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Item 10 of the provisional agenda

GENOCIDE

Note by the Secretary-General

The following further replies have been received to the inquiry despatched to Governments in accordance with paragraph 1 of resolution 1420 (XLVI) of the Economic and Social Council:

CANADA

[Original: English]
26 August 1969

No specific legislative measures have been taken in Canada to give effect to the Convention on Genocide. However, the Canadian Bill of Rights of 1960 is considered to provide adequate protection in normal circumstances. Nevertheless, a legislative bill which deals specifically with this type of crime was approved by the Senate during the last session of Parliament. This bill, if adopted, would have the effect of amending the Canadian Criminal Code so as to make an indictable offence of advocating and promoting genocide. A copy of the bill is attached. Until the bill is reintroduced and approved by the House of Commons, however, it does not have the force of law.

Annex

1. The Criminal Code is amended by adding thereto, immediately after section 267 thereof, the following heading and sections:

HATE PROPAGANDA

267A. (1) Everyone who advocates or promotes genocide is guilty of an indictable offence and is liable to imprisonment for five years.

(2) In this section "genocide" includes any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely:

- (a) killing members of the group, or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

(4) In this section "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

267B. (1) Everyone who, by communicating statements in any public place, incites hatred or contempt against any identifiable group where such incitement is likely to lead to a breach of the peace, is guilty of

- (a) an indictable offence and is liable to imprisonment for two years; or
- (b) an offence punishable on summary conviction.

(2) Everyone who, by communicating statements, wilfully promotes hatred or contempt against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for two years; or
- (b) an offence punishable on summary conviction.

(3) No persons shall be convicted of an offence under subsection (2)

- (a) for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion upon a religious subject; or

(b) if he establishes

- (i) that the statements communicated were true, or
- (ii) that they were relevant to any subject of public interest, the discussion of which was for the public benefit, and that on reasonable grounds he believes them to be true.

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(4) Where a person is convicted of an offence under section 267A or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, upon such conviction, may, in addition to any other punishment imposed, be ordered by the presiding magistrate or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

(5) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

(6) In this section,

- (a) "public place" includes any place to which the public have access as of right or by invitation, express or implied;
- (b) "identifiable group" has the same meaning as it has in section 267A; and
- (c) "statements" includes words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representation; and
- (d) "communicating" includes communicating by telephone, broadcasting or other audible or visible means.

267C. (1) A judge who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda, shall issue a warrant under his hand authorizing seizure of the copies.

(2) Within seven days of the issue of the warrant, the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

(3) The owner and the author of the matter seized and alleged to be hate propaganda may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the said matter.

(4) If the court is satisfied that the publication is hate propaganda, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

(5) If the court is not satisfied that the publication is hate propaganda, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings:

- (a) on any ground of appeal that involves a question of law alone,
- (b) on any ground of appeal that involves a question of fact alone, or
- (c) on any ground of appeal that involves a question of mixed law and fact, as if it were an appeal against conviction or against a judgement or verdict of acquittal, as the case may be, on a question of law alone under Part XVIII and sections 501 to 601 apply mutatis mutandis.

(7) No proceeding under this section shall be instituted without the consent of the Attorney General.

(8) In this section,

(a) "court" means a county or district court or, in the Province of Quebec

(i) the court of the sessions of the peace, or

(ii) where an application has been made to a judge of the provincial court for a warrant under subsection (1), that judge;

(b) "genocide" has the same meaning as it has in section 267A;

(c) "hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under subsection (2) of section 267B; and

(d) "judge" means a judge of a court or, in the Province of Quebec, a judge of the provincial court.

NETHERLANDS

[Original: English]
26 August 1969

The Convention on the Prevention and Punishment of the Crime of Genocide was approved by Act of 2 July 1964. The punishable offences defined in the Convention are incorporated in penal law through the Act for the Implementation of the Convention of Genocide of 2 July 1964. A summary of the principal elements of this Act is enclosed herewith.

The Secretary-General may furthermore be informed that a bill pertaining to the non-statutory limitation of war crimes - whereby the term of limitation for the crime of genocide will be abrogated - will be introduced in Parliament shortly.

Annex

On 2 July 1964, the Convention on the Prevention and Punishment of the Crime of Genocide concluded at Paris on 9 December 1948, was approved by "Kingdom Act" (an Act of Parliament applicable throughout the Kingdom).

In the "Act for the Implementation of the Convention on Genocide" the punishable offences are defined and the penalties attaching thereto laid down as follows:

Section 1

1. Any person who with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such deliberately
 - (a) kills members of the group,
 - (b) causes serious bodily or mental harm to members of the group,
 - (c) inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part,
 - (d) imposes measures intended to prevent births within the group,
 - (e) transfers forcibly children of the group to another group,shall, as being guilty of genocide, be liable to imprisonment for life or to a term of imprisonment for life or to a term of imprisonment not exceeding twenty years.

2. Conspiracy to commit genocide shall be punished in the same manner as the attempt to do so.

3. The terms "conspiracy" and "serious bodily harm" shall have the same meaning in this section as they have in the Penal Code.

In wartime the death penalty may be imposed for genocide as defined above.

When genocide is committed in time of war the period of limitation is twenty-four years; at other times it is eighteen years.
