



Chairman: Miss Maria GROZA (Romania).

AGENDA ITEM 50

Question of the punishment of war criminals and of persons who have committed crimes against humanity: report of the Secretary-General (A/8003, chap. IX, sect. D; A/8038 and Add.1 and 2, A/C.3/L.1812, A/C.3/L.1831)

1. Mr. SCHREIBER (Director, Division of Human Rights) said that annex I of the report of the Secretary-General (A/8038) and the addenda to that report (A/8038 and Add.1 and 2), in accordance with the provisions of General Assembly resolution 2583 (XXIV), contained replies from Governments on the measures taken in connexion with the matters covered by item 50. Annex II of the report contained the draft resolution which the Economic and Social Council, in its resolution 1500 (XLVIII), had recommended for adoption by the General Assembly, on the basis of the report on the question by the Commission on Human Rights.

2. Mr. DABROWA (Poland) observed that, unfortunately, the question of the punishment of war criminals did not yet belong to the past. For example, out of the 6,000 officials who had supervised the Auschwitz concentration camp only 1,500 had been identified, and of those only thirty-one had so far been punished. Out of 7,800 criminals whose names had been put on the international list of war criminals at the request of Poland, it had been possible to bring to trial only 1,800. The others had not been tried because extradition had been refused, even though article 1, paragraph 2, of the Declaration on Territorial Asylum (see General Assembly resolution 2312 (XXII)) stated that the right to seek and to enjoy asylum might not be invoked by any person with respect to whom there were serious reasons for considering that he had committed a crime against peace, a war crime or a crime against humanity, as defined in international instruments. Poland was urging the punishment of all war criminals not out of a desire for revenge but because it believed that those who had committed war crimes should be punished, and also because it would serve as a warning to those who might contemplate committing such crimes.

3. In its resolution 2583 (XXIV), the General Assembly had requested States to inform the Secretary-General of the measures taken by them in implementation of that resolution. Twenty-six Governments had sent replies, which were reproduced in the report of the Secretary-General. The Government of the Polish People's Republic had previously sent to the Secretary-General a detailed memorandum on that subject and had therefore not deemed it necessary to

send another note. The competent Polish authorities were continuing to investigate, arrest, put on trial and punish all persons guilty of war crimes; Poland was a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and had been one of the first States to ratify the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. It therefore welcomed the fact that several Governments which were not yet parties to the 1968 Convention were considering the possibility of acceding to it. On the other hand, some Governments had stated that they could not become parties to the Convention because of their domestic legislation. Such an explanation could not be accepted, because international law should prevail over domestic legislation. A third group of States took the view that the question did not concern them because no crimes of that nature had been committed in their territories. It was evident that that ought not to prevent them from ratifying the Convention, since according to the terms of article I (a) and (b) (see General Assembly resolution 2391 (XXIII)) its provisions were not limited to any particular conflict.

4. Among the replies received from Governments, that of the Government of the Federal Republic of Germany called for special attention, since it was estimated that 75 per cent of the Nazi criminals who had not yet been exposed lived in the Federal Republic. The terms "war crimes" or "crimes against humanity" were unknown in West German law, which allowed the perpetrators of such crimes to be treated exceptionally mildly if ever they were brought to trial. Out of 6,227 criminals convicted, about 6,000 had been given prison sentences averaging from three to four years.

5. The note from the Federal Republic of Germany (see A/8038, annex I) said that co-operation with the States of Eastern Europe had not come about until 1965 in the case of Poland. In that connexion, he wished to make it clear that the Government of the Federal Republic of Germany had refused repeated offers by Poland from 1960 onwards; it was only in 1964 that West German authorities had accepted Polish assistance. As for the statement that the Government of the Federal Republic of Germany would do its utmost to investigate war crimes, the best evidence that Government could offer would be to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In that connexion, it was surprising that the Government of the Federal Republic of Germany should speak on behalf of other countries by stating that most Western countries would refrain from signing the Convention, that the vast majority of countries objected to the provisions of the Convention, and so forth. He recalled that only seven States had voted against the Convention in 1968.

6. He would like to refer to the information made available by the Government of the German Democratic Republic. Between 1945 and 1970, over 12,800 persons had been tried in that country for war crimes—more than double the number tried in the Federal Republic of Germany. In the past ten years, the German Democratic Republic had granted legal assistance in more than 200 proceedings instituted in the Federal Republic of Germany. That attitude of the German Democratic Republic deserved to be commended.

7. Economic and Social Council resolution 1500 (XLVIII) contained the draft resolution recommended to the General Assembly. That draft was based on the one submitted by Poland and the USSR at the twenty-sixth session of the Commission on Human Rights.¹ His delegation supported it for a number of reasons. Firstly, it considered it very important that the General Assembly should express its concern and condemn the crimes at present being committed in various parts of the world as a result of aggressive wars and the policies of racism, *apartheid* and colonialism. Secondly, it also considered it important that the General Assembly should draw the attention of the world community to the fact that many criminals were continuing to enjoy the protection of certain States and that it should once again request those States to take the necessary measures for the investigation, arrest and punishment of all criminals who had not yet been brought to trial. Thirdly, it was of the opinion that the study which the Secretary-General was to continue might lead to the elaboration and adoption of an international instrument dealing with co-operation in collecting evidence, extradition and compensation due to the victims.

8. As to the last matter, the Polish Government had submitted detailed information concerning the proposed criteria for determining compensation to the victims of such crimes. The information was contained in a note by the Secretary-General.² The question of civil responsibility for war crimes had not yet been settled by international law and would be a good subject for consideration by appropriate United Nations bodies.

9. His delegation had submitted two amendments to the draft resolution recommended by the Economic and Social Council, which appeared in document A/C.3/L.1812. His delegation would also support the amendments proposed by the Byelorussian SSR (A/C.3/L.1831).

10. Mr. BAROODY (Saudi Arabia) recalled that at the twenty-third session of the General Assembly his delegation had submitted a draft optional protocol³ in connexion with the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and that the draft protocol, as revised, had been adopted by an overwhelming majority in the Committee. It had been referred by the Third Committee to the Sixth Committee, to be returned by the latter in due course together with its observations on the legal aspects, and he was surprised that

at the end of two sessions the Sixth Committee, which was not particularly overburdened with work, had not yet returned the draft together with its observations.

11. Addressing himself to the draft optional protocol, he observed that all wars that were not waged strictly for self-defence were crimes against humanity. It had been said that the First World War had been fought to free the world from German militarism; in fact, its aim had been to free the world from German mercantilism. Both the First World War and the Second, the seeds of which had been sown in the First, had been waged primarily for economic and political reasons, and certainly not in self-defence. As an Asian, he believed that he could adopt an objective attitude toward the persons responsible for the two wars. Despite the fact that only the war criminals of the defeated countries had been tried at the international Nuremberg and Tokyo Tribunals, responsibility had lain on both sides. Why had not those responsible for Hiroshima and Nagasaki been brought to trial? Dresden had not been a military target; yet its mediaeval architecture had been destroyed by the Allies, not by the Nazis. It was true that Coventry had been destroyed by the Germans, but then there had been, arms factories in the vicinity. In any event, the proceedings before the international tribunals had been of a vindictive nature and should never have taken place.

12. There were also the crimes committed by colonialism. If the peoples of Asia and Africa had not displayed the same vindictive spirit, it was because their age-old sufferings had instilled in them a magnanimous attitude, in the same way as the chivalry which had flourished in Europe during the crusades had been the result of contacts with Asia. Europeans, however, tried to rationalize their economic interests with arguments of self-defence.

13. He read out a draft resolution⁴ calling upon the Sixth Committee or any other appropriate organ of the United Nations to study as soon as possible the revised draft optional protocol and to report the results of its deliberations to the General Assembly. It was shameful that, twenty-five years after the end of the Second World War, so much attention should still be given to war crimes committed then, while the crimes against humanity that were being committed now were ignored. The draft resolution submitted by his delegation was designed precisely to prevent the perpetration of injustices against alleged war criminals of another era and to ensure that the United Nations no longer remained indifferent to the crimes that were being committed now by the colonialist Powers and those who encouraged them.

14. Mr. OGURTSOV (Byelorussian Soviet Socialist Republic) said he was gratified by the entry into force, on 11 November 1970, of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, a most important legal instrument which would ensure that no war criminal escaped just punishment. Certainly, all Governments concerned about peace and security should give thorough consideration to the possibility of acceding to the Convention. His delegation fully supported the draft resolution on item 50 recommended by the Economic and Social Council in its resolution 1500 (XLVIII) and endorsed, in particular, the appeal to States to intensify their co-operation in the collection and

¹ See *Official Records of the Economic and Social Council, Forty-eighth Session, Supplement No. 5*, paras. 50-57.

² See document E/CN.4/1010.

³ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 55, document A/7342, paras. 101-112.

⁴ Subsequently circulated as document A/C.3/L.1833.

exchange of information conducive to the detection, trial and punishment of war criminals. It also supported the amendments submitted by the Polish delegation (A/C.3/L.1812), which it considered fully justified.

15. He introduced a further amendment (A/C.3/L.1831), whereby two new operative paragraphs would be inserted in the draft resolution recommended by the Council. The purpose of the first was to collect information that might be very helpful to States which were parties to the Convention or were preparing to become parties to it. The second reflected a legal practice, normal in recent decades, whereby States which were not yet parties to instruments drawn up by the United Nations undertook to observe the norms laid down in them.

16. Mr. MANI (India) said that his country was a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and had set in motion the procedure which would lead to the signing of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Although there had been no case relating to war crimes or crimes against humanity in India and therefore no occasion to investigate any such offence, the Indian courts had jurisdiction to try any persons who were alleged to have committed such an offence outside India. His delegation had voted for the draft resolution recommended by the Economic and Social Council in its resolution 1500 (XLVIII) and would vote for it again at the current session.

17. Mr. SECARIN (Romania) said that the question before the Committee was closely bound up with the promotion of the purposes of the Charter, the first of which was to save succeeding generations from the scourge of war and to maintain international peace and security. The great political, economic, social and scientific changes which had occurred since the adoption of the United Nations Charter had only served to heighten the need to strengthen, in relations between States, the fundamental principle of the prohibition of the threat or use of force and of aggression, as recognized in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the General Assembly at its 1833rd plenary meeting on 24 October 1970. The principles of the Charter and of the Declaration, which made wars of aggression a crime against peace, provided a basis for efforts to ensure that the perpetrators of war crimes and crimes against humanity—a term which could, of course, include States as well as individuals—were tried and punished.

18. His delegation therefore commended the initiatives that had led to the adoption by the General Assembly of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and other instruments and resolutions whose purpose was to encourage States to ensure that the perpetrators of such crimes were punished. It was States, of course, which had the duty of trying, under their national laws, persons who had committed war crimes and crimes against humanity and of co-operating with other countries to that end; the information transmitted by Governments to the Secretary-General pursuant to General Assembly resolution

2583 (XXIV) reflected their concern to carry out that duty.

19. As could be seen from document A/8038/Add.1, Romania had supplied comprehensive information on its penal legislation, which included provisions for the punishment of any act termed a war crime or a crime against humanity. In addition, Romania had ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity on 30 July 1969.

20. In the belief that there was a need for continued United Nations action concerning responsibility for war crimes and crimes against humanity, since wars of aggression—with all the criminal acts they involved—had not yet disappeared from the earth, his delegation felt that the draft resolution recommended by the Economic and Social Council merited the most careful consideration, especially because it condemned such crimes and advocated international co-operation in the interests of justice, peace and progress. His delegation also supported the amendments proposed by the delegations of Poland (A/C.3/L.1812) and the Byelorussian SSR (A/C.3/L.1831).

21. Mr. HANDL (Czechoslovakia) said that he supported the draft resolution recommended by the Economic and Social Council because many war criminals and persons who had committed crimes against humanity went unpunished, and because, as a result of wars of aggression and the policies and practices of racism and colonialism, that type of crime continued to be committed in various parts of the world. In particular, he supported operative paragraph 2 of the draft resolution, in which States were called upon to take measures to arrest war criminals and persons who had committed crimes against humanity and extradite them to the countries where they had committed their crimes. That provision was very important in view of the fact that many Nazi war criminals not only remained unpunished but were occupying high positions in certain countries, as had been pointed out by the Minister for Foreign Affairs of the German Democratic Republic in his message to the President of the General Assembly (see A/C.3/623). His delegation also considered it appropriate that operative paragraph 4 should call for states to intensify their co-operation in the collection and exchange of information which might contribute to the detection of persons guilty of war crimes and crimes against humanity.

22. Czechoslovakia welcomed the fact that, as a result of the deposit of its instrument of ratification, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity had entered into force, and his delegation supported the first Polish amendment in document A/C.3/L.1812, whereby that development would be mentioned in the preamble of the draft resolution recommended by the Economic and Social Council. It hoped that other States would soon accede to the Convention, which was of fundamental importance and should be accepted as universally as possible. It should be noted, in that connexion, that in March 1969 the German Democratic Republic had informed the Secretary-General that it was ready to accede to the Convention whereas the Federal Republic of Germany had indicated that it was unable to sign it (see A/8038, annex I). His delegation hoped, in the interest of peace and international security,

that the Federal Republic of Germany would change its recalcitrant attitude. In conclusion he said that he would also support the amendments submitted by the Byelorussian delegation (A/C.3/L.1831) to the draft resolution recommended by the Economic and Social Council.

23. Miss EDMONDS (United States of America), supported by Mr. LE DIRAISON (France), proposed that the words "all States" in the first Byelorussian amendment in document A/C.3/L.1831 should be replaced by the word "Governments".

24. Mr. SCHREIBER (Director, Division of Human Rights), referring to operative paragraph 6 of the draft resolution recommended by the Economic and Social Council, in which the Secretary-General was requested to continue, in the light of the comments and observations submitted by Governments, the study of the question of the punishment of war criminals, reminded the members of the Committee that the Secretary-General had prepared a study⁵ on the questions referred to in that paragraph, in which measures were suggested for dealing with the matter. Of the replies so far received from Governments, very few contained new information, and a new appeal might have to be made to Governments or recourse had to experts. The Secretary-General would try to meet the costs out of the budgetary appropriations approved for 1971.

25. Mr. NETTEL (Austria) asked for a separate vote on the words "as defined in article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity", in operative paragraph 5 of the draft resolution recommended by the Economic and Social Council.

26. Mrs. BARISH (Costa Rica), speaking in explanation of vote, said that her country had not transmitted information on the question under consideration because it had never experienced the problems of racial discrimination and incitation to hatred. It was, however, a party to the International Convention on the Elimination of All Forms of Racial Discrimination, and was a member of the Committee on the Elimination of Racial Discrimination and of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa; moreover, in compliance with the relevant United Nations resolutions, it maintained no relations of any kind with South Africa. During the Second World War, her country had vehemently rejected Nazi ideology and had broken off relations with the Hitler régime as a repudiation of its cruel racist practices. After the hostilities had ended, Costa Rica had not granted asylum in its territory to any Nazi war criminal. That being the case, the competent authorities had not deemed it necessary to introduce amendments relating to war crimes and crimes against humanity into the National Constitution. For those reasons, her delegation had abstained from voting during the consideration and adoption of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and would again abstain in the voting on the draft resolution before the Committee and the amendments thereto. Without prejudice to its unequivocal anti-racist stand, which had led it to co-operate enthusiastically in the

struggle being waged by the United Nations against racial discrimination, her delegation was not convinced that the Convention would be of great value in promoting that struggle.

27. Mrs. DINÇMEN (Turkey), speaking in explanation of vote, said that her Government was in favour of punishing war criminals, but that the draft resolution recommended by the Council and the Byelorussian amendment (A/C.3/L.1831) presented certain legal problems in connexion with the Turkish Constitution and Penal Code. She would therefore abstain in the voting on the draft resolution and amendments.

28. Mr. NTAWIHA (Rwanda), supported by Mr. DIOGO (Dahomey), Mr. GUIAGOUSSOU (Chad), Mr. GOUAMBA (People's Republic of the Congo) and Mr. GUNEWAR-DENE (Ceylon), asked that the voting should be postponed until the end of the following meeting so that he would have time to consult his Government.

29. Mr. HAYATOU (Cameroon), Mr. OULD HACHEME (Mauritania), Mrs. WARZAZI (Morocco), Mr. KRAVETS (Ukrainian Soviet Socialist Republic) and Mr. OGURTSOV (Byelorussian Soviet Socialist Republic) expressed the view that, since the Committee had heard explanations of vote and a request for a separate vote, voting had begun and could not be postponed.

30. After a procedural debate in which Mr. EL SHEIKH (Sudan), Mr. RYBAKOV (Union of Soviet Socialist Republics), Mr. NDURURUTSE (Burundi), Mr. DABROWA (Poland), Mr. EL-FATTAL (Syria) and Mr. MAGONGO (Swaziland) took part, the CHAIRMAN invited the members of the Committee to vote on the first amendment in document A/C.3/L.1812.

The amendment was adopted by 50 votes to 4, with 34 abstentions.

31. Mr. DABROWA (Poland) requested a separate vote on the words "Members of the United Nations or members of the specialized agencies" in operative paragraph 2 of the draft resolution recommended by the Economic and Social Council in its resolution 1500 (XLVIII).

The words were deleted by 24 votes to 15, with 47 abstentions.

Operative paragraph 2, as amended, was adopted by 44 votes to 4, with 40 abstentions.

32. The CHAIRMAN reminded the Committee that the representative of Austria had requested a separate vote on the words "as defined in article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity" in operative paragraph 5 of the draft resolution.

The words were retained by 42 votes to 8, with 36 abstentions.

33. The CHAIRMAN put to the vote the second amendment in document A/C.3/L.1812.

The amendment was adopted by 37 votes to 4, with 50 abstentions.

⁵ Document E/CN.4/983 and Add.1 and 2.

34. The CHAIRMAN invited the Committee to vote on the amendments in document A/C.3/L.1831 and the United States oral amendment (see para. 23 above).

The oral amendment was adopted by 32 votes to 24, with 26 abstentions.

The first amendment in document A/C.3/L.1831, as amended, was adopted by 41 votes to 5, with 46 abstentions.

The second amendment in document A/C.3/L.1831 was adopted by 40 votes to 4, with 46 abstentions.

35. The CHAIRMAN put the draft resolution as a whole, as amended, to the vote.

At the request of the Polish representative, the vote was taken by roll-call.

Somalia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Somalia, Southern Yemen, Sudan, Swaziland, Syria, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Cuba, Cyprus, Czechoslovakia, Ethiopia, Gabon, Ghana, Hungary, India, Indonesia, Iraq, Israel, Jordan, Kenya, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Morocco, Niger, Nigeria, People's Republic of the Congo, Peru, Philippines, Poland, Romania.

Against: United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Portugal.

Abstaining: Spain, Sweden, Togo, Tunisia, Turkey, Uruguay, Venezuela, Argentina, Austria, Belgium, Brazil, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Costa Rica, Denmark, Dominican Republic, Finland, France, Greece, Guatemala, Guyana, Iran, Ireland, Italy, Ivory Coast, Jamaica, Japan, Lesotho, Liberia, Malawi, Mexico, Netherlands, New Zealand, Norway, Rwanda, Saudi Arabia, Sierra Leone.

The draft resolution, as amended, was adopted by 47 votes to 4, with 41 abstentions.

36. Mr. DUCCI (Chile) said that when his delegation had voted in favour of General Assembly resolution 2391 (XXIII), by which the Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, it had made the reservation that the provisions of the Convention would apply in the case of Chile only as from the date on which it deposited its instrument of ratification. That reservation had been made because article I of the Convention embodied a premise which was contrary to those constitutional provisions of Chile which established the absolute non-retroactivity of criminal law. Since the position had not changed, his delegation had been unable to vote in favour of the reference to the Convention in operative paragraph 5 of the draft resolution recommended by the Economic and Social Council or of the amendments in documents

A/C.3/L.1812 and A/C.3/L.1831. It had, however, supported the draft resolution as a whole, since it considered that it contained provisions which were definitely valuable.

37. Mr. NETTEL (Austria) regretted that he had been unable to support the amendments to the draft resolution recommended by the Economic and Social Council. Those amendments over-emphasized the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which contained legal principles that were not universally recognized.

38. Mr. AANØ (Norway) explained that his delegation had abstained in the vote on the amendments to the draft resolution recommended by the Economic and Social Council and on the document as a whole because of the references they made to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. As non-retroactivity was one of the basic principles of its criminal law, Norway had been unable to accede to the Convention. However, the Norwegian Parliament had recently adopted an amendment to the Penal Code which extended until 31 December 1975 the power to institute criminal proceedings and pronounce sentence for war crimes and crimes against humanity committed during the Second World War, provided that the maximum penalty for the crime in question was life imprisonment and the case fell within the scope of Norwegian criminal legislation.

39. Miss SLYFIELD (Jamaica) noted that her delegation had had to abstain in the vote on resolution 2391 (XXIII), whereby the General Assembly had adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, because it had considered the principle of retroactivity of criminal law to be entirely unacceptable. She had abstained in the voting which had just taken place in the Committee for the same reason. However, her delegation was in favour of drawing up an international convention on the extradition of war criminals.

40. Mr. COLL (Venezuela) said that he shared the concern of other delegations regarding the punishment of war criminals, but that he had had to abstain in the voting for the same considerations of domestic legislation which had prevented his country from becoming a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, a document that contained provisions incompatible with certain principles expressly proclaimed in the Venezuelan Constitution.

41. Mr. EL-FATTAL (Syria) stressed that his country condemned Nazi activities and racial, religious or other forms of discrimination or intolerance and said that the brutality and horror of nazism, from which Europe had freed itself at the cost of a devastating war and fifty million lives, was reappearing in the Middle East in the systematic atrocities inflicted on the Arab population of the territories occupied by the Israeli invaders, whose ideology and

practices in no way differed from those of the Nazis. His delegation considered that the draft resolution which had just been adopted applied equally to past war crimes and crimes against humanity, and to crimes which were being or might be committed.

42. Mrs. DAES (Greece) explained that she had abstained in the vote for reasons of a legal nature which she had explained on previous occasions.

The meeting rose at 1.30 p.m.