

**United Nations
GENERAL
ASSEMBLY**

TWENTY-EIGHTH SESSION

Official Records



**2185th
PLENARY MEETING**

*Friday, 30 November 1973,
at 10.30 a.m.*

NEW YORK

CONTENTS

| | <i>Page</i> |
|--|-------------|
| Agenda item 53: Elimination of all forms of racial discrimination (<i>continued</i>): (b) Draft Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i> Report of the Third Committee | 1 |
| Agenda item 55: Elimination of all forms of religious intolerance: (a) Draft Declaration on the Elimination of All Forms of Religious Intolerance: report of the Secretary-General; (b) Draft International Convention on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Report of the Third Committee | 1 |
| Agenda item 59: Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights: report of the Secretary-General Report of the Third Committee | |
| Agenda item 60: Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity Report of the Third Committee | |

President: Mr. Leopoldo BENITES (Ecuador).

AGENDA ITEM 53

**Elimination of all forms of racial discrimination (*continued*)*
(b) Draft Convention on the Suppression and Punishment
of the Crime of *Apartheid***

**REPORT OF THE THIRD COMMITTEE
(A/9233/ADD.1-3)**

AGENDA ITEM 55

**Elimination of all forms of religious intolerance:
(a) Draft Declaration on the Elimination of All Forms of
Religious Intolerance: report of the Secretary-General;
(b) Draft International Convention on the Elimination of
All Forms of Intolerance and of Discrimination Based
on Religion or Belief**

REPORT OF THE THIRD COMMITTEE (A/9322)

*Resumed from the 2163rd meeting.

AGENDA ITEM 59

**Importance of the universal realization of the right of peoples
to self-determination and of the speedy granting of inde-
pendence to colonial countries and peoples for the effective
guarantee and observance of human rights: report of the
Secretary-General**

REPORT OF THE THIRD COMMITTEE (A/9325)

AGENDA ITEM 60

**Principles of international co-operation in the detection,
arrest, extradition and punishment of persons guilty of war
crimes and crimes against humanity**

REPORT OF THE THIRD COMMITTEE (A/9326)

1. Mr. BECK (Turkey), Rapporteur of the Third Commit-
tee: I have the honour to present to the General Assembly
the reports of the Third Committee on items 53 (b), 55, 59
and 60.

2. The first report in document A/9233/Add.1 relates to
item 53 (b). During the discussions many representatives
expressed strong support for the adoption of a convention
for the suppression and punishment of the crime of *apar-
theid*. It was also pointed out that the adoption of a new
international instrument to combat one of the most flagrant
violations of fundamental human rights and freedoms
would supplement and strengthen existing international
instruments and would be an important contribution to the
struggle against *apartheid*, as well as to the Decade for
Action to Combat Racism and Racial Discrimination.

3. The view was also expressed that the adoption of a new
international instrument dealing with *apartheid* might
weaken the existing instruments and would in practice add
nothing to the protection against racial discrimination and
apartheid already provided for in such international instru-
ments as the International Convention on the Elimination
of All Forms of Racial Discrimination. Emphasis was
placed on the need for careful and detailed elaboration of
the draft convention in order to avoid any ambiguities.

4. The Third Committee, in paragraph 63 of its report,
recommends for adoption by the General Assembly the
draft resolution to which is annexed the draft convention.
Under operative paragraph 1, the General Assembly will
declare that it "Adopts and opens for signature and ratifica-
tion the International Convention on the Suppression and
Punishment of the Crime of *Apartheid*...". I should like to
draw attention also to operative paragraph 2 in which an
appeal is made "to all States to sign and ratify the Conven-
tion as soon as possible". The draft resolution and the draft

convention are now being presented for the consideration of the Assembly.

5. The second report that I also have the pleasure of presenting to the General Assembly is in document A/9322 and relates to item 55. The Third Committee, in accordance with resolution 3027 (XXVII), examined the question extensively. The Committee had before it for consideration the text of the draft declaration on the elimination of all forms of religious intolerance prepared by the Sub-Commission on Prevention of Discrimination and Protection on Minorities and by the Working Group set up by the Commission on Human Rights, and the various amendments thereto. Although it was generally recognized that the completion of a draft declaration on religious intolerance was desirable, a large number of representatives felt that the preparation of such a document required additional study. The view was also expressed that a single draft declaration, prepared by the Commission on Human Rights, would greatly facilitate the work of the Committee. The draft resolution which the Committee, by a unanimous vote, recommends to the Assembly in paragraph 62 of its report has taken into account these considerations.

6. The next report I have the honour to present today, in document A/9325, concerns the proceedings in the Third Committee on item 59. The discussions in the Committee tended to focus on the report of the Secretary-General [A/9154] prepared in accordance with General Assembly resolution 2955 (XXVII) of 12 December 1972, indicating the present scope and nature of the assistance being provided to colonial countries and peoples, as well as to those in the liberated areas, from relevant organs of the United Nations, the specialized agencies, regional intergovernmental organizations and relevant non-governmental organizations, in order to assist in the examination of areas and ways and means of further promoting humanitarian and material assistance, account being taken of the need for co-ordination.

7. During the debates, it was reaffirmed that the subjugation of peoples, alien domination and colonial exploitation were a violation of the principles of self-determination, as well as a denial of basic human rights. It was pointed out that, although substantial progress has been made in the field of decolonization, many millions of people remain under the yoke of colonialism despite the Declaration on the Granting of Independence to Colonial Countries and Peoples and numerous United Nations resolutions on decolonization and self-determination.

8. Satisfaction was expressed with the efforts which were being made by various Governments, organs of the United Nations, the specialized agencies and intergovernmental and non-governmental organizations to provide humanitarian and material assistance to colonial countries and peoples in the struggle for self-determination and independence, and members declared their solidarity with all peoples struggling for their freedom from colonialism.

9. The draft resolution recommended by the Third Committee in paragraph 20 of its report for adoption by the Assembly *inter alia* requests the Secretary-General to continue to assist the specialized agencies and organizations

within the United Nations system in working out measures for the provision of increased international assistance to the peoples of colonial Territories, and requests the Secretary-General to submit a report on its implementation to the General Assembly at its twenty-ninth session.

10. The fourth and last report that I have the honour to present to the Assembly relates to item 60. The report, in document A/9326, sets out in its introduction the documentation which the Committee had before it. It then summarizes the action taken by the Committee and, finally, presents in paragraph 10, for adoption by the General Assembly, the text of a draft resolution containing the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

11. There was general agreement in the Third Committee on the desirability of the adoption of the draft principles which, it was felt, would make a valuable addition to the existing international legislation concerning war crimes and crimes against humanity, notably the charter of the Nürnberg Tribunal, the Convention on the Prevention and Punishment of the Crime of Genocide [*resolution 260 (III) annex*] and the Convention on the Non-Applicability of Statutory Limitations on War Crimes and Crimes Against Humanity [*resolution 2391 (XXIII), annex*]. The opinion was expressed that the adoption of such principles would promote co-operation for the effective punishment of war crimes and crimes against humanity, ensure a better protection of human rights and fundamental freedoms and promote co-operation among peoples and international peace and security. Views were also expressed about the interpretation of the draft principles and the fact that their implementation would be carried out within the framework of the national legislation and jurisdiction of the respective countries. The opinion was widely shared that adoption of the draft principles incorporated in the draft resolution would be a first step towards closer co-operation among States in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

12. The PRESIDENT (*interpretation from Spanish*): We shall consider first the report on agenda item 53 (b) [A/9233/Add.1].

13. I call on the representative of Zambia to introduce his amendment [A/L.712/Rev.1].

14. Mr. KABINGA (Zambia): The Zambian delegation submits the amendment in document A/L.712/Rev.1 for two reasons. First, a United Nations *ad hoc* working committee, a group of experts, reported in 1968 that:

“The international standards relating to trade union freedom are being seriously and persistently violated by South African legislation and by administrative and penal measures.”

The experts reported further that African unions did exist but had no legal status. Thus, the African worker in South Africa, whether South African or migrant, cannot legally defend his rights. Since the beginning of this century, any attempt to strike has been accompanied by arbitrary arrests and massacres, as the recent Carletonville massacre proved.

15. Secondly, there are not even non-recognized trade unions in many sectors of the economy. In the farming sector especially, conditions of forced labour—slave labour, that is—exist, conditions which can be made better only if the workers of the whole country gain their right to form recognized trade unions.

16. Let me conclude by stating that, by calling for the right to form trade unions in the present South African context, we are not implying recognition of any legitimacy of the present political system in South Africa, Rhodesia and occupied Namibia. The only viable solution is the complete liquidation of the present criminal system.

17. We hope that the amendment will receive maximum support.

18. The PRESIDENT (*interpretation from Spanish*): The Assembly will now proceed to the vote.

19. In accordance with rule 92 of the rules of procedure, I shall first put to the vote the amendment in document A/L.712/Rev.1.

The amendment was adopted by 95 votes to none, with 18 abstentions.

20. The PRESIDENT (*interpretation from Spanish*): Before I put to the vote the draft resolution as amended I call on the representative of the United States, who wishes to explain his vote.

21. Mr. FERGUSON (United States of America): The draft convention now before us raises profound and troubling problems for my Government. It is in several respects inconsistent with the concepts basic to our legal system, such as the protection of human rights. Moreover, we do not think that this draft convention makes any positive contribution to the international law and conventions which cover this subject.

22. A convention establishing *apartheid* as a crime against humanity is not necessary in view of the broad, all-inclusive provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. That Convention effectively outlaws all practices of racial discrimination, specifically including that of *apartheid*. Moreover, the most serious offences which may be associated with *apartheid* are directed against racial groups and, as such, are already made criminal and punishable under the Genocide Convention.

23. The proposed new draft convention purports to extend international criminal jurisdiction in a broad and ill-defined manner and seeks to rely upon present powers of domestic jurisdiction for its enforcement. Any country that wishes to take internal action against *apartheid* can, of course, do so, and many States have passed laws against various aspects of racial discrimination. They must, of course, do so in accordance with the principles set forth in the Universal Declaration of Human Rights. Under our civil legislation, for example, the United States has adopted laws prohibiting and punishing certain of these practices of racial discrimination. However, if this draft convention were merely redundant and raised no basic problems of law and international usage, we would certainly be in favour of it,

given the widespread and thoroughly understandable desire to take some further effective action against the continuing institution of *apartheid*.

24. Unfortunately, however, certain provisions of this draft convention could be damaging to the very structure of international law, and even to the constitutional structure of the United Nations itself. Deplorable as it is, we cannot, from a legal point of view, accept that *apartheid* can in this manner be made a crime against humanity. Crimes against humanity are so grave in nature that they must be meticulously elaborated and strictly construed under existing international law, as set forth primarily in the charter of the Nürnberg Tribunal and as applied by the Nürnberg Tribunal.

25. As we have explained earlier, the broad extension of international jurisdiction under this draft convention, even in cases where there are no significant contacts between the offence and the forum State, and where the offender is not a national of the forum State, makes it impossible for the United States to accept this as consistent with the basic norms of fairness, due process and notice so essential in criminal law. We believe that an exception can be made only in certain limited cases of serious crimes which, for the most part, are by their very nature not confined to the specific territory of one particular State, crimes such as piracy, air piracy and war crimes. We do not, for example, accept that an American citizen vacationing in a foreign country could be extradited to another foreign country and tried in that third foreign country for something that he has said on the territory of the United States, a result which would flow quite clearly from the provisions of this convention.

26. The difficulties we encountered with the initial text have been increased as a result of the decision to fill the blank in article IX with the words "the Commission on Human Rights". This decision raises a question of constitutionality under the United Nations Charter. That question is whether under a separate treaty, one not accepted by all Members of this Organization, the States parties to a convention can confer additional powers upon an organ created under the United Nations Charter.

27. Over and above that constitutional problem, this convention poses a practical dilemma for the Commission on Human Rights. Most of the States members of that Commission will not be parties to this convention in the near or even foreseeable future. This will place the Commission in the untenable position of having to discharge its functions under a convention which the majority of its members have not signed and do not support.

28. So far as the signature and accession articles are concerned, we have previously expressed grave doubts about the sense of placing the Secretary-General in an impossible position. The compromise proposal which has been developed in the Sixth Committee¹ corrects this defect, and on the understanding that that compromise will be applied to this case as well, we see no problems now in that regard.

29. Rules for the protection of human rights cannot be elaborated in such a manner as to ignore the very fabric of

¹ See document A/C.6/L.944/Add.3.

the rules of law. Efforts to protect human rights which ignore the rule of law can only lead to chaos, and in chaos it is the vicious and the repressive who triumph and the individual who suffers. This convention in our opinion marks a step backwards in the protection of the individual. We have assiduously searched for some basis on which we might abstain. However, for all of the reasons I have set forth, my Government will have to vote "no" on this proposition.

30. The PRESIDENT (*interpretation from Spanish*): I now put to the vote the draft resolution recommended by the Third Committee, as amended. That draft resolution contains the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

The draft resolution, as amended, was adopted by 91 votes to 4, with 26 abstentions (resolution 3068 (XXVIII)).

31. The PRESIDENT (*interpretation from Spanish*): I shall now call on those representatives who wish to explain their vote after the vote.

32. Mr. VERRET (Haiti) (*interpretation from French*): Mr. President, may I first of all express to you the great satisfaction of my delegation with the tact and skill you have shown in directing the work of this Assembly. Your talent, your thorough knowledge of the law and your great experience of the Organization constitute for all of us the surest guarantee of success.

33. According to the Scriptures, God created light, thus separating us from the darkness. That happened at the time when the world was created.

34. Thus according to the authors of the Scriptures light and darkness were two distinct entities, two separate elements, which in ancient times took the material form of gods. There was the god of darkness and the god of light. It is perhaps from that text that those who advocate the separation of races have taken their inspiration. But if we look back to prehistoric ages we easily see that primitive men could not then in relations between them carry out an advanced concept of *apartheid* on the basis of race and colour. Because of the need to obtain food and protect themselves against the elements and animals, they had to group themselves haphazardly in order to survive in those nebulous times. Then man had more solidarity with man, and the distinctions of class, race and religion were not yet established in a society which ignored these elements and whose only purpose was to satisfy its animal functions. It is believed that little by little the devil came into the picture and man learned to know the soil on which he had been cast. His eyes opened to knowledge, and as he became aware of his power over the lower species surrounding him, his appetite, which was strictly limited at first, became greater as his horizons widened. Thus, with progress and civilization—which according to some authors is the source of all evils—there developed in man a sense of refinement which was prejudicial to his original nature, a spirit of competition and an avidity for conquests and riches which caused peoples to fight and destroy each other.

35. History is full of these gigantic conflicts which have caused different civilizations to collapse in turn. These historical clashes have extinguished some races and brought

others to slavery. According to the Bible, the vanquished brother became the slave of his victorious brother. Thus people won empires and set up barriers for the subjugated peoples, and race became a primary consideration. Thus, the Jewish people were scattered throughout the world for centuries, suffered the interdict of the Western world, although the West preached the religion of Christ. Then the yellow peril was raised in some continents and the black race was considered to be congenitally incapable of self-government. But times have changed. At the end of this twentieth century, the subjugated peoples have broken the more than century old yoke which oppressed them, so that no form of racial discrimination will persist on the planet, and so that the spirit of peace and harmony may serve as a basis for a new world.

36. It was in that spirit that on 20 November 1963 the delegation of Haiti voted in favour of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination [*resolution 1904 (XVIII)*]. However, after the adoption of that document, which constitutes one of the greatest monuments to contemporary thinking, some leaders of peoples, practising iniquity and injustice, still set up laws of segregation and discrimination whereby certain rights and privileges refused to others were given only to certain so-called superior races.

37. But a new trend of thinking born of the hecatomb of the two world wars destroyed these concepts and, out of economic and political considerations, there was a revision of traditional values. Other responsible leaders strove to respond to the clamour for racial equality. Here, the delegation of Haiti is pleased to pay a just tribute to United Nations action in the incessant struggle against racism, in the conviction based on the teachings of the immortal Duvalier—whom we greet in his immortality—who created a State where racism had been a pestilence. He blew the trumpets and caused the walls of Jericho to fall. Similarly, the United Nations must destroy the walls of anachronistic colonialism and every kind of discrimination.

38. An integral part of the Organization, the Republic of Haiti, born of the French Revolution's celebrated Declaration of the Rights of Man and the Citizen of 1789, has always associated itself with all measures for effectively combating racial discrimination and the system of *apartheid* in southern Africa.

39. The delegation of Haiti voted in 1965 in favour of the International Convention on the Elimination of All Forms of Racial Discrimination [*resolution 2106 A (XX)*]. We did so because the people of Haiti—born of legendary blacks who in 1804 founded the first black Republic in the world and the second Republic on the American continent—despite the colonial yoke under which their fathers had suffered, have always practised tolerance toward all races and all religions. On our sunny soil, races and colours constitute a wide range and harmoniously merge. The foreign minorities in Haiti, of whatever race, live in the closest union with the indigenous population. Xenophobia does not exist in our house. Contrary to the customs of certain States, no racial designation is used to identify anyone in our immigration documents, because within the context of a world where the vestiges of colonialism are not yet abolished, any racial classification

would seem to us to indicate a difference of content in the various kinds of human species.

40. We consider that all races are equal and have in turn known servitude and grandeur in the past. History relates the splendour of the great empires of the past and the races which built great cities: Babylon, with its hanging gardens; the celebrated city of Thebes, which appeared as the capital of antiquity; Jerusalem, in the time of the temple of Solomon; and, closer to us, the city of Granada, which the black Saracens conquered from Spain and which became a marvel of technique and architectural beauty. The list goes on and on. But history also teaches us that the conquering peoples have always scorned the peoples they subjugated. Thus, the peoples of the West, having occupied the countries of Asia and Africa, considered the races there as inferior races. They told the people that they were savages and ugly and that the Western type with all its attributes symbolized the canon of beauty and intelligence.

41. Until the end of the last century, despite the reverses of international politics, European arrogance placed the peoples of Asia, Africa and America under the same label of barbarism and savagery. As for us, we know that beauty is subjective and that black is as beautiful as white.

42. That is why for the delegation of Haiti, in accordance with the great principles of His Excellency Jean-Claude Duvalier, President for Life of the Republic, social justice is the background and progress the main objective. We are therefore in favour of the Convention on the elimination of *apartheid*. Despite certain difficulties in implementing them fully, the measures adopted here can be applied by the majority of States to reconcile all peoples of the world and eliminate prejudices which paralyse or destroy all efforts towards universal peace and progress. By our vigilance, this document can have a real value and be a sure guide for future generations. That is the sincere wish of my delegation.

43. In the meantime, let us rejoice, justice has been done!

44. Mr. MACKENZIE (United Kingdom): The decision to change to a negative vote on this item was a very difficult one for my delegation and one which we took only with the greatest reluctance. But we came to the conclusion that the legal objections to the text of the Convention are so strong that they required a negative vote on the resolution adopting the Convention. I wish to make it abundantly clear that our negative vote does not in any way indicate support for the policy of *apartheid*, which, as we have repeatedly said, we whole-heartedly condemn. That remains our position. There has been no change. We support the ultimate aim of the Convention, but we have to reject the means.

45. There are a number of features of the Convention which we find entirely unsatisfactory and unacceptable. One of the most important is that it contains provisions which would violate the principles of international law concerning the proper exercise of criminal jurisdiction, principles to which we attach the highest importance. The provisions in question purport to authorize contracting States to exercise criminal jurisdiction in respect of certain matters covered by the Convention over acts done outside their jurisdiction by persons who are not their nationals. That assertion of jurisdiction would be totally inadmissible as far as my Govern-

ment is concerned, and if this Convention should enter into force, my Government would reserve its rights in relation to any attempt to assert such jurisdiction over United Kingdom nationals. We believe that many Governments share our position.

46. We also strongly object to the mandate which article IX seeks to impose upon the Commission on Human Rights and its Chairman. We consider that this mandate, even though expressly formulated in the accompanying resolution, is incompatible with Article 68 of the Charter and is, therefore, legally ineffective.

47. Finally, in explanation of its vote in the Third Committee, my delegation referred to the provisions relating to signature and accession contained in the draft convention. Since then the Sixth Committee has had occasion to consider the problem and a satisfactory understanding of how provisions such as these will be administered in practice has emerged and has been explained in that Committee. In these circumstances, my delegation does not find it necessary to maintain its objection to these provisions.

48. The PRESIDENT (*interpretation from Spanish*): We shall now turn to the report of the Third Committee on agenda item 55 [A/9322].

Pursuant to rule 68 of the rules of procedure, it was decided not to discuss the report of the Third Committee.

49. The PRESIDENT (*interpretation from Spanish*): As no representative wishes to explain his vote at this time, we shall take a decision on the draft resolution recommended in paragraph 62 of the Third Committee's report for adoption by the General Assembly. As the report indicates, the Third Committee adopted the draft resolution without objection. If there is no objection, I shall take it that the General Assembly also decides to adopt the draft resolution.

The draft resolution was adopted (resolution 3069 (XXVIII)).

50. The PRESIDENT (*interpretation from Spanish*): I call on the representative of the United States, who wishes to explain his vote.

51. Mr. BUCHANAN (United States of America): It was the hope of my delegation that it would be possible to complete work on a declaration on the elimination of all forms of religious intolerance at this session of the Assembly. We share the sense of urgency expressed by the Assembly at its twenty-seventh session in its mandate to the Third Committee on this important subject. We do, however, congratulate the Committee for having taken a concrete and positive step in the right direction in the resolution just adopted by this Assembly, particularly those delegations which worked together on a very complex and difficult subject to make such progress. We therefore support this resolution and congratulate the Third Committee for its leadership.

52. The PRESIDENT (*interpretation from Spanish*): We shall now consider the report of the Third Committee on agenda item 59 [A/9325]. In this connexion there is a draft amendment in document A/L.710. I call on the representative of Morocco to introduce it.

53. Mrs. WARZAZI (Morocco) (*interpretation from French*): The Moroccan delegation, since it did not have sufficient time to introduce its amendment in the Third Committee, now presents it to the General Assembly.

54. As is well known, as an African delegation we attach particular importance to this item. Consequently, we consider that the draft resolution on this subject, which is contained in the report that has just been presented and will shortly be voted on, is an excellent one and will definitely contribute to the goals that we are pursuing.

55. I should like, however, to point out that the United Nations is according even more importance to this question, and that the Sub-Commission on Prevention of Discrimination and Protection of Minorities has decided to carry out a study and to that end has requested the Commission on Human Rights to authorize it to appoint a Special Rapporteur.

56. So that the sense of the Moroccan amendment may be fully grasped, I should like to read out one of the reasons that prompted the decision to carry out a study on this subject, which appears in one of the paragraphs of a resolution of the Sub-Commission. The paragraph, which deals with the appointment of a Special Rapporteur, reads:

“Considering that the designation of a Special Rapporteur for this purpose and the preparation of a detailed study will constitute a constructive element in favour of the recognition and the implementation of the right of peoples to self-determination”.

My delegation believes, therefore, that it will be important for the draft resolution on which we are about to vote to contain that constructive element concerning the study to be carried out.

57. I have been told that the Commission on Human Rights has not yet taken up the report of the Sub-Commission and that perhaps it would not be in accordance with general practice if the General Assembly were to address the Commission on this point. To my delegation that objection does not appear to be very cogent, because in the final analysis the highest authority in our Organization is, undoubtedly, the General Assembly. However, my delegation has decided to act in a spirit of courtesy to the Commission and to allow it to take the final decision to grant the request of the Sub-Commission by authorizing it to designate a Special Rapporteur to prepare a detailed study designed to reinforce the attitude adopted by the United Nations towards self-determination. Consequently, the Moroccan amendment would stop at the words “fundamental freedoms”, and the phrase which requested the Commission on Human Rights to authorize the Sub-Commission to appoint this Special Rapporteur would be deleted.

58. The PRESIDENT (*interpretation from Spanish*): Before we proceed to the vote, I should like to draw the attention of the General Assembly to the suggestion in paragraph 19 of the report [A/9325], which was made in the Committee by the representative of Trinidad and Tobago. Paragraph 19 reads as follows:

“At the 2018th meeting, the representative of Trinidad and Tobago suggested that the Secretary-General should

study the possibility of inviting a group of 20 to 25 school children from liberated areas of Guinea-Bissau to give an artistic performance before the United Nations, reflecting the indigenous cultural and moral aspirations of the liberation movements. The Committee took no decision on this suggestion, but agreed, at the request of the representative of Trinidad and Tobago, to include it in the present report.”

May I take it that the Assembly takes note of that suggestion?

It was so decided.

59. The PRESIDENT (*interpretation from Spanish*): We shall now proceed to the vote. In accordance with rule 92 of the rules of procedure, I shall put to the vote first the amendment which has been presented by the delegation of Morocco. The representative of Morocco has just made an oral amendment to that amendment, deleting the last phrase: “and requests the Commission on Human Rights to authorize it to make that appointment”. Therefore the amendment now ends with the words “and protection of human rights and fundamental freedoms”. I now put the amendment to the vote.

The amendment was adopted by 106 votes to none, with 22 abstentions.

60. The PRESIDENT (*interpretation from Spanish*): I now put to the vote the draft resolution recommended by the Third Committee, as amended.

The draft resolution, as amended, was adopted by 97 votes to 5, with 28 abstentions (resolution 3070 (XXVIII)).

61. The PRESIDENT (*interpretation from Spanish*): I call on the representative of Cuba, who wishes to explain his vote.

62. Mr. ALARCON (Cuba) (*interpretation from Spanish*): The debate in the Third Committee and the broad support for the draft resolution presented to the General Assembly demonstrate the interest which most Member States attach to the universal realization of the right of peoples to self-determination and the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.

63. In adopting this resolution, the Assembly has expressed its solidarity with those who are fighting in Africa, Asia or Latin America to win national emancipation and put an end to colonialism in all its forms and manifestations. The text recommended by the Third Committee for adoption by the Assembly reaffirms the inalienable right of all people to independence and the legitimacy of the peoples' struggle for liberation and condemns the Governments which still refuse to recognize that right.

64. In the debates in the Committee, my delegation had an opportunity to state its views on this item and its complete support for the draft resolution. At that time we indicated that we are in complete solidarity with all those who are fighting against colonialism and foreign oppression in any part of the world. We stated in particular our sympathy for the fighters who are in gaol in various colonial Territories, as referred to in the sixth preambular paragraph. Specifically

we drew attention to the situation of Puerto Rican nationalists who have been imprisoned since the beginning of the 1950s. Those patriots—Lolita Lebrón, Oscar Collazo, Andrés Figueroa Cordero, Rafael Cancel Miranda and Irving Flores—are political prisoners who have been in gaol for the longest time on the American continent. They are in American prisons because they have exercised a right which is recognized as legitimate in paragraph 2 of the resolution which the General Assembly has just adopted by 97 votes in favour to 5 against.

65. Last week, after the Committee had concluded consideration of the item, Member States received a communication from the Permanent Representative of the United States of America which claims ignorance of the status as political prisoners of those patriots. The document, which was circulated as note verbale No. 349, is an obstinate repetition of the colonialist attitude of Washington and a vain attempt to present as common criminals revolutionary fighters who have carried their sacrifices to the utmost in the defence of the sacred right of their people to national independence.

66. The note verbale is, moreover, an exposition of the absurd arguments of the colonialists. Although it tries to do the contrary, it constitutes additional proof of our accusations. In fact, in paragraph 4 of his communication the Permanent Representative of the United States affirms the following:

“In conclusion, I should like to note once again that Collazo and Lolita Lebrón are eligible for parole but have refused to submit necessary written application for parole.”

67. How can the colonialists explain the fact that those patriots, after 20 years of prison, refuse to comply with the legal procedures to obtain their freedom? What reason can there be other than a profound and unbreakable political will which makes them prefer imprisonment rather than submit to the oppressor of their country?

68. In not accepting the conditions imposed by the authorities to return their personal freedom, in persevering in their struggle from within colonial prisons, in preferring gaol rather than renouncing their ideas, Lolita Lebrón, Oscar Collazo and their colleagues offer to the world an example of revolutionary firmness and loyalty to their principles and of devotion to their struggle which it would be difficult to imitate. With their sacrifice they show the firm will for independence of the people of Puerto Rico. Such unshakable attitudes as those of Lolita Lebrón and Oscar Collazo in continuing the fight reaffirm our conviction that the people of Puerto Rico, like all other peoples subjected to colonialism and foreign oppression, will conquer its independence and that nothing and nobody will prevent it.

69. The PRESIDENT (*interpretation from Spanish*): We turn now to the report of the Third Committee on agenda item 60 [A/9326].

70. I call on the representative of Saudi Arabia to introduce the amendments in this connexion contained in document A/L.711.

71. Mr. BAROODY (Saudi Arabia): The item before us was elaborated by the Commission on Human Rights and transmitted to the General Assembly after the text had been endorsed by the Economic and Social Council last May in its resolution 1791(LIV). The Third Committee approved the text without sufficient analysis. I thought it appropriate to amend the text in keeping with the protocol on a similar item that was discussed more fully in 1968, but I was prevailed upon by the Third Committee to make a protocol of the points I raised, which I duly did, and instead of having it discussed I was again prevailed upon to have the Sixth Committee discuss that draft protocol on war crimes with a view to having it fully discussed in the Third Committee. But this draft protocol got buried in the Sixth Committee. Hence, I am reminded of Clemenceau in Versailles when he said: “If you want to kill an item, just create a Committee and transmit it to that Committee.” The Committee was the Sixth Committee, and presumably its members did not have time to look into my protocol on war crimes.

72. So I thought of digging out the essential articles of that draft protocol with which to amend the text which was being discussed in the Third Committee. It took a little time for the Secretariat to bring me the text of my amendments. I had not known that the time-limit for the submission of amendments was 6 o'clock that evening. The next day I came up with the amendments that members have in front of them now, and I was prevented from submitting them. I asked for courtesy. No courtesy was accorded, although I had many a time accorded a courtesy to the Soviet Union, which put up the representative of Bulgaria to state on its behalf that the final date for amendments had passed.

73. So I had no choice but to submit my amendments to the General Assembly and to explain them fully, so that we may not vote too hastily or be governed by principles which should have been scrutinized more fully, and perhaps debated by a special conference, rather than adopted through solidarity on the part of certain States or negligence on the part of others.

74. Gone are the days of yore, many centuries ago, when knights at arms challenged one another to battle, abiding, as most of them did, by accepted rules of combat. They fought in the open and were watched by the contesting parties, who saw to it that even in war anyone resorting to foul practices was regarded as having broken the code of honour. In our modern age, more than at any time in history, war has become essentially the art of deception. There can hardly be a semblance of moral law when one resorts to deception. The object of war is to kill the enemy or be killed by him. If the persons involved were wilfully to kill one another outside the pale of war they would be considered murderers by the common law of nations, but if the combatant kills a good number of the enemy he is considered a hero. In short, war becomes justifiable homicide. The victors who committed war crimes can easily brush aside these crimes with impunity. On the other hand, the defeated are usually accused, without difficulty, of having committed war crimes and crimes against humanity.

75. This reminds me of something that happened far back in history, during the time of Alexander the Great. A pirate was brought before him, and he said, “You thief, how dare

you molest the seafarers?” The pirate is reported to have replied, “I am called a thief because I command a small boat, but you have a navy and do what you want with a collectivity, and you are called an emperor”.

76. Another incident in history comes to mind. I am referring to the commander of the guard who, on orders, executed Charles I. I believe it was Cromwell who was the dictator then in England. Sometimes he is called the “benevolent dictator”. I do not know whether he was a benevolent dictator or not. This same chief of the Guard, during the Restoration of the Stuarts, with the advent of Charles II, was hanged because he had obeyed the orders of Cromwell or those who on behalf of Cromwell gave instructions that Charles I should be beheaded. The question presents a dilemma. If he had not obeyed orders, would that guard have been left to go scot-free? He would have been beheaded by Cromwell for disobeying orders. Anyway he was beheaded by those who emerged as victors, the Stuarts, after the Restoration. This gives us a little food for thought. It is typical of what happens in the changes of fortune in war.

77. In 1812 the British burned the White House, during the war that was fought after the United States had liberated itself from the colonial yoke. Some of those who burned the White House were captured. I leave it to the British and my good American friends to do research on whether they were hanged or allowed to go free.

78. Wars usually have a motivation—like the First World War, which allegedly was waged to end wars and to save the world for democracy. But the First World War was waged because Germany was expanding its markets. It was not to save the world for democracy. Was it a just war? I leave it to those here to do research on the matter and judge for themselves. However, in the wake of the First World War there was what came to be known as the Kellogg-Briand Pact.² Aristide Briand was a statesman—I remember him in the 1920s—who dominated the concepts of peace in Europe, and Kellogg was a gentleman from the United States who knew Aristide Briand very well, and the two worked together and promulgated what came to be known as the Kellogg-Briand Pact. Article I of that Pact states:

“The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.”³

79. What about the Second World War? Did Germany declare war on the United States? In view of that Pact and regardless of what type of man Hitler was, did the United States abide by the Kellogg-Briand Pact? No, sir. It was in the interest of the United States to join the Allies. And none other than the late Mr. Roosevelt had to rationalize the entry of the United States into the Second World War with slogans, by saying that it was to defend the four freedoms, among them freedom from fear and freedom from want. And the ancestors of that self-same late President of the United States came here and made short shrift of the red Indians only three or four centuries before.

80. I am saying that wars give rise to the use of slogans so that they may be waged. They are not waged for justice, not to save the world for democracy, not to safeguard alleged four freedoms.

81. Then we come to the motives that lie behind wars. Wars are waged for either one of three motives or a combination of them: national interest, to the extent of greed; ambition for power; ambition for glory. Those are the motives for most wars. Except for the purpose of strict self-defence, there is no such thing as a just or an unjust war. I must repeat this: except for the purpose of legitimate and strict self-defence, there is no such thing as a just or an unjust war. War in itself is evil and is against humanity. Let us be frank with ourselves; then we can be honest even with our enemies, as we should be.

82. What about war by attrition? Nothing is mentioned in those principles about war by attrition. It is only a general statement of principle. What about besieging a city? I remember in history how many cities were besieged until half of the population died before they surrendered. Now there are modern ways of attrition in our time. As a child I witnessed how the commander of the Fourth Army in the Middle East, Jamal Pasha, who had only 19,000 troops between the Taurus mountains in southern Turkey and the Suez Canal, resorted to a war of attrition. The Arab people, I must say now, in hindsight, foolishly fought the Ottomans. They were trying to do everything to subvert Jamal Pasha's army, whether by what later became to be known as guerrilla warfare or by spying. So he had no choice but to withhold wheat from that tiny State of Lebanon. And I remember as a child seeing people die like flies from hunger in the streets. He could not wage war against the British and the Arabs, so he resorted to a war of attrition.

83. Do not big Powers today resort to the same thing? They withhold food-stuffs and other means of subsistence from their enemies. Who is responsible for civilians dying like flies? War is a collective responsibility. How can you pin the responsibility on one person and say that he is a war criminal? What if the general receives orders to win regardless of the cost? Hence the saying, “Everything is fair in love and war”. Everything is justifiable in war, unfortunately so. And what about the wars of mass destruction in our modern days, massive air bombing when foe and friend are wiped out by orders of those who wage war? Did we not see what happened and what is still happening in South-East Asia, in Viet-Nam? What about orders that are given for the defoliation of forests and for the burning of crops? Who is responsible for those? Are they brought to task? Are those brought to task who give orders or who carry out orders that make millions destitute? Where do you draw the line?

84. I am trying to stir your conscience, before you ratify blindly such principles as are enunciated in document A/9326. Who is going to ascertain where the responsibility lies? In times of war, as I have said, it is a collective responsibility.

85. And here I come to the crux of tribunals. Please, fellow representatives, do not be impressed by famous judges, because they are human and can err, either by being subjective or by becoming conformist by the imperatives of the law. Indeed, it is quite rarely that a judge who presides over a

² General Treaty for Renunciation of War as an Instrument of National Policy, signed in Paris on 27 August 1928.

³ See League of Nations, *Treaty Series*, vol. XCIV, No. 2137, p. 59.

tribunal for trying war criminals gives the accused the benefit of the doubt. The judge is there to punish and not to reprieve in most cases.

86. We have spoken about genocide year in, year out, but what about genocide by stages, which is happening in the wars of the Far East? Who is responsible for such genocide? Are they being brought to task, those who rain bombs over civilians just to gain a strategic post? Is the poor pilot, who is provided with a chart to go above the clouds and press buttons and wipe out friend and foe, a criminal? Or is the one who orders him to do that a criminal? Or is the whole nation a criminal? Can you try a whole nation if such orders are given and the people have no say in the matter—all this in the name of bogus self-defence, when people go 10,000 miles away from their territory to wipe out people, communities? Will judges in a tribunal can sit with equanimity and sort out things with justice? Tell me that, fellow representatives. Or do you just vote for principles without scrutiny, without going into the underlying factors of war?

87. Now we come to a statement that I mentioned earlier: the victor seems to get away with impunity. What about Hiroshima and Nagasaki, which were wiped out? Was the gentleman who ordered the destruction of Hiroshima and Nagasaki brought to task by any tribunal? No, he was a victor. And what about those who ordered the destruction of Dresden in Germany, which was not a military target? They did not kill soldiers; they wiped out Dresden, a beautiful mediaeval city. Were the victors, the British and the Americans—whoever ordered the destruction of Dresden—brought to task? No, they were victors. Nobody could touch the victors.

88. When I mentioned this time and again throughout the years, from this podium and in committees, my argument was met with deep silence. And they whispered to me, Why do you not ask whether anybody brought the Soviet Union to task for having invaded Hungary in 1956 and Czechoslovakia in 1968? I said, All of you are guilty. You wanted to upset the balance of power, you Western Powers, including the United States and the socialist countries, because you were sending your spies into Hungary and Czechoslovakia to upset the régime and you were both guilty, and I say it from this rostrum. And who is going to preside over the determination of guilt? It cannot be done.

89. Does somebody want to raise a point of order? Come, I will challenge you.

90. I say, with a clear conscience, that we are all guilty in war whether it be a war among States or whether it be a civil war. The same people killing one another has happened during none other—

91. The PRESIDENT (*interpretation from Spanish*): May I request that, in accordance with practice, the representative of Hungary be allowed to raise a point of order?

92. Mr. BAROODY (Saudi Arabia): Let him come. I will sit down. Come on. I want an argument on war crimes but do not call me names, I warn you. Oh, it is a lady. I am handicapped.

93. Mrs. GERÉB (Hungary) (*interpretation from French*): Excuse me, Mr. Baroody, for interrupting you. We hold you

in the highest esteem in our Committee. You are aware of this. But I believe that you have gone a little beyond the agenda item. It would not be just of you to place on the same footing the Nazis and the progressive forces that are fighting for other goals, for peace, for self-determination. It would not be worthy of you and I hope that you will not persist in it.

94. Mr. BAROODY (Saudi Arabia) (*interpretation from French*): I shall do my best, but I must—

95. Mrs. GERÉB (Hungary) (*interpretation from French*): I hope that—

96. Mr. BAROODY (Saudi Arabia) (*interpretation from French*): I was not given the opportunity to take up this question in the Third Committee—

97. Mrs. GERÉB (Hungary) (*interpretation from French*): I would ask, Mr. Baroody, that you not place on the same footing—

98. The PRESIDENT (*interpretation from Spanish*): I am sorry, but I cannot allow this conversation to continue. Although it is certainly most interesting it runs counter to all precedents. I cannot permit it to continue here at the podium.

99. Mrs. GERÉB (Hungary) (*interpretation from French*): Mr. President, may I ask you to appeal to Mr. Baroody not to go beyond the agenda item and not to place on the same footing the Nazi wars and the wars for progress in the world.

100. The PRESIDENT (*interpretation from Spanish*): The representative of Saudi Arabia may continue.

101. Mr. BAROODY (Saudi Arabia): I will heed the appeal and not mention Hungary any more. But I do not wish to speak in a vacuum because I will become a conformist, and if we deal only in platitudes we do not get anywhere. Furthermore, I must explain to my gracious colleague, the representative of Hungary, that I did not have the Nazis in mind when I spoke. It was not a question of Nazis. That was in 1956 anyway. And in 1968 there were no Nazis. I think that they had been tried and killed, or were in hiding.

102. I am talking about the balance of power. That is in reply to what the representative of Hungary just said, in order to avoid the exercise of a right of reply later. My colleagues, especially from the Soviet Union and the socialist States, did not give me a chance to submit my amendments. I told them: fair warning, I will have to unfold the whole problem before the General Assembly if you do not give me a chance to do this. They did not heed my fair warning and they called for this debate on my amendments, and I think I am in order. But I am sorry that the representative of Hungary feels hurt. I do not think that she is deeply hurt, but she wants me to confine myself to the subject without perhaps mentioning Hungary. I will yield to her appeal and not mention Hungary. But I have to proceed with my argument. After all, this is an open forum, this is the United Nations and we do not go by platitudes. Platitudes get us nowhere, as we know from our work in the United Nations since its inception.

103. What I was trying to say was that we are still governed by the balance of power, power politics and the policy of spheres of influence, and I had to cite examples of what had taken place. I could have cited many things that took place inside the Arab world, but many of you would be unfamiliar with events in the Arab world. I must hasten to say that man is a rationalizing animal. He rationalizes war. What I am saying applies to all parts of the world, but more dramatically so to the doings of the major Powers, because after all they seem to govern the world. Therefore, I found myself constrained to stir the conscience of the Assembly, even if its members vote by solidarity, so that my remarks will be recorded verbatim in the proceedings of the Assembly in order to give us food for thought if and when some of the members wish to elaborate these principles into a draft convention—which would be a calamity.

104. Now, having made my point with the historical background, and not wishing to abuse the patience of the Assembly, I shall explain my amendments [A/L.711], which are embodied in the draft protocol that has been neglected by the Sixth Committee.

105. My first amendment reads:

“After principle 1, add the following new principles:

“2. Any person accused of war crimes or crimes against humanity shall be tried by a competent tribunal consisting of judges from States not parties to a given war...”

That amendment is self-explanatory. As I have mentioned, the war criminals of the defeated countries are usually brought to trial, whereas the alleged criminals of victor countries go scot-free. Therefore, it is only natural that the victorious countries find it necessary to allay the inflamed emotions that wars generate, and usually war criminals have to pay the price. I do not say that there are no war criminals, but there should be no distinction between the war criminals of the victor country and those of the defeated country, and it stands to reason that a neutral tribunal should do the judging rather than a tribunal of the victor country.

106. Some representatives have said to me: “But there is no such thing as a neutral tribunal in existence.” That is a valid remark, so I have decided to add the following after the words “to a given war” in the third line of the new paragraph 2 under my first amendment:

“The President of the International Court of Justice may be requested to appoint the judges of such a tribunal, or the judges may also be appointed by the Secretary-General of the United Nations and the President of the General Assembly after due consultations with appropriate parties, including those directly concerned.”

107. In the following paragraph the words “Without prejudice to the provision of the preceding paragraph” are deleted so as to simplify matters. The amendment therefore now reads:

“3. Every State has the right to try its own nationals for war crimes or crimes against humanity.”

108. Some of my colleagues have said that there might be a conflict between the preceding paragraph, which I have just

read, and this paragraph. I should like to explain the *raison d'être* of this second paragraph. It is designed to apply to those alleged war criminals who may have escaped and returned to their own country. This does not exonerate them from being tried. It is understandable that war prisoners who may have committed alleged crimes could not be tried except by neutral tribunals or by judges in their own countries. It depends on the whereabouts of the alleged war criminals. That is the *raison d'être* of the second paragraph. I hope that is clear. There is no conflict whatsoever between the first and second paragraphs.

109. In my second amendment I would replace principle 6 by the following:

“6. The right of asylum shall be denied to a person accused of war crimes or crimes against humanity, where the charges against him have been confirmed by a neutral tribunal.”

The reason for this paragraph is that alleged war criminals should not be accused on the grounds of hearsay, or distorted news, or propaganda—which has become the order of the day in the mass media of information, which may have a malicious motive in having an alleged war criminal considered as indeed having committed a crime without having been given due process of the law.

110. The principles enunciated in the document adopted by the Third Committee suffer from many loop-holes that may be used to try innocent people or people who are not responsible for alleged crimes. At least my amendments try to do away with some of those loop-holes although they are not fool-proof for the whole text. However, it is my intention that these amendments should be in the nature of a reminder to any international body which may elaborate a convention from the principles enunciated in the document before us. If I had not submitted them, like many of you I would feel guilty of a sin of omission, if not of commission. Therefore, may I ask you, Mr. President, to be kind enough to ask Mr. Morse to read out each of these amendments and put them to a recorded vote.

111. Before closing, I appeal to my friends from the Soviet Union not to oppose my amendments or urge me to withdraw them. Our work here is very serious, especially on questions of human rights, of which I have been seized since the inception of the United Nations, having participated in the elaboration of the Universal Declaration of Human Rights as well as of the two International Covenants on human rights. We should not be slack or slovenly in treating such a matter as war crimes. Again I appeal to the Soviet Union to show the same magnanimity it manifested when General von Paulus devastated Stalingrad by order of Hitler—who, incidentally, as I remember made von Paulus a marshal on the field of battle. The Soviet Union refused to surrender von Paulus to the judges of the Nürnberg Tribunal and I learned from reliable sources inside the Soviet Union that many officers, Nazi officers for that matter—and I say this for the information of my colleague from Hungary—if they were not reprieved were not tried but were considered as having received orders from their superiors. I wonder why the Soviet Union is so averse to see such principles adopted in spite of the loop-holes which I have brought to the attention of the Assembly.

112. Should there be no neutral tribunal constituted I would say this. You, Sir, are about my age and I am sure you will remember what I am about to bring to your attention because you happen to belong to the same generation as I, whereas many of our young colleagues are ignorant of these facts. The Nürnberg Tribunal was constituted by directive of the Secretary of War, Mr. Stimson, and by the advice of a gentleman whom I knew personally, none other than Judge Rosenman, who died only a few weeks ago—and I can understand why he should have encouraged the constitution of such a tribunal: he happened to be a Jew and he knew how much the Jews had suffered at the hands of the Nazis.

113. And then one of the judges that was nominated, Mr. Robert H. Jackson of the Supreme Court—I think Mr. Morse knows that—became the president of the Nürnberg Tribunal. And do you remember, my good friends Mr. Morse and you, Mr. President, that it was the late Mr. Roosevelt who departed from the common practice and appointed judges to the Supreme Court? It became a different system from that in England or in France. Such judges were appointed by the judiciary of those countries, not by the Chief of State.

114. Therefore, the whole set-up of the Nürnberg Tribunal had many faulty aspects. For your information, Mr. President, and the information of my colleagues who are students of history, I would recall that the Tokyo Tribunal, consisting of 11 members, was a so-called international military tribunal. How can such tribunals be neutral? What assurance do we have that future trials will not follow the same pattern? For heaven's sake, think before you vote on the whole draft resolution lest you have to consider yourselves responsible in the future for having been negligent about scrutinizing the whole question more thoroughly and more carefully and not just voting because of the solidarity of groups.

115. Finally, I apologize to my colleagues whose countries I have cited. If they are hurt in any way, I would assure them that my intervention was not meant to be personal or vindictive. I had to adduce history to bolster my argument. Thank you, Sir, for your patience with me.

116. The PRESIDENT (*interpretation from Spanish*): The representative of Saudi Arabia has requested the Under-Secretary-General to be so good as to read out the text of further amendments he is making in his amendment. I think that is a matter of elementary courtesy, and I therefore now call on the Under-Secretary-General for Political and General Assembly Affairs.

117. Mr. MORSE (Under-Secretary-General for Political and General Assembly Affairs): The representative of Saudi Arabia's revision of his own amendment contained in document A/L.711⁴ is as follows.

118. Add the following sentence to the new principle 2 which would be included in the draft resolution in paragraph 10 of document A/9326:

"The President of the International Court of Justice may be requested to appoint the judges of such a tribu-

nal, or the judges may also be appointed by the Secretary-General of the United Nations and the President of the General Assembly after due consultations with appropriate parties, including those directly concerned."

119. In the new paragraph 3 to be added to the draft resolution in paragraph 10 of document A/9326, delete the first phrase, reading "Without prejudice to the provision of the preceding paragraph". The new paragraph 3 would therefore read as follows: "Every State has the right to try its own nationals for war crimes or crimes against humanity."

120. The PRESIDENT (*interpretation from Spanish*): I call on the representative of Ghana on a point of order.

121. Mr. CATO (Ghana): Mr. President, I have asked to be allowed to speak on a point of order and in order to request your ruling on the procedure that we have been following. I should like to quote the relevant rule of our rules of procedure on which I should like to obtain your ruling. I refer to rule 80, which reads:

"Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the General Assembly unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day."

122. This morning the representative of Saudi Arabia has made further amendments to his original amendments. My delegation has not had time to obtain instructions on the way it should vote on these new amendments and, therefore, I am asking you to rule that we shall not take a decision on these amendments today, but shall defer further consideration of this item until the next meeting or until the next report of the Third Committee comes up for discussion in the plenary Assembly.

123. The PRESIDENT (*interpretation from Spanish*): A point of order has been raised and I must give a ruling on it before calling on other speakers, including any who may wish to raise another point of order.

124. As I see it, the procedural position is as follows. We had not yet started consideration of the amendments; we had only heard the presentation of the amendments by the representative of Saudi Arabia. I had intended to call immediately thereafter on the representative of the Byelorussian SSR to speak on those amendments, in document A/L.711. I had not yet said that the voting had begun. After the representative of the Byelorussian SSR had spoken, it had been my intention to request the representative of Saudi Arabia and the General Assembly—because of the importance of the amendments—to agree that we should take no decision today but should postpone doing that until representatives had had time to study the new amendments, in accordance with rule 80, which has just been quoted. That is the procedure I intend to follow.

⁴ The revised text of the amendments in document A/L.711 was subsequently distributed as document A/L.711/Rev.1.

125. I now call on the representative of the Byelorussian SSR, who wished to refer to the amendments.

126. Mr. GURINOVICH (Byelorussian Soviet Socialist Republic) (*translation from Russian*): The delegation of the Byelorussian SSR welcomed the decision of the Third Committee to approve the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, and would appeal to the delegations of Members of the United Nations to adopt them without any unnecessary delay and without any change.

127. The principles under consideration are a continuation of United Nations efforts to prevent war crimes and crimes against humanity, a process that had its beginning when the General Assembly, at the initiative of the delegation of the Byelorussian SSR, adopted resolution 3 (I) of 13 February 1946 on the extradition and punishment of war criminals.

128. As representatives know, the United Nations has elaborated and confirmed the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

129. A few minutes ago, at the present session of the General Assembly, we approved, by 91 votes in favour, the International Convention on the suppression and punishment of the crime of *apartheid* [resolution 3068 (XXVIII)]. There are many other agreements in force in this respect, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide [resolution 260 A (III)], the 1949 Geneva Conventions and others.

130. The work of elaborating the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity has been going on very carefully in the United Nations for three years now—I would emphasize that: for three years. This question has been considered in full detail at three sessions of the General Assembly, in the Commission on Human Rights and in the Economic and Social Council. All delegations have had many opportunities to make their contribution to the elaboration of these principles. We should like to emphasize that the principles that we are now considering are the result of the joint efforts of many delegations and United Nations bodies. Therefore it cannot be said that we are now considering a document that has been prepared without sufficient analysis; the analysis and preparatory work have been more than sufficient. Various points of view and proposals are reflected in these principles. It is therefore not surprising that the Third Committee approved these principles by 75 votes to 1.

131. The principles are informed by a spirit of peace and justice; they are of importance not only for the past but also for the future, because they are a grave warning to the forces of aggression, colonialism, racism and reaction. As the first principle states:

“War crimes and crimes against humanity, whenever or wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.”

132. The delegation of the Byelorussian SSR believes that the recommendation of the Third Committee should be adopted in connexion with those principles without any modification, and particularly without any radical alteration. In this connexion, despite the final words of Mr. Baroody which we have just heard, we would continue to request him not to insist on putting to the vote his amendments, either as they appear in document A/L.711 or in their present revised form.

133. May I explain why the delegation of the Byelorussian SSR—whose views are furthermore shared by many other representatives—makes this appeal to Mr. Baroody.

134. Both the principles and the amendments put forward by Mr. Baroody are based upon the need to punish those persons who are guilty of war crimes and crimes against humanity. This is excellent in itself; everybody can agree with it, and it is precisely the reason why work has been going on for so long on this point.

135. The divergence of view essentially is summed up in one point: who should judge those persons who have perpetrated such crimes?

136. Principle 4 says that these persons

“... shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. In that connexion, States shall co-operate on questions of extraditing such persons.”

The amendment of Mr. Baroody states however that they should be tried “by a competent tribunal consisting of judges from States not parties to a given war”, under his first amendment, to which extra language has just now been added, or “by a neutral tribunal” under the second amendment. But as the Assembly knows, there are no such judges existing on this earth. The years of the Second World War have shown that all people, whether they in fact declared war or not, in fighting against the dark forces of fascism and militarism were on one side or the other of the barricades. In principle it could also be said that this is true of local wars as well.

137. We are convinced that all judges, apart from a small group of Zionists, condemn the aggression of Israel against the Arab peoples and their crimes in the occupied Arab territories. This is referred to in resolutions adopted by the Special Political Committee with the support of a very broad range of delegations, including the delegation of Saudi Arabia.

138. It is even more difficult to interpret the amendment of Mr. Baroody if we think about the crimes perpetrated by colonialists and racists who pursue a policy of *apartheid*, which has frequently been described in the United Nations as a crime against humanity.

139. Where can we find those judges who would not condemn crimes committed against many peoples by the forces of colonialism, *apartheid* and racism, unless it be in the Republic of South Africa itself, in Southern Rhodesia or in Portugal or among certain individuals in countries who condone those crimes?

140. From the humanitarian point of view, all judges are people with their own convictions and their own views, but as judges they are obliged according to the law to be guided precisely by that law and nothing else. This was the case of the judges who handed down the sentences against the war criminals of the Second World War. No one can blame them or accuse them of having punished persons who did not in fact commit those heinous war crimes against all mankind and the peoples of individual countries.

141. I think that we would all agree that up to now the criminals who have been punished have been punished justly. The unfortunate thing is that they have not yet all been punished.

142. Furthermore, as we know, in the United Nations system there is no such thing as a so-called neutral tribunal. We also know that neither the International Court of Justice nor any other body has, according to its statute, vested in it the authority to carry out criminal process.

143. I should like, with all due respect to the opinion of Mr. Baroody, to ask him what Article of the Statute of the International Court of Justice states that its President can found such a tribunal? He has no such authority.

144. In connexion with the further subamendments made to the amendment, I should like to ask, What provision would enable the Secretary-General of the United Nations or you, Mr. President, to be requested to form such an unbiased tribunal? All people are necessarily biased in some way. They are either for or against *apartheid*. How can the Secretary-General or you, Mr. President, appoint people to carry on consultations with the people directly concerned? Is this not the right of the representatives of the racist régime in South Africa, for example, or of the Portuguese colonizers, to say, "No, this person is not suitable, that person is not suitable, no one is suitable", because they do not wish their crimes against the peoples of Africa to be condemned? Thus such judges would never be appointed.

145. I should like to stress that the adoption of the amendments proposed by Saudi Arabia—whether the author wishes this to be so or not—could be utilized by certain forces in order to avoid punishing those persons who are guilty of war crimes and crimes against humanity. Furthermore, these amendments also raise the following question under the proposed new paragraph 3. The numerous judges appointed and the trials which were held in Byelorussia and other countries when we tried former citizens who had perpetrated war crimes against our own people—were they completely illegal, simply because the United Nations did not give its permission, or finally gave its permission? Or are we allowing the courts of any Member State to punish its citizens only for war crimes, or for crimes against humanity, but not allowing them to punish them for other crimes? I think this paragraph 3 really calls into question the competence of the judiciary organs of every Member State. I think that the United Nations is obviously not entitled to say, "You can try this case but you cannot try that one" or "We have not said anything about this case, therefore you cannot act in this way". In each of our countries we have our own laws, our own legal codes, our constitutions, on the basis of which criminal process is duly carried out.

146. On the other hand, the provisions contained in the principles on the punishment of persons guilty of war crimes and crimes against humanity point out those countries where the crimes were committed, and this is a practice which has been frequently confirmed by the United Nations. The 1946 resolution to which I have referred—the third resolution adopted in the history of the United Nations—

"Recommends

"that Members of the United Nations forthwith take all the necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those countries".
[*Resolution 3 (I).*]

147. The same thing is stated in all subsequent resolutions of the General Assembly on the subject, including resolution 2840 (XXVI), which initiated the work done up to date on these principles. In that resolution of the twenty-sixth session the General Assembly

"Urges all States to implement the relevant resolutions of the General Assembly and to take measures in accordance with international law to put an end to and prevent war crimes and crimes against humanity and to ensure the punishment of all persons guilty of such crimes, including their extradition to those countries where they have committed such crimes".

The same resolution goes on to say that the General Assembly:

"Affirms that refusal by States to co-operate in the arrest, extradition, trial and punishment of persons guilty of war crimes and crimes against humanity is contrary to the purposes and principles of the Charter of the United Nations and to generally recognized norms of international law;"

148. I should like now to comment on what Mr. Baroody said regarding the victors and the vanquished. Nowhere in these principles is there even the slightest hint that the court to judge war crimes or crimes against humanity has to have some sort of different approach depending on whether the person who committed the crime is a citizen of the victor country or of the vanquished country. There is not even a hint of this in the principles.

149. As members know, many countries which were themselves founding nations of the United Nations—that is, countries that were the victors in the Second World War—have frequently tried members of their own armed forces who were guilty of war crimes, crimes which were genuine war crimes but which cannot be compared with the crimes committed by the Nazis and other war criminals. But we did try them. We brought to trial our own citizens who had violated our own legislation regarding the treatment of civilians or prisoners of war and we tried and executed them in our own countries.

150. So why does Mr. Baroody say that we are speaking only about the right to try those who were defeated? No, we are talking about the trial of all those who perpetrate heinous war crimes or crimes against humanity.

151. The withdrawal of the amendments of the representative of Saudi Arabia would be in accordance with all previous decisions taken by the United Nations on this matter and would leave no doubt about the objectivity of judges in any particular State who, as I said, in accordance with the tenets of the law try all criminals equally, their own citizens and the citizens of other countries—in this case war criminals and persons guilty of crimes against humanity under the principles we are now considering.

152. The comments we have made apply to all the amendments introduced by Saudi Arabia. I shall therefore not go into all of them.

153. In conclusion, I should simply like to remind the Assembly that those amendments reproduce articles from the optional protocol which was introduced by Saudi Arabia at the twenty-third session of the General Assembly⁵ in connexion with the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

154. As can be seen from a report of the Third Committee at the twenty-third session of the General Assembly, a report contained in document A/7342, this draft optional protocol was discussed at that time in some detail. At that session, on the proposal of the representative of Saudi Arabia, resolution 2392 (XXIII) was adopted. In that resolution introduced by the representative of Saudi Arabia, the General Assembly decided

“... to take up this draft optional protocol at such time as it resumes consideration of the question of international criminal jurisdiction, or at such other time as it deems appropriate.”

155. In this connexion the delegation of the Byelorussian SSR considers that the amendments of Saudi Arabia contained in document A/L.711 could be considered subsequently in their revised form within the context of our discussion of the draft optional protocol, that is, in accordance with the decision contained in resolution 2392 (XXIII), which was adopted on the proposal of the representative of Saudi Arabia at that time.

156. I should like to say that if Mr. Baroody does not wish to respond to our convincing arguments by withdrawing his amendments, we shall unfortunately be obliged to vote against them. We shall do so reluctantly because we have always held the view that Mr. Baroody speaks here in the United Nations to protect and defend justice. On this occasion, however, for some reason this was not so and we very much hope that the General Assembly will adopt the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity unamended and that all States will be guided by these principles in order to promote the efforts of the United Nations in its struggle for peace and international security, to eradicate colonialism, *apartheid* and racism and to ensure the observance of human rights.

157. Our delegation would like to reserve its right to speak on these amendments subsequently if we feel there is a need to do so.

158. The PRESIDENT (*interpretation from Spanish*): I would summarize the procedural situation as follows. After I had already given the floor to the representative of the Byelorussian SSR to speak on the amendments, the representative of Ghana raised a point of order based on rule 80 of the rules of procedure. Under that rule, amendments must be submitted at least one day before they are considered and voted on. Because of the very great importance of Mr. Baroody's revision of his own amendments, we shall continue consideration of this item at the 2187th meeting.

159. If there is no objection, I shall now call on those who have asked for the floor to exercise the right of reply in regard to this morning's debate. I would, in this connexion, recall the decision of the General Assembly that no such statements should last longer than 10 minutes.

160. Mr. FERGUSON (United States of America): This morning, in addressing himself to item 59, the representative of Cuba again raised and resurrected slanderous, scurrilous and, above all, stale charges regarding certain felons who are imprisoned in the United States. My Government has explained at length that the five individuals in question were and are serving prison sentences not because of their political views but rather because they attempted to assassinate the President of the United States, President Truman, a crime under our law, or fired on members of the United States House of Representatives, also a crime under our law. Our guard on duty at Blair House, where President Truman was then in residence, was killed and another was wounded by shots fired by members of this group on 1 November 1950. The individuals in question were sentenced after having been convicted of such specific criminal acts as murder, arson, armed assault and conspiracy. Their convictions followed a trial by jury in which their rights were guaranteed in accordance with due process of law. I know whereof I speak because I was then, in another capacity, involved in that prosecution.

161. All of these prisoners are receiving medical attention when necessary while in confinement. Figueroa continues regularly to receive out-patient care after a successful operation in 1972. Collazo occasionally receives out-patient treatment for hypertension. The other prisoners are seemingly enjoying reasonably good health.

162. In conclusion, I should like to note once again that Collazo and Lolita Lebrón are eligible for parole but have refused to submit the necessary written applications for their own freedom. These prisoners carry their own keys to their freedom in their pockets, and this body should not continue to be subjected to allegations based on their own non-performance. Therefore I must deplore the continuing practice of the representatives of Cuba of making charges that are so totally without merit and so lacking in substance.

163. Mr. MIKOLAJ (Czechoslovakia) (*translation from Russian*): In connexion with what was stated by the representative of Saudi Arabia, Mr. Baroody, I should like to exercise the right of reply on behalf of the Czechoslovak delegation to rebut his attack on the Czechoslovak Socialist Republic and its allies.

164. I should like to state unambiguously that the Czechoslovak delegation regards the part of the statement

⁵ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 55, document A/7342, para. 104.

made by the representative of Saudi Arabia that referred to my country as an inadmissible attempt to interfere in the internal affairs of Czechoslovakia and also as an attempt to distort and to destroy the relations between the Czechoslovak Socialist Republic and its allies. The Czechoslovak Socialist Republic has already made a decisive rebuttal of these remarks in past years, and we consider that the representative of Saudi Arabia should not distract our attention from a constructive discussion of the important items that appear on the agenda of this meeting of the General Assembly.

165. Mr. GROZEV (Bulgaria) (*translation from Russian*): I think we all wish to be very brief and businesslike in our statements, particularly now when we are reaching the end of the session and we still have so many items to consider and so many resolutions to adopt and confirm. Therefore I shall confine myself to a very brief reply to a very long statement.

166. In his statement the representative of Saudi Arabia, Mr. Baroody, referred to my country and the Bulgarian delegation. We should not like to repeat what we consider the senseless disputes which have occurred previously but we should like to refresh the memory of the members of the Third Committee and to give correct information to the General Assembly about the consideration of item 60 and the amendments which were submitted to the draft resolution.

167. I should like to recall that in his statement on the procedural matter our representative in the Third Committee did not at all refer to the amendments of Saudi Arabia. After the Chairman of the Committee stated that no amendments would be entertained, in accordance with a previous decision taken by the Committee, after the Committee had approved that decision a second time and after the Chairman had stated that there was no one who wished to speak on that item, it was only then that the Bulgarian delegation made its procedural proposal that we take an immediate vote on that item. We did not even refer to any amendments when we did so.

168. It is strange that the representative of Saudi Arabia, Mr. Baroody, referred to my delegation, because he was actually absent himself when the Bulgarian delegation made that procedural proposal in the Third Committee. Perhaps he was incorrectly informed about the events; I do not know. Therefore we did not wish to reply to this but we simply wished to shed light on the actual state of affairs and to ensure that events were correctly represented. We are sorry that the representative of Saudi Arabia did not stay in the Committee until the completion of our work on an item which he himself initiated.

169. Mr. ALARCON (Cuba) (*interpretation from Spanish*): When the representative of the United States tried to reply to our statement of this morning what he really did was to read out the note verbale which his delegation had distributed earlier last week and to which I referred in my statement.

170. I simply wish to indicate that, as stated in that note verbale, the persons I referred to this morning are political prisoners who exercised their inalienable right to fight for the independence of their country by means of armed struggle. Shortly before I dealt with this matter in my statement, the General Assembly adopted resolution 3070 (XXVIII), paragraph 2 of which reads as follows:

“Also reaffirms the legitimacy of the people’s struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle”.

171. It is true that the representative of the United States, together with some of the more striking representatives of contemporary colonialism—five in all—opposed that paragraph and the draft resolution. It is no less true that 97 members voted in favour of the draft resolution.

172. Mr. BAROODY (Saudi Arabia): I shall have occasion to reply to my friend and colleague of Byelorussia when we resume the debate on this item and the amendments that have been submitted.

173. However, I must assure my colleague from Czechoslovakia that there was no malice in my relating what happened in 1968, when the Soviet Union saw fit to take action in Czechoslovakia. I know that Czechoslovakia is a member of the Warsaw Pact. I was trying to state what the Western Powers told me, in other words, to bring home to Czechoslovakia and the Soviet Union that many people in the Western countries thought that the intervention by the Soviet Union constituted a criminal act. It was not I who said that. I wanted to balance my statement with certain criminal acts that may be committed or tragedies that may be perpetrated by Member States no matter to what part of the world they belonged. I mentioned something about the Arab world, but I said that since people were not familiar with my region I would not give examples taken from the Arab world. It is in that context that I mentioned Czechoslovakia, and not in the context that the Soviet Union had done something wrong and that Czechoslovakia was a victim.

174. With regard to what my colleague from Bulgaria said, it is true that I was not in my seat in the Third Committee room at the time. I have an aide who has been sitting in that Committee during sessions of the Assembly for 10 years, and I have always checked on his reports to me. I find the representative of Bulgaria to be a very fine young man whom I like very much, but he precipitated action to have a vote taken on the item in spite of my pleas. I had said that I would like to see my amendments considered and I asked for that courtesy to be extended to me. The courtesy was not extended and I gave fair warning that I would take up the matter in the General Assembly. I must say that I have extended courtesies, not only to the Soviet delegation, whenever a favour of that nature was asked of me, but to many of my friends and colleagues. Similar courtesy was denied me and it was in that context that I took issue with the representative of Bulgaria, who is still a friend. If I mention this, it is to set the record straight.

The meeting rose at 1.45 p.m.