

AD HOC COMMITTEE ON GENOCIDE

RELATIONS BETWEEN THE CONVENTION ON GENOCIDE ON THE ONE HAND AND THE  
FORMULATION OF THE NURNBERG PRINCIPLES AND THE PREPARATION OF A  
DRAFT CODE OF OFFENCES AGAINST PEACE AND  
SECURITY ON THE OTHER

Note by the Secretariat

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THE RELATIONS BETWEEN THE CONVENTION ON GENOCIDE ON THE ONE HAND AND THE FORMULATION OF THE NURNBERG PRINCIPLES AND THE PREPARATION OF A DRAFT CODE OF OFFENCES AGAINST PEACE AND SECURITY ON THE OTHER

Note by the Secretariat

In its Resolution 180 (II) of 21 November 1947 "reaffirming its Resolution 96 (I) of 11 December 1946", the General Assembly decided to pursue the conclusion of a special convention on genocide. By that decision it rejected the idea of simply considering genocide as one of the crimes against humanity mentioned by the Charter of the International Military Tribunal of 8 August 1945.\*

Nevertheless, the General Assembly resolution mentioned above requested the Economic and Social Council to take into account the terms of reference given to the International Law Commission concerning the formulation of the Nurnberg principles. The resolution states:

"The General Assembly... requests the Economic and Social Council... to proceed with the completion of a convention, taking into account that the International Law Commission, which will be set up in due course in accordance with General Assembly Resolution 174 (II) of 21 November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nurnberg Tribunal, as well as the preparation of a draft code of offences against peace and security."

What did the Assembly mean when it said that the Council should take into account the terms of reference given to the International Law Commission?

That allusion to the formulation of the principles recognized in the Charter of the International Military Tribunal is due to the Chinese delegation's initiative in presenting to a plenary session of the General Assembly on 21 November 1947 an amendment (document A/514) the text of which was embodied as it stood in the above-quoted paragraph of the General Assembly resolution.

\* That Charter is an annex to the Agreement by the Government of the United States, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the prosecution and punishment of the major war criminals of the European Axis, signed in London the same day.

Mr. Wellington Koo, Jr. commented on his amendment in the following terms to the General Assembly (123rd plenary meeting):

"We feel that that body (Economic and Social Council) should be instructed to draw up the convention with a careful consideration of the exact terminology and definition of the crime of genocide. We feel that the Economic and Social Council should draw up the text of this convention 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 Nurnberg Tribunal - and also with the preparation of a draft code of offences against peace and security.

"We wish that the Economic and Social Council, in swiftly completing its task in drawing up a convention on genocide, would not do anything which would prejudice the work of this latter body."  
(Document A/P.V.123, page 241)

CHAPTER I - DOES GENOCIDE COME WITHIN THE CATEGORY OF CRIMES AGAINST HUMANITY AS DEFINED BY THE CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL?

I. The acts constituting genocide have been provided for in the Charter of the International Military Tribunal.

In Resolution 96 (I) of 11 December 1946, the General Assembly described genocide as "a denial of the right of existence of entire human groups" and compared it to homicide which "is the denial of the right to live of individual human beings".

The crime of genocide, considered from the point of view of the actual facts which constitute it, is certainly included in the list contained in Article 6, paragraph (c) of the Charter of the International Military Tribunal:

"(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions of political, racial or religious crimes in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."\*

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\* Text corrected by the Berlin Protocol of 6 October 1945.

Genocide in the most restricted sense consists in the physical destruction of the members of a human group with the purpose of destroying the whole or part of that human group.

Thus defined, genocide is mass murder. It constitutes an act of extermination. It is therefore covered by the terms of Article 6, paragraph (c) of the Charter of the International Military Tribunal.

If the crime of genocide is understood in the widest sense to include the destruction by brutal means of the specific characteristics of a human group, it is still covered by the terms of Article 6, paragraph (c) of the Charter of the International Military Tribunal which is concerned with "persecutions on political or racial or religious grounds."

II. The Charter of the International Military Tribunal is only concerned with crimes against humanity if they are related to crimes against peace or war crimes.\*

In interpreting Article 6, paragraph (c) mentioned above, the International Military Tribunal ruled, in its verdict of 30 September 1946, that crimes against humanity were not liable to punishment by an international court unless they were in some way connected with crimes against peace or war crimes. In reaching that conclusion the Tribunal considered the final part of paragraph (c) mentioned above. "Acts.....or persecutions .....in execution of or in connection with any crime within the jurisdiction of the Tribunal".\*\* Consequently, if acts of genocide have

\* The following are crimes against peace and war crimes according to Article 6 of the Charter of the International Military Tribunal:

"(a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

"(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity".

\*\* Here is the relevant part of the verdict:

"To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of or in connection with any crimes within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proven that they were done in execution of or in connection with any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter".

/been committed

been committed without any connection with crimes against peace or war crimes, they are punishable by an international court.

On the contrary, the condemnation of genocide contained in General Assembly Resolution 96 (I) of 11 November 1946 is not accompanied by any conditions, and consequently genocide is considered as a crime under international law even if it has been committed in time of peace, and even if the country where it has been committed has not subsequently been involved in any war.

III. The General Assembly wished genocide to be indictable as a separate offence

In adopting Resolutions 96 (I) and 180 (II) the General Assembly had in mind a convention which would enable genocide to be punished in whatever circumstances it was committed.

Without going into the general question of crimes against humanity, the Assembly wished to organize the prevention and punishment of a particular category of such crimes, namely those described as genocide. The General Assembly wished to give special treatment to the crime of genocide because of the particular gravity of that crime, which aims at the systematic extermination of human groups.

It should be noted that the treatment of certain criminal acts falling within the same category as distinct offences is no innovation. Examples exist in state penal systems. Thus homicide which is the denial of an individual human being's right to live is divided into several different categories: manslaughter, homicide, murder, and even parricide or regicide.

IV. Definition of the crime of genocide in relation to other crimes against humanity

The General Assembly considered that it could make genocide indictable separately from other crimes against humanity because it had itself noted certain specific characteristics of that crime which made it possible to differentiate it from other crimes against humanity.

"Genocide", said the General Assembly, "is a denial of the right of existence of entire human groups....." It follows that:

1. The victim of the crime of genocide is a human group. It is not a greater or smaller number of individuals who are affected for a particular reason (execution of hostages) but a group as such;
2. It refers to the actual destruction of a human group and not to restrictions, ill-treatment or oppression of that group;
3. The destruction of the human group is the actual aim in view. In the case of foreign or civil war, one side may inflict extremely heavy losses on the other but its purpose is to impose its will on the other side and not to destroy it.

CHAPTER II - CONDITIONS FOR THE PUNISHMENT OF THE CRIME OF GENOCIDE  
AND OF CRIMES AGAINST HUMANITY

I. In the convention the notion of genocide will be independent of the notions of crimes against peace and war crimes

One of the essential features which distinguishes the international punishment of the crime of genocide from the punishment of crimes against humanity has been mentioned in the preceding chapter. Under the Nurnberg Charter, crimes against humanity cannot be punished unless they have been committed in execution of, or in preparation for, an aggressive war. On the contrary, General Assembly Resolution No. 96 (I) of 11 November 1946 which "affirms that genocide is a crime under international law which the civilized world condemns" does not attach any conditions or reservations to that statement. Consequently the convention on genocide envisaged in the said resolution and confirmed in the further Assembly Resolution 180 (II) of 21 November 1947 obviously does not contain any restriction similar to that in the Nurnberg Charter with regard to crimes against humanity.

It may be said that a convention on genocide, without weakening the condemnation of crimes against humanity under international common law, which is valid for all the members of the international community, will organize a practical system for the punishment of the crime of genocide which will be implemented by the States that have ratified the convention. It will not be the first time that a convention has been concluded on a matter on which rules of common law already exist. Common law retains its full force for the States which have not signed the convention, but the States parties to the convention define and develop the rules of common law in order to secure certain practical results.

The committee will no doubt consider it expedient to insert a clause, either in the preamble or the body of the convention, implying that genocide is already a crime under general international law.

II. The convention will not confine itself to recognizing the right of States to punish genocide; it will make it obligatory for them to do so.

That is another considerable difference between the Nurnberg Charter and the convention envisaged by the General Assembly.

After noting the criminal nature of certain acts and recognizing the right of States to punish their authors, the Charter of the International Military Tribunal organized the punishment of those crimes in given circumstances but did not impose on States a formal and general obligation to punish such crimes in the future, no matter what the circumstances.

/The very purpose

The very purpose of the convention on genocide, however, is to make it obligatory for States which have signed the convention to punish the crime of genocide. It is desired to make what was simply optional for States into an imperative international obligation.

The General Assembly Resolution of 11 December 1946 mentioned above, which provided for the conclusion of a convention on genocide states:

"THE GENERAL ASSEMBLY

AFFIRMS that genocide is a crime under international law...for the commission of which principals and accomplices.... are punishable;

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

.....

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...."

III. The convention will be concerned not only with the punishment of genocide but also with its prevention.

The Charter of the International Military Tribunal provides only for penal action taken a posteriori against the authors of crimes which have already been committed.

In order to comply with General Assembly Resolution 96 (I), on the other hand, the authors of the convention on genocide must provide for both the punishment and the prevention of the crime. By the terms of the resolution in question, "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, 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....."

This prevention may involve making certain acts punishable which do not themselves constitute genocide, for example, certain material acts preparatory to genocide, agreements or plots with a view to committing genocide, or systematic propaganda inciting to hatred and thus likely to lead to genocide.

Prevention may take other forms than penal measures. There may be international prevention of a political nature. That would be the case if it was provided that the States parties to the convention should inform the organs of the United Nations in order that they might prevent the Commission of genocide.

CHAPTER III - THE GENERAL ASSEMBLY'S RECOMMENDATION CONCERNING THE  
FUTURE WORK OF THE INTERNATIONAL LAW COMMISSION

1. The convention on genocide will organize the prevention and punishment of genocide as a separate crime within the category of crimes against humanity.

To comply with the invitation contained in General Assembly Resolution 180 (II) of 21 November 1947 to "take into account that the International Law Commission, which will be set up..... has been charged with the formulation of the principles recognized in the Charter of the Nurnberg Tribunal, as well as the preparation of a draft code of offences against peace and security", the Committee will have to give a sufficiently precise definition of genocide for it to be clearly distinguishable from other crimes against humanity.

The International Law Commission, which cannot in any case begin to function until after the third session of the General Assembly, will have to take into account what the General Assembly has already decided on the question of genocide.

2. Nevertheless, the Ad Hoc Committee, should perhaps consider the case in which the same individuals have committed the crime of genocide and other crimes against humanity or other crimes mentioned in the Charter of the International Military Tribunal (crimes against peace, war crimes). In such a case - if the International Law Commission not only defines offences but organizes their punishment - there would be some advantage in punishing those crimes as a whole according to the same principles. It might also be advantageous if an individual accused of a number of offences could be brought before the same Tribunal and tried at a single hearing. That is perhaps a reason for not providing for a special ad hoc jurisdiction for crimes of genocide, or only envisaging such jurisdiction as a subsidiary measure should there be no other international penal jurisdiction having more general powers.

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