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AD HOC COMMITTEE ON GENOCIDE

SUMMARY RECORD OF THE TENTH MEETING

Held at Lake Success, New York
Thursday, 16 April 1948, at 2:00 p.m.

<u>Chairman:</u>	Mr. MAKIOS	(United States of America)
<u>Vice Chairman:</u>	Mr. MOROZOV	(Union of Soviet Socialist Republics)
<u>Rapporteur:</u>	Mr. RUDZINSKI	Poland
<u>Members:</u>	Mr. LIN	China
	Mr. ORDONNEAU	France
	Mr. AZKOUL	Lebanon
	Mr. PEREZ PEROSO	Venezuela
<u>Secretariat:</u>	Mr. SCHWEIB	Assistant Director of Human Rights Division
	Mr. GIRAUD	Committee Secretary

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22 APR 1948

UNITED NATIONS

DISCUSSION OF THE DRAFTING OF VARIOUS ARTICLES OF THE CONVENTION
ON GENOCIDE

(N.B. The discussion concerned draft articles submitted by various delegations, which have not been circulated in the form of documents of the Commission.)

The CHAIRMAN mentioned that the members of the Committee had hold an exchange of views during an informal meeting. They had thus been able to find common ground on various questions. He submitted to the members of the Committee the text he had prepared for the first four articles of a Convention for the prevention and punishment of genocide. The text was based on the general principles elucidated during the general discussion. He opened the discussion of articles 1 and 2 of his draft.

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that in order to have a legal basis, the Convention should specify in the definition of the crime attempt, conspiracy, provocation, complicity, and pre-meditation, which contribute to the committing of genocide. If those elements were not included in the definition, the Committee would have to draft a special article to cover them. He called attention to point 2 of his own draft which took into account the element of pre-meditation, and proposed the subdivision of article 2, submitted by the Chairman, into three sub-paragraphs: the first would define genocide as a criminal act aimed at the physical destruction of a group of human beings on racial, national or religious grounds; the second would define "physical destruction" in accordance with the terms of article 2 of the text submitted by the Chairman; and the third would show that measures taken for the elimination of a national culture also constituted an act of genocide known as cultural genocide.

/A separate

A separate article would follow specifying the elements of pre-meditation, provocation, complicity, etc., which contributed to the commission of the crime.

Mr. Morozov pointed out that his proposal merely concerned the fundamental question and that the Committee was free to decide on the best method of drafting the sub-paragraphs and the two articles.

Mr. ORDONNEAU (France) expressed his preference for a discussion point by point, and said he was in favour of a separate article covering the elements of pre-meditation, provocation, complicity, attempt, and conspiracy.

Mr. LIN MOUSHENG (China) submitted a proposal which, he thought, was a compromise between the texts submitted by the Chairman and the USSR. The Chinese draft defined genocide after declaring in the preamble that genocide was a crime punishable by international law. He enumerated in four sub-paragraphs of article 1, the acts which constituted genocide: first, the physical destruction, in whole or in part, of a human group; second, the subjecting of a human group to conditions of life, or applying to it measures that were likely to result in the physical destruction, in whole or in part, of that group; third, the destruction of the institutions or of the culture of that group, or the suppression of its language; fourth, conspiring to commit the acts enumerated under 1, 2 and 3, or planning them, or attempting to commit them, or inciting or provoking other persons to commit them.

Mr. ORDONNEAU (France) pointed out that, legal point of view, it was incorrect to make the attempt to commit a crime identical with the crime itself, as sub-paragraph 4 of the Chinese

/representative's

representative's draft seemed to do. The attempt was not the crime itself.

Mr. PEREZ PEROZO (Venezuela) emphasized the importance of the preamble which made all conventions solemn instruments. He preferred, however, a short preamble, similar to the one submitted by the Chinese representative.

With regard to the definition, he thought that in stating that genocide was a crime punishable under international law, the scope of the convention was being limited. It was preferable to widen it so as to include the concept of crime against humanity, or against the law of nations. It was understood that the national courts would have to repress the crime. Hence, every State should be able to take measures for prevention and punishment covered by national legislation.

Finally, the definition seemed to allow the extermination of human groups on account of their political opinions, since groups united by a common political opinion were not mentioned.

He favoured a definition specifying the acts which constituted genocide, but urged that the list should be merely declaratory and not restrictive.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the Committee had agreed not to discuss the preamble until after the principles expressed in the Convention had been drafted.

Every member would undoubtedly, at a later stage, have comments to make on the preamble. He also thought that the preamble was necessary in order to mark the solemn nature of the Convention. He pointed out that his proposal defining the crime of genocide in

three paragraphs of the same article, agreed to a great extent with the draft submitted by the Chinese representative, as well as with the observations made by the representative of France. Nevertheless, the elements of provocation, conspiracy, complicity and pre-meditation should be covered, as he had already stated, by a separate article and should not be included in the article defining the crime.

Mr. ORDONNEAU (France) agreed with the remarks made by the representatives of Venezuela and USSR on the preamble, and requested the members of the Committee to examine the definition point by point. They had to decide first of all whether article 1 should include attempt, provocation, pre-meditation and complicity.

With the approval of the representatives of China and USSR, the Committee decided to include in a separate article the elements of provocation, conspiracy, attempt, etc.

The CHAIRMAN pointed out that there had been no objections to the wording of draft article 1 submitted by the Chinese representative. He asked the members whether they thought cultural genocide should be covered by a separate article. He pointed out that this would make it easier for the various countries to notify the Convention. If the crime of cultural genocide was dealt with in a separate article, this would enable Governments to make reservations on a particular point of the Convention.

Mr. ORDONNEAU (France) stated that the drafting of the clause concerning cultural genocide presented great difficulties. He agreed with the Chairman that the question should be dealt with in a separate article. The characteristics of cultural genocide would give rise to such a diversity of concepts in the various legislations that would have to deal with it, that the crime should be defined with very great care.

/Mr. LIN MOUSHENG

Mr. JTN MOUSHENG (China) pointed out that in certain countries the act of conspiring did not constitute a crime, whereas other legislations had a different concept. Although he was not opposed to item 4 of his draft being dealt with in a separate article, he preferred that point 3, relating to cultural genocide, should be retained in article 1. However, if making it a separate article would facilitate agreement among the members, he would not be opposed to that procedure. He pointed out, however, that legislative bodies could as easily make reservations on part of an article as on a whole one.

He drew attention to a suggestion made by the representative of Venezuela, and expressed himself in favour of a text which would define genocide only for the purpose of the Convention. Hence, the text might read: "In this Convention, genocide means", which would have the advantage of precision without claiming to give an absolute definition of the crime.

Mr. MOROZOV (Union of Soviet Socialist Republics) fully agreed with the desire of the representative of China to retain sub-paragraph 3, relating to cultural genocide, in article 1, which gave the definition of the crime as a whole. That form would contribute to the legal accuracy of the definition. Indeed, it would not be possible to isolate one of the elements constituting the crime in order to specify it in a separate article. In that way, the notion of cultural genocide, instead of being put rather in the background, would only be given greater importance. It was essential to bear in mind that any prohibition of the use of a language, any destruction of cultural monuments, etc., did not necessarily constitute an act of genocide. They could only be so described if the acts were the

/the result

the result of a persecution carried out on racial, national or religious grounds. For that reason, he considered that sub-paragraph 3 of the Chinese draft should remain in the article defining the crime, because it was an inseparable part of that definition.

With regard to the ratification of the Convention, he remarked that a Convention constituted a whole which could only be ratified or rejected in its entirety. For that reason, he failed to understand the argument of the Chairman. Furthermore, it sufficed for the Convention to be ratified by a specified number of States and it would then come into force.

Mr. ORDONNEAU (France) concurred in Mr. Morozov's view that the Convention should be ratified as a whole. He asked for separation into two articles because the draft Convention would be considered by the Economic and Social Council and the General Assembly, bodies which were hardly able to undertake drafting work. In these circumstances, it would be easier for them to vote on the question of cultural genocide if it formed the subject of a separate article.

There was also a reason of principle: cultural genocide and physical genocide were not exactly the same crime, and if they were dealt with in two separate articles this would avoid confusing their characteristics which were quite different. While the factor of intention was present in both cases, the means of action were different. These, in the case of physical genocide, consisted in attacks on life (murder), whereas cultural genocide involved various acts which might be directed against objects and things, such as the "culture" of a group.

He thought therefore that it would be prejudicial to include in one article the factor of intention which was common to both crimes, and the means of execution, which were entirely different. It would be preferable to draw up two separate articles, containing the following ideas:

Article 1: Physical genocide ... can be committed by means of physical attack on individuals or groups.

Article 2: Cultural genocide ... is committed by such and such material means.

If that solution were not adopted, it would be necessary to state first the general principle and then specify the material means of execution in separate paragraphs, as, for example, in the draft Convention proposed by China. He thought it would be preferable to specify

/in separate

in separate articles the material means of execution distinguishing the various forms of genocide.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed in principle with Mr. Ordonneau. He pointed out that the text of article I of the draft Convention submitted by the USSR was similar to that of the Chinese draft, inasmuch as it contained three clearly distinct ideas, separated by punctuation marks. He suggested that if the Chinese text were to mention the "premeditated creation of intolerable conditions of life" the resemblance would be still more evident. Physical destruction and cultural destruction were not, in his opinion, on the same level; both were genocide, but in different degrees. Article I of the Convention should thus be divided into three points defining:

1. Genocide in the form of physical destruction;
2. The premeditated infliction of conditions of life aimed at the destruction of a group;
3. Cultural genocide.

He asked the Committee to accept that division in principle.

Mr. ORDONNEAU (France) explained that in proposing separation into two distinct articles, he had not intended to imply that the two aspects of genocide were equally important. From the drafting point of view, article I of the USSR draft lacked balance. He thought that paragraphs 1 and 2 of that article should constitute a new article 1, and paragraph 3 should become article 2. He was strongly of the opinion that a distinction should be made between the means of action.

As far as drafting was concerned, he would be more inclined to accept the Chinese draft, but here again he thought there should be an article to define each category of crime (physical genocide and cultural genocide).

In the opinion of Mr. AZKOUL (Lebanon), the text of the Convention should be brief. He thought it should be possible to find a single formula to cover all the details, a premise from which all the rest of the Convention would follow.

The fundamental point was to decide what elements should be included in the definition of genocide. He perceived three essential ideas: the aim of the act, namely, destruction; the character of that destruction; its motives (national, racial, political, etc.) He considered that such a definition would suffice, whether it was drawn up in one or more parts. Moreover, the enumeration in the Chinese draft was dangerous because it was restrictive. It did not mention forced religious conversion, which might however be considered as a punishable element of the crime of genocide. A very wide definition was thus required; and he would propose a text as soon as the members of the Committee had expressed their opinions.

Mr. ORDONNEAU (France) was in entire agreement with Mr. Azkoul's analysis. He also considered that a distinction must be made between the aim - the physical destruction of a group - and the material means, whatever they might be, used to achieve that aim.

/The CHAIRMAN

The CHAIRMAN remarked that the differences of opinion between the members of the Committee were of a purely formal nature. In reply to the representative of the USSR, he stated that there was no legal objection to inserting in separate articles the definition of cultural genocide, on the one hand, and that of cultural genocide, on the other. He recalled that some time previously the Polish representative had even suggested that a separate document should be drawn up on cultural genocide.

Furthermore, he believed that the separation would facilitate the adoption of the Convention by the legislative bodies which would be called upon to ratify it, because it would enable them to make reservations on certain provisions.

Mr. RUDZINSKI (Poland) pointed out that the Committee had decided to replace the expression "deny the right of existence of racial, national, religious or political groups of human beings" by "deny the right of existence to groups of human beings on grounds of religion, nationality or political opinion". In that connection, he considered that a distinction should be made between the motives of genocide and its aims. Both should be defined by the Convention, which should moreover specify those groups which should be protected against genocide.

/Mr. MOUSHENG LIN

Mr. MOUSHENG LIN (China) proposed that genocide should be defined as an act directed against racial, national or religious groups for reasons of race, religion, nationality or political opinion.

Mr. SCHWELB (Secretariat) pointed out that the new wording of the United States and Chinese drafts differed from the original texts. He emphasized the difficulty experienced by the prosecution in proving the motives of a crime.

The CHAIRMAN agreed with Mr. Schwelb.

Mr. ORDONNEAU (France) said that the French text did not present any difficulties, and that it was in harmony with the ideas expressed by the Polish representative.

The CHAIRMAN suggested that the Committee should vote on whether cultural genocide and physical genocide should be dealt with in the same article or in different articles.

Mr. AZKOUL (Lebanon) raised the objection that his vote would depend on the final text of the article or articles in question.

Mr. PEREZ PEROSO (Venezuela) supported the Chairman's suggestion. He would make one criticism of the text proposed by China: it mentioned cultural genocide only as part of an enumeration and not in the definition. He proposed that the Committee should vote on whether to include cultural genocide at the beginning of the definition contained in the text proposed by China.

The Committee decided by three votes to one with two abstentions to insert the notion of cultural genocide in a separate article.

/Mr. MOROZOV

Mr. MOROZOV (Union of Soviet Socialist Republics) proposed that physical genocide should be defined in an article consisting of two distinct paragraphs, as follows:

Paragraph 1 - In this convention, the word "genocide" means a criminal act directed at the physical destruction of a group on national, racial or religious grounds.

Paragraph 2 - "Physical destruction" also means the deliberate subjection of such groups to conditions of life that are likely to result in their physical destruction.

Mr. ORDONNEAU (France) observed that the text submitted by the USSR was almost identical with the French text. He would therefore support the proposed definition.

Mr. AZKOUL (Lebanon) observed that Committee were agreed on two points: the definition of genocide should indicate both the aim and the motive of the crime. He requested that the definition should include a third notion, namely, that of the destruction of a group, as such.

The CHAIRMAN was ready to accept the first paragraph of the USSR proposal.

Mr. PEREZ-PEROZO (Venezuela) wondered whether the proposed definition covered also the destruction of one or more persons as members of a racial, religious or national group.

Mr. MOROZOV (Union of Soviet Socialist Republics) replied that his definition obviously applied not only to the destruction of a group, but to that of the individuals composing it whenever murder

/for racial

for racial, national or religious reasons was involved. Naturally, the murder of an individual could not be considered genocide unless it could be proved that it was the first of a series of acts aimed at the destruction of an entire group.

Mr. ORDONNEAU (France) thought that that notion should be stated clearly in the definition.

To that end, he suggested the following definition:

"The crime known as genocide is an attack directed against the physical existence of a group of human beings, as such, or of one or more individuals, as members of the group."

He said that this formula met the wish expressed by Mr. Azkoul.

Mr. PEREZ-PEROZO (Venezuela), while agreeing with the definition proposed by the representative of France, thought that a more flexible definition should be adopted. It would be sufficient to add the words "in whole or in part" after the word "destruction" in sub-paragraph 1 of the definition proposed by the USSR.

Mr. MOROZOV (Union of Soviet Socialist Republics) asked whether the following definition would be satisfactory to the Committee:

"In this Convention, the word "genocide" means a criminal act aimed at the physical destruction of a group either by mass massacre or by individual murders, for racial, national or religious reasons."

Mr. ORDONNEAU (France) thought that the new definition was too limited in scope since there were other methods of destruction besides "massacre" and "murder."

After a brief discussion, Mr. MOROZOV withdrew his last proposal and agreed to accept the amendment to his first formula suggested by the representative of Venezuela.

The CHAIRMAN suggested the addition of the following phrase to the definition proposed by the USSR: "... or the physical destruction of an individual incidental to the physical destruction of a group."

Mr. AZKOUL (Lebanon) pointed out that appropriate measures should be taken for the punishment of individual crimes aimed at the destruction of a group of human beings before that group was totally destroyed. He therefore objected to the words "incidental to", which he thought were ambiguous. He rather favoured the more flexible wording suggested by the representative of Venezuela.

He expressed doubt concerning the full implication of the word "national". He emphasized that the concept of nationality was not identical in all legal systems. Moreover, protection had to be extended not only to the nationals of any country, but to an ethnic group, whatever the nationality of its members. He preferred the wording "through hatred" or "through national fanaticism" to "for national reasons" because, in his view, the word "reasons" might be ambiguous.

Mr. MOROZOV (Union of Soviet Socialist Republics) wondered whether the word "nationalistic" might meet Mr. Azkoul's wishes.

An exchange of views took place and it became evident that the majority of the members of the Committee did not appear to favour introducing the concepts of hatred and fanaticism in the definition, since they were not legal concepts.

/The CHAIRMAN

The CHAIRMAN suggested that the concepts of "nationality" and "national origin" be combined to cover the case of persons who, while possessing a particular nationality, belonged to a different ethnic group from that of the majority of the population.

The Committee adopted the following definition pending further discussion of the word "national":

"In this Convention, the word "genocide" means a criminal act aimed at the physical destruction, in whole or in part, of a group of human beings, for racial, national or religious reasons."

The meeting rose at 6:20 p.m.