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AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Lake Success, New York

Monday, 10 May 1948, at 2 p.m.

<u>Chairman:</u>	Mr. MAKTOŠ	United States of America
<u>Vice-Chairman:</u>	Mr. MOROZOV	Union of Soviet Socialist Republics
<u>Rapporteur:</u>	Mr. AZKOUL	Lebanon
<u>Members:</u>	Mr. LIN MOUSHENG	China
	Mr. ORDONNEAU	France
	Mr. RUDZINSKI	Poland
	Mr. PEREZ-PEROZO	Venezuela
<u>Secretariat:</u>	Mr. SCHWELB	Assistant Director, Human Rights Division
	Mr. GIRAUD	Secretary of the Committee

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ADOPTION ON FIRST AND SECOND READING OF THE REPORT ON THE FINAL CLAUSES (Articles XI to XIX inclusive).

Article XI:

On the proposal of Mr. LIN MOUSHENG (China), the second paragraph of the observations beginning with the words "A delegate said..." was deleted.

The observations on Article XI were adopted.

Article XII:

The observations on Article XII were adopted without discussion.

Article XIII:

On the proposal of Mr. MOROZOV (Union of Soviet Socialist Republics), the following sentence was added after the words "some a higher":

"The representative of the Union of Soviet Socialist Republics, in particular, submitted a proposal that the number of such ratifications and accessions should be twenty-nine".

The observations on Article XIII were adopted.

Article XIV:

The CHAIRMAN observed that the words "was seized with", in the English text, should be replaced by the words "had before it".

The observations on Article XIV were adopted.

Article XV:

The observation on Article XV was adopted without discussion.

Article XVI:

In the last line of the second paragraph, the words "to seize" were replaced by the words "to bring the matter before".

The observations on Article XVI were adopted without discussion.

Article XVII:

The observation on Article XVII was adopted without discussion.

Article XVIII:

The words "Article XVI" in the second paragraph of article XVIII were amended to read "article XII".

The observations on Article XVIII were adopted without discussion.

Article XIX:

The observation on Article XIX was adopted without discussion.

ADOPTION ON SECOND READING OF THE REPORT ON THE PREAMBLE AND ARTICLE I (Document E/AC.25/W.5)

The first page was adopted without discussion.

Preamble of the Draft Convention

The words "in this convention", in the last paragraph of the preamble, were deleted and the word "hereinafter" was inserted after the word "as".

Observations on paragraph 1.

On the proposal of Mr. MOROZOV (Union of Soviet Socialist Republics), the following passage was inserted after the first sentence "The representative of the Union of Soviet Socialist Republics submitted a proposal to include in the preamble the following texts:

'The High Contracting Parties declare that the crime of genocide is one of the gravest crimes against mankind' and

'This crime constitutes a rude violation and an insult to the principles and purposes of the United Nations'".

Observations on paragraph 2

The words "It was emphasized" on page 5, line 1, were replaced by the words "He emphasized".

/Observations

Observations on paragraph 3:

On the CHAIRMAN's proposal, the sentence beginning: "Fearing that the crime of genocide..." was amended to read "Since it was feared that the crime of genocide..." Military Tribunal, several amendments were made; among others, the words "under a different legal description" were added.

The word "has" was deleted in two places on Page 7.

The observations on the preamble were adopted.

On the proposal of Mr. LIN MOUSHENG (China) it was decided to number the articles of the Convention with Roman numerals and the paragraphs with Arabic numerals.

Article I

After some slight changes in wording, the observations on Article I were adopted.

ADOPTION ON SECOND READING OF DOCUMENT E/AC.25/W.4 (Introduction and Articles II to VII inclusive).

The first page was adopted without discussion.

The word "Present", on page 2, was deleted.

In the first paragraph under the heading "DETERMINATION OF PROCEDURE etc", on page 2, the words "formulas proper" were replaced by the words "exact wording" and the words "if approved by the Committee" were inserted after the words "in the note".

The last paragraph on Page 2 was replaced by the following text:

"Although the Committee had previously decided on the proposal of the representative of Venezuela to take the Secretariat draft as the basis of the actual drafting of the Convention which followed the discussion of general principles, it eventually reversed its decision and it resolved not to

/take

take as a basis any of the drafts before it, namely, the Secretariat draft (document E/447), the draft of the United States of America (document E/623) and the French draft (document E/623/Add.1) but to take them into account in its work. The final clauses of the Secretariat draft were however kept as the basis of the Committee's work."

The following text was inserted between the third and fourth paragraphs on page 3:

"The text of the Draft Convention as a whole was adopted by the Committee in its twenty-sixth meeting on 30 April 1948 by five votes to one, with one abstention."

(Some members of the Committee having expressed the opinion that it was unnecessary to mention the number of votes, the representative of the USSR pointed out that this would imply that the Draft Convention had been adopted unanimously, whereas he had voted against it for the reasons given in his statement. Moreover, the representative of Poland asked that explicit mention should be made of the fact that he had abstained from voting for the reasons he had stated).

"In accordance with sub-paragraph (a) of the Resolution of the Economic and Social Council dated 3 March 1948 (document E/734), this Draft Convention is herewith submitted to the Economic and Social Council. The text of the Draft Convention is given in an Annex to this report."

The last two paragraphs on page 3, beginning with the words "The report indicates..." were deleted.

There was a discussion of some length on the advisability of including the note at the bottom of page 3, stating that the draft Report contained commentaries on the scope of the provisions unanimously adopted.

Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) maintained that the note was entirely unnecessary and could be dangerous.

Mr. AZKOUL (Lebanon), Rapporteur, on the other hand, argued that the note was necessary as a guide for those who wished to refer to the sources of the debates.

The Committee finally decided by two votes to one, to delete the note at the bottom of page 3.

Mr. AZKOUL (Lebanon), Rapporteur, stated that he would include his reservations regarding this deletion in the report.

Article II

Mr. LIN MOUSHENG (China) asked that the first note at the bottom of page 6 should be replaced by the following text:

"The representative of China called the attention of the Commission to the fact that during the second World War the Japanese built a huge opium extraction plant in Mukden, which could process some 400 tons of opium annually, producing fifty tons of heroin -- at least fifty times the legitimate world requirements. This quantity, according to medical authorities, would be enough to administer lethal doses to 200,000,000 to 400,000,000 persons.

"It is clear the representative of China stated, that the Japanese intended to commit, and did commit, genocide by narcotics. The plant in question was the most sinister and monstrous conspiracy known in history. He emphasized the fact that narcotic drugs could be used as an instrument of genocide, and he wished it to be understood that articles II (sub-paragraphs (2) and (3)), and article IV, (sub-paragraphs

(b), (d), and (e)), should cover genocide by narcotics, if narcotic drugs were not specifically mentioned in the Convention.

"The representative of China further suggested that Article II (sub-paragraph (2)), might be amended to read, 'impairing the physical integrity or mental equilibrium of members of the group', or 'impairing the health of members of the group'.

Such an amendment would make it sure that narcotic drugs would be covered by the Convention."

Article III

The observations on Article III were adopted.

The meeting was suspended at 4.30 p.m., and resumed at 5.15 p.m.

Article IV:

The CHAIRMAN, speaking as representative of the United States of America, recalled that his delegation was opposed to specific reference to direct incitement to genocide being made in the Convention. He therefore asked that the first note on page 12 of the Report should be replaced by the following text:

"The United States delegation believes that the Convention should establish the culpability of all who directly perform the physical acts comprehended in the crime of genocide, all who "conspire" together to achieve the end which is to be described by this Convention, the act of genocide, or who "attempt" to achieve this end. In this connection a "direct incitement" to the achievement of the prescribed end, if of a nature to create an imminent danger that it would result in the commission of the crime, would generally constitute part of an attempt thereto and an overt act of conspiracy thereto. To outlaw such incitement, it is

/sufficient

sufficient to outlaw the attempt and conspiracy without specifically enumerating the acts of direct incitement in the Convention."

Mr. AZKOUL (Lebanon), Rapporteur, thought that in the final text, paragraph 2 on page 13, concerning propaganda in favour of genocide, should be placed under "Rejected Proposals."

Mr. MOROZOV (Union of Soviet Socialist Republics) asked for the deletion of the word "indirect" from the heading of paragraph 2 mentioned above.

The observations on Article IV were adopted.

Article V.

The CHAIRMAN, speaking as representative of the United States, proposed the insertion of the following text immediately after the heading "Persons liable":

"The Committee decided to insert in its report its opinion that the rules concerning diplomatic immunities and privileges are not affected by the Convention."

Mr. MOROZOV (Union of Soviet Socialist Republics) opposed that suggestion.

After some explanations by Mr. SCHWELB (Secretariat), the proposal was rejected.

With regard to page 14, Mr. MOROZOV (Union of Soviet Socialist Republics) recalled the statement he had previously made following the Committee's rejection of the proposal to stipulate, in a special paragraph, that "Command of the law or superior orders shall not justify genocide."

Mr. PEREZ-PEROZO (Venezuela) presented the following text for inclusion in the report:

"In opposition to the Soviet proposal, the representative of Venezuela stated that that principle is a danger to the stability of the institutions of the State. The Charter of the Military Tribunal of Nürnberg admitted that principle having in mind the crimes of war; but to accept it in time of peace is to invite the armed forces to disobedience, when they are in themselves a non-political body, bound to obedience and non deliberative. He also said that as far as his country was concerned, the law exempted from penal responsibility those who acted by virtue of due and legitimate obedience while its sanction fell on those giving the illegal order."

/With reference

With reference to the same point, Mr. RUDZINKSI (Poland) in turn asked that the following statement should be inserted in the final Report:

"The omission from the Convention of the provision stating that 'Command of the law or superior orders shall not justify genocide' represents a serious step back in the development of international law and endangers seriously the effective prevention and repression of genocide under this Convention. Therefore, the Polish Delegation cannot share any responsibility for the Convention in its present form and cannot support it until amended."

The observations on Article V were adopted.

Article VI.

The heading: "Obligation for Contracting Parties to harmonize their domestic legislation with the Convention" was amended to read: "Domestic Legislation".

The text of the observations gave rise to a long discussion, in which Mr. MOROZOV (Union of Soviet Socialist Republics), Mr. AZKOU (Lebanon), Rapporteur, the CHAIRMAN, as representative of the United States, Mr. LIN MOUSHENG (China) and Mr. PEREZ-PIEROZO (Venezuela) took part.

The Committee finally decided to amend the text of the report as follows:

The observations would open with a brief preamble followed by the text of the USSR proposal contained in the note on page 17 of document E/AC.25/W.4.

The first and third paragraphs on page 16 were retained.

The whole passage from the beginning of the fourth paragraph on page 16 ("The answer was.....") to the end of the fourth line on page 17 ("in conformity with their constitutional procedure") was deleted and replaced by another text giving the USSR and Polish delegations, which

/had been

had been in the minority at the time of voting, an opportunity to make their point of view more fully in the report. The new text was as follows:

"To this effect the representatives of the Union of Soviet Socialist Republics and Poland stated that there already existed a number of conventions, providing for the obligation of States-signatories to envisage in their legislation the measures of criminal penalties for certain kinds of crimes. (Footnote: 'For example: The Convention for the Prevention of Traffic in Women and Children, Geneva, 30 September 1921; Convention for the Repression of Counterfeiting Currency, Geneva, 20 April 1929, etc.')"

"They contended that the introduction in the national legislation of laws for the suppression and prevention of genocide, the suppression and prevention of racial, national and religious hatred and laws for criminal penalties for the culprits of such crimes, was an elementary condition, without which, in the opinion of these representatives, there can be no talk about any suppression of the above-mentioned crimes.

"As regards the argument that such an obligation would be an obstacle to the ratification of the Convention by some States, the representative of the Union of Soviet Socialist Republics stated to this effect that in this case, the legislation required for the punishment of culprits of genocide should be evidently enacted first and only then the Convention ratified in conformity with the constitutional procedure. In other cases this can be obviously done simultaneously, for in his opinion one cannot imagine a situation when a State would join the Convention but would not enact in its legislation the laws for punishment of crimes, provided for by the Convention. This would be tantamount to refusal to become a party to the Convention."

/Mr. RUDZINKSI

Mr. RUDZINSKI (Poland) requested the inclusion of the following statement in the Report:

"The Polish Delegation is of the opinion that the present text of Article VI is ambiguous and insufficient.

"The text should at least be amended to read 'The high contracting parties undertake to enact in accordance with their constitutional procedures the legislation necessary to give effect to the provisions of this Convention' and be supplemented with a provision concerning the prevention of genocide as well as combatting any propaganda to racial, national and religious hatred."

The observations on Article VI, as amended, were adopted.

Article VIII.

Mr. MOROZOV (Union of Soviet Socialist Republics) asked that the second and third paragraphs of the observations on Article VIII (document E/AC.25/W.5, page 16) should be redrafted as follows:

"The representative of the Union of Soviet Socialist Republics proposed the following text:

"The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter."

The observations on Article VIII were adopted with that amendment.

The observations on the other Articles of the Convention were adopted with various drafting amendments.

Before the report as a whole was put to the vote by the Chairman, Mr. AZKOUL (Lebanon) read out the following statement:

"In voting for the Report, the representative of Lebanon wishes to point out that the draft Report submitted by him as Rapporteur to the Committee (Document E/AC.25/W.1 and Add.1,2,3 and 4) contained comments on the scope of certain provisions of the Convention based on views expressed by various members of the Committee. The Committee decided to eliminate all comments of this kind."

Mr. RUDZINSKI

Mr. RUDZINSKI (Poland), who had abstained from voting on the draft convention as a whole, read out the following statement:

"The Delegation of Poland, a country which suffered so terribly from genocide committed by Hitlerite Germany, was and is one of the main supporters of an International Convention on Genocide as a matter of great international importance and urgency. During the General Assembly in 1946, in the Committee on Codification of International Law, as well as during the General Assembly in 1947, and in the last session of the Economic and Social Council, the Polish Delegation expressed with great emphasis and several times its opinion on this matter, and submitted proposals and suggestions. It is, therefore, with profound regret that the Polish Delegation abstained from voting on the draft adopted by the Ad Hoc Committee for the reasons explained in connection with certain articles. The Polish Delegation will do all in its power to achieve a text of the Convention on Genocide which would be both effective and acceptable to Members of the United Nations. Poland wishes to be one of the first signatories of the Convention on Genocide."

The report as a whole was put to the vote and adopted unanimously.

Mr. LIN MOUSHENG (China) expressed his pleasure at having had the opportunity to collaborate with the Chairman, the Vice-Chairman, the Rapporteur, his colleagues on the Committee and the members of the Secretariat

Mr. AZKOUL (Lebanon), Rapporteur, made a similar statement.

Mr. MOROZOV (Union of Soviet Socialist Republics) thanked the Secretariat services. He hoped that his country's views would find support when the text of the Convention was finally discussed. He hoped that his delegation would be able to vote in favour of the Convention, which should become an effective weapon against genocide.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) endorsed the cordial sentiments of the previous speakers and expressed his wish for the views of the Draft Convention.

Mr. PEREZ-PEROZO (Venezuela), after paying a tribute to the Chairman, especially thanked the interpreters, of whose services he had often been obliged to make use.

The meeting rose at 7.30 p.m.

The Chairman declared the session of the Committee closed.