

United Nations

ECONOMIC
AND
SOCIAL COUNCIL

Nations Unies

CONSEIL
ECONOMIQUE
ET SOCIAL

RESTRICTED

E/AC.25/W.1

26 April 1948

ORIGINAL: ENGLISH

FRENCH

AD HOC COMMITTEE ON GENOCIDE

COMMENTARY ON ARTICLES ADOPTED BY THE COMMITTEE

ARTICLE 1

"In this Convention genocide means any of the following deliberate acts committed with the intention of destroying a national, racial, religious or political group, on grounds of national or racial origin, religious belief, or political opinion;

1. killing members of the group;
2. any act directed against the corporal integrity of members of the group;
3. inflicting on the members of the group such measures or conditions of life which would be aimed to cause their deaths;
4. any act or measure calculated to prevent births within the group."

Observations

Article 1 is the basic article defining genocide. It was the subject of long consideration by the Committee.

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/A. General elements

A. General elements of the definition

The definition contains four elements:

1. The notion of premeditation. This was accepted by the Committee as a whole.
2. The intention of destroying a human group (accepted by four votes with three abstentions).

In principle an isolated act directed against one or more members of a human group does not constitute genocide. However, such an act may constitute genocide if it is part of a chain of actions inspired by the intention of destroying the group.

International or civil war conducted in accordance with the laws of war does not constitute genocide because there is no intention of destroying a group.

Genocide is involved even if the authors of the act intended to destroy only part of the group, as for example if they sought to reduce it by a third or a quarter of the number of its members.

3. The third element is that of the human groups protected.

The Committee was unanimously in favour of protecting national, racial and religious groups.

The inclusion of political groups was accepted by four votes to three. The minority pointed out that political groups lack the stability of the other groups mentioned. They have not the same homogeneity and are less well defined.

4. The fourth element is that of the motives for genocide.

In the opinion of some members of the Committee it was in the first place unnecessary to lay down the motives for genocide since it was indicated in the text that the intention of destroying a group must be present and, in the second place, motives should not be mentioned since, in their view, the destruction of a human group on any grounds should be forbidden. They accepted the mention of motives but only by way of illustration. This point of view was not accepted.

The majority view was that the inclusion of certain motives was indispensable.

In defining these motives the Committee agreed on the adoption of the following terms: As regards nationality and race it was decided to say, "on grounds of national or racial origin". Members of a group are subjected to genocide because of their

/racial or

racial or national origin and not because of their legal nationality. The German Jews were, for example, of German nationality. As regards religion and politics the expressions "religious belief" and "political opinion" were adopted.

The outlawing of genocide obviously does not preclude the taking of proper measures against a human group whose actions inside a state might imperil its existence, more especially in time of war. So long as the action taken remains within the ordinary bounds of self-defence there is no genocide because the specific motive for genocide does not exist.

B. Indication of the types of acts constituting genocide

The Committee thought that it would be unsound to list the very varied acts which may constitute genocide. In its opinion, however, in this new matter affecting criminal law, it was essential to know what was envisaged. The Committee therefore established the following four categories:

1. Killing members of the group.

(This formula was accepted by five votes to two.)

This is the principal case of genocide in its most flagrant and radical form. The formula covers mass murders as well as the execution or assassination of individuals with a view to the total or partial destruction of the group.

2. Any act directed against the corporal integrity of members of the group.

(Accepted by five votes to one, with one abstention.)

This formula covers any acts, other than killing, which have the common characteristic of including a direct attack on the person of members of the group. (Blows and wounds, torture, mutilation, harmful injections, biological experiments conducted with no useful end in view etc.)

3. "Inflicting on the members of the group such measures or conditions of life which would be aimed to cause their deaths."

(Accepted by three votes to one with three abstentions.)

The text covers two cases of great practical importance.

The first is the case of individuals herded in ghettos, interned in concentration camps, imprisoned, subjected to forced labour and exposed to conditions of life - for example, inadequate food, lack of sanitation and excessive work - which condemned them to a slow death.

The second case is that in which, while individuals are left at liberty, they are deprived of the means of existence enjoyed by other inhabitants. They are, for example, refused housing, access to provisions, or the right to work.

4. Any Act or measure calculated to prevent births within the group.

(Accepted by four votes with three abstentions.)

The formula refers to measures of any kind intended forcibly to prevent the births by which the group reproduces itself (the sterilization of individuals, forced abortions, separation of the sexes, barriers to marriage etc).

ARTICLE 2

Cultural Genocide

"In this Convention genocide also means any deliberate acts committed with the intention of destroying the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or prohibiting the printing and circulation of publications in the language of the group;
2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group."

Observations

The question of cultural genocide gave rise to a fairly full discussion.

Those who supported the concept of cultural genocide emphasized that there were two ways of suppressing a human group, the first by causing its members to disappear, and the second by abolishing, without making any attempts on the lives of the members of the group, their specific traits. According to this opinion, the Convention would fail fully to achieve its objects if it left out cultural genocide.

The opponents of the concept of cultural genocide emphasized that there was a considerable difference between so-called "physical" genocide (including biological genocide) and "cultural" genocide. Only physical genocide presented those exceptionally horrifying aspects which had revolted the conscience of humanity. They also pointed to the difficulty of fixing the limits of cultural genocide, which impinged upon the violations of the rights of man and the rights of minorities. It was

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therefore through the protection of the rights of man, the prevention of discrimination and the protection of minorities that acts which would be improperly introduced into the notion of cultural genocide should be prevented. Finally, it was said that from the practical point of view, the inclusion of cultural genocide in the Convention might prevent many countries from becoming parties to the Convention and jeopardize its success.

In this connection the United States delegation made a declaration for entry in the record.*

During the discussion of principles, the Committee decided by six votes to one to retain the idea of cultural genocide (Fifth Meeting - 8 April).

The Lebanese delegate had proposed a more restricted definition of cultural genocide, as follows:

"According to the terms of the Convention, it is also understood that genocide includes all acts and measures which are directed against a national, racial or religious group on grounds of the national or racial origin or religious beliefs of its members, and which aim at the systematic destruction by oppressive or violent means of the language, religion, or culture of that group."

The Ad Hoc Committee had intended to insert the definition of cultural genocide in Article 1 of the Convention, but subsequently decided by three votes to two with one abstention to make it the subject of a separate article (Tenth Meeting - 15 April).

The reasons for this decision were as follows:

In the first place, the Committee considered that it would be difficult to arrive at a definition the general terms of which would in every instance be applicable to cultural genocide as to other forms of genocide, owing to the fact that the idea of cultural genocide could not be applied in practice to political groups. The Committee then thought that Governments would find it easier to make known their views on the inclusion of cultural genocide if the matter were treated in a separate article.

* Declaration of the United States delegation:

"The prohibition of the use of language, systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value commonly known in this Convention to those who wish to include it as cultural genocide is a matter which certainly should not be included in this Convention. The act of creating the new international crime of genocide is one of extreme gravity and the United States feels that it should be confined to those barbarous acts directed against individuals which form the basic concept of public opinion on this subject. The acts provided for in these paragraphs are acts which should appropriately be dealt with in connection with the protection of minorities."

It is to be noted that the first sentence of Article 2 presents a certain differences compared to the first sentence of Article 1. It speaks of the destruction of language, religion or culture and makes no mention either of political groups or political opinions.

There is no need to explain sub-paragraph 1, which deals with language, and sub-paragraph 2, which deals with cultural institutions (libraries, museums, historical monuments, etc....).

The Lebanese delegate had proposed to add a third sub-paragraph reading as follows:

"3. Placing the members of the group in conditions calculated to make them renounce their language, religion or culture."

This proposal was rejected by three votes to two with two abstentions (Fourteenth Meeting - 21 April).