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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, A/C.3/L.1563, A/C.3/L.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 (concluded)

1. Mr. BAROODY (Saudi Arabia) said that his delegation maintained its amendment (A/C.3/L.1566/Rev.1), but that it was no longer to be regarded as relating to article I of the draft convention but as a protocol annexed to it.
2. Mrs. RAOELINA (Madagascar) had voted against the amendment submitted by the United Kingdom (A/C.3/L.1564/Rev.1) because she had felt that its wording was incomplete. On the other hand, she had welcomed the four-Power amendments (A/C.3/L.1561), which accorded with her delegation's basic position regarding the concept of law; nevertheless, she had voted in favour of the second sub-amendment submitted by the six Powers (A/C.3/L.1567, para. 2), since the definition of crimes against humanity should reflect present-day realities and it was in every respect impossible to remain indifferent to the suffering occasioned by the policy of apartheid.
3. Miss KHUHRO (Pakistan) said that she had withdrawn her amendment to article I (A/C.3/L.1560) in a spirit of co-operation and goodwill, in order to facilitate the progress of work; she hoped, however, that the future convention would be so interpreted as to apply to religious persecutions. The point was

of particular interest to her Government, which had given refuge to many refugees from other countries whose religion was different from that observed in Pakistan.

4. Mr. ERMACORA (Austria) had abstained from voting on article I as a whole, not because his delegation was opposed to the non-applicability of statutory limitation to war crimes and crimes against humanity but because it opposed the formula adopted to define such punishable offences. Furthermore, the Economic and Social Council was studying the question of whether the policy of apartheid was tantamount to the crime of genocide; until it had completed its deliberations, no judgement on that matter ought to be made. In addition, the retroactive nature of the draft's provisions could give rise to serious problems in classifying as criminals certain actions which had not previously been punishable.

5. Mr. NAÑAGAS (Philippines) reaffirmed his delegation's endorsement of a convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. His delegation's abstentions in the vote on article I and its sub-paragraphs (a) and (b) were indicative of a desire to see a textual formulation that would more faithfully reflect the intent and scope of the convention. The insertion of the phrase "to the extent that they are of a grave nature" in sub-paragraph (a) to characterize war crimes would have served the clarity of the text and the precise delineation of the scope of the provision. With respect to sub-paragraph (b), his delegation did not view with favour the addition of the clause "even if such acts do not constitute a violation of the domestic law of the country in which they were committed" since it would lead to inconsistency and confusion. The purpose of the clause could more logically be achieved by a positive formulation of an obligation in the convention by which States parties would recognize, for the purpose of international as well as domestic law, such acts as criminal in nature. His delegation welcomed the inclusion of inhuman acts resulting from the policies of apartheid under the category of crimes against humanity. Those acts arising from a unique and most pernicious policy deserved to be so condemned.

6. Mr. MATHYS (Canada) said he had been unable to vote in favour of article I of the draft convention, since elements had been introduced which were not of a strictly juridical nature.

7. Mr. KOIRANEN (Finland) said that he would have voted in favour of the four-Power amendment to article I (b) of the draft convention, but that he had abstained from voting on the second sub-amendment submitted by the six Powers and also, therefore, from voting on sub-paragraph (b) as a whole.

8. Mr. ZORILLA (Mexico) felt that the divergence of views which had arisen seriously limited the chances of implementing the future convention. His delegation had voted in favour of the proposal to delete the last part of the introductory sentence of article I of the draft, and had been one of the four sponsors of an amendment to sub-paragraph (b) designed to avoid difficulties of a legal nature in citing actual examples of criminal acts. His country's position regarding the policy of apartheid was entirely clear, and there was no need to reaffirm it; however, since neither of the two amendments referred to had been accepted, he had been compelled to abstain in the final vote.

9. Mr. ARTAZA (Chile) said that he had been guided by the idea that the draft convention was an instrument which was intended eventually to become part of positive law by incorporation in national statutes. He had therefore voted in favour of those amendments whose purpose was to strengthen the legal nature of the text, and against those stemming from transitory reasons or chance political views. He had voted for deletion of the words "irrespective of the date of their commission" from the introductory sentence of article I, since they were contrary to the principle of non-retroactivity which was recognized in his country's Constitution; as a result, he had abstained in the vote on article I as a whole. On the other hand, he had voted in favour of the two sub-paragraphs of that article, but he had been unable to accept either the amendment submitted by the United Kingdom or the second six-Power sub-amendment.

10. His Government would adhere to the future convention provided that it would apply only to deeds committed after the relevant instruments of ratification had been deposited.

11. Mr. SENTURK (Turkey) said that although his delegation subscribed to the principle that war crimes and crimes against humanity must not go unpunished, it had abstained from voting on article I since its wording could rise to difficulties in his country in view of the principles underlying the Turkish legal system.

12. Miss LOPES (Portugal) had voted against article I as a whole, since it contradicted the principle of non-retroactivity of the law, a principle embodied in her country's Constitution. The definition of crimes against humanity in article I (b) was unacceptable to her delegation because, in its view, that definition in its vagueness was out of place in the draft convention.

13. Miss CAO-PINNA (Italy) had voted against retention of the past part of the introductory sentence to article I of the draft convention, stating that its application would be retroactive, and had voted in favour of limiting the instrument to crimes of a grave nature. She had abstained in all subsequent votes on the various parts of article I and on that article as a whole, not because the voting on those two points had run counter to her delegation's position, but for the reasons expressed in her Government's comments (see A/7174). Her delegation had thus recorded its disagreement with the attitude which the Committee had shown in defining the crimes covered by the draft convention instead of confining itself to incorporating

in international law the principle of non-applicability of statutory limitation to such crimes.

14. Mr. PETERSEN (Denmark) said that the position adopted by his delegation in voting on article I of the draft convention was strictly in accordance with his Government's comments (*ibid.*).

15. Mr. DARWIN (United Kingdom) said that his delegation would have voted in favour of the Norwegian amendment to article I (A/C.3/L.1563, para. 1) had it not been withdrawn. Consequently, when the Chilean delegation requested a separate vote on the wording to which that amendment had referred, he had voted against their retention.

16. He had voted in favour of the four-Power amendment to sub-paragraph (a), whose purpose was to state explicitly that the non-applicability of statutory limitation referred solely to crimes of a grave nature. On the other hand, he had voted against the second six-Power sub-amendment, since his delegation favoured a general definition and thought that the attempt to enumerate the crimes covered by the draft convention was inappropriate.

17. Since none of those considerations had been taken into account in the final wording of article, he had voted against it as a whole.

18. Mr. EL SHEIKH (Sudan) said that he had been unable to vote; had he done so, however, he would have supported the second six-Power sub-amendment but would have abstained from voting on the amendments submitted by Chile (A/C.3/L.1562). For reasons of a legal nature, he could not have supported the rest of the amendments.

19. Mr. PAOLINI (France) regretted that the second six-Power sub-amendment restoring a text which his delegation, among others, had wished to amend had been declared receivable. The adoption of that sub-amendment, which, in seeking to create new offences, introduced imprecise elements into the definition of crimes against humanity, had compelled him to vote against the revised amendment and against the article as a whole as amended. The original purport of the draft convention, which was to affirm as a standard of international law the non-applicability of statutory limitation had thus been lost sight of; the drafting of a legal instrument had been confused with moral and political condemnation of a despicable practice. Since article I was the corner-stone of the draft convention, the remainder of the document was no longer of the same interest to his delegation as at the outset.

20. Mr. STATATHOS (Greece) agreed with the other representatives that the concept of international law could not be a static one but that it should develop and adapt to reality. However, he had been compelled to abstain from voting on article I because its wording implied that the non-applicability of statutory limitation was valid for crimes whose statutory time-limit had already expired. He hoped that the other delegations would understand his country's difficulties in that respect, and would help to work out a draft which could be ratified by the greatest possible number of countries.

21. Mr. BARISH (Costa Rica) said that in her opinion an instrument for the punishment of war criminals

should be based on justice rather than on prevention, since the Universal Declaration of Human Rights and the International Covenants on Human Rights already existed to defend human rights. She drew attention, as the Japanese delegation had done, to the contradiction which existed between article I of the draft convention and the provisions prohibiting retroactivity in article 15 of the International Covenant on Civil and Political Rights. As for the changes that would have to be made in national penal codes in order to apply the convention, the broadening of the provisions concerning the non-applicability of statutory limitation would not cause insurmountable problems, but it would be extremely difficult to introduce the principle of retroactivity even for the crimes referred to in the draft. The fact that Costa Rica had abstained from voting on article I, because of those considerations, had no bearing whatever on its attitude to the policy of apartheid. Indeed, it was because of the practice of that policy that her country maintained no relations of any kind with the Republic of South Africa.

Mrs. Ould Daddah (Mauritania), Vice-Chairman, took the Chair.

22. Mr. PONCE RAMIREZ (Guatemala) said that his country's Constitution provided for the non-retroactivity of law except in criminal cases where it benefited the accused, and it regarded the prescription of crimes as an essential feature, justified by such considerations as expiation, forgetfulness and lack of certainty. Thus, Guatemala's basic Charter provided that any law which restricted or infringed the rights which it guaranteed would, ipso jure, be null and void. Therefore, his delegation could not accept the principle of the non-applicability of statutory limitation to crimes whose time-limit had already expired.

23. The CHAIRMAN said that the Committee had completed consideration of article I of the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity, and invited it to consider article II.

Article II

24. Mr. ARTAZA (Chile), introducing an amendment (A/C.3/L.1565, para. 1) to article II of the draft convention adopted by the Joint Working Group (A/7174, annex), said that its purpose was to improve the text and make it as precise as possible from the legal point of view. The present wording of article II did not establish clearly the kinds of participation in the crimes defined in article I, nor the degree of completion of the crimes, and he felt that those aspects should be clearly stated. Although the Committee was not a body of jurists, it had been instructed to prepare such an instrument, and efforts should be made to ensure that the text was precise and complete.

25. Mr. ABOUL-NASR (United Arab Republic) said that he supported the Joint Working Group's text for article II, which was the fruit of hard work and lengthy discussions and which reconciled various differing points of view. He felt that the Chilean amendment would cause difficulties, since it omitted the first part of the original wording—"if any of the crimes mentioned in article I is committed"—which was important and should be kept in the text. Moreover, although the amendment was more detailed than the

original text it did not cover all the aspects which the authors of article II had considered when drafting it.

26. He himself wished to suggest that article II should be worded as follows: "The provisions of this Convention shall also apply, if any of the crimes mentioned in article I is committed, to complicity in such a crime and to direct incitement or conspiracy to commit it".

27. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that he doubted whether it would be desirable to include the Chilean amendment in the draft convention, although it contained a number of interesting features. The original draft of article II contained concepts on which agreement had been reached after hard work and lengthy debate, and further difficulties could arise from the inclusion of other factors. The Joint Working Group had discussed the degree of the completion of the crimes and the forms of participation to which the amendment referred but had decided not to include them in the text of the article. Moreover, the amendment introduced a new element—the question of the perpetrator of the crime and his status as an individual or as a State authority. That question had already been studied during the drafting of the Charter of the International Military Tribunal of Nürnberg but no agreement had been reached concerning the trial of State authorities. He felt, therefore, that the amendment contained complex and contradictory elements while the original wording was more simple and acceptable.

28. His delegation would consider favourable the United Arab Republic's suggestion to alter the wording of the article slightly without changing its basic meaning or its scope.

29. Mr. ARTAZA (Chile) said that he had great respect for the work done by the Joint Working Group, but considered that there was no point in reviewing the draft convention if the Committee's main concern was to preserve the results of that work. In that connexion, he regretted the deletion from article I of the text adopted by the Joint Working Group of the phrase "by the authorities of the State or by private individuals acting at the instigation or with the toleration of such authorities", which the Group had regarded as essential, since if that phrase was omitted, the State authorities would not be liable under the convention, though they had always been the main perpetrators of war crimes and crimes against humanity. The purpose of his delegation's amendment (A/C.3/L.1565, para. 1) was precisely to make good the omission caused by the deletion of that phrase from article I and to improve the text of article II, from a legal point of view, by stating in the clearest possible way the forms of participation in those crimes and the degree of their completion.

30. The comment of the representative of the United Arab Republic should not be taken as a reason for rejecting the amendment, since the Chilean delegation would have no objections to the text it proposed beginning with the first phrase of the original wording.

31. Mr. ALVAREZ TABIO (Cuba) considered that, although the Chilean amendment omitted some of the features contained in article II, in some respects it

improved the wording of that article. The Chilean proposal was better from a technical point of view, since according to that draft the crimes would be defined in article I and article II would refer to the authors and accomplices. However, the amendment did not mention conspiracy, which was a separate crime and not part of the completion of the crime, and should therefore be considered separately.

32. Mr. ARTAZA (Chile) said that he agreed completely with the Cuban representative, who had very aptly explained the problem of establishing the authorship of the crimes. He pointed out that in his country's legal system, conspiracy was considered a kind of decision taken and was therefore one stage in the completion of a crime; for that reason he did not consider that it was necessary to mention it in article II. However, he would not object to that word being included in his amendment.

33. Mr. ALVAREZ TABIO (Cuba) said that he had no intention of submitting a formal amendment on the matter.

34. Mr. VALDIVIESO (Peru) proposed that the vote on the amendment submitted by Chile should be deferred, as the final text of article I had not yet been circulated and he considered that it was necessary to compare that text and article II.

35. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that he supported the Peruvian representative's suggestion, since it was desirable that the delegations concerned should hold consultations with a view to improving the wording of that article so that they could submit a unified version which would have general support.

New article proposed by Chile.

36. Mrs. AFNAN (Iraq) requested the representative of Chile to submit also his second amendment calling for the insertion of a new article after article II

(A/C.3/L.1565, para. 2), in order to speed up the Committee's work.

37. Mr. ARTAZA (Chile) said that he accepted the suggestion. He pointed out that in the comments made by his Government (see A/7174), it was stated that in the final analysis, the effectiveness of the convention depended on the real and practical possibility of bringing accused or condemned persons within the jurisdiction of the authorities competent to try them or enforce their sentences. None of that would be possible if a convention did not prescribe machinery for facilitating the extradition of such persons. The effectiveness of the convention could not depend on the existence of bilateral extradition treaties. Consequently his delegation had presented a new article dealing with that matter (A/C.3/L.1565, para. 2).

38. Mr. NAÑAGAS (Philippines) suggested that the new article proposed by Chile would be clearer if the phrase "in accordance with the rules of international law" was inserted after the word "extradition".

39. Mr. ROSENNE (Israel) considered that the Chilean representative had raised a most pertinent question and he hoped that consultations to be held would be fruitful.

40. Mr. ABOUL-NASR (United Arab Republic) asked the Chilean representative why the new article referred only to the persons mentioned in article II.

41. Mr. ARTAZA (Chile) explained that the logic behind his proposal was that first, the crime was defined, and then the guilt was established; thus, the article dealing with extradition had to refer to the guilty parties.

42. The CHAIRMAN said that if there were no objections the time-limit for submitting amendments to article II would be fixed at 10 a.m. on Monday, 14 October.

The meeting rose at 12.45 p.m.