



Chairman: Mr. Carlos GIAMBRUNO
(Uruguay).

AGENDA ITEM 52

Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity (*continued*)
(A/8703, chap. XIV, sect. B; A/8823 and Add.1, A/8837, A/C.3/L.1975 and Corr.1)

1. Mr. ALFONSO (Cuba) said that his delegation considered the question under consideration to be one of the most important of all the agenda items assigned to the Third Committee. It was therefore unfortunate that its consideration should have been delayed until the end of the session, when the pressure of time afforded little opportunity for a substantive debate on the useful documents provided, while other, less important, topics had taken up much of the time available. The delegation of Cuba hoped that, at the twenty-eighth session, the Third Committee would give the item the priority it deserved.

2. The importance which his delegation attached to the items was attributable not only to events dating from mankind's recent past history, but also to quite current events. As soon as the coalition of anti-fascist forces had formed in the wake of the Second World War, the Governments and peoples of the United Nations had shown their concern to ensure that those who had plunged the world into that tragedy should receive the punishment they deserved. Two legal instruments of special significance had been the immediate outcome of the ensuing peace: the London Agreement of 8 August 1945, establishing the International Military Tribunal, Nuremberg, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Subsequently, with the drafting of the Geneva Conventions of 1949, the entry into force of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the adoption of various resolutions by the General Assembly and the Economic and Social Council, the international community had continued to show constant concern over crimes of that nature. It should be noted that Cuba was a party to the six instruments he had just mentioned. However, despite the clear evidence of the importance of the question, attempts had been made on certain occasions, even in the United Nations, to belittle the significance of the item, on the pretext that it belonged to the past, that the subject had been adequately dealt

with within the institutional framework of international law, or that it was merely an obsession on the part of the countries that had suffered most severely from aggression by the Nazi-Fascist axis. The delegation of Cuba was obliged to reject those arguments. Although Cuba had not experienced the horrors of the Second World War on its own soil, it had been the victim of all kinds of aggression since it had begun to decide its own fate and it knew that the ideas which had ignited the conflagration in 1939 had not disappeared with the suicide or execution of the leaders of the Third Reich. It therefore fully understood the legitimate concern of the peoples to persevere in their endeavour to mete out due punishment to those responsible for the atrocities committed 30 years earlier and to ensure that their present-day successors were also given their deserts.

3. It should therefore be clear that the delegation of Cuba considered that the time had come to start defining a set of principles governing the detection, arrest, extradition and punishment of persons guilty of war crimes or crimes against humanity. First of all, it was evident that, as a result of the continuing genocidal aggression against the peoples of Indo-China by United States imperialism, war crimes and crimes against humanity were a daily event in that region. The atrocities committed in Viet-Nam, Laos and Cambodia had been denounced by the genuine representatives of the peoples of those countries many months before the My Lai scandal had leaked to the press of the country responsible. If there should be any lingering doubt about the necessity for strengthening the legal framework to prevent such deeds from going unpunished, one need only recall that, of the 30 or so United States officers who had been responsible for those actions—which were not unique of their kind—or who had covered them up, only one low-ranking officer, Lieutenant Calley, was currently in confinement—and, according to United States information sources, the conditions of his confinement were certainly far from uncomfortable. The person in question had ensured his economic future by publishing an account of his exploits in Viet-Nam, and his sentence, which had originally been imprisonment for life and had subsequently been reduced to 20 years, was under review as a result of an appeal for clemency.

4. Secondly, the world was continuing to witness the abhorrent practice of *apartheid* in southern Africa and the indiscriminate murders which, with the assistance of ultra-modern techniques, the Portuguese colonialists were committing against the indigenous peoples of their colonies on the same continent, and those actions came

under the heading of crimes against humanity according to article 1 (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. It must also be recalled that, in its resolution 3 (XXVIII),¹ the Commission on Human Rights had expressed the view that the grave breaches of the Fourth Geneva Convention committed in the occupied Arab territories also constituted war crimes.

5. With regard to those responsible for war crimes or crimes against humanity committed during the Second World War, the General Assembly, in its resolution 2840 (XXVI), had urged all States to contribute to the arrest, extradition, trial and punishment of persons guilty of such crimes, affirming that refusal by States to co-operate in that way was contrary to the purposes and principles of the Charter and to generally recognized norms of international law. Nevertheless, the Government of a Member State had met with considerable difficulty in securing the extradition of Klaus Barbie, a notorious Nazi criminal. The excellent relations maintained by that war criminal with the authorities of the military régime currently in power in Bolivia had obviously had something to do with the obstacles placed in the way of his extradition, under cover of a variety of pseudo-legal technicalities. That strengthened the conviction of the Cuban delegation that the United Nations should continue in its endeavour to draft principles to govern international co-operation in that field.

6. In any case, the subject was far from exhausted. It was necessary to find ways of guaranteeing the right of national liberation movements to punish those guilty of crimes against their peoples; for although that right could be taken for granted in view of the nature of such acts, strictly speaking it was confined to the punitive authority of the State, at least until further progress had been made in solving the complex problem of international jurisdiction. Moreover, it should not be forgotten that article 6 of the Charter of the International Military Tribunal, Nuremberg, also defined crimes against peace as well as war crimes and crimes against humanity. There was still a need for an instrument to cover that special and very serious category of crime, on the lines of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

7. The Cuban delegation considered the draft principles in document A/C.3/L.1975 and Corr.1 to be a good example of the type of progress that could be made in that direction and supported them, although it would submit written comments at a later date. It should be noted that paragraph 4 contained two ideas of particular importance: the principle that the power to punish lay primarily with those who had been subjected to the criminal act, and the implied notion that double classification of crimes, which had merits in the case of other offences, did not apply to that type of crime, because of its special nature and gravity. That exception had already been recognized in article I (b) of the Conven-

¹ See *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 7, chap. XIII.*

tion on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Cuban delegation would support any draft resolution on the item which would ensure the continuation of the work already begun on the principles in question.

8. Mr. AL-MASRI (Syrian Arab Republic) said that his delegation attached great importance to the item under consideration by the Committee. War crimes and crimes against humanity were still being committed in Asia, the Middle East and Africa, and the persons guilty of those crimes were escaping punishment. There was no doubt that the crimes that were being committed against peoples as a result of aggressive wars, military occupation and the policies of racism, *apartheid* and colonialism were as serious as the crimes for which the Nazi leaders had been prosecuted and punished.

9. In that connexion, it would be relevant to draw attention to the war crimes and crimes against humanity perpetrated by the Zionist Israeli forces in the occupied Arab territories, in occupied Palestine since 1947 and against the civilian population of the Arab States. Examples of those crimes were the total destruction of villages, houses and water tanks; the expulsion of the Arab inhabitants and the expropriation of their property; the collective punishments; the collective transfer of Arab populations; the radical changes in the physical character and demographic composition of the Arab territories; the destruction of the Arab national identity and of humanitarian, cultural and historical values; the establishment of Jewish settlements in all occupied Arab territories, in the Golan Heights, on the West Bank and in Sinai; the massacres among peaceful populations, and the air and ground attacks against the civilian population of the Arab States. All those criminal acts constituted war crimes and crimes against humanity, as defined in the principles of international law recognized by the Charter of the International Military Tribunal, Nuremberg, and affirmed by the General Assembly in its resolution 95 (I), and flagrant violations of the Geneva Conventions of 1949. It was also appropriate in that respect to recall resolution 3 (XXVIII) of the Commission on Human Rights, which his delegation firmly supported. The Syrian Arab Republic also urged the international community to take effective measures against such crimes whenever or wherever they were committed.

10. Mr. ROPOTAN (Romania) said that his delegation had consistently expressed its support for any action taken within the framework of the United Nations to ensure the prosecution and punishment of persons guilty of war crimes and crimes against humanity and the prevention of such crimes. The principle that States should refrain in their international relations from the threat or use of force against the political independence or territorial integrity of other States, or in any other manner inconsistent with the Charter of the United Nations was one of the most important principles proclaimed in the Charter. In the formulation of that principle in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the

Charter of the United Nations it had consequently been underlined that a war of aggression constituted a crime against peace, which gave rise to responsibilities under international law, i.e. the responsibilities of States and responsibilities of individuals guilty of such crimes. The primary purpose of the action taken within the framework of the United Nations to contribute to the prevention and punishment of war crimes, crimes against humanity and crimes against peace was to strengthen the role of the Organization as an instrument for the elimination of the use of force in international relations.

11. In accordance with that position of principle, his delegation attached great significance to the adoption of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the many resolutions aimed at encouraging States to take effective measures to punish persons guilty of war crimes and crimes against humanity. Adequate regulations for the effective punishment of such crimes played an important part in their prevention and in the protection of the right to life of individuals, and contributed to the implementation and strengthening of the principles of the non-use of force in international relations and to the defence of the most important common values of mankind. International co-operation in that field should take as its starting-

point the necessity of introducing in the legislation of all States appropriate provisions for the effective and prompt punishment of all persons guilty of such crimes. In Romania, even before the end of the Second World War special legislation for the punishment of war criminals had been adopted. The Romanian Penal Code, giving effect to the relevant international conventions to which Romania was a party—the Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity—included a special section concerning crimes against peace and humanity to which statutory limitations were not applicable. On the basis of the Penal Code and of the law on extradition, persons guilty of war crimes and crimes against humanity could be extradited, in accordance with international law.

12. His delegation shared the desire to intensify international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity and likewise supported the idea of adopting principles of international co-operation to that end. The draft principles in document A/C.3/L.1975 and Corr.1 offered a sound basis for progress in that direction.

The meeting rose at 10.50 a.m.