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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, and 2, 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, A/C.3/L.1568)

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

Article II (continued)

1. Mr. MUKIIBI (Uganda) supported the Chilean amendment (A/C.3/L.1565, para. 1) to article II of the draft convention adopted by the Joint Working group (A/7174, annex), as in his view it made the text clearer and more precise and he proposed that a slight change should be made in the amended text of article II, after the word "authorities," so that it would read: "and private individuals who tolerate or inspire their commission".

2. Lady GAITSKELL (United Kingdom) said that the problems which would arise in considering the practical consequences of the convention were already beginning to appear. In the case of apartheid, the representative of Chile was quite logically providing that the convention would apply both to State authorities and to private individuals. However, if a legal instrument of that kind went beyond the principles of international law, the sole result would be to add a futile condemnation to the long list of condemnations by the United Nations, without making provision for any practical measures which could be adopted by States in conformity with their own laws.

3. Mr. ARTAZA (Chile) announced that the text of article II proposed by his delegation had been revised

to take into account the suggestions made at the previous meeting by the representatives of the United Arab Republic and USSR. He read out the revised text.^{1/}

4. Mr. NAÑAGAS (Philippines) expressed reservations with regard to the words "irrespective of the degree of completion", which seemed to conflict with the introductory phrase "If any of the crimes mentioned in article I is committed". Under some systems of law, any reference to a crime which had been committed would imply that all the requirements for its commission had been fulfilled and that the crime had been completed in contemplation of law. Thus the article gave rise to doubts concerning its scope and applicability. His delegation therefore preferred the original wording of article II.

5. Miss CAO-PINNA (Italy) agreed with the Philippine representative's comments concerning the apparent contradiction between the opening phrase of the new text of article II proposed by Chile and the words "irrespective of the degree of completion" which appeared in the same text.

6. Mr. VALDIVIESO (Peru) pointed out that the Chilean amendment to article II of the draft convention was logically necessary, since, once the last phrase of article I (b) had been deleted in the final version of that article, the statement in the original text of article II that the provisions of the convention should also apply to complicity in such a crime was meaningless. In his view, the revised version of article II proposed by the Chilean delegation was perfectly clear.

7. Mrs. CONDE (Guinea) felt that the original text of article II was preferable to the new wording proposed by Chile. The Chilean amendment referred in a detailed manner to certain private individuals or State authorities who were covered more broadly in the Joint Working Group's version.

8. Mr. ARTAZA (Chile) said that, as pointed out by the representative of Peru, it was not practical to retain the original wording of article II, since it referred only to accomplices, whereas with the deletion of the last phrase of the original text of article I there was no mention in the draft convention of the perpetrators of war crimes and crimes against humanity. The Chilean amendment attempted to fill that gap and to identify those perpetrators. Moreover, the scope of the original wording of article II was too restricted, since it only covered complicity and did not refer to other forms of participation.

9. Mr. NAÑAGAS (Philippines) agreed that it was necessary to amend the text of article II, although

^{1/} Subsequently circulated in document A/C.3/L.1565/Rev.1.

he did not favour the new wording proposed by Chile. He suggested that the basic part of the original text should be retained and that a reference to the State authorities and private individuals who were defined in the Chilean amendment should be added.

10. Mr. SANON (Upper Volta) suggested that, since the new text had not yet been circulated, the new article which Chile proposed should be inserted after article II should be considered.

11. The CHAIRMAN said that, if there was no objection, the vote on article II would be deferred and the Committee would proceed to consider the new article proposed by Chile (A/C.3/L.1565, para. 2).

It was so agreed.

New article proposed by Chile (continued)

12. Mr. ERMACORA (Austria) asked the representative of Chile what relation the new article concerning extradition bore to the convention in general, since there was no reference to extradition in any of the remaining articles.

13. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) asked the representative of Chile whether the article concerning extradition would apply not only to the persons mentioned in article II but also to those referred to in article I.

14. Mr. ARTAZA (Chile), replying to the representative of the Ukrainian SSR, explained that a comprehensive approach was needed in order to understand the logic on which his amendment concerning extradition (A/C.3/L.1565, para. 2) was based. In article I war crimes and crimes against humanity were defined, but at no time was any mention made of perpetrators. Everything relative to perpetrators and degrees of participation and complicity was contained in article II. Thus, the amendment concerning extradition would apply to them, if it were adopted.

15. The question put by the representative of Austria went to the very heart of the matter. The convention should include provisions to facilitate the punishment of crimes that were committed; it should provide for machinery to enable the criminals to be extradited, so that such crimes would not go unpunished.

16. Mr. SANON (Upper Volta) asked what kind of measures were meant by the phrase "or otherwise" in the article on extradition; if administrative measures were meant, they too were governed by legislative provisions, in which case it would not be necessary to mention them.

17. Mr. PAOLINI (France) asked the representative of Chile whether, under the terms of his amendment, extradition would apply to representatives of the State authority when war crimes and crimes against humanity were committed without the consent of the State or against its express will.

18. Mr. NASINOVSKY (Union of Soviet Socialist Republics) stated that his delegation had no difficulty in accepting the Chilean amendment since in its view, extradition was the logical conclusion of the work accomplished in 1967. He further suggested that the difficulties which had arisen could be resolved by making reference in the article concerning extradition not only to the perpetrators to which article II

referred but also to the crimes themselves mentioned in article I.

19. Mr. NAÑAGAS (Philippines) recalled that, at the 1569th meeting, his delegation had introduced an amendment to the new article proposed by Chile, because it believed that the obligation to extradite must not be absolute, and that, in addition, it must be adapted to the rules of international law. The amendment would insert the phrase "in accordance with the rules of international law" after the word "extradition". His delegation shared the reservations expressed by the representative of France with respect to the application of extradition to "representatives of the State authority", a term which it considered vague and imprecise. No such concept existed under the legal system of his country.

20. Mr. ALVAREZ TABIO (Cuba) felt that the new article which Chile proposed should be inserted after article II would introduce a supranational jurisdiction with respect to extradition, which might endanger the principle of the sovereign equality of States. That fundamental point should therefore be spelt out with the greatest precision.

21. Mention was made in article III of the draft convention of the respective constitutional processes of States, but that reference was omitted in the Chilean delegation's amendment; yet it was a vital point, in that some constitutions, including that of his own country, stipulated that the requested State was not bound to accede to the request for extradition.

22. Mr. ERMACORA (Austria) noted that in that connexion it was a principle recognized in international law that States were not bound to consent to the extradition of their own nationals.

23. Mr. ARTAZA (Chile), replying to the question put by the representative of the Upper Volta, said that the words "or otherwise" in the new article proposed by his delegation referred, for instance, to constitutional measures or to regulations.

24. With respect to the comments made by the representative of France, he believed it was clear that the intention of the wording of the new article proposed by his delegation was to apply extradition, not to those representatives of the State authority who had taken whatever measures where necessary to prevent the commission of the crimes referred to in the draft convention, but to those other representatives who tolerated them or incited others to commit them.

25. In reply to the USSR representative, he stated that he had no objection whatever to the inclusion in the suggested new article of a reference to article I of the draft convention also, although he considered it redundant, since article II, to which reference was made, in turn referred to article I of the draft convention.

26. He also had no objection to the insertion of the words "in accordance with the rules of international law" after the word "extradition" in the new draft article, as proposed by the representative of the Philippines, but he suggested that mention should be made simply of international law, without any reference to rules, since there were no precise rules on the subject.

27. He assured the representative of Cuba that the new article proposed by his delegation was not intended in any way to establish a supranational jurisdiction, and he pointed out that the principle whereby the requested State was not bound to accede to the extradition of its own nationals was recognized by only a minority of States in international law.

28. Mr. PAOLINI (France) said that the new article proposed by Chile should include a clear statement of the responsibility of private individuals who, contrary to the express will of representatives of the State authority, committed any of the crimes referred to in the draft convention.

29. Mr. VALDIVIESO (Peru) said that he did not believe that the point concerning extradition would raise any difficulty, since it was obvious that it would apply, in the case of representatives of the State authority, only after the persons responsible had been stripped of all authority, as had occurred in the case of the trials of the nazi war criminals.

30. Mr. GANESH (India) said that extradition was a bilateral procedure, and should not, therefore, be mentioned in a document of the kind under discus-

sion. Its inclusion would force the signatory States to conclude bilateral treaties among themselves or to revise the existing treaties. He therefore suggested that the provision relating to extradition should appear in an optional protocol.

31. Mr. ARTAZA (Chile) said that he fully agreed with what the representative of France had said concerning the new article proposed by Chile, which would, of course, apply to private individuals who committed war crimes or crimes against humanity contrary to the will of the State authorities.

32. With regard to the comment made by the representative of India, he said that the Chilean amendment did not conflict with existing extradition treaties, but that its intention was to make use of the channels established by them for requesting the extradition of persons guilty of the crimes referred to in the draft convention. Since the effectiveness of the convention would depend on there being provision for a procedure which would facilitate bringing the accused to justice, it was necessary that the draft should include a clause whereby States would undertake to initiate extradition proceedings, where necessary.

The meeting rose at 12.20 p.m.