

Dual Distribution

Third session

GENOCIDE: DRAFT CONVENTION AND REPORT OF THE ECONOMIC AND  
SOCIAL COUNCILReport of the Sixth CommitteeRapporteur: Mr. J. Spiropoulos (Greece)

1. In resolution 96 (I) of 11 December 1946, the General Assembly, at the second part of its first session, affirmed that genocide is a crime under international law which the civilized world condemns. At the same time the Assembly requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft Convention on the crime of genocide to be submitted to the second regular session of the General Assembly.
2. The Economic and Social Council, by resolution 47 (IV) of 28 March 1947, instructed the Secretary-General to prepare, with the assistance of experts, a draft Convention on the crime of genocide.
3. In accordance with this instruction, the Secretary-General prepared a draft Convention which, on 7 July 1947, was transmitted to Member Governments for their comments and which, together with the comments received, was submitted to the second regular session of the General Assembly.
4. By resolution 180 (II) adopted on 21 November 1947, the General Assembly, at its second session, reaffirmed its former resolution on the crime of genocide and requested the continuation of the work begun by the Economic and Social Council concerning the suppression of this crime, including the study of the draft Convention prepared by the Secretariat.
5. Accordingly, the Economic and Social Council, at its sixth session, established an ad hoc Committee, composed of the representatives of seven Member States, to draw up a draft Convention on genocide for consideration at the next session of the Council. The ad hoc Committee met at the headquarters of the United Nations during the period from 5 April to 10 May 1948 and prepared a report containing a draft Convention on the prevention and punishment of the crime of genocide (E/794).
6. At its seventh session, the Economic and Social Council decided, by resolution 153 (VII) of 26 August 1948, to transmit to the third session of  
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the General Assembly the report of the ad hoc Committee and the draft Convention together with the records of the proceedings of the Council at its seventh session on this subject (E/SR.180, E/SR.201, E/SR.202, E/SR.218 and E/SR.219).

7. The General Assembly, at its 142nd plenary meeting held on 24 September 1948, decided to refer this matter to the Sixth Committee for consideration and report.

8. At its 63rd meeting, held on 30 September 1948, the Sixth Committee began the consideration of this item by a general discussion, after which it decided (1) to examine, article by article, the text of the draft Convention drawn up by the ad hoc Committee; (2) to begin with article I, leaving the preamble to be discussed last of all; and (3) to refer the decisions of the Committee with respect to the various articles and the preamble to a drafting committee charged with the preparation of a final draft.

9. The text of the draft Convention prepared by the ad hoc Committee was examined by the Sixth Committee from its 67th to 110th meetings, held between 5 October and 9 November 1948. The text revised by the Drafting Committee was examined by the Sixth Committee from its 128th to 134th meetings, held between 29 November and 1 December 1948. Several articles, especially those of a substantive character, gave rise to prolonged discussions and divergent opinions, and a considerable number of amendments was submitted to the Committee. In the present report, only those articles are referred to which to a special degree retained the attention of the Committee.

10. In dealing with article II of the draft Convention, which defines the acts of genocide, the Committee had, in particular, to resolve three important problems. In the first place, the question arose whether the acts of genocide should be explicitly enumerated in the article, as was done in the text prepared by the ad hoc Committee, or whether a general definition of genocide should be adopted, as proposed in an amendment submitted by the representative of France (A/C.6/211). The Committee, at its 72nd meeting, decided on the principle of enumeration, the amendment submitted by the representative of France having been withdrawn. Secondly, the question arose whether political groups should be included in the groups to be protected by the Convention, as proposed by the ad hoc Committee, or whether these groups should be excluded from the article. At its 75th meeting, the Committee decided to retain political groups, the vote being 29 in favour to 13 against, with 9 abstentions.\* Thirdly, the

\* This decision was later reversed: see paragraph 21, below.

question arose whether, as motives of the acts of genocide, the Committee should retain the words "on grounds of the national or racial origin, religious belief, or political opinion of its members", proposed by the ad hoc Committee. This was settled when the Committee, at its 77th meeting, by 27 votes to 22, with 2 abstentions, adopted an amendment submitted by the representative of Venezuela (A/C.6/231) whereby the phrase in question was deleted and the words "as such" added after the word "group", whereafter the first part of article II came to read as follows:

"In this Convention genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:".

During the discussion of the various categories of acts constituting genocide, the representative of China called the attention of the Committee to the desirability of including acts of genocide committed through the use of narcotics. This was made possible when the Committee, at its 81st meeting, decided to insert in sub-paragraph 2 the words "or mental", whereby the text in question came to read: "Causing serious bodily or mental harm to members of the group."

At its 82nd meeting, the Committee adopted, by 20 votes to 13, with 13 abstentions, an amendment submitted by the representative of Greece (A/C.6/242) to include as point 5 in the acts of genocide the act of forcibly transferring children from one group to another.

11. Article III of the draft Convention, which dealt with "cultural" genocide, gave rise to a discussion on the question whether this form of genocide should be covered by the Convention. At its 83rd meeting the Committee decided, by 23 votes to 16, with 4 abstentions, not to include provisions relating to cultural genocide in the Convention. It was pointed out, however, by several representatives that, in expressing their views on the retention or suppression of article III, no position was taken on the principle of cultural genocide, and that action to protect against this form of genocide might more appropriately be taken within the sphere of human rights.

12. With respect to article IV of the draft Convention, which listed the different acts to be punished, prolonged debates took place, particularly on the question of the retention or suppression of sub-paragraph (c) providing that "direct incitement in public or in private to commit genocide shall be punishable whether such incitement be successful or not". At its 85th meeting, the Committee rejected, by 27 votes to 16, with 5 abstentions, an amendment submitted by the representative of the United States of America (A/C.6/214) to delete this sub-paragraph. On the other

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hand, the Committee decided at the same meeting to delete both the words "in private" and the words "whether such incitement be successful or not" from the original text.\*

13. At its 92nd meeting, the Committee took up article V, dealing with the authors of the crime of genocide. It examined in the first place the amendment submitted by the representative of the Union of Soviet Socialist Republics (A/C.6/215/Rev.1) to add to this article a second paragraph to read as follows: "Command of the law or superior orders shall not justify genocide". This amendment was rejected by 28 votes to 15, with 6 abstentions. The Committee then discussed the terminology to be used in order to describe adequately the authors of the crime of genocide. Whereas the expression used in the original French text, "des gouvernants, des fonctionnaires ou des particuliers", was found satisfactory and consequently retained by the Committee, it was pointed out by several representatives that the expression "Heads of State" used in the English text went beyond the French expression "gouvernants" as it would appear to include Heads of State of constitutional monarchies who, according to the Constitution of their country, enjoyed immunity and could not, for that reason, be brought to trial before a national court. At its 95th meeting the Committee therefore adopted, by 31 votes to 1, with 11 abstentions, an amendment submitted by the representative of the Netherlands (A/C.6/253) and amended by the representative of Siam, whereby the English text came to read "constitutionally responsible rulers, public officials or private

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\* The representative of Sweden made the following statement with regard to article IV:

"The discussion at the beginning of this meeting seems to me to have shown that the significance of the terms corresponding to the French and English expressions here in question -- incitement, conspiracy, attempt, complicity, etc. -- is subject to certain variations in many systems of criminal law represented here. When these expressions have to be translated in order to introduce the text of the Convention into our different criminal codes in other languages, it will no doubt be necessary to resign ourselves to the fact that certain differences in meaning are inevitable. It would therefore be advisable to indicate in the Committee's report that article IV of the Convention does not bind signatory States to punish the various types of acts to a greater extent than the corresponding acts aimed at the most serious crimes, as, for example, murder and high treason, already recognized under national laws.

"I will not enter here into the details of Swedish legislation which, moreover, does not present too great difficulties in this respect, but I find it necessary to formulate, somewhere, my reservation on this subject."

individuals".\* Finally, the Committee rejected, at its 96th meeting, an amendment submitted by the representative of Syria (A/C.6/246) which would have included in the article as authors of genocide also de facto Heads of State and persons having usurped authority. It was felt that such persons already came within the scope of article V.

14. Article VII of the draft Convention provoked a lengthy discussion. As drafted by the ad hoc Committee, this article provided that persons charged with genocide should be tried by a competent tribunal of the State in the territory of which the act was committed or by a competent international tribunal. At its 98th meeting the Committee, by 23 votes to 19, with 3 abstentions, decided to delete the reference in the text to trial before an international tribunal.\*\* On the other hand, the Committee, at its 99th meeting, adopted a joint draft resolution submitted by the representatives of the Netherlands and Iran (resolution B), by which resolution the International Law Commission is invited to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction would be conferred upon that organ by international conventions.

15. In article X of the draft Convention as drafted by the ad hoc Committee, it was laid down that disputes relating to the interpretation or application of the Convention should be submitted to the International Court of Justice, provided that no dispute should be submitted to the Court involving an issue which had been referred to and was pending before, or had been passed upon by, a competent international criminal tribunal. At its 104th meeting the Committee adopted, however, in substitution for this article, a joint amendment submitted by the representatives of the United Kingdom and Belgium (A/C.6/258), and amended by the representative of India, according to

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\* The following statement was made by the representative of Sweden with regard to the question of responsibility of Members of Parliament:

"I must point out that the discussion that has taken place has in no way clarified the position of Members of Parliament under the article we have just adopted. This question raised by the Swedish delegation consequently remains unanswered. For our part, we conclude that no absolute obligation could be imposed by article V in this regard."

\*\* Article VII, which became article VI in the final text, was later revised by the Committee: see paragraph 22 below.

which any dispute between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention, including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV, should be submitted to the International Court of Justice, at the request of any of the Contracting Parties.

At its 105th meeting, the Committee adopted, as the second paragraph of article X,\* an amendment submitted by the representative of Australia (A/C.6/265) providing that, with respect to the prevention and suppression of acts of genocide, a party to the Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter of the United Nations.

16. A new article dealing with the application of the Convention to dependent territories was proposed by the representative of the United Kingdom as well as by the representative of the Ukrainian Soviet Socialist Republic. The amendment of the United Kingdom (A/C.6/236) provided that the application of the Convention might, by a notification to the Secretary-General, be extended to all or any of the territories for the conduct of whose foreign relations the Party in question is responsible. The amendment of the Ukrainian Soviet Socialist Republic (A/C.6/264) provided that the Convention should apply equally to the territory of the Contracting Parties and to all territories in regard to which they perform the functions of the governing and administering authority (including Trust and other Non-Self-Governing Territories). At its 107th meeting, the Committee rejected the Ukrainian amendment by 19 votes to 10, with 14 abstentions, but adopted the United Kingdom amendment by 18 votes to 9, with 14 abstentions. The Committee also adopted, at its 108th meeting, a draft resolution presented by the representative of Iran (resolution C), recommending Members of the United Nations administering dependent territories to take such measures as are necessary and feasible to enable the provisions of the Convention to be extended to those territories as soon as possible.

17. After having disposed of the Final Clauses in the draft Convention of the ad hoc Committee (articles XI - XIX) the Committee, at its 110th meeting, took up the question of the preamble of the Convention and adopted, by 38 votes to 9, with 5 abstentions, a text proposed by the representative of Venezuela (A/C.6/261).

18. At its 104th meeting, held on 13 November 1948, the Sixth Committee

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\* By the rearrangement and renumbering of the articles decided upon by the Drafting Committee, the second paragraph of article X became article VIII of the final text.

appointed a Drafting Committee consisting of the representatives of Belgium, China, Cuba, Egypt, France, Poland, Union of Soviet Socialist Republics, United Kingdom, and United States of America. The membership of the Committee was later increased from nine to thirteen by the addition of the representatives of Australia, Brazil, Czechoslovakia and Iran. As the representative of Cuba was unable to take part in the work, the Committee appointed the representative of Uruguay to take his place. To the Drafting Committee were referred the text of the articles of the draft Convention, the preamble, and the two resolutions dealing with the study of the question of an international jurisdiction and with the application of the Convention on genocide with respect to dependent territories.

19. The Drafting Committee submitted, on 23 November 1948, its report to the Sixth Committee (A/C.6/288). In this report the Drafting Committee recommended to the Sixth Committee the adoption of three draft resolutions: (A) a draft resolution recommending the adoption by the General Assembly of the draft Convention on genocide; (B) a draft resolution dealing with the study by the International Law Commission of the question of an international criminal jurisdiction (A/C.6/271); (C) a draft resolution dealing with the application of the Convention on genocide with respect to dependent territories (A/C.6/272).

20. The report of the Drafting Committee and the revised texts submitted by it were considered by the Sixth Committee from its 128th to its 134th meetings. Amendments to the revised text of the draft Convention were submitted by the representatives of the United States of America (articles III and VI, A/C.6/295) and India (articles II, VI, IX and XVII, A/C.6/299). Also, a joint amendment was introduced by the representatives of Belgium, United Kingdom and United States of America (article IX, A/C.6/305). In addition, several verbal amendments were made to the articles to which formal amendments had been presented.

21. At the 128th meeting of the Committee, a proposal was made by the representatives of Egypt, Iran and Uruguay to re-examine the question of excluding "political groups" in article II of the Convention. Having heard a statement by the representative of the United States of America in favour of such exclusion, the Committee decided by a two-thirds majority vote of 26 to 4, with 9 abstentions, to reconsider this question. Following this, the Committee, by a second vote of 22 to 6, with 12 abstentions, decided to exclude political groups from the groups protected by article II.

22. A redrafting of article VI, dealing with the question of jurisdiction, was discussed during the 129th and 130th meetings of the Committee. The Committee decided first by a two-thirds majority of 33 to 9, with 6 abstentions, to reconsider the article. It adopted next, by 29 votes to 9, with 5 abstentions, a revised text of the United States amendment to article VI, submitted by the representative of France and drawn up in consultation with the representatives of Belgium, France and the United States of America. By this text the following words were added at the end of article VI: "or by such international penal tribunal as may have jurisdiction with respect to such Contracting Parties as shall have accepted the jurisdiction of such tribunal."

23. At its 133rd meeting the Committee proceeded to vote on the three draft resolutions contained in document A/C.6/289. By 30 votes to none, with 8 abstentions, the Committee adopted draft resolution A with the annexed draft Convention as amended by the Committee. By 27 votes to 5, with 6 abstentions, the Committee adopted draft resolution B. Finally, the Committee, by 29 votes to none, with 7 abstentions, adopted draft resolution C.

24. At its 131st meeting, the Committee had agreed to insert in its report to the General Assembly the substance of an amendment to article VI submitted by the representative of India, according to which nothing in the article should affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State. Following this, the representative of Sweden had requested that the report should also indicate that article VI did not deprive a State of jurisdiction in the case of crimes committed against its nationals outside national territory. After some discussion of the questions raised in this connexion, the Committee, at its 134th meeting, adopted, by 20 votes to 8, with 6 abstentions, an explanatory text\* for insertion in the present report.\*\*

25. The Committee therefore recommends for adoption by the General Assembly the following three resolutions:

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\* The text reads as follows:

"The first part of article VI contemplates the obligation of the State in whose territory acts of genocide have been committed. Thus, in particular, it does not affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State."

\*\* For reservations made by some representatives with respect to the draft Convention, see the summary records of the 132nd and 133rd meetings of the Committee.



PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

A.

Resolution relating to the adoption of the Convention on  
the Prevention and Punishment of the Crime of Genocide,  
and text of the Convention

THE GENERAL ASSEMBLY

APPROVES the annexed Convention on the Prevention and Punishment of the Crime of Genocide and proposes it for signature and ratification or accession in accordance with its article XI.

ANNEX

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME  
OF GENOCIDE

THE CONTRACTING PARTIES,

HAVING CONSIDERED the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

RECOGNIZING that at all periods of history genocide has inflicted great losses on humanity; and

BEING CONVINCED that, in order to liberate mankind from such an odious scourge, international co-operation is required;

HEREBY AGREE AS HEREINAFTER PROVIDED:

ARTICLE I (1)

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II (2)

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

ARTICLE III (4)

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

ARTICLE IV (5)

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V (6)

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

ARTICLE VI (7)

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII (9)

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII ~~(10)~~

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX (10)

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X (11)

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of . . . . .

ARTICLE XI (12)

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII (13)

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV (14)

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV (15)

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI (16)

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII (17)

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

ARTICLE XVIII (18)

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

ARTICLE XIX (19)

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

B.

Resolution relating to the study by the International Law Commission  
of the question of an international criminal jurisdiction

THE GENERAL ASSEMBLY,

CONSIDERING that the discussion of the Convention on the Prevention and

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/Punishment

Punishment of the Crime of Genocide has raised the question of the desirability and possibility of having persons charged with genocide tried by a competent international tribunal,

CONSIDERING that, in the course of development of the international community, there will be an increasing need of an international judicial organ for the trial of certain crimes under international law,

INVITES the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions;

REQUESTS the International Law Commission in carrying out this task to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice.

C.

Resolution relating to the application of the Convention  
on the Prevention and Punishment of the Crime of Genocide  
with respect to dependent territories

THE GENERAL ASSEMBLY recommends that Parties to the Convention on the Prevention and Punishment of the Crime of Genocide which administer dependent territories, should take such measures as are necessary and feasible to enable the provisions of the Convention to be extended to those territories as soon as possible.

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