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The Cold War and the Genocide Convention: A History of the United States' Refusal to Ratify

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Abstract

This paper traces the relationship between the Cold War Era and the United States' refusal to ratify the U.N. Convention on the Prevention and Punishment of the Crime of Genocide treaty within the time period of 1948-1989. While both the Cold War and the Genocide Treaty have been heavily studied, their relationship has not been well explored. In this paper, I argue that the Cold War was the main reason for the refusal to ratify the Genocide Treaty that the United States had originally been a huge part of crafting. Through using primary sources from government officials from each decade as well as secondary scholarly sources on the Cold War and the Genocide Convention I aim to show that factors such as rivalry and paranoia between the United States and the Soviet Union led to the failure of ratification. The perspective of the Soviet Union during this time is also discussed in order to point out that both sides experienced this paranoia.

Keywords: Genocide, Holocaust, Foreign Policy, United States, United Nations

The Genocide Convention was created by the United Nations as a result of the atrocities that came to light at the end of World War II. Although genocide had occurred beforehand, never before had there been something as meticulously planned and carried out like the Holocaust. The Genocide Convention aimed to make clear that genocide was not just mass murder or war crimes but was defined as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group (Facing History). Since the Genocide Convention was drafted by the United Nations, countries who signed and ratified it were legally obligated to intervene in a country where they knew genocide was occurring. The United States played an important part in drafting the Convention and was also remembered as the great champion of both the Nuremberg Trials (Korey 273). However, once it came time for the treaty to be ratified, the United States became an embarrassment in the international community by refusing to ratify the treaty until 1989, forty years after it was drafted. The Cold War had everything to do with this failure, as the ratification of the Genocide Convention was repeatedly put off because of the Cold War interests of the United States. By exploring the challenges to ratification through four decades, the trend in Cold War justifications can be seen.

These trends are not as absolute as the rivalry between the Soviet Union and the United States. While rivalry was certainly one of the driving factors, the paranoia that had permeated the minds of all Americans throughout the Cold War is clearly seen throughout the resistance to the Convention. American ideals were being challenged by communism, and the fear that Americans could lose their privileged way of life because of international laws such as the genocide Convention is present.

The Genocide Convention was completed and to be signed into international law by 1948. However, by the end of the decade, it was clear that ratification of the Convention by the

United States senate would not be as easy as previously thought. While the Truman administration was confident at first, they soon realized that the pushback from the senate would be detrimental.

The United States was one of the main actors of the drafting process for the Genocide Convention, and Anglo-American legal theory was the basis of the text (Korey 273). During the vote in the United Nations in 1948, the United States was eager to be one of the first countries to sign the treaty, and once it was ratified it would soon be legally bonding. The process of ratification depends on the country, and in the U.S., it required a two-thirds vote from the senate (Korey 274). It came as a surprise to many that the senate did not pass the treaty, which was largely due to the presence of the American Bar Association as well as the Southern wing of the Democratic party (Cooper 189). There were several different reasons for this refusal of ratification, ranging from reservations about the wording of the Convention, to domestic fears of a Civil Rights movement, to international concerns about the Soviet Union and Cold War interests of the United States (Cooper 189). The wording of the Genocide Convention was of great concern to the United States lawmakers, especially those who belonged to the American Bar Association. The main point of contention was in Article II. Article II provides that:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group (United Nations Genocide Convention)

Debates over the “true” meaning of genocide revealed sharp disagreements among proponents and opponents to ratification that were heavily rooted in Cold War as well as domestic politics (LeBlanc 175).

The critics of the Convention believed that there would be certain implications for domestic and international law. One of the main criticisms was of the possible usage of the Genocide Convention against U.S. domestic interests. Namely, treatment of African Americans. Since treatment of African Americans in the United States was so bad at the time, some senators believed that that racial segregation and lynching’s could be considered genocide under the terms of the condition. This point was furthered by the black activist William Patterson, who presented a petition to the UN stating that the United States was committing genocide against African Americans. While the petition did not bring any reform, it was enough for Southern senators to fear ratification and its effect on domestic policies in the United States (LeBlanc 176).

The committee also questioned whether or not they would consider political groups being a part of the Genocide Convention. The Committee examined the text of the Convention and decided that political groups would not be protected under the Convention, despite criticism from others that this would create a loophole in the Convention that would allow for the Soviet Union and other authoritarian regimes to persecute opposing political groups (LeBlanc 176). Even today, this is an issue that is still not settled. Some believe that ‘politicide’ is not the same as

genocide, while some believe that it should be included within the Genocide Convention (LeBlanc 176).

In a document from the acting secretary of state James E. Webb to President Truman in June of 1949, it is clear that the administration was confident that the Convention would be passed. Webb states that it is his “firm belief that the American people together with the other peoples of the world will hail United States ratification of this Convention as another concrete example of our repeatedly affirmed determination to make the United Nations the cornerstone of our foreign policy” (United States Department of State 385). Throughout the document, it is clear that the crimes committed during the Holocaust had affected people such as Webb, and his determination to punish the guilty was thought to be common throughout most American minds. Unfortunately, this hope of ratification of a treaty that could possibly prevent genocide was soon decimated because of the failure of the senate.

It is also important to discuss the Soviet perspective on the drafting of the Genocide Convention. While the USSR ratified the Convention in 1954, way before the United States did, there were several reservations to the Convention that were present. Weiss-Wendt argues that both the United States and the Soviet Union had a similar stance on the Convention. Both countries “worked hard to install safeguards that would make it difficult, if not utterly impossible, to use the Genocide Convention as legal blackmail” (Weiss-Wendt 187). Because of this paranoia, the Genocide Convention was basically dysfunctional. While the USSR ratified the Convention, the application of the Convention was a failure mainly as a result of the ideological confrontation between the Soviet Bloc and the West (Weiss-Wendt 188). If the Convention had mentioned, for example, the deliberate starvation of the Ukrainian countryside by Stalin in the years before World War Two, then the Convention would have never been ratified. Therefore, in

the eyes of the international community, the Convention was a forward-looking document rather than one that could accuse countries of their past human rights violations.

The 1950's in the United States was a time of fear and paranoia over the possibility of a nuclear war, and leaders of the U.S. as well as citizens felt that their way of life needed to be protected. It is no surprise that the Genocide Convention did not have much luck during this decade, and faced some of the harshest criticism, most notably from Republican Senator John Bricker of Ohio. In May 1950, it looked as if the Senate subcommittee reported favorably on the genocide treaty (Korey 275). Suddenly, isolationism and nativism were present again in American politics and some officials feared that the genocide treaty as well as other human rights treaties would undermine American sovereignty (Korey 276). Bricker and his followers wanted to make an amendment to the constitution that would reduce the historic authority of the Executive branch to make treaties with foreign powers (Korey 276).

The proposal of the Bricker Amendment was the first major domestic obstacle to the ratification of the Genocide Convention. John Dulles, Secretary of State under President Eisenhower, stated promised that the Eisenhower administration would not “become a party to any covenant on human rights for consideration by the senate (Korey 277). If human rights were to be promoted by the U.S., then it would be through methods of persuasion, education, and example (Korey 277). Bricker and his allies, such as Dulles, were concerned that the Genocide Convention would violate the U.S. constitution. While the Eisenhower administration was able to defeat the amendment, it came at a cost. Instead of an activist stance towards human rights that the Truman administration had, the Eisenhower administration was forced to use its treaty making power only for more traditional concerns (LeBlanc 128).

Although the Bricker Amendment was blocked, there was still a lot of support for it in the senate as well as in the American public. The effects of the Convention on the lives of everyday Americans was a cause for paranoia in the public. Many thought that the Soviet Union would use the Convention to unreasonably try Americans abroad for any reason.

If this genocide treaty is ratified by the United States Senate, it guarantees to Russia the winning of the third world war, for this treaty not only would effectually prevent our being able to defend our own shores and our people but it gives the power to our enemies to lie about and harass our citizens, our police, our FBI, our officials, and our armies with charges of "genocide" or inciting to "genocide." . . . This treaty would be a most effective means to prevent the apprehension of spies and traitors (Kaufman 37).

In a speech given by Bricker, he states that "We do not intend to change the way of making treaties by the president and the Senate. What we do intend to do and in God's good time it will have to be done, is to say to the rest of the world that the inalienable, God-given rights of the American people are not for barter by anybody, anywhere, anytime." (Bricker 1809). Religious language is used substantially throughout his speech, language that would appeal to most of the American public at the time. American exceptionalism is evident throughout this speech as well as during this time period. Because of the threat to the American way of life that communism posed, suddenly, international treaties posed that same threat. The ideas that Bricker proposed did not only affect opinions in the 1950's, but instead "Brickeritis" set in and became the main domestic reason for objection to the Genocide Convention for decades. Even though

this was a domestic issue, Cold War culture had everything to do with the drafting of the Bricker Amendment.

Concern for the implications of the Bricker Amendment was clear from those who opposed it. Secretary of State for UN affairs Hickerson wrote to legal advisor Fisher over the concern of the amendment. While the amendment itself does not directly mention the Genocide Convention, Hickerson states that “Senator Bricker’s proposal is obviously related to the draft Covenant on Human Rights and the Genocide Convention.”(Memorandum by assistant secretary of state for UN Affairs to the Legal Advisor) Because of the success of Bricker’s proposal, proponents of the Convention wanted to “make public a forceful legal opinion which would reassure public supporters of our international programs, many of whom have unquestionably been confused by Senator Bricker’s proposal.” (Memorandum to Legal Adviser). This document shows the real threat that the Bricker Amendment posed to the ratification of the Genocide Convention and helps to explain the magnitude of this threat.

The appeasement to the ideas proposed in the Bricker amendment are shown in a memorandum from Hickerson to the Secretary of State in 1953. The memorandum mentions the importance of international treaties such as the Genocide Convention, stating that

United States leadership in the promotion of human rights and our championship of the fundamental freedoms has been a significant factor in the Cold War. It has helped to bring into focus the basic differences between the countries aspiring to greater freedom on the one hand, and those under the control of totalitarian Communism on the other. It has helped to strengthen the ideological basis for common action on the part of the free nations and for greater unity among them (Memorandum to Secretary of State).

Hickerson highlights the importance of U.S. involvement in human rights and how this involvement establishes the United States as a beacon of hope to countries suffering under communist rule. Human rights should be central to United States foreign policy because of the appeal they have to other countries. He also states that “ For the United States to withdraw at this stage from participation in the elaboration of these treaties would greatly weaken the position of leadership of the United States in the UN as a whole, and would be exploited to the full by countries hostile to the United States, and particularly the USSR” them (Memorandum to Secretary of State). The USSR had ratified several of the conventions that the United Nations had put forth, and the failure of the U.S. to ratify these treaties could easily be used as propaganda against the United States by the Soviet Union. Even though these remarks are supportive of U.S. involvement in human rights treaties, the main goal of this memorandum was to make sure that the objectives of the Bricker Amendment would be attained. Hickerson’s recommendations include a “less ambitious” international treaties as well as the “improvement of living standards which require economic and social measures rather than legislation” them (Memorandum to Secretary of State). These propositions show that while the United States wants to pursue a human rights foreign policy, they are severely limited through the arguments of the Bricker Amendment.

One of the first events of the Cold War, the Korean war, played a large part in the start of the aversion to the Genocide Convention. In 1950, President Truman wrote a letter to the Senate urging them to pass the treaty. He had received word from the Ambassador of Korea, John Chang that as a result of the North Korean invasion, that a genocide was likely to occur. He called attention to the “imminent danger to the Christian population of Korea from the

Communist invaders.” (President Truman Urges Senate). It is interesting here that both Chang and Truman highlight the Christian population in Korea, and do not allude to any other religions that could be persecuted by communists. While Christians did make up a considerable population of Korea, there were also several other prominent religions such as Buddhism that were not mentioned in the document by either person. This is most likely due to the fact that President Truman’s goal was to get the Genocide Convention to pass, and to do this he figured he would need to appeal to most Americans. Since at the time many Americans were beginning to go back to a nativist and isolationist stance, bringing up a possible threat to Christianity, something that several Americans would be concerned about, would possibly help gain more support for the Genocide Convention. Later on, in 1951, Assistant Secretary of State for UN Affairs John D. Hickerson attempted to compare the escalation of the Korean situation to the horrors of the Holocaust in order to bring to light a potential repeat genocide. He argued that the claims from Seoul had a moral weight, and that Americans could not fail again to stop a genocide from occurring (Hickerson 14). Unfortunately, with U.S. entry into the Korean War, the focus was on fighting communism, not preventing genocide. The Genocide Convention was tossed aside in order to focus on containment of communism.

The 1960’s saw a continuation of the isolationist policies of the United States towards human rights treaties, especially the Genocide Convention. One of the main reasons of the fear towards the Genocide Convention was that it was an international law. Countries that opposed the Convention wanted to ensure that their country or any of its citizens would never be brought to justice through an international criminal court (Weiss-Wendt 149). Because the United States and the Soviet Union were both influential countries in the United Nations, they both feared that

the other would accuse them of genocide. It is because of this irrational fear that the Convention has been rarely applied to actual genocides.

In 1966, a lawyer wrote a report that was broadcasted on foreign radio that U.S. pilots fighting in the Vietnam War were war criminals and should be punished according to international law because they were committing genocide against the Vietnamese. Since the Genocide Convention was not ratified by the United States, the accusations would get nowhere. However, the accusations that were made highlight possible convictions. He states that those who bear the most responsibility for the crimes are Johnson, McNamara, and Rusk, but the American pilots who are carrying out the bombing should not be dismissed (Lawyer says U.S. Pilots are War Criminals). While this document didn't seem to be very widespread, it does show that American fears towards the Convention were grounded in some evidence.

In terms of domestic policy towards the Convention, the 1960's led to a new era in human rights opinion in the United States. President John F. Kennedy was the first President to speak about the significance of human rights in over a decade. While Kennedy sent several human rights treaties to the Senate, he failed to send the Genocide Convention (Korey 278). President Johnson, like Kennedy, was known for his focus on human rights. A representative from the United Nations, Arthur Goldberg, wrote to President Johnson in 1966 urging the administration to move forward with international human rights Conventions. Again, the Genocide Convention is not mentioned among the Conventions that should be passed. Instead, Goldberg suggests that Johnson should not push for ratification of the Genocide Convention until other international treaties are passed by the senate (Letter from the Representative to the United Nations to President Johnson).

Nevertheless, proponents of the Genocide Convention continued to try and appeal to the government. An Ad Hoc Committee on Human Rights and Genocide Treaties was formed. Several NGOs joined and by the end of the 1960's, there were fifty-two that made up the committee. They attempted to allure legislators by explaining how the ratification of the Genocide Convention would serve the international interests of the United States. While they tried to convince the government that supporting human rights treaties would boost their international image, the United States was too preoccupied with Cold War interests to care (Korey 278).

Surprisingly, President Richard Nixon seemed to have an interest in ratification of the Genocide Convention when he came into office in 1970. He sent a message to the senate "urging reconsideration of the genocide Convention and the granting of its advice and consent to ratification" (Korey 281). This was the first time since 1948 that a U.S. President had directly called for action on genocide (Korey 282). Unfortunately, Cold War affairs clouded the Senate's judgement once again when the Genocide Convention was passed on to the Senate. There was a fear that if the Convention was ratified, North Vietnam would attempt to put captured American soldiers on trial for genocide (Korey 284). Yet again, the Convention did not pass in the Senate.

After the embarrassments of the Nixon and Ford administrations, a President whose main focus was on human rights came into office. The Carter Presidency gave hope to those who advocated for the Genocide Convention, as they knew that he would likely want to get it passed. They were correct, as Carter said that he hopes "congress will take the step that has been long overdue for a generation, the ratification of the Convention on the Prevention and Punishment of the Crime of genocide" (Zbigniew Brzezinski SALT). While this was a bold move, several of his advisors suggested against it specifically because of the issue of timing. The Strategic Arms

Limitation Talks treaty was to be the main priority of the Senate, and National Security Advisor Zbigniew Brzezinski advised against talks on the Genocide Convention until the SALT was ratified (Zbigniew Brzezinski SALT). Vice President to Carter, Walter Mondale, also agreed with this idea. He stated that he was “not at all certain that either Americans or many people abroad see the Genocide Treaty as being crucial to the progress we desire on human rights” (Vice President Mondale writes to Carter). He also advocated for SALT to pass before talks on the Genocide Convention were to occur. The Genocide Convention went from one of the most important human rights documents in the eyes of the American government to something that many didn’t see as an essential document. This is not surprising considering the amount of fear that the Senate put into the minds of the American people throughout the Cold War about the dangers of the Soviet Union and how they could use the Genocide Convention against the United States.

The year 1976 was the turning point for consideration of the Convention. The American Bar Association, once one of the main opponents of the Convention, “completely reversed itself by an overwhelming vote on the issue” (Korey 285). For the next decade, it became one of the strongest advocates of the issue. Even with more support, the election of Ronald Reagan and an increase in a hard-line stance towards communism led to yet again weariness towards the Genocide Convention. “American embarrassment” was a term coined to describe how Americans felt when the international community pointed out their failure to ratify (Korey 287).

The competition between the Soviet Union and the United States intensified under the Reagan Administration, and this can be seen through the critiques from the Soviet Union on the U.S. failure to ratify. When the U.S. Helsinki Commission criticized the USSR on their

violations of the Helsinki Final Act's human rights commitments, the Soviet Union responded with:

Why... has the United States not ratified the 1948 Convention on the Prevention and Punishment of the crime of Genocide? Eighty-two countries have ratified it, but the United States did not. Moreover, it was not by accident... but rather after very long debates in the Senate. It can hardly be said that the whole world is out of step, while the United States is in step (Korey 287).

Although the Reagan Administration had shown no interest in the Convention during his first term, he endorsed ratification towards the end of his 1984 campaign for re-election (LeBlanc 177). Most likely, because he wanted to seem like a more humane leader to win re-election votes. Democrats saw this as a re-election ploy, which the Reagan Administration was aware of. They realized that "the administration might be accused of a cynical electoral ploy, in submitting the treaty too late for action during the President's entire term after sitting on it for three and a half years" (Memorandum from the Executive Secretary).

After forty years of refused ratification, the Genocide Convention Implementation Act of 1988, or the Proxmire Act, was finally put into law. While this was a huge step forward, the Proxmire Act needed to make significant changes to the original Genocide Convention in order to it to be passed in the Senate. The most important change that the United States made was affirming the supremacy of the United States Constitution. Although the Genocide Convention falls under international law, the U.S. saw that the only way they could protect themselves from outside threats was to put federal law above

international (LeBlanc 180). Many signatories to the Convention felt that this was unacceptable, because “it is a generally recognized rule of international law that no state can invoke provisions of its domestic law as reasons for not living up to its international obligations” (Memorandum from the Executive Secretary). Unfortunately, the implementation of this reservation was the only way that the treaty would be ratified by the Senate. And once again, the United States in the international community was defined by “American embarrassment”.

During the time of the Conventions addition into U.S. and international law, Cold War tensions were lessening and one year after the ratification the Cold War came to an end. Although the Convention was ratified before the end of the Cold War, the forty years that surrounded both the failure of ratification as well as tensions between the United States and the Soviet Union had several things in common. The decision of the U.S. to ratify the Convention with the Constitution as the superior document was a result of the paranoia that the Cold War placed into the minds of Americans.

With the Genocide Convention having been ratified by one of the most powerful countries in the world, the hope was that genocides would be prevented or stopped more easily. But, through studying genocides of the 1990’s, specifically Rwanda and Bosnia, it is clear that the United States, as well as other countries who ratified the Convention did not want to step in. The countries could label genocide as “mass killings” but once the term genocide was used, there was an obligation under international law to stop it from occurring. For example, during the Rwandan genocide, the Clinton Administration instructed its spokesmen not to describe the deaths occurring there as genocide, despite many senior officials labeling it as genocide (Jehl). Because the United States had no

important political ties to Rwanda, many felt that there was no reason to intervene and risk American lives. Most other countries felt the same exact way, which is why there was why intervention was sparse and hundreds of thousands of people died because of the failure of the United Nations and strength of the Genocide Convention. The failures of the Genocide Convention cannot only be attributed to the United States. Several other countries signed and ratified it but did nothing in the several genocides that happened throughout the Cold War.

The drafting of the Genocide Convention was a huge win for Jewish people after the Holocaust who felt that they were finally being heard, and the phrase “never again” became popularized. Rivalry between the United States and the Soviet Union halted this celebration, as ratification of the Convention took forty years to complete. During the Cold War the United States knowingly helped to commit atrocities in foreign countries in order to stop the spread of communism. This paranoia of communism lead to fear throughout lawmaking entities such as the Senate that actions committed by the U.S. military and the CIA could be tried as genocide in an international court, thus being used as blackmail by the Soviet Union. Sadly, aversion to the Genocide Convention did not stop at its ratification. The paranoia of blackmail and conviction is still seen in modern U.S. foreign policy towards genocide.

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