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COMMISSION ON HUMAN RIGHTS

Twenty-second Session

SUMMARY RECORD OF THE EIGHT HUNDRED AND SEVENTY-FOURTH MEETING

Held at Headquarters, New York,
on Thursday, 24 March 1966, at 12 noon

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The question of the punishment of war criminals and of persons who have committed crimes against humanity (E/CN.4/906; E/CN.4/L.800, L.830; E/CN.4/NGO/133)

PRESENT:

<u>Chairman:</u>	Mr. VOLIO JIMENEZ	(Costa Rica)
<u>Rapporteur:</u>	Mr. QUENTIN-BAXTER	New Zealand
<u>Members:</u>	Mr. SANCHEZ VIAMONTE	Argentina
	Mr. ERMACORA)	Austria
	Mr. HENNIG)	
	Mr. IRURETA)	Chile
	Mr. WIEGOLD)	
	Mrs. BARISH	Costa Rica
	Mr. ZOLLNER	Dahomey
	Mr. JUVIGNY	France
	Mr. SAJJAD	India
	Mrs. AFNAN	Iraq
	Mr. COEN	Israel
	Mr. SPERDUTI	Italy
	Mr. RICHARDSON	Jamaica
	Mr. MOMMERSTEEG	Netherlands
	Mr. NANAGAS	Philippines
	Mr. RESICH	Poland
	Mr. DELGADO	Senegal
	Mr. FORSHELL	Sweden
	Mr. NEDBAILO	Ukrainian Soviet Socialist Republic
	Mr. NASINOVSKY	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. ABRAM	United States of America

Observers for Member States:

Mr. TCHERNOUCHTENKO	Byelorussian Soviet Socialist Republic
Mr. DEVENDRA	Nepal
Mr. TARIAN	Turkey

Observer for an inter-governmental organization:

Mr. PENTEADO	Organization of American States
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PRESENT (continued):

Representative of a specialized agency:

Mr. SALSAMENDI

United Nations Educational,
Scientific and Cultural
Organization

Representative of the High Commissioner for Refugees:

Miss PETLUCK

Secretariat:

Mr. HUMPHREY

Director, Division of Human
Rights

Mr. TARDU

Secretary of the Commission

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES (E/CN.4/898, 911, 913; E/CN.4/L.818, L.823-829) (continued)

The CHAIRMAN suggested that the Commission should adjourn the debate on item 21 of the agenda pending the outcome of the discussion in the informal working group, which had met that morning and had not yet completed its work. Moreover, some delegations had asked to be allowed time to consult their Governments. He therefore suggested that the vote on item 21 should be postponed until the 877th meeting.

It was so decided.

THE QUESTION OF THE PUNISHMENT OF WAR CRIMINALS AND OF PERSONS WHO HAVE COMMITTED CRIMES AGAINST HUMANITY (E/CN.4/906; E/CN.4/L.800, L.830; E/CN.4/NGO/133)

Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the question before the Commission was extremely important, particularly for the Soviet Union, which had suffered most grievously from Nazi atrocities and had played a decisive role in the victory over Hitlerism. There was no need to recall the atrocities committed by the Nazi criminals or to stress the necessity of punishing them. The Commission should therefore concentrate its discussion on the non-applicability of statutory limitation to those war crimes under international law.

The Soviet Union had taken all the necessary steps to ensure the punishment of war criminals. On 4 March 1965 the Supreme Soviet had adopted a special decree providing that persons guilty of crimes against humanity would be punished, no matter when their crimes had been committed. The Soviet Union felt that the perpetrators of such heinous acts should not be able to rely on the possibility that their crimes would be forgotten and it was doing all it could to ensure the application of the just principle that there was no period of limitation for those crimes and to punish the guilty persons. That principle of international law was applied also in the German Democratic Republic. In that connexion, he drew attention to the document submitted on 8 March 1966 by the Legal Department of the Ministry of Foreign Affairs of the German Democratic Republic, which gave valuable information on the subject.

Not all States, however, were following that example. In the Federal Republic of Germany many Nazis still went unpunished and held posts in the Government. Far from taking steps to punish those war criminals, the Federal Republic of Germany was granting them an amnesty. The extension of the period of limitation until 31 December 1969 affected only prisoners serving life sentences, of whom there were very few, and actually granted an amnesty to the countless criminals who were still unpunished. Thus that measure was merely a subterfuge designed to enable the majority of criminals to escape punishment, a smokescreen intended to deceive public opinion.

The draft resolution submitted by Poland (E/CN.4/L.800) was based on the discussion which had taken place at the last session, the Secretary-General's study and the results of the questionnaire on war criminals. It called upon all States to observe the principle of international law according to which no statutory limitation should be applied to war crimes, a principle upheld by many United Nations decisions, and in particular by General Assembly resolution 95 (I), which reaffirmed the principles of international law recognized by the Charter of the Nürnberg Tribunal. The Polish draft resolution also asked the Commission to take steps with a view to developing international co-operation in that field. The task entrusted to the Secretary-General, namely, to collect information on the subject and submit his observations to the Commission, was of the greatest importance. The USSR delegation supported all the provisions of the Polish draft resolution.

The amendments submitted by Austria, Israel, the Netherlands and New Zealand (E/CN.4/L.830) had the effect of changing the entire meaning and content of the Polish draft resolution, since they would eliminate the constructive ideas in the last preambular paragraph and in the most effective operative provision, namely, operative paragraph 1. Instead of marking any progress beyond what had been adopted at the Commission's previous session, the amendments went a step backward. Indeed, they seemed to cast doubt on the very existence of the principle of the non-applicability of statutory limitation to crimes against humanity, which seemed to be universally recognized, and they would therefore have the effect of calling into question everything that the Commission had thus far adopted. The principle was an inalienable principle of international law and it was not for the Commission to question its existence; rather should it reaffirm that principle and ask all States to put it into effect. That was precisely what the Polish draft resolution

(Mr. Nasimovsky, USSR)

did. Apart from legal considerations, some thought should be given to the practical consequences of the Commission's decisions. Experience had shown that the preparation and adoption of an international convention was a long-term task. Moreover, once the convention was adopted, the signatories had yet to put into effect a long and complicated ratification procedure, which sometimes took several years. Consequently, the convention might not come into force until after the expiry of the periods of limitation. Furthermore, an international convention could only come into force if it was ratified by a specified number of States; indeed, many international instruments had remained a dead letter for lack of a sufficient number of ratifications.

In view of the importance of the question, the Commission should endeavour to draw up a text, based on the Polish draft resolution and taking into account the four-Power amendments, which could be adopted unanimously and which, in its preamble, would confirm the existence of the principle of international law according to which there could be no period of limitation for war crimes and crimes against humanity. Moreover, there was no reason why the draft resolution should not mention the possibility of adopting a convention reaffirming that principle. If it was to be truly valuable, such a convention should also contain provisions relating to the extradition of war criminals and the transmission of the documents and information required to bring to trial war criminals and perpetrators of crimes against humanity.

He proposed that a small working group should be asked to work out the final text of the draft resolution.

Mr. COHN (Israel) thanked the Secretary-General and his staff for the excellent study which they had prepared and which not only provided a highly interesting historical resumé but also made it possible to learn the views of Governments on the question before the Commission.

While he agreed with the USSR representative that the principle of the non-applicability of statutory limitation to war crimes and crimes against humanity was an established principle of international law, his delegation could not subscribe to all the arguments put forward by the Soviet Union delegation. In his view, that principle of international law existed because it corresponded to a need of the international community and, as was stated in the Secretary-General's study, because the universal conscience revolted against the idea that such crimes could go unpunished (E/CN.4/906, para. 159). It was inconceivable that the perpetrators

(Mr. Cohn, Israel)

of crimes of such enormity should be able to take advantage of a period of limitation. But his own view was not binding on others, and the view held by several other States and scholars was that there was not yet any such established principle in international law. It was the purpose of the amendment (E/CN.4/L.830) to accommodate all the various divergent opinions - there being general consensus as to the desirability of the principle being validly and bindingly established.

At its twenty-first session, the Commission on Human Rights had adopted a resolution entitled "Question of Punishment of War Criminals and of Persons Who Have Committed Crimes Against Humanity". In that connexion, he drew the Commission's attention to one point where the English and the French versions of that resolution were at variance. The words "establishing the principle" had been translated into French by "consacrer le principe", which presupposed that the principle was already recognized, whereas the fact was that, while its existence had been recognized by the members of the Commission, it was still contested by many States. Moreover, it was not for any delegation, or for the Commission on Human Rights, or even the Economic and Social Council or the General Assembly, to establish principles of international law. It would not therefore be sufficient to adopt a resolution proclaiming or confirming that principle. That was why the sponsors of the amendments (E/CN.4/L.830) felt that the Commission should in all urgency adopt a convention giving binding force in international law to the principle that no statutory limitation could apply to war crimes and crimes against humanity. It was true, as the USSR representative had pointed out, that the adoption of such a convention by the General Assembly and its ratification by a sufficient number of States might take time. If, however, the Commission set to work on it immediately, the Convention could be ratified well before the expiration of the extended period of limitation for war crimes and crimes against humanity in the Federal Republic of Germany.

He ventured to think that all Governments which considered themselves democratic, including the Government of the Federal Republic of Germany, would of necessity have to ratify such a convention, for if they did not they would be unable to stand up before world opinion and would cut themselves off from the community of nations which had undertaken to regulate their actions according to minimum standards of the rule of law. He had been disappointed by the reply sent by the Government of the Federal Republic of Germany to the note verbale sent by the

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(Mr. Cohn, Israel)

Secretary-General (E/CN.4/906, para. 176). He felt that, since the Government of the Federal Republic of Germany itself had already enacted the necessary measures to extend by four years the period of limitation in force in that country, it could equally well lay down that there should be no period of limitation for crimes against humanity. He would have expected the Federal Republic of Germany to welcome an instrument of international law abolishing the period of limitation; in any case, he hoped that, if such a convention was adopted by the United Nations, the Federal Republic would ratify it promptly. With regard to the time that might be required for the adoption and ratification of the Convention, he was somewhat more optimistic than the USSR representative. The Convention would of necessity be short and, since there was general agreement on the question, it could be adopted quickly: a draft could be submitted to the Economic and Social Council at its session in summer 1966, and by winter 1966 it could come before the General Assembly, which would have ample time to adopt it before the various periods of limitation expired, in particular the period established by the municipal law of the Federal Republic of Germany. Lastly, since ten of the twenty-one Governments which had replied to the Secretary-General's note verbale had declared themselves to be in favour of the drafting of a convention, it was reasonable to expect the Commission to take account of their wishes. The reply of the Czechoslovak Government (E/CN.4/906, para. 179) closely reflected his delegation's views: although the principle of the non-applicability of statutory limitation already existed, it was none the less necessary to adopt a convention which would ensure universal recognition and application of that principle and which, in the words used by the Secretary-General in the conclusions in his report, would be "binding on all States", so that the sovereign States that ratified it would be for ever bound to bring their municipal law into harmony with its provisions.

At the previous session, the Commission had adopted a resolution urging States to continue their efforts to ensure that war criminals were punished. There had been some criticism of the Government of the Federal Republic of Germany in that respect, but in his delegation's view it was not correct to say that that Government had done nothing. He was informed that on the territory of the Federal Republic alone, some 15,000 persons accused of war crimes had been indicted and tried. Moreover, the crimes in question were not the exclusive concern of one sole national system of justice, since atrocities had been committed - and not only

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(Mr. Cohn, Israel)

against the Jews - in all the countries occupied by the Nazis. That was why the sponsors of the amendments proposed that all States should be urged "to make available to other States any documents in their possession relating to such crimes". The Governments which were prosecuting war criminals could not guarantee them a fair trial unless they had the necessary information; the prosecution must first assemble sufficient evidence to warrant a conviction before embarking on criminal proceedings. No country could criticize a Government for not having done its duty if it had itself refused or neglected to transmit to that Government all the relevant information. It would seem that political considerations were the main obstacle to the transmission of certain documents to the Federal Republic of Germany. His delegation felt, however, that no political considerations should absolve States from that elementary obligation incumbent upon them under international law.

His delegation had no objection to the establishment of a working group, as proposed by the USSR. In conclusion, he announced that the French and United States delegations had joined the sponsors of the amendments (E/CN.4/L.830).

The meeting rose at 1.15 p.m.