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AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE THIRD MEETING

Lake Success, New York
Tuesday, 6 April 1948, at 2 p.m.

Chairman: Mr. MAKTOS (United States of America)
Vice-Chairman: Mr. MCROZCV (Union of Soviet Socialist Republics)
Mr. AZKOUL (Lebanon)

Members:

China	Mr. Mousheng LIN
France	Mr. ORDONNEAU
Poland	Mr. RUDZINSKI
Venezuela	Mr. PEREZ-PIEROSO

Secretariat:

Mr. SCHWELL (Assistant Director of the Division of
Human Rights)
Mr. GIRAUD (Secretary of the Committee)

Also present:

Mr. MARCUS (Acting Director of the Political Department
of the World Jewish Congress)

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CONTINUATION OF THE GENERAL DISCUSSION REGARDING THE CONVENTION ON GENOCIDE

The PRESIDENT opened the meeting and announced that he had received a memorandum from the Consultative Council of Jewish Organizations on a draft convention on genocide.

Mr. MOROZOV (Union of Soviet Socialist Republics) made a statement on the fundamental principles which, in the opinion of his delegation, should form the basis of the future Convention on Genocide. This statement based on the memorandum he had submitted (document E/AC.25/7, of 7 April) consisted of several points, the essence of which is as follows:

The crime which had to be repressed was defined as that aimed at the destruction of certain human groups on account of race, nationality (or religion).

Crimes of this kind were by their nature organically connected with fascism, nazism or other racial "theories" which preached hatred of races and nationalities and as well as the ascendancy of so-called "superior" races and the extermination of so-called "inferior" races.

Like the draft Convention prepared by the Secretariat (document E/447), the Soviet delegation's memorandum considered as factors constituting genocide various acts and measures aimed at the physical extermination of populations and acts and measures aimed at the destruction of the national and cultural heritage of these populations. It proposed the repression of attempts to commit acts of genocide, and a number of preparatory acts (studies and research for the purpose of developing the technique of genocide; setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide; issuing instructions or orders, etc...).

The Soviet delegation was of the opinion that the Convention should aim at suppressing any kind of propaganda (press, radio, film, etc...)

/which was

which was intended to arouse racial, national or religious hatred or to provoke acts of genocide.

By way of example -- and there were many others -- the USSR delegation's memorandum cited certain forms of genocide and, like the Secretariat's text, laid down the obligation of the contracting Parties to make provision in their penal law, if necessary, for its suppression or prevention.

The two distinctive characteristics of the Soviet proposal lay in its two last provisions. Point IX of the memorandum proposed that the Convention should provide that national tribunals would be competent to judge genocide in accordance with the internal legislation of the country concerned.

Point X proposed that the Convention should contain a provision stipulating that the contracting Parties must seize the Security Council of all cases of genocide, as well as all violations of the obligations of the Convention, so as to enable it to take the necessary measures in accordance with Chapter VI of the United Nations Charter.

Mr. RUDZINSKI (Poland) said that although genocide was a new term, the act it referred to was an ancient one. The fact that international repression of this crime had not been provided for sooner made it possible even today for some people to contest the legality of the Nurnberg judgment.

He considered that acts constituting genocide were acts aimed at the physical extermination of a human group or acts leading to its progressive extermination, called biological genocide, whatever the motives might have been that had inspired them.

He said that cultural genocide was closely related to the problem of the protection of minorities. His country would willingly sign and ratify any convention aimed at the protection of minority groups, but this idea should not be enclosed in a proper convention on genocide. That was essentially a political question which would give rise to great difficulties

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and as its practical result, it could decrease considerably the number of adherences to the proposed Convention. The idea of cultural genocide would therefore be more suitably placed either in a convention on minorities or human rights or even in a separate convention.

He then dealt with the question of the category of persons committing genocide who would be covered by the Convention. The idea that only rulers should be made internationally responsible for acts of genocide would have disastrous consequences and, contrary to the principles of criminal law requiring that accomplices should be punished on the same grounds as the principal offenders, would result in most cases in protecting accomplices from any kind of punishment.

He favoured universal repression of genocide, that is to say, the punishment of guilty persons wherever they might be or to whatever nationality they might belong. Nevertheless, the idea of setting up an international tribunal was, in his opinion, a premature one. In this connexion, he referred to the fate of the Convention of 16 November 1937 on the institution of an International Criminal Court; that Convention had been signed by 13 States, but none of them had ratified it. It would therefore be better to be satisfied, for the time being, with leaving the punishment of guilty persons to the various national jurisdictions. In support of this view, he pointed out the various categories of crimes against international law, namely, piracy, traffic in women and children, traffic in narcotic drugs, the repression of which was the responsibility of national jurisdictions. The Polish Criminal Code of 1932, which was still in force, stipulated, inter alia, in article 9 that "...any other crime recognized as such by international treaties to which the Republic of Poland is a Party" would be punishable.

This provision of the Polish Criminal Code would, if the occasion arose, be applicable to the crime of genocide.

/In conclusion,

In conclusion, Mr. Rudzinski stated that he would submit concrete proposals during the discussions and pointed out that the essential problem was to introduce into the various national legislations provisions for the prevention and punishment of crimes of genocide.

Mr. Mousheng LIN (China) said that he would not take up time by going into the past history of genocide or repeating the views of the Chinese delegation.

The first question was to determine what groups were to be protected. Were we to retain political groups? The Chinese representative had doubts about that. A political group had neither the stability nor the homogeneity of an ethnical group. Moreover, the same political group might be connected with different theorists of the doctrine. Thus a Liberal might be connected either with Malthus or with Ricardo or with others. That applied to every doctrine. Moreover, the individuals themselves changed their ideas.

In the second place, there was a risk of bringing about a confusion between the idea of political crime and that of genocide. It was known that the various political parties of a country were liable to commit acts that might display certain characteristics of genocide but were nevertheless political crimes. If the protection of political groups were included in the Convention, the number of charges would be multiplied ad infinitum.

As regards the categories of guilty persons to be covered by the Convention, he agreed with the Secretariat's version of article 4 of the draft as it had been amended by the United States. (American draft, article 3).

Moreover, he was in favour of the idea of universal repression, which would give to national jurisdictions the right to punish guilty persons wherever the crime might have taken place and to whatever nationality they might belong.

/The representative

The representative of China thought it would perhaps be desirable to provide for an international jurisdiction. It did not belong to the Committee to constitute a permanent International Criminal Court. It could at the most provide for the establishment of an ad hoc international tribunal.

As regards the relations between the Convention on Genocide and the Nurnberg principles, he said that the latter related solely to acts committed either during a war of aggression or in connexion with the preparation of such a war. It was the purpose of the Committee, however, to define and provide for the means for the punishment of genocide at all times and at all places.

After a short pause, the CHAIRMAN called upon Mr. Marcus, Acting Director of the Political Department of the World Jewish Congress.

Mr. MARCUS (Acting Director of the Political Department of the World Jewish Congress) thanked the Committee, on behalf of his organization, for having given it an opportunity to submit a general statement on genocide.

The Jewish Congress considered itself especially competent to make appropriate proposals on "this very important matter", because many of the communities it represented had been subjected to the most cruel and inhuman forms of wholesale extermination and persecution every recorded in the history of mankind. Mr. Marcus pointed out that six million Jews from different European countries had lost their lives, that others had been uprooted from their homes and that, even today, unless something were done, numbers of Jews might well become the victims of fresh persecution and new massacres.

When certain acts perpetrated during the war were recalled, it had to be recognized that there could be no security in the world if it were

/generally

generally accepted that the notion of sovereignty included the right of any Government to destroy groups of human beings within its borders or in areas coming under its control, without being subject to international supervision and punishment for such acts.

The representative of the World Jewish Congress denounced the unjustified attacks made on the Statute of the International Military Tribunal, and, more specifically, against the contention that it had established an ex-post factum ruling which was contrary to the principles of criminal law and of equity.

Mr. Marcus believed that the safety of ethnical groups and communities could not be guaranteed otherwise than by action by the United Nations. For that reason, one of the most important tasks before that Organization was to set up the machinery which would safeguard the existence of such groups against possible attacks by stronger groups. For that idea to become a reality, it was essential in the first place to prevent genocide.

In conclusion, Mr. Marcus put forward the following ideas:

1) No effective prevention of acts within the definition of genocide could be guaranteed through the medium of purely domestic legislation or action. It was indeed improbable that the local courts or authorities of a given country would be able to act with the requisite independence, especially where the indictable acts would have been committed by representatives of the Government, as had been the case on the eve of and during the last war in countries dominated by the Axis. It was essential, therefore, that in taking measures against genocide, the United Nations should, above all, provide for international action.

2) The Convention should embody a definition of genocide which would clearly specify the groups of persons to be protected. There was not, and could not be, any possible justification for the contention that the

destruction of such groups was a legitimate act of self-defence or of destruction

destruction of a given group was necessary for reasons of national defence.

3) The measures for the prevention of genocide should make it sufficiently explicit that no ethnical group or government was entitled to commit acts of genocide on other groups on the ground, real or imaginary, that the latter had themselves perpetrated that crime.

The state of unrest in which many European countries live at present led Mr. Marcus to fear the possibility in the near future of serious outbreaks of violence based on racial, religious or other grounds. The need for measures against genocide, therefore, appeared to him to be extremely urgent.

In the World Jewish Congress representative's opinion:

(a) Preventive measures should not be confined solely to Parties to the Convention, but should be of universal application;

(b) The Convention should include the obligation, for all Member States, to take measures to prevent the occurrence of genocide before the actual destruction of human groups began;

(c) The Convention should make provision for effective measures compelling States to deliver to the international authority all persons guilty of acts of genocide, regardless of the personal status of such persons;

(d) The Convention should make provision for the reparation of material damage caused by acts of genocide, and for the establishment of an international authority to adjudicate claims in such connexion;

(e) In view of the possibility of weakening or destroying human groups by economic and other measures short of the actual destruction of life, the Convention should prohibit any action likely to lead ultimately to the partial or total destruction of a human group;

(f) The Convention should make provision for the establishment of a supervisory body authorized to call the attention of the signatories

/to any

to any non-compliance with its provisions, to advise Member States on the action necessary to prevent genocide, and to consider petitions from groups or individuals who felt themselves threatened.

The CHAIRMAN proposed that the debate should be closed and that the Secretariat document be taken as a basis of discussion, on the understanding that the various delegations would remain free to submit their views as the discussion of the articles proceeded.

Mr. MOROZOV (Union of Soviet Socialist Republics) felt that it would be impossible to draw up a convention without prior agreement as to general principles. He saw no good reason why the Committee should not arrive at an unanimous decision on the principles set out in the USSR proposals. He therefore suggested that those proposals should be taken as a basis of discussion.

Mr. ORDONNEAU (France) accepted the proposal of the representative of the Union of Soviet Socialist Republics, reserving his right, however, to read and study the text which had not yet been distributed.

Mr. PEREZ-POROSO (Venezuela) thought that, according to the terms of reference conferred upon the Committee by the General Assembly and by the Economic and Social Council, the Committee had to take as a basis of discussion the draft proposals already communicated to all the Governments concerned. That procedure would have the advantage of allowing the various representatives on the Committee to consult their Governments more easily.

He, therefore, formally proposed that the Secretariat proposals (document E/447) should be taken as a basis of discussion.

Mr. MOROZOV (Union of Soviet Socialist Republics) insisted that the short document submitted by his delegation should be distributed to the Committee prior to a vote being taken.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) felt that it was of primary importance to reach agreement first on basic principles of the question. He therefore proposed to examine first of all the Soviet memorandum, not to discuss the text itself but to take note of the principles it contained and then to study the draft submitted by the Secretariat in the light of the principles that would be made clear in the consideration of the Soviet memorandum.

In reply to a question by the Chairman, Mr. MOROZOV (Union of Soviet Socialist Republics) agreed that the fact of accepting the main principles of his proposal in no wise meant that the members of the Committee undertook to accept the actual text.

After a short debate, the Committee decided to adopt the USSR proposal, as it had been amended by the delegation of Lebanon.

DISCUSSION OF THE PRINCIPLES SET FORTH IN THE MEMORANDUM OF THE USSR:
POINT I

The CHAIRMAN invited the Committee to proceed with the consideration point by point, of the principles set forth in the proposals of the USSR delegation, and requested the Committee, inter alia, to take a decision on the question of the groups to be protected by the Convention.

Mr. AZKOUL (Lebanon) stated that the Convention had not only a political but also an educational aim. On that account, it was essential to establish an accurate definition of genocide, of which the various provisions of the Convention would be a logical sequence.

The CHAIRMAN, speaking as the representative of the United States, supported the general idea of the definition contained in the USSR text. He defined this definition in the following terms: "Genocide is the

/extermination

extermination or attempted extermination of racial, national and religious groups of human beings."

Mr. AZKOUL (Lebanon) asked if "extermination" was to be taken to mean the physical destruction of individuals composing a group or the elimination of the group as such.

The CHAIRMAN said that for the time being, he was referring only to physical extermination. To lay down a very precise distinction between the extermination of individuals comprised in a group and that of a group as such would raise very delicate questions of law and would involve the Committee too deeply. Moreover, the definition just proposed was of a purely provisional nature and was subject to revision.

Mr. ORDONNEAU (France) pointed out that, from a legal viewpoint, it was difficult to dissociate principles and the drafting of the text. It was juridically dangerous to use such a general term as "extermination". At the same time, he was prepared to accept the definition proposed by the Chairman.

Mr. AZKOUL (Lebanon) also agreed to accept that definition, provided it covered the physical destruction of groups of individuals.

Following a question put by the CHAIRMAN, a general debate took place on whether or not genocide should apply to political groups.

Mr. ORDONNEAU (France) replied that, in his opinion, it was necessary to protect freedom of opinion not only in political matters but also in all other fields.

Mr. MOROZOV (Union of Soviet Socialist Republics) did not share the opinion of his French colleague. He thought, in fact, that the notion

/of opinion

of opinion was not precise enough to enable courts, which might be called upon to deal with such questions, to arrive at a decision. Moreover, it appeared to him deprived of scientific basis and practically unapplicable.

Mr. ORDONNEAU (France), in reply, said that the difficulties stressed by Mr. Morozov might be of a philosophical or political nature but certainly could not be of a legal character. In a Frenchman's mind, the notion in question was clear enough to allow of its being included in the Convention. The United Nations could be considered as a legislative body the essential role of which was to provide the legal authority with the means of giving effect to its designs. Therefore, the representative of France requested that the Convention on Genocide should provide for the protection of groups formed on the basis of the opinions of their members.

Mr. PEREZ-PEROSO (Venezuela) approved, in principle, the arguments of Mr. Ordonneau. The dictatorial governments of some countries in Latin America, for example, did not hesitate to make use of persecution, torture and executions to crush political groups which attempted to oppose their domination. Nevertheless, according to the representative of Venezuela, there were reasons which made it difficult to include in the Convention, political motives among those which, in the mind of the Committee, might provoke the crime of genocide. A decision taken in that sense might, in his opinion, prevent the adherence of countries which had to struggle against subversive movements.

On the proposal of the Chairman, the Committee, for the time being, decided to keep to the definition of genocide which he had proposed.

The meeting rose at 6.15 p.m.