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MEETING**

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*Chairman:* Mr. Erik NETTEL (Austria).

AGENDA ITEM 59

Capital punishment (concluded) (A/7203, chap. XI, sect. B; A/7243, A/C.3/L.1557/Rev.2, A/C.3/L.1558)

1. Mr. PONCE RAMIREZ (Guatemala) said that he approved the revised draft resolution (A/C.3/L.1557/Rev.2) which was before the Committee. However, with reference to operative paragraph 1, he thought it was unnecessary to speak of both social and economic justice as the latter was a logical consequence of the former.

2. Mr. VALDIVIESO (Peru) suggested that the words "or use" before the words "of capital punishment" in operative paragraph 1 should be deleted as they were repetitious and served no purpose.

3. Mr. SQUIRE (United States of America) said that he had consulted two of the sponsors of the revised draft resolution (A/C.3/L.1557/Rev.2) and had tried to suggest changes in the text which would be acceptable to his delegation, but he had not succeeded mainly through lack of time. He therefore wished to propose certain amendments to the draft. If they were accepted by the sponsors, he would withdraw the amendments which his delegation had submitted in document A/C.3/L.1558. The phrase "the racist Government in South Africa" in the sixth paragraph of the preamble and in operative paragraph 1 should be replaced by the words "the Government of the Republic of South Africa". Although the term "racist" had already been used in United Nations resolutions to describe the policy of the South African Government, it had not ever been applied to the Government itself. He also proposed that the word "equally" before the word "illegal" in operative paragraph 1 should be deleted on the grounds that while both régimes were illegal, they had different status vis-à-vis the United Nations. He also expressed preference for condemning acts of a government, rather than the government itself. The beginning of operative paragraph 1 would then read as follows:

"Condemns any resort to the threat or use of capital punishment by the illegal régime in Southern Rhodesia and the illegal South African régime in Namibia and the Government of the Republic of South Africa in their attempts ...".

4. If those amendments were not accepted, he would request that a vote should be taken on operative paragraph 1 of his written amendments (A/C.3/L.1558).

5. Mr. MEHIRI (Tunisia) proposed that the meeting should be suspended while the sponsors of the draft resolution considered the amendments proposed by the United States.

6. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that a vote should be taken immediately. He personally opposed the amendments proposed by the United States for they were intended to protect the South African racist régime.

7. The CHAIRMAN put the motion for suspension to the vote.

*The motion was adopted by 54 votes to 16, with 15 abstentions.*

*The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.*

8. Mr. SANON (Upper Volta), speaking on behalf of all the sponsors of the revised draft resolution (A/C.3/L.1557/Rev.2), said they could not accept the amendments proposed orally by the United States representative. They wished to maintain the text of the draft as it stood.

9. The CHAIRMAN invited the Committee to vote on operative paragraph 1 of the written amendments submitted by the United States (A/C.3/L.1558) which would replace operative paragraph 1 of draft resolution A/C.3/L.1557/Rev.2. The end of operative paragraph 1 proposed by the United States would read as follows: "to social and economic justice, civil rights and political freedom" just as the text of the draft resolution.

*Operative paragraph 1 of the United States amendments was rejected by 52 votes to 18, with 20 abstentions.*

10. The CHAIRMAN invited the Committee to vote on draft resolution A/C.3/L.1557/Rev.2.

*At the request of the Libyan representative, a vote was taken by roll-call.*

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

*In favour:* Norway, Pakistan, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Somalia, Spain, Sudan, Sweden, Syria,

Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zambia, Afghanistan, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Morocco, Netherlands, Nicaragua, Niger, Nigeria.

*Against:* South Africa.

*Abstaining:* Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, France, Malawi, New Zealand.

*The draft resolution was adopted by 87 votes to 1, with 7 abstentions.*

11. Mr. SQUIRE (United States of America) said he had hoped that his amendment to operative paragraph 1 would receive a majority of the votes and he regretted that he had had to abstain on the draft resolution. However, the spirit of co-operation shown by the members of the Committee was a hopeful sign. Although the United States deplored the policy of the Government of South Africa and although the adjective "racist" could be correctly applied to a policy or a measure, he did not think that it could be applied to a Government in a resolution. Moreover, while it was true that the Southern Rhodesian régime and the South African régime in Namibia were both illegal, he could not accept the word "equally" because the status of Southern Rhodesia was different from that of Namibia.

12. Miss LOPES (Portugal) pointed out that, although the death penalty had been abolished in her country over a century ago, her delegation had been forced to abstain because of the political aspects of the text, which should have been of a purely humanitarian nature. Moreover, if a Government or régime was condemned because it applied capital punishment, the General Assembly of the United Nations would soon have to condemn many Member States where laws provided for the application of the death penalty, and that would be interference in the internal legal order of States.

13. Mr. BENSON (Australia) said that his delegation had abstained on the draft resolution on the general principle, which it would also apply in other cases, that, while upholding the human rights principles referred to in the resolution, it was unwilling to vote in condemnation without evidence concerning the particular acts and actions to which the condemnation referred.

14. Mrs. ROQUET (Canada) said that her delegation had voted in favour of the draft resolution but would have preferred the more rigorous wording proposed by the United States. She greatly appreciated the spirit of collaboration shown by various delegations.

15. Mr. ARTAZA (Chile) said that he had voted for the United States amendment and, when it had been rejected, for the draft resolution because, although he preferred the text of the amendment, he could not fail to support a text which condemned apartheid and defended the fight to freedom.

16. Lady GAITSKELL (United Kingdom) recalled that her Government had deplored and condemned the executions carried out in Southern Rhodesia and had voted for Security Council resolution 253 (1968). Likewise, it had expressed grave doubts about the legislation under which thirty-seven Namibians had been tried, and had voted for Security Council resolution 191 (1964). Her delegation approved the spirit of the resolution. However, while there was every justification for condemning Southern Rhodesia in operative paragraph 1, the text inaccurately reflected events in South Africa. The fact was that the executions in South Africa had been made under the criminal law, however widely that had been interpreted. Her delegation therefore had had to abstain but emphasized that it condemned the policy of apartheid of the Republic of South Africa.

17. Mr. PAOLINI (France) said that his country rejected the policy of apartheid and the use of the death penalty for political ends. France had voted for Security Council resolutions 191 (1964) and 253 (1968), but the French delegation had abstained on the resolution which had just been adopted, because it felt that it was not for the General Assembly to condemn a Government for an act which was solely a matter of internal sovereignty. Neither could his delegation accept the term "illegal", for it had doubts concerning the validity of the termination of South Africa's mandate.

18. Mr. STOCK (South Africa) stated that the resolution which had just been adopted showed a lack of knowledge of the real situation in his country, where the death penalty was applied only for the most serious crimes, and was carried out only after the Head of State had reviewed the matter. For that reason, his delegation rejected with the contempt which they deserved the allegations that South Africa used the death penalty to stifle the natural aspirations of the peoples of southern Africa. It was the aim of the South African Government's policy to allow all ethnic groups to live in harmony, while recognizing their individuality.

19. He deplored the fact that political questions which had no bearing on the subject had been introduced into the debate on capital punishment. The resolution which had been adopted at that meeting was totally unacceptable to his delegation.

20. Mr. SANON (Upper Volta) noted that the eighty-seven delegations which supported the resolution had not all been African delegations.

#### AGENDA ITEM 55

Question of the punishment of war criminals and of persons who have committed crimes against humanity: report of the Secretary-General (A/7174 and Add.1, A/7203, chap. XI, sect. H)

21. The CHAIRMAN said that the question of the punishment of war criminals and of persons who had

committed crimes against humanity was an item which remained on the agenda of the Commission on Human Rights and of the Economic and Social Council. As it had not been able to complete a study of the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity prepared by the Joint Working Group of the Third and Sixth Committees,<sup>1/</sup> the General Assembly had decided, at its twenty-second session in its resolution 2338 (XXII), to give high priority to the completion of the draft convention with a view to its adoption at the twenty-third session. The Committee had before it a report of the Secretary-General (A/7174 and Add.1) which contained the comments of Governments on the draft convention. It also had before it the relevant section of the report of the Economic and Social Council (A/7203, chap. XI, sect. H). Under the circumstances, the Chairman suggested that the Committee should not enter into a general discussion and should pass immediately to a detailed study of the draft convention (A/7174, annex).

22. Mr. RESICH (Poland) stressed the importance of the draft convention which the Committee was considering and said that, in his view, it was useless to engage in a general debate at the present stage. Instead, the Committee should study in detail the draft prepared by the Joint Working Group, using as a basis the comments of Member States, the majority of which were in favour of the draft convention.

23. Miss CAO-PINNA (Italy) also felt that a general discussion would be superfluous but Member States which had not sent in their comments to the Secretary-General should state their views on the question. Since the Secretary-General had received replies from only twenty-seven Member States, it was difficult to believe that they reflected the opinion of the international community as a whole. Furthermore, the replies which had been received revealed profound differences of opinion and it would be regrettable if such an important convention were to be adopted only by a small majority. That would mean that the efforts exerted by the United Nations in that field had failed. Furthermore, the replies of some countries which supported the draft convention as it had been adopted by the Joint Working Group, were based on considerations which only referred to crimes committed during the Second World War; that meant that they conceived of the convention not as an instrument for the present and for the future, but for the prosecution of criminals of the last war.

24. Her Government had already made its stand clear and proposed (see A/7174) to make internationally binding the non-applicability of statutory limitation to war crimes and crimes against humanity where such crimes constituted serious violations of international law and that, to ensure a certain uni-

formity in the treatment, on the international level, of particular types of crimes, the criterion of the seriousness of the offence should be interpreted in the sense that no statutory limitation would apply to those international crimes which were punishable under the domestic law of each Contracting State by a period of detention not less than such number of years as would be specified in the convention itself. Her delegation reserved the right to speak later when countries which had not yet made their position clear on the matter had explained their views to the Committee.

25. Mr. SANON (Upper Volta) agreed with the opinions expressed by the representative of Poland. It was not necessary to engage in a general debate and those delegations wishing to explain their views would be able to do so in the course of the study of the articles. If necessary, they could submit amendments.

26. Mr. BAROODY (Saudi Arabia) also thought that it was preferable not to engage in a general debate on the matter. He asked whether, to facilitate discussion, the Secretariat might be able to circulate to the members of the Committee copies of the Charter of the International Military Tribunal of Nürnberg, of 8 August 1945, on which the preamble and the first article of the draft convention were based. That legal instrument should be studied with great care. It should be emphasized that the Nürnberg Tribunal had not dealt with war criminals belonging to the victorious nations and that the convention which the General Assembly was to adopt should not make a distinction between war criminals according to whether they belonged to the victorious or to the defeated nations.

27. Mr. SCHREIBER (Director, Division of Human Rights) said that the Agreement for the prosecution and punishment of the major war criminals and the Charter of the Tribunal annexed thereto had been published in the *United Nations Treaty Series*.<sup>2/</sup> If it would be of use to the Committee, the Secretariat could arrange for the reproduction of the articles of the Charter which dealt with jurisdiction and general principles.<sup>3/</sup>

28. Mr. BAROODY (Saudi Arabia) warmly thanked the Secretariat. He had forgotten to mention the question of right of asylum, to which his country attached considerable importance, and he earnestly requested the members of the Committee to ensure that that right was safeguarded in the draft convention.

29. The CHAIRMAN said that, if there were no objections, he would consider that the Committee did not wish to engage in a general debate on item 55 and wished to proceed to a detailed study of the draft convention.

*The meeting rose at 6.5 p.m.*

<sup>1/</sup> *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 60, document A/C.3/L.1503, para. 9.

<sup>2/</sup> *United Nations, Treaty Series*, vol. 82 (1951), No. 251, p. 279.

<sup>3/</sup> Subsequently circulated as document A/C.3/L.1559.