

AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE FIFTH MEETING

Held at Lake Success, New York
Tuesday, 8 April 1948, at 2 p.m.

Present:

Chairman: Mr. MAKTOS (United States of America)

Vice-Chairman: Mr. MOROZOV (Union of Soviet Socialist Republics)

Rapporteur: Mr. AZKOUL (Lebanon)

China	Mr. LIN MOUSHENG
France	Mr. ORDONNEAU
Poland	Mr. RUDZINSKI
Venezuela	Mr. PEREZ-PEROZO

CONTINUATION OF THE DISCUSSION ON THE DRAFT BASIC PRINCIPLES OF A CONVENTION ON GENOCIDE SUBMITTED BY THE DELEGATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (document E/AC.25/7)

CONSIDERATION OF SECTION III

Mr. MOROZOV (Union of Soviet Socialist Republics), referring to section III of the USSR draft basic principles, stressed the importance of qualifying the form of genocide under discussion by the term "national-cultural" and not merely by "cultural", as that crime had to be considered only from a national standpoint.

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Such a distinction was essential, for here the motive of the crime was the persecution of a national group as such; otherwise, the act listed in section III, namely, the prohibition or restriction of the use of the national tongue, especially in education, the destruction of books and publications, the destruction of historical or religious monuments, might concern the individual members of a national minority, and in that case, they should be condemned not by the convention but by the International Bill of Rights which was in process of preparation.

Mr. Morozov quoted passages from Professor Lemkine's book, "Axis Rule in Occupied Europe", which showed that Hitlerite Germany, in the action which it took with a view to the annihilation of certain national groups -- an action entirely independent of the conduct of military operations -- had committed, in occupied territories, a series of acts directed against the kind of national culture as had been described in section III, paragraphs (a), (b) and (c) of the proposals of the USSR delegation. Among the countries victims of those Hitlerian measures, Mr. Morozov mentioned Luxembourg, Lorraine, Poland and the part of the USSR territory that had been under enemy occupation.

Mr. PEREZ-PEROZO (Venezuela) recalled that in its resolution of 11 December 1946, the General Assembly had stressed the fact that genocide deprived humanity of the cultural contributions of certain human groups. It was, therefore, important that the convention which the Committee was called upon to draw up should protect the cultural heritage of national groups against systematic destruction of the kind committed by the Hitler regime.

The cultural bond was one of the most important factors among those which united a national group, and that was so true that it was possible to wipe out a human group, as such, by destroying its cultural heritage, while allowing the individual members of the group to survive. The physical destruction of individuals was not

the only possible form of genocide; it was not the indispensable condition of that crime.

The CHAIRMAN warned the Committee against an excessively wide extension of the concept of genocide, which might possibly exceed the framework traced by the General Assembly. The fact which initiated the General Assembly resolution had been the systematic massacre of Jews by the Nazi authorities during the course of the last war. Were the Committee to attempt to cover too wide a field in the preparation of a draft convention for example, in attempting to define cultural genocide -- however reprehensible that crime might be -- it might well run the risk to find that some States would refuse to ratify the convention or would give their signature only after a long period devoted to the study of the question.

Speaking as the representative of the United States of America, Mr. MAKTOU felt that it was the repression of barbarous acts against individuals forming a group which above all shocked the conscience of mankind, and it was, therefore, on the condemnation of physical genocide that agreement would be most easily reached between Member States. Section III of the USSR memorandum really referred the defense of national minorities, especially in times of war, and on that account it should be included in the conventions regarding war.

Mr. AZKOUL (Lebanon) drew the Committee's attention to the difficulty of defining genocide and to certain points that that question raised. The physical destruction of a human group was certainly not the only form which genocide could take, but immediately the question of cultural genocide was mooted, confusion with certain measures of national or international interest might arise. For example, it had been necessary, in the interests of

world peace, to introduce compulsory re-education of Japan's youth, in order to destroy the idea of the Emperor's divinity.

Furthermore, within one and the same nation, minority groups might hold ideas tending to destroy national unity.

The complexity of the concept of cultural genocide clearly explained the attitude of the United States representative, who would rather base the convention on the simpler concept of physical genocide.

Mr. RUDZINSKI (Poland) attached great importance to the notion of cultural genocide, as his country had suffered more especially from that particular crime. He felt, however, that a distinction had to be drawn between that form of genocide and the physical extermination of a group. The destruction of the cultural heritage of a group should be suppressed as a preparatory act to physical extermination.

Mr. ORDONNEAU (France) said that his country was specially interested in the suppression of cultural genocide in so much as such measures were connected with the protection of culture in general, to which France had always been devoted. A cultural group as such was not necessarily a national group, but might equally well be a racial or religious community.

In paragraphs (a), (b) and (c) of section III of the USSR memorandum there was, indeed, listed a series of acts coming within the concept of cultural genocide, but the list was incomplete, while the Secretariat's proposals mentioned other acts of a like nature, such as the dispersal of teachers and intellectuals belonging to a cultural group and the forced displacement of youth so as it might be prevented from receiving education in accordance with the ideas of the group.

That all went to show the difficulty of defining cultural

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genocide and of including such a definition in an international convention. Moreover, the repression of most acts of genocide should be provided for in the covenant on human rights, at present in preparation. During the drafting of that covenant, which was of a more general scope, it would be possible to arrive at a definition of much greater value than any which might be adopted when a more limited conception of genocide was under discussion. There was also the risk of some overlapping in advance between the points covered by the two instruments.

In spite of the importance that it attached to cultural genocide which is a crime against the conscience of mankind, the French delegation would now adopt a waiting attitude, for, above all, it was necessary to succeed in drafting a convention condemning physical genocide.

Mr. LIN MOUSHENG (China) said that he had already expressed the Chinese delegation's opinion during the second meeting of the Committee. Referring to the various views expressed by the representatives of France and the Union of Soviet Socialist Republics, he felt that the representative of France was right in stating that the listing of the various aspects of genocide would result in the limitation of the convention's scope.

Finally, he agreed with the representative of Lebanon that the cultural destruction of a group was tantamount in effect to the destruction of the group.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the members of the Committee were in agreement on the relation existing between cultural genocide and the acts defined in section III of the USSR memorandum.

In reply to the remarks of the United States representative, he said that the task of the Committee was to draw up a draft convention which could be used to condemn the crime of genocide,

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but that that draft was not a final document, since the Economic and Social Council would have to consider it at its forthcoming session in Geneva and that it was for the General Assembly in Paris to decide on the final form of the convention. He felt, therefore, that in the initial drafting of that document, the Committee might allow expression to be given to the voice of the peoples and its own humanitarian conceptions. The future would show if the Committee had been right and to what extent the conceptions expressed in the draft convention were acceptable to the Governments which would be called upon to ratify it.

He agreed with the representative of France in recognizing that certain aspects of the problem before the Committee were similar to those dealt with by the Commission on Human Rights. In the case in point, however, the Committee was asked to deal with a specific problem. Now it had been shown, and recognition of the fact was world wide, that cultural genocide was a matter which had to be included in international legislation. Section III of the USSR memorandum aimed at showing that the acts enumerated therein came under the crime listed as genocide.

It was obvious that the definition of genocide was not an easy task. That difficulty, however, should not lead the Committee to shirk its duty, but rather to redouble its efforts to find a formula embodying a unanimous solution of the question.

Mr. AZKOUL (Lebanon), in reply to the remarks of the representative of the United States, read the preamble of the General Assembly resolution calling attention to the losses genocide inflicted upon humanity which, by the destruction of a human group, found itself deprived of the cultural contribution of that group. Contrary to the opinion voiced by the United States delegation, that resolution made it a duty for the Committee to mention cultural genocide and not to restrict the convention to the physical protection of human groups.

Mr. MAKTOS (United States of America) maintained that the convention should reflect the main points of public opinion on the matter. The members of the Committee showed a tendency to go beyond the aims specified by Members of the General Assembly in the resolution they had adopted.

He felt that the General Assembly had had in view only the physical aspect of genocide and that if, as stated by the representative of Lebanon, its Members had meant to include in the resolution other forms of that crime, such as cultural genocide, then the resolution would not have received so many votes. They had to deal with two clearly different cases and it was essential to deal with them separately.

In the attempt to cover all forms of genocide, the Committee ran the risk of failing to realize its object. It would be child's play for any clever lawyer to find a large number of new definitions of genocide: it was precisely that profusion which had to be avoided.

Mr. ORDONNEAU (France) said that the draft convention submitted by his delegation (document E/623/Add.1) contained a minimum number of articles and might be taken as a basis of a convention likely to be ratified with but little delay. In that way, a realistic step forward would be taken which could be completed later.

The French plan in the first place, studied physical genocide, which was the most important form of that crime. It stipulated that genocide should be suppressed by an international court, for, in the national field, it was Governments which perpetuated the crime or at least were its accomplices.

As regards cultural genocide, the French delegation adopted the same attitude of reserve as the United States representative, though it whole-heartedly condemned that crime against the

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conscience of mankind.

Mr. Ordonneau stressed that the nature of a new international crime could not be defined by an enumeration of facts, which by its very nature would be limitative, but only by a general definition. The work of drafting the convention, together with the study and research entailed, would perhaps enable a satisfactory definition of cultural genocide to be found.

Mr. MOROZOV (Union of Soviet Socialist Republics) urged the Committee not to postpone defining such an important concept as that of cultural genocide and to include that concept, at least in principle, in the draft convention. For the time being, it would be enough to mention the concept of cultural genocide, without prejudice, however, to the actual wording of any definition which might later be established.

Mr. ORDONNEAU (France) thought that a definition of genocide should cover all violent measures used to destroy the cultural elements of a group, whether such group were of a national, racial or religious character. He asked the representative of the USSR if he really agrees on that point.

Mr. MOROZOV (Union of Soviet Socialist Republics) expressed his agreement with the opinion put forward by Mr. Ordonneau.

The Committee decided by six votes to one that the principle of the suppression of cultural genocide should be inscribed in the draft convention.

Mr. ORDONNEAU (France) made it clear that he had voted in favour of the above decision in the hope that a fully comprehensive definition of genocide would be found later.

The CHAIRMAN, as representative of the United States of America, said that his country was greatly attached to freedom of

the Press and information and could agree to limitation only in well-defined and exceptional cases. That exception only concerned actions involving a violation of the rights of others and of which American courts were the judges. Subject to this explicit reservation he agreed to the principle of suppressing propaganda for genocide.

Mr. LIN MOUSHENG (China) requested that the systematic distribution of narcotic drugs for the purpose of bringing about the physical debilitation of a human group be included in the list of measures or acts aimed against a national culture.

Mr. RUDZINSKI (Poland) pointed out that the United States representative had not accepted section VI of the draft convention submitted by the USSR regarding punishment of propaganda for genocide, because he considered that a provision of that kind might endanger freedom of the Press and freedom of expression in general. Furthermore, Mr. Rudzinski thought that section V, paragraph 2, covering direct public incitement to commit acts of genocide, was in fact connected with the suppression of propaganda for that crime. It seemed to him that there existed there a contradiction.

The CHAIRMAN agreed that action should be taken against the Press and other media of information when they were guilty of direct incitement to commit acts of genocide, just as it was necessary to repress association and any form of collusion for the purpose of committing genocide.

Mr. RUDZINSKI (Poland) thought that incitement to commit genocide should be punishable, whether it was oral or used large-scale media of diffusion such as the Press, radio and films.

The CHAIRMAN remarked that propaganda did not always constitute culpable incitement. In his opinion, it assumed that

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character only when the courts determined its existence.

As representative of the United States, he would be obliged to withdraw the agreement in principle which he had just given, if the terms of the Convention proved to be in contradiction with the Constitution of his country insofar as the freedom of the Press was concerned.

Mr. ORDONNEAU (France) referred to article 2 of the draft submitted by the French delegation (document E/623/Add.1) and was of the opinion that under the circumstances, an attempt, provocation or incitement to commit genocide were only valid if they were linked with the crime referred to. He was against too explicit an enumeration of the means of provocation and incitement used by offenders, and preferred to keep to very general definitions, which could be applied more easily. With these reservations he thought that his Soviet colleague might agree to the provisions of the French draft.

Mr. AZKOUL (Lebanon) urged the necessity of mentioning in the Convention acts of propaganda constituting in some way a psychological preparation for the crime of genocide. However, he wanted to point out one difficulty: in war time it was not uncommon for a State to have recourse to press and radio campaigns aimed at arousing hatred against the enemy. It was clear that such campaigns which helped to raise the morale of its citizens should not be considered as propaganda for the incitement of genocide.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that he had not the least desire to make an attack on the freedom of the Press.

He was merely anxious that culpable acts of this nature should be prevented and repressed, in exactly the same way as some of the articles of the penal code of the State of New York

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provided for limitations of the freedom of the Press. This being so, he was of the opinion that the Committee could propose the condemnation of propaganda for genocide carried on through the various media of information.

Mr. ORDONNEAU (France) replied to the remark made by Mr. Azkoul. In his opinion, the point was to repress propaganda aimed, for instance, at the total destruction of an enemy country as such. Incitements of this nature went beyond the limits of war itself, which was not without certain laws. Indeed, war should only be a means to force an adversary to submit on a whole number of conditions. The point at issue was to establish principles and not to judge concrete cases.

Mr. AZKOUL (Lebanon) gave further illustration of his point and took the case of a State at war seeking solely to sustain the morale of its people. Its Government and Press might possibly stir up hatred of the enemy country without wishing to bring about its complete destruction. In that case how was a distinction to be made between the will to win the war and the will to destroy the enemy country as such?

Mr. MOROZOV (Union of Soviet Socialist Republics) replied that while not contesting the right to wage war, he was opposed to the violation of the laws of war. He had in mind particularly the crimes committed by Hitler, who sought to exterminate millions of human beings because he wished to bring about the destruction of the national or racial group to which they belonged. The criterion should therefore be the motives by which the propaganda was inspired. Hence, proceedings should be taken against propaganda when it preached the domination of the so-called "inferior" races by the so-called "superior" races.

/Mr. AZKOUL

Mr. AZKOUL (Lebanon) thought that campaigns of hatred should be prohibited before acts of genocide were committed, but that they should be distinguished from defence measures necessitated by the circumstances of war.

Mr. ORDONNEAU (France) thought that it was merely a question of application which would be decided by the competent courts when they were in possession of texts such as article II of the French draft.

Mr. MOROZOV (Union of Soviet Socialist Republics) shared the view of the representative of France. At the present stage of its work, the Committee should confine itself to stating the general ideas that should guide the future Convention. No law could be applied without an interpretation by the judge, because justice could not be rendered automatically.

The CHAIRMAN asked Mr. Ordonneau which of the French terms "provocation" or "instigation" was the equivalent of the English term "conspiracy".

Mr. ORDONNEAU (France) made it clear that "provocation" was a stronger term than "instigation", because the former presupposed an urging towards the accomplishment of an act. "Conspiracy" indicated the association of several individuals grouped together for the accomplishment of a harmful act.

The CHAIRMAN said that in his opinion it was a matter of repressing attempts and conspiracy.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that a particular severity was required with regard to Press, radio and films. Those media of information were aimed at the masses, whose moral sense they were sometimes likely to distort.

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The recent war had revealed in a disturbing manner the very pernicious nature of the influence of the hitlerite Press on people's minds. That Press could be held responsible for the death of several million human beings.

Hitler had stated very clearly that the task of the German nation was not only to conquer its enemies but to exterminate them.

In view of the connection between paragraph 2 of section V and section VI, he suggested they should be merged so that direct public incitement to commit genocide would also apply propaganda in any form. He considered that on this point the Convention should be drafted in clear terms and that it should provide for the repression of the acts referred to by national tribunals.

Mr. ORDONNEAU (France) pointed out that the French draft had, on that point, the same object as the Soviet draft. But unlike the latter, it did not enumerate the means of propaganda that were to be condemned. Such an enumeration would present serious difficulties. Because of its restrictive nature, it would run the risk of allowing new and unforeseen forms of propaganda to go unpunished, such as aircraft tracing watchwords in the sky.

He thought that it would be preferable to use a general term such as "provocation" which moreover was full of meaning for jurists.

Mr. AZKOUL (Lebanon) said that the question of whether propaganda was the equivalent of provocation could be solved when the work of the Committee reached the drafting stage. For the time being, it was sufficient to know that the term "provocation" was applicable to propaganda when the latter was connected with the crime of genocide.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed with this proposal.

At the request of the CHAIRMAN, Mr. MOROZOV (Union of Soviet Socialist Republics) formulated the principle concerned in the following terms:

"The Committee notes that the Convention should make it a punishable offence to engage in any form of propaganda for genocide (the Press, radio, cinema, etc.) aimed at inciting racial, national or religious enmity or hatred and designed to provoke the commission of acts of genocide."

Mr. ORDONNEAU (France) said he had difficulty in accepting that definition which, in his opinion, did not cover all forms of propaganda; the latter might indeed be of an insidious nature. The French delegation supported the Soviet formula only in so far as direct propaganda was concerned.

Mr. RUDZINSKI (Poland) thought that in order to be covered by the proposed international convention, propaganda of genocide ought to be of a twofold nature: (1) when it was aimed at inciting national enmities; (2) when it was characterized by the incitement to commit genocide.

When the latter element was lacking, Polish domestic legislation, for instance, provided for the repression of this propaganda by the competent national tribunals.

Mr. AZKOUL (Lebanon) concluded, in the light of the explanation given by Mr. Rudzinski, that there was no essential difference between the Soviet and the French drafts. He supported the latter in so far as the principle was concerned.

Mr. ORDONNEAU (France) said that he too agreed with the principle of condemning propaganda but without accepting any text.

In reply to a question by Mr. PEREZ-PEROZO (Venezuela), Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the words "techniques of genocide" in section IV, paragraph 2 of the Soviet memorandum meant gas chambers, cremation ovens, pseudo-biological research and any other means of extermination used, for instance, by the Nazis during the recent war.

Mr. ORDONNEAU (France) thought it would be advisable to mention the "techniques" in question in the Convention. Nevertheless, he considered that a too precise enumeration should be avoided and that it should not be forgotten that the means referred to belonged to the category of attempts to commit the crime of genocide.

Mr. LIN MOUSHENG (China) expressed the view that genocide consisted in acts aimed against a national, racial, religious (or political) group for the purpose of destroying that group and hindering its development.

In his opinion, the acts referred to involved the total or partial physical destruction of a group of that kind; the fact of imposing upon the latter living conditions likely to bring about its total or partial physical destruction; the destruction of its culture or the suppression of its language, etc...; conspiracies of individuals, attempts or provocative acts aimed at committing the acts that had just been enumerated.

The CHAIRMAN, speaking as the representative of the United States of America, said he was unable to commit his

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Government beyond conspiracy and incitement to commit genocide. Those questions came under the fundamental legislative provisions of the United States Constitution. He reserved the right to withdraw, if necessary, the agreement in principle which he had given.

Mr. ORDONNEAU (France) agreed that only the signature of the Convention could bind the Governments concerned.

The meeting rose at 6 p.m.