

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

Held at Lake Success, New York, on Monday, 16 June 1947, at 2:00 p.m.

Present:

Chairman: Sir Dalip Singh	(India)
Dr. Enrique Ferrer Vieyra	(Argentina)
Mr. A. H. Body	(Australia)
Dr. Gilberto Amado	(Brazil)
Dr. Shuhsi Hsu	(China)
Prof. Dr. Jesus M. Yepes	(Colombia)
Mr. Osman Ebeid	(Egypt)
Prof. Henri Donnedieu de Vabres	(France)
Dr. J. G. de Beus	(Netherlands)
Dr. Aleksander Bramson	(Poland)
Mr. B. Q. S. Petren	(Sweden)
Prof. Dr. Vladimir Koretsky	(Union of Soviet Socialist Republics)
Prof. J. L. Brierly	(United Kingdom)
Prof. P. C. Jessup	(United States of America)
Dr. Perez Perozo	(Venezuela)
Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN opened the meeting and gave the floor to Professor KORETSKY (Union of Soviet Socialist Republics) who wanted to make a statement.

Professor KORETSKY, referring to the statement the representative for Poland had made at the nineteenth meeting (A/AC.10/SR.19, page 6) on the crime of propaganda of a war of aggression with which the representative for Yugoslavia had associated himself (A/AC.10/SR.20, page 23), requested that it be inserted in the Report that the representative for the Union of Soviet Socialist Republics also associated himself with this statement.

Professor BRIERLY (Rapporteur) agreed to do this.

The CHAIRMAN opened the discussion on the RAPPORTEUR'S Report on Item 5 of the Agenda (document A/AC.10/49) concerning the draft Declaration on the

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rights and duties of States presented by the Government of Panama and proposed to take up this report paragraph by paragraph.

Paragraph 1 was accepted without discussion. In the initial part of Paragraph 2 Professor KORETSKY (Union of Soviet Socialist Republics) proposed to insert between "international" and "bodies" the word "non-governmental", to which the Committee agreed.

With regard to Sub-Paragraph (a) Professor KORETSKY suggested a slight redrafting of the text. As it now stood it seemed to imply that the procedure for the work of the ILC recommended by this Committee was sure to be accepted by the General Assembly, whereas, of course, the Assembly could modify the Committee's suggestions. He therefore proposed to replace the words "procedure suggested" by the words "procedure finally adopted by the General Assembly".

The Committee agreed to this change of wording.

With regard to Sub-Paragraph (b) Professor KORETSKY asked for an explanation as he had not been present at the discussion on the Panamanian draft. Was it the Committee's intention that the ILC should have to take the Panamanian draft as the only basis of study? Professor KORETSKY expressed his appreciation to the Government of Panama for having taken the initiative in this problem, but did not think it proper to thus tie down the ILC to a definite basic document. Other governments might also submit proposals. Was it the Committee's intention that such proposals could only be considered as amendments to the Panamanian draft? Professor KORETSKY asked whether the Committee's decision had been unanimous.

The CHAIRMAN replied that to his recollection the Committee had been unanimous on this point, but of course the ILC would study all proposals placed before it.

Professor KORETSKY (Union of Soviet Socialist Republics) considered that the wording of Sub-Paragraph (b) excluded other drafts from being considered on an equal footing and preferred to use "a basis" instead of "the basis".

Professor YEPES (Colombia) supported Professor KORETSKY (Union of Soviet Socialist Republics) and proposed to use the words "one of the bases" which was accepted by Professor KORETSKY and also by the RAPPOREUR, Professor KORETSKY emphasizing that of course the Panamanian draft would be one of the principal documents for study.

The CHAIRMAN stated that subject to the changes decided on above the RAPPOREUR's Report had been adopted.

The CHAIRMAN continued the discussion on Item 6 of the Agenda concerning the draft convention on genocide (Doc. A/AC.10/41 and 42) which had begun at the previous meeting and recalled that three points of view had been expressed: firstly, that the Committee was not competent to deal with this matter, secondly, that the time at its disposal was too short, and thirdly, that, as it was impossible for the members of this Committee, who were Government representatives, to get instructions from their Governments in the short time available, the Committee could not do justice to the matter.

Dr. AMADO (Brazil) observed that crimes coming under the notion of genocide were unknown in his country and that this crime did not interest Brazil directly, but the people of Brazil absolutely shared the distaste of all civilized countries for this crime. As to the point whether this Committee was competent to deal with this matter, Dr. AMADO considered that in the first place this Committee was only set up to study methods, and moreover, its members had no instructions from their governments. In Dr. AMADO's opinion not only the seventeen Governments represented on this Committee should have an opportunity to give their opinions on this draft. He expressed his agreement with the observations made by the Representative for the United Kingdom at the previous meeting and laid down in the draft resolution presented by the United Kingdom Delegation (A/AC.10/44).

Mr. EBEID (Egypt) expressed the hope that future plans for preventing the crime of genocide would be farsighted enough not only to eliminate this crime in one direction, but also to prevent it from developing in another

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direction.

Mr. BODY (Australia) agreed with the point of view held by the representative for the United Kingdom and considered that this Committee could not discuss the details of the Panamanian draft. The members of this Committee were Government representatives and had not yet been able to consult their Governments.

Moreover, in view of this Committee's recommendation that the ILC be established, Mr. BODY considered that it should be recommended that the ILC be consulted before final action was taken with regard to genocide and also that the matter should be studied in connection with the subject matter of Item 4 of the Agenda. He acknowledged that the problem was complicated as the General Assembly had already adopted a resolution for specific action, in requesting the Economic and Social Council to prepare a draft convention for submission to the next session of the General Assembly. In his opinion it would be appropriate to reply to the Secretary-General's letter of 8 May 1947 (document A/AC.10/15) that the Committee, having made a recommendation on the establishment of an International Law Commission, felt that this Commission, if and when established, should be asked to study the draft of genocide at the appropriate stage of its work and that the method should be studied in connection with the Nurnberg principles. Mr. BODY proposed the following text:

"The Committee requests the CHAIRMAN, in replying to the Secretary-General's communication of 8 May 1947, to inform him that it has recommended to the General Assembly the establishment of the ILC and that it considers that at an appropriate stage the draft convention on genocide should be referred to the ILC, if the ILC be established as recommended".

Dr. VIEYRA (Argentina), referring to the General Assembly resolution on genocide, considered that the Economic and Social Council had given a wrong interpretation to the General Assembly's Resolution, when by its

Resolution of 28 May 1947, it instructed the Secretary-General to undertake certain studies with a view to the drawing up a draft convention and requested him to consult this Committee and, if feasible, the Commission on Human Rights.

In the opinion of the Argentine delegation this Committee, from a constitutional point of view, was competent to study the draft convention on genocide, but only for the purpose of an examination whether its clauses did or did not violate the provisions of the Charter. Dr. VIEYRA did not consider that this Committee should study whether the draft convention as embodied in document A/AC.10/41 was a good draft on the subject of genocide itself.

Dr. VIEYRA referred to the various instances when the General Assembly had referred some subjects on the agenda to the Sixth Committee only for the purpose of examining whether the proposed resolutions were contrary or not to the Charter provisions and not with a view to their substance, e.g. financial problems were referred both to the Fourth and Sixth Committees, political problems to the First and Sixth Committees. In Dr. VIEYRA's opinion the fact that the subject matter of genocide, while mainly the concern of the Economic and Social Council, was also referred to this Committee, should be viewed in the same light and the Chairman could reply to the Secretary-General that it had studied the draft only with respect to its constitutionality. In his opinion this restricted interpretation of the Committee's task with regard to this item would also accelerate the proceedings as a whole.

Dr. VIEYRA proposed to make a formal motion after the other members of the Committee had expressed themselves on the principle involved.

Dr. HSU (China) observed that genocide was very important also for the development of international law. As to the matter of competence, it was enough that this subject had been referred to the Committee by the Economic and Social Council, which was a United Nations organ. The difficulty was that the draft had been submitted much too late and that no member of the Committee

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had instructions from his Government in this respect. It might be possible to wait for such instructions, but the Committee had really been appointed for a different purpose and the Economic and Social Council would have to accept the Committee's excuse that it had no time at its disposal and that any pronouncement on the draft given at the present time would not do justice to the draft.

Dr. HSU even doubted whether the Committee should recommend that the draft be referred to the ILC. Obviously the General Assembly would do so if it decided to establish the ILC, and he feared that a recommendation by this Committee that the draft be referred to the ILC might be interpreted as an unfavourable judgment on the draft, which would not be correct either. He therefore considered preferable that in his reply to the Secretary-General the CHAIRMAN only expressed the Committee's regret that it had not been able to deal with this draft.

Professor KORETSKY (Union of Soviet Socialist Republics) considered that it was difficult for the Committee to restrict itself to a purely formal point of view on the subject of genocide, and referred to the many countries (e.g. Poland) which counted millions of victims of this crime. He also pointed out that for many of these countries the crime of genocide had not been committed for the first time. He also feared that this crime would still be a menace for peoples living near the German frontier, not only in theory but also in practice. The Governments of the countries concerned surely had a right to insist that effective measures be taken to prevent and punish this crime.

On the other hand, Professor KORETSKY appreciated the difficulties expressed by the previous speakers: that the members of this Committee were Government representatives and should first consult their Governments before giving their opinion on the draft.

Moreover, Professor KORETSKY considered that a draft convention should contain complete proposals on which the Governments should be able to give
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their opinion. The General Assembly referred the matter of genocide to the Economic and Social Council and this Council, in its turn, referred it to the Secretary-General. The Secretary-General, instead of addressing himself to the Governments, set up a Committee of Experts which did not have the experience of Government representatives and could not get the view-points of the Governments. Consequently, the draft now submitted to this Committee did not represent the views of Governments, either directly or indirectly, and in Professor KORETSKY's opinion it did not give any value to the political point of view. On account of this fundamental failing he considered that the draft could not be taken as a basis for the Committee's work. In order to correct this failing the draft should be submitted to the Governments within the shortest possible time and they should be asked for their comments on it. It could be suggested to the General Assembly that this Committee be convened again to study the draft after the Governments' replies had been received. Of course the Committee could not continue its session just to wait for these replies to come in, nor could it take a decision now.

For the only reason that this Committee did not have any Government comments on the draft at its disposal and that the draft did not represent the opinion of Governments, but was prepared by individual experts, Professor KORETSKY declared that he would abstain from the voting.

Professor DONNEDIEU DE VABRES (France) observed that the Committee of Experts had received criticism from the representative of the Union of Soviet Socialist Republics. As a member of this Committee he referred to the difficult task with which it had been confronted. There had been no preparatory work at all on the subject of genocide, which term in itself was new and vague. The Secretary-General did not request the experts to draw up a convention. The draft submitted could not even be called preliminary draft ("avant-projet"), but it was only a maximum programme. As the experts only met during a few days, they were just as unable as this Committee to study the substance of the matter. In order to get out of this difficulty they

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decided to limit themselves to an enumeration of the issues that could possibly be brought under the term of genocide. The commentary to be found in document A/AC.10/41 clearly showed that the experts were often not in agreement. In his opinion they did useful work, they did not take any decisions which would bind any future body to which the subject of genocide was referred, but they only drew up a programme to be used for future work.

Professor DONNEDIEU DE VABRES absolutely agreed that this Committee need not give an opinion on the draft, as it most certainly was not a draft convention at all. Genocide gave rise to many problems and this Committee could not pronounce itself on them. Professor DONNEDIEU DE VABRES referred to the draft Declaration on the rights and duties of States in connection with which the Committee had also decided that it could not give its opinion, as only six replies from governments had been placed before it. A similar decision had been taken with regard to the Nurnberg principles, although in his opinion this decision had been rather too prudent. A fortiori this Committee could not take a decision on this entirely new problem of genocide and this should be expressed in the reply to the Secretary-General. Professor DONNEDIEU DE VABRES considered however that a suggestion that the matter be referred to the ILC was appropriate.

However, there was a general agreement in the Committee that genocide, from which so many countries had suffered, and France not in the last place, should receive a severe condemnation. In his opinion the Committee should not limit itself to a suggestion that the matter be referred to the ILC, but it should also express that the problem of genocide was connected with the crimes against peace and humanity and with the matter of an international criminal jurisdiction.

Mr. PETREN (Sweden) observed that his country also desired measures against genocide to be taken, but in view of the fact that he had no instructions from his Government, he expressed his agreement with the

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proposal submitted by Mr. BODY (Australia) which wanted the matter of genocide to be referred to the ILC.

Professor BARTOS (Yugoslavia) emphasized that the peoples of Yugoslavia vividly desired a convention on genocide.

However, in spite of this desire the Yugoslav delegation was obliged to make the following statement:

"(1) The Yugoslav delegation is surprised and astonished that the draft convention on genocide (as submitted to our Committee) has been elaborated and published without a previous consultation of the governments whose peoples in a very recent past have been the principal victims of the commission of the crime of genocide and whose scientists are engaged in a thorough study of this criminal phenomenon with which its history is so closely concerned.

(2) In the opinion of the Yugoslav delegation a draft convention cannot be discussed either by our Committee or by the Economic and Social Council or by any other Organ of the United Nations, if such draft has not been presented by a thorough consultation with the Governments of the Members of the United Nations, particularly taking into account the Governments referred to in Paragraph 1.

(3) The Yugoslav delegation requests the Secretary-General to consider the draft submitted to our Committee neither as a draft convention nor even as a preliminary draft, but only as documentation for the internal work of the Secretariat and, consequently, to withdraw it as an official draft. We request the Secretary-General not to define this draft as a "programme", not even as a maximum "programme", which definition has been used several times in the Committee.

(4) The Yugoslav delegation considers that in following the procedure envisaged for the method to be followed for the work of the ILC, the results should be awaited of the request for Government comments referred to Sub. (1) and (2).

/(5) As in General.

(5) As in general the proposal made by the Polish delegation* guarantees that the future draft of the convention on genocide shall be the result of scientific work based on the needs of practical life, the Yugoslav delegation, in principle, takes a favourable view of the proposal of the Polish delegation. On the other hand, in view of the fact that the draft submitted has been elaborated in a manner which is not permissible, either as far as the substance is concerned or as regards the composition of the organ which was engaged in the drawing up of the draft, or as regards the procedure followed by this organ, the Yugoslav delegation shall abstain from voting on each proposal which refers to this so-called draft.

Dr. DE BEUS (Netherlands) observed that a majority of the Committee seemed to agree with the Australian proposal. As this proposal was, however, only concerned with a final recommendation with regard to genocide and as a preliminary decision leading up to this recommendation had to be taken, Dr. DE BEUS made a proposal to the following effect: that the Committee request the CHAIRMAN in replying to the letter of the Secretary-General to state (a) that the Committee considers a convention on genocide desirable; (b) that the draft had been received so late that it was impossible to get Government comments and that the Committee therefore would not express its opinion on it; (c) that the Economic and Social Council should be requested to submit the draft to the Governments and then (d) the Australian proposal concerning reference of the crime of genocide to the IIC.

Professor KORETSKY (Union of Soviet Socialist Republics) asked the representative of the Netherlands why the Committee should express its opinion that a convention was desirable, as the General Assembly had already done so. Dr. DE BEUS (Netherlands) replied that he considered the Committee should also express its own opinion.

The CHAIRMAN proposed that this motion be distributed in both English

* See below.

and French.

Professor KORETSKY (Union of Soviet Socialist Republics) wanted to make some general observations in the meantime. In the first place he referred to the fact that Professor DONNEDIEU DE VABRES (France) had said that the draft submitted was not a draft convention and he wondered whether Professor DONNEDIEU DE VABRES spoke as a representative for France or as a member of the Committee of Experts.

Secondly, with regard to bringing genocide in connection with the Nurnberg principles, Professor KORETSKY considered that with regard to the Nurnberg principles the Committee had only been instructed to make a plan for the formulation of these principles and it had complied with this request. With regard to the Panamanian Draft Declaration on the rights and duties of States, the Committee was also justified in saying that it could not take up this draft, as it had not sufficient governmental replies at its disposal. Thirdly, genocide is a new conception of crime and in certain parts of the globe it might become an imminent danger so that a quick action is necessary. In Professor KORETSKY's opinion the fact that this Committee did not contain a sufficient number of criminologists was no justification for not taking up the matter, as it was for the Governments to send specialists for the subject matters on the Agenda. However, genocide should be decided by Governmentsrepresentatives on the basis of Government comments and he agreed with Professor BARTOS (Yugoslavia) that it could not be studied before these comments were available. The Secretariat had submitted to the Committee a text which the Secretariat itself did not consider a proper draft, as it left it to the consulted Committees and Governments to make selections from the enumeration of issues it contained. In Professor KORETSKY's opinion this was a strange method: instead of submitting a proper draft to the Governments, the Secretariat put the task on the shoulders of the Governments which were to do the selecting of those issues. The text now available, being merely an enumeration, could not be used as a basis for the Governments in

expressing their opinions on genocide, but only as a working document. So in reality the work must be begun anew. Professor KORETSKY considered these observations indispensable as the Committee must express its objections to the unsatisfactory method used with regard to this problem which was a part of the development of international law, and it proved clearly that the Committee's decision to use only the method of conventions implying the participation of the Governments had been correct.

Dr. AMADO (Brazil) observed that there seemed to be some misunderstanding. The Committee of course wanted the crime of genocide to be liable to punishment, but on the other hand, the representatives of the countries most interested in the achievement of this object seemed to be in favour of a postponement of the matter which seemed rather strange, although Dr. AMADO fully agreed that the problem needs a thorough study as it was an entirely new problem. With regard to codification of international law the Committee received two instructions, one with regard to the **Nurnberg principles** and the second with regard to the Panamanian draft Declaration on the rights and duties of States. If the General Assembly Resolution on genocide was to be carried out, the only procedure possible was to send the result of the preparatory work done by the Economic and Social Council and the Secretariat to the Governments for their comments and to take further action after these comments had been received. In Dr. AMADO's opinion, however, a reference of genocide to the International Law Commission would entail a too prolonged postponement as the ILC had not yet been constituted, and several countries could not agree to such a postponement of this matter which concerned them so deeply. Also, the ILC would have an enormous task and would not be able to take a speedy decision in the matter. Therefore Dr. AMADO was opposed to the Australian proposal and appealed to all those members who want rapid action on the matter of genocide not to suggest a reference of the matter to the ILC.

Dr. KERNO (Assistant Secretary-General) observed that the representative
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for Yugoslavia had desired that the text under discussion be withdrawn from circulation even as a preliminary draft. He pointed out that the Secretary-General was the servant not only of this Committee but also of the Economic and Social Council and therefore could only carry out the Economic and Social Council's resolution instructing him to submit a draft convention on genocide to the next session of the Council after having consulted this Committee and the Commission on Human Rights. The Secretary-General considered that the Economic and Social Council had been too optimistic where it requested this draft to be submitted to it at its next session, for the time was too short for a proper consultation with the two Commissions referred to and for receiving comments from all the Governments as was also mentioned in the Resolution of the Economic and Social Council. Therefore the Secretary-General had been compelled to consult only the Commission on Human Rights and the experts referred to by previous speakers and this Committee. The hurry in which this was done explained the imperfection of the results. The Committee should not consider the text submitted as a draft convention, but only as a working document.

The Secretary-General understood perfectly that this Committee could not take a decision on the basis of this text. He would now send this text to the Governments with a request for their comments and their comments should be studied before the final draft convention was submitted to the Economic and Social Council. The Secretary-General understood likewise the criticism made of the submitted text, but it was really the consequence of the Economic and Social Council having allowed far too little time for the various consultations which it instructed the Secretary-General to carry out.

Professor DONNEDIEU DE VABRES (FRANCE) replying to Dr. AMADO's observations observed that he would regret it if the reference of the matter to the International Law Commission were to be interpreted as a first class burial of the problem and he had no fears as to the usefulness of such reference.

/In reply

In reply to Professor KORETSKY, Professor DONNEDIEU DE VABRES stated that he was in favour of a general recommendation on genocide, confirming that the draft submitted was really only a "table of contents". He fully endorsed the observations made by Dr. KERNO with regard to the short time allowed by the Economic and Social Council. The experts had not been able to do more than make a preliminary study of the field. As a member of this Committee he had also been unable to get the opinion of his Government and his reply, therefore, did not bind his Government, but the opinion of the French consultative Commission on the codification of international law had been laid down in the memorandum on genocide which he had presented to the Committee (A/AC.10/29). Professor DONNEDIEU DE VABRES summarized this point of view as follows: (1) that genocide only occurred if a Government committed this crime or was guilty of not preventing it from being committed; (2) genocide implied an attack on the lives of individuals; and (3) the only persons to be prosecuted on account of this crime were rulers ("les gouvernants") who ought to be judged by an international criminal jurisdiction. Professor DONNEDIEU DE VABRES considered that there was a close link between the crimes against peace and humanity and the crime of genocide. The persons who actually committed the murders constituting genocide should be punished as murderers under the common law. Even a narrow conception of genocide should not be allowed to have for its result that the individuals who committed those murders should go unpunished.

The CHAIRMAN stated that there was practically a unanimity amongst the members on the point that this Committee did not have the time to study the substance of the text submitted to it. Firstly, with regard to competence, the CHAIRMAN suggested that the Committee first decide this matter. He agreed with the point of view expressed by the representative for Argentina. Secondly, with regard to lack of time, the CHAIRMAN observed that this prevented the Committee from studying the substance, but it might pronounce itself on first principles. Thirdly, a majority of the Committee seemed to

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consider that lack of Government instructions made it impossible for them to express their opinion. In this connection he pointed out that the General Assembly Resolution already expressed that genocide was a crime and therefore in his opinion this Committee could decide, even without Government instructions, what constituted this crime which had been defined in the report of the Sixth Committee of the General Assembly as the "denial of the right of existence of entire human groups". The CHAIRMAN considered this definition not very clear. Did it intend the destruction of individuals of the group or of the group as such? Did it also imply a prohibition of the continuation of any group, the destruction of a language of a group, etc.?

With regard to the point raised by Professor BARTOS, the CHAIRMAN observed that the Secretary-General had had to obey the instructions given him and the Secretariat had done the best it could. It was not for this Committee to pass judgment either on the Economic and Social Council or on the Secretariat.

The CHAIRMAN said he had no argument against the idea underlying the observations of the various speakers that, without having the opinions of their Governments at their disposal, it would be dangerous to draw up any draft convention.

As the Secretary-General addressed the letter to him as CHAIRMAN of this Committee, he would have to reply to it, but he would prefer to submit the draft of this letter to the Committee.

Speaking as representative for India, Sir DALIP SINGH observed that in his opinion this Committee was competent to deal with the matter under Article 22 of the Charter and Rule 100 of the Rules of Procedure. If this Committee could not be said to be a subsidiary organ, the General Assembly would have appropriated a right which was not given to it in the Charter and this seemed very unlikely. In his opinion there was no difference between committees and subsidiary organs.

Article 71 of the Charter gave the Economic and Social Council the

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right to make arrangements for consultation with non-governmental organizations. Could not this Committee be regarded as a non-governmental organization?

In any case the Economic and Social Council could consult with the General Assembly in connection with the tasks entrusted to it and this Committee being a General Assembly Committee could likewise be consulted by the Economic and Social Council. Secondly, with regard to the objection that there was no time at the disposal of the Committee Sir DALIP SINGH considered that the whole of the next day could be given to the subject. The Committee would then have to study: (a) what was the correct definition of genocide, i.e. whether it was directed towards the destruction of individuals or groups as such; (b) what kinds of genocide should be contained in the draft: this point was closely connected with the requirement of instructions from the Governments represented on this Committee, but Sir DALIP SINGH considered that every representative could decide for himself, for it should not be forgotten that all the Governments already had the General Assembly Resolution before them. As to the combined Australian-Netherlands proposal now distributed to the effect that the subject of genocide be referred to the International Law Commission, Sir DALIP SINGH considered that it was quite possible that it might be one or two years before the ILC could commence its work and it had already been suggested to refer many problems to the ILC. All of which might cause a lengthy postponement. Sir DALIP SINGH considered it preferable, therefore, to leave the matter to the Economic and Social Council and its subsidiary bodies.

Professor BARTOS (Yugoslavia) on a point of order observed that the CHAIRMAN had interpreted his observations wrongly. He had not intended to address any reproaches to the Secretary-General, but only to point out that the Economic and Social Council gave no instructions to the Secretary-General on the proceedings to be followed by the latter and the Secretary-General had chosen this method of which Professor BARTOS disapproved. As a

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matter of course the Secretary-General had to obey the orders received from the Economic and Social Council. Professor BARTOS observed that he had made no proposal but only a statement.

Dr. BRAMSON (Poland) referred to the proposal which he had had distributed at the meeting in the French and English text.

With regard to Dr. AMADO's objections against postponement of the genocide problem and to the objection made by the CHAIRMAN that it might take one or two years before the ILC was set up, he referred to Article 62 (3) of the Charter authorizing the Economic and Social Council to prepare draft conventions for submission to the General Assembly with respect to matters falling within its competence. Dr. BRAMSON declared in view of the fear of delay expressed by various speakers in the event that the problem of genocide be referred to the ILC that he withdrew paragraph 1 of his proposal, but he wanted to maintain paragraph 2.

In Dr. BRAMSON's opinion the Governments must necessarily be consulted. He hoped that the Economic and Social Council would do its utmost to present a draft convention to the General Assembly at the next session.

As to the Argentine point of view with regard to the Committee's competence, he expressed his agreement with Dr. VIEYRA's opinion which was also shared by the CHAIRMAN. Dr. BRAMSON considered that there was no difference of opinion on the problem of genocide itself and that this Committee could decide whether the draft was in accordance with the Charter provisions. Dr. BRAMSON repeated that he maintained the second paragraph of his proposal.

Professor KORETSKY (Union of Soviet Socialist Republics) asked the representative for Poland whether he withdrew his original proposal to the effect that this Committee should study the substance of the matter.

Dr. BRAMSON (Poland) replied that he did not insist on the Committee making such a study.

Professor KORETSKY then asked Dr. BRAMSON whether he wanted to maintain

the word "solely" in the preamble of his proposal.

Dr. BRAMSON (Poland) replied that his text was based on the Resolution of the General Assembly. He understood that a majority of the Committee considered that under its terms of reference it was only concerned with methods. He did not want to reopen the discussion on this point as he had expressed his opinion at previous meetings.

As to the second paragraph of his proposal, Dr. BRAMSON intended to draw the attention of the competent organs of the United Nations to some aspect which the Argentine representative called constitutional and he referred to the fact that this Committee already drew the attention of the General Assembly to the question of the desirability of the establishment of an International Criminal Court. The same procedure could be applied to important problems connected with genocide.

Professor JESSUP (United States of America) in connection with the order of the various points before the Committee as given by the CHAIRMAN, observed that there was general agreement in the Committee not to discuss the substance of the draft of genocide. However, the representatives took this point of view for any of three different reasons. Professor JESSUP suggested that the broadest proposal be first decided, to the effect that the Committee would not discuss the substance of genocide and thereafter it could be decided in what form the CHAIRMAN should reply to the Secretary-General.

The CHAIRMAN speaking as representative for India considered that the principle of the Committee's competence should be decided in any case, before the Committee decide whether or not it would discuss the matter.

Professor KORETSKY (Union of Soviet Socialist Republics) asked whether one point had priority over others. The Committee might formally decide that it was not competent, but in his opinion this was too formalistic a point of view and it would certainly be strange if the Committee refused to consider genocide. However, Professor KORETSKY considered that it was not necessary to give all the reasons why this Committee would not discuss genocide, if the

principal reason was that the representatives had no instructions from their Governments. A second argument brought forward by the representatives was the lack of time and, as far as reference to the IIC was concerned and the possibility that this Commission might not be established very soon, Professor KORETSKY considered that the Economic and Social Council could prepare a draft without consulting the IIC which had no monopoly in the field of international law. In his opinion it would be preferable to suggest to the Economic and Social Council that it consult all the Governments before preparing a draft.

All the other proposals made during the discussions concerned the future work and were not appropriate now. The basic issue before the Committee was that it had no comments from Governments nor instructions from the representatives of Governments on this Committee and, secondly, that if a mention was made to the Economic and Social Council of the desirability of referring the subject to the IIC, this should not be worded as an exclusive reference but it should be attenuated to "IIC or other appropriate organ". The General Assembly could then, if it did not establish the IIC at the 1947 session, set up another Committee or continue the present Committee for the task of dealing with genocide.

Dr. PEREZ PEROZO (Venezuela) observed that one of the reasons given for the Committee's not being able to discuss the draft, was that it lacked time. He asked whether the Committee really must terminate its meetings on this day or the next. If this were not so, this reason was not acceptable.

The CHAIRMAN replied that no fixed date had been set for the end of the meetings of the Committee. However, the Committee met on 12 May and it was now already 16 June. Moreover, a thorough study of the problem of genocide would undoubtedly extend beyond the date fixed for the opening of the next session of the Economic and Social Council.

Professor BRIERLY (Rapporteur) agreed with Professor KORETSKY that Government comments on the draft were indispensable. Therefore, as this

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Committee consisted of Government representatives, it was improper for them to give their opinion without such comments. In Professor BRIERLY's opinion, the Committee should restrict itself to this one reason for declining to take up the matter now and he suggested to the CHAIRMAN that only this reason be mentioned in his reply to the Secretary-General.

Dr. AMADO (Brazil) joined the RAPPORTEUR in his support of Professor KORETSKY's proposal.

In reply to the observation from Professor DONNEDIEU DE VABRES (France) who had interpreted his words as meaning that a reference of the matter to the International Law Commission would amount to a first class burial, he emphasized that that was not at all his intention. He had only wanted to point out that not only the establishment of the ILC, but also the collection of Government replies would take some time. Therefore, a considerable period would elapse before the ILC could actually study the matter.

Professor JESSUP (United States of America) also supported Professor KORETSKY's proposal and Professor BRIERLY's suggestion. Dr. DE BEUS (Netherlands) likewise expressed his agreement and referred to paragraph (b) of the combined Netherlands-Australian proposal which had now been distributed and which read as follows:

"The Committee requests its Chairman in reply to the letter of the Secretary-General of 8 May 1947, to inform the Secretary-General:

- (a) that the Committee considers highly desirable that a convention be concluded at an early date on the crime of genocide;
- (b) that in view of the fact that the draft convention on genocide prepared by the Secretariat (documents A/AC.10/41 and 42) could not be presented to the Governments for comments owing to the late date of its distribution, the Committee considers itself unable to express its opinion on that draft;
- (c) that the Committee therefore recommends to the Economic and Social Council without further delay to submit this draft convention to the Governments for their comments;

(d) that the Committee has recommended to the General Assembly the establishment of an International Law Commission and that it considers that at an appropriate stage the draft convention on genocide should be referred to the ILC if the ILC be established as recommended."

In view of the fact that a reference to the ILC might undoubtedly cause a considerable delay, he suggested a slight re-wording at the end of paragraph (d): "that at an appropriate stage the draft convention of genocide might be referred to the ILC, if the ILC is established within a reasonable time".

In Dr. DE BEUS' opinion it would be rather strange if this Committee expressed as its opinion that the genocide draft could also be referred to another organ than the ILC, as Professor KORETSKY had suggested, but this Committee should keep in mind the danger of a lengthy postponement of the problem.

Professor DONNEDIEU DE VABRES (France) expressed his agreement with the proposal of Professor KORETSKY as amended by Dr. DE BEUS.

Mr. BODY (Australia) likewise supported these proposals, but wanted to point out that the Economic and Social Council would not be able to cease working on the project in view of the General Assembly Resolution. He also suggested that in paragraph (d) of the Netherlands-Australian proposal the words "the draft convention" should be replaced by "the draft convention on genocide to be drawn up".

Dr. HSU (China) observed that paragraph (b) of the Netherlands-Australian proposal was worded rather confusedly. The Committee could of course form its own opinion without knowing those of the Governments.

The CHAIRMAN asked that the Committee in the first place decide that the answer to be given to the Secretary-General would give as the exclusive reason for the Committee's declining to study the matter the absence of instructions from their Governments.

/Professor KORETSKY

Professor KORETSKY (Union of Soviet Socialist Republics) considered that this should be defined as an "absence of instructions on the draft submitted".

The CHAIRMAN observed that he had avoided using this term as it had been pointed out that the text submitted was not even a preliminary draft of a convention. He thereupon put to the vote the motion that the only reason why the Committee refrained from expressing its opinion on the documents submitted was the absence of instructions from their Governments. This motion was carried by 11 votes in favour and 5 abstentions. On some representatives expressing their surprise that the representative for the Union of the Soviet Socialist Republics had abstained from voting on his own motion Professor KORETSKY (Union of Soviet Socialist Republics) referred to his first speech on this subject, when he stated the reasons why he would take part in the debate but would abstain from voting.

Dr. LIANG (Secretary) observed that the vote was really taken on the formulation given by the CHAIRMAN and not on Professor KORETSKY's motion. The CHAIRMAN agreed with this point of view.

In reply to an observation from Professor KORETSKY that the CHAIRMAN ought to send his reply to the Economic and Social Council, Professor JESSUP (United States of America) observed that the letter had been sent to the CHAIRMAN by the Secretary-General and that the Secretariat was the channel for all correspondence between United Nations organs, so the reply should be sent to the Secretary-General too. The Committee agreed to this point.

The CHAIRMAN thereupon opened the discussions on the Netherlands-Australian proposal and on paragraph 2 of the Polish proposal which had been maintained by Dr. BRAMSON.

Professor BRIERLY (Rapporteur) observed that paragraph (b) of the Netherlands-Australian proposal had in effect been accepted by the motion just carried.

Professor KORETSKY (Union of Soviet Socialist Republics) observed that the drafting of the reply to be sent to the Secretary General would have to be based on the Netherlands-Australian proposal and the Polish one. He

suggested that the three movers with the RAPPORTEUR draw up a resolution which could serve as the basis for the reply to the Secretary-General. In his opinion paragraph (d) of the Netherlands-Australian proposal was superfluous and could be omitted. The General Assembly had referred the problem of genocide to the Economic and Social Council and it was not for this Committee to question whether this was appropriate. The suggestion made in paragraph (d) amounted to this Committee's requesting the General Assembly to revise its own decision.

Professor KORETSKY also considered that paragraph (a) should be redrafted as the General Assembly had already decided that a convention of genocide should be concluded at an early date and had therefore referred the matter to the Economic and Social Council which met three times a year. He suggested that paragraph (a) might be reworded to the following effect: "whereas the General Assembly desiring a conclusion of the convention on genocide at an early date" and then pass on to paragraph (b).

The CHAIRMAN agreed to the suggestion of a drafting sub-committee, but preferred to have a discussion first on the separate paragraphs of the two proposals, that is to say, on the underlying ideas not on the exact wording. He opened the discussion on paragraph (a) of the Netherlands-Australian proposal.

Dr. DE BEUS (Netherlands) agreed with Professor KORETSKY that the General Assembly Resolution should be referred to, but he considered desirable that the Committee also express its own opinion to the effect that a convention on genocide should be concluded at an early date.

Mr. BODY (Australia) and the other members of the Committee agreed with this point of view.

The CHAIRMAN pointed out, as had already been observed by the RAPPORTEUR, that paragraph (b) of this proposal had already been accepted by the motion voted on.

/With regard

With regard to paragraph (c) Dr. LIANG (Secretary) observed that the Economic and Social Council had already instructed the Secretary-General to request the opinions of the Governments in its Resolution of 28 March 1947. Consequently there was no need to refer to this matter in the CHAIRMAN'S reply to the Secretary-General.

Dr. DE BEUS (Netherlands) observed that the intention of the movers had been to emphasize that the Economic and Social Council should not wait for the answer of this Committee before submitting the draft on genocide to the Governments.

Professor JESSUP (United States of America) pointed out that the wording of the Resolution of the Economic and Social Council was perfectly clear: the Secretary-General was instructed to submit a draft convention to the next session of the Council after consultation with the present Committee and if feasible with the Commission of Human Rights and after reference to all Member Governments for comments. Consequently the obligation for the Secretary-General to submit the draft to Member Governments already exists.

The members agreed that it was superfluous for the Committee to recommend that the draft be submitted to the Governments. Professor KORETSKY (Union of Soviet Socialist Republics) asked whether under the Resolution of the Economic and Social Council consultation of the Governments had to take place simultaneously with consultation of the present Committee, or not.

Professor JESSUP (United States of America) observed that it was for the Secretary-General and not for this Committee to interpret the resolutions of the Economic and Social Council. He observed that the CHAIRMAN'S reply to the Secretary-General should refer both to the General Assembly Resolution and to the Resolution of the Economic and Social Council.

With regard to paragraph (d) the CHAIRMAN observed that it had been suggested to mention also another organ apart from the IIC or to omit paragraph (d) altogether.

Professor BRIERLY (Rapporteur) and Dr. VIEYRA were in favour of omitting this paragraph.

Professor DONNEDIEU DE VABRES (France) preferred this matter to be voted on, as in his opinion it would be perfectly normal for the IIC to be consulted.

The CHAIRMAN put to the vote the motion that paragraph (d) be deleted, i.e. that no reference to the IIC be made in his reply to the Secretary-General. This motion was carried by 10 votes in favour, 4 against and 2 abstentions. The CHAIRMAN then opened the discussion on the second paragraph of the Polish proposal reading as follows:

"The Committee also resolved to draw the attention of the competent organs of the United Nations to the necessity of maintaining the conformity between the convention on genocide and the principles and purposes of the United Nations as expressed in the Charter, and the Resolution of the General Assembly on genocide on 11 December 1946, and the principles recognized by the Charter of the Nuremberg Tribunal and its judgment, affirmed by the General Assembly's Resolution of the same date."

Professor KORETSKY (Union of Soviet Socialist Republics) asked the representative for Poland not to insist on a vote on the substance of the proposal, but to request that this point should be taken into account when the substance of genocide was examined by any competent organ.

The CHAIRMAN suggested that the Committee might express in abstracto that there was a close connection between genocide and the Nuremberg principles.

Professor KORETSKY (Union of Soviet Socialist Republics) observed that this was obvious in view of previous decisions taken, but his idea was that the Committee could not examine the substance of the Polish proposal as it had refused all discussion on the substance of genocide. In his opinion the contents of paragraph 2 should be mentioned as a statement by the representative for Poland.

Dr. BRAMSON (Poland) observed that he had not wanted the Committee to discuss the substance of his proposal, but only to draw attention to the point contained therein and he agreed to submitting it as his own statement. He referred to the instance of the memorandum presented by

the French representative (document A/AC.10/29) about which it had also been decided that mention of it would be made in the Report. If no statements were made on these memoranda, Dr. BRAMSON feared that in the future a wrong interpretation might be given to the Committee's having passed over these matters in silence. Dr. BRAMSON wanted to avoid a discussion now and only to state that the repression of genocide could not be limited to a prosecution of the rulers of the countries, for they could not be brought before an international criminal jurisdiction. In the case of genocide a military expedition might be needed and this would be a matter for the Security Council to decide and not for an international criminal jurisdiction.

As to the responsibility of subordinates Dr. BRAMSON referred to Article 8 of the Charter of the Nuremberg Tribunal which provided that the fact that any defendant acted pursuant to order of his Government or of his superior should not free him from responsibility. This was an important principle. In Dr. BRAMSON's opinion there could be no different principle of responsibility in connection with the Nuremberg principles and with genocide. Dr. BRAMSON drew a comparison with the principle of criminal law that children and lunatics were not fully responsible, which principle was applied over the whole field of criminal law and not for special parts only. The underlying principle was the freedom of the human will. Dr. BRAMSON quoted Tolstoy who had observed that if the last corporal of Napoleon would have refused to march on Moscow, the campaign of 1812 would not have taken place. With regard to the limitation of genocide to the attacks on the lives of individuals forming a certain group, Dr. BRAMSON also referred to cultural genocide, a clear instance of which was the fact that over fifty million books had been destroyed in Poland alone. The crime of murder was committed against an individual as such, but genocide against a group as a whole.

/Dr. BRAMSON

Dr. BRAMSON referred to a compatriot of Professor DONNEDIEU DE VABRES, Erneste Renan, who had said: "La nation c'est la langue". Others did not agree with this conception of a nation and considered it too narrow. They indicated new elements such as a common cultural or historical tradition and a common will to cohesion, the will to live together as a group. Dr. BRAMSON considered that there might be individual victims of genocide but the crime itself was directed against a group.

With regard to the fact that a draft of genocide had been submitted to the Committee as a maximum programme, it would have to be studied what groups were protected under provisions of the Charter.

Dr. BRAMSON had merely wanted to draw the attention of any organ of the United Nations which might be charged with the study of genocide on these points. He observed that he wanted it to be recorded in the Summary Records and the Report but did not insist on a publication of the full text of his statement.

Professor BRIERLY (Rapporteur) observed that discussion of the Polish proposal would constitute a going back on the decision taken not to discuss substance. The subject matter of the Polish proposal would have to be studied by the organ to which the draft of genocide was to be finally submitted for preparation as a draft convention.

Professor JESSUP (United States of America) agreed with the RAPPORTEUR that the very mention of the Polish statement would lead the Committee into the substance of genocide and he considered that Dr. BRAMSON's statement should only be mentioned in the Summary Records. Moreover, Professor JESSUP was of the opinion that the Economic and Social Council might resent another organ of the United Nations pointing out to the Council the necessity of observing the provisions of the Charter.

Dr. BRAMSON (Poland) observed that a mention in the Summary Records would be sufficient for him.

Professor DONNEDIEU DE VABRES (France) also considered this the best

procedure and observed that a reference to his memorandum in the Report indicated clearly that the memorandum was the opinion of the French representative and therefore could not lead to any misunderstanding.

The CHAIRMAN proceeded to set up the drafting Sub-Committee and appointed the representatives for Australia, Netherlands and Poland with the RAPPORTEUR, the latter to act as convener.

The CHAIRMAN opened the discussion on the United States proposal concerning the election of the members of ILC (A/AC.10/48).

Professor JESSUP (United States of America), referring to observations made earlier in the discussion at this meeting and which had expressed some pessimism as to the possibility that the ILC take up its work in the immediate future, did not consider these fears justified. Several members of this Committee had influence with their Governments and Professor JESSUP asked them to exert this influence in order to render possible a speedy election of the ILC members if the General Assembly should decide to accept the Committee's recommendation to this effect.

Dr. AMADO (Brazil) repeated that he was not at all pessimistic about the future of the ILC, but that he only had some doubts as to the ILC's being able to take up the matter of genocide at once.

Dr. VIEYRA (Argentina) expressed his agreement with the proposal submitted by the United States representative.

Professor KORETSKY (Union of Soviet Socialist Republics) agreed that the Secretary-General should act as requested in that proposal but considered that the Secretary-General should not emphasize the necessity of the Governments preparing themselves to make their nominations and he suggested that paragraph 2 (b) be attenuated to this effect as follows: "to suggest to the Governments that they prepare themselves to make nominations."

The CHAIRMAN opened the discussion on the United States proposal paragraph by paragraph, paragraph 1 was accepted without discussion and likewise paragraph 2 (a).

With regard to paragraph 2 (b), Professor KORETSKY (Union of Soviet Socialist Republics) now moved that this paragraph be deleted.

Dr. VIEYRA (Argentina) considered that with this deletion there would be no point to the proposal at all and Professor JESSUP (United States of America) observed that Professor KORETSKY himself had suggested an attenuation of its wording.

Professor KORETSKY (Union of Soviet Socialist Republics) considered that paragraph (a) was really sufficient, as it would follow that the Governments would make preparations for the election of the ILC's members. He considered that the subject matter of sub-paragraph (b) exceeded the powers of this Committee.

Professor JESSUP (United States of America) observed that his draft with the greatest care had avoided any suggestion of this Committee's giving any instructions and that it only requested the Secretary-General to suggest to the Governments a certain consideration.

Professor DONNEDIEU DE VABRES (France) proposed to avoid the repetitions in sub-paragraph (b) and merely to add after sub-paragraph (a): "and to insist that this election take place before the end of the Second Session of the General Assembly".

Dr. VIEYRA suggested the following addition to sub-paragraph (a): "and to the possibility that the election might take place before the closing of the Second Session of the General Assembly".

Professor DONNEDIEU DE VABRES observed that this wording was really the same as his own.

Professor KORETSKY (Union of Soviet Socialist Republics) suggested to add the words "if the General Assembly accept the recommendation about the establishment of an International Law Commission", for the reason that the wording should be as clear as possible: what was evident to this Committee might be not so evident to the General Assembly.

/Dr. KERNO

Dr. KERNO (Assistant Secretary-General) observed that he had tried to place himself in the position of a Government which had not been represented on this Committee and he had come to the conclusion that if the Secretary-General sent a letter to the Governments as now proposed, without any comment, the Governments would not be able to understand its meaning.

Professor KORETSKY (Union of Soviet Socialist Republics) suggested that the Secretary-General could add any comments he considered desirable.

The CHAIRMAN stated that the Committee agreed on the combined text of sub-paragraph (a) with the proposed additions and on the deletion of sub-paragraph (b).

The meeting adjourned at 6:10 p.m.
