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Chairman: Mr. Erik NETTEL (Austria).

AGENDA ITEM 55

Question of the punishment of war criminals and of persons who have committed crimes against humanity: report of the Secretary-General (continued) (A/7174 and Add.1, A/7203, chap. XI, sect. H; A/C.3/L.1559-1565, A/C.3/L.1566/Rev.1)

DRAFT CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATION TO WAR CRIMES AND CRIMES AGAINST HUMANITY (continued)

Article I (continued)

1. Lady GAITSKELL (United Kingdom), presenting her delegation's amendment (A/C.3/L.1564) to article I of the draft convention adopted by the Joint Working Group (A/7174, annex), recalled the position of her Government on that article (see A/7174/Add.1); in the first place, application of the convention should be limited to war crimes of a grave nature. Moreover, it was neither necessary nor desirable to list in detail the various types of crimes against humanity.

2. The expression "inhuman acts", which appeared in sub-paragraph (b) of the existing text (A/7174, annex), was too vague and was out of place in a legal instrument. Furthermore, although her delegation fully understood and shared the anxiety that the policy of apartheid aroused in the Committee, it considered it inappropriate specifically to mention inhuman acts resulting from that policy in a text intended to be universal. The United Kingdom amendment proposed a definition which could readily be applied by all States, which allowed for the progressive development of international law, and did not exclude the possibility of including other crimes among crimes against humanity which might arise.

3. Mr. SHERIFIS (Cyprus) said that the convention was not only a humanitarian document, but a legal document which should take into account certain major legal principles, such as the principle of non-retroactivity, which were in force in many coun-

tries. It was true that the crimes to which the convention applied were not ordinary crimes and that their gravity justified waiving the principle of non-retroactivity. In that case, however, it was necessary to specify that the crimes in question were "of a grave nature" and, in that connexion, he supported the amendment to sub-paragraph (a) of article I submitted by France, Mexico, Netherlands and the United States (A/C.3/L.1561, para. 1). He thought that crimes resulting from the policy of apartheid should be mentioned in sub-paragraph (b) and recalled that the International Conference on Human Rights at Teheran, in its resolution III of 11 May 1968, ¹/had condemned the policy of apartheid as a crime against humanity.

4. Mr. KITI (Kenya) said that his Government found the draft convention was satisfactory, though not perfect. No criminal should escape the consequences of his actions simply because a certain period of time had elapsed. Kenya was a party to the Geneva Conventions of 1949 for the protection of war victims and was attempting to incorporate their provisions in its national legislation.

5. He pointed out that there was no reference in the draft to the crimes against peace mentioned in the Charter of the International Military Tribunal of Nürnberg; he would support any amendment to include such crimes in the scope of the draft convention. He was opposed to the amendments proposed by France, Mexico, Netherlands and the United States (A/C.3/L.1561) which eliminated important ideas in sub-paragraph (b) in a roundabout way and substituted a repetition of sub-paragraph (a). He thought it essential to enumerate the crimes against humanity and supported article I sub-paragraph (b) as drafted by the Joint Working Group. It was not sufficient to refer to international law in defining the crimes in question since that law, which had been formulated in the past by the developed countries, did not take into account certain present-day realities which were of the highest importance for the young countries. It was important that the convention should apply to crimes past, present and future. Apartheid was one of the gravest crimes against humanity being committed today and it would render the draft convention meaningless if the words "including inhuman acts resulting from the policy of apartheid" were omitted.

6. Mr. SANON (Upper Volta) said that in the course of the Symposium on the adaptation of the United Nations to the world of today, held at Nice in May 1965, ²/Mrs. Bastid had pointed out that the young States did not dispute the legal obligations resulting

¹/ See Final Act of the International Conference on Human Rights (United Nations publication, Sales No.: E.68.XIV.2), p. 6.

²/ See Colloque International de Nice, L'adaptation de l'O.N.U. au monde d'aujourd'hui (Paris, éditions A. Pedone, 1965).

from their membership of the United Nations, but had expressed the desire to take an active part in drawing up the rules governing international co-operation. International law could be regarded not as a system imposed by certain States but as a necessity imposed by relationships in the modern world, relationships in which the new States fully participated.

7. Although his country had not yet become independent at the time of the Second World War, many Africans had died in that war. It was regrettable that the victorious Powers had not established the non-applicability of statutory limitation to war crimes and crimes against humanity when the Charter of the Nürnberg Tribunal and the Geneva Conventions of 1949 were being drafted. Some representatives considered that apartheid should not be mentioned among the crimes against humanity; yet it was the very Nazis who had been tried by the Nürnberg Tribunal who had taken refuge in South Africa and there had instituted the policy of apartheid which had repeatedly been condemned by the United Nations and which the Teheran Conference had defined as a crime against humanity. If apartheid were not mentioned in the draft convention, it would mean that international law was static and could not be adapted to the hard realities of the contemporary era. His delegation shared the opinion expressed at the previous meeting by the Syrian and Iraqi delegations. He agreed with the representative of Saudi Arabia that victory should not give absolution.

8. He was in favour of the amendment submitted by Pakistan (A/C.3/L.1560) which was fully in keeping with the International Covenants on Human Rights. As for the amendments proposed by France, Mexico, Netherlands and the United States (A/C.3/L.1561), he found the modification in sub-paragraph (a) quite acceptable but was against the wording proposed for sub-paragraph (b), which reproduced the text of the preliminary draft prepared by the Secretary-General (E/CN.4/928)^{3/} and merely recapitulated the instruments on which the principle of the non-applicability of statutory limitation to crimes against humanity was based. That was a deliberate step backward. Moreover the omission of any reference to apartheid showed that the sponsors did not wish to recognize the realities of the modern world.

9. He concluded with the following words that had been quoted by Mr. René Cassin, President of the Association for the Development of World Law:

"The world of today must try to live up to the ideals and objectives of the Charter at least as far as the Charter must be interpreted as adaptable to the changes which have occurred since it was signed."^{2/}

10. Mrs. TSERENNAMID (Mongolia) said that the convention had the threefold purpose of preventing war criminals and persons who had committed crimes against humanity from escaping punishment, preventing the recurrence of such crimes and protecting human rights and fundamental freedoms for the future. She was in favour of the draft prepared by the Joint Working Group and hoped that it would be adopted by the Committee without change.

11. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that if it was to be universal, the convention which the Committee was trying to draft should apply to the past, the present and the future. Recalling the heavy loss of lives suffered by the Soviet Union during the Second World War, he said that no Nazi should be able to escape punishment, or the convention would become meaningless.

12. Of the amendments put forward, three had already been considered the previous year by the Joint Working Group. The amendment proposed by France, Mexico, Netherlands and the United States, which reproduced the Secretary-General's preliminary draft, ^{4/}made it difficult to decide what would be regarded as grave crimes for the purposes of sub-paragraph (a). While some countries might have defined grave crimes in their national legislation, they could not impose their own definition on international law. War crimes and crimes against humanity were defined in the Charter of the Nürnberg Tribunal and in the 1949 Geneva Conventions. The amendment in question was therefore untenable. As for the text proposed by the same countries for sub-paragraph (b), the Committee in 1967 had recognized the progressive nature of the development of international law. Although genocide had long been considered a crime against humanity in international law, some countries challenged the fact. For example, the United Kingdom delegation had declared that apartheid was not considered in international law to be a crime against humanity. Since the principles of international law were subject to different interpretations by the various delegations, it was essential to specify which crimes were meant. He therefore supported the Afro-Asian delegations which favoured a specific reference to apartheid among the crimes against humanity. In the circumstances, his delegation was unable to support the four-Power amendments.

13. For the same reasons, it could not support the United Kingdom amendment (A/C.3/L.1564), which, moreover, was similar to an amendment already submitted by the United Kingdom in 1967.

14. The first Norwegian amendment (A/C.3/L.1563, para. 1), which was the same as the amendment proposed by Greece in 1967 and even went further, was unacceptable to the Soviet delegation since it would render the convention meaningless.

15. The amendment submitted by Saudi Arabia (A/C.3/L.1566/Rev.1) dealt with questions outside the scope of the draft under discussion: the latter related only to the non-applicability of statutory limitation, to war crimes and crimes against humanity. The legal machinery for prosecuting criminals and the question whether the victors should be judged in the same way as the vanquished were extremely important questions, which should be given the closest scrutiny and perhaps even form the subject of other conventions. The question of the right of asylum, likewise of great importance, had been dealt with in General Assembly resolution 2312 (XXII). Consequently, his delegation did not consider that the Saudi Arabian amendment, however valuable it was, should be included in the draft convention.

^{3/} See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 60, document A/C.3/L.1503, para. 42.

^{4/} *Ibid.*, para. 32.

16. Mr. BAROODY (Saudi Arabia) observed that at the previous meeting he had indicated that the amendment submitted by his delegation could of course be improved but that its substance could not be altered. The basic criticism to be made of the draft convention prepared by the Joint Working Group was that it dealt primarily with war crimes and crimes against humanity committed at the time of the Second World War. In reality, the draft convention should apply to all crimes of that nature, not only those committed in the past but also, those committed in the present and the future. With that in mind, the question to be resolved was whether the Charter of the Nürnberg Tribunal was the only legal instrument to which reference should be made in support of the draft convention. Actually, since that Charter had been drawn up by the victorious Powers only, the reference was highly questionable. Europe was not the only place where crimes against humanity had been committed; they were still being committed today in other parts of the world, particularly in Asia, where certain acts were perhaps even more terrible than anything the world had known under the Nazi heel.

17. All those considerations were taken into account in paragraph 2 which his delegation proposed should be added to article I (A/C.3/L.1566/Rev.1). Contrary to the opinion of the USSR representative, the amendment proposed by Saudi Arabia did in fact deal with the non-applicability of statutory limitation to war crimes and attempted to draw the attention of the international community to the fact that the Nürnberg trials were biased. Indeed, any court which had to try a person accused of a war crime or a crime against humanity should be composed of judges from neutral States. His delegation insisted that the court should be composed of highly qualified judges, because there had often been cases where judges had not been competent jurists but merely political instruments.

18. Sub-paragraph (b) of the proposed paragraph 2 was justified by a fact of life in the present-day world, namely, that the younger generation in every country no longer wanted war and that, in the near future, war criminals would not have to be tried by neutral States; they would be tried by their compatriots.

19. Sub-paragraph (d) attempted to safeguard the right of asylum: indeed, that right should not be denied to persons accused of war crimes or crimes against humanity when there was insufficient evidence.

20. Regarding the codification of international law and the preparation of other conventions, to which the representative of the Soviet Union had referred, it should be noted that the United Nations had been engaged in that undertaking for many long years, but that it was being hampered by the profound differences in the domestic legislation of the various States. For that reason, amendments which helped to narrow those differences while having due regard for the legislation of all countries were particularly well-founded.

21. In conclusion, he said that his delegation had wished to draw the attention of the Committee members to certain points which it considered of the greatest importance and which would presumably not be dealt with in a convention in the near future.

22. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the position of the Saudi Arabian representative did not differ in substance from that of his own delegation, since they both considered that non-applicability of statutory limitation should cover not only past crimes but present and future crimes as well. He wondered, however, whether article I of the draft convention was the right place to set out the views expressed by the representative of Saudi Arabia. In that connexion, he drew the Committee's attention to resolution 1158 (XLI) of the Economic and Social Council which invited the Commission on Human Rights "to consider and make any further recommendations it believes desirable with a view to developing international co-operation in the prosecution and punishment of those responsible for war crimes and crimes against humanity", and requested the Secretary-General "to carry out a study as regards ensuring the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity and the exchange of documentation relating thereto". The representative of the Secretary-General might be able to indicate what the Commission on Human Rights and the Secretary-General had done to carry out the task entrusted to them by the Economic and Social Council under that resolution, that would meet the desire of Saudi Arabia to broaden the scope of the question.

23. With regard to the revised amendment submitted by the representative of Saudi Arabia, he noted that in sub-paragraph (c) the terms "State defeated in war" and "victor State" were vague and could not be applied to apartheid. He reaffirmed that there was no real difference of opinion on substance between his own position and that of the representative of Saudi Arabia, but he was still in favour of the draft convention prepared by the Joint Working Group.

24. Lady GAITSKELL (United Kingdom), in reply to the comment by the representative of Saudi Arabia, noted that British justice remained an example throughout the world.

25. Mr. BAROODY (Saudi Arabia) said that he had not meant to deny that British justice was still an example at the present time; he had merely referred to what he had found by personal experience. In reply to the Soviet representative concerning resolution 1158 (XLI) of the Economic and Social Council he said that the fact that the Economic and Social Council had entrusted the Secretary-General with a task should not prevent the Committee from taking action. The purpose of the amendment he was proposing was to prevent the errors committed in 1945 from being repeated in the future. It was pointless, in his view, to mention crimes resulting from the policy of apartheid, because apartheid was doomed to disappear sooner or later, and the convention should be universal in scope.

26. Mr. LAWSON (Secretariat), in reply to the question put by the representative of the Soviet Union, said that the Secretary-General was in the process of preparing the study requested under operative paragraph 4 of resolution 1158 (XLI) of the Economic and Social Council. He stated that the study was already well under way and that it would be submitted to the Commission on Human Rights at its twenty-fifth session.

27. Mr. ARTAZA (Chile) said that many delegations were disturbed and even discouraged by the turn taken by the debate. Article I of the draft convention raised many legal problems. However, some of the proposed amendments did not improve the text; they added to the general confusion by introducing new elements which had not been given sufficient study. His delegation considered that applicability was a technical legal question which did not really bring principles into question, and it saw no difficulty in subscribing to the non-applicability of statutory limitation to war crimes and crimes against humanity. On

the other hand, Chile would continue to uphold the principle of the non-retroactivity of laws since article 11 of its Constitution specified that no person could be prosecuted except by virtue of a law promulgated before the criminal act had been committed. For those reasons, he would vote for the first amendment submitted by Norway (A/C.3/L.1563, para. 1) and, if that amendment was not adopted, he reserved the right to enter reservations when the convention was adopted.

The meeting rose at 5.40 p.m.