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AND  
SOCIAL COUNCIL**

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ECONOMIQUE  
ET SOCIAL**

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AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Lake Success, New York  
Friday, 23 April 1948, at 11 a.m.

<u>Chairman:</u>	Mr. MAKTOS	United States of America
<u>Vice-Chairman:</u>	Mr. MOROZOV	Union of Soviet Socialist Republics
<u>Rapporteur:</u>	Mr. AZKOUL	Lebanon
<u>Present:</u>	Mr. LIN MOUSHENG	China
	Mr. ORDONNEAU	France
	Mr. RUDZINSKI	Poland
	Mr. PEREZ-PEROZO	Venezuela
<u>Secretariat:</u>	Mr. SCHWELB	Assistant Director of the Human Rights Division
	Mr. GIRAUD	Secretary of the Committee

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PREPARATION OF A DRAFT CONVENTION: CONTINUATION OF THE DISCUSSION

The CHAIRMAN recalled that at its meeting the previous day the Committee had approved a provisional text of Article III of the Draft Convention, subject to (1) simplification or clarification of the draft and (2) possible addition of a new paragraph regarding "complicity".

Mr. PEREZ-PEROZO (Venezuela) thought it preferable to omit "preparatory acts" for the commission of genocide if "complicity" were to be included in the list of punishable acts. The idea of "attempt" was in fact already covered; if "complicity" were added it would be superfluous to mention "preparatory acts". He made a proposal to that effect.

The CHAIRMAN asked for the Committee's views on the proposal to omit "preparatory acts" from the list in Article III and to add "complicity".

Mr. ORDONNEAU (France) supported the proposal.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out the necessity of avoiding any decision that was in flagrant contradiction to established concepts of criminal law regarding preparatory acts, attempt, complicity, etc. There was a clear distinction in the principles of criminal law between preparation of a crime and complicity in that crime, which were two different things. The proposal just made to substitute one of those concepts for the other, was inadmissible; its adoption would cause complete confusion in the legal terminology.

After a strenuous debate at its last meeting, the Committee had decided to include preparatory acts leading to the crime of genocide among the punishable acts. Although the text then approved was not final so far as drafting details were concerned, he thought it hardly possible to go back on the decision taken on the question of principle, without another formal vote.

Complicity should be included under Article III, and provision should also be made for the punishment of accomplices, in respect of all the criminal acts it specified. The principle of punishment for complicity was a part of the criminal law of all countries. It would be useful to define the idea, and he suggested the following: "Complicity in the crimes specified in this convention is also punishable".

The Committee had set out to draft an international convention that would be of considerable importance. In justice to itself it should prepare a complete and coherent legal document.

Mr. CRDONNEAU (France) replied that neither he nor the representative of Venezuela had any intention of confusing complicity and preparation, which were certainly different things. In the legislation of their two countries, however, as in the legislation of Latin countries generally, a preparatory act leading to a crime was not punishable in itself. Punishment of a preparatory act would imply a very critical study of intent and might lead to practical difficulties, injustice and arbitrary decisions. A preparatory act was punishable only if it involved an attempt or complicity. It was superfluous to add preparation to the list in Article III, if that list included the attempt, conspiracy to commit the crime and complicity. Moreover, it would be dangerous. He therefore supported the Venezuelan representative's proposal.

Mr. MOROZOV (Union of Soviet Socialist Republics) expressed partial satisfaction with the explanations of the French representative, who had admitted that preparatory acts differed from complicity. But since decisions already taken should be respected he urged that preparation be retained as a punishable offence.

Two independent questions had been raised, and he proposed that they should be discussed separately. The first question was whether to include complicity in the list in Article III; the second, whether to go back on the previous day's decision regarding preparation of the crime.

The CHAIRMAN ruled that the Venezuelan representative's proposal to substitute "complicity" for "preparatory acts" in Article III was in order.

Mr. MOROZOV (Union of Soviet Socialist Republics) hoped that the Committee would reject the proposal and maintain his own proposal to consider the two questions separately.

In order to clear up/misunderstanding, Mr. PEREZ-PEROZO (Venezuela) submitted his proposal in another form. He proposed that "preparatory acts" should be omitted from the list in Article III and that "complicity" should be added. He had no intention of causing confusion between those two ideas. In Venezuela, as in Latin countries generally, preparation of a crime was not punishable in itself. It had at least to be followed by a beginning of commission and thus become an attempt. If attempt and complicity were made punishable, there was no need to mention preparation.

Referring to procedure, Mr. RUIZINSKI (Poland) thought that it would not be in order to vote on a conditional proposal under which one term would be included provided that another were deleted. As the Venezuelan representative had amended his proposal, he asked for separate decisions on the two points it contained.

Mr. MOROZOV (Union of Soviet Socialist Republics) supported this request.

/Mr. PEREZ-PEROZO

Mr. PEREZ-PEROZO (Venezuela) explained that his proposal was in no sense conditional. He himself did not ask for separate votes on the two points he proposed, though he recognized that each representative had the right to make such a request.

Mr. AZKOUL (Lebanon), speaking as Rapporteur, favoured the procedure that would allow each representative to define his position most clearly.

The CHAIRMAN observed that a proposal to substitute one term for another was by no means out of order, but that the two points in the Venezuelan representative's proposal should be decided separately.

Speaking as the Lebanese representative, Mr. AZKOUL (Lebanon) recalled that he had opposed the inclusion of "preparatory acts" in Article III. They could only be punishable when they formed part of an attempt. He would like to see such a vague and dangerous term eliminated.

Mr. MOROZOV (Union of Soviet Socialist Republics) took up the question of how preparatory acts leading to a crime should be treated from a theoretical point of view. No doubt they only constituted a crime or criminal offence if they were of that nature independently and in themselves. Preparatory acts for the crime of genocide could be divided into various categories, such as: 1) investigation, study and perfection of means to commit the crime of genocide; 2) purchase of materials, setting up of installations, etc. with a view to the crime; and 3) issuing of instructions to commit genocide. Such concrete preparatory acts should be considered dangerous in themselves and therefore punishable. Did the Committee think that courts should regard construction of extermination plants, establishment of camps with special installations for genocide, and illegal possession of arms for that purpose, as not

/being punishable?

being punishable? If the Committee decided that such actions could be <sup>not</sup> left unpunished, it would be accomplishing the whole of its task. Acts such as those he had mentioned were real crimes.

He therefore opposed the omission of preparation, which was an important part of the crime of genocide, and proposed completing the concept by the addition of paragraphs (a), (b) and (c) of Article II of his delegation's text. Those paragraphs were already included in the draft prepared by the Secretariat.

Mr. ORDONNEAU (France) said that the French delegation fully realized the necessity of anticipating and punishing preparatory acts whose purpose was completely evident. It must be recognized, however, that it was impossible to undertake extensive preparations and build crematoriums without a previous conspiracy to commit genocide. Since the Committee had accepted the idea of conspiracy, offenders would certainly be prosecuted and punished on that charge; it was therefore unnecessary to introduce into the Convention the vague and general concept of "preparatory acts".

Mr. AZKOUL (Lebanon) agreed that preparatory acts should be punished if their purpose could be clearly determined; but it was most difficult and dangerous to introduce the general concept of "preparatory acts" into the convention without qualifying it.

Mr. LIN MOUSHENG (China) also thought that preparatory acts, which were crimes in themselves regardless of their purpose, were punishable. The question was whether the word "conspiracy" covered all preparatory acts of that category.

Mr. RUDZINSKI (Poland) thought that the Convention should specify all punishable preparatory acts, although, from a strictly legal

/point of view

point of view, the word "conspiracy" included only preparatory acts committed by two or more persons.

Mr. ORDONNEAU (France) replied that it was very difficult to conceive of a single individual building crematoriums or undertaking research with a view to committing genocide. Consequently, all punishable preparatory acts were sufficiently covered by the terms "conspiracy" and "complicity".

Mr. MOROZOV (Union of Soviet Socialist Republics) regretted that although unanimous in its condemnation of preparatory acts whose purpose was evident, the Committee did not expressly provide for the penalty. There were many punishable acts that would not be covered by the word "conspiracy". Moreover, since the Convention was to constitute an international agreement of wide legal scope it was important that everything should be provided for in the most explicit manner.

The CHAIRMAN put to the vote the Venezuelan proposal for:

- 1) omission from the Convention of the concept of "preparation"; and
- 2) inclusion of the concept of "complicity".

The proposal to omit from the Convention the concept of "preparation" for the crime of genocide was adopted by four votes to two, with one abstention.

The proposal to include in the Convention the concept of "complicity" was adopted unanimously.

The CHAIRMAN proposed the following paragraph: "Whoever directly commits any act constituting a crime as defined in any of the sections of this Convention, or is an accomplice to such act, shall be guilty of the crime."

/Mr. RUDZINSKI

Mr. RUDZINSKI (Poland) supported by Mr. ORDONNEAU (France) considered that the ideas of "conspiracy" and "complicity" should not be included in the same paragraph, owing to the differences that had arisen regarding the legal interpretation of those two terms.

Mr. ORDONNEAU (France) proposed the addition of the following sub-paragraph, to replace the previous sub-paragraph (b) of Article III: "Complicity in any of the acts enumerated above as well as in any acts of genocide as such." He pointed out that the draft proposed by the United States delegation left some doubt as to the acts which constituted a crime.

Mr. MOROZOV (Union of Soviet Socialist Republics) supported the French proposal which he changed slightly to read as follows: "Complicity in any of the acts enumerated in this article as well as in any of the acts of genocide specified in the Convention."

Mr. ORDONNEAU (France) suggested: "Complicity in any of the acts enumerated in this article as well as in any of the acts enumerated in articles I and II."

The CHAIRMAN thought the crime of genocide itself should head the list of punishable acts specified in article III and that complicity could be defined in an additional paragraph (e).

Mr. LIN MOUSHENG (China) thought it preferable to declare that genocide was punishable in a separate article I, drafted as follows: "Genocide, which is a crime under international law, shall be punishable."

Mr. MOROZOV (Union of Soviet Socialist Republics) said that it would be better to consider the nature of genocide during the discussion of the preamble. He supported the original French proposal and withdrew the amendment he had made to it.

/Mr. ORDONNEAU

Mr. ORDONNEAU (France) favoured the Chinese proposal, though he also preferred to postpone discussion of that point.

Mr. RUDZINSKI (Poland) was of the same opinion.

The Committee approved Article III subject to the following changes:

The addition of a new paragraph (a) under the terms of which "genocide as defined in Articles I and II" was punishable.

The present paragraph (a) to become paragraph (b).

Deletion of former paragraph (b).

Addition of a paragraph (c) under the terms of which

"Complicity in any of the acts enumerated in this article" was punishable.

Article III would then be as follows:

"The following acts shall be punishable:

- "a) genocide as defined in Articles I and II;
- "b) conspiracy to commit genocide;
- "c) direct incitement in public or in private to commit genocide whether such incitement be successful or not;
- "d) attempt to commit genocide;
- "e) complicity in any of the acts enumerated in this article."

The meeting rose at 1 p.m.