

United Nations

Nations Unies

UNRESTRICTED

ECONOMIC
AND
SOCIAL COUNCIL

CONSEIL
ECONOMIQUE
ET SOCIAL

E/447
26 June 1947
ENGLISH
ORIGINAL: FRENCH

MASTER FILE

978

INDEXED

DRAFT CONVENTION ON THE CRIME OF GENOCIDE

This draft convention was prepared by the Secretary-General of the United Nations in pursuance of the resolution of the Economic and Social Council dated 28 March 1947.

TABLE OF CONTENTS

	Page
Part I. Draft Convention for the Prevention and Punishment of Genocide.	5
Part II. Comments on the Draft Convention	14
Section I. Introduction	14
I. Instructions to the Secretary-General	14
II. How the present study was prepared.	15
III. Definition of the notion of genocide.	16
IV. The chief problems involved in the international punishment of genocide.	17
1. What human groups should be protected by the Convention?.	17
2. What is meant by genocide?	17
3. Will the Convention be universal, or will its application be strictly limited to the States parties to the Convention?.	18
4. Are the acts of genocide punishable under the Convention to be only acts committed by rulers or statesmen (i.e., persons having strictly political functions such as Ministers and members of legislative assemblies), or acts committed by rulers, officials properly so-called, and private persons without distinction?	18
5. Punishment of genocide by an international tribunal	19
6. Conditions of entry into force of the Convention	19
V. How the Convention was drafted.	19
Section II. Comments Article by Article	20
A. BODY OF THE CONVENTION	
Article I. General Definitions.	20
No. I of Article I	21
No. II of Article I.	22

	Page
1. The act must be intentional.	23
International war and civil war.	23
Acts of violence by individuals or communities not aimed at the destruction of a group of human beings	24
Policy of forced assimilation of a section of the population.	24
2. The act must be aimed either at the destruction of the whole or part of a group or at "preventing its preservation or development"	24
Remarks.	24
The three forms of genocide.	25
1. "Physical" genocide	25
(a) Group massacres or individual executions	25
(b) Subjection to conditions of life wherein, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion, the individuals are doomed to weaken or die	25
(c) Mutilations and biological experiments imposed with no curative purpose	25
(d) Deprivation of all means of livelihood by confiscation of property, looting, curtailment of work, denial of housing and supplies otherwise accessible to the other inhabitants of the territory concerned.	26
2. "Biological" genocide	26
(a) Sterilization and/or compulsory abortion	26
(b) Segregation of the sexes	26
(c) Obstacles to marriage.	26
3. "Cultural" genocide	26
The means of "cultural" genocide.	27
(a) Forced transfer of children to another human group.	27
(b) Forced and systematic exile of individuals representing the culture of a group.	27
(c) Prohibition of the use of the national language even in private intercourse	28

	Page
(d) Systematic destruction of books printed in the national language, or of religious works, or prohibition of new publications.	28
(e) Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic or religious value, and of objects used in religious worship.	28
Article II - Punishable Offences	29
"Attempts to commit genocide"	29
"Preparatory acts".	29
"Wilful participation in acts of genocide in all its forms"	30
"Direct public incitement to any act of genocide".	30
"Conspiracy to commit acts of genocide"	31
Article III - Punishment of a Particular Offence.	32
"All forms of public propaganda".	33
"Their systematic and heinous character".	33
Propaganda "tending . . .to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act".	33
Article IV - Responsible persons	35
Article V - Command of the Law and Superior Order	36
Article VI - Provisions Concerning Genocide in National Legislation	37
Article VII - Universal Enforcement of National Legislation	38
Article VIII - Extradition	39
Article IX - Trial of Genocide by an International Court	40
Article X - International Court competent to Try Genocide	42
<u>1st Draft:</u> Trial by an international court of criminal jurisdiction having general competence.	42
<u>2nd Draft:</u> Trial by a special international court to be set up under the present Convention.	43
Article XI - Dissolution of Groups or Organizations Having Participated in Genocide.	44

	Page
Article XII - Action by the United Nations to Prevent or to Stop Genocide.	45
Article XIII - Reparations to Victims of Genocide	47
B. FINAL PROVISIONS	
Article XIV - Settlement of Disputes on Interpretation or Application of the Convention.	50
Article XV - Language - Date of the Convention.	52
Article XVI - What States May Become Parties to the Convention. Ways to Become Party to It	53
1. Common feature of the two drafts	53
2. Explanation of the first draft	54
3. Explanation of the second draft.	54
Article XVII - Reservations	55
Article XVIII - Coming into Force.	56
Article XIX - Duration of the Convention - Denunciation.	57
1. Common feature of the two drafts	57
2. Explanation of the first draft	58
3. Explanation of the second draft.	58
Article XX - Abrogation of the Convention	59
Article XXI - Revision of the Convention	60
Article XXII - Notifications by the Secretary-General	61
Article XXIII - Deposit of the Original of the Convention and Transmission of Copies to Governments.	62
Article XXIV - Registration of the Convention	63
<u>Suggestions Submitted by the Experts</u>	64
Part III. Opinion of the Committee on the Progressive Development of International Law and its Codification	65
Annex I. Establishment of a Permanent International Criminal Court for the Punishment of Acts of Genocide	67
Annex II. Establishment of an Ad Hoc International Criminal Court for the Punishment of Acts of Genocide	77

PART I

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE

Preamble

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

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

Article I

Definitions

(Protected
Groups)

I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.

(Acts
qualified as
Genocide)

II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.

Such acts consist of:

1. Causing the death of members of a group or injuring their health or physical integrity by:

/(a) group

- (a) group massacres or individual executions; or
 - (b) subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or
 - (c) mutilations and biological experiments imposed for other than curative purposes; or
 - (d) deprivation of all means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.
2. Restricting births by:
- (a) sterilization and/or compulsory abortion; or
 - (b) segregation of the sexes; or
 - (c) obstacles to marriage.
3. Destroying the specific characteristics of the group by:
- (a) forced transfer of children to another human group; or
 - (b) forced and systematic exile of individuals representing the culture of a group; or
 - (c) prohibition of the use of the national language even in private intercourse; or
 - (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
 - (e) systematic destruction of historical or religious monuments or their diversion to alien uses,

/destruction

destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

Article II

(Punishable
Offences)

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

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

II. The following shall likewise be punishable:

1. wilful participation in acts of genocide of whatever description;
2. direct public incitement to any act of genocide, whether the incitement be successful or not;
3. conspiracy to commit acts of genocide.

Article III

(Punishment of
a Particular
Offence)

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

Article IV

(Persons
Liable)

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

Article V

(Command
of the Law
and Superior
Orders)

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

Article VI

(Provisions
concerning
Genocide in
Municipal
Criminal Law)

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

Article VII

(Universal
Enforcement
of Municipal
Criminal Law)

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

Article VIII

(Extradition)

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

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

Article IX

(Trial of
Genocide by
an Interna-
tional Court)

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

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

Article X

(International Court competent to try Genocide)

Two drafts are submitted for this section:

- 1st draft: The court of criminal jurisdiction under Article IX shall be the International Court having jurisdiction in all matters connected with international crimes.
- 2nd draft: An international court shall be set up to try crimes of genocide (vide Annexes).

Article XI

(Disbanding of Groups or Organizations Having Participated in Genocide)

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

Article XII

(Action by the United Nations to Prevent or to Stop Genocide)

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

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

Article XIII

(Reparations to Victims of Genocide)

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

Article XIV

Article XIV

(Settlement
of Disputes
on Interpretation or Application of
the Convention)

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

Article XV

(Language -
Date of the
Convention)

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

Article XVI

(First Draft)

(What States
may become
Parties to
the Convention.
Ways to become
Party to it)

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

(Second Draft)

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

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

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

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

Article XVII

(Reservations)

No proposition is put forward for the moment.

Article XVIII

(Coming into Force)

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

Contracting Parties.

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

Article XIX

(First Draft)

(Duration of the Convention)

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.

(Second Draft)

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

Article XX

(Abrogation of the Convention)

Should the number of Members of the United Nations and non-member States bound by this Convention become

/less

less than...as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

Article XXI

(Revision of
the Convention)

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

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

Article XXII

(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 XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Articles XVI and XVIII, of denunciations received in accordance with Article XIX, of the abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

Article XXIII

(Deposit of
the Original of
the Convention
and Transmission
of Copies to
Governments)

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

/Article XXIV

Article XXIV

(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.

PART II
COMMENTS ON THE DRAFT CONVENTION
SECTION I. INTRODUCTION

I. Instructions to the Secretary-General

The Economic and Social Council, acting on a resolution of the General Assembly dated 11 December 1946*, by a resolution dated 28 March 1947 instructed the Secretary-General to undertake studies and to prepare a draft convention on the international crime of genocide.

* "Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

"Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

"The punishment of the crime of genocide is a matter of international concern.

"The General Assembly, therefore,

"Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices - whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds - are punishable.

"Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime.

"Recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide; and, to this end,

"Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly".

The resolution of the Economic and Social Council reads as follows:

"The Economic and Social Council,

"Taking cognizance of the General Assembly Resolution No. 96 of 11 December 1946, instructs the Secretary-General:

"(a) to undertake, with the assistance of experts in the field of international and criminal law, the necessary studies with a view to drawing up a draft convention in accordance with the resolution of the General Assembly; and

"(b) after consultation with the General Assembly Committee on the Development and Codification of International Law and if feasible the Commission on Human Rights, and after reference to all Member Governments for comments, to submit to the next session of the Economic and Social Council a draft convention on the crime of genocide."

In pursuance of the above resolution of the Economic and Social Council, the Secretary-General asked the Director of the Division of Human Rights to prepare a draft convention with suitable comments and requested three experts, Mr. Donnedieu de Vabres, Professor at the Paris Faculty of Law, His Excellency, Professor Pella, President of the International Association for Penal Law, and Professor Lemkin, to give him the assistance of their valuable advice.

The experts discussed a preliminary draft of the Convention with Professor Humphrey, Director of the Division of Human Rights, Professor Giraud, Chief of the Research Section of the Division of Human Rights, and Mr. Kliava, representing the Legal Department.

On the basis of the comments of these experts, the Secretary-General amended and supplemented the preliminary draft which he had submitted to their consideration; this has now become the draft Convention reproduced above.

II. How the present study was prepared

The Secretary-General felt that he ought to define the notion of genocide in such a way as not to encroach on other notions which logically are and should be distinct.

In determining what should be included in the draft, he was guided by

/the Assembly

the Assembly resolution of 11 December 1946 concerning genocide, and has adopted the principles and methods of application established therein.

For the rest he considered that the first draft to be submitted to the competent organs of the United Nations ought, as far as possible, to embrace all the points likely to be adopted, it being left to these organs to eliminate what they wished.

In so doing the Secretary-General did not intend to recommend one political solution rather than another, but wished to offer a basis for full discussion and bring out all the points deserving of notice.

The organs of the United Nations, consisting of representatives of Governments, will be entirely free to decide the political question raised by the problem of the prevention and punishment of genocide.

III. Definition of the notion of genocide

Genocide is the deliberate destruction of a human group.

This literal definition must be rigidly adhered to; otherwise there is a danger of the idea of genocide being expanded indefinitely to include the law of war, the right of peoples to self-determination, the protection of minorities, the respect of human rights, etc.

Absence of a careful definition of the notion of genocide would present two disadvantages.

Firstly, there would be a tendency to include under genocide international crimes or abuses which, however reprehensible they may be, do not constitute genocide and cannot be regarded as such by any normal process of reasoning. International law must be built up on a rational and logical basis and exclude confusion and arbitrary opinions; each idea must be properly defined and not overlap others.

Secondly, if the notion of genocide were excessively wide, the success of the convention for the prevention and punishment of what is perhaps the most odious international crime would be jeopardized. If

/the convention

the convention on genocide were to include too many accessory reservations and implications whose significance was not always easy to discern at first sight, Governments might become suspicious and tend to abstain. A multiplicity of objectives might lead to the chief target being missed.

The law of war, the law of nationality, the protection of minorities, the general rights and obligations of States, the protection of human rights - these are so many chapters of international law which should not completely, or even partially, coincide with the question of genocide, even though genocide may have many points of contact with them.

IV. The chief problems involved in the international punishment of genocide

The chief problems involved in the international punishment of genocide, which are governmental rather than technical problems, are the following:

1. What human groups should be protected by the Convention?

Human beings exist variously in racial, national, linguistic, religious and political groups, and even this list is not exhaustive.

Should the Convention on genocide protect all or only some of these? That is the first general question which will have to be settled.

The General Assembly's resolution speaks of "racial, religious, political and other groups" and we adopted this formula (see Article I).

2. What is meant by genocide?

Professor Lemkin distinguishes between "physical" genocide (destruction of individuals), "biological" genocide (prevention of births), and "cultural" genocide (brutal destruction of the specific characteristics of a group).

Should all these three notions be accepted or only the first and second? That is the second general question to be decided.

/According to

According to the method we have indicated, we have submitted formulas covering the three types of genocide so as to convey an exact idea of what they represent, and thus enable the United Nations organs to reach a decision. (See Article I).

3. Will the Convention be universal or will its application be strictly limited to the States parties to the Convention?

Obviously the obligations established by the Convention should apply only to the States parties to it, for otherwise States parties and States not parties to the Convention would be on an equal footing.

It is conceivable, however, that States might limit the application of the Convention strictly to acts committed in the territories of States parties thereto, or by nationals of such States or, on the contrary, that States parties to the Convention might punish genocide wherever committed and regardless of the nationality of the criminals.

The Secretary-General and the experts were of the opinion that the draft Convention should adopt the last-mentioned point of view, firstly because that seems to be the intention of the Assembly resolution of 11 December 1946, and secondly, because genocide is by its nature an offence under international law; and if this were ignored the Convention would fail in its object. (See Preamble 1, 2, Articles VII, VIII, XII).

4. Are the acts of genocide punishable under the Convention to be only acts committed by rulers or statesmen (i.e., persons having strictly political functions such as Ministers and members of legislative assemblies), or acts committed by rulers, officials properly so called, and private persons without distinction?

Contrary to the opinion expressed by an expert (see below Article V and comments), the draft Convention has adopted the widest formula, firstly because this is in accordance with the general method followed, and secondly because the Assembly resolution of

11 December 1946 would seem to have endorsed that formula.

5. Punishment of genocide by an international tribunal

National courts will be called upon to play a part in the punishment of genocide, but in the more serious cases it would appear to be highly desirable that it should be punished by an international tribunal.

Such a tribunal might be an international criminal court with general jurisdiction; in the absence of such a court, a special court with jurisdiction limited to genocide would have to be provided for.

The question of the establishment of an international criminal court with general jurisdiction exceeds the scope of the question of genocide. It is not for us to deal with this question, but the bodies entrusted with the preparation of the Convention on the punishment of genocide may consider the question in liaison with the other bodies dealing with international criminal law and the codification of international law.

6. Conditions of entry into force of the Convention

In view of the fact that the Convention is to be of universal application, i.e. in some respects even to affect States not parties to the Convention, the question of how many accessions will be needed before the Convention can come into force is of special importance.

V. How the Convention was drafted

In view both of the fact that the draft Convention is intended to form a basis of discussion and to facilitate such discussion and that genocide is a new subject, an effort has been made to deal with the questions in order and to isolate them in the draft. The earlier articles give a somewhat detailed classification and lists of acts which perhaps need not be maintained in the final text of the Convention. The method followed was that of induction; once agreement has been reached on what is to be included or excluded, shorter synthetic formulas might be substituted for the present analytical texts.

SECTION II. COMMENTS ARTICLE BY ARTICLE

A. BODY OF THE CONVENTION

ARTICLE I

General Definitions

(Protected
Groups)

I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.

(Acts
qualified
as Genocide)

II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.

Such acts consist of:

1. Causing the death of members of a group or injuring their health or physical integrity by:

- (a) group massacres or individual executions; or
- (b) subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or
- (c) mutilations and biological experiments imposed for other than curative purposes; or
- (d) deprivation of all means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing, and of supplies otherwise available to the other inhabitants of the territory concerned.

2. Restricting births by:

- (a) sterilization and/or compulsory abortion; or

/(b) segregation

- (b) segregation of the sexes; or
 - (c) obstacles to marriage.
3. Destroying the specific characteristics of the group by:
- (a) forced transfer of children to another human group; or
 - (b) forced and systematic exile of individuals representing the culture of a group; or
 - (c) prohibition of the use of the national language even in private intercourse; or
 - (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
 - (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

COMMENTS ON ARTICLE I

I. Article I, Section I

"The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings."

1. Genocide, as its name suggests, is aimed at a group through the individual members which compose it.

A human group is made up of a certain part of the population whose members have common characteristics distinguishing them from other members of society.

From a very general point of view, there are many and diverse human groups; but if the problem of genocide is considered from the practical point of view and in the light of past experience, it is obvious that protection is

/not meant

not meant to cover a professional or athletic group. The human groups to be protected are:

racial
national
linguistic
religious
political.

2. The Secretary-General mentioned these five groups because, apart from the linguistic group, they were mentioned in the Assembly resolution of 11 December 1946 and because, in virtue of the method adopted, he was to submit the widest possible formula.

One of the experts consulted, Professor Lemkin, voiced some doubts, however, on the advisability of including political groups. He pointed out, on the one hand, that political groups have not the permanency and the specific characteristics of the other groups referred to and, on the other hand, that the Convention on Genocide being of general interest, it should not run the risk of failure by introducing ideas on which the world is deeply divided. He also pointed out that in practice the human groups most likely to suffer from genocide as history has shown, are racial, national and religious groups.

Another expert, Professor Donnedieu de Vabres, opposed this point of view and said that genocide was an odious crime, regardless of the group which fell victim to it and that the exclusion of political groups might be regarded as justifying genocide in the case of such groups. Professor Pella felt that this very delicate question was a matter for the Assembly. Of course the protection of political groups, if agreed to by governments, would not cover activities by political groups with Nazi or Fascist tendencies, for those are the very groups which in the past were guilty of committing or instigating the crime of genocide.

II. Article I - Section II

The first paragraph of this Section defines genocide as a deliberate act "with the purpose of destroying groups of human beings in whole or in part or
/of preventing

of preventing their preservation or development."

1. The act must be deliberate

This means that its object must be the destruction of a group of human beings.

By this definition, certain acts which may result in the total or partial destruction of a group of human beings are in principle excluded from the notion of genocide, namely, international or civil war, isolated acts of violence not aimed at the destruction of a group of human beings, the policy of compulsory assimilation of a national element, mass displacements of population.

International War and Civil War

1. War is not normally directed at the destruction of the enemy: such destruction is only the means used by a belligerent to impose his will on the opponent. When that result has been achieved, peace is concluded. However harsh the conditions imposed on the defeated party may be, it retains the right to existence.

2. The infliction of losses, even heavy losses, on the civilian population in the course of operations of war, does not as a rule constitute genocide.

In modern war belligerents normally destroy factories, means of communication, public buildings, etc. and the civilian population inevitably suffers more or less severe losses.

It would of course be desirable to limit such losses. Various measures might be taken to achieve this end, but this question belongs to the field of the regulation of the conditions of war and not to that of genocide.

3. War may, however, be accompanied by the crime of genocide. This happens when one of the belligerents aims at exterminating the population of enemy territory and systematically destroys what are not genuine military objectives. Examples of this are the execution of prisoners of war, the massacre of the populations of occupied territory and their gradual extermination. These are clearly cases of genocide.

Acts of violence by individuals or communities not aimed at the destruction of a group of human beings

In times of stress, when there are brawls or clashes between opposing political parties or adherents of hostile religions, or when parties or factions contend for power by force, there may be loss of human life; but such acts are outside the notion of genocide so long as the intention physically to destroy a group of human beings is absent.

Policy of forced assimilation of a section of the population

Such a policy, even if the notion of "cultural" genocide (see below) is admitted, does not as a rule constitute genocide.

The system of protection of minorities, if applicable, should provide for the protection of minorities against a policy of forced assimilation employing relatively moderate methods.

Mass displacements of populations from one region to another also does not constitute genocide.

It would, however, become genocide if the operation were attended by such circumstances as to lead to the death of the whole or part of the displaced population. (if, for example, people were driven from their homes and forced to travel long distances in a country where they were exposed to starvation, thirst, heat, cold and epidemics).

2. The act must be aimed either at the destruction of the whole or part of a group or at "preventing its preservation or development."

The systematic destruction even of a fraction of a group of human beings constitutes an exceptionally heinous crime.

Measures to prevent the preservation or development of a group is also genocide.

Remarks: Obviously it makes no difference whether the victims of genocide are nationals or aliens. It makes little difference whether genocide is committed in time of war or peace. (subject to what has been said above concerning foreign or civil war).

The three forms of genocide

Article I describes the three forms of genocide which Professor Lemkin has called "physical", "biological" and "cultural" genocide.

In order to convey a concrete and exact idea of these three forms, the draft gives a general enumeration of the material means used for committing genocide.

1. "Physical" genocide

This involves acts intended to "cause the death of members of a group, or injuring their health or physical integrity".

The means referred to are:

(a) Group massacres or individual executions

This calls for no comments.

(b) Subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion, are likely to result in the debilitation or death of the individuals.

This is what may be termed "slow death". In such cases, the intention of the author of genocide may be less clear. Obviously, if members of a group of human beings are placed in concentration camps where the annual death rate is thirty per cent to forty per cent, the intention to commit genocide is unquestionable. There may be borderline cases where a relatively high death rate might be ascribed to lack of attention, negligence or inhumanity, which, though highly reprehensible, would not constitute evidence of intention to commit genocide. At all events, there are such borderline cases which have to be dealt with on their own merits.

(c) Mutilations and biological experiments imposed with no curative purpose

These practices were current in Hitlerite Germany.

Biological experiments are to be condemned even if they have a scientific value because they imply that the life and health of the members of the group of human beings subjected to them are regarded as

/worthless.

worthless.

- (d) Deprivation of all means of livelihood by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.

Man cannot live without the help he receives from the community in exchange for his services to it. If the State systematically denies to members of a certain group the elementary means of existence enjoyed by other sections of the population, it condemns such persons to a wretched existence maintained by illicit or clandestine activities and public charity, and in fact condemns them to death at the end of a medium period instead of to a quick death in concentration camps; there is only a difference of degree.

2. "Biological" genocide

This is characterized by measures aimed at the extinction of a group of human beings by systematic restrictions on births without which the group cannot survive.

Such restrictions may be physical, legal or social.

Article I lists these processes as follows:

- (a) Sterilization and/or compulsory abortion

These are biological means.

- (b) Segregation of the sexes

This may be induced by various causes such as compulsory residence in remote places, or the systematic allocation of work to men and women in different localities.

- (c) Obstacles to marriage

These are legal restrictions.

3. "Cultural" genocide

This consists not in the destruction of members of a group nor in restrictions on birth, but in the destruction by brutal means of the specific characteristics of a group; this section gave rise to divergent views among the experts.

/Professor Donnedieu

Professor Donnédieu de Vabres and Professor Pella held that cultural genocide represented an undue extension of the notion of genocide and amounted to reconstituting the former protection of minorities (which was based on other conceptions) under cover of the term genocide.

Professor Lemkin, on the contrary, argued that a racial, national, or religious group cannot continue to exist unless it preserves its spirit and moral unity. Such a group's right to existence was justified not only from the moral point of view, but also from the point of view of the value of the contribution made by such a group to civilization generally. If the diversity of cultures were destroyed, it would be as disastrous for civilization as the physical destruction of nations. He added that means of cultural genocide were criminal acts under municipal law and that hence there was no reason why they should not be included in the international crime of genocide.

Professor Lemkin pointed out that cultural genocide was much more than just a policy of forced assimilation by moderate coercion - involving for example, prohibition of the opening of schools for teaching the language of the group concerned, of the publication of newspapers printed in that language, of the use of that language in official documents and in court, and so on. It was a policy which by drastic methods, aimed at the rapid and complete disappearance of the cultural, moral and religious life of a group of human beings.

Means of cultural genocide

(a) Forced transfer of children to another human group

The separation of children from their parents results in forcing upon the former at an impressionable and receptive age a culture and mentality different from their parents'. This process tends to bring about the disappearance of the group as a cultural unit in a relatively short time.

The experts were agreed that this point should be covered by the Convention on genocide, but their agreement did not go further than that.

(b) Forced and systematic exile of individuals representing the culture of a group

/Such

Such individuals are chiefly scholars, writers, artists, teachers and educators, ministers of religion, doctors of medicine, engineers, lawyers, administrators, etc.

The cultural and moral life of a group is sustained by its cultured members. If these are removed, the group is no more than an amorphous and defenceless mass. Its language is degraded to the rank of a dialect, and hence those using it are reduced to a position of inferiority, and the language has no longer any political or social significance.

Professor Lemkin expressed preference for the following wording: "systematic elimination of the individuals representing the culture of the group by acts of violence or infringement of personal liberty."

It seems to us that if this idea is to be adopted, the simpler text is preferable.

(c) Prohibition of the use of the national language even in private intercourse

This amounts to outlawing the language and its use even in the home or in correspondence.

Professor Lemkin proposed the following different formula: "prohibition, on threat of criminal punishment or violent measures, of the use of the national language even in private intercourse."

(d) Systematic destruction of books printed in the national language, or of religious works, or prohibition of new publications

A religious linguistic national group cannot continue to exist if it relies on oral tradition only.

(e) Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value, and of objects used in religious worship

Such measures are also directed at undermining the existence of a group of human beings.

ARTICLE II

(Punishable
Offences)

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

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

II. The following shall likewise be punishable:

1. wilful participation in acts of genocide of any whatever description;
2. direct public incitement to any act of genocide, whether the incitement be successful or not;
3. conspiracy to commit acts of genocide.

Comments on Article II

This article lists other acts which are punishable under Article VII (attempts, preparatory acts, complicity, incitement, conspiracy to commit genocide.)

"Attempts to commit genocide"

No comments

"Preparatory acts"

As a rule preparatory acts do not fall under criminal law because the agent is unable to carry out his schemes. But it is different in the case of certain crimes against society.

/Preparatory

Preparatory acts for the crime of genocide should be punishable for a number of reasons.

On the one hand genocide is an extremely grave crime, the effects of which, once it has been committed, are irreparable; on the other hand it is a crime which normally requires the support of a comparatively large number of individuals and substantial preparation.

In order to make acts preparatory to the crime of genocide punishable, however, such acts must first be defined, otherwise there would be the possibility of arbitrary proceedings against political opponents for acts of no serious import or of doubtful significance.

Article II, Section 2 gives the preparatory acts under three headings as follows:

(a) Firstly "studies and research for the purpose of defining the technique of genocide".

For example, chemists and doctors might be asked to undertake research in the gases to be used for mass executions.

(b) This refers to the setting up of installations and the obtaining of articles or substances intended for genocide and covers the actual material preparations for genocide.

(c) Instructions or orders and the distribution of tasks with a view to committing genocide.

This refers to what might be called the "administrative" preparation of genocide by the designation of persons to carry out the policy, their grouping in teams, the establishment of a list of future victims, etc.

"Wilful participation in acts of genocide in all its forms"

This refers to participation by both principals and accessories.

"Direct public incitement to any act of genocide"

This does not mean orders or instructions by officials to their subordinates, or by the heads of an organization to its members, which are covered by the "preparatory acts" referred to above.

It refers to direct appeals to the public by means of speeches, radio or press, inciting it to genocide.

Such appeals may be part of an agreed plan but they may simply reflect a purely personal initiative on the part of the speaker. Even in the latter case, public incitement should be punished. It may well happen that the lightly or imprudently spoken word of a journalist or speaker himself incapable of doing what he advises will be taken seriously by some of his audience who will regard it as their duty to act on his recommendation. Judges will have to weigh the circumstances and show greater or lesser severity according to the position of the criminal and his authority, according to whether his incitement is premeditated or merely represents thoughtless words.

"Conspiracy to commit acts of genocide"

Genocide can hardly be committed on a large scale without some form of agreement. Hence the mere fact of conspiracy to commit genocide should be punishable even if no "preparatory act" has yet taken place.

ARTICLE III

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

Comments on Article III

This Article is not concerned with direct and public incitement to any act of genocide, which falls within Article II. In cases provided for by Article III, the author of the propaganda would not recommend the commission of genocide, but would carry on such general propaganda as would, if successful persuade those impressed by it to contemplate the commission of genocide in a favourable light.

Such propaganda is even more dangerous than direct incitement to commit genocide. Genocide cannot take place unless a certain state of mind has previously been created. The majority of people participating in genocide would be persons believing themselves to be honest citizens incapable of committing individual crimes for gain or in order to satisfy personal vengeance. They will be induced first to condone and later to commit genocide, because they will have been convinced that the existence of the human group designated as the victim of genocide is a very great evil, that this group represents error and perversion, that it imperils society, the nation, some religion, some political or social system, that it is an obstacle to progress, etc.... That is the philosophical and ideological preparation for genocide.

Such propaganda must be prohibited, but it must also be carefully defined. Political and social life is, in fact, composed of antagonisms and oppositions which often involve bitter and violent criticism, controversies and discussions. The various human groups of which society is composed often regard each other as rivals, antagonists, adversaries, or even enemies, and treat each other as such. There can be no question of prohibiting all criticism directed against a social group, even if this criticism is unjust,

impassioned and excessive. The prohibition of genocide must not provide a pretext for any infringement of the freedom of opinion nor be used as a means of preventing abuse of polemical campaigns. During elections, for instance, opponents often use exaggerated language which, taken literally, might at times be interpreted as reflecting intentions of genocide, whereas the violence really only lies in the language.

Before any propaganda can be considered as likely to be preparatory to genocide, it must possess certain clearly defined characteristics.

Article III of the draft submitted describes the propaganda falling under the Convention as follows:

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

Let us analyze the terms of this definition.

"all forms of public propaganda"

The propaganda must be public, that is to say, it must be addressed to public opinion as a whole or to a fraction of it. This excludes private conversations, which are usually carried on by ordinary private persons without responsibility and have only a slight influence. Private conversations are not likely to bring about the psychological and moral conditions in which genocide can be committed.

We have said "all forms of propaganda", using the plural, because not only are the sources of propaganda various (political, religious) but it may also assume many forms (speeches, broadcasts, the press, cinema, etc. . .)

"their systematic and hateful character"

In order to make the idea of destroying a human group acceptable, this group must be represented in an odious light, the propaganda must necessarily be heavily charged with hatred and must be systematic, that is to say, repeated methodically.

Propaganda "tending . . . to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act."

/If the propaganda

If the propaganda openly advocated genocide, it would come within Article II (end), as already pointed out.

Article III provides specifically for propaganda which, without recommending it, inevitably leads to genocide. Persons won over by this propaganda will, when the question becomes acute, tend to regard genocide as a necessary, legitimate or excusable act, because the group concerned has already been denounced as a fundamentally bad element, constituting a mortal danger for the nation or for society.

ARTICLE IV

(Persons Those committing genocide shall be punished, be
liable) they rulers, public officials or private individuals.

Comments on Article IV

1. The Assembly resolution of 11 December 1946 states that "genocide is a crime under international law...for the commission of which principals and accomplices - whether private individuals, public officials or statesmen...are punishable."

The perpetration of genocide can indeed be the act of statesmen, officials or individuals.

The heaviest responsibility is that of statesmen or rulers in the broad sense of the word, that is to say, heads of state, ministers and members of legislative assemblies, whose duty it is to abstain from organizing genocide personally and from provoking it and to prevent its commission by others.

Nevertheless, officials who commit genocide at government orders - the most frequent case - or do so on their own initiative, also bear a heavy responsibility.

Finally, private persons, that is to say, persons who are neither rulers nor officials, can also commit acts of genocide ("public incitement to any act of genocide", Article 2 - II - 20, and propaganda - Article 3), either by collective action (through a political group, league, or clandestine or other association), or by individual action.

2. Mr. Donnedieu de Vebres, while admitting that the General Assembly resolution made no distinction between rulers and executives, thought that the definition of genocide should be restricted to the actions of rulers. He thought that, although the agents were subject to international jurisdiction, they would be prosecuted at common law (crime of homicide, etc.).

ARTICLE V

(Command of the Law and Superior Orders) Command of the law or superior orders shall not justify genocide.

Comments on Article V

It should not be possible for offenders, whoever they may be, to take shelter behind a command of the law or superior orders.

After the fall of a regime which has organized genocide, individuals and officials will no doubt invoke this excuse. They will say: "It was not for us to question the law whereby we were governed, or the commands which came to us from a superior authority. Our duty was to obey, and we obeyed."

Hence great care must be taken to provide expressly that command of the law or superior orders are no defence.

In certain cases, of course, a command of the law or superior orders may constitute extenuating circumstances. That is a question for the judge. The principle, however, is that an individual who participated in genocide will not escape liability by pleading that the law or superior orders forced him to participate in genocide.

ARTICLE VI

(Provisions concerning Genocide in Municipal Criminal Law) The High Contracting Parties shall make provision in their municipal law for acts of genocide as defined by Articles I, II and III above, and for their effective punishment.

Comments on Article VI

It is essential that the Parties to the Convention should introduce into their criminal law provisions for the punishment of the acts of genocide as defined by the Convention.

It did not seem advisable to establish in the Convention the punishments to be applied to various acts of genocide, because penal systems vary and because it is preferable to leave some freedom of action to States, whenever this does not present any real disadvantage. It is enough to say that the penalties should be sufficiently rigorous to make punishment effective.

ARTICLE VII

(Universal
Enforcement of
Municipal
Criminal Law)

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

Comments on Article VII

Preliminary Remarks

Articles VI, VIII and IX should be considered as a whole. They lay down rules providing for trial of persons guilty of genocide by the courts of the one or other state or by an international court.

When persons guilty of acts of genocide are in territory under the jurisdiction of a State, such State is bound to arrest these individuals and either to bring them before its own courts (Article VII), or to hand them over to another State which has requested their extradition (Article VIII), or to bring them before an international court (Article IX).

Article VII provides for the first obligation.

This article lays down the principle of the universality of punishment, which means that the contracting Parties undertake to punish those persons guilty of genocide who are in their territory, irrespective of their nationality or of the place where the crime was committed.

ARTICLE VIII

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

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

Comments on Article VIII

Paragraph 1

This paragraph lays down the principle that genocide should not be considered as a political crime. It therefore constitutes grounds for extradition.

Paragraph 2

The High Contracting Parties pledge themselves to grant extradition for acts of genocide, which means that in such cases they would be released of their duty to bring the offenders before their own courts.

Needless to say, the High Contracting Parties will not be obliged to grant extradition on a simple request. In such cases, they would be influenced by the general principles of international law in deciding whether to accede to a request for extradition. The two main contingencies in which a State would be qualified in requesting extradition would be if the crime had been committed in its territory or if the victims of genocide were its nationals, even if the crime was not committed in its territory.

ARTICLE IX

(Trial of
Genocide by an
International
Court)

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

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

Comments on Article IX

Article IX refers to cases in which the acts of genocide can or must be brought before an international court.

First Case - The State which has arrested the persons guilty of genocide is free to bring them before an international court, although not obliged to do so.

The State may refuse to try these persons for various reasons. It may not consider itself capable of seeing that justice is done; for instance, if the decision of the jury empanelled for the case is open to criticism. The State may also fear lest the trial further disturb its divided and excited public opinion, or it may be reluctant to risk the possibility of a decision by its courts attracting the animosity of other Powers, however unjustified.

The State may refuse to grant extradition on request, either because public opinion in the country, rightly or wrongly, objects; because the State requesting it does not appear capable of ensuring justice; because the latter State is in fact endeavouring to let the offender whose extradition it is requesting go unpunished; or because the State requesting extradition proposes to take revenge on political opponents under cover of punishing genocide.

/In all these

In all these cases, the State will have the option of being released from its responsibility without prejudicing the punishment of genocide by bringing the offenders before the international court.

Whereas Mr. Donnedieu de Vabres and Mr. Pella were in favour of paragraph 1 of Article IX, Mr. Lemkin spoke in favour of its omission, since he thought that persons, other than rulers and leaders of criminal organizations, responsible for the acts defined by the Convention should not be brought before the international court, but should be tried or extradited. He said that as the cases of these other persons were of lesser importance, no action should lie in an international court, since this involved the use of complicated procedure. The danger would be that the complexities of the procedure might eventually result in the offenders going unpunished.

Second Case - The State is obliged to bring acts of genocide before an international court, if these acts of genocide have been committed by individuals acting as organs of the State or with the support or toleration of the State.

This relates to the trial of the rulers of a State, or of persons who conspired with these rulers; these constitute serious cases, of the greatest interest to the whole international community. The international court would be the final authority in such cases.

ARTICLE X

(International
Court competent
to try Genocide)

Two drafts are submitted for this section:

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

Second draft: An international court shall be set up to try crimes of genocide (vide Annexes).

Comments on Article X

Two drafts have been submitted:

First draft: trial by an international court of criminal jurisdiction having general competence.

If an international court having general competence is established, the trial of crimes of genocide will, of course be one of its functions.

Mr. Donnedieu de Vabres thought that, on the basis of the distinction he had drawn between the trial of rulers and of agents, rulers should be justiciable in a criminal chamber to be set up within the International Court of Justice. Mr. Pella was in favour of creating such a chamber and agreed with Mr. Donnedieu de Vabres that if this idea were adopted, the draft adopted in 1928 by the International Association for Penal Law might be taken as a basis of discussion. Mr. Lemkin, however, thought that in the existing circumstances, and in the absence of a sufficiently developed international criminal law, the establishment of a permanent court of criminal jurisdiction having general competence would be premature.

In any case, the question whether such a Court should be established is a general problem, outside the scope of the special problem of the punishment of genocide.

/Second draft:

Second draft: trial by a special international court to be set up under the present Convention.

There may be two views on such an international court, with jurisdiction limited to cases of genocide: a permanent court (see Annex I) or an ad hoc court (see Annex II).

Mr. Donnedieu de Vabres and Mr. Pella thought that the choice between these two types of special courts should be left to the Assembly.

In order to facilitate the study of this problem, Mr. Donnedieu de Vabres, Mr. Pella and Mr. Lemkin amended the aforementioned annexes concerned with these two variants.

(see Page of present text).

ARTICLE XI

(Disbanding of
Groups or
Organizations
Having
Participated in
Genocide)

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

Comments on Article XI

The crime of genocide is of a "social" nature, in the sense that it is always, to a greater or smaller extent, organized, provoked or instigated by movements, groups and associations.

Hence groups and organizations bearing the responsibility for genocide must be disbanded.

Furthermore, any clandestine activities which these groups or organizations may continue to exercise after their dissolution must be punished. In such cases, however, the leaders and members of these groups or organizations should be punished individually for their clandestine activities.

ARTICLE XII

(Action by the United Nations to Prevent or to Stop Genocide)

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

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

Comments on Article XII

1. All criminal law has a preventive effect. The fact that there is a law tends to deter and prevent action by persons who might be tempted to commit a crime. Experience shows, however, that the preventive effect of threats is limited, since these do not stop certain criminals, either because their passions overwhelm their prudence or because they consider the threat of punishment illusory.

In the international field even more than in the national, it is essential to exercise constant vigilance, and preventive action must be taken, either before the harm is done or before it has assumed wide proportions, for then it takes on the nature of a catastrophe, the effects of which are to a great extent irreparable.

There is no need to expatiate on the preventive action which would be taken by the United Nations, for this is a question of the general competence of the United Nations being applied in a particular case.

It must nevertheless be pointed out that, if preventive action is to have the maximum chances of success, the Members of the United Nations must not remain passive or indifferent. The Convention for the punishment of crimes of genocide should, therefore, bind the States to do

everything in their power to support any action by the United Nations intended to prevent or stop these crimes.

2. Mr. Pella and Mr. Lemkin thought it desirable to provide that the Secretary-General of the United Nations should have the duty of informing the competent organs of the United Nations. For various reasons, Governments might hesitate to take the initiative in submitting a question to the organs of the United Nations. In such cases, the Secretary-General, being free of the particular (and possibly perfectly legitimate) preoccupations of States, would act as a representative of the common cause and lay the matter before the organs of the United Nations.

This proposal, however, even in the opinion of its authors, raises the constitutional question whether a Convention to which not every Member of the United Nations will necessarily be a party may confer upon the Secretary-General powers or duties relating to the application of the Charter which are not already laid down by the Charter.

ARTICLE XIII

(Reparations to
Victims of
Genocide)

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

Comments on Article XIII

1. This article contains far-reaching principles.

It represents an application of the principle that populations are to a certain extent answerable for crimes committed by their governments which they have condoned or which they have simply allowed their governments to commit.

Some, perhaps, will contest the validity of this principle by arguing that often criminal intent, the basis of criminal liability, was absent in the population and that the crimes committed by governments were so committed against the will of the majority of the people, the government representing only a minority which forced its will on the people; or again, that the country as a whole did not know what it was doing because it was misled by systematic government propaganda without any means of opposition.

The first answer to that will be that things do not actually always happen like that. Sometimes criminal conduct by governments does not betray the will of the people but accurately reflects the passions, hatreds and prejudices common to the majority or a large part of the population, the remainder of the population being indifferent, passive or offering only mild opposition.

But even where there was no criminal intent on the part of the majority of the people of the country, it is just that the country as a whole should be held to account for the following reasons:

- (a) In this case, the nature of the liability of a whole population

is not "penal", involving punishment, but "civil", involving the obligation to make reparations to victims of genocide. Hence, such liability can be created even in the absence of a general criminal intent on the part of the nation as a whole.

(b) "Civil" liability, in traditional legal thought, is based on the idea of a wrongful act.* Such wrong need not be intentional; ineptitude or negligence are sufficient grounds for liability. Whenever bad governments rule over a people the latter has always been to blame at some time or other. It may be charged with irresponsibility, negligence, indifference, naiveté, lack of judgment, or practical good sense, of courage and will, etc. If the people concerned had not displayed some of those faults it would never have brought or allowed to come to power the governments which committed genocide, or were unable to prevent it.

(c) Furthermore, "civil" liability for genocide must be borne by somebody. If the country in which genocide was committed is not to be held responsible for reparations, who is?

* The modern view of liability as being based in part on the idea of risk does not exclude the idea of a wrong.

It can, of course, happen that the idea of risk, involving much more far-reaching liability than the idea of a wrong, makes it unnecessary to look for a wrong.

But the two ideas are often present together. Where liability is founded on the idea of risk, the idea of a wrong is not necessarily ignored. The wrong is taken into account in certain cases e.g. as a factor aggravating liability of the persons who in accepting the risk committed a serious wrong; or, if the person who suffered the injury himself committed a serious wrong, as a factor excluding or limiting the amount of damages.

3. What is redress to consist of?

Redress may be made to members of the human group who are victims of genocide, or to the group as a whole.

(a) Redress for members of the group.

The dead cannot be brought back to life but compensation or pensions may be given to the spouses, children, or other persons maintained by the deceased.

There may be restitution of seized property or compensation corresponding to the value of the goods in question, wherever such restoration is not possible.

Compensation may be made to persons who have been imprisoned, deported or maltreated.

Special benefits may be granted to survivors of the group in the form of houses, scholarships, etc.

(b) Redress for the group as such.

Such redress may take various forms: reconstitution of the moral, artistic and cultural inheritance of the group (reconstruction of monuments, libraries, universities, churches, etc. and compensation to the group for its collective needs).

B. FINAL PROVISIONS*

(Settlement of disputes on interpretation or application of the Convention)

ARTICLE XIV

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

Comments on this article

1. Difficulties may arise regarding the operation of a Convention. A suitable method of settling them is to submit them to a third party who shall decide between the conflicting parties.

If a dispute arises regarding "the interpretation" of the Convention, i.e. regarding the meaning of its provisions, or "the application" of the Convention, i.e. if it is to be ascertained whether one of the parties has faithfully discharged his obligations, it is normal procedure for the dispute to be submitted to a judicial authority.

The International Court of Justice would appear to be the judicial authority best qualified to deal with such disputes.

Since the Convention is not intended to regulate the particular relations between States but to protect an essential interest of the international community, any dispute is a matter affecting all the parties to the Convention. Hence, such dispute should not be settled by an authority arbitrating between two or more States exclusively, for then its decision would lack any claim to be binding on other States.

* Articles XIV-XXIV concerning final arrangements were to be drafted after the experts had stated their opinion on the Convention as a whole. As the experts had not had sufficient time to deal with them, Mr. Pella proposed that the final provisions might confidently be entrusted to one of Prof. Giraud's experience.

The International Court of Justice, on the contrary, is an organ of the United Nations established by virtue of the Charter itself; it is a court whose authority is recognized by all the Members of the United Nations, and should consequently be given jurisdiction to settle the disputes concerned.

ARTICLE XV

(Language - Date of the Convention)	The present Convention of which the texts are equally authentic shall bear the date of*
---	--

Comments on this article

The General Assembly, that is to say the Plenary Assembly (and its Committees) will play the part of a diplomatic Convention summoned to prepare and adopt a Convention.

When agreement has been reached within the General Assembly, the latter shall by passing a final resolution adopt the Convention and open it either for signature or accession by Members of the United Nations.**

* This will be the date when the General Assembly passes a resolution adopting the text of the Convention and opening it either for signature or for accession by the Members of the United Nations.

** Regarding the question of whether the Convention is to be open to signatures or accessions, see Article XVI below.

ARTICLE XVI

(What States may become parties to the Convention. Ways to become Party to it)

First draft -

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

Second draft -

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

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

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

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

Comments on Article XVI

1. Common feature of the two drafts

The question is who may become a Party to the Convention.

Obviously the Convention will be open to all Members of the United Nations.

Participation of States not Members of the United Nations, is also desirable. It is not possible, however, to employ a general formula which would open the Convention indiscriminately to all non-Member States.

Firstly, there is no official list of such States, and secondly,

* i.e. about 6 months after the adoption of the Convention.

** i.e. at the end of the 6 months period aforesaid..

participation by a State may not be desirable at a given moment for various reasons. The choice of States to be invited should therefore be in the hands of a United Nations organ, which might be the Economic and Social Council. Obviously, the Economic and Social Council will not issue invitations once and for all. If changes should occur in the future, if, for example, new States are formed or if there is a change in the attitude of certain States which had not been considered eligible to receive an invitation, the Economic and Social Council will be free to issue new invitations.

2. Explanation of the first draft

This draft departs from the traditional procedure providing on the one hand for signature followed by ratification; and on the other hand for accessions. This latter procedure is appropriate in the case of conventions prepared by diplomatic conferences. The delegates to these conferences used to be able to sign forthwith the adopted Convention without binding the State they represented, and ratification would take place later after the delegates had reported on their mission to their governments or when the executive power had obtained requisite authorization from Parliament.

In the case of a Convention adopted by the General Assembly of the United Nations, it seems that the traditional procedure involves unnecessary complications. The vote cast in the Assembly by highly representative delegations denotes the assumption of a definite attitude towards the Convention. What purpose would there be then in asking for a signature which has to be followed by ratification? If, as is generally the case, States are not able to bind themselves immediately they can wait with committing themselves until they are able to do so by acceding to the Convention.

It is to be noted that the system represented by the first draft has already been employed for certain general Conventions and that it constitutes the system regularly used for International Labour Conventions.

3. Explanation of the second draft.

The second draft which provides for a preliminary signature period to be followed by later ratifications and accessions upon the expiry of that period, does not call for any further comment.

ARTICLE XVII

(Reservations) No proposition is put forward for the moment.

Comment

At the present stage of the preparatory work, it is doubtful whether reservations ought to be permitted and whether an article relating to reservations ought to be included in the Convention.

We shall restrict ourselves to the following remarks:

1. It would seem that reservations of a general scope have no place in a Convention of this kind which does not deal with the private interests of a State, but with the preservation of an element of international order.

For example, the Convention will or will not protect this or that human group. It is unthinkable that in that respect the scope of the Convention should vary according to the reservations possibly accompanying accession by certain States.

2. Perhaps in the course of discussion in the General Assembly it will be possible to allow certain limited reservations.

These reservations might be of two kinds: either reservations which would be defined by the Convention itself, and which all the States would have the option to express, or questions of detail which some States might wish to reserve and which the General Assembly might decide to allow.

ARTICLE XVIII

(Coming into
Force)

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

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

Comment on Article XVIII

First paragraph - As stated in the introduction, the minimum number of accessions necessary to enable the Convention to come into force must be fixed. In view of the nature of the Convention, parts of which will be universally applicable, it would seem necessary that the number of accessions should be rather high.

A term of 90 days should be allowed to elapse between the receipt of the accession required to enable the Convention to come into force, and its actual coming into force. The States should be given prior notice of the Convention's entry into force in order that they may take the necessary steps as far as they themselves are concerned.

Second paragraph - When once the Convention has come into force, new accessions shall similarly take effect 90 days after receipt.

* The two forms indicated above are alternative, depending on whether it is decided to consider accession as the only procedure necessary for becoming Party to the Convention, or whether signature followed by ratification and accession, is required.

ARTICLE XIX

(Duration of
the Convention-
Denunciation)

1st draft

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.

2nd 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.

Comments

1. Common feature of the two drafts

Both the drafts submitted provide for the possibility of Parties to the Convention terminating their obligations by denouncing the Convention.

Should there be a right of denunciation? Some consider that, in the interests of the progress of international law, States should not be allowed to relieve themselves of their obligations, once they have contracted them, in the case of Conventions serving a purpose of general interest and having universal application.

There are, however, three reasons against regarding obligations under Conventions of this type as permanent.

1. A Convention of general application cannot be enforced unless it has the moral support of the governments and peoples bound by it. As soon as that condition ceases to be fulfilled, the Convention becomes practically nugatory.

2. If States are not obliged to bind themselves, then sound logic dictates

/that they

that they should not be obliged to remain bound. Practically speaking, when States know that they will be able to escape the Convention, they will be less reluctant to accede to it.

3. In the past, governments have argued that if a Convention neither provides for denunciation nor is limited in time, it follows, not that the obligation is of a permanent character, but, on the contrary, that the Convention may be denounced at any moment.

1st draft

This draft permits States to dissociate themselves, but it restricts their freedom in that respect and creates a certain stability.

The Convention would be concluded for a period of six years from the date of its coming into force, renewable indefinitely for a like period by tacit consent. At the end of each period, however, States would have the right to be released by giving notice of denunciation. In that way, negligence or inertia on the part of governments concerned would operate in favour of the continuance of the obligation.

2nd draft

This draft allows States to be released at any time by giving notice which would be effective after a comparatively short period (1 year).

ARTICLE XX

(Abrogation of
the Convention)

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

Comments on Article XX

Since Article XVIII requires.....accessions to bring the Convention into operation, then, if it is logical that the Convention lapses, if as a result of denunciation the number of States bound by the Convention drops below.....

* Number required to make the Convention operative.

ARTICLE XXI

(Revision of
the Convention)

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

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

Comments on Article XXI

No comments.

ARTICLE XXII

(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 XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Article XVI and XVIII, of denunciations received in accordance with Article XIX, of the abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

Comments on Article XXII

The Secretary-General is to inform the States interested, that is to say the States parties to the Convention or likely to become parties to the Convention, of all the acts regarding the Convention of which he has been notified: accessions, denunciations, etc.

ARTICLE XXIII

(Deposit of
the Original
of the
Convention and
Transmission of
Copies to
Governments)

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

Comments on Article XXIII

No comments.

ARTICLE XXIV

(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.

Comments on Article XXIV

No comments.

SUGGESTIONS SUBMITTED BY THE EXPERTS

Prof. Pella and Prof. Lemkin proposed that the resolution of the General Assembly adopting the Convention should contain two recommendations reading as follows:

The Assembly recommends that:

1. The High Contracting Parties should take suitable steps likely to allay such racial, national, or religious antagonisms or conflicts as may lead to genocide.
2. Special national offices should be created by each High Contracting Party in order to centralize information on antagonisms between human groups and to transmit such information to the Secretary-General of the United Nations.

PART III

OPINION OF THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATION

The resolution of the Economic and Social Council dated 28 March 1947 requests that the Secretary-General consult the Committee set up by the General Assembly to study progressive development of International Law and its codification.

That Committee's Chairman, by a letter dated 17 June 1947 to the Secretary-General replied as follows to the request for an opinion:

The Committee has received, under cover of your letter of 10 June 1947 the text of "the draft convention for the prevention and punishment of the crime of genocide, drawn up by the Secretariat, with the assistance of experts in the field of international and criminal law, in accordance with the Resolution of the Economic and Social Council of 28 March 1947."

The Committee fully realizes the urgency, which was expressed in the recommendation contained in the Resolution of the General Assembly of 11 December 1946, of organizing co-operation between States with a view to facilitating the speedy prevention and punishment of the crime of genocide. It notes, however, that the text prepared by the Secretariat, owing to lack of time, has not yet been referred to the Member Governments of the United Nations for their comments, as is contemplated in the Resolution of the Economic and Social Council, and it regrets that, in the absence of information as to the views of the governments, it feels unable at present to express any opinion in the matter.

ANNEXES CONCERNING ARTICLE X

Two drafts were submitted for this article of the Convention.

The first draft provides that crimes of genocide shall be brought before the International Criminal Court having general jurisdiction to try international crimes.

The second draft submitted to provide for the case of the absence of such Court and for the establishment of an International Tribunal with jurisdiction limited to the international trial of crimes of genocide.

Such a Tribunal might be either a permanent Tribunal or an ad hoc Tribunal constituted for the specific purpose of trying cases of genocide.

The experts consulted by the Secretary-General prepared two annexes corresponding to these two possibilities. They were guided by the Convention for the Creation of an International Criminal Court for the Prevention and Punishment of Terrorism concluded at Geneva on 16 November 1937 after the assassination at Marseille.

NOTE: Some articles of Annexes I and II reproduce textually articles from the Convention of 16 November 1937 for the Creation of International Criminal Court whilst others reproduce articles from the said Convention with amendments which are mostly purely of form.

In the margin, we give the numbers of the articles of the Convention of 16 November 1937 which were taken as models and we add "amended" whenever such article is not reproduced entirely, the new passages being in italics.

ANNEX I

ESTABLISHMENT OF A PERMANENT INTERNATIONAL CRIMINAL COURT FOR THE PUNISHMENT OF ACTS OF GENOCIDE

Convention
16 Nov. 1937
(Article 1
amended)

Article 1

An International Criminal Court for the trial, as hereinafter provided, of persons accused of an offence dealt with in the Convention for the Prevention and Punishment of Genocide is hereby established.

Article 2

1. In cases of acts of Genocide committed by individuals acting as organs of the State or having been supported or tolerated by the State, each High Contracting Party and any other State which arrested such individuals on its territory may, if unwilling to extradite or punish the said individuals, request*.....to commit them for trial to the Court.

2. The act whereby a State requests* to commit an accused for trial to the Court shall contain a statement of the main charges and evidence in support thereof.

3. If the* is of the opinion that the accused should be committed for trial to the Court, it shall designate the persons instructed to act for the prosecution.

4. The * shall transmit to the Court all the dossiers containing the incriminating evidence. Upon such transmission the matter shall be deemed to be before the Court.

Convention
16 Nov. 1937
(Art. 3)

Article 3

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for an offence within its jurisdiction.

* Request to be addressed to the Economic and Social Council or to the Security Council of the United Nations.

Convention
16 Nov. 1937
(Art. 4
amended)

Article 4

1. The seat of the Court shall be established at.....
2. For any particular case, the President may take the opinion of the Court and the Court may decide to meet elsewhere subject to the consent of the State on whose territory such meeting is to be held.

Convention
16 Nov. 1937
(Art. 5
abridged)

Article 5

The Court shall be composed of judges chosen from among jurists who are acknowledged authorities on criminal law.

Convention
16 Nov. 1937
(Art. 6
amended)

Article 6

The Court shall consist of seven regular judges and seven deputy judges, each belonging to a different nationality, but so that the regular judges and deputy judges shall be nationals of the High Contracting Parties.

Convention
16 Nov. 1937
(Art. 7
amended)

Article 7

1. Any Member of the United Nations and any non-Member State, in respect of which the Convention for the Prevention and Punishment of Genocide is in force, may nominate not more than two candidates for appointment as judges of the Court. A panel of all the candidates so nominated shall be drawn up for this purpose.
2. The International Court of Justice shall be requested to choose the regular and deputy judges from the persons so nominated.

Convention
16 Nov. 1937
(Art. 8)

Article 8

Every member of the Court shall, before taking up his duties, give a solemn undertaking in open Court that he will exercise his powers impartially and conscientiously.

Convention
16 Nov. 1937
(Art. 9)

Article 9

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the

business of the Court.

Convention
16 Nov. 1937
(Art. 10
amended)

Article 10

1. Judges shall hold office for seven years.
2. Every two years, one regular and one deputy judge shall retire.
3. The order of retirement for the first period of seven years shall be determined by lot when the first election takes place.
4. Judges may be re-appointed.
5. Judges shall continue to discharge their duties until their places have been filled.
6. Nevertheless, judges, though replaced, shall finish any cases which they have begun.

Convention
16 Nov. 1937
(Art. 11
amended)

Article 11

1. Any vacancy, whether occurring on the expiration of a judge's term of office or for any other reason, shall be filled as provided in Article 7.
2. In the event of the resignation of a member of the Court, the resignation shall take effect on notification being received by the Registrar.
3. If a seat on the Court becomes vacant more than twelve months before the date at which a new election to that seat would normally take place, the vacancy shall not be filled before that date.

Convention
16 Nov. 1937
(Art. 12)

Article 12

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

Convention
16 Nov. 1937
(Art. 13)

Article 13

A judge appointed in place of a judge whose period of appointment has not expired shall hold the appointment for the

/remainder

remainder of his predecessor's term.

Convention
16 Nov. 1937
(Art. 14
amended)

Article 14

The Court shall elect its President and Vice-President from its members for a term of seven years. In the event of the Presidency or Vice-Presidency becoming vacant, the Court shall hold fresh elections which may be conducted by correspondence.

Convention
16 Nov. 1937
(Art. 15)

Article 15

The Court shall establish regulations to govern its practice and procedure.

Convention
16 Nov. 1937
(Art. 17)

Article 16

The Court's archives shall be in the charge of the Registrar.

Convention
16 Nov. 1937
(Art. 18
amended)

Article 17

The number of members who shall sit to constitute the Court shall be seven.

Convention
16 Nov. 1937
(Art. 19 (1))

Article 18

Members of the Court may not take part in trying any case in which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

Convention
16 Nov. 1937
(Art. 19 (2))

Article 19

If, for some special reason, a member of the Court considers that he should not sit to try a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Convention
16 Nov. 1937
(Art. 20
amended)

Article 20

1. If the presence of seven regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.
2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

Convention
16 Nov. 1937
(Art. 21
amended)

Article 21

1. The substantive criminal law to be applied by the Court shall be that of the territory on which the offence was committed if the country concerned is a party to the Convention and, in other cases, the law of the country which applied to the Court under Article 3.

2. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

Convention
16 Nov. 1937
(Art. 22
amended)

Article 22

If the court has to apply, in accordance with Article 21, the law of a State of which no sitting judge is a national, the Court may invite a jurist who is a national of the said State and an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Convention
16 Nov. 1937
(Art. 26 (2))

Article 23

Any person directly injured by the offence may, if authorized by the Court, and subject to any conditions which it may impose, constitute himself partie civile before the Court; such person shall not take part in the oral proceeding except when the Court is dealing with the damages.

Convention
16 Nov. 1937
(Art. 27)

Article 24

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Convention
16 Nov. 1937
(Art. 28
amended)

Article 25

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is withdrawn by*

* The Economic and Social Council or the Security Council of the United Nations.

Convention
16 Nov. 1937
(Art. 29
amended)

Article 26

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.
2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused or group of accused a counsel selected from advocates belonging to a Bar.

Convention
16 Nov. 1937
(Art. 30)

Article 27

The file of the case and the statement of the partie civile shall be communicated to the person who is before the Court for trial.

Convention
16 Nov. 1937
(Art. 31)

Article 28

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.
2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Convention
16 Nov. 1937
(Art. 32)

Article 29

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards all evidence.

Convention
16 Nov. 1937
(Art. 33)

Article 30

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Convention
16 Nov. 1937
(Art. 34
amended)

Article 31

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and the representatives of*

Convention
16 Nov. 1937
(Art. 35 (1))

Article 32

The hearings before the Court shall be public.

Convention
16 Nov. 1937
(Art. 36)

Article 33

The Court shall sit in private to consider its judgment.

Convention
16 Nov. 1937
(Art. 37)

Article 34

The decisions of the Court shall be by majority of the judges.

Convention
16 Nov. 1937
(Art. 38)

Article 35

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Convention
16 Nov. 1937
(Art. 39)

Article 36

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.
2. The Court may sentence the persons committed to it to pay damages.
3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons are situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.
4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Convention
16 Nov. 1937
(Art. 40
amended)

Article 37

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court.

* The Economic and Social Council or the Security Council.

/Such consent

Such consent may not be withheld by the State which brought the matter before the* under Article 2

2. The Court shall determine the way in which any fines shall be dealt with.

Convention
16 Nov. 1937
(Art. 41
amended)

Article 38

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall, if its national law does not provide for the death penalty be entitled to substitute therefor the most severe penalty provided by the said law which involves loss of liberty.

Convention
16 Nov. 1937
(Art. 42
amended)

Article 39

The right of pardon shall be exercised by the State which has to enforce the penalty unless within a period of one month from the date on which the State concerned has informed it of its desire to exercise such right the* shall have entered an objection.

Convention
16 Nov. 1937
(Art. 43
amended)

Article 40

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.
2. The Court shall determine in its rules the cases in which an application for revision may be made.
3. The States mentioned in Article 2, and the persons committed for trial of the court, shall have the right to ask for a revision

Convention
16 Nov. 1937
(Art. 44
amended)

Article 41

1. The judges shall while sitting receive allowances to be borne by the respective State of which each judge is a national, on the basis of a scale established by the High Contracting Parties.
2. There shall be created by contributions from the High

* The Economic and Social Council and the Security Council.

Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Convention
16 Nov. 1937
(Art. 45
amended)

Article 42

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention for the Prevention and Punishment of Genocide and the general principles of law.
2. If a High Contracting Party, not being the Party who sent the case in question for trial to the*, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts and does not see his way to appear in the proceedings in order that the question may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 14 of the Convention for the Prevention and Punishment of Genocide.

Article 43

Whenever the Court is unable to deal with a possible accumulation of actions it may establish additional sections. Such sections shall consist of seven judges. Each section shall be presided over by a regular judge of the Court elected by the

* The Economic and Social Council or the Security Council.

regular and deputy judges of the Court in general assembly.

Lots shall be drawn to elect the other judges to the various sections.

If, owing to an accumulation of actions the number of regular or deputy judges is insufficient to produce a full complement of all the sections created, vacancies may be filled by lot by persons appearing on the panel referred to in Article 7, paragraph 1.

In all cases however, and irrespective of the number of sections created, such sections may not be presided over except by a regular judge or, in the absence of a regular judge, by a deputy judge of the International Criminal Court.

ANNEX II

ESTABLISHMENT OF AN AD HOC INTERNATIONAL CRIMINAL
COURT FOR THE PUNISHMENT OF ACTS OF GENOCIDE

Article 1

1. Each State shall, within a period of one month from the date on which the Convention for the Prevention and Punishment of Genocide comes into force with reference to such State, designate two persons who are acknowledged authorities on Criminal Law to hold the office of judge in an International Criminal Court for the Punishment of Genocide if called upon.
2. No person may be designated who is not a national of one of the High Contracting Parties to the said Convention.
3. The names of the persons so designated shall be communicated to the President of the International Court of Justice who shall place them on the panel.

Article 2

1. In the case of acts of Genocide committed by individuals acting as organs of the State or with the support or toleration of the State, each High Contracting Party and any other State which arrested such individuals on its territory may, if unwilling to extradite or punish the said individuals, request* to commit them for trial to the Court.
2. The instrument whereby a State requests.....* to commit an accused for trial to the Court shall contain a statement of the main charges and evidence in support thereof.
3. If the.....** is of the opinion that such request should be complied with, it shall forthwith approach the International Court of Justice requesting it to select seven regular and seven deputy judges from the panel provided for in Article 1.

* Request to be addressed to the Economic and Social Council or to the Security Council of the United Nations.

** The Economic and Social Council or the Security Council of the United

4. The.....* shall also designate the persons instructed to act for the prosecution.

Article 3

The.....* shall at the same time decide where the Court is to sit. If such place shall be in territory other than that where the permanent headquarters of the United Nations is established or in territory where the seat of the International Court of Justice is established, the consent of the State to which such territory belongs shall be required.

Article 4

For the purposes of constituting the International Criminal Court, the President of the International Court of Justice shall forthwith summon the persons designated under Article 1.

Article 5

The first meeting of the International Criminal Court shall be presided over either by the President or Vice-President of the International Court of Justice or by a judge of that Court designated for that purpose.

At such first meeting which shall be public, the members of the International Criminal Court shall before taking up their duties give a solemn undertaking to exercise their powers impartially and conscientiously.

Article 6

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

Convention
16 Nov. 1937
(Art. 8
amended)

Convention
16 Nov. 1937
(Article 9)

* The Economic and Social Council or the Security Council of the United Nations.

Convention
16 Nov. 1937
(Art. 12)

Article 7

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

Convention
16 Nov. 1937
(Art. 14
amended)

Article 8

The Court shall elect its President and Vice-President from its members.

Convention
16 Nov. 1937
(Art. 15)

Article 9

The Court shall establish regulations to govern its practice and procedure.

Convention
16 Nov. 1937
(Art. 17)

Article 10

The Court's archives shall be in the charge of the Registrar.

Convention
16 Nov. 1937
(Art. 18
amended)

Article 11

The number of members who shall sit to constitute the Court shall be seven.

Convention
16 Nov. 1937
(Art. 19 (1))

Article 12

Members of the Court may not take part in trying any case in which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

Convention
16 Nov. 1937
(Art. 19 (2))

Article 13

If, for some special reason, a member of the Court considers that he should not sit to try a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Convention
16 Nov. 1937
(Art. 20 (1)
amended)

Article 14

If the presence of seven regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

/Article 15

Convention
16 Nov. 1937
(Art. 21
amended)

Article 15

1. The substantive criminal law to be applied by the Court shall be that of the territory on which the offence was committed if the country concerned is a party to the Convention and, in other cases, the law of the country which applied to the Court under Article 2.

2. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

Convention
16 Nov. 1937
(Art. 22
amended)

Article 16

If the Court has to apply, in accordance with Article 15, the criminal law of a State of which no sitting judge is a national, the Court may invite a jurist who is a national of the said State and an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Convention
16 Nov. 1937
(Art. 26 (2))

Article 17

Any person directly injured by the offence may, if authorized by the Court, and subject to any conditions which it may impose, constitute himself *partie civile* before the Court; such person shall not take part in the oral proceeding except when the Court is dealing with the damages.

Convention
16 Nov. 1937
(Art. 27)

Article 18

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Convention
16 Nov. 1937
(Art. 28
amended)

Article 19

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is withdrawn by.....*.

* The Economic and Social Council or the Security Council of the United Nations.

Convention
16 Nov. 1937
(Art. 29
amended)

Article 20

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.
2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused or group of accused a counsel selected from advocates belonging to a Bar.

Convention
16 Nov. 1937
(Art. 30)

Article 21

The file of the case and the statement of the parties shall be communicated to the person who is before the Court for trial.

Convention
16 Nov. 1937
(Art. 31)

Article 22

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.
2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Convention
16 Nov. 1937
(Art. 32)

Article 23

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards all evidence.

Convention
16 Nov. 1937
(Art. 33)

Article 24

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Convention
16 Nov. 1937
(Art. 34
amended)

Article 25

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and of the representatives of.....*.

Convention
16 Nov. 1937
(Art. 35 (1))

Article 26

The hearings before the Court shall be public.

Convention
16 Nov. 1937
(Art. 36)

Article 27

The Court shall sit in private to consider its judgment.

Convention
16 Nov. 1937
(Art. 37)

Article 28

The decisions of the Court shall be by majority of the judges.

Convention
16 Nov. 1937
(Art. 38)

Article 29

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Convention
16 Nov. 1937
(Art. 39)

Article 30

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.
2. The Court may sentence the persons committed to it to pay damages.
3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons are situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.
4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

* The Economic and Social Council or the Security Council.

Convention
16 Nov. 1937
(Art. 40
amended)

Article 31

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court. Such consent may not be withheld by the State which brought the matter before the.....* under Article 2.
2. The Court shall determine the way in which any fines shall be dealt with.

Convention
16 Nov. 1937
(Art. 41
amended)

Article 32

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall, if its national law does not provide for the death penalty be entitled to substitute therefor the most severe penalty provided by the said law which involves loss of liberty.

Convention
16 Nov. 1937
(Art. 42
amended)

Article 33

The right of pardon shall be exercised by the State which has to enforce the penalty unless within a period of one month from the date on which the State concerned has informed it of its desire to exercise such right the.....* shall have entered an objection.

Convention
16 Nov. 1937
(Art. 43
amended)

Article 34

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.
2. The Court shall determine in its rules the cases in which an application for revision may be made.
3. The States mentioned in Article 2, and the persons committed for trial of the Court, shall have the right to ask for a revision.

Convention
16 Nov. 1937
(Art. 44
amended)

Article 35

1. The judges shall while sitting receive allowances to be

* The Economic and Social Council or the Security Council.

borne by the respective State of which each judge is a national, on the basis of a scale established by the High Contracting Parties.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Convention
16 Nov. 1937
(Art. 45
amended)

Article 36

The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention for the Prevention and Punishment of Genocide and the general principles of law.
