United Nations A/49/PV.56

General Assembly

Forty-ninth Session

Official Records

56th Meeting

Monday, 14 November 1994, 10.20 a.m.

New York

President: Mr. Essy . . . . . (Coté d'Ivoire)

The meeting was called to order at 10.20 a.m.

Agenda item 149

Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991: note by the Secretary-General transmitting the first annual report of the International Tribunal (A/49/342)

The President (*interpretation from French*): The General Assembly has before it the first report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. This report covers the period from 17 November 1993 to 28 July 1994 and is contained in document A/49/342.

May I take it that the Assembly takes note of the first report of the International Tribunal?

It was so decided.

The President (*interpretation from French*): I now call on Mr. Antonio Cassese, President of the International Tribunal.

Mr. Cassese (President, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991): I am most grateful for the signal honour of being invited to address the General Assembly.

Of course, I shall not summarize the first annual report of the international criminal Tribunal for the former Yugoslavia. I shall simply draw the Assembly's attention to some crucial issues concerning the establishment and functioning of the Tribunal.

I shall divide my exposition into four parts. First, I shall briefly recall the unique nature of the Tribunal. Secondly, I shall try to cast light on some of the many problems that have so far beset the existence of the Tribunal. Thirdly, I shall provide an update to our annual report. Fourthly, I shall set out a few final reflections.

Just a few words will suffice to bring to the fore the novelty and crucial significance of the Tribunal. It cannot be denied that we are currently witnessing an escalation in both national and international violence. This escalation is not only quantitative but also qualitative, in a sinister way. In previous times, when individuals and State agents perpetrated vicious crimes, they hastened to cover them up, or else they denied being involved in their commission. These expedients, however hypocritical, showed, nevertheless, that individuals and States were endeavouring to cleanse their consciences by claiming that they had not, in fact, misbehaved. In recent years even this pretence of good behaviour has been dropped:

94-87043 (E)

individuals and State agents engage in barbarous misdeeds without fear of the moral and political blame of the world community. They slaughter, maim and kill without even attempting to conceal their murderous hand.

The quality of violence has also changed in a second respect. Conflict, animosity and ethnic, racial and social tension tend to be dramatically radicalized and to find their sole outlet in physical violence. We are also witnessing an evil implementation of the concept that the political universe falls into two categories: friend or enemy. "Either you are on my side, and I shall lend you a supportive hand, or you are my foe, and I shall give you no quarter." In this Manichean vision of life and society, little or no space is left for mutual understanding, for compromise, for the amicable settlement of differences.

Faced with this calamitous plunge into violence, the international community's response, at least with regard to two areas of conflict — first the former Yugoslavia and now Rwanda — has been drastic: those suspected of outrages against humanity must be brought to justice at the international level; if found guilty, they must be sternly punished by a truly international and truly impartial body, before the very eyes of the whole international community. It is apparent that the creation of these two institutions, so strongly willed by the international community, signals an impressive turning-point. The United Nations has not only built up a powerful bridgehead in its fight against inhumanity, but has also reinforced that position at the first possible opportunity. These important steps make it possible to cherish the hope that the United Nations will eventually establish a criminal court of a permanent nature for the punishment of outrages against humanity, wherever they may be perpetrated.

Let me move on to my second point, which can be set out as follows: How is it that 12 months after the establishment of this ground-breaking institution, the Tribunal for the former Yugoslavia, no trials have yet been conducted at The Hague? To answer this question I need to draw the Assembly's attention to something which may seem obvious, and is indeed obvious, but which ought nevertheless to be borne in mind. To make an international criminal tribunal function one needs several things. One needs a courtroom and a secure place to hold the accused pending trial. One also needs international prosecutors and judges as well as law clerks, experts in court management, court reporters and other appropriate staff. In addition, one needs security officers responsible for the protection of judges and prosecutors as well as of victims, witnesses and defendants. On top of that, one needs guards charged with the custody of persons awaiting trial. It is clear that, even at this simple level, the logistical requirements of an international criminal court are numerous and varied, and markedly different from those necessary for setting up any of the various administrative bodies of the United Nations.

To depict graphically the way the international criminal Tribunal for the former Yugoslavia has tackled this huge array of problems, let me draw a parallel with the most important precedent at hand: the International Military Tribunal at Nuremberg.

At Nuremberg the bulk of the logistic resources was provided by the armies of the four victor Powers — in particular, by the United States Army. Whenever investigators, court reporters and other personnel were needed, the Nuremberg Tribunal tapped the huge resources of one of the occupying armies, and the problems were settled with military dispatch and efficiency. For example, it was from General Eisenhower that the Tribunal obtained its "Registrar", as well as approval for the payment of compensation to defence counsel. This made it possible for the trial to start with surprising speed — only three and a half months after the adoption of the Nuremberg Statute.

Things have gone differently with our Tribunal. Our Tribunal is a truly international institution. It is the expression of the entire world community, and not the long arm of four powerful victors. As a consequence, our Tribunal could only draw upon the resources made available to it by this world Organization, as well as voluntary contributions by States.

I shall not recount all the logistic, financial and other practical problems bedeviling the initial life of the Tribunal. These problems are set out in full in our annual report. Let me simply draw attention to three.

First, for many months after the institution of the Tribunal, the lack of a regular budget made it impossible to build a courtroom. As a consequence, a courtroom is only now available — 12 months after the setting up of the Tribunal. The same applies to the construction of a special detention unit under United Nations authority and control at The Hague. Despite the best efforts of all involved, this unit was ready only 11 months after the institution of the Tribunal.

Even more serious problems were caused by the lack of a Prosecutor. For many months this was a matter of

serious disquiet, for, under our Statute, no criminal proceedings can be started unless the Prosecutor submits an indictment. A Prosecutor was appointed by the Security Council in October 1993, but did not take office. Only in July 1994 — eight months after the Tribunal's establishment — was it possible for the Security Council to reach agreement on the appointment of another Prosecutor. Our Prosecutor, Justice Richard Goldstone, took office on 15 August this year — that is, eight and a half months after the initiation of the Tribunal's work.

In addition to these two major problems, let me draw attention to a third and fundamental difficulty that our Tribunal has had to face. This difficulty is not caused by financial or logistic strictures, but is inherent in the conduct of international criminal proceedings. To describe this difficulty, it may be useful briefly to compare our criminal proceedings with what normally happens in a national criminal case, on the one hand, and with the way in which international bodies normally collect information about serious breaches of international law, on the other. I shall start with a comparison with domestic criminal investigations.

Let us take a case of murder, the crime closest to those over which our International Tribunal has jurisdiction. Within a national setting, when a murder is committed, normally there is one victim and one offender. The police are able to commence their investigations immediately. As a rule, witnesses are not far from the location of the crime, and real evidence, such as weapons, blood and so on, can be readily collected. Furthermore, the police are guided by a set of clear legal rules and well-thumbed legal precedents.

Let me stress two more points, which are also important. On average, five to 10 investigators are called in to take part in the inquiry, which, again on average, may last many months. In addition, as soon as a suspect is identified, he or she is arrested by the police, who can then carry on their investigations and collection of evidence without fear that the presumed offender will escape. This is what happens in most States at the national level.

Let us now turn to the international setting — in particular, the setting of our Tribunal at The Hague. Here things are quite different. First of all, the crime scene is normally far from the seat of the investigators, as well as being inaccessible or, at any rate, not immediately accessible. Secondly, the crimes normally involve dozens of victims and scores of perpetrators. Thirdly, there is little or no forensic evidence available when the investigators arrive. Fourthly, often many States are involved in the investigations; the victims may have fled to various countries, while the witnesses may have taken refuge in others. Since each State has its own laws and its own bureaucracy, our Prosecutor needs to get in touch with and obtain cooperation from many different States. Fifthly — and most importantly — our Prosecutor has no immediate power of arrest, search or seizure. For this purpose he must turn to national authorities. However, before requesting the arrest, search or seizure, he must prove that there is a prima facie case — namely, that there is sufficient evidence leading to the reasonable belief that the suspect can be accused of the crime. It follows that our Prosecutor cannot first arrange for the arrest of the suspect and then collect the necessary evidence. No; he must first collect compelling evidence, and only at the end of this long process can he ask the national authorities to apprehend the suspect.

All these difficulties inherent in international criminal investigations are compounded by one striking fact: currently our Tribunal has approximately 20 investigators for all the crimes over which it has jurisdiction. In other words, it can count on the number of investigators normally used at the national level for just two or three murders. This, I believe, speaks volumes about the tremendous problems with which we are confronted.

Let me now move quickly to a comparison of the criminal investigation and prosecution processes of our Tribunal with the way in which other international bodies collect information about egregious violations of international legal standards. This comparison is also necessary because many commentators have been wondering why, given the wealth of existing documentation on alleged crimes in the former Yugoslavia — press reports and reports of Governments and non-governmental organizations, as well as the impressive work accomplished by the Commission of Experts created by the Security Council — the Prosecutor did not issue indictments immediately after taking office.

The problem is that those reports are a far cry from evidentiary material capable of standing up to judicial scrutiny. The task of our Prosecutor is to produce credible evidence to prove incredible events. This is a task which is fundamentally different from that of other bodies which are simply called upon to collect information.

Let me give an example. Let us assume that the representative of a non-governmental organization finds that there are 50 bodies in the mortuary of a village

inhabited by a certain ethnic group. He notes that all of them have been killed by shelling. In addition, he is told by an inhabitant of the same village that on the previous day a military group belonging to an enemy army, located in the vicinity, attacked the village. In this case, that representative may be warranted in concluding that a massacre of civilians was perpetrated by that particular army.

Our Prosecutor needs to undertake much more extensive and complex investigations. He needs to prove that the death of those people was indeed caused by the shelling and not by any other explosion or firing. He needs to ascertain whether or not all those in the mortuary were killed by the same shelling; whether before dying they were themselves fighters or, instead, peaceful civilians; and whether any military installation was located close to the place where they were killed. Furthermore, our Prosecutor needs to identify those who carried out the shelling, the chain of command, whether or not orders were given to fire on the village and so on. The Prosecutor also has the onus of establishing the guilt of the suspects beyond any reasonable doubt. As can be seen, the task of our Prosecutor is more demanding than, and indeed different from, that of bodies and organizations responsible solely for collecting information and preparing reports.

I am aware that this is indeed a gloomy picture. Let me, however, emphasize one important point: the difficulties to which I have drawn attention should in no way lead one to conclude that the conduct of international criminal proceedings raises problems of such magnitude as to discourage resort to international criminal tribunals. Not at all! The practical and legal problems standing in the way of the good and speedy functioning of such tribunals are undoubtedly outweighed by the great merits of international criminal justice.

Indeed, in cases of gross and large-scale violations of international legal standards on human rights, particularly when such violations occur in time of armed conflict, international justice can guarantee absolute independence and objectivity as well as the correct application of those international legal standards. Often the national courts of the State or States where the gross breaches have occurred may not be in a position to render impartial justice, free from emotional or political overtones, and the courts of other States may lack the necessary jurisdiction. International justice thus becomes indispensable, the more so because the crimes at issue are so abhorrent and on such a scale as to concern the whole international community. True, the realization of international justice faces many practical problems. The response to these problems must be patience, perseverance and a strong will to overcome all existing and future difficulties.

That this must be the response is borne out by what has happened to our Tribunal for the former Yugoslavia. In spite of the numerous and diverse handicaps to which I have referred, the Tribunal's action has only been slowed, not hamstrung. It was an uphill struggle, but we won the fight. Without waiting until all the necessary financial and practical measures had been taken in New York, the Tribunal's judges resolutely put in hand all those activities that were within their power. They have thus laid the groundwork for the initiation of criminal proceedings. Suffice it to mention, in this respect, the expeditious elaboration and adoption of a mini-code of international criminal procedure — our rules of procedure and evidence; of the rules of detention, governing the holding of accused in the Tribunal's custody while awaiting trial; and of the directive on the granting of legal aid to defendants. These three sets of legal rules are indeed unprecedented in the international community. Given the huge differences between our Tribunal and those of Nuremberg and Tokyo, we had to sail into uncharted waters.

These three sets of legal rules will now make it possible for trials to commence, as soon as the necessary legal and practical conditions are fulfilled.

One of the most important of these conditions — if not the major condition — is the filing of indictments by the Prosecutor. This is a crucial issue on which I wish to report to the General Assembly — and this will be my third point: namely, the updating of our first annual report.

At present, in spite of all the existing difficulties, the Prosecutor's Office is investigating 12 cases involving multiple suspects. Many of these investigations may require interviewing more than a hundred victims or witnesses, of whom possibly 60 will be called to each trial.

The investigations by the Prosecutor's Office have already yielded important results. In October the Prosecutor lodged with the Registrar an application for the deferral to our Tribunal of an important case then pending before the German authorities, a case involving charges of genocide, "ethnic cleansing", torture and rape. Last week a Trial Chamber held a public hearing at The Hague to examine the application, as well as the

statements made by the German Government and the defence counsel, who had been granted leave to appear as *amici curiae*. The Trial Chamber upheld the Prosecutor's application and requested Germany to remit the case to our International Tribunal. This first public hearing has at last made our International Tribunal visible to the parties concerned and to world public opinion. In a way, it has not only marked the public birth of our Tribunal, but has also countered, at least in part, the scepticism so frequently expressed.

In addition, at the beginning of November the Prosecutor issued an indictment involving charges of gross violations of the Geneva Conventions and of the laws and customs of warfare, as well as charges of crimes against humanity. This indictment has already been confirmed by the reviewing judge and made public. The reviewing judge also issued two arrest warrants addressed to the relevant national authorities. Soon the Prosecutor will submit further indictments.

It is thus apparent that the initial difficulties are being overcome and the Tribunal's work is proceeding at an increasingly rapid pace. If, as I fervently hope, this Assembly supports our efforts and approves the budgetary requests submitted by the Secretary-General, we in The Hague expect a very busy 1995. We anticipate that from March 1995 the Tribunal will be in continuous session throughout the year. The two Trial Chambers and the Appeals Chamber, having at their disposal only one courtroom, will carry on alternate morning and afternoon proceedings.

I shall wind up my statement with a few general reflections; they will constitute my fourth and final point. We in The Hague are of course aware of the limitations on the role of our Tribunal. We are aware that the sentences we pass will not exhaust the poisoned wells of racial, national or religious hatred. We also know, however, that the setting up of our Tribunal is intended to signal that the world community will not stand idly by, impassively or resignedly, and watch while barbarous acts are perpetrated, unconcerned and unaffected by them only because they are committed in what is for most of us a far-away land, the former Yugoslavia. You, the Members of this Assembly, together with the Security Council, have decided that massacre, rape, "ethnic cleansing" and the wanton killing of civilians affect each and every one of us, whatever our nationality and wherever we live. They affect each and every one of us because they imperil the great principles of civilization enshrined in international legal standards of human rights.

In concluding, let me emphasize that our Tribunal could not have achieved even the initial progress it has made to date without the support of all the State representatives sitting here today. Some have supported us with donations to the Trust Fund of money, equipment, personnel and so on. For that I thank them most sincerely and assure them that every last bit will be used effectively. I must now ask all States to continue to assist us generously, both by way of individual contributions and with overall support for our budget, which is again before this Assembly.

The tasks that the United Nations has entrusted to us are daunting. On the eve of the United Nations fiftieth anniversary, the Organization has decided that the United Nations should broaden its arsenal of pacific means to include resort to international criminal justice as a lawful response to force and violence. All those who are working on behalf of the Tribunal are aware of the heavy responsibility they have been called upon to shoulder on behalf of the whole international community. We shall accomplish the Tribunal's mission to the very best of our ability and energy. We hope thus to make our contribution to alleviating the anguish and sorrow of all those who continue to suffer, even as I speak now, in the former Yugoslavia.

The President *(interpretation from French):* I should like to propose that the list of speakers in the debate on this item be closed this morning at 11 a.m.

It was so decided.

The President *(interpretation from French):* I therefore request those representatives wishing to participate in the debate to inscribe their names on the list as soon as possible.

Mrs. Hasan (Pakistan): With the adoption of resolution 827 (1993) on 25 May last year, the Security Council took the momentous decision to establish an International Tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

The Nuremberg Tribunal and the Tokyo Tribunal judged on behalf of the international community those who had committed crimes against humanity during the Second World War. Those Tribunals were established by the victors of the war and were created in very different circumstances. They were based on moral and juridical

principles of a specific nature. In contrast, the International Tribunal on the former Yugoslavia is the first ever established by the United Nations, and thus occupies a unique place in modern history. Its establishment is a judicial response to the demands posed by the situation in the former Yugoslavia, where appalling war crimes and crimes against humanity have been perpetrated on a large scale, mainly by the Serbian side against the Muslims.

Notwithstanding the fact that the historical circumstances surrounding the creation and work of the Nuremberg Tribunal were drastically different from those behind the setting up of the International Tribunal for the former Yugoslavia, one cannot fail to note that, in comparison with the Nuremberg Tribunal, which was fully operational within eight months of its creation, the International Tribunal for the former Yugoslavia is not yet in a position to accomplish its primary task: to render justice.

We are, however, encouraged to see the first annual report of the International Tribunal transmitted to the General Assembly by the Tribunal's President, Mr. Antonio Cassese. This comprehensive report provides a detailed account of the progress achieved and the remaining impediments in the way of the Tribunal. My delegation expresses the hope that the three categories of difficulties pointed out in the first annual report of the Tribunal — difficulties of a practical, financial and structural nature — will be overcome quickly in order to render the Tribunal functional and effective as soon as possible.

Strong support and assistance by the Secretary-General, the generous cooperation of a number of States, notably the host State, and the dedication of the Tribunal's staff have made it possible to lay a strong foundation for the Tribunal's tasks. In spite of its own resource constraints, Pakistan has made a financial contribution of $1 million to the Tribunal's budget. We are also proud of the fact that Mr. Justice Rustam Sidhwa, an honourable and distinguished Pakistani, is an elected Judge of the International Tribunal.

We note with appreciation that the essential legal framework for the Tribunal's proceedings, including the rules of procedure and evidence, has been established. Suitable premises have been found for the Tribunal and adapted to the needs of the judicial process. An Acting Registrar has been appointed, the Registry has been staffed, although not yet in full, and the core functions of the Victims and Witnesses Unit have been established. The Detention Unit, where the accused will be held pending trial, has been built, and the necessary rules of detention have been adopted by the Tribunal.

One of the most significant steps taken towards the realization of the tasks of the International Tribunal was the appointment of Judge Richard Goldstone as the Prosecutor of the International Tribunal, who assumed his duties on 15 August 1994. My delegation would assure him of our complete cooperation in the performance of his important task. As the Office of the Prosecutor moves forward with its investigations, an issue of increasing importance will be the protection of witnesses. All Member States must offer full assistance to the Office of the Prosecutor, especially in the protection of witnesses.

We note that the first indictment was made by the Tribunal on 7 November, charging a former commander of a concentration camp operated by the Bosnian Serbs with murder, torture and mutilation of Muslim prisoners. We express the hope that in the coming weeks and months the Prosecutor will issue further indictments for review by judges. The Office of the Prosecutor must be fully staffed and equipped with all the necessary infrastructure and modern technology to ensure its smooth and efficient functioning.

The Tribunal must also establish a liaison office in Sarajevo in order to coordinate its work with the authorities in Bosnia and Herzegovina. In order to accomplish its mission of rendering justice expeditiously, the Tribunal will need the continued cooperation of the States Members of the United Nations. We appeal to the international community, particularly the affluent States, to come forward with material and financial assistance to the budget of the International Tribunal.

The establishment of the Tribunal is of enormous significance for the world community, as this institution is called upon not only to vindicate and enforce the abiding demands of justice and humanity, but also to serve as a warning against any future perpetrators of crimes against humanity. My delegation is confident that, with the political, material and financial support of the international community, the Tribunal will be able to carry out its task in an effective and impartial manner and thus open a new path towards the realization of true international peace and justice.

The rendering of justice by the International Tribunal will help to restore humane and peaceful conditions in the war-torn former Yugoslavia and to alleviate the anguish and grief of those who have suffered and who continue to

be victims of armed violence and brutality. The example set in the former Yugoslavia will also serve as a warning to other regions where innocent peoples are being subjected to the use of force, brutalities and atrocities, in breach of the norms of international humanitarian law.

Mr. Elaraby (Egypt) *(interpretation from Arabic):* At the outset, I should like to extend my thanks to Mr. Antonio Cassese, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. We thank him for the lucid and comprehensive statement he made this morning and assure him that the delegation of Egypt fully understands the nature and dimensions of the problems he referred to in his statement.

Security Council resolution 808 (1993) established the International Tribunal. That was a serious step in the right direction towards putting an end to the human tragedy endured by that region as a result of the military conflict and its attendant heinous racial practices, in particular the policy of "ethnic cleansing", which is, without a doubt, a form of genocide. The Tribunal is unique in modern history. It is the first international criminal tribunal ever to be established by the United Nations and differs in its mission, nature and historical circumstances from the two international military tribunals established in Nuremberg and Tokyo.

The inhuman practices witnessed in the former Yugoslavia make it very important to expedite the prosecution of the perpetrators of war crimes and grave breaches of international humanitarian law. Thus, the Tribunal should take expeditious measures, as the traditional approach could lead to more waste of time, and thereby complicate further the prosecution process.

The delegation of Egypt fully supports the objective requirement which the President of the Tribunal clearly enunciated in his statement, namely the need to provide the financial resources that are necessary for the Tribunal. We call upon the General Assembly to approve the allocation of the necessary resources for the Tribunal's work through the regular budget of the United Nations on an urgent priority basis. This is particularly necessary in the light of the Tribunal President's statement that, starting from March 1995, the Tribunal will be in constant, year-round session. The Trial and Appeals Chambers will be rotating morning and afternoon in their procedures. In this connection, the provisional budget under which the Tribunal is currently working is neither sufficient nor guaranteed to continue. This is a situation that endangers the Tribunal's structure with regard to the recruitment of the necessary staff and impedes the provision of the services needed for the Tribunal to perform its work.

The delegation of Egypt expresses its deepest appreciation to the Tribunal. We also commend the serious initiative of the Tribunal, as made clear earlier by the President of the Tribunal, namely that, despite the lack of resources, the Judges proceeded with their serious task of adopting the rules of procedure, detention of the accused and rules of evidence. My delegation also wishes to commend and pay tribute to the serious steps and efforts taken by the Prosecutor, Mr. Goldstone, to initiate the prosecution proceedings and the issuance of the first indictment early this month. On this occasion, we also pay tribute to the cooperation with the Tribunal of the host country, the Netherlands.

The delegation of Egypt underscores the need to ensure the safety of and provide protection for the witnesses who testify before the Tribunal and provide the evidence whereby it may reach its verdict. It is also important to ensure the full cooperation of States and of international judicial organizations with the Tribunal and its organs as such cooperation is essential to make possible the taking of necessary steps within the framework of the domestic laws of States in enforcing the judgements of the International Tribunal and ensure compliance with requests for assistance or orders made by one of the Tribunal's chambers.

In this connection, it is important to refer to the stipulation in the Statute, which states that the International Tribunal shall have primacy over national courts and prevails over all legal impediments obstructing the extradition or transfer of the accused to the Tribunal.

While considering the Tribunal's report it is important to refer to the Commission of Experts established by the Security Council prior to the establishment of the Tribunal. The Commission has effectively concluded its work and investigations into the war crimes as well as the serious breaches of international humanitarian law in Yugoslavia. It is also important to refer to the importance of the Commission's report and to note that it will be issued as an official Security Council and General Assembly document. That report is an important document that will assist the Tribunal in its investigation of a number of the crimes committed, namely, rape, torture, maiming and killing, in addition to other acts of intolerable or degrading treatment.

The delegation of Egypt has perused with interest the report of the Secretary-General (A/49/342), which includes the annual report of the International Tribunal transmitted to the Security Council and the General Assembly. My delegation fully supports the contents of the report and concurs with the concluding observations, which state:

> "The establishment of the Tribunal may constitute a turning-point in the world community. If the Tribunal proves that it can work in an effective and dispassionate way and the necessary cooperation of all States and United Nations bodies is forthcoming, it may open a new path towards the realization of true international justice, and hence of peace, in the world community." (*A/49/342, para. 197*)

Mr. Ismail (Malaysia): Just a few minutes ago, Mr. Antonio Cassese, President of the international criminal Tribunal for the former Yugoslavia, made an incisive and thought-provoking statement to the Assembly. He very aptly observed that we as Member States have

> "decided that the United Nations should broaden its arsenal of pacific means to include resort to international criminal justice, as a lawful response to force and violence." *(supra, p. 5)*

It is true that we the Members of the Assembly have decided that the world community would not stand idly by impassively watching the perpetrators of barbarous acts brutalizing fellow human beings. Massacre, rape, "ethnic cleansing," the wanton killing of civilians affect all of us irrespective of our creed, race, religion or place of abode. They undermine fundamental values and the greatest principles of all civilizations.

Our deliberations here today must contribute to the work of this Tribunal, which seeks to alleviate the anguish and sorrow of all who have suffered, and continue to suffer, from aggression and "ethnic cleansing" in the former Yugoslavia. The Tribunal represents the will of the community to bring the perpetrators of crimes against humanity to justice. It can help dissolve the poisonous fumes of resentment and suspicion, and put to rest the lust for revenge.

The International Military Tribunal at Nuremberg, a forerunner in many ways of the Tribunal on former Yugoslavia, had the benefit of the full support of the victors of the Second World War. The Tribunal on former Yugoslavia remains confronted with a range of issues, both organizational and substantive. These issues have been pointed out by Mr. Cassese in his statement, as well as in the report of the Secretary-General in document A/49/342.

My delegation is concerned over the practical, financial and structural difficulties confronting the Tribunal, particularly in the first few months of its existence. We note that, owing to the shortage of financial resources, the Tribunal has not been able to recruit experienced staff and personnel other than on short-term contracts, thus restricting the choice considerably and hampering its work. The report further discloses that even the judges are still being paid on an ad hoc basis. While we note that some of these problems have been addressed, we firmly believe that the work of the Tribunal should not be made hostage to the availability of resources. In this regard, Malaysia has contributed $2 million for the work of the Tribunal. We call on all Member States to ensure that the Tribunal is adequately funded to ensure that it completes its work.

We regret the unfortunate turn of events that led to the withdrawal of the prosecutor-designate in February 1994 and the ensuing five-month delay in appointing his successor. This was a major blow to the Tribunal. The Office of the Prosecutor, which is responsible for the initiation and conduct of investigations and prosecutions, has been handicapped by the long delay in the appointment of the Prosecutor. My delegation therefore welcomed the appointment of the Honourable Richard Goldstone as Prosecutor in July 1994. This means that the final key element of the Tribunal's structure is now in place.

Malaysia is also concerned about the problems related to staffing in the Office of the Prosecutor. The success of the Tribunal as a whole depends very much on the calibre of the investigative staff of the Office of the Prosecutor. Obviously, if the prosecution's case is not thorough and complete, or is insufficiently prepared, the risk of the failure of prosecution is high. One of the major reasons for the delay in recruiting staff has been identified as the lack of a long-term budget commitment for the Tribunal and the consequent inability on its part to offer long-term contracts of employment to potential staff. We need to address these shortcomings urgently in order to overcome the problems encountered by the Office of the Prosecutor. My delegation looks forward to their early solution in the Fifth Committee.

To ensure the success of the Tribunal, my delegation wishes to stress how important it is that all States

cooperate with it. This is particularly so since the Tribunal lacks any direct authority over the territories of the States Members of the United Nations and, in particular, of the successor Republics of the former Yugoslavia. The Tribunal must rely upon national legal systems and the enforcement machinery of each State to fulfil some of its tasks, including investigations, the subpoenaing of witnesses and the service of arrest warrants in the territories of United Nations Member States. In order to comply with this obligation, all States would need to enact implementing legislation designed to bring their municipal laws in line with the requirements of the statute.

I am pleased to inform the Assembly that Malaysia has taken steps to enact legislation in this regard, and we call upon other States to do likewise. Malaysia is also assisting the Prosecutor of the international Tribunal for the former Yugoslavia to interview Bosnian witnesses who are currently residing in Malaysia. An investigation team from the Tribunal should be visiting Malaysia soon to undertake this task.

My delegation believes that non-governmental organizations could assist in the work of the Tribunal. One area where non-governmental organizations can be of immediate assistance is in the provision of information. Those organizations can be invaluable in providing information regarding incidents that fall within the jurisdiction of the Tribunal, tracing witnesses and, where possible, providing direct evidence for the use of the Prosecutor. Furthermore, non-governmental organizations could also assist in the provision of support for victims and witnesses. More specifically, they could provide psychological and practical support to victims and witnesses both before and after trials.

The credibility and effectiveness of the Tribunal will be judged by its actions. In this regard we note that the Prosecutor's Office is investigating 12 cases involving multiple suspects. We are confident that the early prosecution of the war criminals would have a deterrent effect on further acts of genocide, in all parts of the world. Criminals cannot go unpunished nor victims be denied justice.

Mr. Kharrazi (Islamic Republic of Iran): Since the beginning of the crisis in the former Yugoslavia, numerous crimes against humanity have been committed. During the last three years, the genocidal practice of "ethnic cleansing", involving murder, rape, torture and other inhuman treatment of Bosnian Muslims, perpetrated by the Serbs, has been wounding the conscience of the whole world.

Since the start of Serbian aggression against Bosnia and Herzegovina, many resolutions have been adopted by the Security Council calling for the cessation of hostilities and the termination of aggression, as well as for a halt to violations of international humanitarian law, including "ethnic cleansing". All these calls have been ignored by the Serbs, and the crimes and atrocities against innocent Bosnians are continuing at this very hour. Had the Security Council in fact reacted decisively when its first resolution was violated by the Serbs, the situation of so many Bosnian Muslims would have been different and many lives could have been saved.

The magnitude of these Serbian violations of international law has been so enormous that in February 1993 certain members of the Security Council finally agreed not to oppose the establishment of a tribunal specifically for trying those responsible for war crimes. The setting up of a tribunal to act effectively and expeditiously, rather than relying on the traditional approach of establishing such a body by treaty, which takes many years to reach full ratification, was necessitated by the fact that the case of former Yugoslavia, particularly the case of the Bosnian Muslims, was exceptional, indeed unique, and required immediate action.

The Islamic Republic of Iran has always called for the adoption of effective measures against the Serbian aggressors, for the lifting of the unjust arms embargo against Bosnia and Herzegovina and for the trying of those responsible for crimes in former Yugoslavia, particularly in Bosnia. In this regard, we welcomed the establishment of the Tribunal and expressed our desire for full cooperation in the implementation of its responsibilities.

The delegation of the Islamic Republic of Iran has studied with great interest the first annual report, contained in document A/49/342, of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. One of the problems the Tribunal faced at the beginning of its work was the absence of a Prosecutor. It is regrettable that it took so long for the Security Council to appoint a Prosecutor. The Council, in its resolution 827 (1993), stated that the establishment of the Tribunal would

> "contribute to ensuring that such violations are halted and effectively redressed". (*Security Council resolution 827 (1993), seventh preambular paragraph*)

If one of the principal objectives of the Tribunal is to deter further violation of international humanitarian law, how can this long delay in appointing a Prosecutor be justified in the face of continued Serbian aggression and violation of international law? As the report of the Tribunal indicates,

> "The unfortunate turn of events whereby the Prosecutor-designate withdrew in February, and the ensuing five-month delay in appointing his successor was a major blow to the Tribunal." (*A/49/342, para. 37*)

It is a matter of satisfaction that practical and financial problems facing the Tribunal have been largely solved and that delays that had been hampering the work of the Tribunal have now been overcome. Last week, the Tribunal issued its first indictment, against the former Serbian commander of a concentration camp, who was charged with murder, torture and mutilation of Muslim prisoners. This is a welcome development that should be followed by bringing to justice others responsible for war crimes, especially those in command who plan or order large-scale breaches of international humanitarian law. In this regard, my delegation welcomes the assertion in the report that

> "the Tribunal will proceed against any person, regardless of status and rank, against whom the Prosecutor has issued an indictment confirmed by a judge of the Tribunal." (*ibid., para. 49*)

The Tribunal should not only bring war criminals to justice; it should complete its task regardless of the status of political negotiations or the military situation. The Tribunal will act as a powerful deterrent to all if, and only if, it implements its mandate totally.

In conclusion, the Islamic Republic of Iran stands ready to cooperate with the Tribunal in fulfilling its worthy task. It is incumbent upon all Member States to resolve all problems that lie outside the Tribunal's power, including the financial problems, so as to enable the Tribunal to complete its mission and bring to justice all those responsible for "ethnic cleansing", genocide, rape, torture, wanton destruction of property, and all other barbarous acts.

Mr. Drobnjak (Croatia): At the outset, allow me to express the gratitude of the Government of the Republic of Croatia to Mr. Antonio Cassese, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, for the comprehensive report he has submitted to the General Assembly, which will serve as a valuable basis for informed discussion and future action on this matter.

Croatia has on numerous occasions expressed its support for the establishment of the international Tribunal and understands its obligations in the event that the Tribunal should succeed in prosecuting those who are guilty of committing war crimes and crimes against humanity on the territory of the former Yugoslavia since 1991. We fully share the opinion expressed in the annual report concerning the need for such a tribunal in order not only to dispense justice but also to deter further crimes and to contribute to the restoration and maintenance of peace. It is necessary to bring war criminals and those who have violated humanitarian law to justice in order for reconciliation and confidence-building to occur, thus creating conditions for a just and lasting peace.

It is especially important to ensure that responsibility for the odious crimes that have been committed in the Republic of Croatia and the Republic of Bosnia and Herzegovina is attributed to the initiators, perpetrators and organizers, and not to entire national groups. That will prevent the assignment of collective responsibility to certain peoples and thereby avoid a development which could have negative consequences for future bilateral and multilateral relations and peace in the region.

In this regard, my Government views with favour the possibility of the establishment of a permanent international tribunal designed to deal with war crimes and violations of humanitarian law wherever they may occur.

My Government agrees with the position of the President of the International Tribunal, as stated in the report, that the establishment of this international body through the exercise of the special powers of the Security Council under Chapter VII of the Charter of the United Nations was more rapid than establishment through an international treaty. However, we are of the opinion that the work of the International Tribunal has been proceeding too slowly, largely due to insufficient support — particularly political support — by influential members of the international community.

Likewise, we wish to stress that there has been insufficient financial support for the work of the Tribunal. In this regard, we cannot but express our dismay that the overwhelming majority of the financial contributions in support of the Tribunal have come from the developing countries.

The Republic of Croatia is concerned at various statements by the Federal Republic of Yugoslavia (Serbia and Montenegro) that indicate its unwillingness to cooperate with the Tribunal, especially regarding the extradition of suspected war criminals. We are afraid that this might have an extremely negative impact on the effectiveness of the work of the Tribunal.

It must be noted that this represents a continuing pattern of refusal by the Serbian side to cooperate with the international community. Their refusal to allow for an international investigation of the various mass grave sites in the occupied territories of Croatia — and particularly of the Ovcara mass grave near the Croatian city of Vukovar — is extremely disturbing to Croatia and clearly indicates that the Serbian side continues to obstruct the noble path of legal justice.

If a situation were to occur whereby those in Serbia who committed the grave crimes mentioned earlier were not to be tried, this would represent a miscarriage of justice and would undermine the very credibility of the international Tribunal as well as its legal and moral authority. It would negate the very purpose of the Tribunal's establishment, and it would send completely the wrong message to present and potential war criminals and to those who might commit aggression and genocide in the future.

We wish further to state that since, according to the findings of the Commission of Experts, there was no equivalence of guilt, there can be no equal "balance" between the number of those from each side who are charged with war crimes. Furthermore, there can be no equivalence of the charges to be presented against those representing the side that planned, orchestrated and executed the aggression and genocide and those representing the sides that were victimized by that policy. The aggressors must not be equated with the victims of aggression.

In this connection, I should like to recall the various reports of Mr. Tadeusz Mazowiecki, Special Rapporteur for the former Yugoslavia of the Commission on Human Rights and the final report of the Commission of Experts pursuant to Security Council resolution 780 (1992), in which it is stated that

> "there is no factual basis for arguing that there is a 'moral equivalence' between the warring factions". *(S/1994/674, para. 149)*

In order to induce the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the international Tribunal, it may be necessary to link its cooperation with the easing of the sanctions that have been imposed on it, or to impose stricter sanctions if that State still refuses to comply.

In closing, we wish to reiterate our conviction that the international Tribunal is a necessary factor in the establishment of a just and lasting peace in our region. For that reason, we stress the necessity for all States to comply with the Security Council and cooperate with the Tribunal.

Mr. Sacirbey (Bosnia and Herzegovina): We are pleased to have the opportunity to review the efforts made so far by the international war crimes Tribunal and to reinvigorate the support for the Tribunal's work. We look forward to such future opportunities on a regular basis. As for now, we must emphasize our satisfaction that the Tribunal is finally functioning after some unexpected, and at times unexplained, delays.

We now must place our full confidence in the Office of the Prosecutor and in Judge Goldstone's commitment to an effort not to be diminished or undermined by political considerations. We are confident that Judge Goldstone, the Prosecutor's staff, the investigators, the Registrar, and, of course, the judges of the Tribunal share the view that the efficacious prosecution of war criminals, from whatever military or political ranks they may come, will make a positive, rather than negative, contribution to the peace effort.

Political expediency cannot be the basis for justice, and injustice cannot be the basis for a durable peace.

We would look for the Office of the Prosecutor to be vigilant in identifying and, if necessary, disclosing attempts to destabilize and undermine the Tribunal's work.

Despite our current confidence in the undertakings of the Tribunal and the Office of the Prosecutor, certain considerations concern us today:

First, the Tribunal will be in a position to address only a handful of the many of thousands of potential cases. As a consequence, the Tribunal, along with the international community, must endeavour to assist national courts, including those of the Republic of Bosnia and Herzegovina, in bringing the war criminals to justice.

In this context, we are most supportive of the Tribunal's and the Prosecutor's commitment to establish liaison offices, including one in our capital, Sarajevo.

We also hope that the Tribunal's capacity limitation will not heighten attempts to project equivalence. Although the criminal acts may not be limited to just one side, only one side has made these crimes a tool of its military and political agenda.

For our part, the civilian and military courts of the Republic of Bosnia and Herzegovina have already brought to justice — and will continue to do so — not only Serbian paramilitary forces but others, including people of Bosniac ethnicity, for criminal acts committed against any citizen.

We are proud of, and remain dedicated to, the impartiality of our justice system. At the same time, the Tribunal and those who truly support its efforts must remain cognizant that it is the Serbian side — not the ethnic group, but the political leadership of Serbia and Montenegro and its surrogates in the Republic of Bosnia and Herzegovina — that is responsible not only for numerous individual criminal actions but also for a systematic campaign that constitutes the most blatant violation of the Geneva Conventions and of the Convention on the Prevention and Punishment of the Crime of Genocide.

In this context, we remain concerned at the fact that the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) has continued to assert that it will not cooperate with the Tribunal and the Office of the Prosecutor.

The Security Council must ensure the readiness of the Federal Republic of Yugoslavia to cooperate with the Tribunal and the Office of the Prosecutor before any further rehabilitation or easing of sanctions is even considered. The Tribunal and the Office of the Prosecutor are totally reliant upon the will of, and on the mechanisms available to, the Security Council in seeking the cooperation of the various nations involved.

Easing the sanctions on Serbia and Montenegro would be unseemly and counter-productive at any time in the future if the Federal Republic of Yugoslavia (Serbia and Montenegro) continues to be uncooperative. Otherwise, the Security Council in effect would be undermining the efforts of the very institution it has established as a key to not only justice but also peace.

In line with General Assembly resolution 49/10, we once again re-emphasize the call for material assistance to the Tribunal's work and thank those who have already provided resources, including the home for the Tribunal in The Hague.

We would also be remiss if we did not once again express our gratitude for the efforts of the war crimes Commission, as both the predecessor of the Tribunal and as an institution that has contributed on its own. We believe that the Commission, under Cherif Bassiouni's leadership, will uniquely contribute to the understanding of the systematic criminal campaign and genocide committed against the Republic of Bosnia and Herzegovina and its people.

Finally, we ask the international community, and especially the Security Council, to remain available to adjust the mandate and tools necessary for the Tribunal and Prosecutor's Office in pursuit of their respective agendas. We share the concerns of many, including the Government of Rwanda, that expectations of the Tribunal are very high while the necessary tools and criminal remedies available to it are limited and potentially inadequate, in view of the scope as well as the severity of the crimes.

We took particular note of the statement of Judge Antonio Cassese, President of the international war crimes Tribunal on the former Yugoslavia. We wholeheartedly agree that the Tribunal's efforts, in Freud's terminology, are a "palliative device". The Tribunal cannot be a substitute for confronting war criminals and for peacemaking, but must supplement such efforts as the final act of peacemaking. However, these shortcomings are not reflective of the Tribunal and its participants; rather, they reflect the inadequate political and military response of the Powers that could confront the very criminals the Tribunal seeks to bring to justice.

Now let us offer our sincere support for the efforts of the Tribunal.

The President: We have heard the last speaker on this item. May I take it that it is the wish of the Assembly to conclude its consideration of agenda item 149?

It was so decided.

Agenda item 17

Appointments to fill vacancies in subsidiary organs and other appointments: reports of the Fifth Committee

The President *(interpretation from French):* If there is no proposal under rule 66 of the rules of procedure, I shall take it that the General Assembly decides not to discuss the reports of the Fifth Committee which are before it today.

It was so decided.

The President *(interpretation from French):* Before we begin to take action on the recommendations contained in the reports of the Fifth Committee, I should like to advise representatives that we shall proceed to take decisions in the same manner as was done in the Fifth Committee.

(a) Appointment of members of the Advisory Committee on Administrative and Budgetary Questions: report of the Fifth Committee (Parts II and III) (A/49/432/Add.1 and 2)

The President *(interpretation from French):* The Fifth Committee recommends in paragraph 9 of part II of its report that the General Assembly should appoint the following persons as members of the Advisory Committee on Administrative and Budgetary Questions for a three-year term of office beginning on 1 January 1995: Mr. Ahmad Fathi Al-Masri, Mr. Ioan Barac, Mr. Mahamane Maiga, Mr. E. Besley Maycock and Mr. C. S. M. Mselle.

May I take it that the Assembly appoints those persons?

It was so decided.

The President *(interpretation from French):* The Fifth Committee recommends in paragraph 4 of part III of its report that the General Assembly should appoint Mrs. Norma Goicochea Estenoz as a member of the Advisory Committee on Administrative and Budgetary Questions for a term of office beginning on 14 November 1994 and ending on 31 December 1996.

May I take it that the Assembly wishes to appoint Mrs. Norma Goicochea Estenoz as a member of the Advisory Committee on Administrative and Budgetary Questions for a term of office beginning on 14 November 1994 and ending on 31 December 1996?

It was so decided.

(b) Appointment of members of the Committee on Contributions: report of the Fifth Committee (A/49/657)

The President *(interpretation from French):* In paragraph 8 of its report, the Fifth Committee recommends that the General Assembly should appoint the following persons as members of the Committee on Contributions for a three-year term of office beginning on 1 January 1995: Mr. Uldis Blukis, Mr. David Etuket, Mr. Igor V. Goumenny, Mr. William Grant, Mr. Masao Kawai, Mr. Vanu Gopala Menon.

May I take it that it is the wish of the Assembly to appoint those persons?

It was so decided.

(c) Appointment of a member of the Board of Auditors: report of the Fifth Committee (A/49/658)

The President *(interpretation from French):* In paragraph 4 of its report, the Fifth Committee recommends that the General Assembly should appoint the Comptroller and Auditor-General of the United Kingdom of Great Britain and Northern Ireland as a member of the United Nations Board of Auditors for a three-year term of office beginning on 1 July 1995.

May I take it that the Assembly wishes to appoint this person?

It was so decided.

(d) Confirmation of the appointment of members of the Investments Committee: report of the Fifth Committee (A/49/659)

The President *(interpretation from French):* The Fifth Committee recommends in paragraph 4 of its report that the General Assembly should confirm the appointment by the Secretary-General of the following persons as members of the Investments Committee for a

three-year term of office beginning on 1 January 1995: Mr. Ahmad Abdullatif, Mr. Aloysio de Andrade Faria and Mr. Stanislaw Raczkowski.

May I take it that it is the wish of the Assembly to confirm the appointment of these persons?

It was so decided.

(e) Appointment of members of the United Nations Administrative Tribunal: report of the Fifth Committee (A/49/660)

The President *(interpretation from French):* In paragraph 4 of its report, the Fifth Committee recommends that the General Assembly should appoint the following persons as members of the United Nations Administrative Tribunal for a three-year term of office beginning on 1 January 1995: Mr. Balanda Mikuin Leliel, Mr. Samarendra Sen and Mr. Hubert Thierry.

May I consider that the Assembly appoints those persons?

It was so decided.

(f) International Civil Service Commission: report of the Fifth Committee (A/49/661)

(i) Appointment of members of the Commission

(ii) Designation of the Chairman and Vice-Chairman of the Commission

The President *(interpretation from French):* In paragraph 8 of its report, the Fifth Committee recommends that the General Assembly should appoint the following persons as members of the International Civil Service Commission for a four-year term of office beginning on 1 January 1995: Mr. Mohsen Bel Hadj Amor, Mrs. Turkia Daddah, Mr. André Xavier Pirson, Mr. Jaroslav Riha and Mr. Carlos S. Vegega.

May I consider that the General Assembly appoints these persons?

It was so decided.

The President *(interpretation from French):* In the same paragraph, the Fifth Committee recommends that the Assembly designate Mr. Mohsen Bel Hadj Amor as Chairman and Mr. Carlos Vegega as Vice-Chairman of the Commission for a four-year term of office beginning on 1 January 1995.

May I take it that the Assembly designates these persons as Chairman and Vice-Chairman of the Commission?

It was so decided.

(g) Appointment of members and alternate members of the United Nations Staff Pension Committee: report of the Fifth Committee (A/49/656)

The President *(interpretation from French):* In paragraph 5 of its report, the Fifth Committee recommends that the General Assembly should appoint the following persons as members of the United Nations Staff Pension Committee for a three-year term of office beginning on 1 January 1995: Mr. Tadanori Inomata, Mr. Vladimir V. Kuznetsov, Mr. Philip Richard Okanda Owade, Ms. Susan Shearouse, Mr. Clive Stitt and Mr. M. El Hassane Zahid.

May I take it that the General Assembly appoints these persons?

It was so decided.

The President *(interpretation from French):* May I take it that it is the wish of the General Assembly to conclude its consideration of sub-items (a), (b), (c), (d), (e), (f) and (g) of agenda item 17.

It was so decided.

Agenda item 8 ***(continued)***

Adoption of the agenda and organization of work: reports of the General Committee

Fourth report of the General Committee (A/49/250/Add.3)

The President *(interpretation from French):* The fourth report of the General Committee concerns a request by a number of countries for the inclusion in the agenda of the current session of an additional item entitled "Capital punishment".

The General Committee decided to recommend to the General Assembly that the item should be included in the agenda.

In accordance with rule 23 of the rules of procedure,

"Debate on the inclusion of an item in the agenda, when that item has been recommended for inclusion by the General Committee, shall be limited to three speakers in favour of, and three speakers against, the inclusion."

Mr. Ferrarin (Italy): The General Assembly is called upon today to take a decision on the inclusion in its agenda of an additional item entitled "Capital punishment". The request for such inclusion was signed by 34 countries, including Italy.

On 7 November 1994, the General Committee decided to recommend to the General Assembly that the item should be included in the agenda and should be allocated to the Third Committee as sub-item (e) of agenda item 100, entitled "Human rights questions".

We have already had the opportunity to explain why Italy is leading this initiative, which is not intended to add fuel to the fire on a very controversial issue, but only to give Member States the opportunity to have a debate on it.

First, my country's Parliament has passed a motion mandating the Government to submit a request for the inclusion of the item in the agenda of the current session of the General Assembly. This decision reflects the sentiments of the overwhelming majority of the Italian people.

Secondly, other initiatives have emphasized the death penalty issue, such as the resolution adopted by the Parliamentary Assembly of the Council of Europe on 4 October 1994, in which all States that have not yet abolished capital punishment are asked to do so.

Thirdly, on 21 September 1994, the Secretary-General of the United Nations sent a letter urging the countries that had not yet done so to ratify the second United Nations optional protocol aiming at the abolition of the death penalty. On 26 October 1994, the second optional protocol was approved by the Italian Chamber of Deputies and has been sent to the Senate for final approval in the next few days. Furthermore, my country has just abolished the death penalty also for crimes committed in wartime under military law.

I should like to add some remarks on the point of the allocation of the item. We have already agreed in the General Committee, in a spirit of compromise, to scale down the question of putting capital punishment on the agenda of the General Assembly from an item to a sub-item, sub-item (e) of the existing item 100, entitled "Human rights questions", and allocate it to the Third Committee.

We were and are unable, much to our regret, to make further concessions. In particular, we cannot accept the allocation of the question to the Sixth Committee rather than to the Third. This is so for a number of reasons which we have already explained but which I would like to repeat.

First, in the United Nations from the very beginning capital punishment has been debated by the Third Committee as a human rights issue. It would be extremely difficult to explain to our Parliament and to our public opinion why the matter should be treated in a different framework and by a different body, especially if one considers that even the second optional protocol, aimed at the abolition of the death penalty, was drafted in the Third Committee and not in the Sixth Committee.

Secondly, if we allocate the question to the Sixth Committee we would have to add a separate item to the General Assembly's agenda, which would reopen the problem that the compromise on the sub-item was intended to solve — that is to say, the problem of not overburdening that agenda.

Thirdly, it is an established practice of the Sixth Committee to finish its work by the week of Thanksgiving — that is to say, less than a week from now. There would hardly be enough time for the 34 countries that are requesting the inclusion of the item in

the agenda, and for others, to express their views on such an important matter fully and thoroughly, since the Sixth Committee's calendar is already rather overburdened. The alternative to a very short and compressed debate would be to refer the item to next year, which we cannot accept.

For all those reasons, I am confident that the General Assembly will follow the recommendations of the General Committee and decide to include "Capital punishment" in its agenda as sub-item (e) of agenda item 100 and to allocate it to the Third Committee. We hope that this decision will be taken by consensus. If, however, a vote is requested, I should like to ask all delegations to vote in favour of the inclusion of the item on the agenda and of its allocation to the Third Committee.

Mr. Minoves-Triquell (Andorra): As I stated in the General Committee, for centuries the Principality of Andorra has taken a particular interest in matters relating to the dignity of the human being in all its forms. While the death penalty was in existence, the Andorran people were always deeply affected when it was applied. A French weekly noted this about Andorra in 1846:

(spoke in French)

> "The memory of a death sentence passed in the seventeenth century still today fills the people with dread."

(spoke in English)

Perhaps the fact that Andorra has been blessed by decades of a low rate of criminality has allowed us to distance ourselves from the notion of capital punishment. Perhaps the small size of our community has made us very appreciative of the value of human life.

The last sentence to death in our country was carried out in 1945. It caused great consternation and deep sociological shock, which our writers have reflected upon in the decades following the event. Finally, having died from non-use, the death penalty was abolished formally in 1990.

True to the deep-rooted principles of their political philosophy, the citizens of Andorra, in the exercise of their sovereignty, enshrined their commitment against the death penalty in the Constitution of 1993. Article 8 states:

> "1. The Constitution recognizes the right to life and fully protects it in its different phases.
>
> "2. All persons have the right to physical and moral integrity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
>
> "3. The death penalty is prohibited."

The death penalty is of primordial concern to our people. Therefore it is only natural that we signed the request to the General Committee in document A/49/234, of 25 October 1994, and its addendum.

But the death penalty is also the concern of a larger body of people. Last Friday my country joined the Council of Europe, the parliamentary assembly of which, on 4 October 1994, adopted a resolution advocating the abolition of capital punishment.

(spoke in French)

At this end of the second millennium of our era it would appear that the peoples of the world, ever-more-tightly bound by a system of world-wide trade and cultural exchanges, have increasingly embraced the philosophy of tolerance, respect for human rights, peace instead of war, and life instead of death.

The debate on capital punishment is therefore clearly part of this world-wide debate on the dignity of the human being. The United Nations, as the forum for rational dialogue *par excellence*, is the ideal place to exchange views on the question before us.

That is why the Principality of Andorra would welcome the General Assembly's adoption of the General Committee's recommendation first, that the additional item entitled "Capital punishment" be included in the agenda; and, secondly, that, as is only natural, it be discussed in the Third Committee as sub-item (e) of agenda item 100, "Human rights questions".

Mr. Chaves (Kyrgyzstan): The Republic of Kyrgyzstan has deep feelings of concern about the subject of this discussion.

We have all observed the great increase in crime throughout the world and the concern that all nations and peoples of the world feel about this subject.

The subject of capital punishment has been dealt with very extensively by great philosophers. The founding father of criminal law, Cesare Beccaria, referred to the

subject a long time ago. We also find references to it by Montesquieu and Voltaire.

But at present there is genuine concern throughout the world about this subject. There is an increase in violent crime; there is a very great increase in crimes against humanity and genocide; and there is also a great increase in the violation of human rights of a criminal nature. Therefore it is only natural that the General Assembly should concern itself with the subject of crime and capital punishment.

On this subject I should like briefly to quote the following from Dostoyevsky:

> "We cannot judge crime with ready-made opinions. The philosophy of crime is a little more complicated than people think. It is acknowledged that neither prisons for convicts nor the hulks nor any system of hard labour ever cured a criminal."

For all those reasons, the delegation of Kyrgyzstan supports the inclusion of this item in the agenda of the General Assembly.

The President *(interpretation from French):* We have now heard three speakers in favour of the inclusion of this item in the agenda.

Mr. Khan (Pakistan): I have the honour to speak on behalf of the members of the Organization of the Islamic Conference (OIC) and to put on record our views on the request, contained in documents A/49/234 and Add.1, for the inclusion of an additional item entitled "Capital punishment" in the agenda of the General Assembly at its forty-ninth session.

Prior to the meeting on 7 November 1994 of the General Committee, whose report is at present under the General Assembly's consideration, the members of the Organization of the Islamic Conference in New York met for an exchange of views on the request for the inclusion of an additional item, "Capital punishment". While recognizing the right of Member States to request the inscription of additional items, the members of the OIC felt that, in view of the highly sensitive and controversial nature of the proposal, there was a need to carry out further consultations before proceeding with its inscription as an additional item on the General Assembly's agenda at the current session. The OIC also felt that the request was not urgent enough to merit its inscription as an additional item.

The group also expressed its very strong objection to allocating the proposed additional agenda item on capital punishment to the Third Committee, as proposed by the sponsors. However, the members of the OIC, exhibiting a spirit of compromise and wishing to promote consensus, felt that, in the event that the General Committee were to agree to the request of the sponsors to recommend to the General Assembly the inclusion of the additional item, it should be allocated to the Sixth Committee, not to the Third Committee, as a sub-item of agenda item 100, "Human rights questions".

These decisions of the OIC were conveyed in writing by its Chairman to you, Mr. President, for the information of the members of the General Committee when it met on 7 November. Much to the regret of the OIC countries, the sponsors of the proposed additional item opted instead to take a vote on their proposal in the General Committee meeting on 7 November, without giving due consideration to the extremely pertinent views of the OIC.

The OIC members continue to have serious reservations about the inscription of a new agenda sub-item, "Capital punishment", and its allocation to the Third Committee as sub-item (e) of agenda item 100, "Human rights questions". It is our hope that the members of the General Assembly will give appropriate consideration to the views of the 51 States Members of the OIC when considering the report of the General Committee contained in document A/49/250/Add.3. We should not be led to accommodate the domestic compulsions of any country.

Mr. Razali (Malaysia): During the consideration of this issue in the General Committee last week, my delegation stated its position. As this issue is now before the General Assembly, it is necessary to restate Malaysia's position.

Malaysia opposes the inclusion of the item in the agenda. We cannot agree to such an inclusion, as we believe that it is the right of every State to choose the most appropriate penal system in response to the needs of its own society.

Like many other countries of both the North and the South, Malaysia has capital punishment in its laws. This does not mean that we do not value life. Throughout its history, Malaysia has been at the confluence of many humanistic civilizations. Our society and our laws are predicated on humanism, justice and the necessity of the

State's possessing the proper deterrent to violations of law, commensurate with the degree of such violations. Our people and our society are at peace with this power of the State, including the death penalty, even if the manifestations of our society celebrate the sanctity and beauty of life.

Our problem with the initiative at hand is its single-mindedness and its blanket attempt to impose one point of view on all societies, when that point of view may apply to only a few. Furthermore, this initiative takes no account of differences in cultural mores. It is not sensitive to different needs. While the motive behind the initiative is respected, it cannot be forced to apply to all.

The initiative, even if the purpose is to have a debate, will divide us. It would be a serious mistake if that division were seen to be on the basis of religion. The last thing we should do is to debate the religion or culture of one against that of the other.

The initiative seeks to impose a moral imperative, but the effect of that effort tends towards being divisive, intrusive and non-applicable. It had been my delegation's hope that the sponsors would undertake further consultations on this issue. If, however, the proposal is put to a vote today, my delegation will vote against it.

Mr. Yousif (Sudan) *(interpretation from Arabic):* Contrary to its customary practice of adopting decisions by consensus, the General Committee voted on the question of including a new agenda item entitled "Capital punishment". The inclusion of the item calling for the abolition of the death penalty, was passed by a majority of 17 votes out of a total of 33 votes in the General Committee. It was clear that many countries abstained from voting in favour of the inclusion of the item because of the sensitivity of the issue and because it touches upon the sovereign rights of States and, therefore, it should not be included as an item on the agenda.

My delegation believes that the discussion in the Third Committee of the question of abolishing the death penalty as a sub-item of agenda item 100, "Human rights questions", would put my country, along with more than 130 States Members of this Organization that apply the death penalty, in a very awkward position. We in the Sudan consider the death penalty to be divinely ordained. Allah almighty says in the Koran:

> "In the Law of Equality there is life to you, O ye men of understanding that ye may Restrain yourselves". *(Sura 2, Verse 179)*

The abolition or non-abolition of the death penalty is a matter that has to do with the jurisdiction of sovereign States. The adoption by the United Nations of a resolution on this question may infuriate public opinion in the whole world. It may put the United Nations in the unacceptable position of contradicting the principles enshrined in the very Charter of the United Nations, especially paragraph 7 of Article 2, which prohibits the United Nations from intervening in the internal affairs of any country.

Also Article 13 of the Charter stipulates that the General Assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation.

The delegation of my country believes that the Sixth Committee, rather than the Third Committee, is the appropriate body to look into the question of the death penalty. That opinion is based on the fact that the death penalty is more a legal matter than a human-rights question. The abolition of the death penalty and the whole matter of the relationship between national jurisdiction and international jurisdiction might give rise to legal problems. There is also the question that the call for abolishing the death penalty runs counter to the provisions of the Charter in the Articles I have just mentioned.

There are also the legal aspects relating to the question of the usefulness of the death penalty as a means of combating crime at the national and international levels and the effect this may have on preserving the stability of societies and the lives of individuals. There is no doubt at all that it is the Sixth Committee that has the mandate to consider the question, as it is the Committee that discusses all legal matters.

For all these reasons, my delegation finds that this Assembly should have voted on paragraphs 2 and 3 of the report contained in document A/49/250/Add.3.

The inclusion of this item on our agenda and its allocation to the Third Committee or the Sixth Committee is a procedural matter. What concerns us here is the substantive aspect with all its grave dimensions. We do not see any benefit that would accrue to international cooperation from the abolition of the death penalty. Even if such a resolution were to be adopted by the General Assembly, we could not expect all the Member States to accept it, as a majority of them apply the death penalty in accordance with their national legislation. That being the case, the delegation of my country asks the Assembly to

proceed with a recorded vote on the inclusion of this item on its agenda. Once this is done, there should be a vote on the allocation of the item to the Third Committee.

The President *(interpretation from French):* Three delegations have now spoken against the inclusion of this additional item on the agenda.

The General Assembly will now take a decision on the inclusion of the additional item.

A vote has been requested, and we shall now begin the voting process.

I put to the vote the General Committee's recommendation that an additional item entitled "Capital punishment" be included in the agenda of the present session.

The recommendation was adopted by 70 votes to 24, with 42 abstentions.

The President *(interpretation from French):* The additional item entitled "Capital punishment" is thus included in the agenda.

I shall now call on those representatives who wish to explain their votes.

Mr. Chew (Singapore): My delegation abstained in the voting on the inclusion of the item entitled "Capital punishment" in the agenda of the forty-ninth session of the General Assembly.

Singapore does not support the abolition of capital punishment and does not agree with the substance of the draft resolution contained in the appendix to document A/49/234, which was submitted by the countries that asked for the inclusion of this item. But my delegation abstained in the voting as Singapore has consistently adhered to the principle that it is the right of any delegation to request the inclusion of an item in the agenda of the General Assembly, provided that it is not one that runs counter to the United Nations Charter or is frivolous. However, when the item comes up for consideration my delegation will strongly oppose the attempt by countries, through the United Nations General Assembly, to seek the abolition of capital punishment in other countries.

While we understand and respect the position of those countries that are opposed to the death penalty, they must appreciate the position of other countries, like Singapore, that have capital punishment.

Mr. Lamamra (Algeria) (*interpretation from French*): Capital punishment is, undoubtedly an important question and a sensitive issue. It is not a new question, either, as it has been a matter of conscience for mankind since the beginning of life in organized society. Nor is it, in view of the priorities and the work of the forty-ninth session of the General Assembly, a matter of such urgency that it justifies inscribing an additional item on the agenda without adequate previous consultation and in particular, as a result of a vote in the Bureau and then in the General Assembly — something which immediately introduces an element of confrontation in the consideration of this item that is prejudicial to the very cause the delegations that have sponsored the proposal claim to promote.

The harmonization of national legislations whilst respecting the principle of consensus, which is the very basis of contemporary international law and which is inherent in the sovereignty of States, is both an arduous and a desirable task. Such harmonization often needs long and laborious processes to mature and presupposes that the specific nature of the differences in the various legal systems and the various schools of thought is not blurred but, rather, that the common ground between them is enhanced, in view of the respect due to the referential values of all legal orders that underlie the legislation of States.

The United Nations work to codify and progressively develop international law in various spheres of human activity, including criminal law, bears witness to the fact that the universal accession to standards, particularly when they are not based on customary law, has always been characterized by the compatibility — or by the lack of incompatibility — of those standards with the underlying principles of national legislations. Indeed, it is this very wise and pragmatic approach that prevailed in connection with the matter before us, since capital punishment in international law is the subject of a strictly optional protocol, this statute naturally reflecting the objective constraints that make it impossible to unify law in this matter at the level of the international community as a whole.

It would have been sufficient, and undoubtedly much more appropriate, for the sponsors to have chosen to deal with the question of capital punishment under an existing agenda item, perhaps that on the implementation of

human rights instruments or the more general topic of crime prevention and criminal justice. The debate might have, once again, clarified positions in a calm and responsible manner. Understanding would thereby have been fostered and confrontation avoided.

But that was not the choice made, and several sponsors indicated during the deliberations in the Bureau that their initiative would not be held up by an effort to find consensus. This choice is fraught with consequences for the expected outcome of the work of the General Assembly on this matter, for it immediately introduces an inopportune and unfortunate division, whereas the general trend is towards promoting compromise and consensus by means of negotiation and mutual concessions on many important issues on this session's agenda.

This procedural debate is not the appropriate framework for the consideration of the substance of the matter. In the light of a mere procedural vote, no hasty conclusion should therefore be drawn with regard to the dedication of anyone to the value and the dignity of the human person, as well as to human rights and fundamental freedoms in general. The question that arises is whether it is opportune to include such an item on the agenda of the General Assembly, whether there is any likelihood of arriving at a positive result, bearing duly in mind the workload of the current session and the necessary energy and effort required to ensure the successful conclusion of our work on a range of issues of the highest relevance to daily life and the future of the peoples of the United Nations.

The delegation of Algeria is not convinced of the expediency of including this item on the agenda. Nor are we convinced that there is any possibility of agreement on any positive result. Its negative vote is based on all these considerations.

Mr. Takht-Ravanchi (Islamic Republic of Iran): The idea of punishing a human being with death, however duly tried and convicted, has always engaged the deep human emotions of compassion, tenderness and kindness. These are considerations that are deeply rooted in the Islamic system of criminal justice. Nevertheless, Islam recognizes the legitimacy of reserving capital punishment for a restricted number of heinous crimes where the criminal justice system defends the safety, integrity and welfare of the public at large against the criminal. The Islamic Republic of Iran applies the rule of Islamic law and, as such, the delegation of the Islamic Republic of Iran opposes any attempt to impose universally the abolition of capital punishment.

Having said that, my delegation believes that reserving capital punishment for a restricted number of grievous crimes serves the common good to the extent that its abolition, however appealing to human compassion, will not. The argument against the deterrent effect of capital punishment is not convincing. In our view, taking into account all aspects of crime, particularly in today's complex world, deterrence and retribution play a significant role in justifying a commitment to and the administration of capital punishment. Therefore, my delegation voted against, on substantive grounds, the proposal to include an item in this regard on the agenda of the forty-ninth session of the General Assembly.

Mr. Eldeeb (Egypt) (*interpretation from Arabic*): The question of applying or abolishing the death penalty is a matter that has to do with the judicial system of every individual State. The application of that penalty aims primarily at protecting the most important human right, the right to life. Capital punishment in countries which apply the death penalty is a means of deterring those who would commit the crime of murder and thereby would take the life of another. Thus the application of the death penalty reduces crime rates. It is well known that judicial systems are based on values that stem from the cultural background and the civilization of each particular country. Therefore, from the standpoint of respecting the specific and multifarious aspects of those States in religious and cultural terms, the international community tended to deal with this question in the context of the Optional Protocol to the International Covenant on Civil and Political Rights. Proceeding from this, the delegation of Egypt believes that the discussion of the question of the application or abolition of the death penalty by the General Assembly, with a view to adopting a resolution to abolish that penalty is unjustifiable because such hasty action would involve disregarding the characteristics and differences we have just highlighted, and would be tantamount to superseding the framework established by the protocol which gave States the option of whether or not they should take such a measure. On the other hand, my delegation believes that if it is necessary for the General Assembly to deal with questions concerning the application of the death penalty, this should be done first of all by putting things into perspective and the question should be referred to the Sixth Committee, as it is the Committee which deals with legal and legislative matters relating to the different judicial systems of States. Consequently, it is clear that the consideration of the

application or abolition of the death penalty is a legal issue rather than a human rights issue. Proceeding from this, my delegation has voted against the inclusion of this item on the agenda and against its allocation to the Third Committee.

The President (*interpretation from French*): The General Committee further decided to recommend to the Assembly that the item entitled "Capital punishment" be allocated to the Third Committee as sub-item (e) of agenda item 100, "Human rights questions".

A vote has been requested, and we shall now begin the voting process.

I put to the vote the recommendation by the General Committee that the agenda item entitled "Capital punishment" be allocated to the Third Committee as sub-item (e) of agenda item 100, "Human rights questions".

The recommendation was adopted by 69 votes to 25, with 37 abstentions.

The President (*interpretation from French*): The agenda item entitled "Capital punishment" is allocated to the Third Committee as sub-item (e) of agenda item 100.

The Chairman of the Third Committee will be informed of the decision just taken.

The meeting rose at 12.45 p.m.