

CONVENTION ON NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

At its twenty-first session, in 1965, the Commission on Human Rights considered the “Question of the punishment of war criminals and of persons who have committed crimes against humanity”, following a proposal by Poland (E/CN.4/885; E/CN.4/L.733/Rev.1). On 9 April 1965, the Commission adopted resolution 3 (XXI) (E/4024), requesting that the Secretary-General undertake a study of the problem raised in international law by war crimes and crimes against humanity, and of existing legal procedures to ensure that no period of limitation applied to such crimes. The Commission decided to discuss the study as a matter of priority at its next session.

At its twenty-second session, in 1966, the Commission had before it the study undertaken by the Secretary-General which was based on an examination of international law relating to war crimes and crimes against humanity, and of relevant United Nations decisions, as well as information gathered from Governments on the issue (E/CN.4/906). The Commission additionally had before it statements submitted by several non-governmental organizations on the topic. After discussion of the topic, the Commission decided that the convention under consideration should be restricted in scope to the non-applicability of statutory limitations to war crimes and crimes against humanity (Report of the Commission on Human Rights, E/4184). On the recommendation contained in the Commission’s resolution 3 (XXII) on 4 April 1966, the Economic and Social Council thereafter adopted resolution 1158 (XLI) on 5 August 1966, by which it urged, *inter alia*, all States to prevent the application of statutory limitation to war crimes and crimes against humanity and to continue their efforts to ensure the arrest, extradition and punishment of persons responsible for them. The resolution also invited all Member States or members of the specialized agencies and the International Atomic Energy Agency to inform the Secretary-General of the measures they had adopted in relation to these requests, in order that the Secretary-General may submit the report on those measures to the Commission at its twenty-third session. Furthermore, the Commission was asked to prepare, at its twenty-third session, as a matter of priority, a draft convention to the effect that no statutory limitation shall apply to war crimes and crimes against humanity, irrespective of the date of their commission, for consideration by the Council at its forty-third session and for adoption by the General Assembly at its twenty-second session. The Secretary-General was requested to prepare a preliminary draft for such a convention to assist the Commission in its task.

At its twenty-third session, in 1967, the Commission had before it a note by the Secretary-General (E/CN.4/926), the report of the Secretary-General on measures taken by governments (E/CN.4/927 and Add. 1-6), and a preliminary draft convention, prepared by the Secretary-General (E/CN.4/928). The Commission decided to establish a Working Group in order to consider the text of the draft convention along with the comments, suggestions and proposals made during the debate of the Commission, and to report to the Commission on its findings (Report of the Commission on Human Rights, E/4322).

Due to lack of time, the Working Group was unable to consider the preamble or articles IV-VII, IX, IXa, X to XII of the Secretary-General’s draft. It did, however, include in its report draft texts for an article I, paragraphs 1 and 3 of an article II, and alternative texts for paragraph 2 of article II; it also considered article VIII, and an amendment submitted to the Commission by Greece (E/CN.4/L.917), as well as proposals and amendments by other States. The Working Group submitted its report to the Commission on 16 March 1967 (E/CN.4/L.943). The Commission adopted resolution 4 (XXIII) on 20 March 1967, by which it expressed, *inter alia*, its regret that it was not possible to prepare a draft convention, as requested, due to lack of time. The Commission transmitted to the

Council the preliminary draft convention submitted by the Secretary-General and the report of the Working Group, along with all proposals submitted to the Commission and the records of the Commission's discussions on this topic. The Commission requested that the Council transmit these documents and records to the General Assembly with the request that they be taken into consideration in the preparation and adoption by the Assembly of a draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. Furthermore, the Commission requested the Council to request that the Secretary-General include in the provisional agenda of the General Assembly the question of punishment of war criminals and of persons who have committed crimes against humanity, as a new and separate item.

During its forty-second session, in 1967, the Council adopted resolution 1220 (XLII), as proposed by Czechoslovakia (E/L.1163), and as orally amended by the United Kingdom, whereby it expressed the hope that the General Assembly would, at the earliest possible moment, adopt a convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. It also transmitted the relevant documents to the General Assembly, recommending that it take them into consideration in the preparation of a convention on the topic; finally, it requested the Secretary-General to include the question in the provisional agenda of the General Assembly.

During its twenty-second session, in 1967, the General Assembly allocated this item to the Third Committee and recommended that the Third and Sixth Committees establish a joint working group for the purpose of preparing a draft convention, the report of which would be examined by the Third Committee. On 17 November 1967, it was agreed by both the Third and Sixth Committees that a Joint Working Group was to be established (A/6989). The Joint Working Group was to take into consideration the documents that had been transferred, in resolution 1220 (XLII), to the General Assembly.

The Joint Working Group held seventeen meetings from 20 November to 7 December 1967. On 30 November, the Joint Working Group adopted a draft convention, which consisted of a preamble and ten articles (Report of the Third Committee to the General Assembly, A/6989). The Third Committee debated the report of the Joint Working Group (A/C.3/L.1503 and Corr. 1) but was not able to complete consideration of the draft convention. On 13 December 1967, the Third Committee adopted a draft resolution submitted by Dahomey, Guinea, India, Lebanon, Nigeria, Syria and the United Republic of Tanzania (A/C.3/L.1516) as amended by the Netherlands, Norway and the United Kingdom (A/C.3/L.1520) for consideration by the General Assembly. On the recommendation of the Third Committee (A/6989), the Assembly adopted resolution 2338 (XXII) on 18 December 1967, by which it expressed its thanks to the Joint Working Group of the Third and Sixth Committees for the work it had accomplished and requested that the Secretary-General transmit to Member States the report of the Joint Working Group containing the text of the draft convention adopted by the Group and invited them to submit comments on the draft convention. In addition, the Secretary-General was requested to issue to Member States, before the General Assembly's next session, a report containing the replies received regarding the text of the draft convention.

At the twenty-third session of the General Assembly, in 1968, the Third Committee had before it the draft convention submitted by the Joint Working Group and the comments of Governments relating to it, contained in the report of the Secretary-General (A/7174). The Third Committee decided, on the basis of a proposal of Poland, that it would not hold a general debate on the topic and instead it would consider the preamble and substantive articles of the draft convention straight away. On 15 October 1968, the Third Committee approved of the whole draft convention, as amended (A/7342). It recommended that the General Assembly adopt the convention. Accordingly, the General Assembly adopted resolution 2391 (XXIII) on 26 November 1968, with the Convention on

the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity attached as an annex.

The Convention entered into force on 11 November 1970 on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.