

DRAFT CONVENTION ON THE CRIME OF GENOCIDE*

COMMUNICATIONS RECEIVED BY THE SECRETARY-GENERAL

3. COMMUNICATION RECEIVED FROM THE PHILIPPINES

Department of Foreign Affairs
Manila, 9 September 1947

The Secretary of Foreign Affairs of the Philippines presents his compliments to the Secretary-General of the United Nations and has the honour to acknowledge the receipt of the Secretariat's note (document No. 605-8-1-1/EG) of 21 August 1947, enclosing copy of the resolution adopted by the Economic and Social Council on 6 August 1947 on the draft Convention on the Crime of Genocide, calling upon Member Governments to submit as soon as possible to the Secretary-General their comments on the draft Convention.

The Philippine delegation to the forthcoming General Assembly has been supplied with the materials on the subject and is believed to be in a position to present the views of the Philippine Government on the matter.

4. COMMUNICATION RECEIVED FROM VENEZUELA

ENGLISH
ORIGINAL: SPANISH

Ministry of Foreign Affairs
Caracas, 12 September 1947

The Acting Minister for Foreign Affairs presents his compliments to the Secretary-General of the United Nations and has the honour to acknowledge receipt of note No. 605-8-1-1/EG, dated 21 August last, to which was attached a copy of the resolution adopted by the Economic and Social Council relating to the Draft Convention on the Crime of Genocide which was transmitted to the Government with the Secretariat's communication number 605-8-1-1/EG dated 7 July 1947.

In accordance with the wishes expressed by the United Nations Secretariat, the Acting Minister transmits herewith a report containing the comments of the Venezuelan government regarding the said Draft Convention on the Crime of Genocide.

* Document A/362.

REPORT

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With the assistance of experts in the field of international and criminal law and in compliance with the request expressed by the Economic and Social Council, the United Nations Secretariat prepared a Draft Convention on the crime of genocide and two annexes regarding the establishment of an International Court for the punishment of this new form of crime. The Secretariat observes that it is only intended to provide a basis for discussion and asks for the comments of Governments on such conventions.

The central ideas of the main draft follow a most noble and generous international trend, born of the experience of the last war, and deserve unqualified support; as far as Venezuela is concerned, such fundamental concepts already constitute a national legal-political heritage, nurtured by those principles of individual equality, security and liberty which are a tradition of the political system of the Republic. Indeed, the most recent National Constitution of 5 July this year (Article 46, paragraph (b)) prohibits racial discrimination and generally extends to all inhabitants of the Republic, whatever their origin, nationality, race or religion, the same fundamental individual guarantees based on the widest equality.

Consequently, Venezuela is fully prepared, by its political traditions and by the liberality of its constitutional principles, to co-operate with other countries in the suppression of a hateful crime which should be highly repugnant to civilized nations.

Nevertheless, the jurists' impression of the United Nations Draft is that it goes beyond the General Assembly's resolution of 11 December 1946. The Assembly affirmed that genocide is a crime under international law; invited the Member States to enact the necessary legislation for its prevention and punishment, and confined itself to recommending that international co-operation be organized for this purpose. It therefore appears that the spirit of this resolution was to ensure that Members should prevent and punish the hateful acts that constitute genocide and establish a principle of international co-operation with this object in view, without demanding from Members a grave sacrifice of their sovereignty and a surrender of the criminal jurisdiction they exercise in their territory. The Drafts of the Secretariat, on the other hand, appear to involve a partial surrender of these traditional principles of national and international law in favour of the establishment of an international repressive jurisdiction which may result in serious danger to Members and wound national feelings that are still over-sensitive. In the course of time, it is probable that future

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solutions of this type will be found; but they may be premature in the present phase of international life and politics and liable to cause friction, differences and disputes between States, which might be more dangerous to the cause of common peace and harmony than the very crimes which it is intended to suppress. Provision 3 of the Preamble, and Articles 7 and 12 of the Draft Convention are of this nature. The whole system envisaged for the establishment of international justice in regard to genocide also appears to be imbued with the same spirit, which seems clearly inconsistent with the principle laid down in paragraph 7 of Article 2 of the United Nations Charter.

The application of such extensive co-operation as that proposed by the instrument in question, is also subject to technical difficulties which appear difficult to overcome. For example, many States, Venezuela among them, maintain as a fundamental principle, the non-extradition of their nationals in any circumstances and in return, undertake to try them in their own territory when the act is punishable under their own law. Such States could not accept the wording of Article 8 under which extradition must be granted in all cases, nor could they surrender their nationals to international jurisdiction without violating the basic principles of their legal system. Even where foreigners are concerned, Venezuela does not grant extradition when the penalty of death or life-imprisonment may be imposed on the accused, in the country applying for it. Consequently, the provision contained in Article 38 of the Annex does not appear to provide sufficient guarantee to a State in such a position for the safeguarding of its cardinal principles in criminal matters.

Without examining the drafts at length, it appears desirable from every point of view that they should first be submitted to a deeper and more extensive study by one of the legal bodies of the United Nations, so that they may be carefully sifted and made acceptable to the greatest possible number of States. The Government of Venezuela gives its support in principle but, rather than the drafts prepared by the United Nations, would prefer a convention by which member States undertook to adopt national criminal legislation ensuring the punishment of genocide and to apply the appropriate penalties themselves. Only when States do not fulfil such obligations would there be cause for claims by other members or by the international organization. The establishment of international criminal jurisdiction to deal with these cases seems to be a step that should be reserved for the future, when the circumstances of international life are more favourable and the spirit of international co-operation in the legal sphere has, as is to be hoped, made further progress. If these views on the method of procedure are not accepted, Venezuela will study her possible final conclusions at greater length in the same spirit of full co-operation and defence of human integrity on which her political institutions are based.

CARACAS - 5 August 1947