

*"Watchman,
what of the night?"*

"BEHOLD, THE BRIDEGROOM!
Come out to meet Him."

(Matt 25:6 RSV)



THE GENOCIDE CONVENTION

(Part One)

The primary meaning of "convention" is an agreement or contract between states for regulation of matters effecting all of them. The Genocide Convention was adopted unanimously by the General Assembly of the United Nations meeting in Paris, France, on December 9, 1948. The United States representative signed it on December 11. It was sent to the Senate for ratification by President Harry S. Truman on June 16, 1949. (See pp. 5 & 6 for UN Genocide Convention. Note that the first Nine Articles are substantive, the rest being of a technical nature) Succeeding presidents - Kennedy, Johnson, Nixon, Ford, Carter and Reagan - each recommended its ratification. Finally on February 19, 1986, it was ratified by the Senate. However, it did not go into effect as far as the United States was concerned until March 26, 1989.

The word - genocide - was first coined in 1944 by Raphael Lemkin, a Jewish Polish Legal scholar, who had lost 50 family members in the Holocaust. It comes from the Greek word, *genos*, meaning, race or kind, and from the French, *cide*, meaning to kill. "Lemkin became a one-man Tobyist who, with unflagging energy, zealous conviction and persuasive logic expressed in a dozen languages, made genocide a fundamental issue in the international community." Already the Nuremberg Tribunal, of which the United States was the principal architect, had set down the rule of law that violation of human rights is a crime against humanity and thus are not exclusively under domestic jurisdiction. This led to the UN resolution 96(I) which declared that "genocide is a crime under international law which the civilized world condemns and for the commission of which principals and accomplices are punishable." The Convention followed in 1948.

Over the years, until 1986, the Senate failed to ratify the Genocide Convention. The Senate's failure has been the result of differing perceptions of what the Convention was meant to be. To some it was simply a moral statement expressing outrage at past genocides, and thus to accept it

would be only a symbolic gesture affirming this nation's commitment to human rights. However, the Convention is first and foremost a legal document. It would commit the United States to a number of international obligations, some of which are not clearly defined in the Convention and which effects United States law.

To meet the legal objections raised, the Committee on Foreign Relations of the United States Senate recommended a set of eight provisos to the Convention. These eight do two things. They spell out and qualify the domestic and legal obligations which the United States would incur in ratification of the Convention, but at the same time maintain the integrity of the instrument thus preserving its symbolic value. (See p. 6 for the Provisos as voted by the Senate.)

The Meaning of Provisos

What is the force of the Senate's provisos in the application of the Genocide Convention to citizens of the United States? Article II, Section 2 of the Constitution of the United States provides that the President "shall have power, by and with the consent of the Senate, to make Treaties, providing two-thirds of the Senators concur." The power to bind the United States to a treaty is a shared power. George Washington sought to carry out this joint power by consulting the Senate during treaty negotiations, but this proved unworkable. In the present procedure, the Senate acting through its Foreign Relations Committee reviews all treaties submitted to the Senate by the President. "If that review reveals problems with the treaty, the Senate can reject the treaty. Alternately, and more commonly, when the Senate finds fault with a treaty it corrects the problem through adoption of amendments, reservations, understandings or declarations. The Senate's approval of a resolution with such provisos means that, Senate consent to ratification is being given subject to these conditions.

The President may reject the Senate's conditions. "He may not, however, ratify the treaty if he does. If the President accepts the Senate's conditions, he proceeds to ratify the treaty by signing an instrument of ratification. This is then either exchanged with the other parties to the treaty or deposited in accord with the procedures agreed to by the parties. Article XI of the Genocide Convention provides, for example, that

instruments of ratification are to be deposited with the Secretary-General of the United Nations." Whatever conditions the Senate places on a treaty are to be included in the instrument of ratification. These conditions, together with the treaty and its accompanying documents, describe the full obligation undertaken by the United States in ratifying the treaty.

In the case of the Genocide Convention, the Senate accepted the recommendation of the Committee on Foreign Relations and voted two reservations, five understandings and one declaration. "A reservation is usually defined as a unilateral statement made by a contracting party which purports to exclude or modify the terms of the treaty or the legal effect of certain provisions... An understanding is generally defined as a statement which interprets or clarifies the obligation undertaken by a party to a treaty." As for the Genocide Convention, the intent of the Committee and voted by the Senate was that the Senate's understanding is the controlling factor, and that no contrary interpretation whether by the International Court of Justice or some other tribunal would supercede or nullify the United States' understandings. "A declaration is generally defined as a formal statement, explanation or clarification made by a party about its opinion or intentions relating to issues raised by the treaty under consideration."

The Two Reservations

Article IX of the Genocide Convention placed the jurisdiction for the "application, interpretation or fulfillment" of the Convention under the authority of the International Court of Justice (ICJ). The first reservation of the Provisos clearly restricted this article stating that before any dispute involving the United States may be submitted to the jurisdiction of the ICJ under this treaty, the specific consent of the United States is required in each case. This reservation was designed to meet situations in which it would be clear that adjudication before the ICJ would be contrary to the national interest. This could involve cases brought solely for the propaganda value that might result.

The second reservation places the Constitution of the United States as paramount. The Constitution (Article VI) lists treaties as well as the Constitution and National legislation as the supreme Law of the Land, but

no treaty can override or conflict with the Constitution. (Reid v. Covert, 354 U.S. 1 (1957))

The first eight articles of the Convention impose a number of obligations on each nation which accepts the Treaty. Some are clear; others are open to interpretation. If any of these articles should be construed to require the United States to act in anyway barred by the Constitution, this reservation excuses the United States from the assumed obligation. If a conflict should arise in regard to obligations resulting from the Convention, the force of the Convention is limited to that permitted under the Constitution.

"Article V of the Convention states that the parties must enact legislation 'in accordance with their respective Constitutions.' It is not certain whether this article refers solely to the procedures to be followed in passing legislation or whether it concerns the content of the legislation as well. If it includes the latter, the Convention by its terms would remove any chance for conflict between itself and the Constitution. However, the Committee felt that this matter was too important to leave to chance; thus it" recommended this reservation.

"Conflict is most likely to occur between the First Amendment's proscription on legislation abridging free speech and Article III's requirement that 'direct and public incitement to commit genocide' be punished... In response to a request for an advisory opinion, or as a result of a proceeding under Article IX, the ICJ could interpret Article III in a way inconsistent with the First Amendment."

Such an interpretation would not be particularly surprising. "The criminal laws of many countries ban speech related to crimes such as genocide on the theory that this deters the acts themselves." The framers of the American Constitution had a different view. Justice Louis Brandeis noted that -

discussion affords ordinarily adequate protection against the dissemination of noxious doctrine;... that the fitting remedy for evil counsels... is good ones; [and that] believing in the power of reason as applied through public discussion, they [the framers] eschewed silence coerced by law. (Whitney v. California, 274, 375-76 (1927))

The Genocide Convention was unique among the treaties which the Committee on Foreign

Relations has ever reviewed in that it involves such fundamental matters as the relationship between criminal law and the right of free speech. "No other type of treaty, be it one of friendship and commerce, taxation or the like, raises these kind of issues." Because of this, the Committee believed it appropriate that a Constitutional reservation be placed in the Provisos. The Senate concurred.

The Understandings

Article II of the Genocide Convention states that "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." In the first understanding of the provisos, the Senate voted that this intent must be "specific." In American criminal jurisprudence, the requirement that purposive behaviour be demonstrated is signaled by making specific intent an element of the offense.

"In addition to acts designated to destroy an entire group, genocide under Article II includes the destruction of a group 'in part.' The aim of the Convention is the prevention and punishment of acts undertaken on a mass scale. Thus, the reference to 'in part' means a substantial number of individual group members. An act must be intended to destroy the group as a viable entity to qualify as genocide. Isolated acts of violence against members of a group are thus excluded." They would be covered under other criminal laws.

"This understanding carefully delineates the acts that constitutes genocide. One might ask why there is need for such precision. After all massive acts of violence directed at individuals because of their membership in a particular national, ethnic, racial or religious group would seem to be easily discernable. The answer is that over the years the true meaning of the word genocide has been debased. The charge of genocide has come to be levelled against virtually any action with which the accuser disagrees. Raphael Lemkin, the Polish legal scholar, coined the term to describe what was happening to Jews in Nazi-occupied Europe. His purpose was to focus the outrage of all civilized people on the commission of such atrocities." By making Article II of the Convention to mean "specific" intent is to keep the original objective in focus. → →

Section (b) of Article II of the Convention lists among the acts of genocide "causing... mental harm to members of the group." This could have a wide interpretation. Passing out or printing literature which sets forth the Papacy as "the little horn" of Daniel 7 could be construed as causing "mental harm" to an adherent to Catholicism. To document the activities of the hierarchy of the Seventh-day Adevntist Church could be alleged as causing mental harm. The proviso indicates that the harm be the result of some physical intrusion into the body. Besides the injection of drugs, this would include electric shock and other acts which would cause physical injury to the mental faculties. Thus the Senate voted - "That the term 'mental harm' in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques."

The matter of Extradition which has loomed large in the propaganda which has been circulated in regard to the Genocide Convention is also spelled out in a proviso. (See II(3), p. 6, col. 2) This states clearly that no citizen of the United States can be extradited to be tried before a foreign court for acts which would not be criminal if committed in the United States. "Before extradition can be granted, it must be shown that the act complained of, if true, would be a violation of U.S. law."

Article VI of the Genocide Convention declared that the individual charged with genocide be tried by a court where the alleged act was committed. The proviso makes it clear that should an American citizen be accused of committing such an act abroad, the United States could meet its treaty obligation under Article VI by prosecuting the person under United States laws.

Further in Article VI of the Convention, the suggestion is made that an "international penal tribunal" be given the authority to try alleged acts of genocide. The Senate proviso makes it clear that should such a court be established, United States participation be authorized through another treaty which would have to have the consent of the Senate. It could not be done through executive agreement by a future President.

The Senate proviso, II(4), put the United States on record that acts committed in the course of armed conflict which do not have specific intent cannot be considered as genocide, but should such an intent be present,

it does become an act of genocide even during a war.

Actually, that which has been voted by the United States Senate protects against a death decree aimed at a political, ethnic, racial or religious group of people. There has been much opposition to the ratification of this Treaty expressed in the Senate hearings over the years as well as in various sections of the media. However, in looking at history during the Christian era, the religious organization that has been guilty of genocide as it has been defined in the Treaty is the Papacy. Moreover, one publication which has inveighed against the ratification of the Treaty has been Spotlight which echoes the objectives of the Catholic right. It was the Papacy which kept silent during the Nazi atrocities against the Jews. Papal policy at present is anti-Jewish, and pro-Arab.

There is one more proviso to the Senate ratification. It is the declaration - "that the President will not deposit the instrument of ratification until after the implementing legislation referred to in Article V shall be enacted." This has now become a Public Law and needs to be carefully considered.

To be continued

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POSTSCRIPT

To the National Sunday Law

Since the preparation of the four articles on the National Sunday Law in WVN (XXII-6, 7, 8) and Commentary (III-4), we received from a writer on the West Coast an E. G. White manuscript (Ms. 163, 1898) captioned: -

PREVENTION AND PUNISHMENT OF CRIME OF GENOCIDE 7

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 1948 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:

- (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

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provide effective penalties for persons guilty of genocide or of 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 interpretation, application or fulfilment 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.

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.

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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 thereof 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 each Member of the United Nations and to each of 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.

Congressional Record - Senate
February 19, 1986, pp. S 1377 & S 1378

The PRESIDING OFFICER. Two-thirds of the Senators present having voted in the affirmative, the Senate does advise and consent to the ratification of the Genocide Convention.

The resolution of ratification, including its reservations, understanding, and declaration, is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948 (Executive O, Eighty-first Congress, first session), Provided that:

I. The Senate's advice and consent is subject to the following reservations:

(1) That with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1) That the term "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such" appearing in Article II means the specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in Article II.

(2) That the term "mental harm" in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques.

(3) That the pledge to grant extradition in accordance with a state's laws and treaties

in force found in Article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in Article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.

(4) That acts in the course of armed conflicts committed without the specific intent required by Article II are not sufficient to constitute genocide as defined by this Convention.

(5) That with regard to the reference to an international penal tribunal in Article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate.

III. The Senate's advice and consent is subject to the following declaration:

That the President will not deposit the instrument of ratification until after the implementing legislation referred to in Article V has been enacted.

"Postscript" from p. 4, col. 2

"The Sunday Law, The Law Against the Sabbath, and the Mark of the Beast." It reads: (Deletion marks as in published manuscript)

Satan to Exercise His Power Above Anything Known. Satan is coming down in great power. He is now in the world and is to exercise his power above anything you know of...

Difference Between Sunday Closing Laws and Laws Forbidding Sabbath-keeping. With regard to the Sunday question: ... If they should come here [the Echo Publishing House, Australia] and say [that] you must close up your work and your presses on Sunday, I would not say to you, "Keep your presses going," because the conflict does not come between you and your God. When they go a little further and say, "You must keep Sunday and you shall not observe Saturday," then everyone that took ... [that] position would have the mark of the beast.

If the authorities should say, "Don't you carry on work here on Sunday" ... You can go on missionary work and make that a day in which you will see what you can accomplish in the work of drawing souls to Jesus Christ, for God does not want us to gratify the devil by defying the powers...

Drawing the Line Regarding the Sunday Law. Then there are other things that they may draw the line on, but we are not ready for the line to be drawn here in regard to the Sunday law. You just go to work, everyone of you, to disappoint the devil and see how much you can do, how many souls you can bring into the truth.

Just yesterday (July 24), we received from friends in Ohio a 1987 "Appointment Calendar" which had been prepared for the United States Air Force Auxiliary, Civil Air Patrol by the Public Affairs Office, National Headquarters at Maxwell AFB in Alabama. The monthly layout placed Monday as the first day of the week, and Sunday as the seventh, even noting "Easter Sunday." We are reminded again of the prophecy in Isaiah which the Pope used in his Apostolic Letter dated, Good Friday, April 20, 1984. That prophecy in Isaiah 2 reads that "out of Zion shall go forth the law." (2:3) The people that designate themselves as "Zion" are a people forsaken of God. (See Isa. 2:6) We need to beware of the Pied Pipers of Adventism who are using the National Sunday Law question to lure the "children" of God up a false mountain. (See poem by Robert Browning) We have more to fear from within than without!

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"If the blind lead the blind, both shall fall into the ditch." Jesus

THE GREAT ENEMY OF TRUTH - THE MYTH

"For the great enemy of truth is very often not the lie, deliberate, committed, and dishonest, but the myth, persistent, persuasive, and unrealistic. Too often we hold to the cliches of our forebearers. We subject all facts to a prefabricated set of interpretations. We enjoy the comfort of opinion without the discomfort of thought."

John F. Kennedy

(From a Speech given at Yale University, 1962. Quoted by Charles Briggs, County News, Santa Cruz, CA., July 8, 1976)

NEW ADDRESS

Recently the Postal Service acquired new facilities in Ozone, Arkansas, which is about two miles from the campus of the Foundation. This new facility offers both postal boxes and bulk-mailing service. By using the Ozone address, we can reduce the time to get mail from one hour to less than 15 minutes. Besides this, if a letter requires immediate response, the answer can be sent back down the mountain the same day the carrier brought it up in the morning. The new address is:

P. O. Box 69
Ozone, AR 72854

We will be phasing in this new address and the old one out over the next six months. We will continue to use the present correspondence supplies in each category until exhausted.

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"Men occasionally stumble over truth, but most of them pick themselves up and hurry off as if nothing happened."

Sir Winston Churchill

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"Watchman, What of the Night?" is published monthly by the Adventist Laymen's Foundation of Mississippi, Inc., P. O. Box 69, Ozone, AR 72854, USA.

In Canada, write - The Adventist Laymen's Foundation of Canada, P. O. Box 117, Thorne, Ont. POH 2J0.

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