

AD HOC COMMITTEE ON GENOCIDE

(Meeting of 4 May 1948 - afternoon)

PORTIONS OF REPORT ADOPTED IN FIRST READING

This document is the continuation of Doc. E/AC.25/W.4 - 3 May 1948 to which one should refer.

These two documents contain the whole report adopted in the first reading with the exception of the portion concerning the final clauses and the vote of the draft Convention as a whole.

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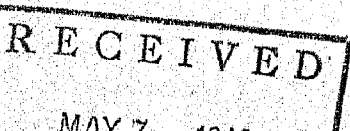
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PREAMBLE

"THE HIGH CONTRACTING PARTIES

declaring that genocide is a grave crime against mankind which violates the spirit and aims of the United Nations and which the civilized world condemns;

having been profoundly shocked by many recent instances of genocide, and

having taken note of the fact that the International Military Tribunal at Nurnberg in its judgment of 30 September and 1 October 1946 has punished under a different legal description certain persons who had committed acts similar to those which the present Convention aims at punishing;

being convinced that the prevention and punishment of genocide requires international co-operation;

HEREBY AGREE TO PREVENT AND PUNISH THE CRIME OF GENOCIDE AS PROVIDED IN THIS CONVENTION."

- - -

COMMENTS

The preamble contains a certain number of considerations of a general or historical nature.

PARAGRAPH 1

"THE HIGH CONTRACTING PARTIES

declaring that genocide is a grave crime against mankind which violates the spirit and aims of the United Nations and which the civilized world condemns;"

The members of the Committee reached agreement on the majority of the ideas expressed in this paragraph.

It will be noticed that genocide is called "a crime against mankind". The delegate of France had requested that it should be stated that genocide, while possessing specific characteristics, was a crime against humanity. He stated that it was for practical reasons that a convention was being drawn up on the crime of genocide which, in his opinion, came within the general category of crimes against humanity. According to him it was desired to organize without delay the prevention and punishment of this particularly grave crime until such time as the International Law Commission in developing and going beyond the Nurnberg principles, should organize the punishment of all crimes against humanity and sever the link by which they were bound to crimes against the peace and to war crimes under the Charter of the International Military Tribunal of 8 August 1945. The unity of the principle regarding crimes against humanity should, in his opinion, however, be preserved.

Certain members of the Committee thought that it was not necessary to insert in the preamble of the Convention doctrinal considerations of no practical utility. Other members of the Committee categorically opposed the expression "crimes against humanity" because, in their opinion, it had acquired a well defined legal meaning in the Charter of the International Military Tribunal and of its judgment pronounced at Nurnberg. They added that by the terms of its Resolution 180 (II), the General Assembly itself had clearly separated genocide from the other crimes which the International Law Commission would be called upon to codify. The formula of "a crime against mankind" was therefore adopted to express a popular idea on which everyone was in complete agreement.

The Committee also rejected the following suggestions: (a) that

of the representative of the U.S.S.R. to the effect that it should be noted in the preamble that the aim of genocide is the destruction of separate human groups on racial, nationalistic or religious grounds and (b) the suggestion of other members of the Committee who considered that this definition should be supplemented by the addition of political motives. The majority of the Committee considered that this would be a duplication of the articles of the Convention in which such a definition was given.

PARAGRAPH 2

"having been profoundly shocked by many recent instances of genocide"

Various proposals were submitted on this point.

The representative of the Union of Soviet Socialist Republics proposed the following text:

"THE HIGH CONTRACTING PARTIES

declare that the crime of genocide is organically bound up with Fascism-Nazism and other similar race theories which preach racial and national hatred, the domination of the so-called higher races and the extermination of the so-called lower races."

The representative of the U.S.S.R. pointed out that the idea of putting the question in this form was not only to place on record generally known historical facts, but also to give proper emphasis to the fact that genocide by the very nature of the crime was organically connected with fascism-nazism and similar racial "theories" about the so-called "higher" and "lower" races; and that a reference to this in the preamble would eo ipso imply condemnation of such regimes and "theories" as instigating to the commission of genocide.

It was emphasized that, although genocide might be committed from motives of religious fanaticism also, nevertheless in actual practice crimes committed from such motives were at the same time committed from national motives also.

It was stated in objection that while Fascism-Nazism was undoubtedly responsible for the crimes of genocide committed before or during the second world war, it was nevertheless wrong to consider genocide as being an exclusive product of Fascism-Nazism. In fact, history revealed many previous cases of genocide. As regards the future, it was possible that crimes of genocide would be based on other motives. It would be dangerous to create the idea that genocide should only be punished if it were a product of Fascism-Nazism, and that the Convention was concerned only with that historical accident.

Furthermore, this text was criticized as giving the impression that genocide was a result of racial hatred alone, whereas it could be inspired by religious fanaticism.

The paragraph proposed by the representative of the U.S.S.R. was rejected by five votes to two (twenty-second meeting - Tuesday, 22 April afternoon).

Certain delegates wished however that there should be some mention in the preamble of the recent crimes committed by Hitlerite Germany and her Fascist allies which were in fact the prime cause of the present Convention's coming about.

Various amendments to this effect were put forward, among others a Lebanese amendment reading as follows:

"Crimes of genocide have found fertile soil in the theories of Nazism and Fascism and other similar theories preaching racial and national hatred."

This amendment was rejected by four votes to three (twenty-second meeting, Tuesday afternoon, 27 April).

Another amendment put forward by the Polish delegate read as follows:

"That recently the crime of genocide has been committed with particularly hideous results by the Nazi and Fascist regimes"

by the majority
Finally it was thought that the formula "having been profoundly shocked by many recent instances of genocide" was sufficient.

PARAGRAPH 3

"having taken note of the fact that the International Military Tribunal at Nürnberg in its judgment of 30 September and 1 October 1946 has punished under a different legal description certain persons who had committed acts analogous to those which the present Convention aims at punishing:"

There was some discussion on this text, which recalls the part played by the International Military Tribunal. It was redrafted at the second reading. Fearing that the crime of genocide might be confused with the crimes against humanity which had been judged by the Military Tribunal, and after having been inclined to favour the suppression of the first text quoted, the majority of delegates requested that it should be revised. Consequently, several amendments were made among others, the addition of the words "under a different legal description".

The revised paragraph was adopted by three votes to one with three abstentions.

PARAGRAPH 4

"Being convinced that the prevention and punishment of genocide requires international co-operation".

The representative of the Union of Soviet Socialist Republics proposed the following text:

"That the campaign against genocide requires all civilized peoples to take decisive measures to prevent such crimes and also to suppress and prohibit the stimulation of racial, national (and religious) hatred and to insure that persons guilty of inciting, committing or encouraging the commission of such crime shall be severely punished."

This text was rejected by four votes to three. (Twenty-third meeting, Tuesday afternoon, 27 April - second afternoon meeting).

This text was rejected because objections were raised to the following passage:

"to suppress and prohibit the stimulation of racial, national and (religious) hatred".

The Committee wished, however, to retain one of the ideas contained in this text and adopted the paragraph given above.

Vote on the preamble as a whole -

The preamble as a whole was adopted by four votes to one with two abstentions (twenty-fourth meeting, 28 April 1948).

The delegate of the U.S.S.R. has made a statement explaining his reasons for voting against the preamble⁽¹⁾

The delegate of Poland has made a statement explaining his reasons for not supporting the preamble.⁽²⁾

(1) Declaration of the delegate of the U.S.S.R.:

"The text of the Preamble of the Convention as adopted by the majority of the Committee does not give a complete and correct definition of the crime of genocide. As a matter of fact, the following elements are missing:

a). The indication that the crime of genocide tends to exterminate certain groups of the population because of their race and nationality (religion).

b). The indication that the crime of genocide is organically bound up with Fascism-Nazism and other similar race "theories" which propagate racial and national hatred, the domination of the so-called "higher" races and the extermination of the so-called "lower" races.

c). The indication that the struggle against genocide requires decisive measures aimed at the prevention of such crimes and also at the suppression and prohibition of the instigation of racial, national (and religious) hatred and at the severe punishment of the persons guilty of inciting, committing or preparing the commission of the crime mentioned above.

The Representative of the U.S.S.R. esteems that it would be indispensable to amend the Preamble of the Convention in accordance with the text of the first part of the 'Basic Principles of the Convention on Genocide', submitted by the U.S.S.R."

(2) Declaration of the delegate of Poland:

"The text of the Preamble as it now stands avoids any reference to the crimes committed on a horrible and unprecedented scale and manner under the Nazi-Fascist regimes, and to the connection between those crimes and the propaganda of the so-called race theories by said regimes. Such an omission being deliberate is deeply disturbing and quite incomprehensible to the Polish Delegation and makes it impossible to support the Preamble until amended".

(Genocide: crime
under international
law)

"Genocide is a crime under international
law whether committed in time of peace or in
time of war".

COMMENTS

This article is to some extent a preliminary one, as articles 2 and 3 define genocide.

Certain members of the Committee wondered whether any useful purpose would be served by adopting this article and whether the ideas expressed therein ought not be included in the preamble. The majority of the members of the Committee decided on a separate article in order to give more weight to the essential ideas to which it gave expression.

This article contains two ideas.

1. Genocide "is a crime under international law".

This statement already existed in General Assembly Resolution 96 (I) of 11 December 1946.

The first part of this article was adopted by five votes to one with one abstention. (Twentieth meeting, Monday afternoon, 24 April).

2. Genocide "is a crime ..., whether committed in time of peace or in time of war".

While not disputing the principle that genocide can be committed in time of war as well as in time of peace certain delegates considered that this reference was definitely superfluous.

The second part of this article was adopted by three votes to one with three abstentions.

Concerning the Article as a whole several delegations indicated their attitude as follows:

The delegate of France proposed a different wording according to which genocide would be described as a crime against humanity. This wording was rejected by 6 votes to one.

The delegate of France stated in this connection that in the

opinion of his government genocide was the most typical of the crimes against humanity. Though the French Delegation has accepted, with a view to facilitate the speedy adoption of special draft conventions, to sever the problem of genocide from the two more general problems referred to the International Law Commission and to submit it to a committee of the Economic and Social Council, this attitude should nevertheless in no way prejudice the general principle which, according to the French Delegation, remains unchanged.

The delegate of the U.S.S.R. is opposed to the insertion of this article in the Convention for the reason given in his declaration to explain his vote.

The delegate of Venezuela proposed the suppression of the second part of the Article and the transfer of the first part to the preamble.

Vote on the article as a whole

The article as a whole was adopted by five votes to two.

The delegate of the U.S.S.R. has made a statement explaining his reasons for voting against the article.(1)

(1) Declaration of the delegate of the U.S.S.R.

"Article 1 should be excluded because the general nature of the crime of genocide should be specified in the preamble. Furthermore, I consider that in place of the words "crimes against the Law of Nations" the preamble should state that the crime of genocide is one of the worst forms of crimes against humanity directed towards the destruction of individual human groups on racial, national (religious) grounds.

With regard to the indication in the second part of Article 1 that genocide is a crime whether committed in time of peace or in time of war, the representative of the U.S.S.R. considered that this provision could be included in the Preamble to the Convention."

- ARTICLES 2, 3, 4, 5 and 6 -

(See document E/AC.25/W.4, 3 May 1948.)

- ARTICLE 7 -

(Jurisdiction) "Any of the acts enumerated in Article 3 shall be punished by any competent tribunal of the State in the territory of which the act is committed or by a competent international tribunal".

COMMENTS -

Several problems were solved directly or indirectly by this article which deals with repression by the national courts and by an international court.

A - Repression by the national courts -

All members of the committee agreed to recognize the jurisdiction of the Courts of the State on the territory of which the offense was committed.

The first part of the article, up to "...on the territory of which the offense was committed..." was voted by all seven members of the Committee.

B - Repression by an International Court -

The set-up of an international jurisdiction gave rise to a lengthy discussion.

For some delegates the granting of jurisdiction to an international Court was an essential element of the Convention. They claimed that in almost every serious case of genocide it would be impossible to rely on the Courts of the States where genocide had been committed to exercise effective repression because the government itself would have been guilty, unless it had been, in fact, powerless. The principle of universal repression having been set aside for the reasons indicated above the absence of an international Court would result in fact in impunity for the offenders. The supporters of an international Court merely requested that the international jurisdiction be expressly provided for by the Convention without the latter setting up the actual organization of the Court.

The opposition first declared that the intervention of an international Court would defeat the principle of the sovereignty of the State because this Court would be substituted for a national Court.

Secondly, they claimed that mere reference in the Convention to an international Court would have no practical value. What would this Court be? There is for the moment no international Court with criminal jurisdiction. It would be necessary either to create a new Court or to add a new criminal chamber to the international Court of Justice and all the members of the Committee had agreed that they had neither the qualifications nor the time necessary for settling these problems.

During the discussion of principles, the Committee adopted by four votes (China, France, Lebanon, United States of America) against two (Poland, U.S.S.R.) with one abstention (Venezuela), the principle of an international criminal jurisdiction. (Eighth meeting - Tuesday, 13 April)

The Committee voted by four votes (China, France, Lebanon, United States of America) against three (twentieth meeting - Monday, 26 April) the final provision of Article 6 "or by a competent international tribunal".

The United States delegate proposed the following additional paragraph to article 7:

"Assumption of jurisdiction by the international tribunal shall be subject to a finding by the tribunal that the State in which the crime was committed has failed to take adequate measures to punish the crime."

The Committee decided by four votes and three abstentions in favour of this principle (Eighth meeting - Tuesday, 13 April).

However, the inclusion of this principle in the Convention was rejected by five votes against one (United States of America) with one abstention (U.S.S.R.) on the ground that the inclusion of this

paragraph in the Convention might prejudice the question of the Court jurisdiction.

The article as a whole was voted by four votes to three.

The delegates of Poland⁽¹⁾, of Venezuela⁽²⁾ and of the U.S.S.R.⁽³⁾ respectively, made a declaration with regard to their negative vote.

(1) Declaration of the delegate of Poland: (Concerning article 7 and article 10)

"The inclusion in the Convention of the principle of an International Criminal Tribunal constitutes an obligation of the parties to this Convention, the contents of which are wholly unknown to them. The creation of an International Criminal Court whose jurisdiction could only be compulsory and not optional, is contrary to the principles on which the International Court of Justice and its Statutes are based."

(2) Declaration of the delegate of Venezuela:

"The Representative of Venezuela has opposed the inclusion in article 7 of the sentence 'or by a competent international tribunal', because he considered that therein was a vague allusion to a possible international jurisdiction the constitutive elements of which are not known to the signatories of the Convention. He has made a similar objection to the sentence 'by a competent international criminal tribunal', contained in article 10."

(3) Declaration of the delegate of the U.S.S.R.:

"The Representative of the Union of Soviet Socialist Republics considers that the decision of a majority of the Committee to place cases of genocide under the jurisdiction of a competent international court is wrong, since the establishment of an international court would constitute intervention in the internal affairs of States and a violation of their sovereignty, an important element of which is the right to try all crimes without exception, committed in the territory of the State concerned.

"The Representative of the Union of Soviet Socialist Republics considers that article 7 of the Convention should be drafted as follows:

'The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, the case to be heard by the national courts in accordance with the domestic legislation of the country'."

Rejected proposal

The principle of universal repression

The principle of universal repression by a national court over individuals who had committed genocide abroad was discussed when they considered the fundamental principles of the Convention.

Those in favour of the principle of universal repression held that genocide would be committed most of the time by the State authorities themselves or that these authorities would have aided and abetted the crime. Obviously in this case the national courts of that State would not enforce repression of genocide. Therefore, whenever the authorities of another State had occasion to arrest the offenders they should turn them over to their own Courts. The supporters of the principle of universal repression added that, since genocide was a crime in international law, it was natural to apply the principle of universal repression. They quoted conventions on the repression of international offenses such as traffic in women and children, forgery of currency, etc.

The opposite view held that universal repression was against the traditional principles of international law and that permitting the Courts of one State to punish crimes committed abroad by foreigners was against the sovereignty of the State. They added that, as genocide generally implied the responsibility of the State on the territory of which it was committed, the principle of universal repression would lead national courts to judge the acts of foreign Governments. Dangerous international tension might result.

A member of the Committee, while he agreed that the right to prosecute should not be left exclusively to the Courts of the country where genocide had been committed, declared himself opposed to the principle of universal repression in the case of genocide. It is a fact, he said, that the Courts of the various countries of the world do not offer the same guaranty. Moreover, genocide as

distinguished from other crimes under International Conventions (traffic in women, traffic in narcotic drugs, forgery of currency) has a distinct political character. Therefore, there is a danger that the principle of universal repression might lead national Courts to exercise a biased and arbitrary authority over foreigners. This delegate, therefore, proposed that jurisdiction be given to an international Court possessing an authority recognized by and to which States would surrender the authors of genocide committed abroad whom they had arrested and whom they would be unwilling to extradite.

The principle of universal repression was rejected by the Committee in the course of discussion by four votes (among which France, the United States of America and the U.S.S.R.) against two with one abstention. (Eighth meeting - Tuesday, 13 April).

During the discussion of Article 6 the proposal to reverse the foregoing decision was rejected by four votes against two with one abstention. (Twentieth meeting - Monday, April 26)

ARTICLE 8

(Action of the
United Nations)

"A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.

A party to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention."

OBSERVATIONS

This article was discussed at length when the Committee considered questions of principle, and it was discussed again when the articles of the Convention were being drafted.

The delegate of the Soviet Union proposed the following text:

"The High Contracting Parties pledge themselves to communicate to the Security Council all the cases of genocide as well as all the cases of violation of the commitments provided for by this Convention in order to take necessary measures in accordance with Chapter VI of the United Nations Charter."

In this connection there was disagreement on two main points:

(1) Should provision be made for the intervention of a specific organ of the United Nations, in this case the Security Council, or should no organ be mentioned?

It was urged in favour of naming the Security Council that the commission of Genocide was a grave matter likely to endanger world peace and therefore one which justified intervention by the Security Council, and that only the Security Council was capable of taking effective action to remedy the situation, that is to say to stop the commission of genocide.

It was argued against this point of view that although the Security Council appeared to be the organ to which Governments would most frequently wish to apply, it was undesirable to rule out the General Assembly, the Economic and Social Council or the Trusteeship Council. In some cases it would be of advantage to call on the General Assembly because it directly expressed the opinion of all Members of the United Nations, and because its decisions were taken by a majority vote with no risk of the right of veto preventing a decision.

(2) Should it be made compulsory for parties to the Convention to lay the matter before the organs of the United Nations or should they be merely given the right to do so?

It was argued in favour of compulsion that the gravity of genocide justified compulsory reference to

the Security Council to which organ would be free to assess the importance of the cases submitted to it and to take the necessary steps for the prevention and suppression of genocide. It was further pointed out that in accordance with the Charter Members of the United Nations were already entitled to refer questions to that Organization and that nothing would be gained by mentioning this right in Article 8 of the Convention.

It was argued against this view that if a serious case of genocide occurred, it would certainly be submitted to the United Nations and that it was unnecessary to make into an obligation a right the exercise of which should be left to the judgment of Governments.

The principle of compulsory notification was rejected by three votes to two with two abstentions.

(20th meeting - Monday 26 April - afternoon)

Having rejected by five votes to two (20th meeting - Monday 26 April - afternoon) the text submitted by the delegate of the Soviet Union, the Committee had to consider the text submitted by the delegate of China and adopted as the basis of discussion.

This text with some amendments was adopted by five votes to one with one abstention.

(20th meeting - Monday 26 April - afternoon)
and became the first paragraph of the article.

A second paragraph, adopted by six votes with one abstention, was added.

(20th meeting - Monday 26 April - afternoon)

The Article as a whole was adopted by five votes to one with one abstention.

The delegate of the Union of Soviet Socialist Republics made a declaration with regard to his negative vote (1)

(1) Declaration of the Delegate of the Union of Soviet Socialist Republics:

"In order really to combat genocide it is essential that the signatories to the Convention should undertake the obligation to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention, so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter. An appeal precisely to the Security Council would be fully in accordance with the gravity of the question of genocide.

The Representative of the Union of Soviet Socialist Republics considers that Article VIII should read as follows in the Convention:

"The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter."

(Extradition)

Article 9

"Genocide and the other acts enumerated in Article 4 shall not be considered as political crimes and therefore shall be grounds for extradition.

Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force."

OBSERVATIONS

This Article was included in the Convention, at the request of the delegate of Poland.

There was no opposition and it was unanimously adopted by the Members of the Committee.

However, the U.S.A. Delegate made a Declaration concerning this Article. (1)

(1) Declaration of the U.S.A. Delegate:

"With respect to the article on extradition, the representative of the United States desires to state that until the Congress of the United States shall have enacted the necessary legislation to implement the Convention, it will not be possible for the Government of the United States to surrender a person accused of a crime not already extraditable under existing laws. Moreover, the provision in the Constitution of the United States regarding ex post facto laws would preclude the Government from granting extradition of any person charged with the commission of the offence prior to the enactment of legislation defining the new crime."

(Settlement of the disputes by the International Court of Justice).

"Disputes between the High Contracting Parties relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice, provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to and is pending before or has been passed upon by a competent international tribunal."

OBSERVATIONS

A member of the Committee requested that Article XIV of the Secretariat's draft (1) regarding the settlement of disputes relating to the interpretation of application of the Convention be re-inserted.

The delegate of the USSR opposed this proposal, recalling his opposition in principle to the establishing of an International Court, which in his opinion, would be an infringement of the sovereignty of States and would amount to intervention in the internal affairs of the State.

The Article as a whole was adopted by 4 votes to 3.

The Delegate of the USSR (2) and the Delegate of Poland (3) made a declaration with regard to their negative vote.

(1) This article reads as follows:

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

(2) Declaration of the Delegate of USSR.

"Establishment of the system contemplated by Article IX must inevitably lead to intervention by the International Court of Justice in the trial of cases of genocide which should be heard by the national courts in accordance with their jurisdiction.

The Representative of the Union of Soviet Socialist Republics bases his argument on the fact that the establishment of international jurisdiction for cases of genocide would constitute intervention in the internal affairs of States and be a violation of their sovereignty.

Consequently, in the opinion of the Representative of the Union of Soviet Socialist Republics, Article X should be excluded."

(3) Declaration of the Delegate of Poland:

"The inclusion in the Convention of the principle of an International Criminal Tribunal constitutes an obligation of the parties to this Convention, the contents of which are wholly unknown to them. The creation of an International Criminal Court whose jurisdiction could only be compulsory and not optional, is contrary to the principles on which the International Court of

Rejected Article

(Disbanding of
Organizations
having participated
in genocide)

The Delegate of Poland made the following proposals

which would have constituted a separate article:

"The High Contracting Parties pledge themselves to disband any group or organization which have participated in any act of genocide."

This question was mentioned in the Soviet Note, concerning the principles, which was discussed by the Committee in the first stage of its work.

It was decided not to retain it by 4 votes to 3.

(6th Meeting - Friday 9 April)

A proposal to reconsider the questions _____ was then rejected by 3 votes to 1 with no abstentions.

The Delegate of Poland made a declaration in this regard.(2)

- (1) The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II and III.
- (2) Declaration of the Delegate of Poland:

The Committee declined to include in the Convention any provision concerning disbanding of groups and organizations which have participated in acts of genocide. The lack of such a provision (having the result that such organizations would be permitted to carry on their criminal activities makes it impossible for the Polish Delegation to support the Convention until amended.