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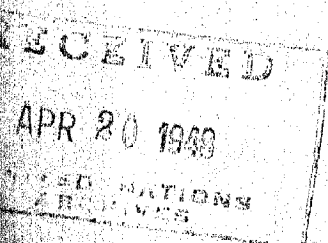
## AD HOC COMMITTEE ON GENOCIDE

## SUMMARY RECORD OF THE FOURTH MEETING

Lake Success, New York  
Wednesday, 7 April 1948 at 2 p.m.

<u>Chairman:</u>	Mr. J. MAKTOS	(United States of America)
<u>Vice-Chairman:</u>	Mr. MOROZOV	(Union of Soviet Socialist Republics)
<u>Rapporteur:</u>	Mr. AZKOUL	(Lebanon)
<u>Members:</u>	China	Mr. LIN
	France	Mr. ORDONNEAU
	Poland	Mr. RUDZINSKI
	Venezuela	Mr. PEREZ-PEROZO

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The CHAIRMAN first of all recalled that the Committee had recognized in the course of its previous meeting that genocide was the extermination of racial, national and religious groups. Later, of course, the members of the Committee might propose the inclusion of other categories.

The Chairman then read a memorandum submitted by the Secretariat, dealing with the Committee's methods of work. This document emphasized that discussion of a convention on genocide fell into two distinct stages: (1) the discussion of principles; (2) the drafting of a suitably worded text. The USSR proposal presented certain disadvantages in that it did not differentiate clearly enough between fundamental principles and the detailed provisions of a convention.

The Chairman did not support these comments unreservedly; moreover he pointed out that they in no wise constituted a criticism of the USSR proposal, which in his opinion could be helpful to the Committee in the accomplishment of its task.

Mr. MOROZOV (Union of Soviet Socialist Republics) felt that even if the proposal presented by his delegation did not exhaust the subject -- and it did not attempt to do so -- it still set forth all the essential questions and would make it possible to define the general nature of the convention. In his view, the Committee should begin by studying the most important questions; namely, definition and nature of genocide, inclusion of cultural genocide, questions of jurisdiction, and finally the additional points raised in the proposal of the USSR as well as in other documents.

In conclusion, Mr. Morozov pointed out that even if the members of the Committee were unanimous with regard to certain principles, they were not agreed on the drafting of the corresponding articles or on the question of whether political groups should be included in the convention.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) thought it would be well to determine the method of procedure, and he suggested that the proposal of the USSR should be adopted as a basis for discussion. He proposed that the different points of that document should be discussed one by one.

If it was agreed to list various groups, that would mean both a long and necessarily incomplete list. In his view, it would be better to begin by specifying the definition, and in that connexion he submitted two questions. (1) Should the crime of genocide be defined as the physical extermination of individuals, or as the extermination of a group as such, without regard to the massacre of individuals? (2) Should the question of the motivation of the act be introduced? Those were important questions which would have to be decided, as their solution would ipso facto settle the question of cultural and political genocide.

The CHAIRMAN, speaking as the United States representative, proposed adding to the definition of genocide, which had been agreed upon at the previous meeting, the words, "with the complicity of the Government". The United States delegation felt in fact that genocide could not be an international crime unless a Government participated in its perpetration. In introducing this amendment, Mr. Maktos in no way wished to exempt from responsibility or excuse from punishment individuals not directly connected with a Government. But the common law of every country covered crimes not committed with the complicity of the Government. Here was a condition sine qua non of genocide which should be inserted in the definition.

Mr. AZKOUL (Lebanon), while admitting that the complicity of the Government was an element of genocide, thought it need not necessarily be a condition of its existence sine qua non. It was possible to imagine the case of a group of individuals seeking to exterminate

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another group, and of a Government which, through weakness or impotence, was powerless to prevent the massacre. Nevertheless, would not that be genocide? The principal idea underlying the convention was that it would be the starting point for an international penal system. The concept of genocide ought to enter into national penal codes and be part of the system of education.

Replying to Mr. Azkoul, the CHAIRMAN explained that it would be genocide for a member of a Government to call for the extermination of a group of individuals and to enlist the help of an individual or another group to accomplish that crime. The Government's complicity would have to be assumed if, for example, it did not intervene to restore order.

Mr. ORDONNEAU (France) stated that he was in favour of the definition proposed by the United States. In his opinion, difficulties arose from the fact that physical genocide was made up of a series of individual crimes which were envisaged as such in national laws. The idea of genocide was bound to overstep national boundaries and take on an international character; it thus became necessary to distinguish genocide from simple homicide.

Another difficulty would be the case of a group which carried on a private war on another group within the same State and committed a series of individual murders. This form of conspiracy was usually taken account of in national laws and could even constitute an aggravating circumstance (entente de malfaiteurs), as it did in France. In that case there was no genocide, precisely because there was no participation by the Government. Thus it was necessary to retain in the definition of genocide the concept of governmental complicity, providing always that the word "complicity" be understood in its widest sense: for example, the mere act of granting impunity to the group committing genocide would constitute complicity.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) reserved the right to offer observations on that point when he received the text of the United States proposal.

He had no objection in principle and only wished to say that in his opinion Governments, officials and individuals accessory to a crime were all equally guilty when the crime was genocide. That was a principle on which everyone agreed, but which he would like to see expressed elsewhere than in the definition of genocide, for fear of weighing the definition down or restricting its scope. He thought that in the text, the elements of the crime should be separated from the criminals.

In his view, the participation of the Government was a necessary but sometimes an indirect element. Genocide was fundamentally the deliberate annihilation of a racial, religious or national group, and the participation of a Government did not change the nature of the crime. The extermination was not necessarily physical, but could be produced by the creation of living conditions which obliterated the group, and there again, the nature of the crime did not depend on the criminal agency.

Mr. Morozov therefore felt that the first thing to be done was to define the crime of genocide, that is, to decide whether it should include biological and cultural destruction as well as physical, and having arrived at this definition, to consider who should be held responsible.

Mr. LIN (China) found it difficult to accept the limitation proposed by the Chairman. In his view, a crime need not be committed with the complicity of a Government in order to fall within the province of international law. Obviously there could be no crime of genocide without a certain amount of government participation, but this participation need not be obvious.

/Mr. Lin

Mr. Lin thought that to describe the inertia of a Government as complicity would be to exaggerate the meaning of an ambiguous term. Genocide could be committed by officials acting as individuals and then a Government could not effectively intervene. In conclusion, Mr. Lin considered that the complicity of the Government was an element in the crime but not an essential element.

Mr. RUDZINSKI (Poland) spoke against the United States amendment which, in his opinion, unduly restricted the concept of genocide.

Behind this amendment lay the false conception that governmental authority was always effective. It was unrealistic to think that a Government could always prevent genocide. It could not do so, for example, either during periods of unrest, in time of war, or in certain Non-Self-Governing Territories where ruling circles practised the well-known policy of divide and conquer; "divide" often meant, in this case, to destroy.

Such a limitation, according to Mr. Rudzinski, would change the whole nature of the convention, which would thus be directed against Governments, contrary to the original intent. Therefore he could not accept the amendment proposed by the United States.

Mr. ORDONNEAU (France) acknowledged the force of Mr. Rudzinski's argument in cases where the authority of a Government was so weakened that it could neither prevent nor suppress the crime.

He thought it might be better to abandon this limitation, which was likely to create practical difficulties.

The CHAIRMAN, in reply to Mr. Lin, said that even if international law did not make governmental complicity a prerequisite to declaring a crime international, there could be practical cases where its participation was obvious and if the definition proposed by his delegation was

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accepted, there was nothing which would prevent an international court from deciding that a Government's inertia amounted to complicity.

Answering Mr. Rudzinski, the Chairman pointed out that national courts could suppress individual crimes. The United States proposal was not designed to hamper the suppression of genocide, but to clarify its definition. Finally, in the great majority of cases, the Government would be able to impose its authority, and plainly the convention could not anticipate every kind of case. It was necessary to have confidence in the wisdom of the judges who would have to interpret the convention.

Mr. FEREZ-HEROZO (Venezuela) did not think the complicity of Governments should be considered as an indispensable element of genocide. He still believed that this approach would dangerously narrow the concept of genocide. Moreover, it would prevent the punishment of numerous crimes committed by one group against another and having all the other characteristics of genocide. The idea of genocide was very clear in his mind: from the etymological standpoint, its roots were "group" and "kill". When these two ideas were combined, the crime of genocide appeared. It would be a mistake to think that genocide was bound up with the physical disappearance of members of the group. The life of individuals could continue after the group as such had been killed off. Besides, the United States proposal did not anticipate the case of a weak Government unable to prevent the extermination of a group occupying a distant region. The proposal was a dangerous idea which could best be expressed outside the definition proper.

Mr. AZKOUL (Lebanon) said it was implied in the first paragraph of the General Assembly's resolution on genocide that the Assembly envisaged the possibility of genocide being committed without governmental participation or culpability. The proposed United States amendment, because it required the complicity of a Government, seemed to exclude the

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possibility that a crime of genocide might be committed by individuals. Besides, a Government could hardly be expected to declare itself an accomplice in massacres. Thus the United States proposal seemed to be in conflict with the first paragraph of the resolution of the General Assembly.

The CHAIRMAN, in answer to Mr. Azkoul, expressed the opinion that it had been the wish of the General Assembly to define genocide as an international crime. It would be neither desirable nor useful to bring in questions of national jurisdiction. Once the convention on genocide had been drafted, it would be up to every country to bring its penal code into line. The General Assembly had not attempted to define the crime of genocide and it was clear that, in the last analysis, it was individuals who were responsible. Finally, the Chairman did not think it would be wise to limit the discussion to the points mentioned explicitly by the General Assembly resolution.

Mr. ORDONNEAU (France) suggested postponing further discussion of the question until later.

The meeting then adjourned and reconvened at 4.25 p.m.

The CHAIRMAN asked the members of the Committee to consider his proposal and to take a decision on it later. Genocide would be defined as the extermination or attempted extermination of racial, national or religious groups of the population, committed with the complicity of responsible State officials.

Mr. LIN (China) proposed to define genocide as the extermination, or attempted extermination of racial, national or religious groups of the population carried out with the complicity of Governments, of responsible Government officials, of Government organs or of persons

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employed as Government officials. He stressed, however, that the word "complicity" should be defined.

Mr. AZKOUT (Lebanon) stated that it was necessary first of all to define the word "extermination", making it clear whether it applied solely to the physical extermination of individuals belonging to a group, or also to cases where the group was destroyed but some of the individuals who had been its members survived, and secondly to include in the definition a reference to the motive for action.

The CHAIRMAN asked whether members of the Committee wished to add further groups of human beings to those listed in the definition already accepted. Speaking as the representative of his Government, he proposed the addition of "political groups".

Mr. ORDONNEAU (France) remarked that the French delegation had, in the course of the previous meeting, proposed to include the extermination of a group on account of its opinions. The word "opinion" was proposed because it laid stress on the fanaticism which was the basis for such action. It also emphasized the fact that intellectual opinion, including political and other opinion, was that borne in mind.

Mr. AZKOUT (Lebanon) agreed to the inclusion of political groups in the definition, providing that their extermination was the result of political fanaticism. The CHAIRMAN stressed the fact that he did not agree that the extermination of a political group did not constitute a crime of genocide if it was not carried out solely on account of the opinions held by that group. He did not find "the extermination of a group on account of its opinion" a sufficiently precise expression and thought that it might even prove dangerous, since many of the groups against which a State might proceed held certain opinions, and it was a mistake to shelter them by allowing them to appear as groups persecuted on account of their opinion.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) drew attention to the manner in which the word "opinion" was used in the Declaration of Human Rights of 1789. The Declaration guaranteed, among other things, freedom of opinion, and the point at issue was to transpose the idea of freedom of opinion from an individual to a collective plane.

Mr. AZKOUL (Lebanon) emphasized the difference between the freedom of opinion of an individual and that of a group. Freedom of opinion included freedom of political opinion, but the latter should not serve as a protection of opinion expressed in terms of a doctrine or a plan of action endangering the very existence of the State. The representative of Lebanon further called attention to the essential difference between racial, national and religious groups, all of which bore an inalienable character, on one hand and political groups, far less stable in character, on the other.

It was possible to dissolve a political party, and such a dissolution might be accompanied by reprisals. It was also necessary to explain whether the extermination of a group, or such a dissolution, were meant in the definition.

Mr. RUDZINSKI (Poland) also stressed the fact that the three first-named groups which the Committee had already decided to protect had a fully established historical background, while political groups had no such stable form. There had been a period in history, half a century ago, when political parties set up by generals in South America vanished immediately after the defeat of the latter. A racial, national or religious group did not disappear simply because its head was eliminated or as a result of reprisals against its leaders.

Further, the representative of Poland drew attention to the moral reasons underlying the idea of drawing up a convention on the crime of genocide. The aim of the convention was to prevent a repetition of the

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atrocities perpetrated during the last war. The significance of the convention would have a moral rather than a political character. It was necessary to limit protection to the three groups already mentioned in the definition accepted by the Committee, as otherwise there would be no reason for not having an endless list protecting every conceivable kind of group.

Mr. ORDONNEAU (France) stated that freedom of political opinion of groups, no less than freedom of individual opinion, should not be allowed to go as far as to endanger the State.

As far as the latter part of the Lebanese representative's remarks was concerned, it would be more convenient to reply to it once the constituent elements of the crime of cultural genocide had been examined. In any case the definition submitted by the French delegation aimed at describing as genocide only attempts on the lives of members of a group made solely on account of the opinions expressed by them.

The CHAIRMAN, speaking as the representative of the United States of America, stated that a political group was more easily recognizable than a group holding a certain opinion, bearing as it does distinguishing marks which leave less room for confusion. Thus for instance, in the United States of America the only parties in question could be the Democratic or the Republic party, or a "third party".

Mr. ORDONNEAU (France) observed that in some countries the number of political parties was far greater and that in some cases they corresponded to philosophical and religious lines of thought which determined their nature.

Mr. LIN (China) suggested the inclusion of both political groups and groups of opinion in the definition, but warned against making the definition needlessly lengthy. There was, in fact, no good reason why

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social, economic and other groups should not be included, or even why no mention of sex distinction should be made, because there again it was possible to envisage separate groups.

The CHAIRMAN observed that resolution 96 (I) of the General Assembly on the crime of genocide mentioned political groups.

Mr. ORDONNEAU (France) thought that the character of the convention would suffer no change if it undertook to protect political groups.

Persecution of persons belonging to a political group on account of their political opinion was quite as reprehensible as that of the other groups. Since the representative of Poland had referred to the original causes underlying the idea of a convention, it should be stated that in Hitler Germany it had been equally dangerous for a member of a political group, such as the social democrats or the communists to declare his membership as it was to announce that he was a Jew. Historical reasons therefore were on the side of the inclusion of political groups in the definition of the crime of genocide.

Mr. PEREZ-PEROZO (Venezuela) opposed the inclusion of political groups. He drew attention to the difficulties which would be met in ensuring the signing of the convention if such groups were contained in the definition. Many political groups would claim such a definition as a reason for inundating the competent organs with complaints, especially if an international criminal jurisdiction were created, but failing that, they would appeal to the Economic and Social Council or the Security Council. Any impression that the definition of the crime of genocide offered some kind of protection to those in revolt against internal authority should be avoided. If the idea of political groups must be included, it should be specified that it would be left to the individual States to determine whether, according to their national jurisdiction, acts of such a nature taking place on their territory constituted the crime of genocide.

/Mr. AZKOUL

Mr. AEKOUL (Lebanon) strongly supported the inclusion of political groups, stressing the fact that the period in history when racial and national hatred had been the thing to be most greatly feared had been succeeded by a period in which political opinion had become the greatest cause of hatred.

Political groups should be mentioned all the more since every racial, political and religious group possessed certain political opinions and in many cases could not be dissociated from them. If they were to be protected effectively, they should also be protected as political groups.

DISCUSSION OF SECTION II OF THE MEMORANDUM SUBMITTED BY THE DELEGATION OF THE USSR (document E/AC.25/7)

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that Section II was designed to explain the concept of genocide. It was clear that in order to constitute genocide, extermination must be motivated by considerations of a racial, national, or religious character. If the crime had not been committed on the basis of those considerations, it belonged to a different type. The USSR representative called attention to Section VII of the memorandum, containing instances of genocide, and asked the Commission whether it wished to have some instances cited and whether it agreed to the choice of instances.

Mr. ORDONNEAU (France) pointed out that it was the rule in criminal law to present an exact definition of an offence bearing in mind the inadvisability of any broad interpretation being given. All enunciative enumeration should therefore be excluded. The French delegation fully agreed that the examples given in Section VII certainly represented cases of genocide, but did not think it was advisable to introduce such enumeration in defining the crime. He went on to ask the USSR representative what, in his opinion, were the limits of physical genocide; certain instances mentioned in Section VII dealt with biological genocide; would the USSR

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representative go so far as to include acts of violence which make procreation impossible, such as for instance the separation of the sexes? Or would his conception of physical genocide extend only to cases of physical violence.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed to change the last sentence of Section VII to read as follows: "Restriction of birth by means including among others, sterilization and compulsory abortion".

Mr. AZKOUL (Lebanon) remarked that paragraph 2 of Section II provided a reply to the French representative's question by stating that the idea of physical extermination must extend over the premeditated infliction on groups of the population of conditions of life leading to their extermination.

Mr. ORDONNEAU (France) explained that it was that last phrase which appeared to him to be insufficiently clear. He wished to know whether conditions such as economic destitution leading to the disappearance of a group would be considered as coming under the same head.

The USSR representative stated that in submitting the formula as it stood in the document he had wished to include all premeditated actions leading to the extermination of one of the groups mentioned. To quote an historical example, the ghetto, where the Jews were confined in conditions which, either by starvation or by illness accompanied by the absence of medical care, led to their extinction, must certainly be regarded as an instrument of genocide. If any group were placed on rations so short as to make its extinction inevitable, merely because it belonged to a certain nationality, race or religion, the fact would also come under the category of genocidal crime.

The USSR representative added that in proposing his wording he had wished to submit a development of the definition that would make all crimes of genocide impossible. It seemed to him that his formula was sufficiently broad to include all possible cases. They would be judged by the competent authorities according to their individual character.

Mr. ORDONNEAU (France) thought that Section II was divided into two distinct elements:

(1) The first paragraph dealt with attempts on the physical safety of a group. His delegation was prepared to accept that formula.

(2) The second paragraph, on the other hand, contained a broader formula which he recognized as important, but which should be studied further and formulated more clearly before it could be included in a text of criminal law.

The CHAIRMAN, speaking as the representative of the United States of America, expressed his agreement with the first paragraph of the USSR proposal. As for the second paragraph, which was to be considered in relation to Section VII, he thought that the enumeration which it contained tended to restrict rather than to clarify the concept of genocide. Its danger lay in permitting the authors of genocide to escape punishment in future simply because the nature of the crime committed by them was slightly different from that listed in the convention. It would therefore be better to adhere to a general definition without examples.

Mr. RUDZINSKI (Poland) emphasized that in considering the crime of genocide, the Committee naturally did not wish to leave aside the concept of murder. The two things were, however, not exactly the same, and the difference was that of intention. Not only murder but also the extinction of a group not involving the death of all its members might constitute a case of genocide. Genocide must include all forms of action designed towards the physical extermination of a group.

The CHAIRMAN

The CHAIRMAN thought that the definition, in the light of the explanations given, would enable any Court of Justice to recognize the crime, for instance, in the case of sterilization.

Mr. AZKOUL (Lebanon) believed that the members of the Committee were fundamentally in agreement. He asked whether, in the first paragraph of Section II stating that "the crime essentially connotes the physical destruction of groups", the word "connotes" made it quite clear that other cases could equally be included in that concept.

The CHAIRMAN replied that the Lebanese representative had interpreted the text correctly. Summing up the discussion, he said that the Committee agreed on the first paragraph of Section II, although it doubted the desirability of listing examples of genocides in the Convention. Each delegation could, if it wished, indicate the manner in which it understood Section II by citing examples in the report. As regards the second paragraph of Section II, the Committee wished to have time for thought before announcing its views.

The meeting rose at 6 p.m.