

AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE NINTH MEETING

Lake Success, New York
Wednesday, 14 April 1948, at 2.20 p.m.

Chairman: Mr. MAKTOS (United States of America)

Vice-Chairman: Mr. MOROZOV (Union of Soviet Socialist Republics)

Rapporteur: Mr. AZKOUL (Lebanon)

Members:

Mr. LIN MOUSHENG	China
Mr. ORDONNEAU	France
Mr. RUDZINSKI	Poland
Mr. PEREZ-PIEROZO	Venezuela

Secretariat:

Mr. SCHWELB	Deputy Director of the Division of Human Rights
Mr. GIRAUD	Secretary of the Committee

COMMUNICATION FROM THE DELEGATION OF PAKISTAN

The CHAIRMAN informed the Committee that he had received a letter dated 9 April 1948 bringing to the notice of the Committee certain acts of genocide committed against the Muslim population of India. The Pakistan delegation again drew the Committee's attention to the need to expedite the preparation of a convention for the prevention and suppression of genocide.

The Chairman instructed the Secretary of the Committee to acknowledge receipt of the Pakistan delegation's communication and to assure the latter that the Committee was fully aware of the importance and urgency of the convention which it had been charged to prepare.

NOTE: Corrections of this summary record provided for in the
PR 2311948 of procedure should be submitted in writing within
two working days to Mr. Delavenay, Director, Official Records
Division, Room CC-119, Lake Success. Corrections should be accompanied
by or incorporated in a letter written on headed notepaper and en-
closed in an envelope marked "Urgent" and bearing the appropriate

CONTINUATION OF THE DISCUSSION OF THE PROPOSAL SUBMITTED BY THE
DELEGATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN CONNECTION
WITH THE BASIC PRINCIPLES OF A CONVENTION ON GENOCIDE
(document E/AC.25/7)

The CHAIRMAN called on the Committee to resume the discussion of section X of the proposal submitted by the USSR delegation.

Mr. AZKOUL (Lebanon), Rapporteur, suggested that section X of the USSR proposal be amended to make quite clear that the signatories to the convention must seize the Security Council of all cases of genocide constituting a danger to peace and international security, but that other cases of genocide should be referred to other organs of the United Nations.

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that agreement should first be reached on the principle of recourse to the Security Council, and that the final wording of the corresponding article in the convention should be discussed later. He reserved the right to submit a text when the time arrived to do so.

He accepted the amendment proposed by the representative of the Lebanon.

The CHAIRMAN, speaking as the representative of the United States of America, suggested that the principle of compulsory recourse to the Security Council proposed by the USSR delegation be replaced by the principle outlined in article XII of the draft Convention as proposed by the delegation of the United States of America (document E/623, page 24 of the English text), according to which:

/"The High

"The High Contracting Parties, who are also members of the United Nations, agree to concert their actions as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide."

Mr. Maktos pointed out to the Committee that the text quoted had the advantage of offering a wider field of action to the United Nations Organization. Moreover, concerted action by the signatories of the convention certainly bore more weight than individual applications to one of the organs of the United Nations.

Mr. AZKOUL (Lebanon), Rapporteur, observed that there was no inconsistency whatsoever between the text proposed by the United States representative and that of the USSR delegation amended in the sense previously indicated. The two texts could perfectly well stand side by side. For its own part, the Lebanese delegation was prepared to accept both texts.

Mr. LIN MOUSHENG (China) observed that a sovereign state could not be placed under the obligation of bringing charges against another state. If the signatories of the convention were to be compelled to denounce states guilty of genocide, would it not be still more to the point to oblige the accused states to answer the summons of the Security Council or any other organ of the United Nations? Mr. Lin Mousheng drew the Committee's attention to the danger of including such a stipulation in the convention, and proposed that states should be given the option, rather than placed under the obligation, of having recourse to the appropriate organ of the United Nations.

Mr. RUDZINSKI (Poland) thought on the contrary that such an obligation was necessary. It would eliminate any suspicion that

/the accusing

the accusing state acted for any reason other than the desire to ensure the observance of the Convention on Genocide. The argument adduced by the representative of China proved, contrary to what the latter believed, that it was essential to place the contracting states under obligation to refer cases to the Security Council. A state which refused to appear in answer to such a charge would ipso facto prove its own guilt. Failure to appear would not prevent the United Nations Organization from taking the measures considered necessary.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that concerted action as advocated by the United States delegate would not constitute the best or the most effective method of ensuring the intervention of organs of the United Nations in cases of genocide or of breaches of the obligations imposed by the convention.

Replying to the Chinese representative, Mr. Morozov stated that it was by no means the intention of the USSR delegation that section X of its proposal should compel states to appear as the accusers of other states: the aim of the section was to ensure that the statutes of the convention should not remain a dead letter. The method proposed by the USSR would thus make the campaign against genocide more effective.

Mr. ORDONNEAU (France) remarked that, in practice, acts of genocide either had no effect on international peace, in which case they passed unnoticed, or they constituted a threat to peace, in which case they could not be disregarded. In the first case it was useless to refer the matter to the Security Council, which could not take cognizance of it. In the second, any member of the United Nations Organization would be able to bring the matter to the attention of the Security Council.

On the proposal of Mr. AZKOU (Lebanon), Rapporteur, the CHAIRMAN asked for a vote on the principle of the obligation of states signatories of the convention to seize the Security Council of cases of genocide or of a breach of obligations assumed under the convention.

The Committee decided by four votes to three to discard the principle of obligatory notification.

The CHAIRMAN then put to the vote the principle of concerted action contained in the proposal submitted by himself as representative of the United States of America.

The principle of concerted action was adopted by five votes to one, with one abstention.

Mr. RUDZINSKI (Poland) explained that he had abstained from voting because he thought that the text proposed by the United States delegation did not specify to which organs of the United Nations cases of genocide should be referred.

DISCUSSION OF ARTICLES IV AND V OF THE DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE, PREPARED BY THE SECRETARIAT (document E/447)

Article IV

Mr. ORDONNEAU (France) stated that in the opinion of his delegation the authors of the crime of genocide and their accomplices should be punished, whether they were private individuals or rulers. He recalled that the Committee had agreed unanimously on that point.

Mr. PEREZ-PEROZO (Venezuela) stated that his delegation was not satisfied with the wording of article IV, which appeared to make a distinction between "public officials" and "rulers". In Venezuela, all rulers, whatever the importance of their functions, were considered to be state officials. All officials, including

/the head

the head of the State, were liable for their actions under the penal laws of the country.

Mr. ORDONNEAU (France) remarked that in France the contrary was the case: a distinction was made between political personalities proper, such as ministers, and public officials who were members of the civil administration. He proposed that a decision on the wording to be adopted should be postponed until the Committee proceeded to the drafting of the convention.

Mr. PEREZ-PEROZO (Venezuela) wished to know whether diplomatic immunity would be respected if a diplomat were guilty of participation in an act of genocide on the territory of the State to which he was accredited.

Mr. ORDONNEAU (France) thought that the question of immunity did not come under article IV. In the hypothetical case mentioned by Mr. Perez-Perozo, the guilty diplomat might either be recalled by his government at the request of the authorities to which he was accredited, or might have his immunity revoked.

Mr. SCHEWELB (Secretariat), on being consulted by members of the Committee, stated that it was difficult to give a considered opinion on so delicate a question at once. For the Committee's information however, he cited the precedent established during the work of the United Nations War Crimes Commission, of a government's declaring itself prepared to extradite a foreign diplomat charged with war crimes, who had been accredited to it between the time of committing these crimes and the time of being charged. The only condition stipulated by that government was that the charge should be substantiated.

Mr. RUDZINSKI (Poland) pointed out the danger of such
/a precedent.

a precedent. If followed, it would infringe the principle of immunity enjoyed by diplomats responsible for maintaining relations between States.

The inviolability of diplomatic missions was established by a long and universally respected tradition; no international convention could revoke that principle.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that there was no provision in article IV under which it could be interpreted as authorizing any change in a principle generally accepted in international affairs. However, to prevent any misunderstanding, he proposed stating in the report that the Committee had no intention of impairing the system of diplomatic immunity.

The Committee adopted Mr. Morozov's proposal.

The CHAIRMAN asked that it should be stated in the Summary Record that all members of the committee agreed to recognize that rulers, public officials and private individuals should be held responsible.

Article V

Mr. ORDONNEAU (France) observed that the national laws of different countries gave different rulings on the question of the responsibility of officials acting on command of the law or superior orders. In principle, anyone who committed a crime should be held guilty of that crime, whether he acted on his own initiative or on orders received. In some cases, however, national legislation recognized that the fact of having received orders might excuse the crime, provided that there was a sufficient degree of constraint.

He did not object to a provision that an official acting on

/orders

orders from his Government should be held guilty; this did not exclude the possibility of pleading orders received as extenuation in certain very exceptional cases.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the text of article V of the Secretariat draft was excellent and was in conformity with the legal precedent not only of the Nurnberg Tribunal, but of all the courts established in the occupied zones after the defeat of Germany and Japan. He saw no need to amend the article or add provisions giving the benefit of extenuating circumstances to officials who acted on command of the law or superior orders; this was outside the scope of the convention which the Committee intended to draw up and might diminish the actual effectiveness of the proposed measures for prevention and punishment. It should be clearly understood that an act of genocide would in no case be justified because it had been committed under orders; a guilty official could only plead superior orders to obtain a reduced sentence in certain cases.

Mr. AZKOUL (Lebanon) thought that special attention should be given to offenders who committed a crime of genocide on superior orders. For although orders could not justify the crime, they could alter its nature. The concept of genocide was a new concept, implying murder with intent to commit genocide. An offender could participate in an act of genocide although he was not personally prompted by the specific intention of destroying a group of human bodies as such. The Committee agreed that before deciding that a State was guilty of genocide, the motives that had inspired its action must be established. There was all the more reason to grant the guarantees given to States to officials bound to carry out orders. When the intention to commit an act of genocide

/could not

could not be established, the criminal act was called homicide, and the criminal could be prosecuted for murder, but not for this new category of crimes which it had been agreed to call "genocide".

Mr. RUDZINSKI (Poland) wondered whether, in practice, the intentions and motives of each offender could be assessed; he favoured the text prepared by the Secretariat.

Mr. OGDONNETAU (France) fully appreciated the doubt expressed by the representative of Lebanon, but thought that the evaluation of degrees of personal responsibility should be left to the Public Prosecutor in each country.

The CHAIRMAN observed that under United States law any person who participated, to any extent whatsoever, in a criminal act, was held responsible for the crime, even though he personally had no intention of committing it. (For instance, if a person intended to take part in a robbery and stood on watch, and another participant committed a murder, the accomplice was held responsible.)

Mr. AZKOUL (Lebanon) reserved the right to revert to the matter when the definition of the crime of genocide was drafted.

The CHAIRMAN, speaking as representative of the United States, proposed the deletion of all reference to superior orders, as he felt it would weaken the effectiveness of the convention. He agreed with the representative of France that extenuating circumstances could be pleaded in each specific case.

Mr. MOROSOV (Union of Soviet Socialist Republics) could not share this view. He recalled that article VIII of the Statute of the Nurnberg Tribunal, while granting the benefit of extenuating circumstances, expressly stated that any subordinate acting on superior orders should be held responsible.

/The delegation

The delegation of the USSR emphasized individual responsibility because it was convinced of the great educational value of the proposed convention. The convention should serve not only as an instrument of punishment, but also as an instrument of prevention. If the Convention on Genocide failed to retain the concept of individual responsibility of the accomplice or criminal, it would lose the force of warning that should be given it. Mr. Mcrosov urged the representative of the United States to withdraw his proposal.

Mr. PEREZ-PERCEZ (Venezuela) wondered to what extent article V of the Secretariat draft, in its present wording, might be interpreted as an incitement to disobedience and insubordination, since officials might invoke its provisions to question superior orders. He feared that States might hesitate to sign the convention if this provision were retained.

In view of the observations of the Venezuelan representative, the Committee decided to postpone decision in principle on the matter until the drafting of the relevant article of the convention.

Mr. RUDZINSKI (Poland) asked that the Summary Record should state his delegation's view that the convention should include an article stipulating that superior orders could not exonerate subordinates guilty of acts of genocide.

DRAFTING OF THE CONVENTION: METHOD OF WORK

The CHAIRMAN announced that the general discussion on the basic principles of a convention on genocide was closed and that the Committee should proceed to draft the text. For this purpose, he suggested that it constitute itself a drafting committee of the whole.

To save time, he proposed that none of the drafts submitted be used as working papers; delegations could submit their proposals

/for the

for the text of the convention as each article was discussed.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought it essential that the general structure of the convention should be determined first. The delegation of the USSR had prepared an outline grouping all the points upon which agreement had been reached during the general discussion and he suggested that the Committee should use it.

Mr. PEREZ-PEROZO (Venezuela), supported by Mr. AZKOUL (Lebanon), Rapporteur, recalled that the Committee had decided by a formal vote, at the beginning of its session, to use the draft prepared by the Secretariat as a working basis when drafting the articles of the convention. They urged that this very carefully prepared and comprehensive draft should be used.

Mr. LIN MOUSHENG (China) supported the Chairman's proposal. He thought it preferable not to work from any prepared text, but only to retain the following chapter headings for guidance: Preamble, Definitions, Responsibilities, National and International Jurisdiction, Relation of the Convention to the United Nations.

The CHAIRMAN and Mr. ORDONNEAU (France) approved this classification, which corresponded to the one they had in mind.

After an exchange of views, during which Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that his outline differed only in detail from the plan proposed by the Chinese representative, the Chairman put the following proposal to the vote:

"1) The Committee would not use any prepared text;

"2) The

- "2) The Committee would adopt the classification suggested by the representative of China;
- "3) Each representative would be free to propose additional items."

The Committee adopted the Chairman's proposal by five votes to two.

The meeting rose at 6.20 p.m.