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CAN THE GENOCIDE TREATY BE CLEANED UP?

In an attempt to deal with the threats to American rights posed by the Genocide Treaty drafted by the United Nations in 1948 and still pending, the Senate Foreign Relations Committee labored mightily and attached several provisos. Although these address some problems, they certainly don't clean up all the constitutional defects.

The Committee attachments do not save us from the disastrous effect the treaty would have on our criminal justice system as it relates to federal-state relations. In the American legal system, most crimes are prosecuted under state laws, not federal.

The treaty creates the new federal crime of "genocide." But what makes genocide different from homicide, assault, battery, or kidnapping? That depends on the intent, so prosecution would depend not on the act itself but on how the indictment is worded.

The late Senator Sam Ervin said that this is one of the treaty's greatest defects because it would transfer the prosecution of nearly every homicide, assault, battery and kidnapping from the state courts to the federal courts (or an international court). The treaty's inclusion of such vague crimes as conspiring, incitement and complicity would also give lawyers a field day to move defendants into federal courts.

Then there is the problem of vagueness. What does it mean to prosecute someone who deliberately inflicts "on the group conditions of life calculated to bring about its physical destruction in whole or in part?" Nobody knows. As Senator Ervin pointed out, it might mean that a state or county official could be prosecuted for genocide for refusing to give welfare benefits which someone thinks is inadequate.

What about a Senator or Congressman who defends the killing by one side or the other in the Middle East confrontations? These are just some of the loopholes in the treaty.

The extradition danger to American citizens is one of the gravest problems with the treaty. The treaty pledges to extradite U.S. citizens accused of genocide. Understanding #3 limits this slightly by saying that we will grant extradition only for acts which are criminal under the laws of both nations.

There is less to this Understanding than meets the eye. While it is true that the U.S. Government does not extradite anyone except under a specific extradition treaty, the U.S. Justice Department lawyer stated at the hearing that the extradition treaty would not have to specify "genocide" so long as it includes "homicide" or other acts mentioned in the Genocide Treaty (which they all do).

The most recent extradition treaties already agreed to by the United States include such language as "extradition shall also be granted for wilful acts which, although not being included in the Appendix, are punishable in accordance with the federal laws of both Contracting Parties..." That means that genocide would be automatically included as an extraditable offense although not specifically mentioned.

U.S. law and policies on extradition do not require that the other country's criminal procedures give the constitutional protections which Americans enjoy. It's just too bad if you have to stand trial in a country where the U.S. Bill of Rights doesn't apply.

One of the most grievous problems with the Genocide Treaty is its Article I statement that genocide is a crime in times of peace AND war. That opens up the possibility that U.S. servicemen fighting in foreign countries could be tried for genocide under the treaty. Obviously, they do intend to "destroy" within the meaning of the treaty.

Understanding #4 states that wartime acts should not be considered genocide without "specific intent." Our servicemen should not have to defend themselves in a foreign court against accusations of "specific intent" without the protection of the U.S. Bill of Rights. The treaty would provide a cover of legality for "show trials" of U.S. servicemen.

Understanding #5 reserves the right of the U.S. to effect its participation in the international penal tribunal only by a treaty entered into for that purpose. But in the hearings, the U.S. Justice Department attorney said this could be done by executive agreement without the consent of the Senate.

The Declaration says that the President will not deposit our ratification with the UN until Congress passes legislation to implement the treaty, as required in Article V. That cannot be considered a safeguard since the whole thing would be a sham if the Senate ratified the treaty while hoping that Congress will renege on its duty to implement it.

The Genocide Treaty is so badly written that it is beyond the skills of the Senate Foreign Relations Committee to clean it up. It is a danger to all Americans.