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STATUTORY LIMITATION WITH REGARD TO CRIMES AGAINST HUMANITY

Summary of the Report by Mr. Marc-Antoine
Pierson, Belgian Socialist, Doc. 1868.

Scheduled day of debate: Thursday, 28 January.

On a proposal by Austrian, Belgian, Danish, French, German, Irish, Dutch and Turkish members, the Assembly has taken up the problem of limitation with regard to crimes against humanity.

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Some member States of the Council ignore the practice of penal limitation; in others, however, proceedings against crimes must be opened within a certain time after they have been committed, generally twenty years. In the latter countries, therefore, the authors of crimes committed during the Second World War would no longer be able to be brought to trial after July 1965.

Mr. Pierson's report underlines the particular nature of these crimes which, under the name of crimes against humanity, belong henceforth to international penal law. The Council of Europe cannot remain indifferent to the fact that war criminals would go unpunished after the period of limitation, chiefly because crimes against humanity constitute particularly atrocious violations of human rights. By its

Statute and by the European Convention of Human Rights, the Council has responsibilities in the field of the protection of human rights which force it to enter into the fray, from which, the Rapporteur regrettably notes, political undertones and propaganda are unfortunately not always absent. Several states have already defined their position: Belgium has prolonged the period of limitation for certain crimes punishable by the death sentence which were committed during the war. In a recent law, France has declared that crimes against humanity are indefeasible by their very nature. The Government of the Federal Republic of Germany have appealed to all governments to send them all the information in their possession on Nazi crimes; a central office of research into such crimes has been set up at Ludwigsburg, which, by collecting evidence, may cause the opening of penal proceedings and in this way interrupt limitation; this work has been carried on for several years.

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Mr. Pierson's report lists three categories of crimes against humanity. First, genocide, the repression of which is provided for in a United Nations' Convention of December 1948. Since this Convention contains no clause relating to limitation, the Rapporteur suggests that to avoid any uncertainty of interpretation, the United Nations General Assembly should expressly exclude, by means of a resolution, the possibility of limitation.

With regard to other crimes against humanity, the report recommends that while awaiting the conclusion of the United Nations classification of international penal law, the member States of the Council of Europe should make it clear in their domestic legislation that crimes against humanity are by their very nature indefeasible.

Finally, there are the crimes against humanity committed before and during the Second World War. Although these crimes are indisputably international crimes, they are, nevertheless, punished through the national law of the member States in agreement with the various declarations of the allies during the war. Where national law provides for limitation, its application could, therefore, appear justified.

The Rapporteur underlines, however, that in spite of this "nationalisation" of one category of crimes against humanity, these do not entirely lose their international character. Mr. Pierson says "given that the Nazi crimes were international crimes, not only because the victims were representatives of all nationalities, but also because their executioners were not all members of a single people, is there any reason to prefer the law of the executioner to that of the victim? On the contrary, would it not be more logical to consider these as international crimes in every respect, and to treat them as not subject by nature to statutory limitation? Lastly, applying an ethical consideration which is elementary, not to say primitive, is it possible to allow the application of the statutory limitation when the prerequisites for statutory limitation, i.e. the abatement of passion and a desire to forget by no means obtain?"

The Report ends by asking the Committee of Ministers to examine whether, in spite of the assimilation of a category of crimes against humanity committed before and during the Second World War to crimes against domestic law, it would not be desirable to modify internal legislation so that these crimes do not go unpunished in the member States of the Council of Europe. According to Mr. Pierson, the solution could consist in the prolongation of the period of limitation.