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BOX 618, ALTON, ILLINOIS 62002

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Genocide Convention: Threat to American Rights

Suppose President Carter sent a message to the Senate saying something like this:

"As part of the 'human rights' policy of my Administration, I urge the Senate to ratify a treaty under which American citizens, under some circumstances, can be tried in an international or foreign court.

"In order to demonstrate our commitment to the United Nations and to cooperation with the Soviet Union, I feel that our citizens should be willing to give up, under some circumstances, their unique American constitutional guarantees such as the right *not* to be charged for a capital crime except 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."

President Carter didn't say those things of course. But he is urging the Senate to ratify the UN Genocide Convention which would have that effect. This treaty would make American citizens subject to trial by an international court for the alleged crime of causing physical or even mental harm to a single member of any specified national, ethnic, racial, or religious group.

The terms of the Genocide Convention were drawn so as not to apply to the genocide regularly practiced by Communist regimes. The definition of genocide is limited to actions against "national, ethnic, racial, or religious groups."

As originally written, the Genocide Convention also included actions against groups or members of a group on "political" grounds. But when the UN General Assembly adopted the Genocide Convention in 1948, the word "political" was stricken out to appease the Communists who insisted on preserving their right to liquidate their political opponents.

Since all Communist acts of genocide can be called "political," they are thus exempt from the sanctions imposed by the Genocide Convention. As the late distinguished past president of the American Bar Association Frank Holman once said, "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.'"

The Danger of Treaty Law

The Genocide Convention has been around await-

ing ratification by the U.S. Senate for more than 25 years. All those Senates had the good judgment *not* to ratify it. There are many compelling reasons.

One reason is the preeminence of treaties in our American system of government. 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 override our present constitutional guarantees.

The dangerous business of treaty ratification was best described by former Secretary of State John Foster Dulles. "Under our Constitution," he said, "treaties become the supreme law of the land. They are indeed more supreme than ordinary laws, for Congressional laws are invalid if they do not conform to the Constitution, whereas treaty laws can override the Constitution. Treaties . . . can cut across the rights given the people by the constitutional Bill of Rights."

Therefore, it is necessary to examine and study a treaty (or convention) even more closely than any ordinary legislation. Furthermore, a treaty need pass only the Senate. It does not have to pass the House of Representatives. This is true even if it takes away individual rights by creating new "crimes."

Just take one example. The Hanoi Communists charged that members of the U.S. Armed Forces were guilty of genocide in "the alleged massacre of civilians in a South Vietnamese village." If the United States had been a party to the Genocide Convention, American soldiers and POWs would have been subject to trial in Vietnam. It is possible that American soldiers already returned from their tour of duty 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 about an international treaty that 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, such as:

"(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 "causing mental harm to members 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.'"

American Bar Against the Treaty

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: the 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 represented the Black Panthers announced that he had plans to go before the United Nations and charge the United States with "genocide" against the Panthers. 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 U.S. 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."

This wipes out the protections that American citizens now enjoy under our Bill of Rights. Individual American citizens could 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. There is absolutely no sound argument for making American citizens subject in any way to the World Court which includes jurists from Communist and pro-Communist nations, including the Soviet Union and Poland.

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, the Senate Committee tried to append 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.

Senator Sam J. 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 noted legal authority Eberhard Deutsch elaborated on this important point when he wrote: "This Article (Article IX) clearly overrides the Connally Amendment and subjects the United States to the unreserved jurisdiction of the International Court of Justice as to all matters involving the 'interpretation, application or fulfillment' of the Genocide Convention.

"Thus, if the United States should ratify that Convention, and a case should rise thereunder which our Supreme Court should hold to be one within this country's domestic jurisdiction and protected by the First Amendment to our Constitution, any party to the treaty could still bring the matter before the International Court of Justice, which could disregard completely the decision of our Supreme Court, and hold that the matter was not one of domestic jurisdiction, and was not protected by the free speech guaranty of the Constitution of the United States, and the United States would be bound by that decision despite the Connally Amendment."

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."

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."

Please wire your U.S. Senators and ask them to vote NO on the Genocide Convention. It would not give any human rights to anyone in the world, but it would take away constitutional rights from American citizens.

Phyllis Schlafly holds a B.A. with Honors from Washington University in St. Louis and a M.A. from Harvard University in Political Science. She is a member of Phi Beta Kappa and Pi Sigma Alpha, the political science honorary society. She has received numerous awards including nine Honor Medals from Freedoms Foundation of Valley Forge, Woman of Achievement in Public Affairs by the *St. Louis Globe-Democrat*, the Brotherhood Award of the National Conference of Christians and Jews, and Honorary Doctor of Laws Degree from Niagara University. Mrs. Schlafly was named in a 1976 *U.S. News & World Report* poll as one of the ten most influential women in the United States, and in a 1977 *Associated Press* survey as one of the ten most powerful persons in Illinois. (She was the only woman on the list.)

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