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THE GENOCIDE CONVENTION: SHOULD IT BE RATIFIED? SAM ERVIN SAYS NO—AND HE TELLS WHY

Mr. HELMS. Mr. President, two of the most distinguished years of my life were those when I was privileged to serve in this body as junior Senator to Hon. Sam J. Ervin, Jr., who represented the people of my State and the Nation as U.S. Senator for more than two decades.

To say that Senator Ervin is a distinguished American understates the case. He is a patriot who possesses all the essential virtues—courage, integrity, wisdom, dedication. I know of no one who exceeds his knowledge and understanding of the Constitution. And if there has been a stouter defender of the Constitution than Senator Ervin, it has escaped my attention.

Mr. President, I frequently call on Senator Ervin for guidance and direction, particularly in matters relating to the Constitution. I am not a lawyer, nor do I claim to be a constitutional authority. Thus, I am mostly guided by instincts, and I call on my friend, Senator Ervin, to assess my conclusions. So in a very real way he has been, and is, my mentor.

Needless to say, the pressures being applied upon the Senate to ratify the so-called Genocide Convention have given me concern. It has bothered me to note so many people, some of them prominent, who have reversed their previous position on the Genocide Convention. It troubles me, for exam-

ple, to observe the American Bar Association in a bizarre flip-flop on this issue.

So, Mr. President, I recently telephoned Senator Ervin at his home in Morganton, NC. Again I asked him to help me assess the turn of events relating to the Genocide Convention. Without hesitation, Senator Ervin went to work and has prepared a remarkable statement on the subject. He has sent to each Senator a letter with a copy of his statement enclosed.

This is the kind of American he is. Although he is 88, and despite a painful arthritic condition, Senator Ervin cares about his country enough to pitch in and help.

Mr. President, I ask unanimous consent that a personal letter to me, bearing the date of March 12, be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 12, 1985.

HON. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR JESSE: This is just a note to advise you that in my opinion the proposed compromise text of the resolution ratifying the Genocide Convention cannot be satisfactory to those who love the United States.

It is, in substance, a subterfuge. I sincerely trust that you will oppose it.

I am sending you a letter and a statement concerning the Genocide Convention. I am likewise mailing copies of the letter and statement to all members of the United States Senate.

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I sincerely trust that the Senate will not make obeisance in this matter to President Reagan, who apparently does not understand what the Convention is all about.

With all kind wishes, I am
Sincerely yours,

SAM J. ERVIN, Jr.

Mr. HELMS. Mr. President, as I mentioned earlier, Senator Ervin has written to each Member of the Senate enclosing a copy of his statement on the Genocide Convention. I ask unanimous consent that this letter be printed in the RECORD at this point, following by Senator Ervin's statement entitled, "The Plain Truth Concerning the Genocide Convention."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 11, 1985.

DEAR SENATOR: I am 88 years old, and entertain no personal political ambitions. Nevertheless, I have prepared and am sending you and other Senators a statement that tells the plain truth about the Genocide Convention, a most unintelligent and unpatriotic proposal.

I do this because I love our country, revere the Senate as one of its institutions, and do not want the Senate to stultify itself by ratifying the Genocide Convention which is calculated and intended to have two drastic impacts on the United States and the fifty states. If ratified by the Senate, the Genocide Convention will do two things to impair the independence of the United States.

First, it will nullify sovereign powers now vested in the United States and the fifty states as members of a free Republic.

Second, it will subject them in respect to the areas covered by the nullified sovereign powers to the complete dominion of the World Court, an international body whose decisions are dictated by the foreigners who compose the overwhelming majority of its members.

I pray that those now serving in the Senate will emulate their predecessors who for 37 years have wisely, patriotically, and courageously refused to ratify this bizarre proposal.

Sincerely yours,

SAM J. ERVIN, Jr.,
Senator from North Carolina,
for 20 years.

THE PLAIN TRUTH CONCERNING THE GENOCIDE CONVENTION

(Statement of Sam J. Ervin, Jr., of Morganton, N.C. 28655, who served in the Senate as a Senator from North Carolina from 1954 through 1974.)

I deeply regret that arthritis disables me to appear before the Committee in person, and express my opposition to the ratification of the Genocide Treaty, which calls itself the Genocide Convention.

I studied this proposal for many years, and made a speech on "Why The Senate Should Refuse To Ratify It" on May 25, 1970. This speech appears in the Congressional Record of that day, and I think merits the consideration of every Senator.

The Genocide Convention is undoubtedly the most bizarre treaty ever presented to the Senate for ratification.

Mark Twain is reputed to have said: "Truth is precious. Use it sparingly." I shall disobey his admonition, and tell the plain truth about this strange document.

For thirty-seven years the Senate has wisely and patriotically refused to ratify the Genocide Convention. It is devoutly to be hoped that intelligence has not forsaken the minds of Senators, and that love of country has not departed from their hearts; and that the present members of the Senate will follow the wise and patriotic decisions of their predecessors and refuse to ratify the Genocide Convention.

Inasmuch as I quote the words of the Genocide Convention to sustain what I say about it, I do not fear that my statement will be contradicted by any intellectually honest person who understands the provisions and implications of the Convention.

As its words reveal, there are cogent reasons to reject the Genocide Convention and not a single intelligent one for adding it to the supreme law of our land. I enumerate why the Senate should again refuse to ratify it.

1. The Genocide Convention is intellectually dishonest and deceptive.

Articles II and III of the Genocide Convention give false definitions to the term genocide, and thereby distort, pervert, and stretch it to cover multitudes of acts and persons wholly aline to the concept embodied in genocide.

According to its true meaning, genocide has always meant the systematic, and planned destruction or the complete wiping out of a designated (1) national, (2) political, (3) ethnical, (4) racial, or (5) religious group.

The Genocide Convention distorts and perverts the true meaning of genocide dras-

tically in three ways.

First, the proposed treaty offers no protection to "political groups", and thus permits their total destruction. The drafters of the proposals did this to appease Soviet Russia, and induce it to join in it.

Second, Article II distorts and perverts genocide to mean certain acts "committed with the intent to destroy, in whole or in part, a (1) national, (2) ethnical, (3) racial, or (4) religious group" as such, and to cover multitudes of persons and acts wholly alien to the true meaning of the term.

Manifestly, the distorted and perverted definition quoted above means that a public official or private individual is to be subject to prosecution and punishment under the Convention if he intentionally destroys a single member of one of the four specified groups.

Since an intent to destroy a single person belonging to one of the four designated groups would subject an official or an individual person to punishment, and since virtually every person on earth belongs to one or more of the four designated groups, the Genocide Convention would make virtually every person in any nation adhering to it a potential victim of genocide as the meaning of that term is distorted and perverted by the Convention.

The third distortion and perversion of the term genocide made by the Genocide Convention is that unlike true genocide it does not require the destruction of a person belonging to one of the four designated groups.

In addition to defining the killing of members of a designated group as a genocide act, Article II of the Genocide Convention distorts and perverts the true meaning of the term genocide by creating four additional genocidal acts. They are:

- (1) Causing serious bodily or mental harm to members of the group;
- (2) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (3) imposing measures intended to prevent births within the group;
- and (4) forcibly transferring children of the group to another group.

It is submitted that several of these newly-created genocidal acts are couched in general terms, and that it is virtually impossible to anticipate what specific acts or omissions they embrace. For example, what does "causing . . . mental harm" mean? Does an administrative officer cause mental harm to an applicant for relief when he denies him the relief he desires? Does a Senator cause mental harm when he refuses to vote for a measure one of the designated

groups ardently desires? Does the President cause mental harm to a prisoner by denying his petition for a pardon or parole.

Article III of the Genocide Convention further distorts and perverts the term genocide by providing that these acts embodying the distorted and perverted definitions shall be punishable as crimes: (1) genocide; (2) conspiracy to commit genocide; (3) direct and public incitement to commit genocide; (4) attempt to commit genocide; and (5) complicity in genocide.

By distorting and perverting the term genocide in the respects enumerated, the drafters of the Genocide Convention deceive multitudes of people into believing that the Convention is merely designed to punish genocide according to the true meaning of the term, and thus hide from them the truth that the Genocide Convention is calculated and intended to make punishable multitudes of persons and many acts alien to the true meaning of the term.

I put this question to each member of the Senate: How can any intelligent and intellectually honest Senator who loves our country and abhors deception vote to ratify the Genocide Treaty and thus make our nation a party to an instrument which distorts and perverts the plain meaning of words to deceive the public into believing that the Convention makes nothing punishable except true genocide?

2. If it should ratify the Genocide Convention, the Senate would make its provisions a part of the law of the land, and play havoc with the administration of justice under the legal systems which have prevailed in America since the United States became a Free Republic.

Upon ratification, a treaty acquires a status in America which has no counterpart in any other nation. The provisions of the treaty do not become domestic laws in other nations unless they are enacted as such by their legislative bodies after ratification. It is otherwise in the United States. This is because Article VI of the Constitution provides:

This constitution, and the laws of the United States which shall be made, in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state should be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

This constitutional provision and Articles IV and V of the Genocide Convention will

play havoc with the division now existing between the Federal government and the states in respect to jurisdiction over criminal cases, and clog the dockets of Federal and state courts so greatly as to hinder the effective discharge of their judicial duties.

If the Senate ratifies the Genocide Treaty, the federal and state courts will be compelled by Article VI to try and punish all "constitutionally responsible rulers, public officials, or private individuals" who commit any of the acts denounced by the Convention.

This article would impose a tremendous burden on the already clogged courts because under the constitutional provision cited above every self-executing provision of the ratified Genocide Treaty would become effective on ratification as domestic federal or state law.

If the Senate should ratify the proposed treaty, the courts would soon be compelled to try and punish persons committing non-executing provisions of the treaty. This is true because Article V of the Treaty would obligate Congress, and the legislatures of the fifty states "to enact necessary legislation to give effect to all provisions of the treaty and provide penalties for all persons guilty of genocide" as that term is distorted and perverted by the Convention and "of any of the other acts enumerated in Article III" of the Treaty.

It beggars the most vivid imagination to even conjecture how many new crimes compliance with these requirements would create for America.

In addition to this, the ratification of the proposed Genocide Treaty would create unprecedented and virtually insurmountable confusion in the administration of criminal justice in America.

If the Senate should ratify the Genocide Treaty, the duty and the power to prosecute and punish criminal homicide, assaults and batteries, and kidnappings covered by categories (a), (b) and (e) of Article II of the Convention would be initially transferred from the states which have always had such duty and power in respect to such crimes to the federal government.

To make this initial transfer of jurisdiction workable, Congress would be required to enact new laws laying down rules of procedure to govern the trial of these newly created federal crimes. Pending the passage of such laws, our country would experience utter confusion in the administration of criminal justice in respect to homicides, assaults and batteries, and kidnappings.

Proponents of ratification may argue that

many homicides, assaults and batteries would not fall within the definition of genocide, even as that term is distorted and perverted by the Convention. This is true, but this contention accentuates rather than minimizes the folly of ratifying the Genocide Convention.

As has been pointed out, virtually every person in America falls within one or more of the four groups designated in the Genocide Convention, and any offense denounced by the Genocide Convention against any one of them would ostensibly fall within the scope of the Convention.

The jurisdiction of a federal court under the Genocide Convention would not depend in the first instance upon what juries might ultimately find in particular cases. It would depend upon the allegations made in the indictments or informations charging the offenses.

Consequently, we can reasonably anticipate that demands will be made that every homicide, every assault and battery inflicting serious injury, and every kidnapping shall be tried in a federal court or in an international court to be established pursuant to the Convention. What this will do to increase the congestion in the already overburdened federal courts beggars description.

In the absence of ratification of the Convention by the Senate, demands have already been made that the United Nations investigate the slaying of Black Panthers by the Chicago police on the ground that their slaying constituted genocide under Article II(a), and that the United Nations investigate the action of the legislature of one state in respect to welfare benefits on the ground that the legislative action constituted genocide under Article II(c).

I respectfully suggest that the Senate should pause and ponder whether it is desirable to ratify a Convention which would necessitate a fundamental alteration in the way in which criminal justice has been administered in the United States since our country came into existence as a Free Republic.

Confusion in the administration of criminal justice in respect to domestic crimes made federal or international crimes by the Genocide Convention would not disappear with the enactment of legislation by Congress implementing the Convention.

The validity of this observation may be illustrated by considering a single crime, unlawful homicide.

Under the Constitution, Congress does not have the power to make unlawful homicides generally federal or international crimes. If ratified by the Senate, the Genocide Con-

vention would confer this power in respect to homicides constituting genocide under the distorted and perverted definition contained in the Convention. Jurisdiction to prosecute and punish other unlawful homicides would remain with the states.

The only distinction between unlawful homicides remaining in the jurisdiction of the states and the jurisdiction of unlawful homicides vested in the federal government by the Genocide Convention and acts of Congress implementing it would depend on whether the homicide is committed with a genocidal intent as that term is defined in the Convention. As a consequence, every unlawful homicide would apparently be within the jurisdiction of the federal or state governments insofar as the external circumstances of the slaying are concerned.

Hence, either state or federal courts could assert jurisdiction in respect to virtually all homicides, and an acquittal of the charge in one court would not bar a second prosecution on the same facts in the other court. This being true, a person could be twice placed in jeopardy for the same offense.

As we have seen, the power of a federal court to try a person for a homicide on the ground that it constitutes genocide under the Genocide Convention depends on the allegations of the indictment and not on the ultimate findings of the jury.

On the trial in the federal court, the jury would be compelled to acquit the accused unless it found that he acted with the requisite genocidal intent, no matter how atrocious the circumstances attending the homicide otherwise might be. In such a case, the accused would go unwhipped of justice unless he is placed on trial a second time in a state court.

I put this question to each member of the Senate: How can any intelligent Senator who loves his country vote to ratify a Convention which is calculated, if not intended, to play such havoc with the system of administering criminal justice which has prevailed in America since it became a Free Republic?

3. If the Senate should ratify the Genocide Convention, American soldiers who fight for our country against a foreign foe in lands beyond the sea would be subject to trial and punishment for violation of the Genocide Convention in a court of the foreign foe or in such an international penal tribunal as may be established to enforce the Convention where the protections of the Bill of Rights against unjust convictions or unjust punishments are not recognized or enforced.

This observation is made indisputable by Article I of the Genocide Convention which provides without exception or limitation for soldiers or any other persons that genocide as distorted and perverted by the Convention "whether committed in time of peace or in time of war, is an international crime" which "the parties to the Treaty undertake to prevent and to punish."

Article VI of the Genocide Convention provides that persons charged with genocide as that term is distorted and perverted by the Convention "or any of the other acts enumerated in Article III", shall be tried by a competent tribunal of the nation in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to parties to the Convention which shall have accepted its jurisdiction."

Manifestly soldiers or former soldiers charged with violation of the Treaty are among the persons covered by Article VI of the Treaty.

If the Senate should ratify the Genocide Treaty, the United States would pledge itself by Article VII of the Treaty to expedite the trial and punishment of American soldiers or former soldiers, who have returned home from a war with a foreign foe in a foreign land, by granting their extradition to the foreign land for trial and punishment in the genocide cases.

I put this question to all members of the Senate: How can any intelligent Senator who loves our country vote to ratify a Convention which sanctions the trial and punishment in the court of a foreign foe or in an internal penal tribunal of an American soldier whose only offense is that he killed or wounded an enemy of the United States while fighting for his country in a land beyond the seas?

Article VIII further specifies that any party to the Convention may call on any organ of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of "acts of genocide or any other acts enumerated in Article III."

4. If the Senate should ratify it, the Genocide Convention would forthwith rob the United States and the fifty states and transfer from them to the World Court the sovereign power of the United States to make any final decision concerning anything embraced by the Convention.

This is the manifest objective of Article IX of the Treaty which provides that disputes between parties to the Treaty "relat-

ing to (1) the interpretation, (2) the application, or (3) fulfillment of the present Convention shall be submitted to the International Court of Justice at the request of any of the parties of the dispute."

By virtue of Article IX, the World Court has supreme and unreviewable authority to make the final decision concerning any question arising under the Convention if a dispute exists concerning it between parties of the Convention and its jurisdiction is invoked by either party to the dispute.

In these events, the World Court would have plenary power to overrule or modify any ruling of the Supreme Court of the United States, or of any other federal court, or of any state court interpreting the Convention; to nullify or alter any decision of the President, or any Governor, or any federal or state executive officer applying the provision of the Convention; to nullify any act of Congress or any state legislature as a failure to perform the obligation imposed on it by Article V of the Convention to enact the necessary legislation to give effect to the provisions of the Convention; and to determine whether or not any provision of the Convention has been fulfilled in any instance.

How can any Senator who entertains an intelligent love for his country vote to ratify an instrument which thus subordinates the United States and the fifty states to the World Court?

5. An unanswered constitutional question.

The power of the Senate to ratify or reject treaties is created by Section 2 of Article II of the Constitution, which stipulates that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provides two-thirds of the Senators present concur."

In telling the truth about the Genocide Convention, the designs of those who drafted it, and what its ratification by the Senate would do to the system of government ordained by the Constitution, I do not raise or attempt to answer this crucial constitutional question: Does Section 2 of Article II of the Constitution confer on the Senate the power to ratify a treaty which robs the United States of any of its sovereign powers as a Free Republic?

It is inconceivable to me that Section 2 of the Article II, or any other provision of the Constitution, empowers the Senate or any other instrumentality of the United States to destroy, in whole or in part, sovereign powers belonging to the United States as a Free Republic. Hence, I assert with complete conviction that the Senate does not

possess the constitutional power to ratify the Genocide Convention.

6. The duty of Senators to reject the Genocide Convention.

For years after its rejection by the Senate, agitation for ratification of the Genocide Convention subsided, and it was largely forgotten by the public.

Unfortunately, however, it was resurrected during the national election campaign of 1984 as a political ploy to appease some of its ardent advocates, and has been submitted anew to the Senate. And unfortunately it now poses a potent threat to constitutional government in America. This is true because pragmatic politicians are often tempted to assign priority to satisfying demands of constituents, no matter how repugnant to common sense, reason, and constitutional government those demands may be, over performing their supreme obligation to give our country sound government conforming to the Constitution.

Charity prompts me to believe that most people who urge the Senate to ratify the Genocide Convention do not understand its drastic provisions and implications.

Unlike people in general, however, Senators are charged with responsibility for understanding the provisions and implications of treaties submitted to them for ratification, and for casting votes in respect to them which are intelligent and harmonize with the best interests of our country.

Hence, no Senator can plead ignorance or political considerations to justify for ratification of the Genocide Convention. This is true because it is calculated and intended to rob the United States and the fifty states of part of their sovereign powers as constituent members of a Free Republic, and to subject their governments in substantial ways to the dominion of the World Court, an international agency controlled by the overwhelming foreign majority of its members.

The present members of the Senate will render a magnificent service to the United States, the fifty states, and constitutional government in our land if they will exercise the political courage to reject the Genocide Convention which bodes no good for the United States, the fifty states, and the American people.

Mr. HELMS. Mr. President, regardless of how any Senator may presently stand on this issue, I do hope that each of us will read and study Senator Ervin's wise counsel on an issue of enormous importance to our Nation.