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CONTENTS

Chairman: Mr. João Carlos MUNIZ (Brazil).

Reports of the United Nations Commission for the Unification and Rehabilitation of Korea (A/1881, A/2187, A/2228, A/C.1/725, A/C.1/729, A/C.1/730 and A/C.1/732) (*continued*)

[Item 16(*a*)]*

1. Mr. ZULUETA (Philippines) observed that there were two points of view—that of the joint draft resolution (A/C.1/725), appealing to the North Korean authorities to reconsider their position on the prisoners of war issue, and that in the proposals of the delegations of Mexico (A/C.1/730) and Peru (A/C.1/732) in the less formal ones of Asian-African delegations, suggesting that a just and honourable compromise might be reached on the repatriation of prisoners of war. The delegate of the Philippines believed that the conciliatory efforts should be considered in the light of a few basic principles.

2. First, United Nations action in Korea was the result of decisions of the Security Council and resolutions of the General Assembly to assist the Republic of Korea to repel Communist aggression. Secondly, the General Assembly found the North Korean and Chinese Communist régimes to be the aggressors in the Korean conflict. Thirdly, the United Nations, being one of the parties in that conflict, should not entertain any proposals tending to derogate from the integrity of that position. Fourthly, the position taken by the United Nations Command against forcible repatriation, was based on accepted principles of international law and the laws of humanity, and though compromise regarding the manner in which the repatriation could be carried out was possible, there could be no abandonment of this position. Fifthly, the immediate objective being an armistice and the enforcement of a cease-fire, a commission, which had been suggested, should be established after the conclusion of an armistice.

3. The representative of the Philippines emphasized that negotiations must rest on the assumption that all desired a cessation of hostilities. He affirmed that his Government, and those of other Member States participating in the United Nations action in Korea, desired an armistice. He thought a compromise was possible if the other side desired an armistice also. With regard to the forcible repatriation of war prisoners, his delegation would accept any proposal which provided that the prisoners of war could indicate, without duress of any kind and under the supervision of a neutral commission, whether or not they wished to return to their homes. The margin for compromise, he continued, could only be found in the procedure to rescreen the prisoners of war and not in the abandonment of principle. He reiterated that the immediate objective of an armistice would not be facilitated by the simultaneous consideration of the settlement of the political aspects of the Korean problem. Although his delegation desired an armistice, they thought that the Committee ought not to consider any proposal which might endanger the position of the United Nations as the enemy of aggression, or which might indicate contempt for the sacrifices of the soldiers of the United Nations. Peace, he concluded, would be too dear if bought at such a price.

4. Mr. CHARLONE (Uruguay) said that the responsibility for the aggression in Korea had been assessed by the Organization, which had decided to repel that aggression. It was in this spirit that it had entrusted to the Security Council, in accordance with Article 24 of the Charter, the primary responsibility for the restoration of international peace and security. The Council had then declared on 25 June 1950 that the aggression in Korea constituted a threat to international peace and security within the meaning of Article 39 of the Charter, and had ordered the North Koreans, as a provisional measure under Article 40, to desist from any military action. In failing to obey this order, they proved beyond doubt that they were the aggressors.

5. The main task of the United Nations was still the conclusion of an armistice based on honourable and just terms. In this connexion, Mr. Charlone said, his delegation believed that the forcible repatriation of prisoners raised a question of honour and moral responsibility. The Unified Command, acting in accordance with the principles of the Charter which safeguarded human rights, could not but reject the principle of forced repatriation.

* Indicates the item number on the agenda of the General Assembly.

6. As to the moral aspect of the question, the Uruguayan representative recalled that Mr. Vyshinsky had contended that a prisoner could not exercise his freedom of choice. In the circumstances, one might ask the question how the prisoner could even make the choice to return? However, if he decided not to be repatriated, a plan had been suggested whereby some neutral powers could handle such a situation. Should this plan be accepted, it could not be argued that the prisoners did not have the freedom of choice. Besides, this plan showed the sincerity displayed by the Unified Command in the course of the armistice negotiations.

7. Moreover, Mr. Vyshinsky had asserted that the principle of non-repatriation of prisoners would infringe upon the sovereignty of the States concerned. It was not unnatural for Mr. Vyshinsky to expound such a theory, in view of the fact that the totalitarian States gave priority to the right of the State over that of the individual. But this use of force against the right of the individual constituted a violation of the essential principle of the freedom of choice. The 38th parallel, being an artificial barrier, the North Koreans should be free to choose to live anywhere in Korea.

8. With regard to the legal aspect of the question, the Uruguayan delegation could not accept the Soviet thesis that treaties were conditioned by the political circumstances prevailing at the time of their conclusion. In the case of the Geneva Convention of 1949, it was evident that the prisoner was not obliged to be repatriated.

9. In the absence of special conventions entered into between the contending parties to bring hostilities to an end, the United Nations still favoured a special covenant which, within the framework of the Geneva Convention, would constitute a standard of rights in order to safeguard respect for the freedom of prisoners.

10. As for the question of asylum, the Sino-Korean authorities had denied the similarity between political refugees and prisoners of war. The question of asylum arose from the existence of differences of views between the State and the citizen. If in this case some prisoners were forced to be repatriated, they could not but hold views different from those of their State.

11. In conclusion, Mr. Charlone stated that since the Unified Command was fighting in defence of liberty, it could not be expected to abandon the principle of freedom of choice as the price for the conclusion of an armistice. His delegation supported the principles contained in the joint draft resolution (A/C.1/725) of which it was a co-sponsor.

12. Mr. FRANCO Y FRANCO (Dominican Republic) wished to pay tribute to the constant efforts of the United Nations Commission for the Unification and Rehabilitation of Korea in carrying out its difficult task. He also paid tribute to the Organization and to the Governments fighting in Korea for their determination to uphold the principles of the Charter and the enormous sacrifices they had made for the implementation of the principle of collective security. He hoped that an end would be put to the shedding of blood, the destruction and the suffering that had begun on 25 June 1950. Since that date, the United Nations had shown the greatest resolution in carrying out the decision to re-establish law and justice in Korea, and had spared no effort within its power, first, to avoid the war which had been forced upon it and then to limit both its duration and its effects.

13. He recalled that Mr. Acheson's intervention of 24 October last (512th meeting) had led to the submission of the joint draft resolution contained in document A/C.1/725, which his delegation supported. Paragraph 8 of that resolution called upon the Central People's Government of the People's Republic of China and the North Korean authorities to avert further bloodshed by having the negotiators agree to an armistice which recognized the freedom of choice of the prisoners. Mr. Vyshinsky himself had acknowledged that the question of repatriation was the only obstacle to the conclusion of an armistice. Unfortunately, the principle of forced repatriation could not be accepted without negating and destroying the moral principles of justice in international affairs. Besides, as several other representatives had pointed out, international practice excluded the use of force in cases of repatriation. Among the international conventions concluded on this subject during the last 35 years, one might find a large number to which the Soviet Union had subscribed. If the principle of forced repatriation were to be accepted it would constitute a singular piece of irony in the light of the universal declaration of human rights, and of the practice of political asylum throughout the world and diplomatic asylum in the American continent. The fact that the Geneva Convention was silent on the question of those prisoners not wishing to return, did not establish the absolute validity of the principle of forced repatriation. Both the concepts which must be considered as constant in law, and the atmosphere in which the Geneva Convention was adopted, confirmed the thesis maintained by the joint draft resolution. Besides, the various conventions concluded on this subject had been written in the interests of the prisoners themselves, and not of the States of which these prisoners were subjects.

14. A close perusal of the Geneva Convention of 1949 in no way led to the acceptance of the principle of forced repatriation. If the right of repatriation was indisputably found therein, so was the right also of an expression of free will of those who did not wish to be repatriated. Accordingly, it was essential to have sufficient guarantees to make it possible for all prisoners to exercise their unquestioned right to decide. The representative of the United States, along with other delegations, had quite frankly favoured the most ample guarantees to safeguard to the prisoners their freedom of expression. The Dominican delegation fervently hoped that the bloodshed, suffering and destruction in Korea might promptly come to an end and that force would understand that its strength was not sufficient to justify it.

15. Mr. AMMOUN (Lebanon) said that while the small countries, such as Lebanon, were not materially contributing to the action in Korea, they must nevertheless devote their efforts to the restoration of peace and the principles of justice governing the international community. His delegation considered that the problem involved two main aspects, namely, the resistance to aggression through collective security and the need to put an end to that situation as early as possible.

16. As regards the principle of collective security, he recalled the attack launched on 25 June 1950 against South Korea, and the decision, two days later, to take collective measures under Chapter VII of the Charter.

Lebanon did not hesitate to endorse the Security Council decision (S/1511), and on 1 February 1951 it had given its support to the General Assembly resolution (498(V)) branding the Chinese Communist and North Korean authorities as aggressors. He also recalled that the collective security system had foundered in the League of Nations and that the Second World War had been the consequence of that unfortunate experience. All the countries, particularly the small ones, were vitally interested in the success of the first attempt of the United Nations at collective action, because they considered the system as their only guarantee against aggression. However, in affirming their faith in this institution, the small nations regretted the fact that it had not been complemented by an international force, the existence of which might have averted the armed conflict in Korea.

17. While the breach of the peace in Korea had been dealt with firmly, it was regrettable that other breaches of the peace had been occurring without suppression by the international Organization; the action of the United Nations must be consistently and uniformly applied for it to be strong and effective. Though aggression had occurred in Palestine when the Jewish terrorists had attacked that State, the United Nations had intervened only to recognize the accomplished fact. Had the United Nations put into effect as early as 1948 the system of collective security in order to defend Palestine, aggression in Korea might never have taken place. Also, aggression in Palestine might not have been possible if an international force, in accordance with Article 43 of the Charter, had already been in existence. The United Nations had established in Jerusalem an international territory of its own; nevertheless, it had taken no action in the face of Israeli aggression in that city. One wondered why a principle was valid in one cause, but not in the other? This lack of action on the part of the Organization had encouraged the non-observance of many United Nations principles. Despite this fact, Lebanon had not hesitated to endorse the action taken by the Security Council. But in so doing, it found it necessary to affirm the absolute need to give a universal application to the principles of the Organization for the more effective exercise of its authority; it should not give the impression that its action was subordinate to ulterior considerations intead of right and reason.

18. As regards the second aspect, namely, the need for an early end to the hostilities in Korea, Mr. Ammoun believed that the danger of the Korean war developing into a world war should prompt the Committee to wind up its debate by an agreement that would open the door to the conclusion of an armistice. Accordingly, Lebanon had joined the Arab-Asian nations in their endeavours to achieve an honourable armistice.

19. The draft resolution of the twenty-one powers (A/C.1/725) tended to affirm the principle of voluntary repatriation. In this connection, Mr. Vyshinsky had contended that under Article 7 of the Geneva Convention of 1949, war prisoners could not waive the rights assured to them by that Convention. But Article 118 established the right of repatriation at the end of the active hostilities. The conclusion of an armistice did not mean the end of hostilities. Therefore, taking the text of Article 118 literally, the right of repatriation did not belong to the prisoner in the case of an armistice. If, by mutual consent, the rules to be found in the Geneva Convention were to be taken as the basis for negotiations, it would be necessary nevertheless to interpret the texts involved in the spirit which governed their drafting.

20. Between 1919 and 1924 the Soviet Union had concluded about fifteen treaties involving voluntary repatriations. This constituted a proof of the legitimate solicitude to safeguard the sacred rights of the individual, which was in conformity with the principles accepted by international law on the initiative of the International Committee of the Red Cross. If other treaties excluding the free choice of the prisoners had been cited from the Versailles Treaty to the capitulation act with Germany and Japan, one noted that all these treaties had been forced upon the vanquished; they could not be invoked to corroborate an international practice which was quite different in nature. Mr. Vyshinsky had also expressed the fear that some of the recalcitrant prisoners might be eventually used against their own country. In that case Mr. Ammoun explained, recourse could be had to an international organ which should ensure that such prisoners should not be used for that purpose. Moreover, a plan had been proposed whereby such prisoners would be transported to a neutral country, once they had availed themselves of the right of non-repatriation. In conclusion, the representative of Lebanon wished to endorse the principles set forth in the joint draft resolution contained in document A/C.1/725. He also welcomed the proposals of Mexico (A/C.1/730 and Peru (A/C.1/732), and was sparing no effort along with the Arab-Asian group to find a solution capable of restoring peace to Korea.

21. Mr. RAFAEL (Israel), raising a point of order, observed that the representative of Lebanon had made a number of references to Israel in the course of his statement which consisted of unfounded allegations and historical distortions. The Israeli delegation intended in due course to participate in the debate on the Korean question, but did not wish, at that time, to introduce any tendentious extraneous matters. Mr. Rafael therefore wished to make a brief reply to certain of the remarks of the representative of Lebanon.

22. The CHAIRMAN stated that he would accord the representative of Israel the right of reply subsequently but the question was not properly speaking a point of order, and he would not interrupt the debate at that time.

23. Mr. DE SOUZA GOMEZ (Brazil) said that the unification and rehabilitation of Korea were the ultimate objectives of the United Nations. From the point of view of the United Nations, Korea was *de jure* a single country, which had been divided *de facto* and only provisionally. The 38th parallel had originally been intended to divide the areas for the acceptance of the surrender of Japanese forces, but due to the policy of the North Korean authorities, it had become a real frontier. That situation was not tolerable to the United Nations and every effort had been made to create an independent, unified government. Those efforts had been impeded by North Korea.

24. In June 1950, the North Korean troops invaded South Korean territory, and thus committed an act of aggression. The United Nations had used all means to restore the peace. The military action was not really a war, for the United Nations could not wage war in the

legal sense. In protecting the South Koreans, the United Nations was protecting the right of all people to a peaceful existence. Korea was a test of the determination of the United Nations to keep the peace.

25. There was, however, a small group which sought to obstruct the resolutions of the United Nations and to aid the aggressor. It was amazing that Members should support those who disregarded the principles of the Charter and were seeking to gain by force what they had not tried to win by peaceful means.

26. Armed forces from seventeen nations had succeeded in turning back the aggression. The present object was to put an end to the hostilities, while preserving the main objectives of repelling aggression and preparing conditions for unification. Negotiations for an armistice had been going forward since June 1951 and all problems but one had been solved. It appeared that only the uncompromising attitude of the North Korean and Chinese Communist authorities on the question of voluntary repatriation stood in the way of an agreement.

27. The representative of the Soviet Union took the position that the principle of voluntary repatriation was contrary to international law. It seemed to follow from that that he also took the position that prisoners of war should be forced to accept repatriation. On the other hand, the policy of the Unified Command was correct and had been accepted on occasion even by the Soviet Union and by the North Korean Command. Even if it were admitted for the sake of argument that forcible repatriation was the rule, it could not be denied that many exceptions to that rule had been accepted into international law. The Soviet Union could do no more than claim that both principles were equally valid.

28. The only principle which could be accepted was one which would take into account the wishes of the prisoners. The application of that principle in the case of Korea was particularly cogent, for the prisoners were also nationals of the detaining country.

29. The legal question was clear, but the political issue remained. Despite concessions by the Unified Command, the prisoner-of-war problem continued to block a settlement. There had been no clear indication why the North Korean and Chinese Communist authorities took an uncompromising stand. A clear statement from the Soviet Union representative as to whether he rejected the principle of voluntary repatriation and insisted upon forcing the repatriation of all prisoners could lead to a solution.

30. The Soviet Union draft resolution (A/C.1/729) was vague and ambiguous. Many questions consequently arose, such as whether the proposed commission would be a United Nations commission or what its relations would be with the United Nations, to whom it would be responsible, what its membership and terms of reference should be, when it should be established and what relations it would have to the armistice negotiations. Any commission should have certain guiding principles indicated and it would be helpful to hear from the Soviet Union representative on those matters.

31. The twenty-one Power draft resolution (A/C.1/725) reaffirmed the intention of seeking a just and honourable settlement, as did the other proposals. That draft resolution and those submitted by Mexico (A/C.1/730) and Peru (A/C.1/732) were based on the assumption that the only obstacle to an armistice was the problem of the exchange of prisoners of war. That was not stated in the Soviet Union draft resolution but the Soviet Union representative had said that it was the only obstacle (514th meeting).

32. All members of the Committee appeared to desire to give that matter further attention. The Mexican and Peruvian proposals offered direct safeguards to ensure a free expression of will by prisoners of war and to avoid the possibility of pressure. It was to be hoped that the Soviet Union position would be clarified in order to dispel doubts that anyone advocated the use of force or would have the United Nations follow a course which was contrary to the Universal Declaration of Human Rights.

33. The Mexican and Peruvian proposals offered complementary measures. The Peruvian machinery for screening could be a preliminary step towards the measures proposed by Mexico. The Mexican proposals could constitute a specific course to be studied by the Commission provided for in the Peruvian proposal. Mr. de Souza Gomez preferred to await a statement by the Mexican representative before discussing those matters in detail, and indeed, he understood that other suggestions on the same matters would be forthcoming.

34. At a later stage, the Committee might see a need for a sub-committee to work out a formula that would meet all points of view. At present, such a course would be premature, pending those other suggestions and also the clarifications which had been requested from the Soviet Union. However, those who had so far put forward proposals concerning the problem of repatriation might begin informally to try to iron out any discrepancy. That course would assist in removing difficulties and might lead to a plan which would fit within the framework of the twenty-one Power draft resolution.

35. Mrs. SEKANINOVA-CAKRTOVA (Czechoslovakia) stated that the main task of the United Nations was the solution of the Korean question. The immediate task was the restoration of peace and the ending of the war. A number of reviews of the history of the Korean question had been given, including one by the United States Secretary of State. That had been remarkable for its suppression and distortion of facts in order to defend the intervention of the United States and slander the Soviet Union. Without entering into a detailed analysis of the whole question, Mrs. Sekaninova-Cakrtová wished briefly to illustrate the respective policies of the Soviet Union and the United States with respect to Korea.

36. At the Moscow Conference of December 1945, the United States had proposed a trusteeship for Korea under a four-Power administration which would exclude the Korean people from the conduct of their own affairs for a period of up to ten years. The Soviet Union had not agreed and had defended the rights of the Koreans. It had proposed the creation of a temporary democratic government for the reconstruction and development of the whole country with the support of a joint United States-Soviet Union Commission. That proposal became the basis of the Moscow

decision. It was enthusiastically received in Korea and opposed only by a small clique of former Japanese collaborators who tried to sabotage unification in furtherance of United States policy.

37. United States attempts to prevent a settlement were shown by all events in the joint commission. It refused to consult with the democratic parties; it prevented the establishment of a government; it obstructed all measures looking towards independence and economic reconstruction; it wrecked the joint commission; and it rejected a Soviet Union proposal to withdraw all troops and allow the Korean people to settle their own affairs.

38. In September 1947, the United States illegally brought the Korean question before the United Nations, thereby beginning its abuse of the United Nations as a cover for its aggressive policies. The United States Secretary of State had attempted to describe his Government's policy as furthering the interests of the Korean people. The course of events showed, however, that the United States was the enemy of national independence and self-determination and that its policy was to suppress the popular will and exclude the people from decisions on their own affairs. That policy has been followed in the United Nations where the United States had prevented representatives of the Korean people from being invited to participate in discussion of the Korean question on all occasions, including the present.

39. The United States Secretary of State had tried to impose upon the Committee the thesis that the Korean war was being waged by the United Nations. No illegal resolutions or distortions could, however, conceal the fact of the imperialistic intervention of the United States on the order of President Truman before any decision had been taken by the Security Council. Those facts were not altered when the United States had its position approved by the United Nations. General MacArthur had revealed quite clearly the extent of United Nations influence in the war at the Congressional hearings in May 1951, when he had said that the connexion between himself as Commander-in-Chief and the United Nations was largely nominal. He had gone on to say that his channel of communication was to the United States Army Chief of Staff and that control was exercised by the United States Joint Chiefs of Staff. Even his reports to the United Nations were censored by the Departments of State and Defense. Mrs. Sekaninová-Cakrtová then quoted remarks by Representative Crawford on 6 March 1952 in the Congressional Record in which he had stated that the Korean war was a United States war, and not the United Nations war. She also drew upon an appendix to the Congressional Record to show the extent of the participation of other nations in the operations, as compared to the United States. The contributions were as follows: in land forces, 9.57 per cent; in naval forces, 6.66 per cent, and in air forces 0.97 per cent. Those figures reflected the extent of the participation of the United Nations.

40. Because it was a United States aggressive war, the United States had kept the command in its own hands and also the control over the armistice negotiations. The United States used pressure to secure the participation of the members of its imperialistic blocs. In framing policy, however, it did not consult, or even inform, its partners. For example, on 13 June after the visit of the British Defence Minister, General Clark had complained about meddling in the Panmunjom negotiations. Moreover, at that time, General Clark had been planning the bombardment of the Yalu power stations. He had not informed the British Defence Minister, and later, the British Foreign Minister had said that the United Kingdom had not been consulted. Moreover, when the Secretary of State of the United States addressed the British House of Commons on 26 June, he had denied any absolute right of consultation.

41. There was no doubt whatsoever that the United States was waging war under the cloak of the United Nations. The world knew, however, that the Soviet Union favoured the restoration and maintenance of peace. When the Prime Minister of India had proposed bringing the Chinese People's Republic into the Security Council and settling the Korean question, the Soviet Union had accepted and the United States had rejected the proposal. In August 1950, when the Soviet Union representative proposed the cessation of hostilities and withdrawal of all troops, the United States reply was the bombing of Manchuria. At the fifth session of the General Assembly, a new proposal by the Soviet Union Foreign Minister for the withdrawal of troops and the arrangement of a settlement by the Korean people themselves was rejected by the United States. On 2 January 1951, the United States rejected proposals by twelve Arab-Asian nations for a peaceful settlement, which had been accepted by the Soviet Union and China. In February again, the Chief of State of the Soviet Union had proposed a peaceful settlement. Later, in 1951, on the initiative of the Soviet Union, truce negotiations were begun.

42. Under the pressure of public opinion, the United States had embarked upon negotiations reluctantly. As peace would disturb its wartime prosperity, it conducted the negotiations so as to make a solution impossible. They had dragged out for sixteen months and then the United States tried to blame the North Korean and Chinese representatives. The facts, however, showed clearly the responsibility of the United States.

43. In substance, the prisoner-of-war issue was simply that the North Korean and Chinese delegations insisted upon repatriation in accordance with the norms of international law. The United States representatives refused to return all prisoners and claimed that there should be a special screening process, after which only those who did not oppose repatriation would be returned. That senseless requirement was called voluntary repatriation and was claimed to be lawful. It was also claimed that the prisoners of war could exercise free will. In that connexion, conditions in the United States prisoner-of-war camps should be examined. North Korean and Chinese volunteer prisoners for a long time were on Koje Island and in early 1952 the United States began its coercive screening process forcing prisoners with much massacre and bloodshed to sign anti-Communist declarations. Only in one report from the United States Command in connexion with the detention of General Dodd was it admitted that there had been many incidents in which prisoners had been killed and wounded. That was what the United States described as conducting screening

in the interests of the prisoners of war. Attempts were made to divert attention, to conceal the facts and to justify the incidents by reference to the maintenance of order. Those claims had been unmasked, however, when large numbers had been removed from Koje on the grounds that they would prefer death to repatriation. 110,000, alleged to be in that category, had been removed, yet the Unified Command had reported in May incidents at Pusan in which Communist leaders had offered violent resistance to the screening process. Over a hundred had been killed and wounded. Those facts proved the nonsense of the claims as well as the brutality of the means employed.

44. The United States Government stated that the prisoner of war camps were administered in accordance with the Geneva Convention of 1949. However, article 42 provided that weapons should be used against prisoners only as an extreme measure and after warnings, but the United States in violation of that provision had used tanks, machine-guns and flame-throwers against defenseless Korean and Chinese prisoners of war. Article 26 prohibited collective disciplinary measures in the form of withholding of food. Yet according to reports of 5 June in the *New York Times* and 6 June in the *Manchester Guardian*, the United States had withheld food from entire compounds. Article 87 prohibited collective punishment for individual acts and that too had been violated by the United States.

45. Even the International Committee of the Red Cross had reported violations. Surprise had been expressed by the representative of Canada that the International Committee was quoted by those who did not recognize it as an impartial body. Czechoslovakia was among those and Mrs. Sekaninová-Cakrtová did not quote the report because she relied upon its impartiality, but because it had had to admit to the violation.

46. In view of the foregoing, it was hard to speak of a principle of voluntary repatriation. At Panmunjom, as in the General Assembly, the United States representatives tried to obscure the substance of the question by inverting it. The United States claimed to be concerned over the use of force in repatriation. But the United States long had been using force to prevent repatriation. The North Korean and Chinese representatives had never expressed themselves in favour of forced repatriation. They had spoken against forced detention. What the United States chose to call voluntary repatriation was merely forced detention.

47. Another attempt at confusion had been made by bringing in the question of asylum. Repatriation had nothing in common with asylum, which was for political refugees. The question before the Committee was one of prisoners of war whose status was established by international conventions. The representative of Uruguay had admitted that men could not be simultaneously prisoners of war and political refugees, but had asserted that they could have these capacities successively. That was not in accordance with the Geneva Convention, under which prisoners would not change their status before their repatriation.

48. The laws of war from the outset were that prisoners of war were entitled to release and repatriation. That was naturally a part of the concept of a prisoner of war who was detained only to prevent his participation in the conflict. Accordingly, upon the cessation of hostilities, there was no purpose in their detention, and they should be returned. That principle was a component of customary law even before the rules were codified.

49. Mrs. Sekaninová-Cakrtová referred to the United States agreement of 1783 with Great Britain and of 1848 with Mexico, to the Hague Conventions of 1899 and 1907, and to the Geneva Convention of 1929, all of which provided for the unconditional and immediate repatriation of prisoners. That principle was also a pillar of the Geneva Convention of 1949, which both parties had recognized as binding.

50. The principle of unconditional repatriation flowed from the general, as well as the specific terms of the Geneva Convention of 1949. Part I contained the fundamental principles and, after defining a prisoner of war, stated in article 5 that that status applied from the time they fell into the power of the enemy and until their final release and repatriation. The purpose was to define the duration of the status in which the prisoners would enjoy the protection of the Convention. No term to that status other than repatriation was set forth. Belligerents therefore could only fulfil their obligations by repatriation or the prisoners would remain in a state of captivity. The provisions of article 5 were of vital importance to prisoners of war, because it ensured their protection while in captivity and their immediate return after hostilities.

51. If a belligerent, by mere declaration could change the status of a prisoner and remove his rights, the system of protection would become meaningless. Article 5 had been adopted unanimously to preclude such a possibility. Turning to the records of the diplomatic conference, Mrs. Sekaninová-Cakrtová noted that on 28 April 1949 in the meeting of the second committee, the representative of the International Committee of the Red Cross had stated that in the previous year there had been a move to enable changes to be made in the status of prisoners of war under certain circumstances, such as at the end of hostilities, but a majority at Stockholm had opposed it, and accordingly article 5 had been introduced.

52. The report of the Unified Command (A/2228), dated 18 October, stated that 37,500 North Korean prisoners of war had been reclassified at one time as civil internees and on a later occasion, another 11,000 had also been so reclassified. It appeared that no convention could eliminate the doubts of the United States Government. The Committee could, however, see that the diplomatic conference had eliminated any doubt as to the duration of the status of prisoners of war.

53. Turning to the specific provisions, Mrs. Sekaninová-Cakrtová observed that article 118 was completely clear. The spirit and wording of the Convention showed the intention to create an obligation to release and repatriate all prisoners of war at the end of hostilities. If no mutual arrangement was made, each side should devise a plan in accordance with the Convention. If that provision was compared with article 75 of the Convention of 1929, it would be seen that there was the new idea of the obligation of immediate repatriation at the end of hostilities and not at the conclusion of a peace. Lauterpacht, in discussing that difference stated that the provision for release and repatriation at the end of hostilities had been inspired by the situa-

tion at the end of World War II, when there had been a long delay before the conclusion of any peace treaties. At the Geneva Conference, the representative of the International Committee of the Red Cross had pointed out that the text of article 118 had been drafted at Stockholm so as to relate repatriation to the cessation of hostilities, and not to the conclusion of peace treaties. There could be no doubt as to the intention to establish an obligation, which could not be modified, for unconditional and immediate repatriation without any questioning or screening. The provisions of the Geneva Convention were consistent with international law as expressed in many agreements and their rejection would mark a long step backward.

54. It was true that an attempt had been made at Geneva to undermine that principle with the idea of voluntary repatriation. That attempt had been rejected by a majority, including the United States, the United Kingdom and France. Mrs. Sekaninová-Cakrtová drew attention to the record of the second committee of the Conference for 16 June 1949, when the Austrian representative had introduced an amendment to article 118 which would entitle a prisoner to ask for a transfer to another country in certain circumstances. The Soviet Union representative had opposed the idea on the grounds that it could be used to the detriment of prisoners and the United States representative had agreed. When the Austrian representative explained that he had had in mind that prisoners whose state had been changed as a result of territorial adjustment since the time of their capture, should not be repatriated to their original nationality but rather to the new nationality of their home, the Soviet Union representative had expressed the fear that prisoners might not have full freedom of expression and that such a provision might lead to the exercise of pressure. The United States representative had shared that view. The Austrian proposal had been rejected in the Committee and was not presented to the plenary session.

55. At that time, the United States had rejected the voluntary principle and had identified itself with the Soviet Union that there were dangers of abuses. Now, however, the United States advocated the voluntary principle. The reason was that the United States had been engaged in aggression since 1950 and wished to retain the prisoners of war for cannon fodder. The aggression against Korea was only part of a larger plan directed against all the peoples of Asia. Direct action had already been taken in respect to Taiwan and Vietnam. The United States was, however, experiencing defeat. That the situation was regarded as hopeless, Mrs. Sekaninová-Cakrtová said, could be deduced from statements made by Mr. Dulles, reported in the Press on 15 May and 8 June 1952, to the effect that Communism was using ideas, while the United States had to rely on armaments.

56. The United States therefore was forcibly detaining prisoners of war and claiming that they resisted repatriation. That was a repudiation of the Convention which they had supported in 1949. According to article 119, prisoners could be detained after the cessation of hostilities only in specific conditions relating to criminal proceedings. Until recently, the United States had recognized that principle. Professor C. C. Hyde, in his treatise on international law, had dealt with the United States concept of repatriation as the accomplishment of the process of release and had quoted United States treaties which insisted on the repatriation of all prisoners of war.

57. Reference in the debate had frequently been made to article 7. The meaning of that article was that the protection of prisoners of war should be guaranteed against any unilateral act and its purpose was to protect the prisoner against loss of rights. It had to be based on the assumption that conditions would not allow the exercise of free will. The Geneva Convention took note of that and protected the prisoners against any change by means of a general clause which applied to all specific provisions. Accordingly, article 7 stated that a prisoner could not surrender either all or a part of his rights in order to protect him from pressure. Indeed, a detaining Power was prohibited thereby from exacting, or even accepting, any renunciation. Lauterpacht had commented that that was a novel and interesting provision forbidding the parties to avail themselves of any renunciation. Those rights, accordingly, could not be annulled even by agreement, but were inalienable. Thus, although the Convention prohibited even the acceptance of any renunciation, the United States had resorted to every sort of pressure. It might be noted that a Finnish amendment, put forward at the diplomatic conference, to allow the acceptance of renunciation had been defeated on the grounds that it would be open to abuse.

58. The representatives of the United States asserted that they were standing on the principle of voluntary repatriation, but they could not obscure the fact that the issue was one of forcible detention. Mrs. Sekaninová-Cakrtová referred to editorials in the *New Statesman and Nation* and *The Times* of London concerning the dangerous precedents which could be established under that policy.

59. There had been previous occasions on which the United States had violated agreements relating to the cessation of hostilities, in particular relative to the repatriation of displaced persons in Europe. In those matters, the United States had violated its obligations and evaded its duty by failing to return the displaced persons. In that matter, it had appealed to the principle of voluntary repatriation, but its real purpose had been to recruit cannon fodder and spies.

60. The question of repatriation was the only obstacle to a peaceful solution and a truce. It was a clear question, determined by international conventions, and could not alone delay the truce. The position of the North Koreans and Chinese was a just one and should be supported by all men of good will. There could therefore be no objections to the proposals contained in General Nam Il's letter of 16 October concerning repatriation.

61. The 21-Power draft resolution (A/C.1/725) would obstruct an early solution. On the other hand, the Polish proposal (A/2229), consideration of which the Committee had postponed, put forward a full programme of concrete measures. The Czechoslovak delegation supported the Soviet Union draft resolution (A/C.1/729) for the establishment of a Commission for a peaceful settlement. The adoption of that resolution would lead to the rapid conclusion of the war

and lay the basis for a just solution on the democratic foundation of self-determination. The United Nations should abandon the dangerous path of acting as an instrument of aggression and turn to the strengthening of peace.

62. The CHAIRMAN requested those who wished to participate in the debate to inscribe their names without delay.

The meeting rose at 6.25 p.m.

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