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PREVENTION AND PUNISHMENT OF GENOCIDE

HISTORICAL SUMMARY
(2 November 1946 - 20 January 1948)

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PREVENTION AND PUNISHMENT OF GENOCIDE

HISTORICAL SUMMARY
(2 November 1946 - 20 January 1948)

CHAPTER I

First Session of the General Assembly
(23 October - 15 December 1946)

SECTION I - Proposals of the Delegations of Cuba, India and Panama

On 2 November 1946, the delegations of Cuba, India and Panama requested the Secretary-General to include in the agenda of the General Assembly an additional item on the prevention and punishment of the crime of genocide (document A/BUR.50, 2 November 1946). The request was accompanied by the following draft resolution:

"1. WHEREAS throughout history and especially in recent times many instances have occurred when national, racial, ethnical or religious groups have been destroyed, entirely or in part, and such crimes of genocide not only shook the conscience of mankind but also resulted in great losses to humanity in the form of cultural and other contributions represented by these human groups;

"2. WHEREAS genocide is a denial of the right of existence of entire human groups, in the same way as homicide is the denial of the right to live for individual human beings and that such denial of the right to existence is contrary to the spirit and aims of the United Nations;

"3. WHEREAS the punishment of the very serious crime of genocide when committed in time of peace lies within the territorial jurisdiction of the judiciary of every state concerned, while crimes of relatively lesser importance such as piracy, traffic in women and children, traffic in drugs and obscene publications are declared international crimes and have been made matter of international concern;

"BE IT RESOLVED that the United Nations Assembly draws the attention of the Economic and Social Council to the crime of genocide and invites the Council to study this problem and to prepare a report on the possibilities of declaring genocide an international crime and assuring international co-operation

/for its

for its prevention and punishment and also recommending among others that genocide and related offences should be dealt with by national legislations in the same way as other international crimes such as piracy, traffic in women and children, slave traffic and others."

The General Assembly, after deciding to include this additional item in its agenda (document A/181, 7 November 1946), referred it to the Sixth Committee (document A/C.6/64, 12 November 1946).

SECTION II - The General Discussion in the Sixth Committee

A general debate took place at the Committee's 22nd, 23rd and 24th meetings (Supp. No. 6 to the Journal of the First Session of the General Assembly, Nos. 41, 46 and 47 - documents A/C.6/84, A/C.6/91 and A/C.6/96).

In addition to the aforementioned draft resolution the Sixth Committee had before it the following amendments:

1. A United Kingdom amendment (document A/C.6/83, 22 November 1946) deleting the third paragraph of the draft resolution and replacing it by the following text:

"Declares that genocide is an international crime, for the commission of which principals and accessories, as well as States, are individually responsible."

2. An amendment submitted by the delegation of India (ibid.) to add the following to the United Kingdom amendment:

"It calls upon the Members to get their respective national legislatures to deal with this crime in the same way as they have dealt with piracy, trade in women, children, and slaves - crimes which have been condemned by all nations as outraging the conscience of humanity."

3. An amendment from the delegation of France (ibid.) to modify the United Kingdom amendment as follows:

"Declares that genocide is an international crime, for which the principals and accomplices, whether private persons or responsible statesmen, should be punished."

4. An amendment submitted by the delegation of the Union of Soviet Socialist Republics (ibid.) to add the following to the United Kingdom amendment:

"It is desirable that the Economic and Social Council should study the question of the preparatory work to be done for a convention on crimes against any particular race."

/When the

When the question of genocide came up in the Sixth Committee (22nd meeting, 22 November 1946) the representatives of the various States which had submitted the above texts made supporting statements to the following effect:

The representative of Cuba (Mr. Dihigo), pointing out that genocide was not a new crime but had been committed on a vast scale during the last World War declared that it might be classed as homicide; but homicide was within the territorial jurisdiction of the State in which the crime was committed, and, genocide being usually perpetrated by those holding power, the prosecution of that crime was thereby prevented. At the Nürnberg trials it had not been possible to punish certain cases of genocide because they had been committed before war began. It was necessary to ensure that this should not recur in the future, in deference to the rule of non crimen sine lege, and Cuba therefore asked that genocide be declared an international crime. He admitted, however, that a resolution voted by the General Assembly, notwithstanding its great authority, could not be considered as a law.

The United Kingdom representative (Sir Hartley Shawcross) also thought it essential to ensure that the rule nullum crimen sine lege could not be invoked in the future. His amendment had been submitted to remedy certain defects which he had noted in the wording of the third paragraph of the draft resolution. International law should protect citizens against abuses on the part of their own Governments. He concluded with the following declaration:

"All States should pass legislation on the subject.

International conventions should be concluded: but the public denunciation of this crime would have to take place immediately."

The representative of India (Mr. Chagla) supported the principle of the United Kingdom amendment but believed that a simple statement of the criminal nature of genocide was not sufficient and that the General Assembly ought to ask States Members to provide for the punishment of genocide in their internal legislation. That was the object of his proposed addition to the United Kingdom amendment.

The representative of France (Mr. Chaumont) held that the General Assembly was competent in virtue of the Charter to discuss the matter and to make recommendations. He supported the Indian amendment but asked that the United Kingdom amendment be modified since "French law did not admit criminal responsibility on the part of States". He had therefore submitted a modification to the United Kingdom amendment.

The representative of the Union of Soviet Socialist Republics (Mr. Lavriachev) also warmly supported the resolution and its amendments. His own amendment called on the Economic and Social Council to study the question of the preparatory work to be done for a convention on crimes against any particular race, as his Government was especially eager to prevent racial discrimination.

The representative of Uruguay (Mr. Arrosa) supported the draft resolution and its various amendments and expressed the hope that the resolution would be unanimously approved by the Committee.

When the Sixth Committee resumed the general discussion on genocide at its 23rd meeting on 28 November 1946 it first heard a speech by the representative of Colombia (Mr. Yepes), who declared that the Nürnberg Tribunal had defined genocide as the "systematic extermination of a group of persons". Several conferences of the Pan-American Union, and particularly the eighth conference at Lima, had adopted resolutions declaring that persecutions were contrary to the political and judicial systems of the new world and condemning persecutions carried out for racial and religious reasons.

The representative of Saudi Arabia (Mr. Riad Bey) showed by legal analysis that genocide fulfilled all the conditions of an international crime. In order to avoid any misunderstanding with regard to the powers of the Sixth Committee he proposed that it should declare that these conditions were in fact fulfilled and that genocide was proclaimed an international crime.

He proposed the adoption of the following protocol (document A/C.6/86 - 26 November 1946):

"WHEREAS the atrocities committed against humanity which violated the rules of International Law and shocked public conscience make it imperative for the nations of the world to take concerted action to prevent and penalize the commission of such acts in the future;

"WHEREAS one of the most obvious violations of the rules of International Law and the laws of humanity is genocide which is as destructive of the human race as a war of aggression which is now universally condemned and outlawed by the United Nations' Charter, therefore:

The Nations signatory of this Protocol declare that genocide is an International Crime against humanity and agree to co-operate to prevent and suppress it as herein provided:

Article I - Definition

Genocide is the destruction of an ethnic group, people or nation either gradually against individuals or against the whole group, people or nation.

Any of the following acts may constitute the crime of genocide:

- (a) Mass killing of all members of a group, people or nation.
- (b) Destruction of the essential potentialities of the life of a group, people or nation or the intentional deprivation of elementary necessities for the preservation of health or existence.
- (c) Planned disintegration of the political, social or economic structure of a group, people or nation.
- (d) Systematic moral debasement of a group, people or nation.
- (e) Acts of terrorism committed for the purpose of creating a state of common danger and alarm in a group, people or nation with the intent of producing their political, social, economic or moral disintegration.

Article II - International Action

The parties to this Protocol agree to make effective use of every means at their disposal, acting separately or in co-operation, to prevent and penalize genocide.

Article III - Jurisdiction

Every state has jurisdiction to prohibit and punish genocide.

An allegation that any act of genocide is political or has been committed under order of a superior authority shall not be available as a defence.

In exercising such jurisdiction every state shall enact legislation defining the crime of genocide, conferring competence on its appropriate courts and prescribing the penalties to be inflicted upon conviction.

Article IV

The acts of genocide shall be prosecuted and punished by any state regardless of the place of the commission of the offence or of the nationality of the offender, in conformity with the laws of the country prosecuting.

No offender shall be prosecuted or punished by any state for an act of genocide for which he has been prosecuted and convicted or acquitted in another state."

The Sixth Committee resumed the general discussion at its Twenty-Fourth Meeting (29 November 1946). There were then two fresh amendments for consideration:

1. The delegation of France had submitted a new text (document A/C.6/95 - 28 November 1946), in the place of its previous amendment which read as follows:

"DECLARES that genocide is an international crime, entailing the responsibility of guilty individuals, whether principals or accessories, as well as States on behalf of which they may have acted."

2. The delegation of Chile had submitted an amendment (document A/C.6/94 - 28 November 1946) which in fact constituted a re-drafting of the resolution as a whole:

"THE GENERAL ASSEMBLY

"DECLARES that genocide is a crime under international law, which the civilized world condemns, and for which the main authors and their accomplices, whether private individuals or statesmen, must be punished;

"INVITES the Member States to take the necessary steps to prevent and punish this crime within the scope of their internal legislation, in the same way as piracy, traffic in women, children and slaves, and others;

"RECOMMENDS that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide.

"TO THIS END, the General Assembly requests the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft convention to be submitted to the next session of the Assembly."

In the course of the discussion the representative of France (Mr. Chaumont) explained that the text of his new amendment had been drafted in collaboration with the representative of the United Kingdom. While it acknowledged the principle of the responsibility of the State for genocide, his text did not confuse this State responsibility with

the criminal responsibility of guilty individuals - which would have been contrary to the accepted principles of French domestic criminal law.

He proposed that the Indian amendment be modified so as to call upon the Member States (and not their Parliaments) to "provide in their respective national legislations for the punishment of this crime....."

The representative of the Netherlands (Mr. Bencker Andrae) supported the United Kingdom and French amendments but declared that "it should not be forgotten that genocide was a very rare crime, and that action taken by the United Nations should aim at prevention of the crime rather than repression".

The representative of Poland (Mr. Laks) also stressed the need to provide for prevention as well as repression - which Poland had just done by a Law of 12 October 1945. Furthermore, the proposal submitted to the Committee contained no definition of genocide, which was a new crime and had not yet been precisely defined (in recent written law, however, such as Article 6 of the Four-Power Agreement of 8 August 1945, paragraph 4, of the Nürnberg indictment, etc. "these crimes had been mentioned").

The representative of Chile (Mr. Gajardo), who had submitted an amendment, said that this was merely a summary of the various amendments that had been proposed. He drew attention to the fact that it would be better to define genocide as a "crime against peoples" than as a "crime under International Law", thus avoiding the confusion resulting from the fact that genocide could be committed within the frontiers of a country and would thus be a national crime. In conclusion, recalling the proposal of Saudi Arabia to draft a protocol, he drew the attention of his colleagues to the last paragraph of his draft resolution proposing the drawing up of a convention; this, in his opinion, was the best method of securing international collaboration.

Other speakers rose to express their agreement with the view that the adoption by the General Assembly of a resolution condemning genocide would be a useful measure, or to explain that would, in their opinion, be the best way to achieve this result. Amongst these speeches may be mentioned that of the United Kingdom representative (Mr. McKinnon Wood) who considered it highly desirable to make a firm and effective declaration against the crime of genocide, but at the same time everything possible should be done to ensure rapid measures being taken for speedy punishment of the crime. He proposed /that the

that the matter should be referred to Sub-Committee I, to which had been assigned, on the suggestion of the United States, the question of the codification of the Nürnberg principles. He explained, however, that it might not be necessary to apply codification procedure to the question, but he thought it would be a good thing to study it at the same time as the United States draft, with which it had a certain amount in common.

After a brief discussion, the Committee decided to refer the various proposals and amendments (including an unpublished Polish amendment) to a Special Sub-Committee (subsequently called Sub-Committee No. 3). The Chairman announced that it would be composed of representatives of the following countries: Saudi Arabia, Chile, Cuba, France, India, Panama, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America.

SECTION III - Examination by Sub-Committee No. 3

Since records are published of discussions in Sub-Committees, such discussions can only be followed in so far as they find expression in the reports of these bodies. The report of Sub-Committee No. 3 (document A/C.6/120, 6 December 1946) contains the following passage:

"In considering the draft resolution which might be submitted to the General Assembly the Sub-Committee felt that the Assembly's resolution should affirm that genocide is a crime under international law condemned by the civilized world, and that provision should be made for the punishment of principals and accomplices who may participate in the commission of this crime. The question of whether or not the responsibility of states should be mentioned in the resolution was considered; but it was the sense of the Sub-Committee that because of special problems in that connection the question of fixing state responsibility, as distinguished from the responsibility of private individuals, public officials, or statesmen, was a matter more properly to be considered at such time as a convention on the subject of genocide is prepared.

"The Sub-Committee felt that it was desirable for Member States to enact legislation for the prevention and punishment of the crime of genocide but that it was not necessary to compare genocide to other crimes such as piracy and traffic in women, as had been suggested in some of the proposals before the Sub-Committee.

"The Sub-Committee felt it was important that there should

/be early

be early action looking toward the preparation of a draft convention on the subject of genocide. To that end the Sub-Committee has proposed in the draft resolution that the General Assembly request the Economic and Social Council to undertake the necessary studies and to prepare a draft convention for submission to the next session of the General Assembly. Some members of the Sub-Committee stressed the importance of the creation of a small Special Committee of Jurists to prepare the convention while others felt that the Economic and Social Council should secure the co-operation of the Committee to Study the Methods of Encouraging the Progressive Development of International Law and its Codification. Various suggestions in this connection were considered for inclusion in the resolution in lieu of the language adopted. It was finally decided by the Sub-Committee that the resolution itself should place the responsibility solely with the Economic and Social Council.

"The Sub-Committee considered a proposal made by Poland concerning the propagation and dissemination of hatred against national or racial and religious groups as a preparatory step in the effectuation of the crime, and the punishment of those responsible therefor. It was agreed that this interesting proposal should be mentioned in the report and left for consideration in connection with the draft convention or studies made under the resolution."

The report concludes with a draft resolution, the text of which will be found below.

SECTION IV - Consideration by the Sixth Committee of the Draft Report of Sub-Committee 3

The Sixth Committee then considered the Report of Sub-Committee 3 at its 32nd meeting on 9 December 1946 (Supplement No. 6 to General Assembly Journal No. 58, document A/C.6/127).

The representative of China (Mr. Liu) suggested entrusting the task of drawing up a draft convention on genocide to a smaller body than the Economic and Social Council, namely the Committee on the Development of International Law and its Codification.

The other representatives, however, were in favour of adopting the report without modification and this suggestion was adopted unanimously after the representative of China had withdrawn his proposal. The Report of the Sixth Committee to the General Assembly (document A/231 - 10 December 1946) is, therefore, a "verbatim" reproduction of the report which that Committee had received from Sub-Committee 3.

SECTION V - Adoption by the General Assembly of Resolution 96 (I) on
11 December 1946

At its 55th plenary meeting on 11 December 1946, the General Assembly adopted, without debate and unanimously, the draft resolution submitted by the Sixth Committee, which has become General Assembly resolution 96 (I):

"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

"Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

"The punishment of the crime of genocide is a matter of international concern.

"THE GENERAL ASSEMBLY THEREFORE,

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

"INVITES the Member States to enact the necessary legislation for the prevention and punishment of this crime;

"RECOMMENDS that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

"REQUESTS the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

Resolution 96 (I) of the General Assembly comprises a number of elements:

1. It "affirms 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,

racial, political or any other ground - are punishable;".

2. The General Assembly "invites the Member States to enact the necessary legislation for the prevention and punishment of this crime".

This refers to prevention and punishment by the national law of each of the Member States.

3. The General Assembly "recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide.....".

This refers to international action and to this end the resolution requests: "the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft Convention on the crime of genocide to be submitted to the next regular session of the General Assembly":

CHAPTER II

Fourth Session of the Economic and Social Council (28 February to 29 March 1947)

The problem of genocide was placed on the Agenda of the Fourth Session of the Economic and Social Council and came before the Council at its 70th plenary meeting on 15 March 1947 (Verbatim record, document E/P.V.70, 15 March 1947; Summary record, document E/421).

In general, the representatives on the Council agreed that the Council should carry out the mandate entrusted to it by the General Assembly and undertake the necessary studies with a view to drawing up a draft convention on the prevention and punishment of the crime of genocide.

Of the views expressed with regard to the substance of the problem, two deserve special mention:

The representative of Peru (Mr. Arca Parro) emphasized the fact that the crime of genocide would be virtually impossible if the government of the country in which it was committed had not failed in its obligation under international law to protect human rights. Otherwise, none of the governments would allow such crimes to be committed. Whoever the principal criminal might be, there was always a mind behind him inspiring the deed. If genocide were committed anywhere in the world, it was because it was supported, openly or otherwise, by a government or group strong enough to place itself above the law and evade the punishments called for by such crimes. Effective punishment would therefore be possible only if they decided to declare war on any States which allowed crimes of genocide to be committed, if they won that war and captured the criminals, as in the case of Nazi Germany. Unless these conditions were fulfilled, the individuals guilty of the crime of genocide would of necessity be protected by their own Government. Some sort of machinery should therefore be set up which would be able, acting through the United Nations or some new International Court of Justice, to make representations not to individuals but to governments.

The representative of Venezuela (Mr. Stolk) drew the Council's attention to the close relationship between the problem of genocide referred to in the General Assembly Resolution 96 (I) and that of formulating the principles recognized by the Charter of the Nürnberg Tribunal and the judgment of the Tribunal, referred to in the General Assembly Resolution 95 (I), a fact which it would be well to take into account when drafting the Convention in question.

/There was

There was some difference of opinion regarding the procedure to be followed.

In a note to the Economic and Social Council (document E/330, 12 March 1947) the Secretary-General said:

"It is for the Economic and Social Council, assembled at its Fourth Session, to fulfil the mandate given to it by the General Assembly.

"For this purpose the Economic and Social Council may entrust the task of making the necessary studies and of drawing up a draft Convention:

"1. To the Commission on Human Rights;

"2. To one or several members of the Economic and Social Council.

"The Secretary-General would be asked to prepare a preliminary draft in order to facilitate the task to be entrusted either to certain members of the Economic and Social Council or to the Commission on Human Rights."

The representative of Cuba (Mr. Belt) supported by the representatives of Peru (Mr. Arca Parro), Venezuela (Mr. Stolk), and the Union of Soviet Socialist Republics (Mr. Morozov), was in favour of the Secretary-General's second suggestion, namely, the appointment by the Council of a Committee made up of one or several of its own members to draw up, with the assistance of the Secretariat, the draft Convention to be communicated to the Members of the United Nations so that the Council, at its Fifth Session, could adopt it and have it submitted to the Second Session of the General Assembly. The representative of Norway (Mr. Lunde), on the other hand, proposed that, once the draft Convention was drawn up, it should be submitted to the Commission on the Development of International Law and its Codification, which was a subsidiary body set up by the General Assembly of the United Nations; while the representative of France (Mr. Quérin) supported the Secretary-General's first suggestion, namely, to entrust the Commission on Human Rights with the task of making the necessary studies.

The representative of the United Kingdom (Mr. Mayhew), feeling that the Commission on Human Rights already had a heavy programme before it, proposed that the Secretariat be asked to draw up the draft Convention, after which it could be decided whether or not there was any need to consult one of the existing Commissions* or some other ad hoc body of experts.

* The French representative probably had in mind the Commission on Human Rights and the Commission on the Development of International Law and its Codification, which had been mentioned in the course of the discussions.

The representative of the Netherlands (Mr. van Reijen) asked that the Council consult both the Commission on Human Rights and the Commission on the Development of International Law and its Codification, as the delegation of the United States had already proposed in a draft resolution it had submitted (document E/342, 17 March 1947).

Finally, the representative of China (Dr. Chang) reminded his colleagues that under the Commission on Human Rights there was a Sub-Commission on Prevention of Discrimination and Protection of Minorities which ought, in his opinion, to be consulted at some stage in the drawing up of the draft Convention.

The acting President (Mr. Jan Papanek, Czechoslovakia), summing up the various proposals and suggestions made in the course of the debate, proposed referring the problem of procedure to the Council's Social Committee.

The Social Committee discussed the procedure to be followed in drawing up the draft Convention at its 6th Meeting on 20 March 1947 (document E/AC.7/8). It had before it the above-mentioned United States draft resolution and a Cuban amendment submitted in the course of its meeting which proposed entrusting the task of drawing up the draft Convention to an ad hoc Committee to be appointed by the President of the Economic and Social Council.

The representative of New Zealand (Mr. Nash) proposed combining the United States draft Resolution with the Cuban amendment and on the following day, 21 March 1947, submitted the following draft resolution (document E/AC.7/W.1):

"The Economic and Social Council, taking cognizance of the General Assembly resolution of 11 December 1946 on the subject of genocide, instructs the Secretary-General:

"(a) To undertake 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 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."

The various texts proposed were considered by the Drafting Sub-Committee of the Social Committee on 24 March 1947 (document E/AC.7/W.14, 26 March 1947). At that meeting a number of other amendments were proposed, and some of them adopted, with the result that paragraph (a)

was redrafted

was redrafted as follows, paragraph (b) being left unchanged:

"(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".

On 28 March 1947 the Social Committee's Report came before the Economic and Social Council. The text of the draft resolution was reproduced in document E/AC.7/15, 25 March 1947. The delegation of the United States had also submitted a new amendment (document E/AC.7/15/Add.2, 28 March 1947). Without debate the Council adopted the draft resolution together with the United States amendment (Cf. Verbatim record, - document E/P.V.82; and Summary record - document E/396/Rev.1, 24 April 1947).

The Economic and Social Council resolution adopted on 22 April 1947 (document E/325) reads as follows:

"THE ECONOMIC AND SOCIAL COUNCIL,

"Taking cognizance of the General Assembly Resolution No. 96 (I) of 11 December 1946 instructs the Secretary-General: (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."

According to that resolution, the Economic and Social Council had instructed the Secretary-General to carry out the following five operations:

1. 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;
2. To consult the General Assembly Committee on the Development and Codification of International Law;
3. To consult also, if feasible, the Commission on Human Rights;
4. To ask all Member Governments for their comments on the draft Convention;
5. To submit this draft Convention to the next session of the Economic and Social Council.

The Secretary-General has followed these instructions as explained
hereinafter:

He was unable, however, to consult the Commission on Human Rights
since it has not met in the interval between the Fourth and Fifth Sessions
of the Economic and Social Council.

CHAPTER III

Preparation of a draft convention by the Secretariat (1 June 1947)

In accordance with the instructions given by the Economic and Social Council, the Secretary-General asked the Division of Human Rights to draw up a "draft Convention on the prevention and punishment of genocide".

The Division of Human Rights drew up a preliminary draft. This preliminary draft was discussed by three experts invited by the Secretary-General - Mr. Donnedieu de Vabres, Professor at the Faculté de droit of Paris, Professor Pella, Chairman of the International Penal Law Association, and Professor Lemkin - together with Professor Humphrey, Director of the Division of Human Rights, Professor Giraud, Chief of the Research Section of that Division, and Mr. Kliava, representing the Legal Department of the Secretariat. In the light of the experts' comments the Secretary-General amended and expanded the preliminary draft, which thus became the draft Convention.

The draft Convention consists of twenty-four articles. Furthermore, two annexes to Article X, suggested by the experts, are attached; the first contains a draft statute for an international criminal court with general jurisdiction, and the second contains a draft statute for an international tribunal specially set up for crimes of genocide.

The draft Convention with the relevant comments was distributed on 6 June 1946, as document A/AC.10/41. It was then reproduced (with the annexes and Article X) as document E/447 dated 26 June 1947. Finally, the same draft was distributed (without comments or annexes) as document A/362 dated 25 August 1947.

CHAPTER IV

Consideration of the Draft Convention by the Committee on the Progressive Development of International Law and its Codification (12 May to 28 June 1947)

This Committee, set up under Resolution 94 (I) of the General Assembly on 11 December 1946, met at Lake Success in May and June 1947. In a letter of 12 May 1947 (document A/AC.10/15), the Secretary-General informed the Chairman of this Committee of the resolution adopted by the Economic and Social Council and stated that the draft Convention then being drawn up would shortly be transmitted to him.

On 19 May 1947, the representative of France submitted a memorandum to the Committee "on the subject of genocide and crimes against humanity" (document A/AC.10/29). A parallel was drawn in this memorandum between the crime of genocide as defined by Resolution 96 (I) of the General Assembly and the crimes against humanity as defined by the Charter of the Nürnberg Tribunal and the sentences passed by this Tribunal. The representative of France preferred a narrower concept of crimes against humanity and was not in favour of adopting the expression "genocide", which he considered to be a useless, even a dangerous, neologism. In concrete terms, he proposed that the Committee should make the following declaration:

- "(1) that all extermination of individuals as members of a racial, social, political or religious group constitutes a crime against humanity;
- "(2) that this crime, which consists of assassination by State action or toleration, and which may be perpetrated in time of peace as in time of war, is a crime against international public law;
- "(3) that the rulers found guilty of this crime are amenable to an international jurisdiction and liable to criminal prosecution."

In order to clarify the exact meaning of the third proposal, the representative of France added the following comment:

"...This crime (against humanity) is individual to the rulers in whose minds the criminal decision was formed, who gave the orders and took no personal part in the action. With regard to the executives, whatever their motives, they are murderers, common assassins amenable to the common law, and nothing is to be gained by removing them from its sphere. It is self-evident that the argument of "superior orders" is applicable in their case, as international law has provided."

The French memorandum further stated that the distinction between rulers and executives should be reflected not only in regard to qualifications, but also in regard to procedure and competence. It reads as follows: "If, owing to the failure of national jurisdictions an international court has to judge executives, this court will be distinct from the International Court of Justice (criminal chamber) which will determine State responsibility and decide the fate of rulers."

Finally, the French memorandum concluded by recalling that the exercise of punitive powers does not exhaust the problem of the struggle against such crimes: "The protection of human groups is not ensured exclusively or even chiefly by penal courts. The French delegation suggests that the Codification Commission should refer to the Commission on Human Rights the task of studying and drawing up a definition of human rights and a procedure which might ensure their effective protection."

The Committee also had before it a draft resolution submitted by the representative of the United Kingdom (document A/AC.10/44, 6 June 1947), which contained the following passage inter alia:

"It (the Committee) recognized the desirability of affording to governments an opportunity to comment on the draft convention prepared by the Secretariat prior to its consideration by the Economic and Social Council. Aside from any conclusion on the question whether the Committee, under its instructions from the General Assembly, would be authorized to study and report on the substantive provisions of the draft convention on genocide, the Committee did not wish, by engaging in such a study, to delay the process of governmental consideration which in turn might make it difficult for the Economic and Social Council to take up the draft at its next meeting.

"In view of these considerations the Committee requests its Chairman to reply to the communication of the Secretary-General in the sense of the foregoing observations."

The United Kingdom representative, Professor Brierly, in reply to a number of questions put to him summarized his ideas as follows: The Committee should not consider the draft Convention for the two following reasons:

"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,

"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."

The Committee discussed the problem of genocide at its 28th, 29th and 30th meetings (see Summary Records, documents A/AC.10/5R.28, 29 and 30).

Certain delegations associated themselves with the views expressed by the United Kingdom representative, while others, especially the Polish representative (Mr. Bramson), were in favour of the draft being studied by the Committee.

The Australian representative (Mr. Body), together with the Netherlands representative (Mr. de Beus), suggested that the draft Convention be transmitted to Governments for their observations and referred to the International Law Commission, if that Commission were set up.

Some representatives, however, objected to this proposal, and said that, if the question were referred to the International Law Commission, this would be tantamount to "a first-class burial" of the draft Convention.

In the end the Committee rejected the part of the draft resolution bearing on consultation with the International Law Commission, by a majority of 10 votes to 4, with 2 abstentions.

Finally, at the Committee's request, the Chairman addressed a letter to the Secretary-General (document A/AC.10/55, 18 June 1947), which was submitted for the Committee's approval and which read as follows:

"The Committee fully realizes the urgency, which was expressed in the recommendation contained in the Resolution of the General Assembly of 11 December 1946, of organizing co-operation between States with a view to facilitating the speedy prevention and punishment of the crime of genocide. It notes, however, that the text prepared by the Secretariat, owing to lack of time, has not yet been referred to the Member Governments of the United Nations for their comments, as is contemplated in the Resolution of the Economic and Social Council, and it regrets that, in the absence of information as to the views of the governments, it feels unable at present to express any opinion in the matter."

CHAPTER V

Fifth Session of the Economic and Social Council, 19 July to 16 August 1947

When the Economic and Social Council met for its fifth session (19 July to 16 August 1947), it had before it only the draft Convention on genocide drawn up as stated above (Chapter II) by the Secretariat with the assistance of experts (document E/447).

The Commission on Human Rights had not met between the fourth and fifth sessions of the Council and the Committee on the Progressive Development of International Law and its Codification had not felt able to give its views on the substance of the draft.

The draft Convention had, moreover, been transmitted to Member Governments by the Secretary-General on 7 July 1947 (document A/362) and no replies had yet been received from Governments (see the Secretary-General's note of 8 July 1947, E/476).

In the absence of views and comments the Economic and Social Council did not wish to embark on a study of the draft Convention and, after a brief exchange of views, it was decided to refer consideration of the Secretary-General's report to its Social Committee (Summary Record of the 86th Plenary Meeting, document E/SR.86).

The Social Committee considered the question at its 15th meeting on 30 July 1947 (document E/AC.7/SR.15). The exchange of views which followed dealt only with the procedure to be recommended to the Council. The Norwegian representative (Mr. Seyersted) stressed the urgency of the question and proposed (document E/AC.7/22) that a special session of the Economic and Social Council be held either before or at the beginning of the second regular session of the General Assembly, that is to say, in the first half of September 1947, and that, in the meantime a Committee of the Council be appointed to consider the draft Convention and the comments of Member Governments and of the Commission on Human Rights. The Economic and Social Council would thus be able to discharge the task entrusted to it under Resolution 96(I) of the General Assembly. Several representatives opposed this proposal.

The United States representative (Mr. Stinebower) submitted another draft resolution, the conclusion of which reads as follows:

"THE ECONOMIC AND SOCIAL COUNCIL

.....

/"DECIDES:

"DECIDES:

"To transmit to the General Assembly the draft Convention on the Crime of Genocide prepared by the Secretariat in accordance with paragraph (a) of the Council Resolution of 28 March 1947, together with any comments from Member Governments which may be received in time for transmittal to the General Assembly." (Document E/AC.7/23).

Although he was in agreement with the United States representative, the United Kingdom representative (Mr. Gore-Booth) thought that the General Assembly might submit the draft convention to the International Law Commission "for a limited period", if that Commission were set up. The Norwegian representative objected to the delay which would be involved by this procedure.

The Cuban representative (Mr. Osuna) then suggested that a resolution be drawn up merely informing the General Assembly where the question stood.

Finally, the Social Commission decided, by 16 votes to none, with 2 abstentions, to call upon Member Governments to accelerate consideration of the draft Convention and to inform the General Assembly that the Economic and Social Council proposed to proceed with its work, subject to any further instructions from the General Assembly.

As a result of this decision, a drafting committee, composed of the representatives of Canada, Cuba, Norway and the United States drew up a draft resolution (document E/AC.7/31), which was altered only in detail by the Social Committee at its 17th meeting (Summary record, document E/AC.7/SR.17) and which was adopted without any modifications by the Economic and Social Council at its 107th plenary meeting (document E/SR.107).

This resolution, No. 77(V) of 6 August 1947 (document E/573, pp. 21-22), reads as follows:

"THE ECONOMIC AND SOCIAL COUNCIL
"CONSIDERING the General Assembly resolution No. 96 (I) of 11 December 1946, and

"HAVING REGARD to paragraph (b) of the Council's resolution of 28 March 1947, which provides for submission to the fifth session of the Economic and Social Council of a draft Convention on genocide 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, and

"TAKING NOTE of the fact that the General Assembly Committee on the Development and Codification of International Law and the Commission on Human Rights have not considered the draft Convention on the crime of genocide prepared by the Secretariat, and that the comments of the Member Governments on this draft Convention have not been received in time for consideration at the Fifth session of the Economic and Social Council,

"CALLS UPON Member Governments, in view of the urgency of the matter, to submit to the Secretary-General as soon as possible their comments on the draft Convention prepared by the Secretariat and transmitted to them with the Secretary-General's letter of 7 July 1947;

"INSTRUCTS the Secretary-General to collate such comments;

"DECIDES to inform the General Assembly that it proposes to proceed as rapidly as possible with the consideration of the question, subject to any further instructions of the General Assembly; and

"REQUESTS the Secretary-General, in the meanwhile, to transmit to the General Assembly the draft Convention on the crime of genocide prepared by the Secretariat in accordance with paragraph (a) of the Council resolution of 28 March 1947, together with any comments from Member Governments received in time for transmittal to the General Assembly."

CHAPTER VI

Second Session of the General Assembly (16 September - 20 November 1947)

In accordance with the Economic and Social Council's Resolution 77(v) of 6 August 1947 the Secretary-General submitted to the General Assembly the draft Convention on the crime of genocide prepared by the Secretariat. (Aforementioned document A/362 - and note by the Secretary-General, document A/C.6/147 of 27 September 1947).

He also transmitted the observations of Governments which had been received in time, namely those of India, Haiti (document A/401, of 27 September 1947); Philippines, Venezuela (document A/401/Add.1, of 1 October 1947); United States of America (document A/401/Add.2, of 18 October 1947); France (document A/401/Add.3, of 31 October 1947) (see Annex below).

The General Committee of the Assembly decided to refer the question to the Sixth Committee (Legal Committee).

The procedure in the General Assembly comprised four phases:

- (1) General discussion in the Sixth Committee and reference to Sub-Committee 2 of that Committee;
- (2) Consideration of the question by the Sub-Committee 2;
- (3) Consideration by the Sixth Committee of the Draft Report submitted by the Sub-Committee 2;
- (4) Discussion by the Assembly in plenary session and adoption of the Resolution.

SECTION I - General Discussion in the Sixth Committee

This discussion occupied part of the 39th, 40th, 41st and 42nd meetings of the Sixth Committee (see Verbatim records, document A/C.6/SR.39, of 29 September 1947; A/C.6/SR.40, of 3 October 1947, A/C.6/SR.41, of 4 October 1947 and A/C.6/SR.42, of 6 October 1947).

The French representative (Mr. Chaumont), who opened the debate, said that the Assembly could act without waiting for the observations of all the Governments. He observed that the Secretariat draft was not a rigid framework but simply a practical basis for work.

He regretted that the draft did not propose any effective machinery for the prevention of genocide.

He said it would not be necessary to link up the repression of genocide with the establishment of an international criminal court.

/The United States

The United States representative (Mr. Fahy) agreed in general with the representative of France, and pointed out that the Committee had a choice between the following methods: to refer the consideration of the draft Convention to the Economic and Social Council or to the International Law Commission, which it was proposed to set up, or to proceed directly to examine the draft with a view to drawing up a convention.

The United Kingdom representative (Sir Hartley Shawcross) took a different view which, in brief, was as follows:

(1) In the view of the United Kingdom genocide was already a crime under prevailing international law; the Military Tribunal at Nurnberg had adopted that view.

In an international convention to which not all States would adhere the abstention of certain States would tend to cast doubts on an already established matter. The convention would thus defeat the purpose it sought to achieve.

(2) If a State wished to commit genocide, it would not be deterred by the existence of a convention, whether the State was a signatory to it or not.

(3) Certain passages in the draft Convention were open to criticism.

The United Kingdom representative, therefore, tabled the following draft resolution (document A/G.6/155, of 2 October 1947):

"THE GENERAL ASSEMBLY OF THE UNITED NATIONS

1. REAFFIRMS its resolution of 11 December 1946 condemning genocide and declares that genocide is an international crime, entailing national and international responsibility on the part of individuals and states;
2. INVITES the attention of all Member states to the principles of the draft Convention transmitted by the Economic and Social Council and recommends adherence to these principles in the executive and legislative activities of states;
3. REFERS the draft convention to the International Law Commission in order that the Commission may consider whether a convention on this matter is desirable or necessary and if so to submit a draft convention to the General Assembly."

The representative of Venezuela (Mr. Perez Perozo), while he agreed that the Secretariat draft should be examined by one or more legal bodies, stated that, when all was said and done, "the real action necessary was that it needed polishing; not by experts but by politicians."

As regards method he was in favour of referring the consideration of the draft Convention to the Economic and Social Council which would have the help of the Committee on the Progressive Development of International Law and its Codification. He submitted a draft resolution to that effect (document A/C.6/149, of 29 September 1947).

The Egyptian representative, Mr. Raafat, and the Cuban representative, Mr. Dihigo, spoke at the Sixth Committee's 40th meeting.

The Egyptian representative, who agreed with the views of the United Kingdom, considered that the convention would not work as a preventive since it would not impede governments from committing the crime of genocide. Moreover, he could not approve the inclusion of "cultural genocide" in the convention as an international crime.

As regards method he thought "the best course would be to draw the Members' attention to the draft Convention prepared by the Secretariat, and to ask for an expression of views before the next regular session of the General Assembly."

The representative of Cuba disagreed with the point of view of the United Kingdom representative, and pointed out that the General Assembly had already in its Resolution 96 (I) voted for the conclusion of a convention. He added that the Nürnberg principles had not been adopted by all the countries, and that all that existed at present of universal scope was the Assembly Resolution 96 (I) which stated that genocide was a crime; however this resolution had no force of law for States. Finally, it should be remembered that criminal courts were bound by the rule that criminal law has no retrospective effect. Consequently, a binding convention for the punishment of genocide would not be valueless, even if certain States failed to ratify it, and, in any case, contrary to what had been suggested, it would not weaken existing law.

When the Sixth Committee resumed the general discussion at its 41st meeting most of the speakers were in favour of the conclusion of a convention on genocide. Such, for instance, was the attitude of the representative of Greece (Mr. Spyropoulos) who stated that he was, nevertheless, ready in principle to support the proposal of the United Kingdom delegation, of Norway (Mr. Castberg), of Poland (Mr. Laks), of the Philippines (Mr. Abello), of the Argentine (Mr. Ferrer Vieyra), of Pakistan (Mr. Pirzada), of Peru (Mr. de Lavalle), of Haiti (Mr. Vieux), of Brazil (Mr. Amado), of France (Mr. Chaumont) and of Ecuador (Mr. Correa).

The above-mentioned speakers developed in a general way the arguments which had already been put forward. Special note should, however, be taken of the statements made by the representatives of Poland and of the Philippines, who considered that the principles established at the Nürnberg Trials did not cover all the aspects of genocide. The Polish representative stressed, in particular, the idea that "physical genocide was only the extreme degree in which the crime showed itself." He was "concerned with genocide on a wider plane: the forms of genocide which do not mean physical extermination, such as discrimination against race, religion, etc."

Other speakers, although not disagreeing with the principle of a convention, and even supporting it, spoke in favour of an extensive study of the problem. The representative of the Union of Soviet Socialist Republics (Mr. Durdenevsky), in stressing certain delicate aspects of the question said that the draft convention was still only a rough draft and could only be considered as a working paper. "It should be carefully considered together with the comments of various Governments by the Economic and Social Council or by the International Law Commission." The representative of the Union of Soviet Socialist Republics supported the conclusions of the United Kingdom proposal (document A/C.6/155 as above), but nevertheless submitted a further draft resolution (document A/C.6/151) in which the principle of a convention was not directly raised. Analogous opinions were expressed by the representatives of China (Mr. Hsu), Colombia (Mr. Yepes), Yugoslavia (Mr. Bartos, who stated that "the Yugoslav delegation agreed in principle with the draft submitted by the Secretariat", although "he saw the force of the United Kingdom arguments").

Thus the Sixth Committee had three draft resolutions before it;

(1) The United Kingdom draft which, as has been seen, recommends that the draft Convention be referred to the International Law Commission in order that the Commission may consider whether a convention on this matter is desirable or necessary, and if so, submit a draft Convention to the General Assembly;

(2) The Venezuelan draft, asking the Economic and Social Council to continue to study the draft resolution with the help of the Committee on the Progressive Development of International Law and its Codification, in order to report to the Third Session of the General Assembly;

(3) The draft

(3) The draft of the Union of Soviet Socialist Republics asking the Economic and Social Council, when it receives the comments of the States Members, to examine "the draft Convention on combating genocide and to report to the Third Session of the General Assembly."

The Egyptian delegation had submitted an amendment to the draft resolution of the Union of Soviet Socialist Republics (document A/C.6/159 of 3 October 1947) pointing out that the Economic and Social Council should use the Secretariat draft as a basis for its work, and the Brazilian delegation had drafted some proposals (document A/C.6/160 of 4 October 1947) which did not differ substantially from the draft of the Union of Soviet Socialist Republics.

Finally, certain delegations were in favour of a direct consideration of the Secretariat's draft, either by the Sixth Committee itself, or by one of its Sub-Committees, so that a convention could be concluded during the Second Session of the General Assembly. This latter point of view was advocated, for instance, by the representative of Panama (Mr. Mendez) who, together with the representatives of Cuba and India, submitted a fresh draft resolution at the Sixth Committee's 42nd meeting (see the text on page 2 of the Summary Record; document A/C.6/SR.42). The Panama delegation, also, asked that a resolution voted by the National Assembly of Panama on 13 October 1947 be communicated to the General Assembly (document A/C.6/177).

The United Kingdom representative (Sir Hartley Shawcross) opposed the view expressed by the representative of Panama. He declared that the value of codification was in those fields where there was uncertainty about the existing law. However, the law on biological genocide had been clearly defined at the Nürnberg Trials, on the one hand, and on the other hand, the Secretariat's draft contained a series of innovations which "under the guise of codification, attempted to create an entirely new body of international law." Moreover, the draft Convention prepared by the Secretariat raised a number of political and social questions which went far beyond the General Assembly resolution. This draft laid down rules that were unacceptable to several States. "The only real sanction against genocide was war." He therefore maintained his point of view summarized in the draft resolution which he submitted.

The Australian representative (Mr. Oldham) supported this argument and observed that "the judgments of Nürnberg and those which probably would be delivered in Tokyo would have a far greater effect towards preventing genocide than a convention."

/After several

After several short speeches the Rapporteur (Mr. Kaeckenbeeck, Belgium) spoke against the General Assembly passing a new resolution condemning genocide, which would only be a repetition of Resolution 96(I) of 1946. He was also opposed to excessive haste and to any desire to secure, at all costs, the conclusion of a convention during the Second Session of the General Assembly.

The United States representative (Mr. Fahy), on the contrary, supported the proposal submitted by the representatives of Cuba, India and Panama, but doubted whether it would be possible to achieve a final result during the second Session.

The Chairman finally put the following questions to the vote:

1. "Should the question of the crime of genocide, together with all the proposals, be referred to a sub-committee?"

The Committee agreed by a large majority to refer the matter to a sub-committee.

2. "Should this sub-committee be Sub-Committee 2, which is entrusted with the problem of the Development of International Law and its Codification?"

The Committee again replied in the affirmative, by a vote of twenty-six to ten.

Sir Hartley Shawcross said that a third question remained to be settled: that of the Sub-Committee's terms of reference. Was it to consider the substance of the problem of genocide, or merely make proposals regarding the procedure to be followed?

The Chairman then put to the vote the proposal submitted by the representatives of Cuba, India and Panama (see above) and, this proposal having been rejected by twenty-five votes to nine, stated that the Committee's decision reflected its wish that the Sub-Committee should consider only the procedure to be followed.

SECTION II - Consideration of the question by Sub-Committee 2

As no minutes were taken of the Sub-Committee's discussions at its 16th and 18th meetings (on 4 and 5 November 1947), the only record of these discussions is contained in the Rapporteur's report (document A/C.6/190/Rev.1 of 18 November 1947). This report states:

"Three different opinions were expressed with regard to the choice of the body (that is, the body to consider the problem of genocide in the future).

"Certain delegations emphasized the sociological aspects of the study to be undertaken and the political nature of the problem, as well as the terms of the resolution adopted by the Economic and Social Council on 6 August 1947, and declared themselves in favour of the Economic and Social Council. Other delegations, emphasizing the legal nature of the work, suggested reference to the International Law Commission. Others, in order not to delay the matter, proposed that the work should be begun by the Committee which, in accordance with the intentions of the Sub-Committee, would act as an interim body until the members of the International Law Commission had been elected, after which the work could, if necessary, be continued by the International Law Commission.

"One delegation suggested that genocide in the strict sense should be considered in connection with the codification of the Nürnberg principles and that sociological aspects, such as racial and religious intolerance, should be considered by the Sub-Committee of the Commission on Human Rights dealing with the prevention of discrimination and the protection of minorities.

"Finally, the Sub-Committee decided, by eight votes to two, to refer the matter to the Economic and Social Council, on the understanding that the Council may, if it wishes, request the assistance of the Interim Committee on the Progressive Development of International Law and its Codification."

As regards the terms of reference to be given to the Economic and Social Council two arguments were put forward:

1. Some delegations thought that that organ should be left free to decide in favour either of a convention or of any other appropriate method.
2. Other delegations considered that the question of drafting a convention had already been decided by the General Assembly resolution of 11 December 1946.

The latter opinion was adopted by ten votes to two. Finally, Sub-Committee 2 proposed that the Sixth Committee recommend to the General Assembly the adoption of a resolution with the following substantive paragraphs:

"THE GENERAL ASSEMBLY

.....

"REQUESTS the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft Convention prepared by the Secretariat, and to proceed with the completion of a convention, with the assistance,

/if it

if it so desires, of the Interim Committee on the Progressive Development of International Law and its Codification;

"INFORMS the Economic and Social Council that it need not await the receipt of the observations of all Member States before commencing its work;

"DRAWS THE ATTENTION of the Member States to the urgency of submitting their observations in the draft convention; and

"REQUESTS the Economic and Social Council to submit a report on this question to the third regular session of the General Assembly."

SECTION III - Examination of the Sub-Committee's Report by the Sixth Committee

I. The Debates

The report of Sub-Committee 2 (document A/C.6/198) was discussed by the Sixth Committee at its 59th plenary meeting on 20 November 1947 (Summary Record, document A/C.6/SR.59, 26 November 1947*).

The Committee had before it four amendments to the draft resolution proposed by Sub-Committee 2: the first was submitted by the United Kingdom delegation (document A/C.6/192, 17 November 1947); the second by the Egyptian delegation (document A/C.6/198, 18 November 1947**); the third by the Union of Soviet Socialist Republics delegation (document A/C.6/201, 20 November 1947); the fourth by the Chinese delegation (document A/C.6/204, 20 November 1947).

It should be noted that at the same 59th meeting, before discussing the report on genocide, the Sixth Committee dropped the idea of creating an interim body to study the progressive development of international law and its codification so that one element in the draft resolution submitted by Sub-Committee 2 became pointless.

The British, Soviet and Chinese amendments were discussed simultaneously; however, for the sake of clarity, we shall examine each of the three questions separately.

1. The United Kingdom amendment proposed to insert in the preamble of the draft resolution a new paragraph as follows:

"THE GENERAL ASSEMBLY

"DECLARES that genocide is an international crime entailing national and international responsibility on the part of individuals and states."

* At the moment this document only exists in the English version which we have been obliged to use.

** However, since this amendment has been withdrawn, we shall not deal with it here.

The representative of the United Kingdom (Mr. Beckett) explained the point of his proposal. It meant that individuals guilty of genocide, that is to say, a crime against humanity which no authority and no national legislation could justify, could not seek protection behind the orders received, - that had been admitted at the trials of war criminals. It meant also that the State itself was responsible when the government of that State had ordered genocide. The representative of the United Kingdom quoted the similar case of the Hague Convention under which a State was responsible for offences against the law of war committed by its armies. Of course, a State could not be punished by being hanged or shot but it was still responsible.

The representative of the United Kingdom saw no objection to replacing the words "entailing national and international responsibility" in his amendment by "entailing individual and collective responsibility". (The rest of Mr. Beckett's speech, which was a fresh criticism of the actual idea of a convention, will be considered later in connection with the Soviet amendment.)

The United Kingdom amendment was supported by the representatives of the Union of Soviet Socialist Republics (Mr. Durinevsky) and Norway (Mr. Seyersted). It was opposed by the representatives of France (Mr. Chaumont) and Egypt (Mr. Raafat). The French representative recalled that the question of the criminal responsibility of the State itself had been debated at the previous session of the Assembly and that the French point of view, which objected to such a conception, as contrary to French law, had won the day. (See above, Chapter I.)

The United Kingdom amendment was put to the vote and adopted by twenty-one votes to six.

2. The Soviet amendment proposed to replace paragraphs 5, 6, 7, 8, in other words the substantive section of Sub-Committee 2's draft resolution by the following text:

"REQUESTS the Economic and Social Council:

"(a) to proceed with the studies on the problem of measures of combating the crime of genocide;

"(b) to study therewith the question of whether a convention on genocide is desirable and necessary, and if so, whether there should be a separate convention on genocide, or whether the question of genocide should be considered in connection with drafting the convention including the principles of international law recognized in the Charter of the Nürnberg Tribunal and sanctioned in the judgment of the Tribunal;

"(c) to consider

"(c) to consider, if conclusion of a separate convention on genocide is considered necessary, the draft convention on genocide prepared by the Secretariat, after having received comments from the governments of States Members of the United Nations, and to submit a report on the matter to the Third Regular Session of the General Assembly."

This amendment reopened the whole question of the necessity for concluding a special convention on genocide.

The representative of the Union of Soviet Socialist Republics said that the Economic and Social Council should be authorized to study the question whether or not a convention were necessary. If the Council should find it necessary, such a convention could be rapidly prepared since a lot of initial work had already been done in the matter.

The representative of Poland (Mr. Bramson) spoke in favour of the Soviet amendment.

The representative of France (Mr. Chaumont), on the contrary, opposed the amendment and stated that the need for a convention had already been decided on by the resolution adopted at the First Session of the Assembly. The representatives of Cuba, (Mr. Díaz Ego) Mexico (Mr. Primo Ville Michel), Egypt (Mr. Raafat), and Norway (Mr. Seyersted) also thought that the substantive part of the resolution submitted by Sub-Committee 2 should be retained.

The representative of China (Mr. Wellington Koo, Jr.,) who had himself submitted a draft amendment (see below), also agreed that a convention was needed, but thought that the Economic and Social Council was not the proper place to consider the juridical aspects of the convention which should be linked to the Nürnberg principles.

The representative of the United Kingdom, though he expressed no views on the Soviet amendment, criticized the actual concept of a convention on genocide and employed the same arguments which he had previously expounded in Sub-Committee 2, namely:

- (1) If genocide was practised with the consent of a government no convention would stop it.
- (2) From the scientific point of view the crime of genocide should be dealt with in conjunction with the codification of the principles of the Nürnberg Charter, since it was so closely analogous to the other crimes covered by that instrument.
- (3) The racial or religious animosities which cause genocide, as indeed they cause discrimination and persecutions, would best be considered by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Human Rights Commission.

On the Rapporteur's suggestion the Soviet amendment was modified. In the last paragraph the words "comments from the governments" were replaced by "comments from most of the governments", to prevent the matter being held up by delay on the part of some Governments.

The Soviet amendment as amended was put to the vote. A roll-call was requested, and the amendment was adopted by 22 votes to 18 with one abstention.

3. The Chinese amendment was to the effect that the body responsible for considering the question of genocide should not lose sight of the fact that the International Law Commission was responsible for formulating the Nürnberg principles.

The summary record does not mention a vote on that amendment.

II. Adoption of a Draft Resolution by the Sixth Committee

Finally, the Sixth Committee adopted the following draft resolution: (See the Sixth Committee's Report, document A/510, 20 November 1947).

"THE GENERAL ASSEMBLY,

"REALIZING the importance of the problem of combating the international crime of genocide;

"REAFFIRMING its resolution 96 (I) of 11 December 1946 on the crime of genocide;

"DECLARING that genocide is an international crime entailing national and international responsibility on the part of individuals and States;

"NOTING that a large majority of the Governments of Members of the United Nations have not yet submitted their observations on the draft convention on the crime of genocide prepared by the Secretariat and circulated to those Governments by the Secretary-General on 7 July 1947;

"CONSIDERING that the Economic and Social Council has stated in its resolution of 6 August 1947 that it proposes to proceed as rapidly as possible with the consideration of the question of genocide, subject to any further instructions which it may receive from the General Assembly;

"REQUESTS the Economic and Social Council:

"(a) To proceed with the studies on the problem of measures of combating the crime of genocide;

"(b) To study therewith the question whether a convention on genocide is desirable and necessary, and if so, whether there should be a separate convention on genocide, or whether the question of genocide should be considered in connection with

/the drafting

the drafting of a convention to include the principles of international law recognized in the Charter of the Nürnberg tribunal and in the judgment of the Tribunal.

"(c) To consider, if the conclusion of a separate convention on genocide is deemed necessary, the draft convention on genocide prepared by the Secretariat, after having received comments from most of the Governments of States Members of the United Nations, and to submit a report on the matter to the third regular session of the General Assembly.

SECTION IV - Discussion at a Plenary Meeting of the Assembly and Final Decision

I + The Discussion - The report of the Sixth Committee was presented to the General Assembly by the Rapporteur (Mr. Kneckenbeeck - Belgium) at its 123rd plenary meeting, 21 November 1947 (see Verbatim record, document A/PV.123, 21 November 1947).

After the Report had been presented the President announced that three amendments modifying the draft resolution proposed by the Sixth Committee had been submitted, namely:

(1) Joint amendment proposed by Cuba, Egypt and Panama (document A/512, 21 November 1947) which proposes that the last paragraph of the resolution should be replaced by the following text:

"REQUESTS the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention by the Secretariat, and to proceed with the completion of a convention; "INFORMS the Economic and Social Council that it need not await the receipt of the observations of all Members before commencing its work; and

"REQUESTS the Economic and Social Council to submit a report and the convention on this question to the third regular session of the General Assembly."

(2) Amendment proposed by China (document A/514, 21 November 1947) adding to the end of the first paragraph of the preceding amendment the following text:

"taking into account that the International Law Commission, which will be set up in due course in accordance with the Assembly Resolution of 21 November 1947 had been charged with the formulation of the principles recognized in the Charter of the Nürnberg Tribunal, as well as the preparation of a draft code of offences against peace and security,"

(3) Amendment

(3) Amendment proposed by Venezuela (document A/513.

21 November 1947):

- "1. Delete paragraph (b) of the resolution.
- "2. Delete, in paragraph (c) of the resolution, the words:
"if the conclusion of a separate convention on genocide is
deemed necessary"."

The Venezuelan delegation withdrew this amendment during the meeting as it believed that the point was covered by the joint resolution submitted by Egypt, Cuba and Panama.

A number of questions were discussed, which may be summarized as follows:

1. Should the Economic and Social Council be instructed to submit a convention, or should it be left free to decide whether a convention was necessary?
2. Should the Economic and Social Council wait until it had received replies from most of the Governments before carrying out its task?
3. Should the Economic and Social Council, in carrying out its task, take into account the fact that "the International Law Commission.....has been charged with the formulation of the principles recognized in the Charter of the Nürnberg Tribunal as well as the preparation of a draft code of offences against peace and security"?
4. The use which the Economic and Social Council should make of the draft convention prepared by the Secretariat.

First question - Should the Economic and Social Council be given terms of reference to submit a convention or should it be left free to decide whether a convention is necessary?

The amendment submitted by Egypt, Cuba and Panama contained the following passage:

"Requests the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention by this Secretariat, and to proceed with the completion of a convention."

This amendment ran counter to the decision adopted by the Sixth Committee and was tantamount to the solution proposed by Sub-Committee 2.

The authors of this amendment (Mr. Ricardo J. Alfaro - Panama; Mr. Ernesto Dihigo - Cuba and Mr. Wahid Fikry Raafat - Egypt) stressed the fact that the General Assembly by its resolution 96 (I) of 11 December 1946 had declared itself in favour of a convention and that "the adoption of the /resolution,

resolution, which was approved... by a slight majority in the Sixth Committee, would mean a recession from the stand taken by this august body last year" (speech by Mr. Alfaro - Verbatim Record - 123rd plenary meeting - document A/P.V. 123 - 21 November 1947. pp. 177-180).

The representative of Venezuela (Mr. Perez Peredo) who had submitted an independent amendment, but which in substance was similar to the one just referred to, expressed the same point of view: it would be wrong to request the Economic and Social Council to consider whether a convention on genocide was desirable and necessary or not, "first, because the General Assembly itself had already recognized unanimously, in its meeting last year on 11 December that it was necessary to carry through...a convention on genocide; and second, because the General Assembly does not need to consult any other organization or organ to know whether this sort of matter is necessary..." (Ibid. pp. 188-190).

Similarly, the representative of France (Mr. de la Tournelle) stated that the Assembly "had to respect and implement...the resolution of the General Assembly of 11 December 1946, which recognizes the juridical existence of the crime of genocide and recommends the suppression thereof by international action" (Ibid. pp. 193-195); and the same idea is found in the statements of the representatives of the Dominican Republic (Mr. Henriquez-Urena) (Ibid. p. 231) and of China (Mr. Wellington Koo, Jr.) (Ibid. pp. 236-241).

The representative of Norway (Mr. Seversted) put forward another argument in favour of the conclusion of a convention: "The second provision (of the resolution 96 (I) of 11 December 1946)... to the effect that legislation should be enacted to prevent genocide, has, I understand, already been carried out by a few members. Other members, like my country, do already possess in the main the necessary legislation on that point. However, this legislation needs some adjustments, but these adjustments cannot be made until the convention is drawn up. We must know what acts will be covered by genocide, and we must also know under what conditions and in what cases we are expected to render extradition". (Ibid. p. 201). The representative of Mexico (Mr. Primo Villa Michel) (Ibid. pp. 232-235) expressed the same idea.

The representative of the United States (Mr. Fahy) pointed out that his delegation had always been in favour of the conclusion of a convention and he added: "Pursuing the line which has been followed by the United States delegation in regard to this subject from the beginning, we prefer the amendments...because they look toward a

more expeditious formulation of a convention for consideration by the General Assembly than does the draft submitted by the Sixth Committee." (Ibid. pp. 207-210).

The representative of Iraq (Dr. Abdul Majid Abbaas) also declared himself in favour of a convention (Ibid. pp. 217-220).

On the other hand, the representatives of the United Kingdom (Mr. Davies) and the Union of Soviet Socialist Republics (Mr. Durdenevsky) defended the draft resolution submitted by the Sixth Committee and were, consequently, against the imperative request to draw up a convention for the prevention and suppression of the crime of genocide. The representative of the United Kingdom said: "It is quite clear that this resolution (submitted by the Sixth Committee) does not exclude the drawing up of a convention; it does not exclude it, but it does give to the Economic and Social Council the job of deciding whether a convention is necessary or not." (Ibid. pp. 217-220). He added that he did not see any contradiction between the draft resolution of the Sixth Committee and resolution 96 (I) of the First General Assembly: "...the decision of the General Assembly of 1946 was merely to the effect that the Economic and Social Council should cause a convention on genocide to be prepared and submitted to this General Assembly. This draft convention was prepared, as the representatives are aware, and was submitted, and when that had been done the previous decision had been fully fulfilled. There is nothing in the resolution of 1946 which even purported to affect the discretion of the present General Assembly." (Ibid. pp. 221-222, the same idea is expressed again on page 222). Finally, he declared: "We wonder why it is necessary to insist that there must be a convention without due deliberation; why there must be a convention which may not be the best method of carrying further this declaration and which is a method...which is not altogether satisfactory to a large number of Members who would presumably be unwilling to accede to such a convention." (Ibid. pp. 223-225).

The representative of the Union of Soviet Socialist Republics (Mr. Durdenevsky), while declaring that he was in favour of energetically combating genocide, urged that the draft convention should be studied by the Economic and Social Council with complete freedom of action, and that the latter "should not be bound by the draft which was elaborated by three experts invited for that purpose by the Secretariat." (Ibid. pp. 227-230).

Question Two - Should the Economic and Social Council wait, in order to fulfil its task, until it has received replies from the majority of Governments?

/In accordance

In accordance with the resolution of 28 March 1947 the secretary-General was to refer "to all Member Governments for comments" on the draft convention which he was also instructed to draw up. The lack of these comments had on several occasions been mentioned by various organs of the United Nations as an obstacle to the accomplishment of their work (Committee on the Progressive Development of International Law and its Codification, Economic and Social Council in its Fifth Session, Second Ordinary Session of the General Assembly). Should the progress of the work be subordinated in future to the receipt of these observations from the Governments?

Sub-Committee 2 had adopted a definite position on this question by inserting in its draft resolution the following passage:

"Informs the Economic and Social Council that it need not await the receipt of the observations of all Member States before commencing its work."

On the other hand, the draft resolution of the Sixth Committee requested the Council (see above, page 36):

"to consider...the draft convention on genocide prepared by the Secretariat, after having received comments from most of the Governments of States Members of the United Nations..."

The amendment submitted by Egypt, Cuba and Panama reproduced on this point the formula adopted by Sub-Committee 2 with a few textual alterations. One of the sponsors of this amendment, the representative of Panama (Mr. Ricardo J. Alfaro) stated at the General Assembly:

"I wish to call the attention of the General Assembly to the passage in paragraph (c) of the resolution of the Sixth Committee.... The original amendment was to the effect that the draft (convention) should not be considered until comments had been received from all Governments. This was the equivalent of giving the right of veto on the question of the Genocide Convention to the fifty-seven members of the United Nations, and this was a sure and infallible method of killing the project, because it was sufficient for one single nation not to send its comment to keep the draft convention in a state of paralysis.

"The original proposal was subsequently made to read: 'After having received comments from most of the Governments', but 'most of the Governments' is at least the absolute majority. Therefore, this means that until twenty-nine Governments or more have sent in their comments, the draft convention will not even be considered.

/"In other words,

"In other words, the resolution raised in opposition to the Genocide Convention is the result of the tremendous force of inertia..." (document A/P.V. 123, pp. 172-175 and 176).

The representative of France (Mr. de la Tonnelle) made a similar statement (*Ibid.*, p. 197), as did also the representative of Norway (Mr. Seyersted) (*Ibid.*, p., 201).

The representative of the United States (Mr. Fahy), after supporting the amendment submitted by Cuba, Egypt and Panama, described what was likely to be the procedure: "If, however, the Economic and Social Council completes a draft convention in the ensuing year, and if, from a legal standpoint, it should not be in proper form by the next session of the General Assembly for submission to Governments for their adherence, the matter can then be referred, in order to have the draft convention perfected from a legal standpoint, to the International Law Commission which will be elected at the next session of the General Assembly. However, that will be a matter for decision by the General Assembly when the draft convention shall have been submitted by the Economic and Social Council." (*Ibid.*, p. 206).

The representative of the Dominican Republic (Mr. Henriquez-Urena) supported the amendment in question. He added that the Economic and Social Council should first revise the Secretariat's draft and adopt a draft convention which it would send to the Member States for consideration, after which it would be submitted to the General Assembly. (*Ibid.*, p. 231).

Question Three - Should the Economic and Social Council, in carrying out its task, take into account the fact that "the International Law Commission... has been charged with the formulation of the principles... of the Nürnberg Tribunal as well as the preparation of a draft code of offences against peace and security"?

As already stated some delegations had, during the debates in the Sixth Committee and Sub-Committee 2, urged that the problem of genocide should be studied in conjunction with that of formulating the principles of the Charter and Judgment of Nürnberg.

Their point of view was rejected by Sub-Committee 2 and the draft resolution adopted by the Sub-Committee was silent on this point.

On the other hand, by adopting the amendment submitted by the Union of Soviet Socialist Republics, the Sixth Committee wished to instruct the Economic and Social Council "to study... the question whether a convention on genocide is desirable and necessary, and if so, whether there should be a separate convention on genocide, or whether the question of genocide should be considered in connection with the drafting of a convention

/to include

to include the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal".

As the formulation of the principles of Nürnberg had been entrusted to the International Law Commission, the members of which would not be elected till the Third Session of the General Assembly, it was obvious that, if the Economic and Social Council felt that the two problems should be dealt with simultaneously, that of genocide could not be solved until the International Law Commission had made progress in its work, that is to say, not for some years.

In submitting their amendments the delegations of Egypt, Cuba and Panama stressed the necessity of speedy action so as to enable the Economic and Social Council to submit a complete convention on genocide to the Third Session of the General Assembly. That is why their amendment did not mention the connection between genocide on the one hand and the principles of Nürnberg on the other - it really reproduced the formula proposed by Sub-Committee 2. The amendment submitted by the delegation of Venezuela (withdrawn by that delegation in favour of the foregoing) likewise tended to suppress the connection between the two problems.

The representative of Norway (Mr. Seyersted) was strongly opposed to linking the problem of genocide with that of the principles of Nürnberg. "Why," he said, "should we halt the work (the drawing up of the convention on genocide) by linking it up with other subjects such as the question of the codification of the principles of the Nürnberg Charter and the Nürnberg Tribunal? Why should we complicate genocide, on which there is such a positive unanimity, by linking it with other and more controversial subjects? The Nürnberg Charter deals only with questions of war, but genocide is a problem of peace as well as of war. Therefore, it will only confuse the issue if we link the two together. If we are going to let every subject wait for other subjects to be worked out as well, then we shall never accomplish anything." (Document A/P.V. 125, p.201).

The representative of the United States (Mr. Fahy) took practically the same view, but put it less categorically: "If there are any further studies needed (other than the convention on genocide), as is emphasized in the (Sixth) Committee's draft resolution, those studies can be adequately made in connection with the actual process of drafting a convention." (Ibid. p. 206). He also foresaw the possibility, as mentioned above, that the convention drawn up by the Economic and Social Council might be referred by the Third Session of the General Assembly to the International Law Commission.

The opposite point of view was put forward by the representative of the United Kingdom (Mr. Davies), whose delegation had maintained that genocide was covered by the principles of Nürnberg. He said: "In the viewpoint of the United Kingdom, which was consistently expressed both in the Sub-Committee and in the full Committee, genocide is so closely analogous to the crimes against humanity covered by the Nürnberg judgment that the best thing to do would be to send it to the International Law Commission, who have to codify the Nürnberg principles, and let them deal with genocide at the same time. We think in that way the question of genocide can best be dealt with and disposed of in the long run and it would be more satisfactory to a large number of members of this General Assembly who are not favourable to conventions themselves." (Ibid. p. 221) and further on: "The majority of the Sixth Committee...leaves it open to the Economic and Social Council either to pursue the course of recommending a single convention on genocide or of adopting another course such as that of combining genocide with the formulation of the Nürnberg principles, which is what my delegation desires." (Ibid. p. 222).

It will be noted that certain delegations in favour of a special convention on genocide considered that the problem of genocide should be linked with that of the principles of Nürnberg.

The representative of China (Mr. Wellington Koo, Jr.), while accepting the amendment submitted by Egypt, Cuba and Panama, had put forward his own amendment to that amendment, the purpose of which was to instruct the Economic and Social Council to draw up the definite text of the convention on genocide "taking into account the fact that the International Law Commission, which will be set up in due course in accordance with the Assembly resolution of (21) November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nürnberg Tribunal as well as the preparation of a draft code of offences against peace and security." After having recalled that his delegation had previously thought that the drawing up of the convention should not be entrusted to the Economic and Social Council but to a body of jurists, he made the following statement: "However, now that the majority of the General Assembly has decided to refer it back to the Economic and Social Council, we feel that that body should be instructed to draw up the convention with a careful consideration of the exact terminology and definition of the crime of genocide bearing in mind that another body, the International Law Commission, has been charged with the responsibility of dealing with a cognate subject - namely, the formulation of the principles of the Nürnberg Tribunal - and also with the preparation of a

/draft code

draft code of offences against peace and security. "We wish that the Economic and Social Council, in swiftly completing its task of drawing up a convention on genocide, would not do anything which would prejudice the work of this latter body." (Ibid. p. 241).

The amendment submitted by China was adopted by the Assembly (see below).

Question Four - The use to be made by the Economic and Social Council of the draft convention prepared by the Secretariat,

In accordance with the draft resolution drawn up by Sub-Committee 2, the Economic and Social Council would have had "to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention prepared by the Secretariat, and to proceed with the completion of a convention, etc." This text shows that, in the opinion of Sub-Committee 2, the Secretariat's draft convention should be the basis for the work of the Council.

The text of the draft resolution adopted by the Sixth Committee permitted the Economic and Social Council, as we have seen, to discard the idea of a separate convention on genocide. Nevertheless, should the Council decide in favour of such a convention, it should "consider... the draft convention on genocide prepared by the Secretariat, after having received comments from most of the Governments of States Members of the United Nations..."

The amendment submitted by Egypt, Cuba and Panama, which was finally incorporated in the Assembly resolution, read:

"Requests the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention prepared by the Secretariat, and to proceed with the completion of a convention."

II - Resolution 180 (II) adopted by the General Assembly on
23 November 1947

The vote was taken by roll-call.

The Chinese amendment was adopted by 29 votes to 15 with 8 abstentions.

The joint amendment moved by Egypt, Cuba and Panama was adopted by 24 votes to 15 with 2 abstentions.

The resolution as a whole was adopted by 38 votes to 0 with 14 abstentions.

TEXT OF THE RESOLUTION

"THE GENERAL ASSEMBLY,

REALIZING the importance of the problem of combating the international crime of genocide;

/REAFFIRMING

REAFFIRMING its resolution 26 (I) of 11 December 1946 on the crime of genocide;

DECLARING that genocide is an international crime entailing national and international responsibility on the part of individuals and States;

NOTING that a large majority of the Governments of Members of the United Nations have not yet submitted their observations on the draft Convention on the crime of genocide prepared by the Secretariat and circulated to those Governments by the Secretary-General on 7 July 1947;

CONSIDERING that the Economic and Social Council has stated in its resolution of 6 August 1947 that it proposes to proceed as rapidly as possible with the consideration of the question of genocide, subject to any further instructions which it may receive from the General Assembly,

REQUESTS the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of 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 Nürnberg Tribunal, as well as the preparation of a draft code of offences against peace and security;

INFORMS the Economic and Social Council that it need not await the receipt of the observations of all Members before commencing its work, and

REQUESTS the Economic and Social Council to submit a report and the Convention on this question to the third regular session of the General Assembly."

ANNEX

Observations of the Governments of States Members and
communications from non-governmental organizations on
the Secretariat's draft Convention

PART I - The Observations of Governments

1. Up to 20 January 1948 seven government observations in answer to the Secretary-General:

| | |
|--------------------------------|---|
| India - 27 August 1947 | Document A/401 - 27 September 1947 |
| Haiti - 12 September 1947 | id. |
| Philippines - 9 September 1947 | Document A/401/Add.1 - 10 October 1947 |
| Venezuela - 12 September 1947 | id. |
| United States of America - | |
| 30 September 1947 | Document A/401/Add.2 - 18 October 1947 |
| France - 7 October 1947 | Document A/401/Add.3 - 31 October 1947 |
| Denmark - 4 December 1947 | This last reply has not yet been distributed. |

The first six of these replies arrived early enough for submission to the General Assembly during its Second Session.

2. Two of the above-mentioned replies do not contain any observations on the substance:

The Government of India confines itself to saying that it has "no comments to offer on the draft Convention."

The Government of the Philippines says that at the next session of the General Assembly its delegation will be "supplied with the materials on the subject" and will present "the views of the Philippine Government on the matter."

3. The other five Governments (Haiti, Venezuela, United States of America, France, Denmark) agree on the need for or value of a Convention. In addition, they submit appraisals or suggestions relative either to the articles of the draft convention or to its principles.

(a) The Government of Haiti proposes, firstly, that not only the State on whose territory acts of genocide have been committed, but also any other State party to the Convention, and the Secretary-General acting "on his own initiative, or in the name of members of the human group victims of such acts," may report the authors of such acts to the Economic and Social Council or the Security Council (Comment on Article IX).

Secondly, it proposes that "the human groups affected", as well as the parties to the Convention, may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes (Comment on Article XII).

/Generally speaking,

Generally speaking, the Government of Haiti envisages an extension of the scope of the draft Convention's provisions.

(b) The Government of Venezuela, on the contrary, is of opinion that the draft goes beyond the General Assembly's resolution of 11 December 1946. "It appears that the spirit of this resolution was to ensure that Members should prevent and punish the hateful acts that constitute genocide and establish a principle of international co-operation with this object in view, without demanding from Members a grave sacrifice of their sovereignty and a surrender of the criminal jurisdiction they exercise in their territory. The Secretariat drafts, on the other hand, appear to involve a partial surrender of these traditional principles of national and international law in favour of the establishment of an international repressive jurisdiction which may result in serious danger to Members and wound national feelings that are still over-sensitive."

The Government of Venezuela adds that "the whole system envisaged for the establishment of international justice in relation to genocide seems clearly inconsistent with the principle laid down in paragraph 7 of Article 2 of the United Nations Charter".

Moreover, the Venezuelan Government recalls that its own legislation, like that of numerous other States, does not allow the extradition of its nationals, and subjects that of foreigners to certain conditions. "Such States could not accept the wording of Article 111 under which extradition must be granted in all cases".

(c) The Government of the United States of America examines each of the draft's various Articles. Moreover, it submits a new text of the draft.

In addition to its criticisms of the wording, the United States Government advocates the following solutions on matters affecting the substance:

1. It accepts the idea of "physical genocide" and "biological genocide", but generally rejects the idea of "cultural genocide", retaining only one of the acts under this head, namely the "forced transfer of children to another human group".

2. It opposes the inclusion among preparatory punishable acts of studies and research for the purpose of developing the technique of genocide, being of the opinion that these studies and researches may be too remote from what is generally regarded as commission of the offence.

/3. It objects

3. It objects to incriminating "public propaganda", which does not constitute direct incitement to genocide. Such incrimination would be contrary to the principle of free speech as understood in Anglo-American law.

4. It proposes to supplement Article IV of the Secretariat draft in such a way as to make groups and organizations punishable as well as individuals.

5. While agreeing that a legal behest or superior orders do not constitute justification, it proposes that they should be considered as extenuating circumstances. (In support of this point of view it invokes Article 8 of Nürnberg Charter.)

6. The United States Government considers that Article VII and VIII of the Secretariat draft impose too great restrictions on the sovereignty of States. It therefore proposes: (a) that where a punishable act was committed outside the jurisdiction of a High Contracting Party having jurisdiction over the offender, that Party "may, subject to Articles VI, VII, and VIII, and with the express consent of the State where the act was committed, itself try and, upon conviction punish such offender"; and (b) that extradition of offenders, though allowed as in the Secretariat draft, shall be granted only in accordance with the laws and treaties of the party which receives the request (on this last point the United States criticism coincides with that of Venezuela).

7. The United States is of opinion that reparations to injured groups should be fixed and allocated by the international criminal court, and not, as proposed in the Secretariat draft, by the United Nations.

(d) In its commentary the Government of France regrets "that the question of genocide was not considered in correlation with the principles affirmed in the statute and sentences of the Nürnberg Tribunal, and as a parallel to the conception of crime against humanity, of which genocide is merely one of the aspects".

It is of opinion that "this draft is too much concerned with introducing anti-genocide clauses into the body of domestic law of each State - clauses which would seem to be of no more than relative value since this crime can be committed only with the complicity of Governments".

It opposes the idea of cultural genocide, since this "invites the risk of political interference in the domestic affairs of States, and in respect of questions which, in fact, are connected with the protection of minorities".

/It opposes

It opposes the application of the idea of genocide to people other than rulers, and excludes agents, civil servants or private individuals. These last may be "prosecuted and punished by international courts (since the courts of their own countries take no action), but on a charge of murder and as common-law criminals".

(e) Declaring that it is not at present in a position to submit detailed comments on each of the articles of the draft, the Government of Denmark confines itself to saying that for its part it would have preferred the enumeration of punishable acts to have been shorter, since no such enumeration can ever be complete and exhaustive. This Government also observes that the adoption of a Convention of the kind represented by the draft would necessitate certain amendments to the present Danish penal code.

PART II - Communications from Non-Governmental Organizations

Several non-governmental organizations with consultative status have communicated their views to the Secretary-General. They are:

Consultative Council of Jewish Organizations (document E/C.2/49, 30 July 1947)

World Jewish Congress (document E/C.2/52, 8 August 1947).

Commission of the Churches on International Affairs (document E/C.2/63, 31 October 1947)

World Federation of United Nations Associations (document E/C.2/64, 12 November 1947).

All these organizations condemn genocide and request that a Convention for its effective prevention and suppression should be concluded as quickly as possible.

The Consultative Council of Jewish Organizations proposes that the draft Convention should be amended as follows:

(a) Rulers or servants of a State who fail to employ the lawful means at their disposal to prevent or punish any offence under the convention should be deemed guilty.

(b) If an individual is brought before a municipal court on a charge of genocide and is acquitted or sentenced to an insufficient penalty as the result of a manifest miscarriage of justice, the delinquent should be brought before the international criminal tribunal.