

A F A C T S H E E T

O N

THE UNITED NATIONS GENOCIDE CONVENTION

Much of the material contained herein was
compiled from A Background Analysis published
by the National Community Relations Advisory
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AD HOC COMMITTEE ON THE HUMAN RIGHTS
AND GENOCIDE TREATIES
· 25 East 78th Street
New York, New York 10021

The Meaning of Genocide

Genocide is the destruction of a racial, ethnic, religious or national group, or part of a group, committed with the specific intent to wipe it out. It can be carried out in two ways:

1. Physical and mental - Subjecting people to conditions which lead to death or mutilation; e.g., putting people in concentration camps, placing them under slave labor conditions, or subjecting them to harmful drugs.
2. Biological - Preventing reproduction through sterilization, compulsory abortion, and similar violent means. The stealing of children is also included. These methods, which serve to destroy by delayed action, are as dangerous as outright murder.

History and Current Status

Active support was given by the United States during the preparation of the various drafts of the Genocide Convention. Indeed, it was largely through United States effort that the Convention was completed in 1948 and adopted by the General Assembly on December 9 of that year.

At that time the position of the United States on the Genocide Convention was clearly set forth in a speech made to the General Assembly by the then Assistant Secretary of State Ernest Gross:

"It seems to the United States delegation that, in a world beset by many problems and great difficulties, we should proceed with this Convention before the memory of recent horrifying genocidal acts has faded from the minds and conscience of man. Positive action must be taken now. My government is eager to see a genocide convention adopted at this session of the Assembly and signed by all member states before we quit our labors here."

The General Assembly responded by unanimously adopting the Convention with fifty-five nations voting, the other three being absent.

In June 1949, President Truman submitted the Genocide Convention to the Senate accompanied by an enthusiastic endorsement. In January 1950, a special Genocide Subcommittee under the chairmanship of the late Senator Brien McMahon of the Senate Foreign Relations Committee conducted public hearings. Leaders of more than fifty important organizations, representing millions of citizens, appeared before it to urge early ratification. On behalf of the State Department Dean Rusk offered reassurance as to the possible effect of the Convention on domestic concerns of the United States. Mr. Rusk said:

"In terms of practical application throughout the United States, genocide means the commission of such acts as killing members of a specified group and thus destroying a substantial portion of that group, as part of a plan to destroy the whole group within the territory of the United States. It can thus be readily seen that genocide, as defined in this Convention, has never occurred in the United States, and is not likely to occur here in the future."

In its report to the full Senate Foreign Relations Committee following these extensive hearings, the Special Subcommittee recommended ratification of the Genocide Convention, urging the inclusion of four reservations. However, months, then years, elapsed and the Convention did not get reported out of committee.

In 1970 a major step toward United States ratification of this Convention was taken by the President who called for Senate approval of the United Nations Genocide Convention; in a special message to the Senate on February 19. He stated then that "I believe we should delay no longer in taking the final convincing step which would reaffirm that the United States remains as strongly opposed to the crime of genocide as ever."

The President endorsed the recommendations of Secretary of State Rogers and concurred with the judgment of Attorney General Mitchell that there are no constitutional obstacles to United States ratification and that ratification at this time would serve the national interest (Appendix A).

President Nixon stressed that Senate action "will demonstrate unequivocally our country's desire to participate in the building of international order based on law and justice."

A principal obstacle to ratification of this Convention was eliminated in 1970 by the positive recommendations of all the relevant divisions of the American Bar Association, including the Section on Individual Rights and Responsibilities, the Standing Committee on World Order Through Law, and the Section on International and Comparative Law. In contrast to past years when there was little support for this Convention, at a meeting of the ABA House of Delegates in February 1970, nearly half the members endorsed ratification.

Senate hearings on the Genocide Convention were scheduled for April 24 and 27 by a special subcommittee of the Senate Committee on Foreign Relations. The Committee, chaired by Senator Frank Church of Idaho, would limit its inquiry to the legal and constitutional implications of the Convention.

Meanwhile, the Genocide Convention has become the most widely ratified United Nations agreement with the exception of the U. N. charter itself. Seventy-five countries have adopted it thus far. The United Kingdom became the 75th party to the Convention on Genocide on January 30, 1970 when its instrument of accession was received by the United Nations Office of Legal Affairs.

How the Genocide Convention will Work

The enforcement of the Genocide Convention, like all international law, depends on acceptance by sovereign states. Genocide can be abolished only to the extent that the pattern of international cooperation exemplified by the United Nations proves effective.

Here is what happens under the Convention if an act of genocide is committed:

1. The nation in which the crime takes place is obliged to try the offender. The government will have enacted legislation to prevent and punish the crime.

Acts punishable under the Convention are:

- a. Genocide
- b. Conspiracy to commit genocide
- c. Attempt to commit genocide
- d. Complicity in genocide
- e. Direct and public incitement to commit genocide

The Convention further provides that all guilty individuals are punishable, even if they happen to be public officers or heads of state.

2. If the government fails to take adequate preventative or punitive measures, another signatory nation may bring the case before the International Court of Justice, which is given jurisdiction in disputes between the contracting parties as to interpretation, application and fulfillment of the Convention. This court cannot try the crime, but is empowered to find that the nation in question is obliged to take effective action.

3. If the court so rules, the offending state is obliged to live up to the Convention by trying genocidists in its own courts.

At present there is no international penal court; genocidists can only be tried in the country where the crime is committed. The Convention does suggest the possibility of a new international court being set up in the future, which would have direct jurisdiction over genocidal acts. However, a separate treaty would be required to establish such a court and to determine the scope of its authority.

4. If a nation fails to comply with the decision of the International Court of Justice, another contracting party may request the Security Council of the United Nations to take appropriate measures to secure fulfillment of the court's decision.

Even if there is no court decision, appeal may be made to the U. N. to do what it can to suppress genocide. Even at present, this much can be done.

5. The Security Council, if it finds a threat to world peace, may call for the use of armed force to uphold international law.

6. Other courses of action open to the U. N. under its Charter include investigation, publicity, persuasion and economic sanctions. These measures may well prove the most effective preventatives of all. For genocide is not committed on the spur of the moment. It is usually plotted over a long period of time. The people of the offending nation must be primed psychologically to accept wanton brutality; and mass extermination is generally preceded by a sequence of lesser outrages. During this "build-up" period, the forces of world opinion, marshalled by the U. N. under the Convention, might very well quench the sparks of genocide before they burst into flame.

Thus, the Convention will serve as a deterrent to would-be genocidists. Moreover, should their government be deposed or their nation defeated in battle, or should they venture beyond their own borders, they would in all likelihood be apprehended and held answerable.

It must be remembered that all the Nazis were never punished for acts of genocide committed prior to 1939. The Nuremberg tribunal, which tried war criminals for crimes against humanity, refused to consider outrages occurring before the war, on the grounds that no international law was violated. Had the Genocide Convention been in existence three decades ago, those who perpetrated atrocities between 1933 and 1939 could have been brought to justice.

Countries that have Ratified the Genocide Convention

Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian SSR, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, Federal Republic of Germany, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Jamaica, Jordan, Laos, Lebanon, Liberia, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Viet-Nam, Romania, Saudi Arabia, Spain, Sweden, Syria, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, Upper Volta, Uruguay, Venezuela, Yugoslavia.

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:

The Convention on the Prevention and Punishment of the Crime of Genocide was transmitted to the Senate by President Truman on June 16, 1949, with a view to receiving advice and consent to ratification. Although hearings were held in 1950 by a Subcommittee of the Committee on Foreign Relations, the Senate itself has not acted on the Convention. Now, twenty years later, I urge the Senate to consider anew this important Convention and to grant its advice and consent to ratification.

In the aftermath of World War II, United States representatives played a leading role in the negotiation of this Convention. It was adopted unanimously by the United Nations General Assembly on December 9, 1948 and signed on behalf of the United States two days later. The Convention entered into force on January 12, 1951, and seventy-four countries from all parts of the world and of every political persuasion have so far become parties.

The provisions of the Convention are explained in the enclosed report from the Secretary of State. The Attorney General concurs in the Secretary of State's judgment that there are no constitutional obstacles to United States ratification. I endorse the Secretary of State's considered judgment that ratification at this time, with the recommended understanding, would be in the national interest of the United States. Although the Convention will require implementing legislation, I am not at this time proposing any specific legislation. The Executive Branch will be prepared, however, to discuss this matter during the Senate's consideration of the Convention.

In asking for Senate approval of the Convention twenty years ago, President Truman said:

"By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime."

Since then, I regret to say, some of our detractors have sought to exploit our failure to ratify this Convention to question our sincerity. I believe we should delay no longer in taking the final convincing step which would reaffirm that the United States remains as strongly opposed to the crime of genocide as ever.

By giving its advice and consent to ratification of this Convention, the Senate of the United States will demonstrate unequivocally our country's desire to participate in the building of international order based on law and justice.

RICHARD NIXON

February 19, 1970

THE WHITE HOUSE
Washington

February 27, 1970

Dear Reverend Halbert:

As the members of the Ad Hoc Committee on the Human Rights and Genocide Treaties meet in this nation's Capital to discuss the Convention on the Prevention and Punishment of the Crime of Genocide, I welcome your deliberations and hope they will be enlightening and profitable.

As you know, on February 19, I sent to the Senate a message urging reconsideration of the Genocide Convention and the granting of its advice and consent to ratification. Your meeting thus comes at an important time, and serves to remind all Americans that the ratification of the Genocide Convention at this time is in their national interest.

The United States should stand second to no other country in its dedication to safeguarding human rights and basic freedoms, both at home and throughout the world. The informed, active support of your Committee for a direction which this Government is determined to take is encouraging and reassuring.

My greetings to all who participate in this Conference, and my best wishes for a productive session from which all mankind may benefit.

Sincerely,

RICHARD NIXON

The Reverend Herschel Halbert
Chairman, Ad Hoc Committee
on the Human Rights and Genocide Treaties
25 East 78th Street
New York, New York 10021

DEPARTMENT OF STATE

The President:

I respectfully recommend that you request the Senate of the United States to give its advice and consent to United States ratification of the Convention on the Prevention and Punishment of the Crime of Genocide. The text of the Convention is enclosed. I believe that ratification is in the interests of the United States and that there is no constitutional obstacle to ratification. I am pleased to report that the Attorney General agrees that there are no constitutional obstacles to United States ratification.

The Convention was adopted unanimously by the General Assembly of the United Nations on December 9, 1948, and signed by the United States two days later. It was submitted to the Senate by President Truman on June 16, 1949 (Executive O, 81st Congress, 1st Session). Hearings were held in 1950 by a Subcommittee of the Foreign Relations Committee which reported it favorably to the full Committee. Neither the Committee nor the Senate as a whole has yet taken action on the Convention.

The Convention entered into force on January 12, 1951. So far seventy-four countries have become parties. It is anomalous that the United States, which firmly opposes the crime of genocide and which played a leading role in bringing about the recognition of genocide as a crime against international law, is not among the parties to the Convention.

Genocide has been perpetrated many times throughout history. Although man has always expressed his horror at this crime, little was done to prevent or punish it before the 1930's. World War II witnessed the most drastic series of genocidal acts ever committed. The revulsion of civilized society manifested itself in a United Nations General Assembly resolution of December 11, 1946, declaring genocide to be a crime under international law and recommending international cooperation in its prevention and punishment. This resolution was the impetus for the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide.

The Convention provides in Article II that any of the following five acts, if accompanied by the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, constitutes the crime of genocide:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group.

In addition to genocide itself, the Convention provides that conspiracy, attempt and direct and public incitement to commit genocide, and complicity in genocide shall be punishable.

In requesting Senate advice and consent to ratification, I recommend that you suggest an understanding to make clear that the United States Government understands and construes the words "mental harm" appearing in Article II (b) of this Convention to mean permanent impairment of mental faculties.

The contracting parties undertake to enact legislation necessary to give effect to the provisions of the Convention "in accordance with their respective constitutions." It is clear, therefore, that the Convention was not expected to be self-executing. I do not recommend, however, that the Executive Branch propose any specific implementing legislation at this time. The Departments of State and Justice will be prepared to discuss this question should the Congress request our views.

Persons charged with genocide would be tried by a competent tribunal of the state in whose territory the act was committed. Parties to the Convention are bound to grant extradition, in accordance with their laws and treaties, of persons charged with crimes falling under the Convention. Genocide is not to be considered a political crime for the purposes of extradition.

Disputes regarding the interpretation, application or fulfillment of the Convention shall be submitted to the International Court of Justice. In addition, any contracting party may call on competent organs of the United Nations to take such action under the United Nations Charter as they consider appropriate toward the prevention and suppression of acts of genocide or any of the related accessorial acts.

I am convinced that the American people together with all the peoples of the world will hail United States ratification of this Convention as a concrete example of our dedication to safeguarding human rights and basic freedoms.

Respectfully submitted,

WILLIAM P. ROGERS

February 5, 1970

APPENDIX B

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

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96(I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided.

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

* Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948. *Entry into force:* 12 January 1951, in accordance with Article XIII.

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

ARTICLE III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX

Disputes between the Contracting Parties relating to the interpretations, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

ARTICLE XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

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

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

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

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

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

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

ARTICLE XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

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

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

ARTICLE XIX

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

For Pp U N

QUESTIONS AND ANSWERS

ON

THE UNITED NATIONS GENOCIDE CONVENTION

Much of the material contained
herein was compiled from
A Background Analysis published
by the National Community Rela-
tions Advisory Council in 1965

AD HOC COMMITTEE ON THE HUMAN RIGHTS
AND GENOCIDE TREATIES
25 East 78th Street
New York, New York 10021

1. What specific acts are comprised in the definition of genocide?

Article II of the Genocide Pact states: "In the present Convention, genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group as such:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group;
- e. forcibly transferring children of the group to another group."

2. What are specific examples of acts of genocide in each of these categories?

- a. Killing: 6,000,000 Jews, 3,000,000 Slavs, and almost the entire Gypsy community of Europe by Hitler; 1,200,000 Armenians in 1915 by the Turks; 600 Christian Assyrians in Iraq in 1933. Earlier, some 30,000 Catholics were killed in Japan (17th century); the Tasmanians were killed by the English (19th century); Huguenots were destroyed in France (16th century); non-conformist Protestants were destroyed in England at many times (16th and 17th centuries); the Herreros of Southwest Africa were destroyed by the Germans at the end of the 19th century; and, of course, pogroms against Jews constituted genocide through the centuries.
- b. Serious bodily or mental harm:
 - (1) The Nazis mutilated countless Slavs and Jews in so-called medical experimentation.
 - (2) Under the Japanese occupation of China (1932-1945), a systematic disintegration of the minds of the Chinese was undertaken by mass administration of drugs, especially heroin.
 - (3) In an attempt to destroy the Polish intelligentsia, as an essential part of the Polish nation, Polish national leaders were imprisoned (1942-3) by the Communists. One of these prisoners, Mr. K. Baginski, former president of the Smallholder Party (liberal) and vice-president of the underground parliament of Nazi-occupied Poland, was administered drugs in food to such an extent that, as he reports, he progressively forgot the names of friends and the members of his immediate family. Many such examples of mental torture through the administration of drugs has been documented in Eastern Europe during the past 15-20 years.
- c. The deliberate inflicting of conditions of life calculated to bring about its destruction wholly or in part:

- (1) Concentration camps
- (2) Slave labor camps
- (3) Deliberate starvation with scientific apportionment of calories calculated to create a short life-expectancy
- (4) Leaving sick persons without medical care
- (5) Death marches of military or other prisoners

d. Preventing birth:

- (1) Sterilizations, castrations, and similar forms of mutilation as practiced by the Nazis, by the Turks on the Armenians, and by Czarist Russia during pogroms.
- (2) Large-scale separation and breaking-up of families. The pattern for such deportations was set not only by the Nazis, but also in the Baltic States in 1941, when special orders issued by the Russian police contained instructions on how to separate families during deportations. The deported families have never been reunited.

e. Kidnapping:

- (1) In 1947, 28,000 Greek children were taken away from their parents by Communist guerillas, and kept in Hungary and Czechoslovakia.
- (2) Great masses of Christian children, under the Sultans of the Ottoman Empire (16th to 20th centuries), were extracted as tribute from the Balkans and brought to Turkey for upbringing in the Moslem faith as Janis-saries (police).

3. Who can be held legally responsible under the Genocide Convention?

Government officials, private individuals, and even heads of states.

4. Can persons accused of genocide receive political asylum in order to escape punishment?

Under no circumstances. Article VII of the Convention provides that "Genocide and other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."

5. What major American organizations are on record as supporting the ratification of the Genocide Convention?

In 1964 a coalition of national organizations formed the Ad Hoc Committee on the Human Rights and Genocide Treaties. The Ad Hoc Committee represents 52 labor, religious, civic and nationality groups. The total

membership of the groups comprising the Ad Hoc Committee runs to millions and reflects the widespread public interest of encouraging the U.S. government to commit itself more vigorously to the strengthening of international law in the field of human rights through ratification of various United Nations Conventions including the Genocide Convention. A list of organizations comprising the Ad Hoc Committee is contained in Appendix A and a resolution adopted unanimously by the Committee on the Genocide Convention is found in Appendix B.

The Legal Arguments

From a legal point of view, international conventions for the control of criminal acts are not unusual. There are a number of them already in existence; the United States is a party to collective action involving the crimes of circulation of obscene literature, traffic in women and children, slave trade, traffic in opium and piracy.

Because of the prominent role played by members of the United States Delegation in drafting the Genocide Convention, it is couched in terms of familiar Anglo-American legal theory and embraces traditional American common law concepts.

For example, the convention preserves the principle of territorial jurisdiction over criminal acts, although an earlier draft would have made genocide punishable as is piracy, where the criminal is apprehended, "irrespective...of the place where the offense has been committed." Conspiracy, attempt and complicity, all punishable under Article III, are common law crimes familiar to American lawyers. Furthermore, the Convention's definition of genocide presents the American approach to the concept of a criminal act. To constitute genocide, the act in question must be coupled with a specific intent to destroy a national, ethnic, racial or religious group. It was the United States that insisted that intent must be proved, for any act to be considered genocide.

Legal Arguments Against Ratification

This country would be peculiarly vulnerable in adhering to the Genocide Convention since its provisions might become the law of the land here before being implemented in other countries. Our constitution provides that any treaty, immediately on ratification, becomes the "supreme law of the land."

Refutation

Ratification of the Genocide Convention in no way involves unilateral action by the United States. By its terms, the Convention remains inoperative until it has been ratified by the parliaments of twenty states. As we have noted above, the Genocide Convention has already been ratified by 64 governments and its terms therefore have already come into force. Far from being in advance of other states in acting on the Convention, our country has fallen substantially behind and many of the governments that have ratified the Convention have long since adopted the necessary enabling laws. Moreover, in other countries, i.e., France, the constitution or constitutional practice also stipulate that international treaties shall immediately become the supreme law of the land.

In addition, it should be noted that the Genocide Convention is not unique but stands in the same position as any convention ever undertaken by the United States. Up to the present time, no difficulties have ever been encountered because of our constitutional provision that international compacts become effective upon ratification. Finally, the Genocide Convention, by its own provisions, is not self-executing. Article V provides "the contracting parties undertake in accordance with their respective constitutions to enact the necessary legislation to give effect to the provisions of the present Convention..." Thus, specific legislation in addition to ratification is necessary to put the Convention into effect.

The Genocide Convention would impinge on the right of the various states of the USA to legislate in certain domestic matters. It will effect a transfer of power from the states to the federal government.

On no point has the Supreme Court been more emphatic or more consistent than that "the powers of the states...set no limit on the treaty-making power." The Supreme Court has upheld the validity of treaties which deal with many matters ordinarily left to state regulation. The historical migratory bird case, Missouri v. Holland, specifically rejected this argument. "States' rights" as protected by the Tenth Amendment do not limit the exercise of a federal power.

Ratification of the Genocide Convention by the Senate is incompatible with the Constitutional powers of the whole Congress "to define and punish ...offenses against the law of nations."

Since the beginning of our history the powers of the whole Congress have been exercised co-extensively with the treaty-making power in the Senate. Congressional authority to enact enforcing legislation affecting "offenses, etc." is not exclusive, but is concurrent.

Lynching of Negroes might be interpreted as an act of genocide, and thus one of our states and all its officials might be hauled into an international court under Article II (b) of the Convention (causing serious bodily or mental harm to members of a group).

These arguments are based on a misapprehension as to the significance of this provision of the Convention. Historically, no group has ever been totally exterminated by acts of genocide. To insure that the chance survival of some portion of a group would not permit the perpetrators of mass murder to evade responsibility, the framers of the Convention were careful to define acts of genocide so as to include the destruction of a group in whole or in part. It is clear from the debates which preceded adoption of this provision that the words "in part" were intended to denote a substantial portion of a group, and that the oppression of particular individuals was not within their contemplation. In fact, efforts by France to extend the definition of genocide to include the persecution of individuals were expressly rejected by the General Assembly.

Article III (c) of the Convention concerning "direct and public incitement to commit genocide" violates freedom of speech and press in the United States.

The Genocide Convention proposes no new abridgment of the right of freedom of expression. Neither in the United States nor anywhere else in the world is there absolutely unrestrained freedom of speech. Incitement has a well-defined meaning in American law and in numerous instances has been made a punishable offense. Incitement to riot, to murder of officials, to mutiny, and other criminal acts, has long been regarded as criminal and in itself subject to penalty. The Convention seeks only to apply the same principles to acts of genocide. Moreover, the Genocide Convention itself requires the contracting parties to enact legislation to make the Convention effective, "in accordance with their respective constitutions." No violation of First Amendment rights would arise from ratification on such a basis.

Ratification of the Convention would obligate the United States to prevent or suppress genocide wherever it appears in the world.

Actually the Convention obligates contracting parties to prevent and punish genocide only in their own territory. Article VIII provides means by which the appropriate organs of the United Nations may be called upon by any contracting party to prevent and suppress acts of genocide.

The term "mental harm" in Article II (b) could be interpreted as psychological distress resulting from segregation or discrimination; thus these would be acts of genocide.

"Mental harm" as it appears in the Convention refers only to such drastic acts as the use of stupefying drugs. This is made clear in the records of the Legal Committee of the UN General Assembly, as well as in the letter of transmittal of Assistant Secretary of State Webb, which President Truman referred to the Senate, along with the Convention on June 16, 1949.

Adherence to and implementation of this Convention are well within the scope of treaty-making and other federal powers. The framers of our Constitution thought it "most safe," in Madison's words, to leave the treaty power without enumeration "to be exercised as contingencies may arise." On this matter, Chief Justice Hughes said: "It seems to me that, whatever doubt there may originally have been or may yet linger in some minds in regard to the scope of the treaty-making power, so far as relates to the external concerns of the nation there is no question for discussion. I think it perfectly idle to consider that the Supreme Court would ever hold that any treaty made in a constitutional manner in relation to external concerns of the nation is beyond the power of the sovereignty of the United States..."

AD HOC COMMITTEE ON THE HUMAN RIGHTS
AND GENOCIDE TREATIES

List of Organizations

American Baptist Convention
American Civil Liberties Union
American Ethical Union
National Women's Conference
 American Ethical Union
American Federation of State, County
 and Municipal Employees, AFL-CIO
American Federation of Teachers, AFL-CIO
American Friends Service Committee
American Humanist Association
American Jewish Committee
American Jewish Congress
American Roumanian National Committee
American Veterans Committee
Americans for Democratic Action
Baha'i National Spiritual Assembly of the U.S.
B'nai B'rith
B'nai B'rith Women
Brotherhood of Sleeping Car Porters, AFL-CIO
Episcopal Church
Farband Labor Zionist Order
Friends Committee on National Legislation
Hadassah, The Women's Zionist Organization of America
Industrial Union Department, AFL-CIO
International Ladies' Garment Workers' Union, AFL-CIO
International Rescue Committee
International Union of Electrical Workers, AFL-CIO
Jewish Labor Committee
Jewish War Veterans
League for Industrial Democracy
National Association of Negro Business and
 Professional Women's Clubs
National Association for the Advancement of Colored People
National Board, YWCA
National Catholic Conference for Interracial Justice
National Jewish Community Relations Advisory Council
National Conference of Christians and Jews
National Council of Jewish Women
Methodist Church, General Board of Christian Social Concerns
Poale Zion, United Labor Zionist Organization of America
Quaker U.N. Office
Retail, Wholesale & Department Store Union, AFL-CIO
Textile Workers Union of America, AFL-CIO
Ukrainian Congress Committee of America
Ukrainian National Association
Union of American Hebrew Congregations
Unitarian-Universalist Association

APPENDIX A (continued)

United Automobile Workers of America
United Church of Christ
Women United for the United Nations
Women's International League for Peace and Freedom
Workers Defense League
Workmen's Circle
World Federalists, USA
World Jewish Congress, American Section
Conference of U.N. Representatives, UNA-USA
National Council of the Churches of Christ in the USA

STATEMENT ON GENOCIDE CONVENTION

More than 20 years have passed since a sub-committee of the Senate Foreign Relations Committee recommended U.S. ratification of the Genocide Convention. During these years, 75 nations have acceded to this Convention, as well as many other treaties establishing international standards of human rights.

On numerous occasions during this period, our government has called upon other governments and peoples to comply with the principles of human rights embodied in these international undertakings. These efforts to promote adherence to human rights principles have been gravely compromised by our government's failure to become a party to human rights agreements. With the exception of the Supplementary Convention on Slavery and the Convention on the Status of Refugees, both approved in the last two years, we have been exceedingly derelict in withholding ratification of the first and most fundamental UN human rights treaty, the Genocide Convention, which declares the planned mass destruction of racial, ethnic and religious groups to be an international crime.

The deep concern of all Americans over this failure is symbolized by the coming together in this conference of more than 60 organizations, representing tens of millions of citizens from all parts of our country and all segments of our society.

We are gratified that in the last few weeks the long impasse in this field was broken by the decisions of the Secretary of State and Attorney General, and the President himself, to recommend ratification of the Genocide Convention, as serving the national interest of the United States.

We are further encouraged by the growing support of the Convention within our country's legal community, elements of which had played a major role in holding up ratification. This has been evidenced by the positive recommendations of all the relevant divisions of the American Bar Association, including the Section on Individual Rights and Responsibilities, the Standing Committee on World Order Through Law, and the Section on International and Comparative Law. In contrast to past years, when there was little support for this Convention, at a recent meeting of the ABA House of Delegates, nearly half the members endorsed ratification.

We call upon the Senate Foreign Relations Committee, on whom responsibility for further action now inescapably rests, to take positive action on the Genocide Convention by reporting it out favorably to the entire Senate. We are confident that once given the opportunity, the Senate will give its overwhelming consent to ratification.

Adopted unanimously by the National Conference
Ad Hoc Committee on the Human Rights and Genocide Treaties
March 4, 1970

Washington, D.C.



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