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Should The U.S. Constitution's Treaty-Making Power Be Used As The Basis For Enactment Of Domestic Legislation?

Implications of the Senate-Approved Genocide Convention

by Robert A. Friedlander*

INTRODUCTION: THE NATURE OF THE PROBLEM

It has been more than thirty-six years since the United Nations General Assembly passed the Convention on the Prevention and Punishment of Genocide without dissenting vote.¹ It has been more than thirty-five years since the Genocide Convention was first submitted by the executive branch to the Senate Foreign Relations Committee, and nearly fifteen years since its resubmission during the divisive Vietnam war. There have been three other considerations from 1971 to the present,² and the Senate only just recently has given its advice and consent to this still controversial instrument. In all this time, the world community has not collapsed and the American republic has continued to be the staunch leader of the freedom-loving nations of the world. No public outcry in support of the Convention has reverberated throughout congressional corridors, and no fatal injury to the international protection of human rights has been sustained because of the U.S. abstention.

To the contrary, if genocide is defined as mass murder either of a particular nationality or of an identifiable group, then that supposed internationally proscribed criminal behavior has become embarrassingly

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¹ Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force, Jan. 12, 1961) [hereinafter cited as Genocide Convention].

² For a short history of the five different hearings held on the Genocide Convention and their result, see COMM. ON FOREIGN REL., INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, S. EXEC. REP. No. 50, 98th Cong., 2d Sess. 207 (1984) [hereinafter cited as FOREIGN REL. REP. (1984)].

prevalent in the post-World War II decades.³ Instead of arguing, as have a number of American scholars, that the proscription of genocidal acts constitutes a universal norm,⁴ the truth of the matter is that the practice of genocide, as distinct from the prohibition, has been so widespread that it sadly reflects modern global normative conduct. On the other hand, if genocide is truly an international crime with individual liability for such heinous activity,⁵ then why—except for Adolf Eichmann—has no individual, let alone government, been brought to bar since the Convention was first approved by the U.N. General Assembly in December, 1948?⁶

The first fundamental (and arguably fatal) flaw of the unreserved Genocide Convention is the question of focus, or to place it in broader perspective, the question of definition. In terms derived from our own legal system, the definitions proffered by articles II⁷ and III⁸ of the Convention are vague and overbroad, arbitrary and capricious, and statutorily unreasonable both in their construction and application. They are, in American constitutional phraseology, violative of substantive due process and could not withstand strict constitutional scrutiny by United States federal courts, since criminal statutes in this country have to be

³ Cf. L. KUPER, *GENOCIDE: ITS POLITICAL USE IN THE TWENTIETH CENTURY* (1981); *The Genocide and Humanicide Symposium*, 8 OHIO N.U.L. REV. 299 (1981); U.S. DEPT. OF STATE, *COUNTRY REPORT ON HUMAN RIGHTS PRACTICE*, vols. 1979-1983.

⁴ See, e.g., Edwards, *Contributions of the Genocide Convention to the Development of International Law*, 8 OHIO N.U.L. REV. 300, 305-06 (1981); Whiteman, *'Jus Cogens' in International Law, with a Projected List*, 7 GA. J. INT'L & COMP. L. 609, 625 (1977). This was also the position of the International Court of Justice. See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, 1951 I.C.J. 15, 23 (Advisory Opinion of May 28) [hereinafter cited as *Genocide Advisory Opinion*]; *The Barcelona Traction, Light, and Power Company*, 1970 I.C.J. 3, 32 (Judgment of Feb. 5).

⁵ See *Genocide Convention*, art. IV, 78 U.N.T.S. at 280.

⁶ *Attorney General of the Government of Israel v. Adolf Eichmann*, 36 I.L.R. 5, 30-42 (1968) [hereinafter cited as *Eichmann Judgment*]. Eichmann was convicted of crimes committed during the Jewish Holocaust of the Second World War, which antedated the Genocide Convention of 1948.

⁷ 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 member 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.

Genocide Convention, art. II, 78 U.N.T.S. at 280.

⁸ 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.

Id. art. III, 78 U.N.T.S. at 280.

strictly construed in favor of the the defendant.⁹

In its 1951 Advisory Opinion on the reservations to the Genocide Convention, the International Court of Justice (ICJ) claimed that “[t]he high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”¹⁰ But this is not how American law operates, how the common law applies, nor is it how international law is supposed to work. High ideals and nobility of purpose are no substitute for the precision and specificity of statute required either by the adversarial or the inquisitorial criminal justice systems. The description of the “crime” of genocide provided by the restricted Genocide Convention is so expansive and all-inclusive as to cover almost any wrongdoer perpetrating almost any criminal act of violence or advocacy of violence against almost every type of victim.

The various classifications of subject victim groups put forward by article II (national, ethnical, racial, or religious as such), encompasses virtually all conceivable persons, except for those having a particular political affiliation, which the drafting committee voted to discard over the objections of the U.S. delegates, but with the support of the Soviet Union.¹¹ In retrospect, discarding the political affiliation classification was probably just as well, since the inclusion of a political groups category would have opened the way to every small, dissident, radical political faction to raise a charge of genocide every time it was prevented from achieving its immediate objectives or was denied major party recognition. Moreover, the crimes enumerated in article II present some very serious additional problems.

No American citizen or resident alien (legal or otherwise) seems to be excluded from the sweep of this article.¹² As for the enumerated crimes, (a) “Killing members of the group” does not allow for any defenses; (b) “Causing serious bodily or mental harm to members of the group” does not specify the degree of mental harm or distinguish whether the injury includes psychological disorientation of a temporary nature; (c) “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” can lead

⁹ See W. LAFAVE & A. SCOTT, JR., HANDBOOK ON CRIMINAL LAW 72-74 (1972).

¹⁰ Genocide Advisory Opinion, 151 I.C.J. at 23.

¹¹ *Serious Problems Raised by the Genocide Convention: Hearings on the Genocide Convention Before a Subcomm. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess. 73 (1950) (statement of Alfred J. Schweppe) [hereinafter cited as Senate Hearings (1950)]; L. KUPER, *supra* note 3, at 24-30.

¹² The originator of the concept of genocide, Professor Raphael Lemkin, was, if possible, even more inclusive, specifying the following categories: political, social, cultural, physical, biological, moral, and religious. This, in effect, covered all humankind. See L. KUPER, *supra* note 3, at 30; Lemkin, *Genocide as a Crime under International Law*, 41 AM. J. INT'L L. 145, 147-148 n.6, 151 n.14 (1947).

to charges raised by minority groups suffering from residential discrimination or ghetto life, or by native Americans seeking redress for the type of existence found on Indian reservations; (d) "Imposing measures intended to prevent births within the group" can lead to complaints directed against government agencies promoting contraceptives or against government officials (including the U.S. Supreme Court) for allowing the practice of abortion (the pro-life terrorists could end their bombing, and could concentrate instead upon paralyzing the federal courts with a flood of genocide actions); and (e) "Forcibly transferring children of the group to another group" may involve the placing of minority dependent children in foster homes. The list of possibilities for creative lawyers is practically endless.

Of even greater import, failure to specify a requisite size for a potential victim group in article I raises the possibility that a single victim belonging to the above-listed groups may be sufficient for a genocide accusation. Despite denials of the State Department to the contrary,¹³ the Special Rapporteur of the United Nations Economic and Social Council Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in his study of the prevention and punishment of genocide, admits it was generally agreed in the debates of the Sixth (Legal) Committee during the drafting of the Convention that "it was not necessary for the act to be aimed at a group in its entirety." He goes on to add: "[a] number of writers also believe that the Convention should be interpreted as applying to cases of 'individual genocide'."¹⁴ That was also the view of the U.S. representative on the Sixth Committee.¹⁵ Thus, the distinction between genocide and homicide becomes one of motive, the latter only applicable in American law to establish a case of first degree murder.

By the language of article III, not only is genocide—as defined in article II—a crime in international and (by incorporation under article I) domestic law, but also proscribed are acts of conspiracy, incitement, attempt, and complicity relating to the crime of genocide. None of these punishable forms of conduct, as designated by article III, contain any material elements whatsoever. There is no indication as to what method of legal analysis obtains for ascertaining the required criminal liability

¹³ Le Blanc, *The Intent to Destroy Groups in the Genocide Convention: The Proposed U.S. Understanding*, 78 AM. J. INT'L L. 369, 373 (1974).

¹⁴ Ruhashyankiko, *Study of the Question of the Prevention and Punishment of the Crime of Genocide*, U.N. Economic and Social Council, Commission on Human Rights, U.N. Doc. E/CH.4/Sub. 2/416, at 14 (July 1978) [hereinafter cited as U.N. Genocide Study].

¹⁵ 11 DIGEST OF INTERNATIONAL LAW 854 (M. Whiteman ed. 1968). His statement indicates that genocide and homicide can be concurrent crimes, later denied by Deputy Undersecretary of State Dean Rusk at the 1950 Senate Foreign Relations Committee Hearings. See FOREIGN REL. REP. (1984), *supra* note 2, at 9.

connected with the aforementioned activities. Are all these crimes equal in degree of culpability? Should they all be subject to the same punishment? For that matter, what kind of punishment do they merit? On each of these significant questions, the Convention is silent.

The rock upon which the Convention has foundered from its very inception is that of the nature of criminal responsibility. The lessons of history, politics, and reality clearly indicate that genocide is committed by governments, not by individuals. An individual, or even a small number of individuals, cannot wipe out an entire group, unless it is a very small group indeed. Neither the designations of genocide provided by the Convention, nor the definition offered by its forerunner, U.N. General Assembly Resolution 96(I) of December 11, 1946,¹⁶ indicate that genocide in its historic sense is a matter of state responsibility. A distinguished American political sociologist in a recent analysis has provided the following definition: "Genocide is herein defined as *a structural and systematic destruction of innocent people by a state bureaucratic apparatus*. . . . Genocide means the physical dismemberment and liquidation of people on large scales; an attempt by those who rule to achieve the total elimination of a subject people."¹⁷ In other words, genocide is mass murder perpetrated by a repressive government. To say, as does article IV, that private individuals commit genocide is not only pure hyperbole, but in the context of the so-called criminality of article II, it is a loaded weapon pointed at the citizenry of any signatory state.¹⁸

For these reasons, the Senate Committee's reservations to the adoption of the Genocide Convention¹⁹ were designed to clarify the meaning

¹⁶ The General Assembly Resolution designated genocide as follows:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern.

G.A. Res. 96(I), U.N. Doc. A/64/Add.1, at 188-89 (1946).

¹⁷ I. HOROWITZ, *TAKING LIVES: GENOCIDE AND STATE POWER* 17, 85 (3rd ed. 1980) (emphasis in original). Cf. *RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* § 702 (Tent. Draft No. 3, Mar. 15, 1982).

¹⁸ Originally, the American delegation urged co-responsibility between the individual and the state. *Treaties Should Not Be Used To Enact Domestic Legislation: Hearings on the Genocide Convention Before a Subcomm. of the Senate Comm. on Foreign Relations*, 92d Cong., 1st Sess. 30 (1971) (statement of Eberhard P. Deutsch) [hereinafter cited as *Senate Hearings (1971)*]. The U.N. ECOSOC Special Rapporteur takes the view that states bear only political responsibility and not criminal liability. U.N. Genocide Study, *supra* note 14, at 38.

¹⁹ GENOCIDE CONVENTION, S. EXEC. REP. NO. 2, 99th Cong., 1st Sess. 17-27 (1985) [hereinafter cited as *SENATE RESERVATIONS*].

of intent, to refine the aspects of prohibited criminality so that they would be in accord with the Anglo-American criminal justice system, and to guarantee to all American citizens and resident aliens the substantive and procedural protections of the U.S. Constitution. They transform the Convention from an instrument whose content potentially endangers the constitutional rights of American citizens (and the security of some of our valued allies like Britain and Israel)²⁰ into a symbolic denunciation of a crime which every civilized society abhors. Since the Genocide Convention deals with individuals rather than states, then the rights and liberties of individuals living in free societies should be protected. The Senate Reservations do exactly that.

CONCLUSION: TREATIES, EXECUTIVE AGREEMENTS, AND
INTERNATIONAL LAW: PRESENT COMPLEXITIES AND
FUTURE CONCERNS

No court has ever declared a treaty unconstitutional, though a number of landmark decisions²¹ indicate that the judicial branch has the power to do so. Treaties and conventions, like statutes, are to be construed reasonably and their words are to be interpreted in their ordinary meaning. When a treaty lends itself to a dual interpretation, the broader view of the rights of the parties is to be preferred.²² Although there seems to be no precise pronouncement on the subject, since there is a strong presumption of constitutionality with respect to acts of Congress, it is reasonable to assume in the light of historical experience that the same applies to treaties.²³

The role of international law in domestic U.S. litigation has always been a matter of some controversy. Thomas Jefferson warned from Paris, during late December 1787, that international law should not become the basis for trials in the United States.²⁴ In contrast, the most sweeping claim imaginable for the role of international law in U.S. municipal jurisprudence was put forward by Justice Chase at the time of the Jay Court, in the landmark case of *Ware v. Hylton*.²⁵ Chase's notion that international law imposed obligations on all courts, state and federal, and upon all citizens,²⁶ was not only pure dictum, but was also ill-founded. The succeeding Marshall Court rejected this approach, emphasizing instead the importance of federal statutes. After more than a decade on the

²⁰ Hatch, *Reject the Genocide Convention*, N.Y. Times, Apr. 23, 1985, at A27, col. 1.

²¹ See, e.g., *Reid v. Covert*, 354 U.S. 1, 16 (1957).

²² *Geofroy v. Riggs*, 133 U.S. 258, 270-72 (1890).

²³ *Baker v. Carr*, 369 U.S. 186, 212 (1961).

²⁴ Letter to James Madison, Dec. 20, 1787, reprinted in *THE PORTABLE THOMAS JEFFERSON* 429 (M. Peterson ed. 1977).

²⁵ 3 U.S. (3 Dall.) 199 (1796).

²⁶ *Id.* at 229.

nation's highest bench, Marshall conceded in *Thirty Hogsheads of Sugar v. Boyle* that the law of nations is partly unwritten, and partly conventional: "[Its] principles will be differently understood by different nations under different circumstances. . . . The decisions of the Courts of every country, so far as they are founded upon a law common to every country, will be received, *not as authority, but with respect.*"²⁷

Two piracy cases, a little more than midway during Marshall's long tenure on the Court, highlight the careful analysis by Justices Marshall and Story of the connective links between international law and international criminality. In *United States v. Palmer*,²⁸ the U.S. government maintained that without a prior statute, there could be no definition and punishment of so-called international crime. The law of nations merely created the offense. Its prosecution and punishment depends upon the exercise of domestic jurisdiction under appropriate legislation.²⁹ Marshall apparently agreed, going on to point out the fundamental importance of specificity and precision of language in drafting statutory crimes.³⁰ In *United States v. Smith*,³¹ Justice Story reaffirmed the Marshall analysis. Offenses against customary international law, Story observed, "cannot, with any accuracy, be said to be completely ascertained and defined in any public code recognized by the common consent of nations. In respect, therefore, . . . as to offenses against the law of nations, there is a peculiar fitness in giving the power to define as well as to punish. . . ." ³² Thus, "[t]o define piracies, in the sense of the constitution, is merely to enumerate the crimes which shall constitute piracy;" and to include their elements.³³ The bottom line for piracy and for all other international crimes falling within U.S. domestic jurisdiction is that "the law of nations . . . [cannot of itself] form a rule of action."³⁴ This is still the law today with respect to any act internationally proscribed by custom, treaty, or convention.

It is the common wisdom among legal scholars that the *Paquete Habana* case, in its description of the role of international law, has made the law of nations part of American legal doctrine: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."³⁵ One well-

²⁷ 13 U.S. (9 Cranch) 191, 198 (1815) (emphasis added).

²⁸ 16 U.S. (3 Wheat.) 610 (1818).

²⁹ *Id.* at 620-21.

³⁰ *Id.* at 628-30.

³¹ 18 U.S. (5 Wheat.) 153 (1820).

³² *Id.* at 159.

³³ *Id.* at 160.

³⁴ *Id.* at 182 (Livingston, J., dissenting).

³⁵ 175 U.S. 677, 700 (1900).

respected contemporary commentator interprets this to mean that international law is in fact "part of 'the law of the land'."³⁶ Another prestigious analyst goes even further, flatly stating that customary international law "is directly incorporable" into the American legal process.³⁷ Small wonder that following the Nuremberg Judgment, and just prior to the U.N. approval of the Genocide Convention, a distinguished American legalist would write that "[i]nternational law has imposed obligations on states to punish certain acts committed in their territory, punishment of which is primarily an interest of other states or of the community of nations. . . ."³⁸ If this were true, then approving the Genocide Convention would be merely symbolic, since its provisions would already control.³⁹

The reality of the American system is best reflected in the sharp-edged dicta of a 1925 Connecticut federal district court: "International practice is law only in so far as we adopt it, and like all common or statute law it bends to the will of Congress."⁴⁰ But in 1980, using *Ware v. Hylton*, *United States v. Smith*, the *Paquete Habana*, and a single sentence in *The Nereide*, Judge Irving Kaufman of the Second Circuit Court of Appeals, taking a dramatic departure from existing practice, claimed that U.S. courts are indeed bound by the prevailing rules of international law.⁴¹ Kaufman's opinion in *Filartiga* has become a rallying point for those who would make the U.N. Charter, the Universal Declaration of Human Rights, the Genocide Convention, the two International Covenants on Civil, Political, Social, Economic, and Cultural Rights, and the Convention on the Elimination of All Forms of Racial Discrimination self-executing in American law.⁴²

Filartiga creatively asserts that U.S. law is subject not only to the U.N. Charter, but also to all relevant human rights instruments.⁴³ It adds the ringing statement that "[f]ederal jurisdiction over cases involving international law is clear."⁴⁴ What is not clear is whether Kaufman

³⁶ Bilder, *Integrating International Human Rights Law into Domestic Law — U.S. Experience*, 4 HOUS. J. INT'L LAW 1, 2 (1981).

³⁷ Paust, *Litigating Human Rights in U.S. Courts*, 4 HOUS. J. INT'L L. 139 (1981).

³⁸ Wright, *The Law of the Nuremberg Trial*, 41 AM. J. INT'L L. 38, 57 (1947).

³⁹ The Eichmann Court on this issue was in agreement with the I.C.J. See Eichmann Judgment, *supra* note 6, at 33-34.

⁴⁰ *The Over the Top*, 5 F.2d 838, 842 (D. Conn. 1925). A further pronouncement, though undeniably dictum, adds: "It is not the function of treaties to enact the fiscal or criminal law of a nation. For this purpose, no treaty is self-executing." *Id.* at 845. But the U.S. Supreme Court has been silent on this issue.

⁴¹ *Filartiga v. Pena-Irala*, 630 F.2d 876, 881-85 (2d Cir. 1980).

⁴² See especially, *Symposium—Federal Jurisdiction Human Rights, and the Law of Nations: Essays on Filartiga v. Pena-Irala*, 11 GA. J. INT'L & COMP. L. 304 (1981).

⁴³ 630 F.2d at 881-85.

⁴⁴ *Id.* at 887.

is also implying that the violation of human rights have a quasi-criminal status in American courts. A resounding denial is offered by two opinions in the three-judge *per curiam* decision of the D.C. Circuit in *Tel-Oren v. Libyan Arab Republic*.⁴⁵ Both Judge Bork and Judge Robb take strong exception to the language and holding of *Filartiga*. Bork not only claims that the *Filartiga* case, if generally followed, would make all U.S. treaties self-executing, but also bluntly declares that the complaints found in *Tel-Oren* and *Filartiga* "were beyond the framers' contemplation."⁴⁶ Robb is even more critical: "the case appears to me to be fundamentally at odds with the reality of the international structure and with the role of United States courts within that structure."⁴⁷

In sum, the law is still not clear and convincing over the application of quasi-criminal proscriptions by way of treaty and convention, or even by executive agreement. The nature of the instrument is often self-executing, while it may very well be that treaties can consist of executory and self-executing provisions.⁴⁸ It may also very well be that an analogy may be drawn by the future courts between the theory of international torts and the theory of international criminal law, which will once again stretch the Constitution beyond the intention of the framers. A distinguished international lawyer and legal academic has cautioned that "it is more fitting for the political branches to state United States viewpoints on human rights internationally than for the courts to do so unnecessarily."⁴⁹

Without the Senate Reservations, the Genocide Convention would have had the effect of refashioning U.S. municipal law by utilizing what appears to be a valid legal instrument, but which is actually burdened by a misleading and misguided orientation, however noble its stated purpose. The key provisions of the Genocide Convention are domestic rather than international in their essential characteristics. If not limited by the Senate Reservations, then the real consequences of its implementation could be far worse than the prevention sought. Recent approval by the United States Senate⁵⁰ with seven provisos and one declaration⁵¹ will lay to rest many of the legal concerns voiced by the Convention's oppo-

⁴⁵ 726 F.2d 774 (D.C. Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3235 (U.S. Oct. 2, 1984) (No. 83-2025).

⁴⁶ *Id.* at 813.

⁴⁷ *Id.* at 826 n.5.

⁴⁸ 2 C. ANTIEAU, *MODERN CONSTITUTIONAL LAW: THE STATES AND FEDERAL GOVERNMENT* 572 (1969). The executive agreement discussed in *United States v. Pink*, 315 U.S. 203 (1942) is surely self-executing.

⁴⁹ Oliver, *Problems of Cognition and Interpretation in Applying Norms of Customary International Law of Human Rights in United States Courts*, 4 HOUS. J. INT'L L. 59, 63 (1981).

⁵⁰ 132 CONG. REC. S1377 (daily ed. Feb. 19, 1986) (by a vote of 83-11, with six members not voting).

⁵¹ See SENATE RESERVATIONS, *supra* note 19. For an in depth analysis of the Senate Reserva-

nents. Yet, to date, the Genocide Convention has resolved nothing in a world filled with oppressive mass-murdering regimes.⁵² There is no reason to believe, in this regard, that the future will be any different than the past.

tions labelled, see 132 CONG. REC. S1273-S1275 (daily ed. Feb. 18, 1986) (floor speech of Sen. Orrin G. Hatch).

⁵² Proponents of the unreserved Convention appear to emphasize the symbolic importance of American approval and its supposed usefulness for the Helsinki follow-up conferences. See 7 *ABA Standing Committee on Law and National Security: Intelligence Report 1* (1985); Murphy, *Human Rights in United States Foreign Policy*, 4 *HOUS. J. INT'L L.* 133, 136 (1981); Feinrider, *First Duty for the U.S. Senate: Pass the Genocide Convention*, *Miami Herald*, Dec. 31, 1984, at 9A, col. 3. Symbolism, however, can build false hopes and be a cruel deceiver. The value of the Helsinki follow-up meetings, and the U.N.-sponsored human rights conferences, with respect to actions of the Soviet Bloc and the majority of the U.N. membership, has proved to be a will-o-the-wisp. The United States would have been the target of the genocide provisions, and not the beneficiary, if the Senate Reservations had not been approved by the United States Senate.