

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL
LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at Lake Success on Friday, 13 June 1947, at 3 p.m.

CHAIRMAN:	Sir Dalip Singh	(India)
MEMBERS:	Dr. Enrique Ferrer Vieyra	(Argentina)
	Mr. A. H. Body	(Australia)
	Dr. Gilberto Amado	(Brazil)
	Dr. Shu-hsi Hsu	(China)
	Prof. Jesus M. Yepes	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Prof. Henri Donnedieu de Vabres	(France)
	Dr. J. G. de Beus	(Netherlands)
	Dr. Alexander Bramson	(Poland)
	Mr. Erik Sjoborg	(Sweden)
	Prof. Vladimir Koretsky	(Union of Soviet Socialist Republics)
	Prof. J. L. Brierly	(United Kingdom)
	Prof. P. C. Jessup	(United States)
	Dr. Perez Perozo	(Venezuela)
	Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN opened the meeting and called upon the delegate of Colombia, who wished to make a statement.

Prof. Jesus M. YEPES (Colombia) read his delegation's official statement and asked for its reproduction in full in the summary record:

"The Colombian delegation did not think it necessary to press the point brought up in the course of the discussion concerning the power granted to the I.L.C. to appoint a Rapporteur not a member of the Commission.

"The Colombian delegation requests permission to reaffirm its vote against this proposal on the grounds that such a power is contrary to parliamentary tradition which

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requires a Rapporteur to be a member of his Commission in his own right. That has been the well-established custom and law for a long time.

"Furthermore, my delegation believes that among the many Commission members, who have to be recognized authorities on international law working full time for the Commission, there must surely be one or more jurists fully qualified to serve as Rapporteurs to the General Assembly.

"My delegation believes that, since the Rapporteur is ex officio the Commission's spokesman and the liaison between the Commission and the Assembly, it would be not only more natural, but perhaps even more constitutional to ask one of the members of the Commission elected by the General Assembly and by the Security Council to perform this function."

Dr. Alexander BRAMSON (Poland) shared the views expressed by the Colombian delegation.

The CHAIRMAN then asked the Committee to continue the consideration of the Rapporteur's Report (Document A/AC.10/43). He read the introduction to paragraph 19:

"The Committee was also asked by the General Assembly to study methods of securing the co-operation of the several organs of the United Nations in the task of the progressive development of international law and its eventual codification. On this point, the Committee recommends:"

This text was adopted without discussion.

The CHAIRMAN then read sub-paragraph (a):

"(a) That the I.L.C. should be authorized, if need be, to consult with any of the organs of the United Nations in any draft or project the subject matter of which is relevant to the functions of the particular organ."

Prof. P. C. JESSUP (United States) requested that the English text be changed by inserting the word "on" instead of the word "in" between the words "United Nations" and the words "any draft."

The CHAIRMAN noted this point and declared sub-paragraph (a) adopted.

The CHAIRMAN read sub-paragraph (b):

"(b) That in projects referred to it by a competent organ of the United Nations, the I.L.C. should be authorized, if it thinks it desirable, to make interim reports to the organ concerned prior to submitting its final report to the General Assembly.

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This resolution was carried by a majority in the Committee. A minority of the members dissented from it on the grounds that in their view it would not be in accordance with the provisions of the Charter for any organ of the United Nations other than the General Assembly to refer a project to the I.L.C."

Dr. Alexander BRAMSON (Poland), without wishing to reopen the debate, recalled that his delegation while sharing the minority view believed that, in addition to the General Assembly, the Economic and Social Council also had the right to place questions before the I.L.C. and requested that this remark be recorded in the report. Nevertheless, it seemed illogical to him that the I.L.C., after preparing an interim report for the Economic and Social Council, should submit a final report to the Assembly without waiting for action by the Economic and Social Council.

Prof. Milan BARTOS (Yugoslavia) repeated his opinion that while it was permissible for the I.L.C. to submit provisional reports to the Economic and Social Council, this did not mean that the Council could take the initiative of suggesting to the I.L.C. which problems it ought to consider. He requested that his opinion be noted in the Summary Record.

Dr. Alexander BRAMSON (Poland) said that a statement similar to the one he had just made appeared in the report under Item 9; he did not share the opinion of the other delegates who formed the minority.

Prof. Milan BARTOS (Yugoslavia) endorsed the views of the delegate of Poland.

The CHAIRMAN stated that that view would be mentioned in the report as a footnote. He then read sub-paragraph (c):

"(c) That all I.L.C. documents which are circulated to Governments should also be circulated to the organs of the United Nations for their information, and that such organs should be free to supply any data or make any suggestions to the Commission."

Sub-paragraph (c) was adopted.

Mr. A. H. BODY (Australia) wished to make the following remarks on the whole of paragraph 19:

"The development of international law would be assured and respect for the rule of law promoted if all the difficult legal problems coming before the organs of the United Nations were referred to the International Court of Justice for an advisory opinion. There were already arrangements for requesting such advice and it might, perhaps, be desirable for this Committee

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to suggest to the General Assembly the adoption of a short resolution recommending the other organs of the United Nations to refer to the International Court of Justice and to request the Court's advisory opinion whenever a legal question of special importance arose."

This question would be submitted to the Assembly by his delegation. The CHAIRMAN read the introduction to paragraph 20:

"20. The Committee was also asked to study methods of enlisting the assistance of such national or international bodies as might aid it in the attainment of its objective for encouraging the progressive development of international law and its eventual codification. On this point, the Committee recommends:"

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) requested that the word "for" in the first line of the second page in the English document be changed to "of".

The introduction was adopted.

The CHAIRMAN read the first sentence of sub-paragraph (a):

"(a) That the I.L.C. should be authorized to consult any national or international organization, official or non-official, on any matter entrusted to it, if and when it believes that such a procedure might aid it in the attainment of its objectives."

This sentence was adopted.

He then read the second sentence:

"A minority of the members of the Committee were of the opinion that such consultation should be limited to organizations included in the list referred to in the sub-paragraph following."

This sentence was adopted.

He then read the first sentence of sub-paragraph (b):

"That for the purpose of the distribution of I.L.C. documents the Secretary-General, after consultation with the I.L.C., should draw up a list of national and international organizations dealing with questions of international law."

This sentence was adopted.

He then read the second sentence:

"In drawing up this list, the Secretary-General should take into account the necessity of having the national organizations of all the Members of the United Nations represented on the list."

This sentence was adopted.

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He then read sub-paragraph (c):

"That in the consultations referred to in sub-paragraph (a) and in the compilation of the list referred to in subparagraph (b) of this paragraph, the Commission and the Secretary-General should take into account the resolutions of the General Assembly and of the Economic and Social Council concerning relations with Franco Spain, and that organizations which collaborated with the Nazis and Fascists should be excluded both from consultation and from the list."

Sub-paragraph (c) was adopted.

The Chairman then read the first sentence of sub-paragraph (d):

"By a majority the Committee decided to refer specially to the necessity and importance of frequent consultation between the I.L.C. and the organs of the Pan-American Union whose task is the codification of international law in the Inter-American System without, however, disregarding the claims of other systems of law."

Prof. Jesus M. YEPES (Colombia) requested a slight change in this first sentence. The agencies of the Pan-American Union concerned with codification were not autonomous and hence it would be necessary to state that consultations should take place between the I.L.C. and the Pan-American Union.

Prof. Milan BARTOS (Yugoslavia) disagreed, for such an amendment would amount to instructing the I.L.C. to consult with a political instead of a purely technical agency.

Prof. Jesus M. YEPES (Colombia) believed there was some misunderstanding. The phrase "the Pan-American Union" meant not a political agency, but simply the Secretariat of the Union.

Prof. Milan BARTOS (Yugoslavia) did not agree with the view of the delegate of Colombia. The Congresses of the Pan-American Union played a political role. The words "Pan-American Union" could not mean merely the Secretariat of the Union.

Mr. Osman EBEID (Egypt) reminded the Committee that he was one of the minority objecting to singling out the Pan-American Union for special mention in the report. The Arab League also constituted a system of law which ought to be mentioned, at least as an example. The main point was the peculiar characteristics of every system of law and he believed accordingly that the text ought not to be amended.

Prof. Henry DONNEDIEU DE VABRES (France) also considered that the text should remain unchanged.

Prof. Jesus M. YEPES (Colombia) had not realized that his amendment would give rise to discussion. Accordingly, he withdrew it.

The CHAIRMAN read the last two sentences of sub-paragraph (d):

"The representative of the Union of Soviet Socialist Republics, who was one of the minority dissenting from this resolution, desires it to be recorded that in his opinion this resolution, by singling out the Pan-American Union for special mention, creates for that Union a privileged position, and thereby violates the principle of equality between nations and between systems of law. He is of the opinion that the resolution might be taken to imply that the work of States other than those represented in the Pan-American Union is of less importance for the I.L.C., and that the I.L.C. need not maintain equally close contact with such other States."

Prof. Milan BARTOS (Yugoslavia) spoke on a point of order:

This part of sub-paragraph (d) reproduced the opinion of the Soviet delegate who was not present. A decision on this question should be deferred until the delegate attended.

Dr. Enrique FERRER VIEYRA (Argentina) agreed with this suggestion provided the discussion was not reopened.

Prof. Jesus M. YEPES (Colombia) felt that no single State should be referred to by name in the report. That might be in order in the summary record, but not in the report.

The CHAIRMAN reminded the Committee that it had been agreed that in future any delegate was entitled to put in documents stating his opinions, which would merely be mentioned in the report.

Prof. Milan BARTOS (Yugoslavia) stated that the point of view of the minority and not just that of the Soviet delegate was involved. That might be mentioned in the report.

Dr. Enrique FERRER VIEYRA (Argentina) opposed such changes in the report.

The CHAIRMAN saw no reason why this request should not be acceded to.

Prof. Henry DONNEDIEU DE VABRES (France) did not wish the report to mention the minority opinion instead of naming the delegate of the USSR. He himself had voted with the minority, but he had not shared the views expressed by the delegate of the USSR.

Dr. Enrique FERRER VIEYRA (Argentina) thought that the two sentences should be kept as they stood or omitted entirely.

Prof. Milan BARTOS (Yugoslavia) recalled that four of the members of the minority had shared the opinion of the delegate of the USSR.

Prof. Henry DONNEDIEU DE VABRES (France) proposed changing the text so as to indicate that this was the opinion of four of the members of the minority.

/Prof. Jesus M. YEPES

Prof. Jesus M. YEPES (Colombia) proposed that the four members of the minority should be mentioned by name.

Prof. Milan BARTOS (Yugoslavia) personally saw no reason why this last proposal should not be adopted, but reminded the Committee that it had been decided that members in a minority should remain anonymous. If this rule were changed, the whole report would have to be revised.

Mr. Osman EBEID (Egypt) thought the rule should not be changed.

Dr. Alexander BRAMSON (Poland) pointed out that he had not himself voted for including these words, but had abstained.

The CHAIRMAN stated that accordingly the minority consisted of three delegates and not four, as had been said previously.

Prof. P. C. JESSUP (United States) reminded the Committee that it had been decided that the Chairman would send a letter to the Secretary-General asking him to request Member States to communicate their observations and comments on the draft declaration of the rights and duties of States submitted by the delegation of Panama. The Assistant Secretary-General had declared that such procedure would be perfectly legal. By virtue of this precedent, he submitted the following proposal:

"1. The Committee for the Progressive Development of International Law and its Codification requests the Secretary-General to transmit its Report to the Governments of Members of the United Nations at the earliest possible moment.

"2. The Secretary-General is further requested:

(a) to call to the special attention of Governments to that part of the Report which contains the proposals for the nomination and election of members of an International Law Commission;

(b) to suggest to Governments that, in anticipation of the possible approval of these proposals by the General Assembly they may wish to give consideration to the desirability of being prepared promptly to make nominations for members of the proposed International Law Commission in order that the contemplated election might take place before the adjournment of the Second Session."

Prof. Milan BARTOS (Yugoslavia) raised an objection: if delegates were to discuss this text usefully, it ought to be presented to them in the two working languages and not only in English.

The CHAIRMAN ruled therefore that the Committee would study this text later.

The next point to be considered was the section of the Rapporteur's report covering Item IV of the agenda (draft formulation of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal) as given in document A/AC.10/46.

Dr. LIANG (Secretary of the Committee) requested that this item be dealt with in a separate report because it had been referred to the Committee in a separate resolution of the General Assembly. He thought this procedure was the most convenient.

Dr. J. G. DE BEUS (Netherlands) asked whether the same procedure would be followed with respect to other items which had been referred under different resolutions.

Dr. LIANG (Secretary of the Committee) answered in the affirmative.

The CHAIRMAN noted that the Committee had accepted its Secretary's suggestion. He read paragraph 21 of document A/AC.10/46 (paragraph 1 of the separate report):

"By a resolution of 11 December 1946, the General Assembly directed this Committee 'to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an international criminal code, of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal.'"

This paragraph was adopted.

The CHAIRMAN then read the first two sentences of paragraph 2 (former paragraph 22):

"The Committee considered the nature of the task entrusted to it by this resolution. In particular, it noted that the General Assembly had requested it to propose 'plans for the formulation' of the Nurnberg principles, and not itself to undertake the actual formulation of those principles which would clearly be a task demanding careful and prolonged study."

Dr. Alexander BRAMSON (Poland) reminded the Committee that, while the first part of this text had been adopted unanimously, the second part beginning with the words "and not itself to undertake" had been adopted by a majority. Hence he proposed amending the text so as to make it clear that this was merely a majority recommendation.

The CHAIRMAN noted that the delegates agreed to this and proceeded to read the third sentence:

"The Committee therefore concluded that it was not called

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upon to discuss the substantive provisions of the Nurnberg principles and that such a discussion would be better entrusted to the Committee of Experts, the establishment of which it had decided to recommend to the General Assembly."

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) proposed that the words "Committee of Experts" be changed to "I.L.C."

Dr. Alexander BRAMSON (Poland) proposed that it should be made clear that this resolution had also been adopted by a majority.

Prof. Henri DONNEDIEU DE VABRES (France) said that this was brought out clearly by the wording of the preceding sentence.

Dr. Alexander BRAMSON (Poland) agreed with the French delegate and withdrew his amendment.

The CHAIRMAN read the last sentence of the introduction to paragraph 2:

"It recommends therefore that the I.L.C. should be invited to prepare..."

Prof. Milan BARTOS (Yugoslavia) pointed out that the recommendations which followed had been adopted unanimously, and hence the word "therefore" should be changed to "unanimously."

The last sentence of the introduction was adopted.

The CHAIRMAN then read sub-paragraph (a): "a draft convention incorporating the principles of international law recognized by the Charter of the Nurnberg Tribunal and sanctioned by the judgment of that Tribunal, (1) and"

This sub-paragraph was adopted.

The CHAIRMAN read sub-paragraph (b):

"(b) A detailed draft plan of general codification of offences against the peace and security of mankind, in such a manner that the plan should clearly indicate the place to be accorded to the principles mentioned in sub-paragraph (a) of this paragraph."

This sub-paragraph was adopted.

The CHAIRMAN then read the second part of the new paragraph 2:

"The Committee further desires to record its opinion that this task would not preclude the I.L.C. from drafting in due course a code of international penal law."

This sentence was adopted.

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) noted that there was a footnote concerning sub-paragraph (a).

The CHAIRMAN read the footnote and said that the delegates of Poland and of Yugoslavia requested that this footnote should stand.

/Dr. LIANG

Dr. LIANG (Secretary of the Committee) proposed that in the English text the word "delegate" be changed to "representative."

The CHAIRMAN read the text of the first sentence of paragraph 3 (old paragraph 23):

"The Committee also resolved to draw the attention of the General Assembly to the fact that, to give effect to the application of the principles of the Charter of the Nurnberg Tribunal and its judgment, and to secure the punishment of other international crimes which may be recognized as such by international legislation, may render desirable the existence of an international judicial authority to exercise jurisdiction over such crimes."

Dr. J. G. DE BEUS (Netherlands) pointed out that the words "international legislation" had been changed to the words "international multilateral conventions" at the request of the delegate of the USSR.

Dr. LIANG (Secretary of the Committee) said that this change had been adopted by the majority.

Prof. Henri DONNEDIEU DE VABRES (France) drew the Committee's attention to the fact that the French text of paragraph 3, as it stood in document A/AC.10/46, did not tally with the text previously adopted. The earlier text should be substituted.

The CHAIRMAN noted that there was full agreement on all these points and proceeded to read the second sentence of paragraph 3:

"The delegates of Egypt, Poland, the United Kingdom, the USSR and Yugoslavia desire to have their dissent from this resolution recorded in this report. In their opinion, the question of establishing an international court falls outside the terms of reference from the General Assembly to the Committee."

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) proposed that the phrase "part of the" be introduced between the words "this" and "resolution" in the first sentence.

Prof. Jesus M. YEPES (Colombia) noted that, contrary to the agreed rule, the delegations in a minority had been mentioned by name.

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) proposed that instead of naming the delegations forming the minority, the text should say "five."

Prof. Vladimir KORETSKY (USSR) said that a question of principle was involved and that the dissenting delegations should be specified.

The CHAIRMAN ruled that the text would accordingly be left as it stood.

Dr. LIANG (Secretary of the Committee) drew the attention of the members
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of the Committee to the fact that the word "resolved," in the first sentence of the English text of paragraph 3, was incorrect. Only the General Assembly passed resolutions, while the Committee merely submitted recommendations. Therefore, he proposed that the word "resolved" be changed to "decided."

Dr. Enrique FERRER VILEYRA (Argentina) proposed that the words "international court" in the second sentence of paragraph 3 be changed to read "international judicial authority," in accordance with the wording of the first part.

Prof. Vladimir KORETSKY (USSR) disagreed with such a change.

Dr. Enrique FERRER VILEYRA (Argentina) said his reason for proposing the amendment was that he did not think this Committee was empowered to discuss the establishment of an international penal court.

The CHAIRMAN put the amendment submitted by the delegate of Argentina to the vote.

Prof. Vladimir KORETSKY (USSR) raised a point of order: The text represented the minority opinion; therefore the majority could not amend it by a vote.

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) fully agreed with the delegate of the USSR.

Prof. Milan BARTOS (Yugoslavia) agreed and added that the present wording reflected their discussion on this question. Both the possibility of establishing a criminal court within the International Court of Justice and of establishing a special criminal court had been mentioned.

Dr. Enrique FERRER VILEYRA (Argentina) withdrew his amendment.

Dr. Alexander BRAMSON (Poland) moved a vote of thanks to the delegate of the United Kingdom, who had discharged his duties as Rapporteur with such distinction.

This was accepted by acclamation.

Prof. J. L. BRIERLY (United Kingdom) (Rapporteur) thanked the representative of Poland and his other colleagues.

The CHAIRMAN said the Committee now came to Item 6 of the agenda: "Letter of the Secretary-General regarding the Resolution adopted by the Economic and Social Council on 28 March 1947, concerning the crime of genocide." A number of documents concerning the crime of genocide and, in particular, a note of the Secretary-General (A/AC.10/42/Add.1) were before the delegates.

Dr. LIANG (Secretary of the Committee) felt he ought to give certain explanations concerning this document circulated in English only. The Secretariat had prepared a document entitled "Draft Convention on the

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Prevention and Punishment of Genocide and Comments Thereon" (A/AC.10/41), published in French only for the time being, page 34 of which reproduced the substance of the Secretary-General's note published as document A/AC.10/42/Add.1. For that reason the latter document had not been distributed in French. The Draft Convention had been published in English without comments in document A/AC.10/42.

The CHAIRMAN said that in addition the representative of France had submitted a memorandum on the subject of genocide and crimes against humanity (document A/AC.10/29).

Prof. P. C. JESSUP (United States) requested permission to read the following statement to be fully reproduced in the summary record:

"All of the Governments represented on this Committee, as well as the Governments of every other Member of the United Nations, were united in adopting the General Assembly's resolution of 11 December 1946, whereby it was affirmed that 'Genocide is a crime under international law which the civilized world condemns.' This unanimous resolution of the General Assembly reflected the sense of horror and outrage which the civilized world has felt as a result of the atrocities committed by the Nazis and Fascists with a view to the extermination of racial and religious groups. As the General Assembly asserted in its resolution, those crimes result in 'great losses to humanity in the form of cultural and other contributions represented by these human groups.' Although these acts of genocide committed by the Axis Governments constitute the most recent and most shocking instances of such lawless and immoral conduct, the world is not oblivious to the fact that they were not the first instances of this kind in human history.

"In this Committee we are charged with the obligation of recommending to the General Assembly plans for the progressive development of international law and its eventual codification. Our debates have clearly revealed our realization of the fact that international law needs to be so extended as to bring within legal control acts which have hitherto gone unpunished because that law has not been adequately developed. The definition of genocide by an international convention, to which it is hoped that all States of the world will subscribe, is an essential step in this process of the development of international law. The Government of the United States has frequently expressed its conviction that this step should and must be taken.

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"The draft resolution on the draft convention on genocide which has been presented to our Committee by the representative of the United Kingdom in document A/AC.10/44 describes the circumstances which confront us in our consideration of this vital subject. Were it possible for this Committee to make a greater contribution toward the achievement of the goal, which I am confident we all seek to reach, by adopting some other plan of procedure, the delegation of the United States would press for such action. However, for the reasons explained in the paper presented by the representative of the United Kingdom, it appears that the action which is there proposed would be most conducive to the ultimate attainment of the objective. For this reason the delegation of the United States supports that proposal."

Prof. H. DONMEDIU DE VABRES (France) said he was speaking in a double capacity. As representative of France he had tabled document A/AC.10/29. As a member of the Committee of Experts he had taken part in the preparation of the Draft Convention contained in document A/AC.10/41. Perhaps he should add that he had been one of the judges of the International Military Tribunal of Nurnberg, which had had to deal with crimes against humanity related to the crime of genocide. The Statute of London of 4 August 1945, which established this Tribunal, contained a definition and even a list of crimes against humanity, but in that Statute crimes against humanity are closely bound up with war crimes. The Tribunal also placed a restrictive interpretation on the crimes against humanity by limiting them solely to war crimes. The Statute and the judgment of Nurnberg had served as a basis for the Draft Convention prepared by the Secretariat with the assistance of experts. Actually this was not a draft but, at the utmost, a preliminary draft or, even more exactly, a programme in which the experts had tried to collate all the possible solutions as regards the crime of genocide, including the worst excesses. It was, so to speak, a maximum programme and the authors of the Convention would be able to draw from it as they considered appropriate, in view of the fact that controversial questions had been raised.

The first of these questions was how to define the crime of genocide proper. The draft distinguished between three varieties of genocide: the physical, the biological, and the cultural.

The next question was how to define against what kind of groups the crime of genocide might be committed: e.g. racial groups only (for instance, the Jews), or would religious, linguistic and political groups be covered too?

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There was also the question of deciding whether genocide meant only positive action undertaken by a State, or whether abstention amounting to complicity, on the part of the State would be included. Then there was the problem of deciding who was liable: should none but Governments be held responsible for the crime of genocide, or executive agents as well as any other persons carrying on propaganda, for instance, against the Jews?

Again, what Courts should try crimes of genocide? Should they be the ordinary State Courts or International Courts specially created for this purpose?

He did not think that the Committee had the necessary time to consider the substance of the problem of genocide. In document A/AC.10/29, the French delegation had taken a definite position concerning some of the problems listed above. For the French delegation the issue was to give modern shape to what had been called humane intervention. The French delegation conceded the possibility of international prosecution, but only in cases where the State in question had at least been guilty of wilful abstention and only against the rulers of such States. Finally, the French delegation was unable to recognize any but physical genocide.

He supported the proposal of the delegate of the United Kingdom that the question of genocide be referred to the Economic and Social Council, which was to meet on 15 July 1947. It was practically impossible to consult the Governments before that date concerning a Draft Convention. He would however like to note that two other agencies might also take an interest in the question of genocide. There was, in the first place, the Human Rights Commission, since the question of punishment was not the only one involved and the question of prevention ought to be considered too. Secondly, there was the I.L.C., the establishment of which this Committee would recommend. The Committee had pointed out that the I.L.C. ought to deal with crimes against the peace and security of mankind and these, as had been stated before, were cognate to the crime of genocide. Therefore, the delegate proposed that the draft resolution submitted by the delegate of the United Kingdom should be amended so as to mention the two agencies of which he had spoken.

Dr. Alexander BRAMSON (Poland) abstained from giving his views on genocide in general as defined in the Secretariat draft. Nevertheless he felt compelled to remind the Committee that genocide was not necessarily related to war crimes, and that it had been committed in the past in times of peace. Poland, and in particular that part of the country formerly under Prussian rule, had experienced genocide before World War I. In using the

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word "ausrotten", Bismarck had meant the so-called physical genocide, but although they did not go quite so far at the time, the Germans did unquestionably commit cultural genocide by forbidding not only the teaching of Polish, but even the use of that language in schools.

Poland had lost six million citizens in the course of World War II: three million Jews and just as many others which proved that this problem was more than merely a Jewish problem.

He could not understand the proposal of the delegate of the United Kingdom, who had suggested that a letter be sent to the Secretary-General stating that this Committee could not deal with the question of genocide. The delegate of the United Kingdom had adduced three arguments in support of his proposal. In the first place, he mentioned the fact that a resolution of the Economic and Social Council had referred the question to this Committee, which was responsible only to the General Assembly and had received its mandate from the Assembly alone. Secondly, the Economic and Social Council was to meet very soon, in July 1947; and, finally, that it was well-nigh impossible to collect all the documentation within such a short period. The delegate did not believe that the conclusions which the delegate of the United Kingdom had drawn from these facts were the correct ones. The Economic and Social Council, by its resolution of 28 March 1947, had planned three parallel steps:

- Consultation with this Committee;
- Consultation with the Human Rights Commission, if feasible;
- Consultation with the Governments for the Council's own information, for admittedly the Governments' answers were not to be submitted to this Committee, but considered by the Council itself.

Hence, by adopting the draft resolution submitted by the delegate of the United Kingdom, this Committee would deprive the Economic and Social Council of the benefit of its advice, contrary to the Council's wishes as expressed in its resolution. The Committee had the duty to discuss at least the general principles contained in Article 1 of the Draft Convention, and to submit its views to the Economic and Social Council. It would be inexcusable if the Committee refused to answer the question referred to it.

The CHAIRMAN, speaking as representative for India, observed that in the proposal submitted by the representative for the United Kingdom there were two points. In the first place, it was suggested that this Committee, which was set up by and answerable to the General Assembly and not the Economic and Social Council, might not be competent to examine a problem referred to it by the Council. This matter of the competence of
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the present Committee would have to be decided by the Committee itself.

In the second place, the United Kingdom representative considered that if this Committee took up the study of the problem of genocide this would only result in delay. He could not follow this argument. The Committee did not have to study the replies of the Governments and conversely any proposals by the Committee need not be referred to Governments.

For the moment he would refrain from discussing the substance of the problem of genocide.

Prof. BRIERLY (United Kingdom) (Rapporteur) wished to reply to the objections which had been raised. This Committee had been set up by the General Assembly, which could have referred the question of genocide to it. But the General Assembly did not do so and, on the contrary, referred this problem to the Economic and Social Council. Moreover, this Committee consisted of representatives of the various Governments, which had not yet seen the Draft Convention on the crime of genocide and consequently, had not been able to give their instructions. For all these reasons this Committee had no power to take up the substance of the matter.

Prof. M. BARTOS (Yugoslavia) said his country was one of those which had suffered most from genocide. Nevertheless, the Yugoslav Government noted with concern that neither it nor the Governments of other countries which had suffered most from genocide had been consulted, and that this draft had been prepared by three non-governmental experts. Before anything was done, the Governments of countries which had suffered most and others, should be consulted. Genocide was nothing new and was not necessarily connected with war crimes. No Draft Convention could be prepared until after a thorough study on the spot where the crime of genocide had been committed.

The explanations accompanying this Draft Convention seemed to imply a denial of the existence of cultural genocide. But, in his country, the mere fact of holding a degree had been sufficient to condemn the holder of it to death.

He concluded by signifying agreement with the Rapporteur as to his conclusion; but as to the substance he agreed with the Chairman. This Committee was actually not empowered to deal with genocide, but it ought to stress that this problem was of the greatest importance and that it was extremely grave.

Prof. H. DONNEDIEU DE VABRES (France) said he felt bound to protest against the way in which the delegate of Yugoslavia had interpreted the opinion which he had given as a member of the Committee of Experts. As a judge on the Nurnberg Tribunal, he denounced the odious and painful deeds

/which some

which some describe as "cultural genocide." But it was not for the Committee to condemn but to establish a new offence and define the acts covered by it. The Committee of Experts had done their best and prepared a text comprising all the possible solutions; all the future legislator would have to do was to draw upon it at will.

Dr. Alexander BRAMSON (Poland) emphasized that the Economic and Social Council was one of the principal agencies of the United Nations. Accordingly the Committee ought to comply with any of the Council's wishes, all the more so since the matter had been referred to the Council by virtue of an Assembly resolution. Thus the question whether the Committee was competent was answered in the affirmative.

He wished to add, in reply to the delegate of Yugoslavia, that any Committee of Experts was composed of representatives of Governments, a fact which did not prevent it from debating. Undoubtedly, this Committee was not composed of representatives with full powers to sign a convention, but it was fully empowered to answer and advise the Economic and Social Council as requested.

He asked that his statement be recorded in the summary record.

Prof. M. BARTOS (Yugoslavia) in reply to the French delegate, read the following passage from page 47 of document A/AC.10/41 which gave the views of that delegate as a member of the Committee of Experts:

"Mr. Donnedieu de Vabres and Mr. Pella stated that 'cultural' genocide represented too far-reaching an extension of the concept of genocide and would lead to the reconstruction, behind the screen of genocide of the old idea of protection of minorities, which was designed to meet different needs."

Dr. LIANG (Secretary of the Committee) wished to make a few remarks.

In the first place, the question of genocide had been considered by the Sixth Committee of the General Assembly, which recommended that the Economic and Social Council take up the study of this problem. This recommendation was accepted by the General Assembly and incorporated in the Assembly's resolution. Therefore, it was clear that the Assembly had referred this problem to the Economic and Social Council and not to this Committee, which was established by virtue of another resolution.

Secondly, in point of fact, there was no Committee of Experts properly so called. As a result of the resolution adopted by the Economic and Social Council three experts had simply been invited to study the problem of genocide. These experts did not constitute a committee or commission. They had been appointed as individuals by the Secretary-General by reason of their personal competence.

/Lastly

Lastly, the Draft Convention on the crime of genocide had been prepared by the Secretariat with the help of these three experts. The draft had been prepared by the Human Rights Division of the Secretariat, with the help of one member of the Section on the Development of International Law and its Codification.

Prof. YEPES (Colombia) wished to make a statement on behalf of his delegation. As the Government of Colombia considered the crime of genocide to be of the greatest importance, he requested his statement to be included verbatim in the summary record. He said:

"The Colombian delegation considers the problem under discussion at the present time to be of the greatest importance, though not because we fear lest our country might one day become the scene of actions known as genocide. Our humanitarian attitude, and the welcome which we extend to men of all races, of all religions and of all languages has placed us beyond any fears in this respect; we have always condemned all persecution for racial, religious or political reasons. At the Pan-American Conference, held at Lima in 1938, we supported and voted for the resolution condemning the persecutions then raging in Europe. At the General Assembly last year, the Colombian delegation was noted for the determination with which it worked for clear condemnation of the crime of genocide. This shows you that it is our very sincere hope that the Convention on this matter, prepared by eminent experts such as our colleague, Prof. Henri Donnedieu de Vabres, may one day in the near future become part and parcel of international law. Unfortunately, since this Draft Convention - and I stress the fact that this is a Draft Convention and not only a preliminary draft - has been presented to us so late, and, on the other hand, because of the great importance of this Draft Convention, which our Governments ought to study in great detail before coming to any decision, we are prevented from broaching the substance of this problem. We might, perhaps, have a general discussion on genocide, and leave the detailed study of it to the projected International Law Commission.

"One last point which I should like to mention, if only very briefly, is that the Pan-American Union has already taken the initiative in this matter. I spoke a moment ago of the resolution adopted by the Lima Conference in 1938. Here is the text of this resolution:

'Art. 36: The Republics represented at the
Eighth International Conference of American States declare

/that,

that, in accordance with the fundamental principles of equality before the Law, any persecution on account of racial or religious motives which makes it impossible for a group of human beings to live decently is contrary to the political and juridical systems of America.'

"This shows that, up to a certain point, we are pioneers in this field and that, in offering our support to any plan to condemn and punish the crime of genocide, we are only continuing to carry out an American tradition of which we may be justly proud. Finally, I wish to say that we are voting for the proposal submitted by the delegate of the United Kingdom solely in view of the present circumstances. But, at the same time, we wish to state that we hope that this question will be decided at the earliest possible date."

Mr. DE BEUS (Netherlands) stated that his country, which had also suffered greatly from the evil described as genocide, attached the greatest importance to this problem. The Netherlands lost 265,000 lives during the last war, at least three-fourths of them through extermination. Accordingly, his Government believed that it was absolutely necessary to conclude an international convention on the crime of genocide. Nevertheless, like the Rapporteur, he thought that this Committee was not empowered to consider an problem, but being composed of Government representatives, had been instructed to explore problems of procedure only not the substance of the law. On behalf of his Government he requested this Committee to refrain from considering the substance of the problem, which was to be studied by other competent agencies, in particular the I.L.C., the establishment of which this Committee had recommended.

The CHAIRMAN noted that various arguments had been advanced for the point of view that this Committee should not study the substance of the problem of genocide. It had been said that this Committee was incompetent as it had been created by the General Assembly and not by the Economic and Social Council. Further it had been said that the Committee was inter-governmental and that the representatives had not received instructions from their respective Governments. And then time was running short. Speaking as representative for India and not as Chairman, he requested the adjournment of the debate until the following day. The Committee would then have to settle on the crucial question of its competence. Still speaking as representative for India, the Chairman reserved the right to take the floor on the substance of the question.

The meeting rose at 6 p.m.
