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AD HOC COMMITTEE ON GENOCIDE

(5 April - 10 May 1948)

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REPORT OF THE COMMITTEE

AND

DRAFT CONVENTION DRAWN UP BY THE
COMMITTEE

(Dr. Karim AZKOUL - Rapporteur)

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REPORT OF THE AD HOC COMMITTEE
ON GENOCIDE

SECTION I

INTRODUCTION

The Ad Hoc Committee on Genocide set up by virtue of the General Assembly resolution dated 3 March 1948, met at Geneva from 5 April to 10 May 1948. It held twenty-eight meetings.

The Committee was composed of the following members:

Chairman:	Mr. John MAKTOS	(United States of America)
-Chairman:	Mr. Platon D. MOROZOV	(Union of Soviet Socialist Republics)
Rapporteur:	Mr. Karim AZKOUL	(Lebanon)
	Mr. LIN Mousheng	(China)
	Mr. Pierre ORDONNEAU	(France)
	Mr. Aleksander RUDZINSKI	(Poland)
	Mr. Victor M. PEREZ PEROZO	(Venezuela)

At its first meeting the Committee elected the Chairman, Vice-Chairman and the Rapporteur.

The Assistant Secretary-General for the Department of Social Affairs, represented by Mr. E. Schwelb, Assistant Director of the Division of Human Rights.

Professor Giraud, assisted by Mr. E. Gordon, fulfilled the duties of Vice-Chairman of the Committee.

The Committee began its work by a general debate during which several delegations expressed their views on the question of genocide.

SECTION II
ACTION OF PROCEDURE AND ORDER OF BUSINESS

The representative of the Union of Soviet Socialist Republics presented to the Committee a ten-point note (document E/AC.25/7 - 7 April 1948) setting out the essential provisions for a Convention on genocide. On the proposal of the Rapporteur the Committee decided that it would first consider the Soviet note, it being understood that it would not retain the first point of the note, but the principles included in the note, if approved by the Committee, and that secondly, it would proceed to draw up the text of a Convention.

The discussion on principles occupied nine meetings (the third to the eleventh). The Committee then proceeded to the preparation of the articles of the Convention.

/Although

Although the Committee had previously decided on the proposal of the representative of Venezuela to take the Secretariat draft as the basis of the actual drafting of the Convention which followed the discussion of general principles, it eventually reversed its decision and it resolved not to take as a basis any of the drafts before it, namely, the Secretariat draft (document E/447), the draft of the United States of America (document E/623), and the French draft (E/623/Add.1), but to take them into account in its work.

The final clauses of the Secretariat draft were, however, kept as the basis of the Committee's work.

The members were invited to submit proposals to the Committee which could form the basis of articles on each point. Subsequently, however, the Committee considered it expedient to adopt as the basic text a proposal submitted by the representative of China (document E/AC.25/9), the other proposals submitted by members of the Committee being considered as amendments to that text. The members of the Committee also submitted texts of articles dealing with points which were not included in the text of the representative of China.

The preparation of the draft Convention occupied twelve meetings (the twelfth to the twenty-third).

At its twenty-fourth meeting the Committee undertook a second reading of the Preamble and Articles of the Convention with the exception of the final clauses which had been examined by a Sub-Committee composed of the representatives of the United States of America, Poland and the Union of Soviet Socialist Republics (document E/AC.25/10). Only formal amendments to the Convention were made at this second reading.

The text of the draft Convention as a whole was adopted by the Committee in its twenty-sixth meeting on 30 April 1948 by five votes to one with one abstention.

In accordance with sub-paragraph (a) of the Resolution of the Economic and Social Council dated 3 March 1948 (document E/734) this draft Convention is herewith submitted to the Economic and Social Council. The text of the draft Convention is given in an Annex to this report.

At the twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth meetings, the Committee discussed and adopted the present report.

For the sake of clarity and with a view to avoiding repetitions, the order followed in the debates is not adhered to in this report, which consists of observations appended to the Preamble and each of the Articles of the draft prepared by the Committee.

The purpose of these observations is to indicate, whenever unanimity was not achieved, the reasons why certain provisions were adopted or rejected, and to give a summary of the different opinions expressed.

Several delegations submitted statements to be included in the report. All these statements will be found in the report in the form of notes appended to the relevant articles of the draft Convention. The summary records (document E/AC.25/SR.1 to 28) moreover, give a detailed account of the debates.

The report was adopted unanimously by the members of the Committee. The representative of Lebanon made, however, a declaration concerning the report*.

* Declaration of the representative of Lebanon:

"In voting for the report, the representative of Lebanon wishes to point out that the draft report submitted by him as Rapporteur to the Committee (document E/AC.25/W.1 and Add.1,2,3 and 4) contained comments on the scope of certain provisions of the Convention based on views expressed by various members of the Committee. The Committee decided to eliminate all comments of this kind."

SECTION II

OBSERVATIONS CONCERNING EACH ARTICLE OF THE DRAFT CONVENTION

PREAMBLE

"THE HIGH CONTRACTING PARTIES

declaring that genocide is a grave crime against mankind which is contrary to the spirit and aims of the United Nations and which the civilized world condemns;

having been profoundly shocked by many recent instances of genocide;

having taken note of the fact that the International Military Tribunal at Nürnberg in its judgment of 30 September - 1 October 1946 has punished under a different legal description certain persons who had committed acts similar to those which the present Convention aims at punishing; and

being convinced that the prevention and punishment of genocide requires international co-operation;

HEREBY AGREE TO PREVENT AND PUNISH THE CRIME OF GENOCIDE AS HEREINAFTER PROVIDED:"

Observations

The Preamble contains a certain number of considerations of a general or historical nature.

Paragraph 1

"THE HIGH CONTRACTING PARTIES

declaring that genocide is a grave crime against mankind which is contrary to the spirit and aims of the United Nations and which the civilized world condemns;"

The members of the Committee reached agreement on the majority of the ideas expressed in this paragraph.

The representative of the Union of Soviet Socialist Republics submitted a proposal to include in the Preamble the following texts:

"The High Contracting Parties declare that the crime of genocide is one of the gravest crimes against mankind".
and

"This crime constitutes a rude violation of and an insult to the principles and purposes of the United Nations".

/It will be noticed

It will be noticed that genocide is called "a crime against mankind". The representative of France had requested that it should be stated that genocide, while possessing specific characteristics, was a crime against humanity. He stated that it was for practical reasons that a Convention was being drawn up on the crime of genocide which, in his opinion, came within the general category of crimes against humanity. According to him it was desired to organize without delay the prevention and punishment of this particularly grave crime until such time as the International Law Commission in developing and going beyond the Nürnberg principles, should organize the punishment of all crimes against humanity and sever the link by which they were bound to crimes against the peace and to war crimes under the Charter of the International Military Tribunal of 8 August 1945. The unity of the principle regarding crimes against humanity should, in his opinion, however, be preserved.

Certain members of the Committee thought that it was not necessary to insert in the Preamble of the Convention doctrinal considerations of no practical utility. Other members of the Committee categorically opposed the expression "crime against humanity" because, in their opinion, it had acquired a well-defined legal meaning in the Charter of the International Military Tribunal and in its judgment pronounced at Nürnberg. They added that by the terms of its Resolution 180 (II), the General Assembly itself had clearly separated genocide from the other crimes which the International Law Commission would be called upon to codify. The formula of "a crime against mankind" was therefore adopted to express a popular idea on which everyone was in complete agreement.

The Committee also rejected the following suggestions: (a) that of the representative of the Union of Soviet Socialist Republics to the effect that it should be noted in the Preamble that the aim of genocide is the destruction of separate human groups on racial, nationalistic or religious grounds and (b) the suggestion of other members of the Committee who considered that this definition should be supplemented by the addition of political motives. The majority of the Committee considered that this would be a duplication of the articles of the Convention in which such a definition was given.

Paragraph 2

"...having been profoundly shocked by many recent instances of genocide;"

Various proposals were submitted on this point.

The representative of the Union of Soviet Socialist Republics proposed the following text:

("The High Contracting Parties ...)

declare that the crime of genocide is organically bound up with fascism-nazism and other similar race 'theories' which preach racial and national hatred, the domination of the so-called higher races and the extermination of the so-called lower races."

The representative of the Union of Soviet Socialist Republics pointed out that the idea of putting the question in this form was not only to place on record generally known historical facts, but also to give proper emphasis to the fact that genocide by the very nature of the crime was organically connected with fascism-nazism and similar racial "theories" about the so-called "higher" and "lower" races; and that a reference to this in the Preamble would eo ipso imply condemnation of such regimes and "theories" as instigating to the commission of genocide.

He emphasized that, although genocide might also be committed from motives of religious fanaticism, nevertheless in actual practice crimes committed from such motives were at the same time committed from national motives also.

It was stated in objection that while fascism-nazism was undoubtedly responsible for the crimes of genocide committed before or during the second world war, it was nevertheless wrong to consider genocide as being an exclusive product of fascism-nazism. In fact, history revealed many previous cases of genocide. As regards the future, it was possible that crimes of genocide would be based on other motives. It would be dangerous to create the idea that genocide should only be punished if it were a product of fascism-nazism, and that the Convention was concerned only with that historical accident.

Furthermore, this text was criticized as giving the impression that genocide was a result of racial hatred alone, whereas it could also be inspired by religious fanaticism.

The paragraph proposed by the representative of the Union of Soviet Socialist Republics was rejected by five votes to two (Twenty-second meeting - Tuesday, 22 April 1948, afternoon).

Certain delegates wished however that there should be some mention in the Preamble of the recent crimes committed by Hitlerite Germany and her fascist allies which were in fact the prime cause of the present Convention's coming about.

Various amendments to this effect were put forward, among others a Lebanese amendment reading as follows:

"Crimes of genocide have found fertile soil in the theories of nazism and fascism and other similar theories preaching racial and national hatred."

This amendment was rejected by four votes to three (Twenty-second meeting, Tuesday afternoon, 27 April 1948).

Another amendment put forward by the Polish representative read as follows:

"That recently the crime of genocide has been committed with particularly hideous results by the nazi and fascist regimes".

Finally it was thought by the majority that the formula "having been profoundly shocked by many recent instances of genocide" was sufficient.

Paragraph 3

"having taken note of the fact that the International Military Tribunal at Nürnberg in its judgment of 30 September - 1 October 1946 has punished under a different legal description certain persons who had committed acts similar to those which the present Convention aims at punishing;"

There was some discussion on this text, which recalls the part played by the International Military Tribunal. It was redrafted at the second reading. Since it was feared that the crime of genocide might be confused with the crimes against humanity which had been judged by the International Military Tribunal, several amendments were made; among others, the words "under a different legal description" were added.

The revised paragraph was adopted by three votes to one with three abstentions.

Paragraph 4

"being convinced that the prevention and punishment of genocide requires international co-operation;"

The representative of the Union of Soviet Socialist Republics proposed the following text:

"That the campaign against genocide requires all civilized peoples to take decisive measures to prevent such crimes and also to suppress and prohibit the stimulation of racial, national (and religious) hatred and to insure that persons guilty of inciting, committing or encouraging the commission of such crimes shall be severely punished."

This text was rejected by four votes to three. (Twenty-third meeting, Tuesday afternoon, 27 April - second afternoon meeting).

/This text

This text was rejected because objections were raised to the following passage:

"to suppress and prohibit the stimulation of racial, national and (religious) hatred."

The Committee wished, however, to retain one of the ideas contained in this text and adopted the paragraph given above.

Vote on the Preamble as a Whole

The Preamble as a whole was adopted by four votes to one with two abstentions (twenty-fourth meeting, 28 April 1948).

The representative of the Union of Soviet Socialist Republics made a statement explaining his reasons for voting against the Preamble.*

The representative of Poland made a statement explaining his reasons for not supporting the Preamble.**

* Declaration of the representative of the Union of Soviet Socialist Republics:

"The text of the Preamble of the Convention as adopted by the majority of the Committee does not give a complete and correct definition of the crime of genocide. As a matter of fact, the following elements are missing:

a) The indication that the crime of genocide tends to exterminate certain groups of the population because of their race and nationality (religion).

b) The indication that the crime of genocide is organically bound up with Fascism-Nazism and other similar race "theories" which propagate racial and national hatred, the domination of the so-called "higher" races and the extermination of the so-called "lower" races.

c) The indication that the struggle against genocide requires decisive measures aimed at the prevention of such crimes and also at the suppression and prohibition of the instigation of racial, national (and religious) hatred and at the severe punishment of the persons guilty of inciting, committing or preparing the commission of the crime mentioned above.

The representative of the U.S.S.R. esteems that it would be indispensable to amend the Preamble of the Convention in accordance with the text of the first part of the 'Basic Principles of the Convention on Genocide', submitted by the U.S.S.R."

** Declaration of the representative of Poland:

"The text of the Preamble as it now stands avoids any reference to the crimes committed on a horrible and unprecedented scale and manner under the Nazi-Fascist regimes, and to the connection between those crimes and the propaganda of the so-called race theories by the said regimes. Such an omission being deliberate is deeply disturbing and quite incomprehensible to the Polish Delegation and makes it impossible to support the Preamble until amended."

ARTICLE I

(Genocide: a crime under international law)*

"Genocide is a crime under international law whether committed in time of peace or in time of war."

Observations

This article is to some extent a preliminary one, as Articles 2 and 3 define the term "genocide".

Certain members of the Committee wondered whether any useful purpose would be served by adopting this Article and whether the ideas expressed therein ought not to be included in the Preamble. The majority of the members of the Committee decided on a separate Article in order to give more weight to the essential ideas to which it gives expression.

This Article contains two ideas.

1. Genocide "is a crime under international law".

This statement already existed in General Assembly Resolution 96 (I) of 11 December 1946.

The first part of this Article was adopted by five votes to one with one abstention. (Twentieth meeting, Monday afternoon, 26 April 1948).

2. Genocide "is a crime whether committed in time of peace or in time of war".

While not disputing the principle that genocide can be committed in time of war as well as in time of peace, certain representatives considered that this reference was definitely superfluous.

The second part of this Article was adopted by three votes to one with three abstentions.

Concerning the Article as a whole several delegations indicated their attitude as follows:

The representative of France proposed a different wording according to which genocide would be described as a crime against humanity. This wording was rejected by six votes to one.

The representative of France stated in this connection that in the opinion of his Government genocide was the most typical of

* The marginal notes placed before the Articles which indicate the subject dealt with therein are not intended to be part of the Convention.

They may be of some use during the preparatory work concerning the Convention to help the reader to trace the origin of Articles to which in some cases a new number has been given.

the crimes against humanity. Though the French delegation has accepted, with a view to facilitating the speedy adoption of special draft Conventions, severing the problem of genocide from the two more general problems referred to the International Law Commission and submitting it to a committee of the Economic and Social Council, this attitude should nevertheless in no way prejudice the general principle which, according to the French delegation, remains unchanged.

The representative of the USSR was opposed to the insertion of this Article in the Convention for the reason given in his declaration to explain his vote.

The representative of Venezuela proposed the suppression of the second part of the Article and the transfer of the first part to the Preamble.

Vote on the Article as a whole -

The Article as a whole was adopted by five votes to two.

The representative of the USSR made a statement explaining his reasons for voting against the Article.*

* Declaration of the representative of the USSR:

"Article 1 should be excluded because the general nature of the crime of genocide should be specified in the Preamble. Furthermore, I consider that in place of the words "crimes under international law" the Preamble should state that the crime of genocide is one of the worst forms of crimes against humanity directed towards the destruction of individual human groups on racial, national (religious) grounds.

With regard to the indication in the second part of Article 1 that genocide is a crime whether committed in time of peace or in time of war, the representative of the USSR considered that this provision could be included in the Preamble to the Convention."

ARTICLE II

("Physical" and
"biological"
genocide)

"In this Convention genocide means any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members;

1. killing members of the group;
2. impairing the physical integrity of members of the group;
3. inflicting on members of the group measures or conditions of life aimed at causing their deaths;
4. imposing measures intended to prevent births within the group."

Observations

Article 2 is the basic Article defining genocide. It was the subject of long consideration by the Committee.

A. General elements of the definition

The definition contains four elements:

1. The notion of premeditation. This was accepted by the Committee as a whole.
2. The intent to destroy a human group (accepted by four votes with three abstentions).
3. The third element is that of the human groups protected.

The Committee was unanimously in favour of protecting national, racial and religious groups.

The inclusion of political groups was accepted by four votes to three.

The minority pointed out that political groups lack the stability of the other groups mentioned. They have not the same homogeneity and are less well defined.

In particular the representatives of Poland and of the USSR said that the inclusion of political groups in the definition of genocide would give the notion an extension of meaning contrary to the fundamental conception of genocide as recognized by science. The perspective would be distorted and in practice it would end in abandoning the necessary struggle against the destruction of human groups on grounds of race, nationality (or religion) the prevention of which was the very purpose of the Convention.

/Another

Another member of the minority expressed the opinion that the inclusion of political groups would have the effect of making the Convention unacceptable to certain governments. Such governments might fear that the Convention would hamper their action against domestic subversive movements by possibly exposing these governments to unjustified accusations.

The inclusion of political groups and political opinions was accepted by four votes to three (Thirteenth meeting, Tuesday 20 April 1948).

4. The fourth element is that of the motive of genocide.

In the opinion of some members of the Committee it was in the first place unnecessary to lay down the motives for genocide since it was indicated in the text that the intent to destroy the group must be present and in the second place, motives should not be mentioned since, in their view the destruction of a human group on any grounds should be forbidden. They accepted the mention of motives, but only by way of illustration. The text would have read "particularly on grounds of national or racial origin or religious belief". (The question of political groups and political opinions was at that time still reserved). This point of view was not accepted. The word "particularly" was rejected by four votes to three (Twelfth meeting, Monday 19 April 1948).

The majority view was that the inclusion of specific motives (dolus specialis) was indispensable.

In defining these motives the Committee agreed on the adoption of the following terms: instead of "grounds of nationality or race" it was decided to say "on grounds of national or racial origin".

As regards religion, the term "religious belief" was agreed upon.

Then, with regard to politics, the majority of the Committee decided by four votes to three to adopt the term "political opinion".

The representative of France who had pointed out that the formula "opinions" contained in the draft submitted by his delegation was wider than the expression preferred by the majority, accepted the majority decision.

B. Enumeration of the types of acts constituting genocide

The Committee thought that it would be unsound to list the very varied acts which may constitute genocide. In its opinion, however, in this new matter affecting criminal law, it was essential to know what was envisaged. The Committee therefore established the following four

categories:

1. Killing members of the group
This formula was accepted by five votes to two.
2. Impairing the physical integrity of members of the group
(Accepted by five votes to one, with one abstention).
3. Inflicting on members of the group measures or conditions of life aimed at causing their deaths
(Accepted by three votes to one with three abstentions).
4. Imposing measures intended to prevent births within the group.
(Accepted by four votes with three abstentions).

The representative of France requested that his abstention be noted.

Vote for the Article as a whole

The Article as a whole was accepted in second reading by five votes to two.

The representative of China who voted for the Article as a whole but abstained from voting on the four sub-paragraphs, requested the inclusion of a statement in "the report."

* The representative of China called the attention of the Commission to the fact that during the second World War the Japanese built a huge opium extraction plant in Mukden, which could process some 400 tons of opium annually, producing fifty tons of heroin - at least fifty times the legitimate world requirements. This quantity, according to medical authorities, would be enough to administer lethal doses to 200,000,000 to 400,000,000 persons.

It is clear, the representative of China stated, that the Japanese intended to commit, and did commit, genocide by narcotics. The plant in question was the most sinister and monstrous conspiracy known in history. He emphasized the fact that narcotic drugs could be used as an instrument of genocide, and he wished it to be understood that Article II (sub-paragraphs (2) and (3)), and Article IV (sub-paragraphs (b), (d), and (e)), should cover genocide by narcotics, if narcotic drugs were not specifically mentioned in the Convention.

The representative of China further suggested that Article II (sub-paragraph (2)), might be amended to read, "impairing the physical integrity or mental capacity of members of the group", or "impairing the health of members of the group". Such an amendment would make it sure that narcotic drugs would be covered by the Convention.

The representative of the USSR has made a statement explaining his reasons for voting against the Article.*

The representative of Poland made a statement explaining his vote.**

* The representative of the USSR stated that he voted against Article II of the Convention as a whole for the following reasons:

It is a mistake to include political groups among the groups protected by the Convention on genocide, just as it is a mistake to include political opinions among the grounds for perpetrating the crime of genocide.

Crimes committed for political motives are crimes of a special kind and have nothing in common with crimes of genocide. The very word "genocide" derived from the word "genus" - race, people - shows that it concerns the destruction of nations or races as such, for reasons of racial or national persecution and not for the particular political opinions of such human groups.

Crimes committed for political motives are not connected to propaganda of racial and national hatred and cannot therefore be included in the category of crimes covered by the notion of genocide. Crimes committed for reasons of racial and national hatred may, in certain cases, also include motives of a religious kind, but motives of this kind are closely linked, in the crime of genocide, to motives of nationality.

The inclusion in the definition of genocide of political groups as groups protected by the Convention and of political opinions among the motives for the perpetration of this crime gives the words an extension of meaning contrary to the fundamental notion of genocide recognized by science.

The extension of the notion of genocide to this degree will in practice end in the distortion of the perspective and consequently in the abandoning of the necessary struggle against the destruction of human groups on grounds of race, nationality (or religion) the prevention of which is the very purpose of this Convention.

On the other hand the enumeration of specific acts of genocide included in paragraphs 1 to 4 of Article II is not exhaustive; moreover, any enumeration of possible acts of genocide will necessarily be incomplete; the representative of the USSR therefore considers that Article II of the Convention should be drafted as follows:

"In this Convention genocide means any of the following acts aimed at the physical destruction of racial, national and religious groups and committed on grounds of racial, national or religious persecutions:

1. The physical destruction in whole or in part of such groups;
2. The deliberate creation of conditions of life aimed at the physical destruction in whole or in part of such groups."

** The Polish delegation objects to the inclusion of political groups and opinions in the present Convention. This matter has nothing in common with genocide and does not come within the scope of the present Convention.

ARTICLE III

("Cultural"
genocide)

"In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as:

1. prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group."

Observations

The question of cultural genocide gave rise to a fairly full discussion.

Those who supported the inclusion in the Convention of "cultural" genocide emphasized that there were two ways of suppressing a human group, the first by causing its members to disappear, and the second by abolishing, without making any attempts on the lives of the members of the group, their specific traits. According to this opinion, the Convention would fail fully to achieve its object if it left out "cultural" genocide.

Those who opposed the inclusion of "cultural" genocide emphasized that there was a considerable difference between so called "physical" genocide (including "biological" genocide) and "cultural" genocide. It was particularly "physical" genocide which presented those exceptionally horrifying aspects which had shocked the conscience of mankind. They also pointed to the difficulty of fixing the limits of "cultural" genocide, which impinged upon the violation of human rights and the rights of minorities. It was therefore through the protection of human rights, the prevention of discrimination and the protection of minorities that acts which would be improperly introduced into the notion of "cultural" genocide should be prevented. Finally, it was said that from the practical point of view, the inclusion of cultural genocide in the Convention might prevent many countries from becoming parties to the Convention and jeopardize its success.

/In this

In this connection the United States delegation made a declaration for entry in the record.*

During the discussion of principles, the Committee decided by six votes to one to retain the idea of "cultural" genocide (Fifth meeting - 8 April 1948).

The Lebanese representative proposed a more restricted definition of "cultural" genocide, as follows:

"According to the terms of the Convention, it is also understood that genocide includes all acts and measures which are directed against a national, racial or religious group on ground of the national or racial origin or religious beliefs of its members, and which aim at the systematic destruction by oppressive or violent means of the language, religion or culture of that group".

It had been intended to insert the definition of cultural genocide in Article I of the Convention, but subsequently it was decided by three votes to one with two abstentions to make it the subject of a separate Article (Tenth meeting - 15 April 1948).

The reasons for this decision were as follows:

In the first place it was thought that it would be difficult to arrive at a definition the general terms of which would in every instance be applicable both to "cultural" genocide and to other forms of genocide, owing to the fact that the idea of "cultural" genocide could not be applied in practice to political groups. It was also thought that governments would find it easier to make known their views on the inclusion of cultural genocide if the matter were treated in a separate Article.

The Lebanese representative proposed to add a third sub-paragraph reading as follows:

"(3) Placing the members of the group in conditions calculated to make them renounce their language, religion or culture".

This proposal was rejected by three votes to two with two abstentions (Fourteenth meeting - 21 April 1948).

* Declaration of the United States Delegation:

"The prohibition of the use of language, systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value, commonly known in this Convention to those who wish to include it, as "cultural genocide" is a matter which certainly should not be included in this Convention. 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."

The text of the entire Article was adopted in the first reading by five votes to two (United States of America and France).

In the second reading the entire Article was adopted by four votes with three abstentions.

The representative of Venezuela asked to place on record a declaration.*

* The representative of Venezuela expressed the fear that sub-paragraph 1 of Article III does not protect the parties against accusations when they take measures with a view to protecting their own language".

ARTICLE IV

(Punishable acts)

"The following acts shall be punishable:

- (a) genocide as defined in Articles II and III;
- (b) conspiracy to commit genocide;
- (c) direct incitement in public or in private to commit genocide whether such incitement be successful or not;
- (d) attempt to commit genocide;
- (e) complicity in any of the acts enumerated in this Article."

Observations

Article IV enumerates all the acts connected with genocide which should be punishable.

It gave rise to prolonged debate.

Principles included in the enumeration in Article IV -

(a) Genocide as defined in Articles II and III

It seemed to the Committee that as the purpose of Article IV was to mention all the acts connected with genocide that should be punishable, the list should, to be complete, begin by referring to the principal act of génocide as defined in Articles II and III.

(b) Conspiracy to commit genocide

Conspiracy which is translated in French by the words "entente en vue de l'accomplissement de génocide" is a crime under Anglo-American law. The Committee considered that conspiracy to commit genocide must be punished both in view of the gravity of the crime of genocide and of the fact that in practice genocide is a collective crime, presupposing the collaboration of a greater or smaller number of persons.

(c) Direct incitement in public or in private to commit genocide whether such incitement be successful or not

The qualification "direct" in conjunction with the word "incitement" was adopted by three votes to two with two abstentions (Fifteenth meeting - Thursday afternoon, 22 April 1948).

The qualification "in public or in private" was adopted by five votes with two abstentions (Fifteenth meeting - Thursday afternoon, 22 April 1948).

Certain members of the Committee considered the final words "whether such incitement be successful or not" to be superfluous. Nevertheless, the Committee decided to insert them by four votes with three abstentions (Fifteenth meeting - Thursday afternoon - 22 April 1948).

The United States representative, in voting against this paragraph, made a declaration, stating that he did so because he was opposed to the concept of direct incitement.*

(d) Attempt to commit genocide

There was no debate on this clause.

(e) Complicity in any of the acts enumerated in this Article

The Committee was unanimous on this point.

The United States representative stated that in agreeing to the inclusion of "complicity" in this Article, he understood it to refer to accessoryship before and after the fact and to aiding and abetting in the commission of crimes enumerated in this article.

The Article as a whole was adopted by six votes to one.

* The statement of the United States representative was as follows:

"The United States Delegation believes that the Convention should establish the culpability of all who directly perform the physical acts comprehended in the crime of genocide, all who "conspire" together to achieve the end which is to be described by this Convention, the act of genocide, or who "attempt" to achieve this end. In this connection a "direct incitement" to the achievement of the prescribed end, if of a nature to create an imminent danger that it would result in the commission of the crime, would generally constitute part of an attempt thereto and or an overt act of conspiracy thereto. To outlaw such incitement, it is sufficient to outlaw the attempt and conspiracy without specifically enumerating the acts of direct incitement in the Convention."

REJECTED PROPOSALS

1. Preparatory Acts

The question of "preparatory acts" gave rise to lengthy controversy.

At a first vote the Committee had decided, by four votes to three, to include preparatory acts in the enumeration in Article IV (Fifteenth meeting - Thursday morning, 22 April 1948). At a later vote the Committee decided by four votes to three, to omit them.

The representative of the Union of Soviet Socialist Republics, who supported the inclusion of preparatory acts in the enumeration of punishable acts, said that according to the penal law of various countries the preparatory acts of a crime were not punishable, unless the law expressly provided that they were. The preparation of genocide should not be left unpunished. However, the representative of the Union of Soviet Socialist Republics stated that the notion of preparatory acts should be defined exactly and that it was necessary to recognize as such only definite acts which by themselves represented crimes defined as follows:*

- "(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."

This proposal was rejected by four votes to two with one abstention. (Sixteenth meeting, Thursday, 22 April 1948).

The members of the Committee who did not support the inclusion of preparatory acts stressed the difficulty in defining the notion of preparatory acts and the disadvantage of enumerating them if that difficulty were to be avoided. Furthermore, in the most serious cases where it would be desirable to punish the authors of preparatory acts, that could be effected either under the clause "conspiracy to commit genocide" or the clause "complicity". If the construction of crematory ovens or the adaptation of motor-cars to the purpose of killing the occupants with noxious gases were at issue, such acts requiring the co-operation of a certain number of persons, would accordingly come under the heading of "conspiracy to commit genocide" even if genocide were

* These formulas are taken verbatim from the Secretariat's draft (Article II 2 (a), (b) and (c), document E/447 - 26 June 1947).

not finally committed, and under the heading of "complicity" if genocide were committed.

2. PROPAGANDA IN FAVOUR OF GENOCIDE

As the representative of the Union of Soviet Socialist Republics considered the text adopted on direct incitement in public or in private to commit génocide inadequate (see above), he proposed that the following additional paragraph be inserted in the enumeration of punishable acts:

"All forms of public propaganda (press, radio, cinema, etc....) aimed at inciting racial, national or religious enmities or hatreds or at provoking the commission of acts of genocide."

In opposition to this proposal certain members of the Committee said that the repression of propaganda termed as hateful propaganda would be outside the scope of the Convention. It might be misinterpreted in such a way that it would prove injurious to freedom of information and therefore might jeopardize the Convention's success.

Other members added that in their opinion the repression of such propaganda was covered in so far as it came under paragraph (c) of the article under discussion.

The Soviet proposal was rejected by five votes to two (Sixteenth meeting - Thursday afternoon, 22 April 1948).

ARTICLE V

(Persons liable)

"Those committing genocide or any of the other acts enumerated in Article IV shall be punished, whether they are Heads of State, public officials or private individuals."

Observations

The Committee agreed unanimously that the authors of genocide should be punished, whatever their status.

The discussion dealt with the terminology to be used. Invoking the principles of national constitutions, certain members of the Committee said that the expression "ruler" used in the English text in the absence of a term corresponding exactly to the French word "gouvernant", was not the right term to apply to the head of the State. The expression "ruler" was replaced in the English text by "heads of State" (chefs de l'Etat), whilst the word "gouvernant", which in French public law covers the Head of the State and the ministers was retained in the French text.

The text of Article V was adopted by seven votes, that is to say by a unanimous vote of all the members of the Committee (Eighteenth meeting, Friday evening, 23 April 1948).

REJECTED PROPOSAL

Command of the Law and Superior Orders

The representative of the Union of Soviet Socialist Republics proposed the following text:

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

In support of this proposal the representatives of Poland and of the Union of Soviet Socialist Republics advanced the following argument:

The Convention on genocide must include this principle which has already been recognized in international law (especially by the Charter of Nürnberg). A rejection of this principle would mean from the practical point of view that all individuals who could put forward the excuse that they acted according to the command of the law or superior orders were proclaimed in advance as exempt from all punishment. On the other hand the acceptance of this principle would signify that the Convention on genocide would have a considerable educative influence by warning those who might be led to commit the crime of genocide. References to military or any other kind of discipline cannot justify acts of genocide even when committed merely by subordinates.

/In opposition

In opposition to the Soviet proposal, the representative of Venezuela stated that that principle is a danger to the stability of the institutions of the State. The Charter of the Military Tribunal of Nurnberg admitted that principle having in mind the crimes of war; but to accept it in time of peace is to invite the armed forces to disobedience, when they are in themselves a non-political body, bound to obedience and non-deliberative. He also said that as far as his country was concerned, the law exempted from penal responsibility those who acted by virtue of due and legitimate obedience while its sanction fell on those giving the illegal order.

The representative of Lebanon observed that Article II of the Convention only punished the authors of acts of genocide in cases where they had acted because of racial or national reasons, religious beliefs or political opinions. Thus an individual who committed genocide solely in obedience to the command of the law or to superior orders and was not inspired by any of those motives could not be punished under the rules laid down in Articles II and III of the Convention. The only exception would be in the case where the crime of genocide accorded with the personal sentiments of the individual in which case he would be considered as a principal author even if he acted on superior orders.

In reply to this argument the representative of Poland stated that the judge would have to determine in each case whether an individual was guilty or not.

The Soviet proposal was rejected by two votes to four with one abstention (Fifteenth meeting - Friday evening, 23 April).

The representatives of Poland* and of the Union of Soviet Socialist Republics** made statements.

* Statement by the representative of Poland:

"The omission from the Convention of the provision stating that "Command of the law or superior order shall not justify genocide" represents a serious step back in the development of international law and endangers seriously the effective prevention and repression of genocide under this Convention. Therefore, the Polish Delegation cannot share any responsibility for the Convention in its present form and cannot support it until amended."

** Statement by the representative of the Union of Soviet Socialist Republics:

"The delegation of the Union of Soviet Socialist Republics considers that Article V should be completed by the addition of a second sub-paragraph reading as follows:

"Sub-paragraph 2. Command of the law or superior orders shall not justify genocide."

The exclusion of this paragraph by the majority of the Committee is contrary to the principles proclaimed at Nürnberg;

It will constitute a renunciation of principles that are recognized by the United Nations and there is a risk that the fight against genocide will be considerably weakened. It is incorrect to assert that this provision is already included in Article IV, paragraph (a) of the present Convention in view of the fact that Article V deals with all the persons who will be responsible for the crime of genocide, a crime which in very many cases was committed systematically and on superior orders, after which the authors of these crimes attempted to exculpate themselves by pleading the command of their superiors or the command of the law."

ARTICLE VI

(Domestic Legislation) "The High Contracting Parties undertake to take the necessary legislative measures within their respective territories with their constitutional procedures to give effect to the provisions of this Convention."

Observations

The representative of the Union of Soviet Socialist Republics had submitted for the Committee's consideration the following text:

"The High Contracting Parties pledge themselves to make provision in their criminal legislation for measures aimed at the prevention and suppression of genocide and also at the prevention and suppression of incitement of racial, national and religious hatred in accordance with the provisions of this Convention and to provide criminal penalties for the authors of such crimes."

The question was raised by some members of the necessity in general of a special provision in the Convention on the legislative measures for the fulfilment of the Convention. It was contended that States were under the obvious obligation to take every measure for the proper performance of the obligations to which they subscribe. Moreover, the facts constituting genocide are already dealt with by domestic criminal laws (murder, etc.).

It was contended that the provisions of such an article might prevent certain countries from becoming parties to the Convention owing to the difficulty of obtaining the passing of the necessary legislation. This obstacle is particularly serious in federal States where criminal law is principally in the province of legislation, by the individual States which form the federation.

To this effect the representatives of the Union of Soviet Socialist Republics and Poland stated that there already existed a number of conventions, providing for the obligation of States-signatories to envisage in their legislation the measures of criminal penalties for certain kinds of crimes.*

They contended that the introduction in the national legislation of laws for the suppression and prevention of genocide, the suppression and prevention of racial, national and religious hatred and laws for criminal

* For example: The Convention for the Prevention of Traffic in Women and Children, Geneva, 30 September 1921; Convention for the Repression of Counterfeiting Currency, Geneva, 20 April 1929, etc.

penalties for the culprits of such crimes, was an elementary condition, without which, in the opinion of these representatives, there can be no talk about any suppression of the above-mentioned crimes.

As regards the argument that such an obligation would be an obstacle to the ratification of the convention by some States, the representative of the Union of Soviet Socialist Republics stated to this effect that in this case, the legislation required for the punishment of culprits of genocide should be evidently enacted first and only then the Convention ratified in conformity with the constitutional procedure. In other cases this can be obviously done simultaneously, for in his opinion one cannot imagine a situation when a state would join the Convention but would not enact in its legislation the laws for punishment of crimes, provided for by the Convention. This would be tantamount to refusal to become a party to the Convention.

During the discussion on the particular purpose of the measures under consideration, it was debated whether the text should read "for the prevention and repression of genocide" or "to give effect to the provisions of the Convention". The second wording was deemed preferable because it dealt with all the obligations of the States under the Convention and not merely with penal measures. The amendment was adopted by four votes against three.

The Article as a whole was adopted by five votes to one with one abstention.

The representative of the Union of Soviet Socialist Republics made a statement in support of his votes against the Article.*

The representative of Poland made a statement with regard to this Article.**

* Statement by the representative of the Union of Soviet Socialist Republics

"The text adopted by the majority of the Committee for Article VI is not satisfactory as regards the organisation of a genuine campaign against genocide since it does not include an obligation for the signatories of the Convention to introduce in their legislation measures for the prevention and suppression of genocide and the prevention and suppression of incitement to racial, national and religious hatred and the obligation to provide criminal penalties for the authors of such crimes. The expression "necessary legislative measures" may in fact be interpreted in various ways because of its vagueness."

** Statement by the representative of Poland:

"The Polish delegation is of the opinion that the present text of Article VI is ambiguous and insufficient.

The text should at least be amended to read "The High Contracting Parties undertake to enact in accordance with their constitutional procedures the legislation necessary to give effect to the provision of this Convention" and be supplemented with a provision concerning the prevention of genocide as well as combatting any propaganda to racial, national and religious hatred."

ARTICLE VII

(Jurisdiction)

"Persons charged with genocide or any of the other acts enumerated in Article IV shall be tried by a competent tribunal of the State in the territory of which the act was committed or by a competent international tribunal."

Observations

Several problems were solved directly or indirectly by this Article which deals with repression by national courts and by an international court.

A. Repression by National Courts

All members of the Committee agreed to recognize the jurisdiction of the Courts of the State on the territory of which the offence was committed.

The first part of the Article, up to "....on the territory of which the offence was committed..." was voted by all seven members of the Committee.

B. Repression by an International Court

The establishment of international jurisdiction gave rise to a lengthy discussion.

For some representatives the granting of jurisdiction to an international court was an essential element of the Convention. They claimed that in almost every serious case of genocide it would be impossible to rely on the Courts of the States where genocide had been committed to exercise effective repression because the government itself would have been guilty, unless it had been, in fact, powerless. The principle of universal repression having been set aside for the reasons indicated below the absence of an international court would result in fact in impunity for the offenders. The supporters of an international court merely requested that the international jurisdiction be expressly provided for by the Convention without the latter setting up the actual organization of the Court.

The members opposing this proposal first declared that the intervention of an international court would defeat the principle of the sovereignty of the State because this court would be substituted for a national court.

Secondly, they claimed that mere reference in the Convention to an international court would have no practical value. What would this court be? There is for the moment no international court with criminal jurisdiction. It would be necessary either to create a new court or to add a new criminal chamber to the International Court of Justice and all the members of the Committee had agreed that they had neither the authority nor the time necessary for settling these problems.

During the discussion of principles, the Committee adopted by four votes (China, France, Lebanon, United States of America) against two (Poland, Union of Soviet Socialist Republics) with one abstention (Venezuela), the principle of an international criminal jurisdiction. (Eighth meeting - Tuesday, 13 April 1948).

The Committee voted by four votes (China, France, Lebanon, United States of America) against three (Twentieth meeting - Monday, 26 April 1948) the final provision of Article VII "or by a competent international tribunal."

The United States representative proposed the following additional paragraph to Article VII:

"Assumption of jurisdiction by the international tribunal shall be subject to a finding by the tribunal that the State in which the crime was committed has failed to take adequate measures to punish the crime."

The Committee decided by four votes and three abstentions in favour of this principle (Eighth meeting - Tuesday, 13 April 1948).

However, the inclusion of this principle in the Convention was rejected by five votes against one (United States of America) with one abstention (Union of Soviet Socialist Republics) on the ground that the inclusion of this paragraph in the Convention might prejudice the question of the court's jurisdiction.

The Article as a whole was voted by four votes to three.

The representatives of Poland*, of the Union of Soviet Socialist Republics** and of Venezuela*** respectively, made declarations with regard to their negative vote.

* Declaration of the representative of Poland: (Concerning Articles VII and X)

"The inclusion in the Convention of the principle of an International Criminal Tribunal constitutes an obligation of the parties to this Convention, the contents of which are wholly unknown to them.

The creation of an International Criminal Court whose jurisdiction could only be compulsory and not optional, is contrary to the principles on which the International Court of Justice and its Statute are based."

** Declaration of the representative of the Union of Soviet Socialist Republics:

"The representative of the Union of Soviet Socialist Republics considers that the decision of a majority of the Committee to place cases of genocide under the jurisdiction of a competent international court is wrong, since the establishment of an international court would constitute intervention in the internal affairs of States and a violation of their sovereignty, an important element of which is the right to try all crimes without exception, committed in the territory of the State concerned."

"The representative of the Union of Soviet Socialist Republics considers that Article VII of the Convention should be drafted as follows:

'The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, the case to be heard by the national courts in accordance with the domestic legislation of the country'".

*** Declaration of the representative of Venezuela:

"The representative of Venezuela has opposed the inclusion in Article VII of the sentence 'or by a competent international tribunal', because he considered that therein was a vague allusion to a possible international jurisdiction the constitutive elements of which are not known to the signatories of the Convention. He has made a similar objection to the sentence 'by a competent international criminal tribunal', contained in Article X."

REJECTED PROPOSAL

THE PRINCIPLE OF UNIVERSAL REPRESSION

The principle of universal repression by a national court in respect to individuals who had committed genocide abroad was discussed when the Committee considered the fundamental principles of the Convention.

Those in favour of the principle of universal repression held that genocide would be committed mostly by the State authorities themselves or that these authorities would have aided and abetted the crime. Obviously in this case the national courts of that State would not enforce repression of genocide. Therefore, whenever the authorities of another State had occasion to arrest the offenders they should turn them over to their own Courts. The supporters of the principle of universal repression added that, since genocide was a crime in international law, it was natural to apply the principle of universal repression. They quoted conventions on the repression of international offences such as traffic in women and children, counterfeiting currency, etc.

The opposite view held that universal repression was against the traditional principles of international law and that permitting the courts of one State to punish crimes committed abroad by foreigners was against the sovereignty of the State. They added, that, as genocide generally implied the responsibility of the State on the territory of which it was committed, the principle of universal repression would lead national courts to judge the acts of foreign governments. Dangerous international tension might result.

A member of the Committee, while he agreed that the right to prosecute should not be left exclusively to the courts of the country where genocide had been committed, declared himself opposed to the principle of universal repression in the case of genocide. It is a fact, he said, that the Courts of the various countries of the world do not offer the same guarantee. Moreover, genocide is distinguished from other crimes under International Conventions (traffic in women, traffic in narcotic drugs, counterfeiting currency) by the fact that, though in itself it is not a political crime, as stated in Article IX of the Draft Convention, it nevertheless has or may have political implications. Therefore, there is a danger that the principle of universal repression might lead national courts to exercise a biased and arbitrary authority over foreigners. This representative therefore proposed that jurisdiction be given to an international court to which States would surrender the authors of genocide committed abroad whom /they

they had arrested and whom they would be unwilling to extradite.

The principle of universal repression was rejected by the Committee by four votes (among which France, the United States of America and the Union of Soviet Socialist Republics) against two with one abstention. (Eighth meeting - Tuesday, 13 April 1948).

During the discussion of Article VII the proposal to reverse the foregoing decision was rejected by four votes against two with one abstention. (Twentieth meeting - Monday, 26 April 1948).

ARTICLE VIII

(Action of the United Nations)

- "1. A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.
2. A party to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention."

Observations

This Article was discussed at length when the Committee considered questions of principle, and it was discussed again when the Articles of the Convention were being drafted.

The representative of the Union of Soviet Socialist Republics proposed the following text:

"The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter."

In this connection there was disagreement on two main points:

1. Should provision be made for the intervention of a specific organ of the United Nations, in this case the Security Council, or should no organ be mentioned?

It was urged in favour of naming the Security Council that the commission of genocide was a grave matter likely to endanger world peace and therefore one which justified intervention by the Security Council, and that only the Security Council was capable of taking effective action to remedy the situation, that is to say to stop the commission of genocide.

It was argued against this point of view that, although the Security Council appeared to be the organ to which governments would most frequently wish to apply, it was undesirable to rule out the General Assembly, the Economic and Social Council or the Trusteeship Council. In some cases it would be of advantage to call on the General Assembly because it directly expressed the opinion of all Members of the United Nations, and because its decisions were taken by a majority vote with no risk of the right of veto preventing a decision.

/The

The advocates of naming the Security Council replied that they did not exclude the possibility of referring the question to the General Assembly or adopting any other measures which the Security Council may deem necessary.

2. Should it be made compulsory for parties to the Convention to lay the matter before the organs of the United Nations or should they be merely given the right to do so?

It was argued in favour of compulsion that the gravity of genocide justified compulsory reference to the Security Council which organ would be free to assess the importance of the cases submitted to it and to take the necessary steps for the prevention and suppression of genocide. It was further pointed out that in accordance with the Charter, Members of the United Nations were already entitled to refer questions to that Organization and that nothing would be gained by mentioning this right in Article VIII of the Convention.

It was argued against this view that if a serious case of genocide occurred, it would certainly be submitted to the United Nations and that it was unnecessary to make into an obligation a right the exercise of which should be left to the judgment of governments.

The principle of compulsory notification was rejected by three votes to two with two abstentions. (Twentieth meeting - Monday, 26 April 1948 - afternoon).

Having rejected by five votes to two (Twentieth meeting - Monday, 26 April 1948 - afternoon) the text submitted by the representative of the Union of Soviet Socialist Republics, the Committee had to consider the text submitted by the representative of China which had been adopted as the basis of discussion.

This text with some amendments was adopted by five votes to one with one abstention. (Twentieth meeting - Monday, 26 April 1948 - afternoon) and became the first paragraph of the Article.

A second paragraph, adopted by six votes with one abstention was added. (Twentieth meeting - Monday, 26 April 1948 - afternoon).

The Article as a whole was adopted by five votes to one with one abstention.

The representative of the Union of Soviet Socialist Republics made a declaration with regard to his negative vote.*

* Declaration of the representative of the Union of Soviet Socialist Republics:

"In order really to combat genocide it is essential that the signatories to the Convention should undertake the obligation to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention, so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter. An appeal precisely to the Security Council would be fully in accordance with the gravity of the question of genocide.

The representative of the Union of Soviet Socialist Republics considers that Article VIII should read as follows in the Convention:

"The High Contracting Parties undertake to report to the Security Council all cases of genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures may be taken in accordance with Chapter VI of the United Nations Charter."

ARTICLE IX

(Extradition)

"1. Genocide and the other acts enumerated in Article IV shall not be considered as political crimes and therefore shall be grounds for extradition.

2. Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force."

Observations

This Article was included in the Convention, at the request of the representative of Poland.

There was no opposition and it was unanimously adopted by the members of the Committee.

However, the United States representative made a declaration concerning this Article.*

* Declaration of the United States representative:

"With respect to the Article on extradition, the representative of the United States desires to state that until the Congress of the United States shall have enacted the necessary legislation to implement the Convention, it will not be possible for the government of the United States to surrender a person accused of a crime not already extraditable under existing laws. Moreover, the provision in the Constitution of the United States regarding ex post facto laws would preclude the government from granting extradition of any person charged with the commission of the offence prior to the enactment of legislation defining the new crime."

ARTICLE X

(Settlement of disputes by the International Court of Justice)

"Disputes between 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 competent international criminal tribunal."

Observations

A member of the Committee requested that Article XIV of the Secretariat's draft* regarding the settlement of disputes relating to the interpretation or application of the Convention be re-inserted.

The representative of the Union of Soviet Socialist Republics opposed this proposal, recalling his opposition in principle to the establishing of an international court which, in his opinion, would be an infringement of the sovereignty of States and would amount to intervention in the internal affairs of the State.

Another representative, supporting the conferring of such competence on the International Court of Justice, pointed out that since the Convention elsewhere conferred competence on an international criminal tribunal (Article VII, last sentence), it was desirable to avoid any concurrent or conflicting jurisdiction.

He therefore proposed, in order to avoid disputes regarding competence, that the following formula be added to that proposed by the Secretariat:

"....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 competent international tribunal."

The first part of the Article conferring competence on the International Court of Justice was accepted by five votes to two.

The second part, including the proviso quoted, was accepted by four votes to one with two abstentions.

* This Article read as follows:

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

The Article as a whole was adopted by four votes to three.

The representative of Poland* and the representative of the Union of Soviet Socialist Republics** made a declaration with regard to their negative vote.

* Declaration of the representative of Poland:

"The inclusion in the Convention of the principle of an international criminal tribunal constitutes an obligation of the parties to this Convention, the contents of which are wholly unknown to them. The creation of an international criminal court whose jurisdiction could only be compulsory and not optional, is contrary to the principles on which the International Court of Justice and its Statute are based."

** Declaration of the representative of the Union of Soviet Socialist Republics:

"Establishment of the system contemplated by Article X must inevitably lead to intervention by an international court in the trial of cases of genocide which should be heard by the national courts in accordance with their jurisdiction."

The representative of the Union of Soviet Socialist Republics bases his argument on the fact that the establishment of international jurisdiction for cases of genocide would constitute intervention in the internal affairs of States and be a violation of their sovereignty.

Consequently, in the opinion of the representative of the Union of Soviet Socialist Republics, Article X should be excluded."

REJECTED ARTICLE

DISBANDING OF ORGANIZATIONS HAVING PARTICIPATED IN GENOCIDE

The representative of Poland made the following proposal which if adopted would have constituted a separate Article:

"The High Contracting Parties pledge themselves to disband any group or organization which have participated in any act of genocide."

This question was mentioned in the Soviet Note concerning the principles, which was discussed by the Committee during the first stage of its work.

It was decided not to adopt the proposal by four votes to three, (Sixth meeting - Friday 9 April 1948).

A proposal to reconsider the question was then rejected by three votes to two with two abstentions. (Twentieth meeting - Monday 26 April 1948 - afternoon).

It was considered by the majority that this was a question to be considered by the domestic authorities.

The representative of Poland made a declaration in this regard.*

* Declaration of the representative of Poland:

"The Committee declined to include in the Convention any provision concerning disbanding of groups and organizations which have participated in acts of genocide. The lack of such a provision (having the result that such organizations would be permitted to carry on their criminal activities) makes it impossible for the Polish Delegation to support the Convention until amended."

Final clauses

ARTICLE XI

(Languages, date
of the
Convention)

"The present Convention of which the Chinese,
English, French, Russian and Spanish texts are equally
authentic shall bear the date of".

Observations

1. Languages - The drafting of the Convention in the five official languages of the United Nations conforms to the practice followed up to the present by the United Nations in most cases.
2. Date of the Convention - The date of the Convention would be that of its adoption by the General Assembly.

This Article was adopted by all seven members of the Committee.

ARTICLE XII

(States eligible to become parties to the Convention. Means of becoming a party.)

"1. The present Convention shall be open until 31... 194.. * 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 General Assembly.

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

2. After 1 194 ...* 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."

Observations

1. The Committee decided in favour of the second alternative wording in the Secretariat draft, that is, the wording providing for signature followed by ratification. The other alternative foresaw that in every case the States would become parties to the Convention by depositing an instrument of ratification.

2. With regard to the question as to what organ of the United Nations would have to decide to whom invitations should be sent, a divergence of opinion was expressed in the Committee. The representative of the Union of Soviet Socialist Republics proposed the Economic and Social Council in view of the fact that the Council met more frequently than the General Assembly.

The Committee decided by four votes against three that this invitation would be sent by the General Assembly and not by the Economic and Social Council (Twenty-second meeting - Tuesday, 27 April 1948 - afternoon).

3. The whole of the Article was adopted on second reading by six votes to one.

The U.S.S.R. representative made a comment with regard to his negative vote:**

* The dates for the time limits will have to be filled in according to the date of the adoption of the Convention by the General Assembly.

** The statement of the representative of the Union of Soviet Socialist Republics reads as follows:

"The U.S.S.R. representative said he was in favour of the second version of this Article, which provides that invitations to sign the Convention will be issued by the Economic and Social Council and not by the General Assembly, as this will expedite the accession to the Convention of States desiring to do so."

ARTICLE XIII

(Coming into force
of the Convention)

"1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of not less than twenty instruments of ratification or accession.
2. Ratification or accession received after the Convention has come into force shall become effective as from the ninetieth day following the date of deposit with the Secretary-General of the United Nations."

Observations

The Committee put at twenty the number of ratifications and accessions necessary to bring the Convention into operation. Some members would have preferred a lower figure, some a higher. The representative of the Union of Soviet Socialist Republics, in particular, submitted a proposal that the number of such ratifications and accessions should be twenty-nine. Finally unanimous consent was reached on the number of twenty. (Twenty-second meeting - Tuesday, 27 April 1948, afternoon).

ARTICLE XIV

(Duration of the Convention - Denunciation)

- "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."

Observations

The Committee had before it two draft wordings proposed in the Secretariat Draft (Article XIX).*

The majority considered that the first wording providing for the renewal of the Convention for successive five-year periods and permitting States to denounce the Convention only at the end of such periods created a more stable situation than the second wording which allows for denunciation of the Convention at any time with one year notice.

Article 14 was adopted on second reading by five votes against two.

The representative of the Union of Soviet Socialist Republics made a statement with regard to his negative vote.**

* Second Draft (Secretariat 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."

** The statement of the representative of the Union of Soviet Socialist Republics reads as follows:

"The period of validity of a Convention, which aims at combatting genocide, should not be limited. Therefore the following text would be preferable:

"The present Convention may be denounced by a notification in writing addressed to the Secretary-General of the United Nations.

Such notification will come into force one year after it has been received."

ARTICLE XV

(Abrogation of the Convention)

"Should the number of parties to this Convention become less than sixteen 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."

Observations

This Article was adopted by all seven members of the Committee (Twenty-second meeting - Tuesday, 27 April 1948, afternoon).

ARTICLE XVI

(Revision of the Convention)

- "1. 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.
2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such requests."

Observations

This Article gave rise to a discussion.

The representative of the United States declared in support of the wording finally adopted that a request for revision would have chances of success only if it met with the views of several parties. The representative of the Union of Soviet Socialist Republics pointed out that the wording was not customary and that it put obstacles in the way of possible improvement by means of revision. In any case it was impossible to deprive member States of the right to bring the matter before the United Nations.

Article XVI was adopted on second reading by five votes against two.

The representative of the Union of Soviet Socialist Republics made a statement with regard to his negative vote.*

* The statement of the representative of the Union of Soviet Socialist Republics reads as follows:

"To limit the right of a State to apply to the United Nations for revision of the Convention would not be in accordance with the Charter. The following wording would be preferable:

'A request for the revision of the present Convention may be made at any time by any State signatory to the Convention by means of a notification in writing addressed to the Secretary-General. The Economic and Social Council will decide what action should be taken regarding such a request'."

ARTICLE XVII

(Notifications by the
Secretary-General)

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

Observations

This Article was adopted by all seven members of the Committee (Twenty-second meeting - Tuesday, 27 April 1948, afternoon).

ARTICLE XVIII

(Deposit of the original
of the Convention and
transmission of copies
to governments)

- "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 the non-member States referred to under Article XII."

Observations

This Article was adopted by all seven members of the Committee.
(Twenty-second meeting - Tuesday, 27 April 1948, afternoon).

ARTICLE XIX

(Registration of
the Convention)

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

Observations

This Article was adopted by all seven members of the Committee (Twenty-second meeting - Tuesday, 27 April 1948 - afternoon).

VOTE ON THE CONVENTION AS A WHOLE

The vote on the Convention as a whole was five (China, France, Lebanon, United States of America, Venezuela) against, one (Union of Soviet Socialist Republics) with one abstention (Poland). (Twenty-sixth Meeting, 30 April 1948 - afternoon).

It was agreed that the votes recorded were subject to the reservations made by the Members of the Committee concerning the various provisions of the Convention.

At this point the representative of the Union of Soviet Socialist Republics made a statement concerning the Convention as a whole.*

* The statement of the U.S.S.R. representative reads as follows:

"The U.S.S.R. Representative states that a number of important provisions which were proposed by the Soviet Union in "The Fundamental provisions of the draft Convention" submitted to the Committee and adopted as a basis for the discussion of the principles of the Convention, which the Union of Soviet Socialist Republics considers to be of vital importance, have found sufficient reflection in separate articles of the draft Convention.

The following are among them:

- (a) Establishing that genocide means also premeditated acts committed with the intention of destroying the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief. (Article III of the Convention).
- (b) Definition in the Article IV of the acts punishable under the present Convention, punishment of the conspiracy, instigation, attempts and complicity (except the reservations made by us regarding Article II).
- (c) Imposition of responsibility for committing genocide regardless of the fact whether the guilty are rulers, public officials or private individuals. (Article V).
- (d) Providing that genocide should not be considered a political crime and consequently the guilty are subject to extradition.

(Continuation of foot-note on preceding page)

(e) Inclusion into the definition of genocide (Article II) as the qualifying indications of genocide: physical extermination of these or those human groups both directly and by means of creating conditions aimed at their extinction; these or those motives of committing the crimes of genocide.

(f) Inclusion into the preamble on genocide the statement that genocide is the gravest crime against humanity; indication in the preamble to the effect that these crimes are the violation of the spirit and purposes of the United Nations Organization.

Noting this positive aspect of the Committee's activities in the working out of the Convention, the U.S.S.R. representative states that, as a result of the adoption by the majority in the Committee of some profoundly wrong decisions the opposition to which was voted by the Union of Soviet Socialist Republics and some other states, this Convention as a whole and as it was prepared by the majority in the Committee is not a sufficiently effective instrument for the suppression of genocide and does not therefore respond to the aim which was set forth before the Committee by the General Assembly and then by the Economic and Social Council.

The preamble of the Convention does not give a complete and correct definition of the character of the crimes of genocide and an important indication that they are organically bound up with fascism-nazism and other similar race "theories" which propagate racial and national hatred, the domination of the so-called "higher" races and the extermination of the so-called "lower" races.

The inclusion of political groups into the number of objects of genocide, having nothing in common with its scientific definition, will practically lead to the loss of perspective and to the absence of the suppression of the destruction of human groups on national, racial and religious grounds which actually takes place, and the punishment of which must be aimed at by this Convention.

The inclusion of such a proposal into the Convention weakens this document considerably and minimizes the importance of the tasks of the suppression of genocide and violators of the Convention. By doing so the blow to instigators and sponsors of genocide is averted.

This is also manifested in the refusal of the majority in the Committee to establish punishability of a number of dangerous crimes of genocide which are the following:

1. All kinds of public propaganda (the press, radio and cinema) aimed at the instigation of racial, national and religious hatred and at the provoking of genocide, which create the conditions encouraging the crimes of genocide and provoking these crimes.

2. Preparatory actions for the perpetration of genocide in cases when they by themselves do not constitute a crime such as: (a) studying and research aimed at the elaboration of the technique of genocide; (b) making of installations and manufacturing, acquisition, storage, and delivery of materials

(Continuation of foot-note on preceding page.)

or products, known to be intended for perpetration of genocide;
(c) instructions, orders, assignments, and distribution of tasks aimed at perpetration of genocide.

3. The refusal of the majority in the Committee to agree that the parties to the Convention pledge themselves to disband and not to allow in future the existence of the organizations, the purpose of which is to aim at the instigation of racial, national and religious hatred as well as at the commission of the crime of genocide.

4. The refusal of the majority in the Committee to include into the Convention a principle already established in Nürnberg that genocide cannot be justified by the command of the law or superior order, the refusal to formulate specifically and exactly the obligations of parties to the Convention to introduce into the national legislation measures directed towards the prevention and suppression of genocide as well as towards the prevention and suppression of the instigation of racial, national and religious hatred and to ensure effective measures of criminal punishment and together with this the attempts of an interference into the internal affairs of states, and violation of their sovereignty by the establishment of the principle of cognizance of cases of genocide by an International Court - all this had made the U.S.S.R. representative unable to consider that the document prepared by the majority in the Committee corresponds to its purpose.

While this document was being prepared the U.S.S.R. delegation repeatedly sought to convince the Committee of the necessity to act in such a way as to work out a draft Convention on the basis of which an effective suppression of the crimes of genocide could be organized in the future.

The U.S.S.R. representative has introduced elaborately worked out proposals on all the above-mentioned questions. For reasons, however, beyond the control of the U.S.S.R. delegation the necessary decisions have not been adopted by the majority in the Committee. That is why the U.S.S.R. representative voted against the draft of the Convention as a whole in its present wording."

The representative of Poland made a declaration to explain his abstention.*

* The statement of the representative of Poland reads as follows:

"The delegation of Poland, a country which suffered so terribly from genocide committed by Hitlerite Germany, was and is one of the main supporters of an International Convention on Genocide as a matter of great international importance and urgency. During the General Assembly in 1946, in the Committee on Codification of International Law, as well as during the General Assembly in 1947, and in the last session of the Economic and Social Council, the Polish delegation expressed with great emphasis and several times its opinion on this matter, and submitted proposals and suggestions. It is, therefore, with profound regret that the Polish delegation abstained from voting on the draft adopted by the Ad Hoc Committee for the reasons explained in connection with certain articles. The Polish delegation will do all in its power to achieve a text of the Convention on Genocide which would be both effective and acceptable to Members of the United Nations. Poland wishes to be one of the first signatories of the Convention on Genocide."

ANNEX

DRAFT CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE*

PREAMBLE

THE HIGH CONTRACTING PARTIES

declaring that genocide is a grave crime against mankind which is contrary to the spirit and aims of the United Nations and which the civilized world condemns;

having been profoundly shocked by many recent instances of genocide;

having taken note of the fact that the International Military Tribunal at Nürnberg in its judgment of 30 September - 1 October 1946 has punished under a different legal description certain persons who have committed acts similar to those which the present Convention aims at punishing, and

being convinced that the prevention and punishment of genocide requires international co-operation,

HEREBY AGREE TO PREVENT AND PUNISH THE CRIME AS HERINAFTER PROVIDED:

Substantive Articles

(Genocide: a crime under international law)

("Physical" and "biological" genocide)

ARTICLE I

Genocide is a crime under international law whether committed in time of peace or in time of war.

ARTICLE II

In this Convention genocide means any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members:

- (1) killing members of the group;
- (2) impairing the physical integrity of members of the group;

* The marginal notes placed before the articles which indicate the subject dealt with therein are not intended to be part of the Convention.

They may be of some use, during the preparatory work concerning the Convention, to help the reader to trace the origin of articles to which, in some cases, a new number has been given.

/ (3) inflicting

- (3) inflicting on members of the group measures or conditions of life aimed at causing their deaths;
- (4) imposing measures intended to prevent births within the group.

ARTICLE III

("Cultural" genocide)

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or religious belief of its members such as:

- (1) prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
- (2) destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.

ARTICLE IV

(Punishable acts)

The following acts shall be punishable:

- (a) genocide as defined in Articles II and III;
- (b) conspiracy to commit genocide;
- (c) direct incitement in public or in private to commit genocide whether such incitement be successful or not;
- (d) attempt to commit genocide;
- (e) complicity in any of the acts enumerated in this article.

ARTICLE V

(Persons liable)

Those committing genocide or any of the other acts enumerated in Article IV shall be punished whether they are Heads of State, public officials or private individuals.

(Domestic legislation)

ARTICLE VI

The High Contracting Parties undertake to enact the necessary legislation in accordance with their constitutional procedures to give effect to the provisions of this Convention.

(Jurisdiction)

ARTICLE VII

Persons charged with genocide or any of the other acts enumerated in Article IV shall be tried by a competent tribunal of the State in the territory of which the act was committed or by a competent international tribunal.

(Action of the United Nations)

ARTICLE VIII

1. A party to this Convention may call upon any competent Organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.
2. A party to this Convention may bring to the attention of any competent Organ of the United Nations any case of violation of this Convention.

(Extradition)

ARTICLE IX

1. Genocide and the other acts enumerated in Article IV shall not be considered as political crimes and therefore shall be grounds for extradition.
2. Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force.

(Settlement of disputes by the International Court of Justice)

Disputes between 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 competent international criminal tribunal.

Final Clauses

(Language, date of the Convention)

(States eligible to become parties to the Convention. Means of becoming a party.)

(Coming into force of the Convention)

ARTICLE XI

The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall bear the date of

ARTICLE XII

1. The present Convention shall be open until 31 194...* 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 General Assembly.

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

2. After 1 194...* 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 XIII

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

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

* The dates for the time limits will have to be filled in according to the date of the adoption of the Convention by the General Assembly.

(Duration of the Convention - Denunciation)

(Abrogation of the Convention)

(Revision of the Convention)

(Notification by the Secretary-General)

ARTICLE XIV

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 XV

Should the number of Parties to this Convention become less than sixteen 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 XVI

1. 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.
2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such requests.

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XII of all signatures, ratifications and accessions received in accordance with Articles XII and XIII, of the date upon which

/the present

the present Convention has come into force,
of denunciations received in accordance with
Article XIV, of the abrogation of the
Convention effected as provided by Article XV,
and of requests for revision of the Convention
made in accordance with Article XVI.

ARTICLE XVIII

(Deposit of the
original of the
Convention and
transmission of
copies to Governments)

The original of this Convention shall be
deposited in the Archives of the United Nations.

A certified copy thereof shall be
transmitted to all Members of the
United Nations and to the non-member States
referred to under Article XII.

ARTICLE XIX

(Registration of the
Convention)

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