

DRAFT CONVENTION ON THE CRIME OF GENOCIDE\*

COMMUNICATIONS RECEIVED BY THE SECRETARY-GENERAL

5. COMMUNICATION RECEIVED FROM THE UNITED STATES OF AMERICA

The Secretary of State of the United States of America presents his compliments to the Secretary-General of the United Nations and acknowledges the receipt of his note, dated 21 August 1947 referring to his earlier note of 7 July 1947, and has the honour to transmit, as therein requested, the comments of the Government of the United States on the Draft Convention on the Prevention and Punishment of the International Crime of Genocide.

Washington, 30 September 1947

\* Document L/362.

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE

(Text Prepared by the Secretary-General  
of the United Nations - E/447)

COMMENTARY BY THE GOVERNMENT OF THE UNITED STATES

Preamble

The High Contracting Parties proclaim that Genocide, which is the intentional destruction of a group of human beings, defies universal conscience, inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed, and is in violent contradiction with the spirit and aims of the United Nations.

1. They appeal to the feelings of solidarity of all members of the international community and call upon them to oppose this odious crime.
2. They proclaim that the acts of genocide defined by the present Convention are crimes against the Law of Nations, and that the fundamental exigencies of civilization, international order and peace require their prevention and punishment.
3. They pledge themselves to prevent and to repress such acts wherever they may occur.

Comment:

The Preamble, as drafted, is objectionable for the reason (a) that it is wordy, and (b) that it contains material of a substantive character which should be treated of in the body of the Convention.

Thus, the first sentence purports to define Genocide, while Articles I and II of the Convention are also devoted to the definition of Genocide. Attention is called to the fact that the important matter of "intent" is injected into the definition contained in the Preamble by the inclusion of the phrase "intentional destruction", which in any event might better read "deliberate destruction or attempt to destroy." The latter change would bring the definition contained in the Preamble more in harmony with the definition contained in the body of the Convention. (See Article II, dealing with "attempt to commit genocide".) It is obviously not intended that groups must be totally destroyed before the crime of genocide exists.

Another subject which appears to be inappropriately dealt with in the Preamble is that of "jurisdiction", which might well be considered to be resolved by the sentence reading: "They pledge themselves to prevent and to repress such acts wherever they may occur." (Underscoring added.) The jurisdictional problem should be dealt with in the body of the instrument.

Should the Preamble as drafted by the Secretary-General be insisted upon the United States would also object to the inclusion of the words "by depriving

/it of

it of the cultural and other contributions of the group so destroyed", language which tends to weaken the sentence in which it appears.

A simply worded Preamble is favoured and the following substitute draft is suggested:

"The High Contracting Parties declare that genocide constitutes a crime under international law, which the civilized world condemns, and which the Parties to this Convention agree to prevent and repress as hereinafter provided."

The language of the proposed draft is taken, in part, from the Resolution of the Assembly of December 13, 1946.

#### Article I

##### Definitions

- I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.
- II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.

Such acts consist of:

1. Causing the death of members of a group or injuring their health or physical integrity by:
  - (a) Group massacres or individual executions; or
  - (b) Subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or
  - (c) Mutilations and biological experiments imposed for other than curative purposes; or
  - (d) Deprivation of all means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing, and of supplies otherwise available to the other inhabitants of the territory concerned.
2. Restricting births by:
  - (a) Sterilization and/or compulsory abortion; or
  - (b) Segregation of the sexes; or
  - (c) Obstacles to marriage.
3. Destroying the specific characteristics of the group by:
  - (a) Forced transfer of children to another human group; or
  - (b) Forced and systematic exile of individuals representing the culture of a group; or

/(c) Prohibition

- (c) Prohibition of the use of the national language even in private intercourse; or
- (d) Systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- (e) Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

Comment:

(1) Paragraphs I and II of Article I, as drafted, overlap each other and are objectionable for this reason. Thus, each paragraph deals with both "purpose" and the nature of the "act". The two paragraphs should be consolidated. A text reading as follows, is suggested:

"Genocide means any of the following criminal acts directed against a racial, national, religious, or political group of human beings, for the purpose of totally or partially destroying such group or of preventing its preservation or development."

In addition, the words "Such acts consist of:" should then be deleted as unnecessary, being replaced by the words "any of the following criminal acts" appearing near the beginning of the text just suggested.

(2) The inclusion of "linguistic" groups is believed to be unnecessary, since it is not believed that genocide would be practiced upon them because of their linguistic, as distinguished from their racial, national or religious, characteristics. Racial, national and religious groups are covered, and that should be sufficient.

(3) Considerable question has been raised as to whether "political" groups should be included in the definition. The United States is able to agree to the inclusion of political groups on the understanding that genocide as to such groups is confined to physical destruction.

(4) It is important that the words "for the purpose of totally or partially destroying it or of preventing its preservation or development", or some similar wording indicating "purpose" or "intent", be maintained in the draft.

(5) The words "physical violence" should be inserted before the words "mutilations and biological experiments" in paragraph (c) of paragraph II (1) of this Article, and the words "imposed for other than curative purposes" should be deleted. The inclusion of the words "physical violence" broadens the definition, to take care of other possible forms of physical violence and the elimination of the words "imposed for other than curative purposes" also broadens the definition. Biological experiments, however imposed, should be made criminal if they are part of a plan to destroy one of the groups herein

/referred

referred to, in whole or in part. The article "and" between "mutilations" and "biological experiments" should be changed to "or".

(6) The word "all" in paragraph II (1) (d) should be deleted. The inclusion of the word "all" in the phrase reading "deprivation of all means of livelihood", would seem unduly to narrow the crime.

(7) It is also considered that the word "compulsory", in paragraph II (2), now modifying the word "abortion" only, should be made to modify all crimes listed under II (2), the initial line of the text thus being made to read: "Compulsory restriction of births by:"

(8) The United States is opposed to the inclusion of paragraph 3 of Article I, relating to "Destroying the specific characteristics of the group" by different means, except as to paragraph (a) "forced transfer of children to another human group."

Paragraph (b) might be interpreted as embracing forced transfers of minority groups such as have already been carried out by members of the United Nations.

Paragraphs (c), (d) and (e) relate generally to prohibition of the use of language, systematic destruction of books, and destruction or dispersion of documents and objects of historical or artistic value. The act of creating the new international crime of genocide is one of extreme gravity, and the United States feels that it should be confined to those barbarous acts directed against individuals which form the basic concept of public opinion on this subject. The acts provided for in these paragraphs are acts which should appropriately be dealt with in connection with the protection of minorities.

Consequently, sub-paragraph (a) of this paragraph should be substituted for the whole of paragraph 3.

#### Article II

I. The following are likewise deemed to be crimes of genocide:

1. Any attempt to commit genocide;
2. The following preparatory acts:
  - (a) Studies and research for the purpose of developing the technique of genocide;
  - (b) Setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide;
  - (c) Issuing instructions or orders, and distributing tasks with a view to committing genocide.

II. The following shall likewise be punishable:

1. Wilful participation in acts of genocide of whatever description;

/2. Direct

2. Direct public incitement to any act of genocide, whether the incitement be successful or not;
3. Conspiracy to commit acts of genocide.

Comment:

Article 2 as drafted is in two parts, namely (I) other crimes of genocide and (II) other punishable acts. It is considered desirable that the definition of genocide should be treated in Article I and that other unlawful acts related to but distinguishable from genocide proper be treated in Article II.

The draft as submitted by the Secretary-General seems to assume that the acts described as genocide are punishable and unlawful. Thus the initial line of paragraph II as submitted reads: "The following shall likewise be punishable". The Convention should contain a clear statement that the acts denominated as "genocide" are unlawful and punishable, as is done in the suggested draft.

The preceding suggestions may be effectuated by causing the first line of Article II to read:

"It shall be unlawful and punishable to commit genocide or to wilfully participate in an act of genocide, or to ..."

The above suggested language also places "wilful participation" in the sentence which declares genocide to be unlawful. The other specifications contained in Article II, paragraph I, as drafted should properly remain there. These include "attempts" and "preparatory acts" which appear to have the same relationship to genocide as "incitement" and "conspiracy" (contained in paragraph II) in that they are related to but distinguishable from genocide proper.

However, it is suggested that sub-paragraph I (2) (a) as drafted "studies and research for the purpose of developing the technique of genocide", should be deleted for the reason that it is considered that these acts may be too far removed from what is generally regarded as the commission of the offense. The conjunction "or" should be inserted before the word "manufacturing" in sub-paragraph (b); "or" should also be inserted in place of "and" before the word "distribution" in sub-paragraph (c) (Sub-paragraphs (b) and (c) would become sub-paragraphs (a) and (b) of paragraph 2.)

Article II would then read:

"It shall be unlawful and punishable to commit genocide or to wilfully participate in an act of genocide, or to engage in any

1. Attempt to commit an act of genocide; or
2. Any of the following preparatory acts:

/(a) Setting up

- (a) Setting up of installations, or manufacturing, obtaining, possessing or supplying of articles or substances, with the knowledge that they are intended for genocide; or
  - (b) Issuing instructions or orders, or distributing tasks aimed to promote genocide; or
3. Direct and public incitement of any person or persons to any act of genocide, whether the incitement be successful or not, when such incitement takes place under circumstances which may reasonably result in the commission of acts of genocide; or
  4. Conspiracy to commit an act of genocide.

#### Article III

All forms of public propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act shall be punished.

#### Comment:

The United States considers that Article III should be deleted. Under Anglo-American rules of law the right of free speech is not to be interfered with unless there is a clear and present danger that the utterance might interfere with a right of others. The United States has proposed under the preceding Article that the provision on "incitement" be qualified to this effect. When "propaganda" constitutes a clear and present danger it takes on the character of "incitement" and is covered in the preceding Article.

#### Article IV

Those committing genocide shall be punished, be they rulers, public officials or private individuals.

#### Comment:

It is unnecessary here to provide that those committing genocide "shall be punished". Article II, as drafted above, makes it "unlawful and punishable" to commit genocide. Moreover, the present Article as submitted makes only "genocide" punishable, while Article II, above makes certain other acts "unlawful and punishable". Accordingly, it is suggested that this Article be recast (and renumbered as Article III, since it is recommended that Article III of the draft submitted be incorporated into Article II) to read as follows:

"Punishment under this Convention shall be meted out to the guilty be they rulers, public officials, private individuals, groups or organizations".

The text submitted above has the advantage of making it clear that the Convention is applicable to "groups or organizations".

Article V

Command of the law or superior orders shall not justify genocide.

Comment:

This Article, as drafted, is also limited to "genocide" and does not include the other acts specified in Article II as "unlawful and punishable". Therefore it is suggested that instead of referring to "genocide", the reference be to "the crimes set out in this Convention."

The Government of the United States also desires to incorporate the rule of the Nuremberg Charter (Article 8) which, while providing that superior orders shall not free a defendant from responsibility, goes on to say that this "may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

The Article (renumbered Article IV) would then read:

"Command of the law or superior orders shall be no defense for the crimes set out in this Convention, but may be considered in mitigation of punishment."

Article VI

The High Contracting Parties shall make provision in their municipal law for acts of genocide as defined by Articles I, II, and III, above, and for their effective punishment.

Comment:

Here again it is submitted that some such formula as "acts prohibited in this Convention" is broader and therefore more desirable than "genocide as defined by Articles I, II, and III, above". It is suggested that the Article (renumbered Article V) be rephrased to read:

"The High Contracting Parties shall make provision in their laws for the effective punishment, as crimes, of the acts prohibited in this Convention, which laws shall take into account all of the provisions of this Convention and each such High Contracting Party shall, subject to Articles VII and VIII, try and upon conviction punish offenses committed within its jurisdiction."

Article VII

The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, irrespective of the nationality of the offender or of the place where the offence has been committed.

/Comment:



Comment:

This Article contains a broad jurisdictional provision.

The United States agrees with the principle set forth in the Draft Convention, in Article IX, that where genocide is committed by or with the connivance of the State the accused individuals should be tried by an international court. All other cases would involve acts against the laws of the State where they are perpetrated.

A second reason for opposing this provision as submitted is that it is obviously liable to be abused. The broad scope of genocide would make it relatively easy for a State to claim jurisdiction of aliens on this ground when the real purpose is political retribution.

A third reason for opposing the provision is that it would apparently seek to establish a rule of law applicable to nationals of States which have not consented to it, namely, such States as may not ratify the Convention.

A suggested text on jurisdiction is contained above under the "Comment" on the preceding Article. It is suggested that the following be added to this suggested article:

"Where such acts were committed outside its jurisdiction, the High Contracting Party having an offender within its jurisdiction may, subject to Articles VI, VII and VIII, and with the express consent of the State where the act was committed, itself try and upon conviction punish such offender."

Article VIII

The High Contracting Parties declare that genocide shall not be considered as a political crime and therefore shall be grounds for extradition.

The High Contracting Parties pledge themselves to grant extradition in cases of genocide.

Comment:

The United States accepts the principle that the crimes defined in this Convention (not merely "genocide") shall not be deemed to be political offenses.

Because of the fact that extradition is a technical process, involving as it does, the safe-guarding of human rights and the promotion of the administration of justice, with respect to which a large network of laws and treaties have been evolved, it is believed that instead of incorporating an entire extradition convention on the subject of the crimes covered by this agreement, it would be preferable to provide that each High Contracting

/Party

Party pledges itself to grant extradition in these cases in accordance with its laws or treaties. The United States therefore suggests that this Article (renumbered VI) be recast to read:

"The High Contracting Parties agree that the crimes defined in this Convention shall not be considered political crimes and shall be ground for extradition.

"Each High Contracting Party pledges itself to grant extradition in such cases, in accordance with its laws or treaties."

Article IX

The High Contracting Parties pledge themselves to commit all persons guilty of genocide under this Convention for trial to an international court in the following cases;

1. When they are unwilling to try such offenders themselves under Article VII or to grant their extradition under Article VIII.
2. If the acts of genocide have been committed by individuals acting as organs of the State or with the support or toleration of the State.

Comment:

It is submitted that the wording of the Article, as drafted, is faulty. The person is apparently to be found "guilty" of the crime before he is delivered up for trial by the international tribunal. It is suggested that a better wording would be a text reading somewhat as follows (renumbered Article VII):

"Each High Contracting Party pledges itself to commit to such permanent or ad hoc international penal tribunal as is established pursuant to Article VII, persons charged with offenses under this Convention in the following cases:

1. Where the High Contracting Party is unwilling itself to try such alleged offenders, be they nationals or non-nationals, in conformity with Article V, or to grant their extradition in conformity with Article VI.
2. Where the alleged acts have been committed by individuals acting as organs of the State or with its support or toleration."

"The provisions of the present Convention shall not prejudice such jurisdiction as may be conferred upon the permanent international penal tribunal herein referred to."

The final paragraph of this proposed Article recognizes that it is desirable that the jurisdiction of the contemplated permanent international penal tribunal should not be prejudiced by provisions of the present Convention.

Article X

Two drafts are submitted (by the Secretariat) for this section:

1st Draft: The court of criminal jurisdiction under Article IX shall be the International Court having jurisdiction in all matters connected with international crimes.

2nd Draft: An international court shall be set up to try crimes of genocide (vide Annexes).

Comment:

The provisions contained in the respective Annexes with reference to the subject of conferring on an international tribunal jurisdiction "in all matters connected with international crimes", or jurisdiction "to try crimes of genocide" are extremely detailed. The task of drafting such a convention at least equals that of drafting a convention on genocide. That task should be undertaken as a task separate and apart from the drafting of a convention on genocide. The Report of the Committee on the Progressive Development of International Law and its Codification draws attention to the possible desirability of an international penal authority. Moreover, the attachment of such a convention to the instant agreement might well provoke such controversy as to cause the failure of adoption of the convention on genocide. For these reasons, the position is taken that it would be preferable to provide for the establishment of ad hoc tribunals to be superseded by a permanent international penal tribunal with appropriate jurisdiction at such time as this may be possible. That this is feasible, is demonstrated by the fact that the Nuremberg Tribunal was an ad hoc tribunal. While it would probably have been preferable for the nations to have had a previously established international penal tribunal to which those cases could have been referred, it is submitted that the problem of the institution of such a tribunal, competent to try international crimes generally, is of such a magnitude as to necessitate a separate project, having the most careful consideration, and inviting the largest number of states possible to become party thereto.

So far as the establishment of a permanent international penal tribunal is concerned, consideration should be given in the first instance to the subject by the proposed International Law Commission. The International Law Commission might well give consideration, in this connection, to the possible desirability of providing for injunctive relief and also of providing for recovery of damages on behalf of the victims or survivors of acts made unlawful by the present Convention.

/It is therefore

It is therefore suggested that an article be included in the Convention, reading somewhat as follows (Article VII):

"The High Contracting Parties agree to take steps, through negotiation or otherwise, looking to the establishment of a permanent international penal tribunal, having jurisdiction to deal with offenses under this Convention. Pending the establishment of such tribunal, and whenever a majority of the States party to this Convention agree that the jurisdiction under Article VIII has been or should be invoked, they shall establish by agreement an ad hoc tribunal to deal with any such case or cases:

"Such an ad hoc tribunal shall be provided with the necessary authority to indict, to try, and to sentence persons or groups who shall be subject to its jurisdiction, and to summon witnesses and demand production of papers and documents, and shall be provided with such other authority as may be needed for the conduct of a fair trial and the punishment of the guilty."

Article XI

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II and III.

Comment:

Because of the possibility that members of organizations may use the organizations as tools in their endeavour to commit genocide, and the organization may thus be used unwittingly in the commission of the crime, it is thought that the draft should read (Article IX):

"The High Contracting Parties pledge themselves to cause the disbandment of any group or organization which, by the judgment of any domestic or international tribunal acting pursuant to this Convention, has been found guilty of participating in any act prohibited by this Convention."

Article XII

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

/Comment:

Comment:

This Article involves the competence of the United Nations to take measures for the suppression or prevention of crimes falling within the scope of the Convention. It is suggested that a more satisfactory wording of Article XII would be (renumbered Article X):

"The High Contracting Parties, who are also members of the United Nations, agree to concert their action as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide."

Article XIII

When genocide is committed in a country by the government in power or by sections of the population, and if the government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in an amount to be determined by the United Nations.

Comment:

It is suggested that this article is not sufficiently precise to be of value. The formulation of satisfactory procedures on this point is a matter of difficulty since while the International Court of Justice is normally the proper organ to award damages against a state, any jurisdiction which it might exercise in this case might result in conflict with a decision of the penal tribunal. It is thought that attention should be given to the problem of damages by the International Law Commission in formulating plans for a permanent international penal tribunal. (See comment under Article X). Until such tribunal is formed it is proposed to vest the ad hoc tribunal referred to in the comment under Article X with jurisdiction to award damages. This could be done by adding the following provision to the article already proposed at that point (new Article VII):

"In addition, such an ad hoc tribunal shall also be authorized to assess damages on behalf of persons found to have sustained losses or injuries as a result of the violation of this Convention by any High Contracting Party. Prior to the assessment of any such damages any State alleged to have violated the Convention, shall be given an opportunity to be heard and to submit evidence on its behalf. Each High Contracting Party agrees to pay such damages, and costs, as may be assessed against it as a result of its failure to comply with the terms of the Convention. The ad hoc tribunal shall have authority to determine the method of distribution and payment of any amounts so awarded."

Article XIV

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

Comment:

The words "between any of the High Contracting Parties" should be inserted after the word "Disputes". Only States may be parties to cases before the Court.

Because of the jurisdiction which may be conferred upon an international tribunal, as indicated above, it seems desirable in order to prevent concurrent or conflicting jurisdiction, to add the following proviso to this Article: "provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to, and is pending before or has been passed upon by a tribunal referred to in Article VII."

Article XV

The present Convention, of which the....., ....., ....., ....., and ....., texts are equally authentic, shall bear the date of.....

Comment:

None.

Article XVI

(First Draft)

1. The present Convention shall be open to accession on behalf of any Member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.
2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

(Second Draft)

1. The present Convention shall be open until 31 ... 1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation has been addressed by the Economic and Social Council.

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

2. After 1 ... 1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be transmitted to the Secretary-General of the United Nations.

/Comment:

Comment:

Insert the phrase "to accede" after the word "invitation" in paragraph numbered 1 (First Draft), if it is to be adopted.

The "Second Draft" is preferred. However, the phrase "to sign" should be inserted after the word "invitation" in paragraph 1, and the words "deposited with" should be inserted in the place of "transmitted to" in two instances, that is to say in the second and fourth unnumbered paragraphs. Whether the Economic and Social Council is the appropriate body to issue the invitations to sign the Convention will need to be determined at the time of the drafting of the agreement. Possibly the "General Assembly" should be substituted for the Economic and Social Council.

Article XVII  
(Reservations)

No proposition is put forward for the moment.

Comment:

An article on the subject of "reservations" should be omitted.

Article XVIII

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of the accession (or...ratifications and accession) of not less than...Contracting Parties.

2. Accessions received after the Convention has come into force shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the United Nations.

Comment:

1. In paragraph numbered 1, delete the words "the accession or..." and insert instead "instruments of". Also change "and" to "or"; and delete "s" in the word "ratifications". It is believed that the Convention should provide for its coming into force upon the deposit of ratifications by a substantial number of States. It is suggested that 20 might be an appropriate number.

2. In paragraph numbered 2 insert the words "Ratifications or" before the word "Accessions" at the beginning of the paragraph. Also delete the words "receipt by" and insert instead "their deposit with" before the words "the Secretary-General of the United Nations" at the close of the paragraph.

Article XIX

(First Draft)

1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

/2. It shall

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

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

(Second Draft)

The present Convention may be denounced by a written notification addressed to the Secretary-General of the United Nations. Such notification shall take effect one year after the date of its receipt.

Comment:

The "First Draft" is preferred.

Article XX

Should the number of Members of the United Nations and non-member States bound by this Convention become less than... as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

Comment:

It is suggested instead of the words "become less than ..." the words "become fifteen or less" be inserted.

Article XXI

A request for the revision of the present Convention may be made at any time by any State which is a party to this Convention by means of a written notification addressed to the Secretary-General.

The Economic and Social Council shall decide upon the measures to be taken in respect of such a request.

Comment:

The following alternative text is submitted:

"Upon receipt by the Secretary-General of the United Nations of written communications from one-fourth of the number of High Contracting Parties, requesting consideration of the revision of the present Convention, and the transmission of the respective requests to the General Assembly, the Secretary-General shall transmit such communications to the General Assembly of the United Nations.

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

Article XXII

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Articles XVI and XVIII, of denunciations received in accordance with Article XIX, of the

/abrogation



abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

Comment:

The following text is submitted for insertion in the place of this Article:

"The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XIII of all signatures, ratifications and accessions received in accordance with Articles XIII and XIV, of the date upon which the present Convention has come into force, of denunciations received in accordance with Article XV, of the abrogation of the Convention effected as provided by Article XVI, and of requests for revision of the Convention made in accordance with Article XVII".

Article XXIII

1. A copy of the Convention signed by the President of the General Assembly and the Secretary-General of the United Nations shall be deposited in the Archives of the Secretariat of the United Nations.
2. A certified copy shall be transmitted to all Members of the United Nations and to non-Member States mentioned under Article.....

Comment:

The United States suggests the following redraft of this Article (renumbered XIX):

1. The original of this Convention shall be deposited in the Archives of the United Nations.
2. A certified copy thereof shall be transmitted to all Members of the United Nations and to non-member States referred to under Article XIII".

Article XXIV

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

Comment:

None.

ANNEX

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE

(Text Suggested by the Government of the United States)

Preamble

The High Contracting Parties declare that genocide constitutes a crime under international law, which the civilized world condemns, and which the Parties to this Convention agree to prevent and repress as hereinafter provided.

Article I

Definitions

I. Genocide means any of the following criminal acts directed against a racial, national, religious, or political group of human beings, for the purpose of totally or partially destroying such group, or of preventing its preservation or development:

1. Causing the death of members of a group or injuring their health or physical integrity by:
  - (a) Group massacres or individual executions; or
  - (b) Subjection to conditions of life wherein, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion the individuals are doomed to weaken or die; or
  - (c) Physical violence, mutilations or biological experiments; or
  - (d) Deprivation of means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.
2. Compulsory restriction of births by:
  - (a) sterilization and/or abortion; or
  - (b) segregation of the sexes; or
  - (c) obstacles to marriage.
3. Forced transfer of children to another human group.

Article II

It shall be unlawful and punishable to commit genocide or to wilfully participate in an act of genocide, or to engage in any

1. Attempt to commit an act of genocide; or
2. Any of the following preparatory acts:
  - (a) Setting up of installations, or manufacturing, obtaining, possessing or supplying of articles or substances, with the knowledge that they are intended for genocide; or
  - (b) Issuing instructions or orders, or distributing tasks aimed to promote genocide; or

3. Direct and public incitement of any person or persons to any act of genocide, whether the incitement be successful or not, when such incitement takes place under circumstances which may reasonably result in the commission of acts of genocide; or

4. Conspiracy to commit an act of genocide.

Article III

Punishment under this Convention shall be meted out to the guilty be they rulers, public officials, private individuals, groups or organizations.

Article IV

Command of the law or superior orders shall be no defense for the crimes set out in this Convention, but may be considered in mitigation of punishment.

Article V

The High Contracting Parties shall make provision in their laws for the effective punishment, as crimes, of the acts prohibited in this Convention, which laws shall take into account all of the provisions of this Convention and each such High Contracting Party shall, subject to Articles VII and VIII, try and upon conviction punish offenses committed within its jurisdiction.

Where such acts were committed outside its jurisdiction, the High Contracting Party having an offender within its jurisdiction may, subject to Articles VI, VII and VIII, and with the express consent of the State where the act was committed, itself try and upon conviction punish such offender.

Article VI

The High Contracting Parties agree that the crimes defined in this Convention shall not be considered political crimes and shall be ground for extradition.

Each High Contracting Party pledges itself to grant extradition in such cases, in accordance with its laws or treaties.

Article VII

The High Contracting Parties agree to take steps, through negotiation or otherwise, looking to the establishment of a permanent international penal tribunal, having jurisdiction to deal with offenses under this Convention. Pending the establishment of such tribunal, and whenever a majority of the States party to this Convention agree that the jurisdiction under Article VIII has been or should be invoked, they shall establish by agreement an ad hoc tribunal to deal with any such case or cases.

/Such an ad hoc

Such an ad hoc tribunal shall be provided with the necessary authority to indict, to try, and to sentence persons or groups who shall be subject to its jurisdiction, and to summon witnesses and demand production of papers and documents, and shall be provided with such other authority as may be needed for the conduct of a fair trial and the punishment of the guilty.

In addition, such an ad hoc tribunal shall also be authorized to assess damages on behalf of persons found to have sustained losses or injuries as a result of the violation of this Convention by any High Contracting Party. Prior to the assessment of any such damages any State alleged to have violated the Convention, shall be given an opportunity to be heard and to submit evidence on its behalf. Each High Contracting Party agrees to pay such damages, and costs, as may be assessed against it as a result of its failure to comply with the terms of the Convention. The ad hoc tribunal shall have authority to determine the method of distribution and payment of any amounts so awarded.

#### Article VIII

Each High Contracting Party pledges itself to commit to such permanent or ad hoc international penal tribunal as is established pursuant to Article VII, persons charged with offenses under this Convention in the following cases:

1. Where the High Contracting Party is unwilling itself to try such alleged offenders, be they nationals or non-nationals, in conformity with Article V, or to grant their extradition in conformity with Article VI.

2. Where the alleged acts have been committed by individuals acting as organs of the State or with its support or toleration.

The provisions of the present Convention shall not prejudice such jurisdiction as may be conferred upon the permanent international penal tribunal herein referred to.

#### Article IX

The High Contracting Parties pledge themselves to cause the disbandment of any group or organization which, by the judgment of any domestic or international tribunal acting pursuant to this Convention, has been found guilty of participating in any act prohibited by this Convention.

#### Article X

The High Contracting Parties, who are also Members of the United Nations, agree to concert their action as such members to assure that the United Nations takes such action as may be appropriate under the Charter for the prevention and suppression of genocide.

#### /Article XI

Article XI

Disputes between any of the High Contracting Parties relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice, provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to, and is pending before or has been passed upon by a tribunal referred to in Article VII.

Article XII

The present Convention, of which the ....., ....., ....., ....., and ....., texts are equally authentic, shall bear the date of.....

Article XIII

1. The present Convention shall be open until 31 ..... 1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the Economic and Social Council.

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

2. After 1 ..... 1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

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

Article XIV

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of instruments of ratification or accession of not less than twenty High Contracting Parties.

2. Ratifications or accessions received after the Convention has come into force shall become effective as from the ninetieth day following the date of their deposit with the Secretary-General of the United Nations.

Article XV

1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

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

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

Article XVI

Should the number of Members of the United Nations and non-member States bound by this Convention become fifteen or less as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

Article XVII

Upon receipt by the Secretary-General of the United Nations of written communications from one-fourth of the number of High Contracting Parties, requesting consideration of the revision of the present Convention and the transmission of the respective requests to the General Assembly, the Secretary-General shall transmit such communications to the General Assembly of the United Nations.

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

Article XVIII

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XIII of all signatures, ratifications and accessions received in accordance with Articles XIII and XIV, of the date upon which the present Convention has come into force, of denunciations received in accordance with Article XV, of the abrogation of the Convention effected as provided by Article XVI, and of requests for revision of the Convention made in accordance with Article XVII.

Article XIX

1. The original of this Convention shall be deposited in the Archives of the United Nations.
2. A certified copy thereof shall be transmitted to all Members of the United Nations and to non-member States referred to under Article XIII.

Article XX

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