Ratification of the Genocide Convention?
The United States and the United Nations Convention on the Prevention and Punishment of the Crime of Genocide

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Introduction

At the end of World War II, the United Nations was officially established in October 1945. The war ended in May 1945 and Hitler's "Final Solution" became known to the world. The Holocaust, as it is called today, became the unequivocal image of mass murder, which continues to reverberate today. Because of the atrocities committed during World War II against Jews, Gypsies, Poles, homosexuals, political prisoners, disabled peoples, and others, the United Nations received a proposal to enact an international law against the crime of genocide. As it was, "genocide" had only recently been created as a word and concept by Raphael Lemkin in 1943. Lemkin became the most vocal advocate for the crime of genocide to be an international law. And so, in 1946 in the wake of Hitler's atrocities and during the Nuremberg Trials, the United Nations General Assembly deliberated on Resolution 96 (I) which made genocide a crime under international law. A Convention was called and subsequent drafts were completed into a final resolution in 1948. The General Assembly unanimously adopted, without any abstentions, the Convention for ratification. And in 1951 Resolution 260 A (III) established genocide as a crime under international law. Yet, the United States was not part of the countries which ratified the Convention by 1951. In fact, the United States would not ratify the Convention nor enact the necessary legislation until 1988.

Why did the United States not ratify the Convention when it was instrumental in the creation of the United Nations and actively participated in the drafting process of the Convention on genocide? Further, given the terrible nature of the crime of genocide, the fact that President Truman endorsed ratification, and the support by many members of Congress as well as independent organizations, why was the Convention left unsigned by

the United States for over forty years? Additionally, why did proposals to ratify the Convention prolong such unbalanced, sporadic, and at times repetitive debates? And finally, why during the Reagan administration was the Convention finally ratified? These complex questions and others will be taken up and answered in this paper.

First it is necessary and important to point out that the debates which occurred in the Subcommittee of the Committee on Foreign Relations which held the discussions on the Convention were repetitive. The same basic issues and concerns were brought up in the debates of 1950, the 1970s and again during the 1980s. It is also noteworthy to point out that the nature of opposition to the Convention barely changed during these forty years. Not including the small, misleading, yet outspoken representation from the American Bar Association, the opposition to the Convention was typified by Senators who argued for a strong unilateralist position and those who feared that the United States could be charged with genocide.[1] Other opposition included fringe groups, often extremely outspoken organizations such as the Liberty Lobby and its representative Trisha Katson, who at times bordered on anti-semitism.[2] Senators who argued for a

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[1] American Bar Association members who provided testimony throughout the forty-year Convention debate include: Alfred J. Schweppe, chairman of special committee on peace and law through United Nations, American Bar Association; Carl B. Rix, special committee on peace and law through the United Nations, American Bar Association; George A. Finch, special committee on peace and law through United Nations, American Bar Association; Eberhard Deutsch, American Bar Association

[2] During the 1985 hearings Katson testified:

> As a believer in our constitutional republic, I am opposed to any alien political philosophy that would undermine it, be it Marxism, communism, socialism, national socialism or Nazism, or Zionism. For the purposes of my testimony, it is important that I point out that Zionism is not synonymous with Judaism. Zionism is a political movement while Judaism is a religion. [...] I am concerned with how pro-Zionist forces have aided in America's having a one-sided foreign policy in the Middle East. [...] it was alluded to that Israel might be accused by the Arabs of committing genocide, there has never been a word said on the record that they

strong unilateralist position, such as Senators Sam Ervin Jr. (D., North Carolina) and Jesse Helms (R., North Carolina) argued and fought for the principle of national sovereignty and expressed a disbelief that the ratification of the Convention would prevent future crimes of genocide. During the 1970 hearings Senator Ervin argued that "the convention would expand the constitutional powers of Congress—that, in fact, the federal government would acquire powers with respect to genocide that it did not have in the absence of the treaty."[3] This fear of expanding the powers of the federal government, and in addition, that the Convention violated the United States Constitution were unwarranted. Even in 1950 and again in the 1970s, testimony was provided (from men such as Solicitor General Philip Perlman and William Rehnquist, Assistant Attorney General) which confirmed that the Convention was not unconstitutional.[4] Indeed, the fears of the Senators, and, the arguments provided by the opposition in general were refuted in 1950, again in the 1970s and finally during the 1980s.

It is understandable, then, that proponents, such as Senator Jacob Javits (R., New York) became frustrated with the opposition's repetitive and at times pointless questions and arguments. Lawrence J. LeBlanc, in his book *The United States and the Genocide Convention*, rightly points out that Javits "who suspected that critics such as Ervin were not interested in serious debate over the merits of the Genocide Convention, that in fact

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might be guilty of it. I would like to take this time to speak on behalf of the Palestinian people who have been victimized by acts of genocide on the part of the Zionist-controlled government of Israel. *Hearings on the Genocide Convention Before the Senate Committee on Foreign Relations*, 99th Cong., 1st sess. (1985) 116.

[3] Lawrence J. LeBlanc *The United States and the Genocide Convention* (London: Duke University Press, 1991), 137.
1970 *Senate Hearings* 196-221.

[4] LeBlanc, 138.
1970 *Senate Hearings* 147-165.

they were determined to prevent its ratification at any cost, even if they had to invent arguments to achieve their objective."[5] One example was Ervin's absurd suggestion during the 1970 debates that the denial of welfare benefits could be considered genocide, when in fact there is no intent to destroy, a necessary component of genocide, present in the denial of welfare benefits, therefore it is not genocide.[6]

Other groups calling for the ratification of the Genocide Convention fought for the Convention on the grounds that human rights treaties were legitimate reasons to take an internationalist position. In fact, proponents such as the strongest advocate of the Convention, Senator William Proxmire (D., Wisconsin), argued that the United States should play a leading role in international human rights. Despite the measures which were taken by the opponents to make the ratification of the Convention a symbolic act, supporters recognized the fact that symbolic acts could produce intended results. In addition, Presidents, such as Truman, Nixon, Carter, and Reagan, had all recognized and advocated (though some more forcibly than others) for the ratification of the genocide Convention.

It is important to recognize that the United States' forty year deliberation over the United Nations Convention on the Prevention and Punishment of the Crime of Genocide can be understood in terms of basic, yet very significant international and domestic concerns which could have possibly jeopardized the United States' reputation and international standing. Even though the context of the debates changed over time, I contend that all the hearings were theoretically were dominated by domestic concerns of civil rights and race concerns and international worries about the Cold War, both of

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[5] LeBlanc, 109.
[6] 1970 *Senate hearings* 221.

which were informed by fears that United States itself could be accused of genocide. These larger concerns encompass and are prevalent throughout the on-going, off-going debates over the Convention. What changes is the particular context in which they take place. So what kept the United States from ratifying the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, when it would be debated for almost forty years? And possibly more intriguing why was the Convention ratified during President Reagan's second term in office rather than during Truman's or any other Presidency before? To answer these questions and others it is necessary to view the Convention debates in terms of very real domestic and international concerns.

It will also be seen that scholars have dealt with genocide, the Holocaust, and the Genocide Convention ratification debates in the United States. A large amount of scholars have argued that the Convention is not adequate, that the Convention needs to be changed in some fundamental way specific to each scholar.[7] However, for the purposes of this paper the General Assembly's decision as to what the Convention entailed is the only necessary one to consider. Additionally, scholars such as Peter Novick, author of *The Holocaust in American Life,* and Norman G. Finkelstein, the author of *The Holocaust Industry*, both discuss the Holocaust in American discourse, but they do not substantially

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[7] See: Leo Kuper *Genocide: Its Political Use in the Twentieth Century* (New Haven and London: Yale University Press, 1981). *Genocide: Conceptual and Historical Dimensions*, ed. George J. Andreopoulos (Philadelphia: Philadelphia University Press, 1997). Frank Chalk and Kurt Jonassohn. *The History and Sociology of Genocide* (New Haven: Yale University Press, 1990). *Genocide: An Anthropological Reader*, ed. Alexander Laban Hinton (Oxford: Blackwell Publishers, 2002). Helen Fein *Accounting for genocide: national responses and Jewish victimization during the Holocaust* (New York: Free Press, 1979). Helen Fein *Genocide: a sociological perspective* (London: Sage Publications, 1993). Christian P. Scherrer "Towards a theory of modern genocide. Comparative genocide research: definitions, criteria, typologies, cases, key elements, patterns and voids." *Journal of Genocide Research* (1999).

consider the ratification debates of the Convention in the United States. Each author barely touches on the Convention and only does so when addressing President Reagan's relationship with the American Jewish Community. This will be discussed later since it is important to understanding why Reagan was a strong supporter of ratification.

On the other hand, Lawrence J. LeBlanc in his book *The United States and the Genocide Convention*, goes into extensive detail about the nature of the Convention in United States. LeBlanc outlines the Convention and highlights the most important issues. He tends to focus on the seemingly powerful force of the American Bar Association (ABA) and outspoken opponents who kept the Convention from being ratified. However, he does not address the Convention's history in the United States analytically, rather he gives a summary of the most important discussions during the subcommittee hearings. For this his book was most helpful. Unfortunately, he does not answer the question, nor Novick or Finkelstein, about why during the Reagan administration the Convention was finally ratified. Nor do any of these authors specifically address the dominant issues, civil rights and race, the Cold War, and the fears of accusations of genocide against the United States, which seem to be present throughout the debates. The preoccupation with these issues, which were ever present in the changing context of the debates, were the very reasons the Convention was not ratified. The changing domestic and international contexts also help to answer why during the Reagan administration the Convention was finally ratified.

The Origins of "Genocide" and the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

The concept of genocide was coined in 1943 by a Polish-Jew and lawyer, Raphael Lemkin. As early as 1915, the idea of intentional mass murder confronted Lemkin when he learned of the Turkish massacre of the Armenians. Because the Versailles Treaty had brought so many different ethnic groups together in one country, newly created Poland had been consistently marked with turmoil.[8] Lemkin would eventually accept the job as Secretary to the Commission of the Laws of the Polish Regime. And in 1933 Lemkin represented Poland at the League of Nations' Fifth International Conference for the Unification of Criminal Law. It was here that Lemkin first proposed his ban on "mass slaughter."[9] Lemkin would continue to work in Poland, until the war when he escaped to the United States and gave lectures and joined the Duke University Law School, while also serving as advisor to the Bureau of Economic Warfare and the War Department.

The 1933 international conference was held in Madrid. It was here that Lemkin made his original proposal to create a multilateral convention making the extermination of human groups an international crime. He called these "offences against the law of nations" or "Acts of Barbarity." Ten years later, in 1943, he would coin the term "genocide" as a continuation of his 1933 proposal and as part of his analysis of the German occupation of Europe during World War II outlined in his book, *Axis Rule in*

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[8] The Versailles Treaty was given to Germany had the end of WWI, 1919. It caused Germany to loose 13% of its pre-war territory, including land lost to Poland, which constituted a significant part of Prussia. Germany was also made responsible for war damages and reparations and had to disarm. The Versailles Treaty could be said to have contributed substantially to WWII. Poland was made a buffer zone between Russia and Germany, which brought together many different ethnic groups.

[9] James J. Martin *The Man Who Invented Genocide: The Public Career and Consequences of Raphael Lemkin* (New York: Institute for Historical Review, 1984), 19.

Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress. In this work, Lemkin introduced the word genocide for the first time, defined genocide as the "destruction of a nation or of an ethnic group" which was "intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves."[10] The goal of the perpetrator was defined as an attempt to eliminate the political and social institutions, culture, language, religion, economics, sense of security and general well-being of the lives of the individuals which made-up such groups. Lemkin claimed there are two phases of genocide which allow perpetrators to carry out their goals. The first is the "destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor."[11] Through these phases, the oppressor systematically destroys any sense of a group's national identity.

With urgings from Lemkin and others, the United Nations, as one of their very first orders of business, took up the question of genocide in 1946 with Resolution 96 (I). In December 1948 the Convention on the Prevention and Punishment of the Crime of Genocide was approved and proposed for signature and ratification by the General Assembly. In January of 1951, Resolution 260 A (III) was put into force by the Convention. The most important point of this resolution is that it made genocide a crime under international law. Further, in Article II of the Convention they outlined which acts, committed against which particular groups would be considered as genocide:

> 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

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[10] Raphael Lemkin *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Howard Fertig, Inc., 1944), 79.
[11] Ibid., 79.

> 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.[12]

For the purposes of this paper it is necessary to outline the larger debates which occupied the drafting of the Convention in order to understand the ratification debates within the United States.

Why, in the first place was a Convention on Genocide necessary? The origins of the Genocide Convention of course lie in the public response to atrocities committed as part of Hitler's "Final Solution." Though Resolution 96 (I) does not refer to any specific genocide, it intentionally defines the crime broadly to fit a larger world context. Lawrence J. LeBlanc, in his book *The United States and the Genocide Convention*, suggests that the reason for the Convention was to establish genocide as a crime whenever it occurred and to surpass the limitations of the Nuremberg War Crimes Tribunal created by the Allies after World War II.[13] The Tribunal was created to prosecute high-ranking Nazi officials. According to its charter, the tribunal was to try persons for crimes against humanity only when the crimes were committed during or connected to war. Some of the acts covered by the tribunal would later fall under the scope of genocide as it was defined by Article II in the Convention. Further, by only having the Tribunal the drafters of the Convention could only prosecute people for crimes against humanity which occurred during World War II. The drafters of the Convention

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[12] United Nations Convention on the Prevention and Punishment of Genocide, 1946, Resolution 96 (I).
[13] LeBlanc, 24.

recognized the need to have an international law which made it illegal, even during times of peace, to commit genocide.

In 1946 the United Nations General Assembly entertained the idea of supporting an international Convention concerning genocide. Prior to Hitler's "Final Solution" and other atrocities committed by the Nazis, the proposal for a Convention upon which genocide was to be discussed was not unreasonable. Genocide was fore grounded in the public mind when the profound revelations of Holocaust were revealed after WWII. Genocide's definition, groups to be protected, actions to be taken against perpetrators, criminal courts, ratification procedures, and the process of implementing legislation were all concerns taken up by the drafters in the years prior to the General Assembly's 1948 adoption of the Convention. And enough countries ratified it by 1951 for the Convention to be established as international law. Though the Convention was ratified amid skepticism regarding its effectiveness, many countries continued to ratify it after genocide was made an international crime. These countries included the United Kingdom and various other Western Powers allied to the United States; the United States did not.

Outline of the Convention in the United States

As we know the United States did not sign the Convention in 1949 when President Truman endorsed it, but the Senate did create a subcommittee from the Committee on Foreign Relations to hold hearings on the Convention in the United States. It was the subcommittee's job to report its findings and suggestions for ratification. The subcommittee, during the 1950 hearings, failed to report its findings to the Foreign Relations Committee. However, no further significant hearings were debated until President Nixon's endorsement of the Convention in 1970. Sporadic hearings were held on the Convention and in 1974 the Convention was brought to the Senate floor for the first time, yet it fell victim to a filibuster. However, the Convention was taken up by the subcommittee again in 1976 and 1977, but nothing came of these debates either. Finally, the Reagan administration endorsed the Convention in 1981 and 1984. Nothing came of the 1981 hearings, but the 1984 hearings marked the second time the Convention was debated on the Senate floor. Though the Convention was not ratified in 84, and had to wait until 1985 for hearings to resume, 1984 and 1985 marked a pivotal moment in the history of the Convention in the United States, which led to its eventual ratification in 1986 and the final steps to the treaty process were enacted in 1988, becoming effective in 1989.

It is important to recognize that the United States' forty-year debates over the United Nations Convention on the Prevention and Punishment of the Crime of Genocide can be understood in terms of basic, yet very real international and domestic concerns which could have possibly jeopardized the United States' international standing. Even though the political and cultural context of the debates changed over time, I contend that

all the hearings were dominated by domestic concerns of civil rights and race and international worries about the Cold War, both of which reflected fears that United States could be accused of genocide. These larger concerns encompass and are consistently prevalent throughout the debates over the Convention. What changes is the specific context in which they take place.

The 1950 Debates

The testimonies during the 1950 Senate hearings were marked with some general concerns about the Convention within the United States. The principle concerns of the Senators and the critics of the Convention were issues relating to Article II of the Convention. Article II defines the crime of genocide and those groups against which genocide could be committed against. A major concern of the debates in the United States was with the words "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such…"[14] A number of questions arose as to how to decide if there was intent or not, what constituted a group and how much of a part of a group was needed to be destroyed, and should political groups be added to the list of groups protected by the genocide Convention? Opponents argued that these questions alone were substantial reasons not to sign the Convention, while they also maintained that entering into an international treaty itself was reason enough not to ratify.

The 1950 debates conducted by the Subcommittee of the Committee on Foreign Relations reveal even more about the history of the Convention in the United States. The hearings conducted during the 1950 Congressional session heard testimony from government witnesses as well as private witnesses who all expressed clear interest in the debates over ratification of the Convention. Similar, if not exactly the same witnesses would be present throughout the history of the Convention. Government witnesses included the Department of State legal advisor Adrian Fisher and the Deputy Under Secretary of State Dean Rusk. Private witnesses included representatives from the

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[14] United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948. Entry into force: 12 January 1951. Article II.

American Bar Association, which would prove to be extremely influential in the debates within the Subcommittee until it was finally ratified. Other private witnesses included people representing women's organizations and various ethnic organizations like the Ukrainian Congress Committee of America, B'nai B'irth, a Jewish service organization, and African-American organizations. The hearings also took into consideration written communication by such diverse groups such as the World Jewish Congress and the National Association for the Advancement of Colored People. Whether or not these organizations were opponents or proponents of the Convention in the United States, they all demonstrated significant interest, in the life of the Convention in America. Further, the testimony or written testimony of these various groups did impact the debates to ratify.

The UN General Assembly had already seriously debated questions concerning the Convention and their compromise, which the United States delegate was apart of. Yet, as noted and suggested by LeBlanc, critics of the Convention and opponents in the Senate "argued that interpreting the phrase "intent to destroy, in whole or in part," [was] so problematic that the United States should not ratify the convention for that reason alone; but if it should ratify, it should do so only with an understanding of how it interprets the phrase."[15] The opponents believed, and the proponents went along, that if the United States did ratify the Convention understandings and possible reservations would need to be submitted to the United Nations General Assembly. One possible fear was that the United States could be accused of having committed genocide at various times in its history. Critics of the Convention argued that the phrase could even make genocide applicable to racially motivated lynchings in the United States. However,

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[15] LeBlanc, 34.

supporters and government testimonies argued that lynchings and other actions during the civil rights struggle would not constitute genocide.

For example, Senator McMahon, chairman of the subcommittee conducting the hearings in 1950, asked Alfred J. Schweppe, a representative of the American Bar Association, how he understood the language: "intent to destroy, in whole or in part."

> Senator McMahon: Now, let's take a lynching case, for example. Let's assume that there is a lynching and a colored man is murdered in that fashion. Is it your contention that that could be construed as being within the confines of this definition; namely, with intent destroy him as part of a group? [16]

Schweppe answered McMahon that he did not know the answer if a lynching would constitute genocide, but he did conclude that a race riot would be more within the confines of genocide. Schweppe says, "Actually, a race riot of some substantial character would be more clearly within my concept of genocide within the meaning of the language."[17] Though Schweppe does admit that he does not know the intentions of the drafters when they agreed on the phrase "intent to destroy, in whole or in part," he did show skepticism as to whether or not people in the United States could be accused of genocide through the act of lynching. These concerns developed into larger concerns over whether or not the phrase could be used as an important weapon to further the mounting civil rights struggle.

These fears, streaming from written opinions by organizations like the American Bar Association were prevalent through the history of the Genocide Convention in the

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[16] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations. United States Senate. 1950 Eighty-first Congress. Second Session on Executive O. The International Convention on the Prevention and Punishment of the Crime of Genocide.204-205.
[17] Ibid.

United States. As early as 1950, the Subcommittee heard testimony by other officials, like Philip B. Perlman, Solicitor General of the United States, who submitted his statement and answered questions on behalf of the Department of Justice. He was asked whether or not racially motivated lynchings would constitute genocide,

> Senator Pepper: Or if there were to be what is commonly called lynching, obnoxious as it is and infamous as it is, that might occur in the United States, that would be genocide within the definition of article 2 of this convention?
> Mr. Perlman: It would not.
> Senator Pepper: That would still remain the same sort of crime that is under the law of this land, whatever that law is?
> Mr. Perlman: That is right
> Senator Pepper: And there would be no possible basis of anything claiming that that was a matter of international concern and what is being proposed here is to give an international tribunal jurisdiction over that or those other offenses as I have described them?
> Mr. Perlman: That is exactly right.[18]

Though it was concluded before Schweppe's testimony that racially motivated lynchings were not considered genocide. Perlman's testimony revealed that the civil rights struggle within the United States would not be considered genocide. Though the issue and fear of Senators that the ratification of the Convention would lead to civil rights groups accusing the United States of genocide were not without merit.

The fears of Senators that the United States could be accused of genocide were confirmed for the first time in 1951. The United States was accused of committing genocide against African Americans in 1951 when a petition entitled "We Charge Genocide" was submitted to the United Nations. William L. Patterson and Paul Robeson, both members of the Civil Rights Congress, which had drafted the petition, presented the

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[18] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations. United States Senate. 1950 Eighty-first Congress. Second Session on Executive O. The International Convention on the Prevention and Punishment of the Crime of Genocide. 48.

it to a UN delegate in New York. The petition used racial lynchings in the United States as one piece of evidence of genocide committed against African Americans. The petition claimed that the United States government was accountable because it had known about the lynchings yet it had done nothing: "You knew about it and you did nothing. You knew about the super-exploitation and inhuman hardships inflicted upon the Black people and you did nothing. Your inaction, your indifference in the face of oppression means that it was policy."[19] It can be seen by this example that the preoccupation and the fear that the United States could be accused of genocide was not unwarranted and continued to persist throughout the debates. The questions over the "intent" phrase and possible genocide charges, as well as the questions concerning protected groups would continue to be seen during the 1970s and 1980s.

Another larger concern of the United States debates to ratify was the issue of what constituted protected groups. The Convention drafters decided to include "national, ethnical, racial and religious" groups to be protected against genocide. However, the debates during the drafting of the Convention reveal that another group was considered by the drafters: political groups. A number of countries, including the United States proposed including political groups as a group to be protected by the Convention. The United States delegate to the General Assembly argued that by not including political groups in Article II, a loophole would be created in the Convention. Therefore, countries like the Soviet Union, which the United States and others suspected of committing genocide against political groups, could not be accused and tried for the crimes of

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[19] Tim Wheeler "'We Charge Genocide': the cry rings true 52 years later" *People's Weekly World Newspaper Online* http://www.pww.org/article/articleprint/2981 29 April 2004.

genocide. As the Convention stands political groups were not included in Article II. The Convention drafters ruled that political groups were not easily defined, nor were they "stable" groups. LeBlanc suggests that, "This decision makes sense given the historical context in which the drafters were operating. Because the convention was obviously drafted in response to atrocities committed against the Jews, Poles, Gypsies, and other groups by the Nazis during World War II, Article II would apply to such situation whether Jews were considered a religious, ethnic, or even racial or national group."[20] By including political groups the drafters would have included a group not so easily distinguishable. The other groups, "national, ethnical, racial, or religious" all have distinguishing characteristics which usually do not significantly change, unlike members of a political party. In addition, members of the General Assembly were concerned that including political groups might undermine the support needed to ratify the Convention.

Because of the drafters decision not to include political groups in Article II, the United States was preoccupied with the issue beginning in 1950 and continued to be so until its ratification of the Convention. During the debates over the drafting of the Convention, the United States delegate to the General Assembly did argue for political groups to be included, perhaps due to the belief that the Soviet Union was committing genocide against political groups. In any event major critics of the Convention in the United States, such as the American Bar Association, and right-wing groups such as the Liberty Lobby, the Voters Interest League, and the American Coalition of Patriotic Societies, all suggest that the United States delegate did not push hard enough the issue of

[20] LeBlanc, 61.

political groups. Unsurprisingly, they all opposed ratification in 1950, partly because political groups were not included in Article II.[21]

Critics of the Convention argued continually that the United States gave into the Soviet proposals to leave political groups out of the Convention, therefore the Convention in the United States should not be ratified. Perhaps the strongest and most influential group who held this position providing testimony during the hearings was the American Bar Association. Schweppe, one of the ABA representatives to the Convention, referred to the missing political groups in Article II when he said, "The losses which our representatives suffered are part of the reasons why our committee thinks the convention should not be ratified as submitted."[22] The ABA, throughout the Convention hearings in the United States, presented testimony focused on the issue of political groups.

It was almost as if the opponents of the Convention who believed strongly in the necessity of political groups being added to Article II, only wanted political groups added in order to charge the Soviet Union with crimes of genocide. Yet, because the United States did not ratify the Convention in 1950 (nor in the 1970s) it would have been hypocritical for the U.S. to charge the Soviet Union with genocide. This problem and fixation with the Soviet Union persisted throughout the Genocide hearings.

The Subcommittee of the Committee on Foreign Relations in 1950 obviously did not suggest ratification of the Convention. In addition the Committee failed to present the findings to the Senate. Why did the Committee fail to report its findings? For many

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[21] LeBlanc, 62.

[22] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations. United States Senate. 1950 Eighty-first Congress. Second Session on Executive O. The International Convention on the Prevention and Punishment of the Crime of Genocide. 194.

reasons, including the opponents control of the debates throughout the hearings, the arguments surrounding the wording of the phrase "intent to destroy, in whole or in part," and including the problems strong organizations had, for example the ABA, with the deletion of political groups from the protected groups in Article II. The Congressional session ended when the opponents and proponents could not reach a compromise; the opponents got what they wanted. Therefore, the United States did not ratify the Genocide Convention in 1950 and it would not be until 1970 that Congress would again conduct hearings on the Convention.

The 1970s Debates

In the opening statements of the 1970 hearings by the Subcommittee of the Committee on Foreign Relations, Senator Cooper gave other possible reasons why the United States did not ratify the Convention in 1950. Senator Cooper said:

> In 1950, the committee considered the convention at length, but Congress adjourned before final action was taken. By 1951, Congress was deeply absorbed with the Korean war, as well as improving security in the Pacific, plus building up NATO in Europe. Nothing further was done at that time on the convention. During the 8 years of the Eisenhower administration, no action was taken at the specific request of that administration. Neither did the Kennedy nor Johnson administrations push for ratification of the convention. Treaties, as we all know, requires a two-thirds vote and without an administration's vigorous support of the Genocide Convention, it has been by no means certain that this vote could be obtained. Now, a strong request for favorable action has been received from President Nixon.[23]

Senator Cooper's reasons for why the Genocide Convention was not taken up by other administrations shows how easily the Convention had been dismissed.

Nevertheless, everyday the United States Senate was in session from 1967 until the resolution of ratification was adopted in 1986, Senator William Proxmire (D., Wisconsin) spoke in favor of the Genocide Convention. Thus, everyday the Senate was in session from 1967 to 1986 various administrations were confronted, at least nominally, with the international issue of genocide and the importance of becoming part of the Convention. It seems hard to believe that it took until 1986 for the United States to ratify the Convention, even with the concerns, however valid they may have been, of the opponents. Whatever the reasons, Proxmire presented testimony at the 1970 hearings. He declared:

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[23] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations United States Senate,1970 Ninety-first Congress. Second Session on Executive 0, Eighty-First Congress, First Session on The Convention on the Prevention and Punishment of the Crime of Genocide. April 24-27, and May 22, 1970, 1.

> The President of the United States with the concurrence of the Secretary of State, has asked the Senate to ratify the Genocide Convention. Attorney General Mitchell finds no constitutional barriers. Senate failure to debate and ratify the Genocide Convention can only be construed by our enemies as evidence that we have indeed something to fear. Certainly we do not.[24]

Proxmire's declaration was necessary and correct at the beginning of the 1970 hearings. It was in reaction to the fears and opinoins expressed by the opponents and proponents alike that if the United States did not ratify the Convention it would give credence to the enemies of the U.S. that it had committed genocide.

Despite the testimony given by Proxmire and the debate in the subcommittee during the 1950 hearings, many of the same issues were again brought up during the 1970s hearings. Like in 1950, the President asked for the Senate's advice and consent to ratify the Convention. Nixon's administration supported the ratification of the Convention and, as suggested by Cooper in the opening statements to the 1970 hearings, it appeared necessary to have strong Presidential as well as administrational support to have an international treaty ratified.

Thus, a subcommittee of the Committee on Foreign Relations held hearings again on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The hearings were conducted in the same manner as 1950 and many of the same groups testified and presented written testimony for the record. Ever present again was the American Bar Association and legal advisors of the government, as well as a U.S. representative to the Human Rights Commission of the United States. Fringe groups also presented testimony at the hearings and voiced their opinions on the Convention.

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[24] Ibid., 21.

The American Bar Association (ABA)

The only notable change in the debates concerning the ratification of the Convention in the United States during the 1970s was the position of the American Bar Association. In 1976 the ABA officially changed its position on the ratification of the Convention. This is notable because throughout the 1950 hearings and at the beginning of the 1970 hearings the ABA was partially responsible for the defeat of the Convention. Yet, the hearings suggest otherwise. In fact, the ABA as an organization was split on the Convention from the outset. But the most outspoken representatives on the Convention, like Schweppe, tended to be misleading. In fact, during the 1950 hearings a testimony was presented for the record which accounted for the discrepancies with the ABA. Perlman, Solicitor General who spoke on behalf of the Department of Justice and with considerable knowledge about the ABA presented testimony discrediting the ABA representatives who spoke on behalf of the entire organization. Schweppe and other members of the ABA who testified during the hearings, claimed to speak for the entire organization. This, according to Perlman, was in fact a distortion of the view of the ABA in order to halt ratification of the Convention. Perlman concluded from written testimony and from a meeting of the ABA at which he was present, that those presenting testimony to the hearings only numbered nine out of a membership of about 1,000 from the section on international and comparative law. Perlman said that at the meeting he attended "there was a favorable report made by the section on international and comparative law of the American Bar Association. This committee should know that the propaganda against

ratification has been conducted by a committee of nine members."[25] Therefore, the authority of the ABA which many had blamed for the failure of the Convention in 1950 and again at the beginning of the 1970s was unwarranted.

Even in LeBlanc's book he presents the ABA as an influential opponent to the Convention. An opponent whom, along with some senators, could delay ratification of the Convention. He acknowledges that the 1950 subcommittee recommended ratification but "in the face of vigorous opposition from some senators and from powerful and influential organizations such as the American Bar Association the full committee failed to report the convention to the Senate."[26] This does not seem entirely correct to assume so strongly that the ABA played such a large role in the defeat of the Convention. Further, there were other, stronger reasons why the Committee on Foreign Relations did not present the Convention to the Senate, including: the disagreements between the opponents and the proponents on the issues of the language and meaning of certain terms within the Convention, most notably Article II; the concerns by Senators over civil rights groups, as well as the constitutionality of the Convention; and the fear by opponents and proponents that the United States could be accused of genocide. These concerns by both groups which continued to be debated until the end of the Congressional session seem to be the more general and perhaps more substantial reasons as to why the Convention was not ratified in 1950. Though the small committee from the ABA was active in the opposition to the Convention, they were not the sole reason, nor a large reason for the

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[25] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations. United States Senate. 1950 Eighty-first Congress. Second Session on Executive O. The International Convention on the Prevention and Punishment of the Crime of Genocide. 50.
[26] LeBlanc, 5.

defeat. This seems to overestimate and places blame on the influence of what was a small group.

In any event the ABA continued to present opposition to the Convention in the beginning of the 1970s. Their concerns remained the same: what constituted a group, the exclusion of political groups, the United States entering into an international treaty, and the implications of which could bring possible charges of genocide against the U.S. These concerns continued to persist throughout the general hearings during the 1970s. As noted these were also the concerns which dominated the 1950 hearings. Though the ABA had the same concerns as the general testimonies heard from opponents, they were not solely responsible for the creation of these concerns. Proponents would have to deal with these concerns even after the ABA changed its position on the Convention and supported it in 1976.

Back to 1970s

The more specific concerns of the 1970s hearings were again racially motivated actions as well as the exclusion of political parties within the protected groups. Preoccupations with the Soviet Union still existed and the fear of charges of genocide being brought against the United States remained prevalent. However, these concerns were all seen during the 1950 hearings and were all refuted by knowledgeable "experts" on the Convention and the United States Constitution, as well as actions taken by the United States in similar human rights treaties. And again during the 1970s hearings the subcommittee brought in "expert" testimony to answer question regarding the above concerns.

Some of the concerns specifically addressed and relieved by testimony are worth noting here. They help to illustrate frustration the proponents start to feel at the end of the 1970s and into the 1980s. Again during the 1970s questions were asked regarding the civil rights struggle in the United States, most notably lynchings. William H. Rehnquist, Assistant Attorney General, Department of Justice answered a question in regards to lynchings constituting genocide. He said, "In my opinion, as I understand the sort of lynchings that have taken place in this country in past times, they have not been accompanied by the intent to destroy in whole or in part an ethnical, racial, or religious group. I think genocide, as defined in the treaty, does require that specific intent."[27] Rehnquist was addressing the "intent to destroy, in whole or in part" phrase, ruling that lynchings lacked the intent to destroy a group, whatever the amount of the group. Therefore, Rehnquist, like Perlman in 1950 ruled that lynchings, just like race riots were not genocide.

Another element of the civil rights concerns characterizing the 1970s hearings was the possible infliction of "mental harm" on African Americans. However many had ruled, including Ambassador to the Human Rights Commission of the United Nations, Rita Hauser, and George Aldrich, Deputy Legal Advisor to the Nixon administration during the 1970s, that local segregation laws, racial slurs, and for instance, busing children were not genocidal acts due to "mental harm."[28] The proponents of this reasoning agreed that for an act to be considered genocidal it must be committed with the

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[27] *The Genocide Convention* Hearings before a Subcommittee of the Committee on Foreign Relations United States Senate,1970 Ninety-first Congress. Second Session on Executive 0, Eighty-First Congress, First Session on The Convention on the Prevention and Punishment of the Crime of Genocide. April 24-27, and May 22, 1970, 147.
[28] LeBlanc, 105.

representation of the Nazi holocaust.[44] He states that his book is a further critique of Peter Novick's book *The Holocaust in American Life*. Finkelstein is critical of Novick's book, suggesting that it was a part of the "American tradition of muckraking."[45] Though Finkelstein is extremely harsh when criticizing Novick, he does not present an objective response, but rather seems to be reacting to what he believes as the exploitation and falsification of the Nazi holocaust which has lead, he believes, to "too many public and private resources" having been "invested in memorializing the Nazi genocide."[46] Though Finkelstein does a commendable job outlining the history of the "Holocaust Industry," his tone throughout the book seems to be guided by anger which makes his arguments not as cool headed and calculated as that of Novick's.

Like Novick, Finkelstein suggests that during the Cold War Jewish organizations and elites supported the United States in his conflict with the Soviet Union. And Jewish groups "forgot" Hitler's Final Solution because West Germany became a crucial ally to the United States. In addition, Finkelstein argues that major Jewish organizations such as the American Jewish Committee (AJC) supported the idea of falling in line with the American public because of the fear that Jews would be isolated "and endanger their postwar achievements on the domestic scene."[47] Therefore, the Nazi holocaust according to Finkelstein, became an unmentionable topic of the American Jewish elites. It was not until the June 1967 Arab-Israeli war that Finkelstein credits the Holocaust emerging as a

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[44] Norman G. Finkelstein, *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering*, 2nd ed. (New York: Verso, 2000), 3.
[45] Finkelstein, 4.
[46] Ibid., 8.
[47] Ibid., 14.
Shlomo Shafir, *Ambiguous Relations: The American Jewish Community and Germany Since 1945* (Detriot: 1999), 88, 98, 100-1, 111, 113, 114, 177, 192, 215, 231, 251.

permanent place in America Jewish life.[48] By the 1973 war, the Holocaust was brought further into the discourse of the general public. From then on, the Holocaust remained a fixture in American discourse, not just Jewish American discourse.

Reagan's first term as President of the United States, elected in 1980, proved the beginning of an uneasy and dramatic Presidency. He entered the Presidency after Carter and inherited a struggling economy and unemployment. He also joined past Presidents since the end of World War Two in the conflicts and struggles against the Soviet Union. Reagan's administration, therefore, took-up the fight against Communism and the Soviet Union. Though Reagan could be said to have ended the Cold War with the Soviet Union, his administration could also be blamed for the cause of future problems. Despite such controversies Reagan's second administration did see the signing of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Given the thirty-five year delay over the Convention in the Senate and its successful defeat in 1950 and the 1970s, why did the Senate choose to ratify the Convention in 1984 and present the signing of the Convention in 1986? Many reasons could be attributed to why the Reagan administration pushed for the ratification and obtained the approval by the Senate. These include Reagan's talks to end of the Cold War, Reagan wanted the United States to play a more prominent role in Middle East affairs, especially with Israel, but also Reagan sold weapons to both Iran and Iraq. Also, Reagan was questioned about his commitment to civil rights, since he was reluctant to use federal authority to punish discrimination of any sorts. In addition, and perhaps a more interesting explanation for

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[48] Ibid., 16.

the ratification of the Convention, was Reagan's visit to Bitburg Cemetery and his visit to Bergen-Belsen concentration camp in 1985.

Bitburg Cemetery

1984 marked the second time the Convention ever made it to debates on the Senate floor. This could be attributed to Reagan's strategic announcement of his endorsement of the Convention after the 1984 elections. The election poles showed that Walter Mondale had received a majority of the Jewish votes. Reagan felt it was necessary for the Republican party to appeal to the American Jewish community. Apparently, Reagan had been a long time supporter of Jews and of a Jewish state in Israel.[49] Perhaps, though he was an even bigger supporter of countering the Soviet Union from having influence in the Middle East. Notably, Reagan endorsed the Convention in September of 1984 immediately before he and Mondale would address a convention of B'nai B' rith, a Jewish service organization and long time supporter of US ratification of the Convention. However much Reagan endorsed the Convention, and proponents pushed to have the Convention ratified, the Congressional session ended in October with no ratification. Yet, for the first time the Senate endorsed the principles of the Convention and vowed to take it up in the 1985 Congressional session.

1985 marked an unfortunate year for Reagan, his administration, and its relationship with the American Jewish Community. If an effort to show the world and each other support, Reagan scheduled a visit to West Germany to share in a wreath laying ceremony with Chancellor Helmut Kohl at Bitburg Cemetery. The ceremony was set to

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[49] Lou Cannon *President Reagan: The Role of a Lifetime* 2 ed., (New York: Public Affairs, 2000), 431.

mark the 40th anniversary of V-E Day, the day Hitler's Third Reich collapsed. Amidst protests before Reagan's actual trip, he still decided to attend the ceremony. The problem with Reagan's visit to Bitburg was that the cemetery did not just include German soldiers, but was also known to include forty-nine members of the Nazi SS (*Schutzstaffel*).[50] Reagan (and possibly Kohl) failed to acknowledge the symbolic appearance of commemorating the Nazis. In an effort to ease the bad publicity of his actions at Bitburg, Reagan went onto Bergen-Belsen concentration camp to give a speech. Lou Cannon in her book *President Reagan, The Role of a Lifetime*, suggests that his speech at Bergen-Belsen "was in political compensation for his participation the same day in an eight-minute wreath-laying ceremony at the German military cemetery near Bitburg, where forty-nine members of the SS were buried amidst 2,000 German soldiers."[51] Members of the American Jewish community were extremely upset. It had seemed that Reagan had taken advantage of their support early in his career as President, especially in the support for Israel. Further, Reagan failed to recognize the historical significance of laying a wreath at a cemetery where SS soldiers were buried. It appeared Reagan was forgetting the Holocaust, by commemorating SS existence and actions, rather than completely condemning their atrocities.

According to Finkelstein the American Jewish community "quickly forgave and forgot Ronald Reagan's demented 1985 declaration at Bitburg cemetery that the German

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[50] Ibid.
During World War II, under the command of Heinrich Himmler, the SS grew in sizes to include Hitler's Body Guards (the original purpose of the SS), the *Waffen* which was part of the German army, and the *Totenkopfverbande* (Death Head Unites, which were put in charge of the Nazi Concentration camps). Before the war the Gestapo also became under the charge of Himmler and was another entity of the SS. These groups alone are responsible for
[51] Ibid.

soldiers (including *Waffen* SS members) buried there were "victims of the Nazis just as surely as the victims in the concentration camps."[52] He rightly asserts that it was again not an asset to the American Jewish community to hold a grudge, because of Reagan's unfettered support of Israel. To get support for Israel, the Holocaust was "ideologically recast," and "proved to be the perfect weapon for deflecting criticism of Israel."[53] The relationship between Israel, the Holocaust, and the American Jewish community (mostly the elite organizations) were intricately tied together and it could be suggested that Reagan understood this. If Reagan was for an Israeli state, then he needed the support from the American Jewish community, which they gave, even after Bitburg. However, the American Jewish community and world could not have forgotten his actions as quickly as Finkelstein suggests. They had to have remained in Reagan's mind until the end of his administration.

Iran-Contra Affair

Unfortunately, the Bitburg catastrophe was just a prelude to anther detrimental affair of the Reagan administration. In late 1985 to 1986 federal courts were conducting en extensive criminal investigation into Reagan's actions of supplying weapons to Iran. In what became known as the Iran-Contra affair, Reagan thought that his actions would help free United States hostages in Lebanon held by pro-Iranian groups. However, Reagan's actions of supplying weapons to a nation which sponsored terrorism and which there had been an embargo on arm's sales to Iran, did not gain points for the administration.

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[52] Finkelstein, 30.
[53] Ibid.

So, in two years the Reagan administration had not improved relations with the American Jewish community, but made them worse, it had threatened the security of the United States, and it had turned world eyes on the United States for the mistakes Reagan had made. Further, during Reagan's administration he was also questioned about his commitment to civil rights since he was reluctant to use federal authority in punishing discrimination of any sorts, which greatly caused African Americans to disassociate themselves with Reagan.[54] And since African Americans had charged and threatened charging the United States with genocide since the 1950s, Reagan's actions caused further alarm to Senators that the United States could be charged with genocide and furthered the supporter's stands that the United States had nothing to hide and needed to demonstrate this by ratifying the Convention.

[54] Cannon, 458.

Conclusion

Though it is speculative, I think it can be suggested that the international and domestic concerns during the last half of the Reagan administration could have led to the ratification of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. In 1986 the Senate adopted a resolution of ratification in an overwhelming majority: eighty-three in favor, eleven against, and six abstentions—a margin well beyond the two-thirds needed to approve a treaty.[55] The Convention was ratified with the presentation of the Lugar-Helms-Hatch Sovereignty Package to the United Nations. It was based on a declaration that the United States would not deposit its instrument of ratification until Congress enacted necessary legislation to implement the Convention in its Constitution. By 1988 legislation had been enacted and the United States finally became a member to the Convention.

As I have suggested the United States debates over the ratification of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide needed to be understood in a larger context. Though the Holocaust was present in the minds of the world when genocide was made an international crime, the atrocities committed by Hitler were not politically beneficial in any way for the United States. It could be argued that the timing of the Holocaust strongly entering into American discourse and Reagan actively appealing to the American Jewish community gave the Convention its best chances for ratification. Additionally, by the time Reagan actively endorsed and consented to ratification the issues which had dominated the Convention, civil rights and

[55] LeBlanc, 2.

race, the Cold War, and the fear of being accused of genocide had continually been addressed and refuted when necessary.

Perhaps more so, the United States finally, officially, recognized genocide as a crime under international law. Though it took over forty-years for the United States to become a member to the Convention, it is interesting that Reagan was the President who deposited the United States' instrument of ratification at the United Nations and the timing of the endorsement and resolution of ratification. All eyes were fixed on the United States and its relations domestically and abroad. It seems that only a grand sweeping gesture could have salvaged the American support, and further the American Jewish support.

The United States became the 98th nation to ratify the Convention. And fitting to Reagan he announced the completed ratification of the Convention at a ceremony at O'Hara Airport outside Chicago, because according to a Reagan spokesman, "the site of [the] ceremony was selected for political reasons, since the Chicago area has a large Jewish population with a "special interest" in the genocide bill."[56]

- one draft away from being v g
- some sloppiness (polishing stylization still needed
- repetitive (11-12) problem of repetition
- ambiguous phrasing
- inferences aren't always clear; some inferences don't seem backed up
- clarity still a problem

in conclusion: bulk of paper is about debate surrounding while end is about Reagan political motivations

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[56] Reagan spokesman, Marlin Fitzwater. Steven V. Roberts "Reagan Signs Bill Ratifying U.N. Genocide Pact," *The New York Times* sec. 1; pg. 28; November 5, 1988.

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