



# The Phyllis Schlafly Report



VOL. 6, NO. 8, SECTION 1

Box 618, ALTON, ILLINOIS 62002

MARCH, 1973

## The Genocide Convention and American Liberties

The United States Senate is now considering ratification of a treaty called the "Genocide Convention." It was reported favorably by Senator Fulbright's Foreign Relations Committee on February 28 and is awaiting action by the full Senate. This is another one of those pieces of legislation which, to the general public, appears either desirable or innocuous, but upon examination reveals serious dangers to the freedom of American citizens.

The Genocide Convention has been around awaiting ratification by the U.S. Senate for more than 22 years. All those Senates had the good judgment *not* to ratify it. Now, however, there appears to be a determined push for speedy ratification.

Under the U.S. Constitution, laws passed by Congress must be "in pursuance" of the Constitution, but there is no such limitation on treaties. Treaties become "the supreme law of the land" and can, in practice, override our present constitutional guarantees. Therefore, it is necessary to examine and study a treaty and its consequences even more closely than any ordinary legislation. Furthermore, a treaty which takes away individual rights by creating new "crimes" need pass only the Senate. It does not have to pass the House of Representatives.

The Hanoi Communists have charged that members of the U.S. Armed Forces have been guilty of genocide in "the alleged massacre of civilians in a South Vietnamese village." If the United States were now a party to the Genocide Convention, American soldiers and POWs would be subject to trial in Vietnam under the provisions of Article VI. It is possible that American soldiers already returned to the United States would be subject to extradition for trial in Vietnam, even if they were found innocent in a U.S. court.

### What Is Genocide?

When the average American thinks of "genocide," he thinks of the mass murders of Jews in Nazi Germany, or the killings in Tibet by the Red Chinese, or the deliberate murders by the Soviets in the Baltic countries and Hungary, or possibly the mass murders in Biafra. Mr. Average American's indignation at these heinous crimes may cause him to think kindly of an international treaty which would prohibit such atrocities in the future.

An examination of the Genocide Convention, however, shows that these particular mass killings are

excluded from the sanctions of this new crime. When the Genocide Convention was originally written, the crime of genocide was defined as the killing of (or the conspiring, attempting or being in complicity to kill) or causing, attempting, conspiring or being in complicity of causing "serious mental or bodily harm" to a group or members of a group on racial, religious, nationalistic or political grounds. Yet when the United Nations General Assembly adopted the Genocide Convention in December 1948, the word "political" was stricken out. As all Communist acts of genocide are "political" in nature, they are thus exempted from the application of the Genocide Convention.

Article II of the Genocide Convention reads:

"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."

No one can accurately define the nature of the "crime" of "attempted mental harm" against a "member of a group."

### "Complicity Of Government"

In order to make genocide an international crime, and therefore removed from traditional domestic prosecution, some lawyers among the U.S. representatives to the Convention tried to insert in the Convention the requirement of "complicity of government," because, after all, a treaty is an agreement between governments. But they were not successful and this essential ingredient is lacking from the Genocide Convention.

The glaring crimes of genocide -- such as the Nazi mass murder of the Jews, the Soviet mass murder of the Poles and Latvians, and the Red Chinese mass murder of the Tibetans -- have been committed with the complicity and at the direction of the governments. The U.S. and other Western representatives who formulated the Genocide

Convention, sought as a *sine qua non* to have genocide defined as having been committed "with the complicity of government," because they properly felt that "genocide could not be an international crime unless a government participated in its perpetration."

This demand was rejected. The Genocide Convention was written to apply to "persons committing genocide" and to require the trial of "persons charged with genocide," whether they are "public officials or private individuals." Article VIII of the Genocide Convention specifically permits "the competent organs of the United Nations" to interfere in the domestic affairs of member nations by hearing complaints as to the conduct of individual citizens, and to "take such action . . . as they consider appropriate" against them.

The late Frank E. Holman, a past president of the American Bar Association and member of its Commission for Peace and Law through the United Nations, explained this great defect of the Genocide Convention: "Of course, no decent person can quarrel with the announced objective of the Genocide Convention -- to wit, the outlawing of mass murder of groups of people -- but the present document is so drawn that it does not apply to liquidating political groups as 'enemies of the state.' Hence, it does not apply to genocide as practiced by Stalin in Russia or in the Russian satellite countries. In drafting Article II of the Convention and in order to appease the Russians, genocide was limited to 'national, ethnical, racial, or religious groups.' The political group was omitted. Under the Russian technique of attacking political groups as 'enemies of the state,' genocide occurs and will continue to occur on the theory that such liquidation is not for the purpose of destroying 'national, ethnical, racial, or religious groups.'

"Hence, dictators can sign the Genocide Convention with complete immunity. All they need to do is to classify a particular group as 'enemies of the state.'"

#### American Bar Against the Convention

The American Bar Association, through its House of Delegates, on September 8, 1949 went on record as opposing ratification of the Genocide Convention. In 1970 a determined effort by the internationalists was made to persuade the American Bar Association to reverse its long-standing position. On February 23, 1970, in Atlanta, the American Bar Association reaffirmed its previous position against the Genocide Convention.

One of the most distinguished lawyers in the United States, Alfred J. Schweppe, of Seattle, testified for the American Bar Association against the Genocide Convention. The following passages from his testimony to the Senate Foreign Relations Committee explain its history and content.

"Far from being an exercise in leadership by the United States, the cold record shows it to have been a pathetic case of abject followership -- so pathetic as almost to drive one to tears.

"The United States delegation consistently caved in on important matters of principle and, in order to get some kind of an agreement -- any kind -- abjectly acquiesced in a draft that is so faulty and confused that it does not prevent genocide where it regularly goes on (Czechoslovakia, Hungary, Poland, Africa, Asia) but in a welter of confusion, creates new international crimes (the treaty becomes the supreme law of the land) that will make endless trouble for the United States. . . .

"Let me particularize a bit. As originally drafted, the Convention included 'political' as well as 'national, ethnical, racial and religious groups.' The Soviets announced that they wouldn't play unless 'political groups' were expunged from the draft. They insisted on preserving the right to assassinate and exterminate the political opposition as essential to the safety of the state. . . .

"Next, in the historical development of the Convention, United States representatives insisted that there should be included in the definition of genocide the words 'with the complicity of government', an obviously correct ingredient when related back to Hitler massacres by Nazi Germany. But the Communists would have none of it, because their governments themselves are the active agents in dealing with dissidents. Result: this United States position was rejected and the United States acquiesced. . . .

"We also acquiesced in the injection of 'part of a group.' Thus genocide under this draft can now be committed under the draft treaty by a single individual against another single individual -- now a domestic crime, but lifted by this Convention to the level of an international crime, triable in the country where committed.

"Then our representatives acquiesced in injecting 'mental harm' into the Convention, thus opening the way for a Pandora's box of claims."

#### What Does "Mental Harm" Mean?

The undefined "crime" of "causing mental harm" is the joker which has consequences which are unpredictable and unlimited. Here are some examples of accusations which have already been alleged to come under the jurisdiction of the Genocide Convention.

At a World Council of Churches meeting in Barbados, Protestant and Catholic missionaries were charged with "genocide" on the ground of their alleged "contempt for indigenous cultures, appropriations of Indian national resources and the overlording spirit of the missionaries." A San Francisco lawyer who represents the Black Panthers announced that he had plans to go before the United Nations and charge the United States with "genocide" against the Panthers.

Last year, Chicago policemen were falsely accused of trying to exterminate the Black Panthers. The policemen got a fair trial in Chicago and were exonerated. Who knows what the result would have been if they had been extradited to some foreign country and tried without the safeguards of the U.S. Bill of Rights? If the Genocide Convention is ratified, our law enforcement agencies may be reluctant to take any action against any person who belongs to any identifiable group which might retaliate with charges of "genocide."

Language so broad and vague as "causing mental harm" could well be held by some World Court to characterize racial segregation prior to 1954 as "genocide," and therefore a "crime" to be tried in a foreign court. In *Brown v. Board of Education*, the Supreme Court held expressly that separation of black children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . . [and] has a tendency to [retard their] education and mental development."

Article III of the Genocide Convention is so broad in its language that no overt act need occur for the "crime" of genocide to be committed. It reads: "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."

It is easy to see that, when the prosecution lawyers tie in all these subjective elements in Article III to the loose definition of genocide in Article II (wherein genocide is defined to include "inflicting on a group conditions of life" which *might* bring about its destruction "in whole or in part," etc.), Mr. Schweppe is exactly correct in advising the Senate Foreign Relations Committee that the Genocide Convention will open a Pandora's box that could plague us for all time.

### What Court Will Judge the Crime?

When we examine the provisions of the Genocide Convention in regard to what court will hear and judge the "crime" of genocide, the prospects are even more chilling. Article VI of the Genocide Convention reads as follows:

"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."

It is clear that this wipes out the protections that American citizens now enjoy under our Bill of Rights. Individual American citizens can be charged with the loosely-defined "crime" of genocide, and then tried in some international court outside of the United States.

Furthermore, our Government will be required, under the terms of the Genocide Convention, to extradite any citizen charged with genocide to the jurisdiction of some foreign court, whether the charge is trumped up or not. Article VII spells this out emphatically: "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."

The usual defense against extradition to a foreign country is that the charge is political and therefore non-extraditable. However, the language of the Genocide Convention prevents that from being used as a shield to protect American citizens unjustly charged.

Is anyone so naive as to assume that the precious guarantees of the U.S. Bill of Rights would be respected in some foreign or international tribunal? Our unique American guarantees -- such as the right to be charged for a capital crime only after a grand jury indictment, the right to a speedy and public trial by an impartial jury in the State and district wherein the crime is alleged to have been committed, the privilege against self-incrimination, the protection against unreasonable searches and seizures, the writ of habeas corpus, and the right not to be denied life or liberty without due process of law -- would be meaningless in a foreign court.

When an individual is extradited for a crime, no rights go with him. He is subject to the rules and the decisions of the court to which he goes.

### The Connally Reservation

The Genocide Convention effectively annuls (in regard to the "crime" of genocide) the Connally

Reservation which limits our submission to the jurisdiction of the International Court of Justice, otherwise known as the World Court. That Reservation provides that we will submit to the World Court only on issues which are *international* in scope, whereas *domestic* issues ("as decided by the United States") would be resolved in U.S. courts. Article IX of the Genocide Convention accomplishes this repeal of the Connally Reservation with this language:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for 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."

This language wipes out all the alleged safeguards, called "understandings," which the Senate Foreign Relations Committee attached to the Genocide Convention. Aware of the many dangers to the rights of American citizens, Senator Fulbright's Committee appended to the Genocide Convention its own interpretations of the controversial parts. In its report recommending ratification, the Senate Foreign Relations Committee attempted to list several things which, it says, "the Convention does not do." However, Article IX, as quoted above, flatly states that it will *not* be the U.S. Senate's role to decide the interpretation of the Convention. Those decisions are clearly in the hands of the International Court of Justice -- and at the request of "any" party to the dispute.

Thus, the validity of any "reservations" or "understandings" or "interpretations" which the Senate may append to the Genocide Convention to make it sound safe to the American people will be decided -- not by the United States at all -- but by the World Court. As it is difficult to predict even what our own Supreme Court will decide when it has the U.S. Constitution to guide it, how in the world can we have any assurance as to what the World Court will decide in the absence of any restraining hand from the U.S. Constitution, the Bill of Rights, or any requirement of "due process of law"?

Senator Sam Ervin, Jr. pointed out in testimony to the Senate Foreign Relations Committee: "All of us are opposed to the systematic, planned annihilation of any national, ethnical, racial, or religious group. . . . But the Senate should not permit itself to be persuaded by the good intentions of the proponents of ratification to ratify a Convention which would have such a tragic impact upon the system of government which has always existed in our land. . . . The existing laws of the United States and its several States are adequate to punish all of the physical acts of violence denounced by the Genocide Convention."

### The Origin of the Convention

The Genocide Convention originated in the United Nations. On December 11, 1946, the General Assembly adopted a Declaration to the effect that genocide "is contrary to moral law and to the spirit and aims of the United Nations"; that "many instances . . . of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part"; and that genocide is a crime, whether it "is committed on religious, racial, political or any other grounds." The Declaration invited "the Member States to enact the necessary legislation for the prevention and punishment of this

crime.”

The United States joined in this Declaration, which was a general statement of moral purpose. Nazi and Communist governments had certainly committed “many instances” of genocide, and they deserved to be censured by world opinion.

However, this is no argument whatsoever for the United States to bind itself by a treaty which (1) commits us in advance to protect the people of other nations against their own governments, and (2) commits us in advance to a procedure whereby *other* countries may determine what is to be considered genocide *within* the United States, and may then take such action “as they consider appropriate” for its “suppression.”

Treaties with other countries (especially with those who have no regard for individual liberties) are simply not the proper constitutional means to handle the problem of crime within the United States. Former Secretary of State John Foster Dulles stated this principle very well when he told the Senate Judiciary Committee:

“I do not believe that treaties should, or lawfully can, be used as a device to circumvent the constitutional procedures established in relation to what are essentially matters of domestic concern. [The United States should] favor methods of persuasion, education and example rather than formal undertakings. . . . We do not ourselves look upon a treaty as the means which we would now select as the proper and most effective way to spread throughout the world the goals of human liberty to which this Nation has been dedicated since its inception.”

### The Public Misinformed

George A. Finch, editor in chief of the *American Journal of International Law*, testified before the Senate Foreign Relations Subcommittee in January, 1950: “The Genocide Convention is an outstanding example of an international agreement upon which the public has been and is being misinformed. As genocide is defined in the convention, it does not apply to the mass killings and destruction of peoples by totalitarian governments, but appeases such governments by making it possible for them to continue, as they are doing today behind the Iron Curtain, the monstrous treatment of thousands of human beings whom those governments regard as enemies of the Communist states.”

The distinguished Philadelphia lawyer, John B. Gest, wrote this in the November 7, 1966 issue of *The Legal Intelligencer*: “The United States as a signatory party would be assuming an obligation to ‘enact legislation’ in a broad field of domestic criminal law. This is *ultra vires* [exceeding legal power or authority] as to the treaty-making power, and it would be an invasion of the legislative power of Congress and the state legislatures.”

The whole idea of trying to prohibit genocide by treaty is an exercise in futility. Hitler would hardly have been restrained by such a treaty if it had been in existence then. The Soviet Union was not deterred from the 1968 invasion of Czechoslovakia by non-aggression provisions of the UN Charter or by a pact of peace and friendship signed only 17 days before the attack.

The elimination of “political” groups and the elimination of the language “with the complicity of government” permits the genocide which is now going

on -- such as the present Soviet persecution of the Jews. While accomplishing *nothing* constructive, the Genocide Convention will make individual American citizens subject to being extradited and hauled before some foreign court to face trumped up charges about alleged crimes which may not even include any overt acts.

Please wire your U.S. Senators and ask them to vote NO on the Genocide Convention.

## Phyllis Schlafly Report Receives Honor Medal

Phyllis Schlafly has just been awarded the George Washington Honor Medal from Freedoms Foundation at Valley Forge for her article “Our Moral Duty to Build Nuclear Weapons,” which was published as the April 1972 issue of *The Phyllis Schlafly Report*.

The award was announced on George Washington’s Birthday and is given for “outstanding accomplishment in helping to achieve a better understanding of America and Americans.”

This is the fourth George Washington Honor Medal which Phyllis has received. She received similar awards in 1972 for her article entitled “Will Ping-Pong Propaganda Erase History?”, in 1970 for her speech entitled “America: Land of Opportunity,” and in 1963 for her editorial called “Is Communism a Philosophy?”

Phyllis Schlafly is the co-author of three books on nuclear strategy, *The Gravediggers* (1964), *Strike From Space* (1965), and *The Betrayers* (1968), which *accurately* predicted that the Soviet Union had a program to overtake and surpass the U.S. in nuclear weapons. She has testified repeatedly on national security before the Senate Foreign Relations and Armed Services Committees. She is the news director for a series of interviews with military and nuclear experts aired on 70 television and 50 radio stations. An honors graduate of Washington University and member of Phi Beta Kappa, she has a Master’s Degree from Harvard University.

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Box 618, Alton, Illinois 62002

Published monthly by Phyllis Schlafly, Fairmount, Alton, Illinois 62002.

Second Class Postage Paid at Alton, Illinois.

Subscription Price: For donors to the Eagle Trust Fund -- \$5 yearly (included in annual contribution). Extra copies available: 15 cents each; 8 copies \$1; 50 copies \$4; 100 copies \$8.