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COMMISSION ON HUMAN RIGHTS
 SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
 AND PROTECTION OF MINORITIES
 Third session

CONTRIBUTION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF
 THE CRIME OF GENOCIDE,^{1/} TO THE PREVENTION OF DISCRIMINATION
 AND THE PROTECTION OF MINORITIES

I. INTRODUCTION

1. On 9 December 1948 the General Assembly of the United Nations adopted a Convention on the Prevention and Punishment of the Crime of Genocide (resolution 260(III)), wherein in article II genocide is defined as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- "(a) Killing members of the group;
- "(b) Causing serious bodily or mental harm to members of the group;
- "(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- "(d) Imposing measures intended to prevent births within the group;
- "(e) Forcibly transferring children of the group to another group."

2. Since this Convention may be considered as a treaty for the protection of the rights of national, ethnical, racial or religious groups against their most outrageous violation, certain aspects of its legislative background and history should be of particular interest to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Among these are:

(a) The reasons underlying the decision to refer, in the text of the Convention as adopted, to "national, ethnical, racial or religious groups,"

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1/ The text of the Convention on the Prevention and Punishment of the Crime of Genocide is to be found in the Annex to Part A of resolution 260(III) of the General Assembly.

(b) the consideration of the concept of "cultural genocide" for possible inclusion in the Convention, and the reasons underlying its final elimination.

II. GROUPS PROTECTED BY THE CONVENTION

3. In its first resolution on the Crime of Genocide (~~resolution 96(I)~~), the General Assembly stated that:

"...many instances of such crimes of genocide have occurred when racial, religious, political or other groups have been destroyed, either in whole or in part..."

The General Assembly further affirmed:

"...that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices -- whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds -- are punishable..."

4. At the same time, the General Assembly, in ~~resolution 95(I)~~, affirmed "the principles of international law recognized by the Charter of the Nurnberg Tribunal and the judgment of the Tribunal;" and directed its Committee on the Codification of International Law "to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offenses 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." The principles referred to in this resolution include, inter alia, the principle that the following is a criminal act:

"...persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."^{2/}

5. Acting on the suggestions of the General Assembly, the Economic and Social Council, by resolution 47 (IV) of 28 March 1947 instructed the Secretary-General:

^{2/} The work of the International Law Commission in this field is recorded in the Report covering its First Session (document A/925, Chapter III). See also the draft of general principles of international law which underlie the Charter and Judgment submitted to the Commission by Mr. Georges Scelle (document A/CN.4/W.11) and the working paper containing a formulation of the Nurnberg principles prepared by a sub-committee of the Commission (document A/CN.4/W.6).

"(a) to undertake, with the assistance of experts in the field of international and criminal law, the necessary studies with a view to drawing up a draft convention in accordance with the resolution of the General Assembly; and

"(b) after consultation with the General Assembly Committee on the Development and Codification of International Law and if feasible the Commission on Human Rights, and after reference to all Member Governments for comments, to submit to the next session of the Economic and Social Council a draft convention on the crime of genocide."

6. In pursuance of this resolution, the Secretary-General requested three experts, Mr. Donnedieu de Vabres, Professor at the Paris Faculty of Law, His Excellency, Professor Pella, President of the International Association for Penal Law; and Professor Raphael Lemkin of the Yale University School of Law, to give him the assistance of their valuable advice. On the basis of the comments of these experts and members of the Secretariat, the Secretary-General produced a Draft Convention on the Crime of Genocide (document E/447).

7. In preparing this draft convention, the Secretary-General adopted the formula used by the General Assembly with respect to the human groups to be protected, i.e., he referred to "racial, religious, political or other groups." However, he pointed out that human beings exist, in addition, in national, linguistic and many other types of groups, and suggested that a decision be reached as to which of these, and any other groups, should be protected by the convention.

8. The draft convention prepared by the Secretary-General was forwarded to Member States of the United Nations for their comments and proposals on 7 July 1947. At its second session the General Assembly, noting that a large majority of governments of Member States had not submitted their observations on the draft, requested the Economic and Social Council, in resolution 180(II), "to continue the work it has begun concerning the suppression of the crime of genocide including the draft convention prepared by the Secretariat, and to proceed with the completion of a convention, taking into account that the International Law Commission, which will be set up in due course in accordance with General Assembly resolution 174(II) of 21 November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nurnberg Tribunal, as well as a draft code of offences against peace and security."

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9. At its sixth session the Economic and Social Council established an ad hoc Committee composed of the following members of the Council: China, France, Lebanon, Poland, the United States of America, the Union of Soviet Socialist Republics and Venezuela, and instructed it to prepare a draft convention on the Crime of Genocide in accordance with the above-mentioned resolution of the General Assembly.

10. Having discussed at some length the question of the groups which were to be protected by a convention on genocide, the ad hoc committee expressed itself as unanimously in favour of protecting "national, racial, and religious groups." The question of the possible inclusion of an additional category, "political groups," was the subject of an extended debate. Some members of the committee pointed out that political groups lack the stability of the other groups mentioned that they have not the same homogeneity and are less well-defined. In particular the representatives of Poland and the Union of Soviet Socialist Republics maintained that the inclusion of "political groups" in the definition of genocide would give this term an extension of meaning contrary to its fundamental conception, and might result in the abandonment of the effort to end the destruction of human groups. The view was also expressed that the inclusion of political groups would have the effect of making the convention unacceptable to certain governments. However, the Committee finally decided, by four votes to three, to include reference to political groups in the draft convention. It also decided to omit the reference to "linguistic groups" which had appeared in the draft prepared by the Secretary-General.

11. The question of the groups to be protected by the convention was not discussed again, in detail, until the draft convention reached the third session of the General Assembly, where it was examined in detail by the Legal (Sixth) Committee (documents A/C.6/SR.73-83).

12. There was general agreement, in the Sixth Committee, that national, racial and religious groups should be included among those to be protected by the Convention. There were amendments proposing that other groups be added to this enumeration, in particular political groups, economic groups, and ethnical groups.

13. At its seventy-fifth meeting the Sixth Committee decided, by 29 votes to 13, with 9 abstentions, to include political groups among those to be protected. However, at its 128th meeting, a proposal was made by the representatives of Egypt, Iran and Uruguay to re-examine the question with a view to excluding political

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groups from the enumeration. In this connexion, the representative of Egypt recalled that the Committee had not had an over-all view of the convention when it had decided that protection should be extended to political groups. Subsequently, during the examination of other articles, the necessity of reshaping the provisions of Article II of the convention had made itself felt especially as it had then become clear that the inclusion of political groups among the protected groups would be a serious obstacle to the ratification of the convention by a large number of States. It was therefore for practical reasons, in addition to the theoretical reasons that had already been given at length during the debate on Article II, that the Egyptian delegation, together with the delegations of Iran and Uruguay, proposed the deletion of political groups from the provisions of Article II. The representative of the United States, recalling that he had advocated the inclusion of political groups among the groups to be protected at the first reading of the draft convention, pointed out that his attitude then had been governed by those historical reasons which had prompted the drafting of the convention, as well as by political considerations. Nevertheless, the United States delegation had since then considered that it was necessary to reconcile two factors; first, that the Committee must prepare a complete draft convention which would be founded on correct principles; secondly, that that convention must be ratified by the greatest possible number of Governments. The United States delegation, he explained, continued to think that its point of view was correct but, in a conciliatory spirit and in order to avoid the possibility that the application of the convention to political groups might prevent certain countries from acceding to it, he would support the proposal to delete from Article II the provisions relating to political groups. In conclusion, he emphasized that the Sixth Committee had to submit to the General Assembly a draft convention which could be ratified by all Member States of the United Nations. He added that once these ratifications would have been obtained, it might be possible, should occasion arise, to make certain improvements in the convention and, in particular, to include political groups. Several members of the Committee thanked the United States delegation for the spirit of conciliation it had shown, while others favoured retention of the article in the form in which it had been drafted earlier. The Committee then decided, by a two-thirds majority vote of 26 to 4, with 9 abstentions, to reconsider the question of the inclusion of political groups among the groups to be protected by the convention. Following

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this, the Committee decided to exclude political groups from the enumeration contained in Article II of the draft convention by a vote of 22 to 6 with 12 abstentions.

14. At its 75th meeting, the Sixth Committee accepted the suggestion of the representative of Sweden that "ethnic groups" be given protection under the convention by a vote of 18 for, 17 against, and 11 abstentions.

15. At the 77th meeting of the Sixth Committee, the Venezuelan delegation proposed that the enumeration of the motives for genocide contained in the draft of Article 2 prepared by the ad hoc committee -- "on grounds of racial or national origin, religious belief, or political opinion of its members" -- be replaced by the simpler formulation "as such", thereby making the Article read, in part, "...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such..." The representative of Venezuela explained that the purpose of his amendment was to specify that, in order to constitute genocide, a group, such as a racial group, must be destroyed as a racial group. He felt that although the Venezuelan draft omitted the enumeration of motives appearing in Article 2 of the ad hoc committee's draft, it reintroduced the motives of the crime without, however, doing so in a limitative form which admitted no motives other than those listed. The aim of the amendment, he stated, was to give wider powers of discretion to the judges who would be called upon to deal with cases of genocide; adoption of the amendment would enable the judges to recognize other motives than those listed in the ad hoc committee's draft. The Venezuelan amendment was adopted by 27 votes for, 22 against, and 2 abstentions.

16. The Committee never voted on the question of including "economic groups" in Article 2.

17. In thus arriving at the text of Article 2 which finally was adopted by the General Assembly, the members of the Sixth Committee recognized that it is very difficult to distinguish between national, racial, and ethnic groups. However, they felt that these three categories, together with the hardly-controversial category, "religious groups", together included all fundamental groupings of individuals requiring protection against genocide; hence they used all three of the terms. Their purpose was to include all possible groups which in their view might require protection, including some which might otherwise be doubtful. For example, it was pointed out that in an extreme case a state might refuse protection

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to a national group as such because of its fear of unduly promoting the national consciousness of the group, but at the same time might extend protection to the very same individuals as members of an ethnical or a religious group.

18. There is, of course, a certain amount of overlapping and ambiguity between the various terms used, with the possible exception of "religious group." The term "racial" was used in referring to the biologically inherited physical characteristics of a group; "ethnical" when referring to the whole of a group's cultural, physical and historical heritage; and "national" when referring to a group's consciousness of nationality, as in the case of groups in one country which feel that they belong, or are felt by others to belong, to another country. It was pointed out that racial groupings are not based upon scientific facts and tend to become indistinct as a result of evolutionary processes, intermarriage, and changes in ideas or beliefs about "race". Ethnical groupings are therefore usually more clear-cut and may be more permanent.

19. At its 179th plenary meeting, on 9 December 1948, the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (resolution 260(III)), containing the formulation proposed by its Sixth Committee as to the groups to be protected; i.e., "a national, ethnical, racial or religious group, or such."

III. "CULTURAL GENOCIDE"

20. In the draft convention prepared by the Secretary-General and the experts referred to in paragraph 6 above at the request of the Economic and Social Council (document E/447), Article 1 describes three possible forms of genocide. These are, as distinguished by one of those experts, Professor Lemkin, (a) "physical genocide", the destruction of human beings; (b) "biological genocide", the prevention of births; and (c) "cultural genocide", the destruction of the specific characteristics of a group.

21. Among the material means for committing "physical genocide", the following were enumerated:

- (a) group massacres or individual executions;
- (b) subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion, are likely to result in the debilitation or death of the individuals;

/(c) mutilations

(c) mutilations and biological experiments imposed with no curative purpose;
and

(d) deprivation of all means of livelihood by confiscation of property, looting, curtailments of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.

Among the material means for committing "biological genocide", the following were enumerated:

- (a) sterilization and/or compulsory abortion;
- (b) segregation of the sexes; and
- (c) obstacles to marriage.

Among the material means listed for committing "cultural genocide" were the following:

- (a) forced transfer of children to another human group;
- (b) forced and systematic exile of individuals representing the culture of a group;
- (c) prohibition of the use of the national language even in private intercourse;
- (d) systematic destruction of books printed in the national language, or of religious works, or prohibitions of new publications; and
- (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value, and of objects used in religious worship.

22. The discussion of "cultural genocide" gave rise to divergent views among the experts who assisted the Secretary-General in preparing the draft convention. Professor Donnedieu de Vabres and Professor Pella held that cultural genocide represented an undue extension of the notion of genocide and amounted to reconstituting the former protection of minorities (which was based on other conceptions) under cover of the term genocide. Professor Lemkin, on the contrary, argued that a racial, national, or religious group cannot continue to exist unless it preserves its spiritual and moral unity. Such a group's right to existence was justified not only from the moral point of view, but also from the point of view of the contribution made by such a group to civilization generally. If the diversity of cultures were destroyed, it would be as disastrous for civilization as the physical destruction of nations. He added that means of cultural genocide

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were criminal acts under municipal law and that hence there was no reason why they should not be included in the international crime of genocide. Professor Lemkin pointed out that cultural genocide was much more than just a policy of forced assimilation by moderate coercion -- involving for example, prohibition of the opening of schools for teaching the language of the group concerned, of the publication of newspapers printed in that language, of the use of that language in official documents and in court, and so on. It was a policy which, by drastic methods, aimed at the rapid and complete disappearance of the cultural, moral and religious life of a group of human beings.

23. In the Draft Convention on the Crime of Genocide, submitted to the sixth session of the Economic and Social Council, the Secretary-General submitted formulae covering the three suggested types of genocide so as to convey an exact idea of what they represented, and thus to enable the United Nations organs to reach a decision. He raised, as a general question: Should all these three notions be accepted or only the first and second?

24. In this connexion it should be noted that although inclusion of the notion of "cultural genocide" in the Convention was eventually rejected, the Convention as adopted by the General Assembly contains, nevertheless, the provision (Article II (e)), that "forcibly transferring children of the group to another group" constitutes an act of genocide if committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."

25. In the discussion of the method to be followed in formulating the Convention on Genocide which took place at the sixth session of the Economic and Social Council in February 1948, the representative of the United Kingdom pointed out that in his view it was essential to make some division in the definition of the term "genocide." He felt that whereas genocide in its absolute -- or "biological" -- sense was more correctly the province of the International Law Commission, "other crimes which could not be separated from genocide were more properly the concern of the Sub-Commission on Prevention of Discrimination and Protection of Minorities." In his view (document E/SR.146, p. 4), it was essential to differentiate between these two categories and distribute the preparatory work accordingly. His proposal was supported by the representative of the Netherlands.

26. At the same meeting of the Council, the representative of the Union of Soviet Socialist Republics emphasized "the importance of the need to prevent the crime of

/genocide by fighting

genocide by fighting against discrimination and not tolerating the stirring up of hatred against certain groups which finally led to genocide".

27. The ad hoc Committee adopted as its basic text a proposal submitted by the representative of China (document E/AC.25/9), the other proposals and the Secretariat draft being considered as amendments to that text and being taken into account wherever possible.

28. After considerable discussion, the Committee decided that "cultural genocide" should be dealt with in the draft convention. Those who supported this view emphasized that there were two ways of suppressing a human group, the first by causing its members to disappear, the second by abolishing, without making any attempts on the lives of the members of the group, their specific traits. Those who opposed the inclusion of "cultural genocide" emphasized that there was a considerable difference between so-called "physical genocide" (including "biological genocide") and "cultural genocide". It was "physical genocide" particularly, which has presented those exceptionally horrifying aspects which had shocked the conscience of mankind. They also pointed to the difficulty of fixing the limits of "cultural genocide", which impinged upon the violation of human rights and the rights of minorities. It was therefore through the protection of human rights, the prevention of discrimination, and the protection of minorities, that the acts which had been referred to as "cultural genocide" should be prevented. Finally, from the practical point of view, it was maintained that the inclusion of "cultural genocide" in the Convention might prevent many countries from becoming parties to it and thus jeopardize its success.

29. In this connexion the United States member of the ad hoc Committee inserted the following declaration in the Committee's report:

"The prohibition of the use of language, systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value, commonly known in this Convention to those who wish to include it, as 'cultural genocide' is a matter which certainly should not be included in this Convention. The act of creating the new international crime of genocide is one of extreme gravity and the United States feels that it should be confined to barbarous acts directed against individuals which form the basic concept of public opinion on this subject. The acts provided for in these paragraphs are acts which should appropriately be dealt with in connection with the protection of minorities."

30. Two proposals made by the Lebanese member of the Committee were rejected. They were:

A.

"According to the terms of the Convention, it is also understood that genocide includes all acts and measures which are directed against a national or racial or religious group on ground of the national or racial origin or religious beliefs of its members, and which aim at the systematic destruction by oppressive or violent means of the language, religion or culture of that group."

B.

"Placing the members of the group in conditions calculated to make them renounce their language, religion or culture."

31. At its fifth meeting, the ad hoc Committee decided, by six votes to one, to retain the idea of "cultural genocide" in the Convention. Subsequently, it adopted, by four votes to none with three abstentions, the following text:

ARTICLE III

In this Convention, genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as:

1. prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group."

The Venezuelan member of the Committee expressed the fear that subparagraph 1 of this Article did not protect the parties against accusations when they take measures with a view to protecting their own language.

32. When this question was discussed by the Sixth Committee of the General Assembly, many arguments were used against inclusion of "cultural genocide" in the Convention, among them:

1. There was an essential difference between "cultural genocide" and genocide as defined in article II -- the two ideas were not on the same level and could not be dealt with in the same manner.

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2. "cultural genocide" fell rather within the sphere of the protection of human rights or of those of minorities;
 3. "cultural genocide" was too vague a conception to be capable of precise definition and delimitation for the purpose of inclusion in the convention on genocide;
 4. the inclusion of "cultural genocide" in the Convention might give rise to abuses by reason of the vagueness of that conception.
33. At its 83rd meeting the Committee decided, by 25 votes to 16, with 4 abstentions, not to include provisions relating to "cultural genocide" in the Convention. It was pointed out by several delegates, however, that in expressing their views on the retention or suppression of Article III, which dealt with "cultural genocide", no position was taken on the principle of "cultural genocide", and that action to protect against this form of genocide might more appropriately be taken within the sphere of human rights. Certain delegations (that of Sweden in particular) were of the opinion that the problem of the cultural protection of minorities should be re-examined with a view to drafting a special convention which would prescribe different forms of international control and prevention from those laid down in the convention on genocide. These delegations pointed out that the cultural protection of human groups should be sufficiently organized within the international framework of human rights and the protection of minorities without there being any need to define as genocide infringements of the cultural rights of such groups.

IV

THE CONVENTION'S CONTRIBUTION TO THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES

34. As its name indicates, the aim of the Convention is to prevent and punish genocide, deemed to be a "crime under international law". It clearly implies that the members of a protected "national, ethnical, racial or religious group" have the right to life and respect for their persons, but it does not directly affirm that right, the existence of which is, as it were, taken for granted.
35. However, though the Convention does not proclaim the right to life of the members of the above-mentioned human groups, it does in fact go further. It aims at guaranteeing this right by organizing the prevention and punishment of genocide, which is the negation of the right in question.

36. The parties, that is to say, the Governments, are required to "provide effective penalties for persons guilty of genocide..." (Article V). This refers to the punitive action to be taken by national tribunals against all persons subject to their jurisdiction. As was repeatedly pointed out during the discussion, however, genocide is a crime which can scarcely be committed without the responsible ruling circles being involved as principals or as accessories; they will have ordered it, provoked it, or acquiesced in it. Hence, Article IV of the Convention lays down that "Persons committing genocide shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals." Clearly, rulers guilty of genocide escape punishment as long as they are in power. Their action, however, is none the less an international crime for which they will later have to answer either to national tribunals or to an international penal tribunal (Article VI contemplates an international tribunal which shall have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction).

37. While the protection afforded by the Convention is not restricted to groups which are minorities, minority groups benefit, of course, from such protection as the Convention may afford, including:

(a) The Convention protects minority groups against the greatest evil which may befall them, namely their physical destruction either through killing members of the groups, or by ill treatment intended to bring about death, or slow extinction (Article II (a), (b), (c)). The Convention also protects minority groups against what has been called "biological" genocide, that is to say, "Imposing measures intended to prevent births within the group" (Article II (d)). It would be quite possible to respect the lives of members of the group but at the same time to bring about its extinction by preventing births.

(b) The Convention does not suppress or punish acts intended not to bring about the total or partial destruction of a group, but rather the destruction of its specific characteristics. Hence, any measures of violence, oppression or even persecution not intended to destroy, in whole or in part, a defined group as such, but simply calculated to destroy the specific characteristics of a group -- to eliminate a national culture, the use of a language or the practice of a religion -- do not come within the scope of the Convention.

38. It has already been pointed out that in the draft which he prepared at the request of the Economic and Social Council, the Secretary-General included

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"cultural" genocide along with "physical" and "biological" genocide and the special committee adopted the same formula. Actually, the underlying idea here was not to guarantee the preservation of the specific characteristics of minorities. A simple denial of the freedoms proclaimed by the Declaration of Human Rights and a policy of forced assimilation were by no means regarded as acts of genocide. Cultural genocide was deemed to comprise rather certain drastic acts of persecution or oppression, committed with the intent to destroy one of the defined groups, such as the prohibition of the use of the group's language in private intercourse or the destruction of historical or religious monuments. The General Assembly was opposed to the retention of cultural genocide even in this form; a number of Governments claimed that it should not be included in the Convention on the grounds that so-called "cultural" genocide was not true genocide, that it was merely a violation of human or minority rights, and that it was a problem to be referred to the authorities having jurisdiction in these two fields. Nevertheless, because of its particularly odious nature, an act which the Secretary-General had included in his draft as one of the forms of "cultural" genocide, namely "forcibly transferring children of the group to another group" was included in the Convention (Article II(e)). The scope of this provision is limited and since the Convention is, as has been stated, an international criminal law convention, it must be strictly interpreted.
