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COMMISSION ON HUMAN RIGHTS

Twenty-second Session

SUMMARY RECORD OF THE EIGHT HUNDRED AND SEVENTY-EIGHTH MEETING

Held at Headquarters, New York,  
on Monday, 28 March 1966, at 11 a.m.

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(10 p.)

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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. IRURETA	Chile
	Mr. REDONDO	Costa Rica
	Mr. ZOLLNER	Dahomey
	Mr. JUVIGNY	France
	Mr. S.K. SINGH)	India
	Mr. SAJJAD )	
	Mrs. AFWAN	Iraq
	Mr. COHN	Israel
	Mr. SPERDUTI	Italy
	Mr. RICHARDSON)	Jamaica
	Miss KING )	
	Mr. MOMMERSTEEG	Netherlands
	Mr. LOPEZ	Philippines
	Mr. RESICH	Poland
	Mr. BOYE	Senegal
	Mr. KELLBERG	Sweden
	Mr. NEDBALLO	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
	Mrs. NASON )	

Observers for Member States:

Mr. TCHERNOUCHTENKO	Byelorussian Soviet Socialist Republic
Mr. HANDL	Czechoslovakia
Mr. DEVENDRA	Nepal
Mr. WALDRON-RAMSEY	United Republic of Tanzania
Mr. LAZAREVIC	Yugoslavia

PRESENT (continued):

Representatives of specialized agencies:

Mr. ORR	Food and Agriculture Organization of the United Nations
Mr. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization

Observer for an inter-governmental organization:

Mr. PENTEADO	Organization of American States
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Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. LAWSON	Deputy Director, Division of Human Rights
Mr. TARDU	Secretary of the Commission

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 and Add.1, L.830/Rev.1, L.833) (continued)

Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said that his delegation's sub-amendment (E/CN.4/L.833) to the revised amendments (E/CN.4/L.830/Rev.1) was entirely in keeping with the Commission's decision adopted at the previous session to request the Secretary-General to undertake a study of the question of the punishment of war criminals and persons who had committed crimes against humanity. An initial study on the non-applicability of statutory limitation to those crimes (E/CN.4/906) had been submitted and a further study should now be requested on procedures for the arrest, extradition and punishment of persons responsible for those crimes.

Moreover, the sub-amendment merely reproduced wording which appeared in operative paragraph 1 of the Polish draft resolution (E/CN.4/L.800) and in the corresponding paragraph of the revised amendments. The difference was that those paragraphs urged States to take the necessary measures to continue their efforts towards that end, whereas the sub-amendment requested the Secretary-General to carry out a study on the question. He praised the study submitted to the Commission at its current session and expressed the hope that the further study now requested would be very useful.

Mr. ERMACORA (Austria), introducing the revised amendments (E/CN.4/L.830/Rev.1), recalled that for a number of legal reasons, the Polish draft resolution (E/CN.4/L.800) was not acceptable as it stood. The debate on the principle of the non-applicability of statutory limitation to war crimes and crimes against humanity had not culminated in agreement on the establishment or recognition of the principle. Consequently, the original text of the amendments (E/CN.4/L.830) reflected the position of a number of delegations concerning two points on which there appeared to be agreement, namely, that no period of limitation for those crimes should be recognized and that the Commission should be asked to prepare a draft Convention to that effect. No agreement had been reached on that text and, in the interests of unanimity, informal consultations had been held with a view to arriving at a compromise solution; the result was reflected in the revised amendments. The main differences between the revised amendments and the original amendments were the following:

(Mr. Ermacora, Austria)

In point 3, the word "affirm" was used in connexion with the principle concerned.

In point 4, the clause "and to continue their efforts to ensure the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity" had been included, in line with operative paragraph 1 of the Polish draft resolution.

In point 5, the words "as a matter of priority" had been added after "twenty-third session"; the words "and for adoption by the General Assembly at its twenty-second session" had been added after "forty-third session"; and the words "further recommendations" had replaced "recommendations" in the line which followed. All those changes were intended to strengthen the paragraph.

No agreement had been reached to include a reference to the study requested by the Ukrainian SSR, which appeared in a separate sub-amendment (E/CN.4/L.833).

With reference to point 3, the Soviet Union had suggested that the phrase should run "the principle of international law..." rather than "a principle of international law...".

Mr. ABRAM (United States of America) said that the Ukrainian sub-amendment would be acceptable with the addition of the words "and the exchange of documentation relating thereto". With regard to the revised amendments, he was firmly opposed to saying "the principle of international law" instead of "a principle of international law". The point involved was not merely one of drafting, but of substance; there had been a very wide divergence of views during the discussion on establishing the principle that statutory limitation should not apply to war crimes and crimes against humanity in international law. If the definite article were used, the implication would be that it was an established principle. A compromise had already been reached on that point. When the existence of a principle was still a matter for debate, that principle could not be referred to as if it had actually been established. That might reopen the debate, and the present wording should therefore be maintained.

Mr. SPERDUTI (Italy) remarked that the differences between the French and English texts of the revised amendments (E/CN.4/L.830/Rev.1) could not be regarded as a mere question of drafting, so that it was essential to know which text would be voted upon. If the English text was to be put to the vote, the

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(Mr. Sperduti, Italy)

French text should be brought into line with it; yet the French text was the one which more accurately reflected the Commission's view. His delegation had preferred not to prejudge the question whether the principle that no statutory limitation should be applied to war crimes existed or did not exist, and to proceed to the adoption of specific measures. The use of the definite article before "principle of international law" as in the French text was preferable and would more faithfully reflect the thinking of the Commission.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) considered that the article "the" should be used before "principle of international law". He also believed that the word "reaffirm", instead of "affirm", would express more accurately what the Commission had in mind; but he was primarily concerned with the French and Russian translations of point 3 of the revised amendments. If the indefinite article was maintained in the English text, the Russian translation would give the impression that the principle that no statutory limitation should be applied to war crimes had not existed previously, and he did not believe that the text should go so far. Consequently, he urged that the definite article should be used in the English text and he recalled that an agreement had been reached in the preliminary consultations and had been accepted by the United States delegation. If the present wording of the revised amendments was maintained, he would ask for a separate vote. As the text now stood, it would cast doubt on the existence of a principle embodied in many international instruments. He had no objection to the other points of the revised amendments. He emphasized the desirability of including the Ukrainian sub-amendment.

Mr. RESICH (Poland) found the revised amendments (E/CN.4/L.830/Rev.1) and the Ukrainian sub-amendment (E/CN.4/L.833) generally acceptable. With regard to the article to be used in the English text, after reading the Russian text he shared the view of the USSR delegation.

Mr. SANCHEZ VIAMONTE (Argentina) considered it essential that the definite article should be used, since it would give the principle character and status and establish a special place for it in the sphere of law. To speak of "a principle" would be to refer to something new or unfamiliar, whereas what was required was to affirm the existence of the principle.

Mr. REDONDO (Costa Rica) agreed with the Italian representative. The Spanish version implied that the principle of the non-applicability of statutory limitation was non-existent. It would be advisable, therefore, to make the various versions agree.

Mr. QUENTIN-BAXTER (New Zealand) recalled, as a co-sponsor of the revised amendments, that the object of the revision had been to meet the various views expressed in the Commission, and not to decide whether or not the principle of the non-applicability of statutory limitation was established. The word "affirming" had been preferred to the word "establishing" as the more neutral term. The introduction of the definite article in the English text would again raise that question, which was not simply one of drafting. On the other hand, the French text was acceptable, and he suggested that it should be translated directly into English, to obtain a neutral text. It would then read: "the desirability of affirming, in international law, the principle that there is no...". The draft resolution under consideration should not detain the Commission; the important thing was to be able to work next year on the draft Convention which the Secretary-General would be asked to prepare.

Mr. MOMMERSTEEG (Netherlands) and Mr. RICHARDSON (Jamaica) supported the New Zealand proposal.

Mr. COHN (Israel) agreed with the New Zealand representative. Regarding the Ukrainian sub-amendment, he said that a study of methods of arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity was very important, but that some aspects of it were highly complex. Extradition, in particular, was usually dealt with bilaterally, and it would be inappropriate to include it in international conventions. Nevertheless, despite its complexity, that problem ought to be solved. It did not seem advisable to undertake a study of that kind, if it delayed the Commission's work on the preparation of the Convention, which was of greater importance and had the higher priority. Moreover, a study of extradition - a legal question - fell outside the Commission's terms of reference; it should be the concern of the International Law Commission and not of a functional commission of the Economic and Social Council.

(Mr. Cohn, Israel)

In point 5 of the revised amendments (E/CN.4/L.830/Rev.1) there was a reference to international co-operation; it was in that sphere that the question belonged. He hoped that the Ukrainian delegation would not press its sub-amendment, so that the adoption of the Convention would be expedited.

Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) said that his delegation was not opposed to the addition, at the end of its sub-amendment (E/CN.4/L.833), of the phrase proposed by the United States representative. Furthermore, that sub-amendment would not jeopardize the adoption of a convention. Precisely because the question of extradition was complicated, a scholarly study of existing legislation should be made. Far from prejudging any aspect of the problem or hindering the adoption of a convention, such a study would clarify the situation and eliminate difficulties.

After a short discussion on matters of drafting, the CHAIRMAN suggested that the first paragraph in point 3 of the revised amendments (E/CN.4/L.830/Rev.1) should be reworded as suggested by the New Zealand representative and supported by others, so that the text would read: "Considering that this study lends further support to the desirability of affirming, in international law, the principle that there is no...".

It was so agreed.

The CHAIRMAN invited the Commission to vote on the draft resolution the adoption of which was recommended to the Economic and Social Council in the Polish draft resolution (E/CN.4/L.800) and the amendments thereto (E/CN.4/L.830/Rev.1), and on the Ukrainian sub-amendment (E/CN.4/L.833) with the phrase added by the United States representative. Each paragraph of the draft resolution would be voted separately, and where there were amendments, they would be put to the vote first.

The first preambular paragraph of the draft resolution (E/CN.4/L.800) was adopted by 20 votes to none, with 1 abstention.

Points 1 and 2 of the revised amendments (E/CN.4/L.830/Rev.1) were adopted by 20 votes to none, with 1 abstention.

What had become the second preambular paragraph of the draft resolution, as amended, was adopted by 20 votes to none, with 1 abstention.

The third preambular paragraph was adopted by 20 votes to none, with 1 abstention.



The fourth preambular paragraph was adopted by 20 votes to none, with 1 abstention.

The fifth preambular paragraph was adopted by 19 votes to none, with 2 abstentions.

Mr. REDONDO (Costa Rica) proposed that the text of the second paragraph proposed in point 3 of the revised amendments should be amended to conform with the changes made in the first paragraph proposed in point 3, and that the two paragraphs should be put to the vote separately.

After a short discussion in which Mr. JUVIGNY (France), Mr. RICHARDSON (Jamaica) and Mr. LOPEZ (Philippines) suggested various forms of words, and Mr. NASINOVSKY (Union of Soviet Socialist Republics) and Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) opposed such a change in the second paragraph, the CHAIRMAN put the two paragraphs to the vote separately.

The first paragraph proposed in point 3 of the revised amendments, as amended, was adopted by 16 votes to none, with 3 abstentions.

The second paragraph was adopted by 18 votes to none, with 3 abstentions.

Point 3 of the revised amendments, as a whole, as amended, was adopted by 18 votes to none, with 3 abstentions.

Point 4 of the revised amendments was adopted by 20 votes to none, with 1 abstention.

Operative paragraph 2 of the draft resolution (E/CN.4/L.800) was adopted by 20 votes to none, with 1 abstention.

The new operative paragraph 3 proposed in point 5 of the revised amendments was adopted by 20 votes to none, with 1 abstention.

The Ukrainian sub-amendment (E/CN.4/L.833) to new operative paragraph 4, with the addition proposed by the representative of the United States of America, was adopted by 16 votes to 1, with 4 abstentions.

The new operative paragraph 4 proposed in point 5 of the revised amendments, as amended, was adopted by 19 votes to none, with 2 abstentions.

Point 5 of the revised amendments, as a whole, as amended, was adopted by 19 votes to none, with 2 abstentions.

Point 6 of the revised amendments was adopted by 16 votes to none, with 5 abstentions.

The draft resolution (E/CN.4/L.800) as a whole, as amended, was adopted by 19 votes to none, with 1 abstention.

The meeting rose at 1.5 p.m.