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Commentaries on the Genocide Convention: A Reintroduction to Nehemiah Robinson

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COMMENTARIES ON THE GENOCIDE CONVENTION: A REINTRODUCTION TO NEHEMIAH ROBINSON

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In September 2007, at the International Conference in Commemoration of the Sixtieth Anniversary of the Negotiation of the Genocide Convention (Conference), I was privileged to chair a panel entitled “The Origins of the Genocide Convention: From Nuremberg to Lake Success.” This forward introduces an unexpected find that I stumbled upon while preparing for our panel: a unique copy of a 1949 commentary on the Genocide Convention that came into my possession just two days before the Conference. The publication in question, The Genocide Convention, Its Origins and Interpretation, by Dr. Nehemiah Robinson, was originally circulated as an unbound seventy-five page folio. With the publisher’s permission, it is reproduced in its entirety in the appendix of this issue.

As a backdrop to how Robinson’s work fits into the chronology of events pertaining to the Genocide Convention, it may be helpful to take a moment to contextualize the title that the Conference organizers bestowed upon our particular panel.

Students of the early history of the United Nations may recall that prior to the construction of its permanent headquarters it was an organiza-

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tion that led what has been referred to as a “wandering existence.” During that period, its meetings were held on both sides of the Atlantic, including facilities in London, Paris, and New York. By December of 1946, its work in the New York area was split primarily between Lake Success, where the Secretariat was housed, and Flushing Meadow, where the General Assembly met. It was at this time that the General Assembly adopted the historic, albeit non-binding, resolution that declared genocide to be an international crime and called for the development of a genocide convention. Yet, with all due respect to both Flushing Meadow and Lake Success, our panel’s title could quite easily have given top billing to Paris, France, for it was actually in Paris, at the Palais de Chaillot, that the General Assembly unanimously adopted the Genocide Convention in December of 1948.

The developments pertaining to the crime of genocide during this eventful period were to be addressed by my co-panelists, Professors Henry King, William Schabas, and my father, Benjamin Ferencz, each of whom I contacted in preparation for our collective presentation. It was in discussions with my father, two days before our panel, that he mentioned, almost as an afterthought, that he had something that he thought might be of interest to me.


4 See Supplementary Report, supra note 3, at 693; Story of the U.N. Headquarters, supra note 3.


7 See Schabas, supra note 1, at 68–69. See also, Nehemiah Robinson, 1949 Commentary, supra note 2 (referencing unanimous adoption of the Convention). From 1946 to 1948, the grounds considered for coverage by the crime of genocide were considerably modified. Compare the language set forth in G.A. Res. 96(I), of December, 1946, which speaks in terms of acts “committed on religious, racial, political or any other grounds” (emphasis added), with the language of the Convention, as finally adopted in December of 1948, which covers only “acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such.” G.A. Res. 96(I), U.N. Doc. A/64 (Dec. 11, 1946), U.N. Doc. A/810 (Dec. 9, 1948).
He produced an old sheaf of fourteen-inch papers in an unbound folder, constituting his personal copy of Nehemiah Robinson’s 1949 commentary—given to him by none other than Robinson himself. The pages were beyond yellow with age; they were brown and fraying at the edges, and contained my father’s original notations, made over half a century ago. Although my father had donated the vast bulk of his personal archives to The United States Holocaust Memorial Museum over a decade ago, this valuable reference work had remained behind. My reaction to being presented with this decaying little treasure was unequivocal. I immediately took it to the nearest Kinko’s copy shop, had half a dozen hard copies made overnight, and then had it scanned and formatted for inclusion in this Symposium Issue.

Since Robinson’s 1949 commentary says nothing about who he was, a few words are in order about his background and how my father came to have a copy of his work. Robinson was a Lithuanian Jew who immigrated to the United States in 1940, becoming an American citizen and the director of the Institute of Jewish Affairs of the World Jewish Congress. He was an expert on war crimes and on German war reparations, and was in charge of all research for the World Jewish Congress. He also worked with the Conference of Jewish Material Claims Against Germany, and it was in this connection that he and my father (who was very involved in worldwide restitution claims after the war) became well acquainted.

In the process of enquiring as to how my father chanced to have received a copy of Robinson’s commentary, I learned to my great surprise, that as a young child, I may very well have met Nehemiah Robinson, if only fleetingly. His relationship with my parents had evolved into a close personal friendship, and my father stated that Robinson was a regular visitor in our home. Hence, in the title of this forward, I give myself the benefit of the doubt, referring to my preparations for our panel as a reintroduction to Nehemiah Robinson.

It bears mentioning that Robinson followed his 1949 publication, about ten years later, with a longer work entitled *The Genocide Convention: A Commentary*, published just four years before his untimely death in 1964. Both works are still cited with some regularity, and it may be of

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8 See Nehemiah Robinson Dead at 65: Led Institute of Jewish Affairs, N.Y. TIMES, Jan. 12, 1964, at 92.

9 Id.

10 Id.

historical interest to note that the 1949 commentary is credited with having been part of the record of Senate subcommittee hearings during the very early stages of the forty-year effort to ratify the Convention in the United States.\footnote{International Convention on the Prevention and Punishment of the Crime of Genocide: Hearings on Executive O Before a Subcomm. of the Comm. on Foreign Relations, 81st Cong. 2d Sess. 487 (1950) (reprinting 1949 Commentary, supra note 2). It was not until 1988 that the United States finally adopted implementing legislation making genocide a federal crime. See Genocide Convention Implementation Act of 1987, 89 Dep’t St. Bull. 38 (1989) (providing a reproduction of President Reagan’s remarks at the signing ceremony of the Genocide Convention Implementation Act, and the text of a White House fact sheet).}

The expanded commentary that Robinson published in 1960 draws heavily on his earlier analysis, portions of which are reproduced verbatim in the later commentary.\footnote{Compare 1960 Commentary, supra note 11, at 53–118, with 1949 Commentary, supra note 2, at 10–56.} There is, however, one notable exception: in his 1949 commentary, Robinson offers authority for the view that there is nothing in the Convention to compel compulsory ICJ jurisdiction with respect to claims for reparations.\footnote{See 1949 Commentary, supra note 2, at 40–43.} The discussion of this topic in his later work differs rather markedly from his earlier analysis, revealing an apparent change of perspective.\footnote{Compare 1960 Commentary, supra note 11, at 101–04, with 1949 Commentary, supra note 2, at 40–43.}

Because The Genocide Convention, Its Origins and Interpretation is reproduced herein in its entirety, the work can speak for itself and needs little in the way of further introduction. Suffice it to say, that true to its title, it traces the Convention’s drafting history, from its origins in 1946 to its adoption in 1948, and provides a comprehensive article-by-article analysis interpreting its provisions.