DRAFT CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATION TO WAR CRIMES AND CRIMES AGAINST HUMANITY (continued)

3. The CHAIRMAN invited the members of the Committee to consider the Saudi Arabian draft resolution (A/C.3/L.1618) relating to the draft optional protocol to the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity (A/C.3/L.1570/Rev.1).

4. Mr. BAROODY (Saudi Arabia) said that he had not requested immediate study by the Committee of the draft optional protocol he had proposed. His main intention was that international guidelines should be established for trials of persons accused of war crimes or crimes against humanity. He deplored the atrocities which inevitably accompanied every war but would point out that the defendants tried at Nürnberg and Tokyo after the Second World War had belonged to the defeated countries, while the war crimes of the victors had remained unpunished. Yet it could not be denied that crimes had been committed on both sides. To regard the destruction of Hiroshima and Nagasaki as a necessary surgical operation to shorten the war would be to show scant respect for human rights. No matter how much the victims of nazism in various European countries had suffered, such discrimination was shameful, and a trial in which the victor judged the vanquished smacked more of revenge than of justice.

5. A number of European countries which had suffered particularly during the Second World War had been the ones which had expressed the desire for the adoption of a convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. The Asian and African countries, which had been suffering for thousands of years, patiently tried to defend their rights without calling for the adoption of any international instrument; nevertheless, he understood perfectly those who wanted such a convention, and he hoped that it would prevent the repetition of similar atrocities.

6. The draft optional protocol was not a sudden idea but was the result of his profound belief in the need to guarantee war criminals a fair trial. Some

delegations had told him informally that the ideas he wished to state would broaden the scope of the draft convention too much and might cause legal difficulties for their countries; he regretted that the countries which had proposed the convention had made it too limited in character by considering only one aspect of the punishment of war criminals and persons who had committed crimes against humanity. However, in view of the objections of some delegations, he had made his proposals merely an optional protocol and did not ask that it should be considered immediately.

7. Article 2 of the draft optional protocol should be replaced by the following:

"Without prejudice to the provision of the preceding article 1, every State has the right to try its own nationals for war crimes or crimes against humanity."

8. Introducing draft resolution A/C.3/L.1618, he said that in the second preambular paragraph the words "who have committed" should be replaced by the words "accused of having committed". The question of international criminal jurisdiction was closely linked to the extremely delicate question of the definition of aggression. The preamble to the draft resolution merely stated the facts. Under the operative part the General Assembly would take up the question of the draft optional protocol at such time as it resumed consideration of the question of international criminal jurisdiction. He was afraid that if the question of the draft protocol was referred to the body responsible for considering the question of international criminal jurisdiction, it would be forgotten; for that reason he had added the expression "or at such other time as it deems appropriate". Such a draft resolution would ensure that the principles stated in the draft protocol would serve, even before they were adopted, to dissuade the world from repeating the injustices committed in the rancour and hatred that had followed the Second World War.

9. In conclusion, he deplored the fact that the victors had given the German and Japanese peoples a feeling of collective guilt; he paid tribute to the artistic and scientific achievements of Germany and Japan throughout their history and, emphasizing that each person could be held responsible only for his own actions, he denounced the concept of inextinguishable collective guilt and appealed to the generosity and forgiveness which man should show towards his fellow man.

10. Lady GAITSKELL (United Kingdom) said she realized that in wartime atrocities were committed on both sides, by the victors as well as by the vanquished. But the Saudi Arabian representative, who had belonged to a neutral country during the Second World War, could not understand the feelings of the countries which had had to fight against the nazis. Furthermore, he should not forget that the nazis had committed atrocities in peacetime against thousands of civilians. Lastly, it might also be mentioned that the countries defeated in the Second World War today enjoyed a better economic situation than some of the victor countries. Ratification of the draft convention was already liable to be difficult for many countries, and the adoption of the draft optional protocol submitted by Saudi Arabia might make the prosecution of war criminals even more difficult.

11. Mr. HOVEYDA (Iran) paid tribute to the co-operative spirit shown by the Saudi Arabian representative in his draft resolution (A/C.3/L.1618), which gave the Committee the time needed to consider his draft optional protocol (A/C.3/L.1570/Rev.1). The Committee would in fact be unable to adopt the draft protocol at the present stage, since it would first have to be studied carefully by Governments. He would therefore vote for the draft resolution. He proposed that the words "Taking note of" in the first preambular paragraph should be replaced by the words "Referring to", since the Committee had not yet considered the draft protocol.

12. Mrs. OGATA (Japan) commended the basic idea and spirit contained in the draft optional protocol proposed by Saudi Arabia. That idea and spirit should be respected and should be taken into account when bodies of the United Nations studied, in future, the nature of tribunals constituted for the trial of war crimes and crimes against humanity.

13. While denying the intention to review the judgement of the International Military Tribunal for the Far East, she stated that one of the preliminary questions that were discussed was the constitution of the tribunal in which the judges were from various victor nations. At the time the accused had expressed their apprehension that in the hands of such a tribunal, justice might not be upheld, and they had stated that that Tribunal should not have proceeded with the trial. Their argument was refuted in the judgement but one of the judges, although he had finally disagreed to the objection of the accused, had maintained that the accused could not be blamed for having entertained apprehension of injustice.

14. Despite its great sympathy and respect for the basic idea and spirit contained in the draft optional protocol, her delegation would have found it difficult to support if it were pressed to a vote, first, because her delegation had abstained on the vote on the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity to which the draft optional protocol was attached, secondly, because her delegation doubted the competence of the Third Committee to deal with such juridical matters as those treated in that protocol. She was grateful, therefore, to the delegation of Saudi Arabia for not requesting a vote on the draft optional protocol at the present session. While recognizing the political and legal complexities involved, she repeated her hope that the basic spirit of the draft optional protocol calling for the constitution of a truly impartial tribunal would be given careful consideration in any future study undertaken by the bodies of the United Nations.

15. Mr. VALDIVIESO (Peru) proposed that in article 1 of the draft optional protocol (A/C.3/L.1570/Rev.1), the words "shall be tried" should be replaced by the words "can only be tried". With reference to article 3, he wondered who would be authorized to try mercenaries who were nationals of a State which was not a party to the conflict.

16. Miss HART (New Zealand) observed that the idea of establishing an international tribunal to try war crimes and crimes against humanity was not a new one and that already in the 1950s the General

Assembly (see resolutions 489 (V) and 687 (VII)) had established a committee to prepare a draft statute for that purpose. But it had then been decided that, since the question was closely connected with the work of the Assembly on the definition of aggression and on the draft Code of Offences against the Peace and Security of Mankind, the Assembly should wait until it had made progress on those questions before taking important decisions concerning the establishment of an international tribunal. Similarly, at the current session, the Assembly had decided not to take up the question of international criminal jurisdiction until its work on the definition of aggression had progressed further. It was in fact a very complex question, which required close study. The draft protocol raised among other things questions of consistency with the Geneva Conventions of 1949.<sup>1/</sup> She was therefore grateful to the representative of Saudi Arabia for not having asked that the draft optional protocol should be put to the vote. She would vote in favour of draft resolution A/C.3/L.1618, because she thought that the draft optional protocol should be studied in the context of the question of international criminal jurisdiction.

17. Mr. PAOLINI (France) thanked the representative of Saudi Arabia for having pointed out, in draft resolution A/C.3/L.1618, that the issues raised by the draft protocol were closely related to the general question of international criminal jurisdiction. He agreed with the observation of the representative of Iran concerning the first preambular paragraph and, in turn, proposed the following text: "Considering the fact that a draft optional protocol ... has been submitted by Saudi Arabia,". He also proposed that the word "revised" in the first and third preambular paragraphs should be deleted since the first text submitted by Saudi Arabia had not been discussed. Lastly, in the second preambular paragraph, he proposed that the word "pertinent" should be deleted, since it seemed to him unnecessary, and that the words "does not preclude" should be replaced by "is not detrimental to" and the word "adopted" by "recognized".

18. Mr. FORSHELL (Sweden) thanked the representative of Saudi Arabia for the spirit of co-operation he had shown in submitting draft resolution A/C.3/L.1618. It would facilitate the work of the Committee since the draft optional protocol (A/C.3/L.1570/Rev.1) raised several delicate questions which would take time to settle. He would therefore vote in favour of the draft resolution, but would have to abstain on the second preambular paragraph in view of his delegation's position on the convention. Moreover, the fact that the draft resolution would be submitted to the General Assembly by the Third Committee did not prejudge the position of the Swedish delegation on the question of which organ of the United Nations should study the draft protocol when the time came.

19. Mr. GILLET (Belgium) supported the oral amendments proposed by Iran and France. He himself proposed that in the fourth preambular paragraph the words "its previous consideration" should be replaced by the words "that it has already had before it", since the Assembly had so far never really considered

the question of international criminal jurisdiction. He would vote in favour of draft resolution A/C.3/L.1618, subject to the amendments proposed.

20. Mr. BAROODY (Saudi Arabia) thanked the representative of France for his suggestions. He saw no objection to replacing the words "Taking note of the" in the first preambular paragraph by the words "Considering the fact that a ... has been submitted". On the other hand, he did not think there was any need to specify that the draft protocol had been submitted "by Saudi Arabia", since other delegations besides his own had taken part in the preparation of the draft and his delegation did not claim a monopoly of the ideas contained in it. The word "recognized", with which it was proposed to replace the word "adopted" in the second preambular paragraph, seemed to him ill chosen since it might imply a return to the principles adopted in the past by the International Military Tribunal at Nürnberg.

21. Replying to the representative of the United Kingdom, he stated that the fact that he was the representative of a State which had been neutral during the Second World War was, on the contrary, a sign of his objectivity. The economic progress of Western Germany was due, like that of Japan, to the tenacity and discipline of its people, but also to the policy adopted immediately after the Second World War by the United States and the United Kingdom, which had promoted Germany's recovery in order to turn it into a shield against communism.

22. Mr. NAÑAGAS (Philippines) expressed his delegation's satisfaction at the statesmanlike act of the representative of Saudi Arabia in submitting a draft resolution which would give the opportunity to Member States to study closely the draft optional protocol which he had submitted. Since, however, there had been no real discussion of the substance of the draft optional protocol proposed by Saudi Arabia, that fact should be mentioned in the draft resolution by the addition of the following phrase at the end of the first preambular paragraph: "the substance of which the Third Committee has not been able to discuss at the twenty-third session of the General Assembly". He hoped that the representative of Saudi Arabia would be able to accept that suggestion.

23. Mr. GILLET (Belgium) said that the draft resolution should indicate that a draft optional protocol had been submitted, that it had raised issues of criminal jurisdiction and that the Committee had decided to postpone discussion of it. His delegation therefore suggested that the first preambular paragraph should read: "Considering the fact that a draft optional protocol to the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (A/C.3/L.1570/Rev.1) has been submitted", and that the third preambular paragraph and the operative paragraph should be amended by replacing the words "the revised draft" and "the draft" by the words "this draft". It would also be preferable to replace the word "adopted" in the second preambular paragraph by the word "affirmed", but that was purely a question of form.

24. Mrs. DE CATTAROSSO (Uruguay) said that it was undeniable that in order to try war criminals appro-

<sup>1/</sup> United Nations, *Treaty Series*, vol. 75 (1950), Nos. 970-973.

priate jurisdiction should be established which would guarantee impartiality. During the general debate in 1967, her delegation had argued that the item under consideration should be discussed in connexion with the codification of international criminal law and the establishment of an international criminal tribunal. Her delegation would vote in favour of draft resolution A/C.3/L.1618, on the understanding that its vote in no way prejudged its position either on the draft convention or on any international criminal jurisdiction which it might subsequently be proposed to establish.

25. Mr. BAROODY (Saudi Arabia) accepted the suggestions of the representative of Belgium. With regard to the suggestion of the Philippines delegation, he pointed out that although the Committee had not considered the draft optional protocol word by word, certain delegations had nevertheless commented, even if only briefly, on the principles stated in it. The addition proposed by the representative of the Philippines did not therefore appear to be pertinent, or else a phrase should be added which exactly reflected the discussion in the Committee. As for the remarks of the representative of Uruguay, he wished to emphasize that the draft resolution did not commit any Government for the future.

26. Mr. PAOLINI (France) said that since the representative of Saudi Arabia had accepted the suggestions of the Belgian delegation, his delegation withdrew the proposals it had submitted.

27. Mr. NAÑAGAS (Philippines) withdrew his proposal.

28. Mr. BOYD (United States of America) thanked the representative of Saudi Arabia for the spirit of co-operation he had shown and said that he wished

to draw the attention of the Committee to a slight drafting error, namely, that the second preambular paragraph of the draft resolution referred to "the Convention" rather than "the draft Convention" which was the expression used in the first preambular paragraph.

29. Mrs. WARZAZI (Morocco) thought that it was not appropriate to use the word "draft" since the convention would be adopted by the General Assembly during the current session.

30. Mr. SIRI (El Salvador) said that he would vote in favour of draft resolution A/C.3/L.1618, on the understanding that that would in no way commit his delegation with regard to the vote on the draft convention in the General Assembly.

31. Mr. ARTAZA (Chile) pointed out that, at the request of the representative of Saudi Arabia, a new revised version of the draft optional protocol would be issued and that the symbol in the first preambular paragraph of draft resolution A/C.3/L.1618 should therefore be amended.

32. Mr. SANON (Upper Volta) proposed that the word "draft" should be placed in square brackets so that it could be deleted later if the General Assembly adopted the draft convention.

33. Mrs. WARZAZI (Morocco) supported that proposal.

*The draft resolution submitted by Saudi Arabia (A/C.3/L.1618), as orally amended, was adopted by 82 votes to none, with 10 abstentions.*

*The meeting rose at 6 p.m.*