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Chairman: Mrs. Mara RADIĆ (Yugoslavia).

*In the absence of the Chairman, Mr. Nettel (Aus-
tria), Vice-Chairman, took the Chair.*

AGENDA ITEM 60

Question of the punishment of war criminals and of
persons who have committed crimes against hu-
manity (continued) A/6703 and Corr.1, chap. XII,
sect. VIII; A/6813, E/4322, chap. III; E/CN.4/928,
A/C.3/L.1503 and Corr.1, A/C.3/L.1504, A/C.3/
L.1516, A/C.3/L.1518, A/C.3/L.1520-1522)

CONSIDERATION OF THE REPORT OF THE JOINT
WORKING GROUP OF THE THIRD AND SIXTH COM-
MITTEES (continued)

1. The CHAIRMAN said that two trends had become
apparent in the Committee. Some delegations wanted
the Committee to consider the draft convention con-
tained in the report of the Joint Working Group (A/
C.3/L.1503 and Corr.1) and to adopt at least some of
the articles. Other delegations felt it would be pre-
ferable to defer consideration of the item until the
twenty-third session.

2. Mr. FUENZALIDA (Chile), while deploring the
atrocities committed during the Second World War,
was nevertheless unable to support the draft con-
vention drawn up by the Joint Working Group because
it contained a number of anomalies from the legal
point of view. In particular, it was at variance with
the principle of the non-retroactivity of penal laws as
embodied in the Chilean Constitution. Moreover, the
Chilean Penal Code provided in criminal cases for
statutory limitation of from five to fifteen years,
depending on the seriousness of the offence. On those
two points, the provisions of the draft convention
were totally incompatible with the laws in force in
Chile.

3. He found it regrettable that article I contained a
general condemnation of war crimes and crimes
against humanity, for in his opinion the two types of
crime should be clearly differentiated.

4. Lastly, certain provisions of the draft conflicted
with commitments undertaken by Chile in regard to
statutory limitation as a State Party to the Convention

on Extradition, signed at Montevideo in 1933 and
ratified by a number of American and European
States.

5. For those reasons, his delegation would abstain
in the vote on the draft convention and on the seven-
Power draft resolution (A/C.3/L.1516). It hoped that
a text that was more satisfactory from the legal point
of view would be drawn up, and it would gladly support
a text fulfilling that condition.

6. Mr. JHA (India) said that he had participated in
the meetings of the Joint-Working Group, which had
been fruitful and highly instructive. As stated in
paragraph 4 of its report, the terms of reference of
the Joint Working Group had been to prepare a draft
convention on the non-applicability of statutory limita-
tion to war crimes and crimes against humanity. He
doubted whether the principle of the non-retroactivity
of laws could be validly invoked to condemn the draft
convention and pointed out that the Joint Working
Group had not been asked to take a decision on that
point. It had considered the draft convention in an
essentially humanitarian spirit rather than from a
purely legal standpoint.

7. The preliminary draft convention prepared by the
Secretary-General (E/CN.4/928) specified the non-
applicability of statutory limitations to war crimes
"of a grave nature". The Joint Working Group had
decided to delete the phrase "of a grave nature", on
the ground that it was very difficult to make distinc-
tions between war crimes according to their degree
of gravity. Neither the Charter of the Nürnberg Inter-
national Military Tribunal nor any of the General As-
sembly resolutions mentioned in the preamble drew
such distinctions. Moreover, it was stated in article I
(a) that the term "war crimes" meant, in particular,
the "grave breaches" enumerated in the Geneva
Conventions of 1949 for the protection of war victims",
and that explanation should be sufficient.

8. Although the convention on the non-applicability
of statutory limitation to war crimes and crimes
against humanity was to apply primarily to crimes
committed during the Second World War, it had the
merit of replacing obsolete concepts by more up-to-
date ones, especially with regard to crimes against
humanity. The amendment submitted by the Demo-
cratic Republic of the Congo (A/C.3/L.1518) reflected
the development of legal thought in the matter. He
welcomed the fact that some of the countries of the
Afro-Asian group had participated in the Joint Working
Group, so that the draft convention reflected some of
their views. He was specially pleased to note that in
the draft convention the policy of apartheid was ex-
pressly condemned as a crime against humanity. In
that connexion, he pointed out that none of the coun-
tries which had opposed the mention of the policy of

apartheid in article I (b) had been able to invoke valid arguments, which was the reason why the countries of the Afro-Asian group doubted the sincerity of the commitments undertaken by those countries to combat the policy of apartheid. His delegation would have liked to see the draft convention adopted at the current session, and felt that Governments had had ample time to study it. However, as the Committee had only a few days left to complete its work, that would not be possible, and his delegation had accordingly taken part in preparing the seven-Power draft resolution proposing postponement of consideration of the Joint Working Group's draft until the twenty-third session. The draft resolution had been put into final shape after long consultations and reflected an attempt at compromise, as could be clearly seen from the list of sponsors representing different trends of opinion.

9. Mrs. HARRIS (United States of America) reaffirmed her delegation's willingness to participate in the formulation of a draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. Contrary to certain accusations levelled against it, the United States delegation had shown a spirit of co-operation in the Joint Working Group. If all delegations had done likewise, the Joint Working Group would have managed to reach agreement on most of the issues and, in the case of the most controversial ones, to acquaint the Third Committee with the different positions. Unfortunately, the text of the draft convention was the result not of a compromise but of hurried voting by a narrow majority.

10. One basic failing in the draft was its lack of juridical precision, which was reflected in the preamble and in article I. For example, General Assembly resolutions 2184 (XXI) and 2202 (XXI) should not be referred to in the preamble, for they did not deal with the question of crimes against humanity in the legal sense. In that connexion, she recalled that at the 542nd meeting of the Special Political Committee on 12 December 1966, during the consideration of the proposal which had given rise to resolution 2202 (XXI), the representative of Guinea had said that the term "crime against humanity" should not be interpreted in the strict legal sense which might be given to it by the Sixth Committee, but rather implied moral and political condemnation. In the circumstances, there were no grounds for mentioning in the draft convention that or any other Economic and Social Council or General Assembly resolution as they had no legally binding force.

11. Another serious failing was that whereas the purpose of the convention was to establish the principle of non-applicability of statutory limitation, article I sought to give a new definition of war crimes and crimes against humanity. She regretted that the Joint Working Group had attempted to define crimes against humanity in paragraph (b) when in paragraph (a) it had used the definition of war crimes given in other documents. The best solution, to her mind, would be to state briefly in article I that the convention applied to war crimes of a grave nature and to crimes against humanity, as defined in international law. That would avoid any enumeration—which would inevitably be incomplete—and any political implications. A reference to international law would

be sufficient explanation of the terms "war crimes" and "crimes against humanity". With regard to the former, the laws and customs of war were well known and had not been questioned by any delegation; with regard to the latter, it was important not to congeal the convention by incorporating an enumeration which did not allow for the progressive development of international law, nor was there any need to formulate a new definition since international law already recognized that, in certain circumstances, genocide, murder, extermination, enslavement and deportation constituted crimes against humanity, regardless of the nature of the political régime under which those acts were committed.

12. The third failing of the draft was reflected in article I, which extended the application of the convention to all war crimes and not merely to those of a serious nature. She had already said that her Government was in favour of the principle of non-applicability of statutory limitation to crimes such as murder, torture, inhuman treatment and biological experiments but not to minor infractions. The Secretary-General's preliminary draft (E/CN.4/928) quite properly provided for the application of the Convention to war crimes "to the extent that they are of a grave nature". That phrase was not ambiguous, since the Geneva Conventions of 1949 for the protection of war victims provided a clear and generally accepted standard in that regard.

13. The other provisions of the draft posed no major problems. In the Joint Working Group, her delegation had expressed reservations regarding the choice of ten as the number of instruments of ratification or accession required for the entry into force of the convention, but it appreciated the reasons why certain delegations favoured a smaller number of ratifications than that adopted for the International Covenants on Human Rights. It had supported the Polish proposal to delete the draft article on reservations, since it believed that States should be free to enter reservations provided that they were not incompatible with the subject and purpose of the convention. On the other hand, it had regretted the decision of the Joint Working Group to delete the provisions relating to settlement of disputes which were included in the Secretary-General's draft.

14. If the members of the Committee consulted paragraphs 91 to 93 of the Joint Working Group's report (A/C.3/L.1503 and Corr.1), they would see that her delegation had not adopted the Greek amendment as its own; it had never voiced support for the amendment, and its final position would depend in large part on the decisions taken by the Committee on the earlier articles of the convention. It was not true, as had been contended, that the United States proposal appearing in paragraph 87 of the report was a veiled version of the Greek amendment. As for the allegations that the United States was harbouring nazi war criminals, she would refer the Committee to the statement she had made at the 1518th meeting.

15. It appeared that the Committee would be obliged, for lack of time, to postpone consideration of the draft convention until a future session. Her delegation could not, however, vote for the seven-Power draft resolution (A/C.3/L.1516), since its preamble re-

peated the preamble of the draft convention prepared by the Joint Working Group and therefore the resolution was not purely procedural in nature.

16. Miss HART (New Zealand) expressed regret that the Joint Working Group had proceeded on the basis of voting rather than consensus and that the draft submitted to the Committee did not reflect any real agreement. A number of delegations had stated in the Committee that they could not accept the text in question, which was particularly regrettable since all the members of the Committee appeared to be in agreement regarding the main purpose of the convention.

17. Her delegation was among those that did not find the text satisfactory; article I of the draft did not solve the problem of defining war crimes and crimes against humanity; the question of the convention's retroactivity needed further study, and various other problems would have to be solved. However, the Committee did not have enough time for that at the present session, and her delegation felt that it had no choice but to postpone consideration of the draft until the twenty-third session of the General Assembly. In that regard, her delegation endorsed the seven-Power draft resolution. She would like to see the resolution call upon Governments to comment on the draft convention, since that would facilitate the work of the twenty-third session. She questioned whether the preamble of the draft resolution should reproduce that of the draft convention. It would be preferable for the resolution not to deal with the substance of the matter.

18. Mr. BENGTSON (Sweden) recalled that, as the Swedish representative had pointed out at the 873rd and 931st meetings of the Commission on Human Rights held respectively on 23 March 1966 and 17 March 1967, statutory limitation applied in Sweden to all kinds of crimes, from the most petty to the gravest. Since capital punishment did not exist in Sweden, the most serious crimes were punished by life imprisonment. The statutory limitation on such crimes was fixed at twenty-five years from the date on which the crime was committed. The principle of statutory limitation had been recognized in his country for more than 150 years and was an integral part of the Swedish Penal Code. His Government therefore had no intention of renouncing that principle with regard to a certain category of crimes, even if they were war crimes or crimes against humanity. Furthermore, as a number of speakers had already pointed out during the general debate, a convention of the kind now before the Committee would have retroactive effect with regard to crimes to which a statutory limitation already applied at the time of its adoption by the Assembly—unless, of course, a special provision to the contrary was inserted in the convention. Since the non-retroactivity of penal laws was one of the basic principles of the Swedish legal system, a convention which provided no guarantees in that regard would be unacceptable to his Government. Even if such guarantees were provided, moreover, the principle of the non-applicability of statutory limitation remained entirely contrary to Swedish law.

19. Since that was the case, his Government had no intention of acceding to the convention adopted by the Committee. He felt that, except as regarded those

States which became parties to the convention, there was no principle of international law which sanctioned the non-applicability of statutory limitation to war crimes and crimes against humanity. Accordingly, his delegation would be unable to support the draft convention now before the Committee even if it was substantially amended, and it would abstain in any voting either on matters of substance or on procedural matters, including the seven-Power draft resolution and the amendments relating to it.

20. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that he saw no serious obstacle to the adoption at the present session of the draft convention prepared by the Joint Working Group. As the Indian representative had observed, the Joint Working Group had examined the question very carefully, and no objections had been raised to the convention on grounds of principle during its proceedings. It was true that some delegations had abstained in the voting, but none of them had voted against the convention. The latter had been drafted by experienced lawyers and took account of all existing legal principles. The United States had opposed the inclusion of a reference to apartheid among crimes against humanity on the pretext that it was a political crime. However, the plenary Assembly, the Fourth Committee and the various bodies dealing with human rights had, on more than one occasion, stated that apartheid was a crime against humanity. In including a reference to apartheid among crimes against humanity, the draft convention was thus merely confirming a principle already recognized by the United Nations.

21. He felt that the Committee should first take up the draft convention prepared by the Joint Working Group (A/C.3/L.1503 and Corr.1) and then go on to the seven-Power draft resolution (A/C.3/L.1516). The Committee should begin by considering the preamble of the draft convention, which did not pose any serious difficulties and was, apart from a few slight changes, the same as the one prepared by the Secretary-General (E/CN.4/928), which the members of the Committee had had ample time to study. The preamble and the seven-Power draft resolution had many basic elements in common, and adoption of the preamble would facilitate adoption of the draft resolution, since the latter contained a number of the principles stated in the preamble. Thus, the Committee would not be losing time if it began its consideration of the draft convention but would, on the contrary, be taking a constructive step. It should begin by adopting the preamble. If it encountered difficulties after that, e.g. in connexion with article I, it could then adopt the seven-Power draft resolution and postpone consideration of the remainder of the draft convention until the twenty-third session. If no difficulties arose, it could readily adopt the entire draft convention.

22. Mr. ABOUL-NASR (United Arab Republic) said that he supported the Soviet representative's suggestions.

23. Mr. HELDAL (Norway), speaking on behalf of the Netherlands, Norwegian and United Kingdom delegations, introduced amendments (A/C.3/L.1520) to the seven-Power draft resolution.

24. The CHAIRMAN suggested that, if there was no objection, the Committee should take up the preamble of the draft convention.
25. Mr. A. A. MOHAMMED (Nigeria) said he did not think that the Committee should adopt the preamble first, since the procedure followed by the Joint Working Group had been to adopt article I before the preamble.
26. With regard to the amendments submitted by the Netherlands, Norway and the United Kingdom, which requested the Secretary-General to transmit the text of the draft convention to Member States and to invite them to submit comments, he observed that the sponsors of the seven-Power draft resolution had thought it unnecessary to include a provision to that effect, feeling that it would be a mere formality which would only lead to procedural delay, since copies of the Joint Working Group's report had been sent to all missions and the various Governments had therefore already had an opportunity to study the draft convention. If the Secretary-General had to send the text of the convention to Member States and wait to receive their comments before submitting his report, the procedure might, because of the limited number of replies he would receive, be a very lengthy one which would prevent the Committee from completing its consideration of the draft convention at the next session. Those States which were interested in the convention would submit comments on it in any case, and there was no point in including in the draft resolution the provision proposed by Norway.
27. Mr. MAHMASSANI (Lebanon) asked what would happen to the seven-Power draft resolution in the event that the preamble of the draft convention was adopted.
28. The CHAIRMAN pointed out that the draft resolution stated that, "owing to the lack of time, it was not possible to complete consideration of and to adopt the convention". Hence, adoption of the preamble would not prejudice the adoption of the draft resolution. With regard to the order in which the two proposals were to be put to the vote, he recalled that, under rule 132 of the rules of procedure, "If two or more proposals relate to the same question, a committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted". Accordingly, the Committee had to vote first on the draft convention submitted by the Joint Working Group and then on the seven-Power draft resolution.
29. Mr. ZOLLNER (Dahomey) said that he agreed with that view. He also wished to observe that the Committee had already begun its consideration of the draft convention, since the observations made during the general debate were part of that consideration. It therefore seemed logical to turn to the convention at once, taking up not the convention as a whole but each provision in turn. While he had no objection to beginning with the preamble, he would also agree to start with article I in accordance with the procedure followed by the Joint Working Group.
30. Mrs. AFNAN (Iraq) said that she endorsed the Soviet delegation's suggestions, which had been supported by the United Arab Republic.
31. Mrs. HARRIS (United States of America) proposed that the Committee should adopt article I before the preamble in accordance with the procedure followed by the Joint Working Group.
32. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said he felt that, on the contrary, it would be preferable for the Committee to begin by taking up the preamble. There was no reason to follow the order adopted by the Joint Working Group, since the latter had been dealing with proposals reflecting very different points of view, whereas the Committee had before it a concrete text on which it could vote. It should therefore begin by adopting the preamble and then follow the sequence of articles in accordance with the procedure employed in adopting the International Covenants on Human Rights. That was the best procedure, particularly since the adoption of the preamble would not pose any problems while article I might give rise to certain difficulties.
33. Mrs. MANTZOULINOS (Greece) said that there were many weak points in the text of the draft convention and that Governments should have an opportunity to study it. She was therefore making a formal motion that the Committee should decide whether or not to start considering the draft convention.
34. Mr. JHA (India) said that, having set up a Joint Working Group and given it an assignment, the Committee had an obligation to consider the results of the Group's work.
35. After an exchange of views in which Mr. ABOULNASR (United Arab Republic), Mr. ZOLLNER (Dahomey), Mrs. EMBAREK WARZAZI (Morocco), Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), Mr. NASINOVSKY (Union of Soviet Socialist Republics), Mr. SANON (Upper Volta) and Mrs. MANTZOULINOS (Greece) took part, the CHAIRMAN observed that the Committee had already begun its consideration of the draft convention.
36. Mrs. MANTZOULINOS (Greece) amended her motion to call upon the Committee to decide whether or not it should proceed with its consideration of the draft convention.
37. Mr. MAHMASSAMI (Lebanon) asked what would happen to the draft resolution if the Greek motion was adopted.
38. Mr. OZGUR (Cyprus) said that if the Greek motion was adopted, the Committee should go on to the draft resolution.
39. Mr. BEFFEYTE (France) asked what would be the effect of a vote suspending consideration of the draft convention.
40. Mrs. MANTZOULINOS (Greece) said that her motion was intended only to interrupt consideration of the draft convention at the present session.
41. Mrs. HARRIS (United States of America) submitted an amendment to the Greek motion adding the words "and should take up the seven-Power draft resolution (A/C.3/L.1516)".
42. Mr. BAHNEV (Bulgaria), supported by Mr. NASINOVSKY (Union of Soviet Socialist Republics), asked whether the rules of procedure provided for the possibility of introducing an amendment to a

motion on a point of order. Under rule 114, the Greek motion should be put to the vote without further delay.

43. The CHAIRMAN asked whether the Committee was prepared to take a vote.

44. Mrs. EMBAREK WARZAZI (Morocco) moved the adjournment of the meeting.

The motion to adjourn the meeting was adopted by 41 votes to 21, with 21 abstentions.

The meeting rose at 1 p.m.