

son and three grandchildren whom he adored, and legions of friends and admirers. He was a citizen of the world, a wise and gentle man, and he will be missed by many.

STEPHEN C. MCCAFFREY\*

### CORRESPONDENCE

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TO THE EDITOR IN CHIEF:

July 3, 1990

I have read with keen interest the article by Professor Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy* (84 AJIL 365 (1990)). While I agree with his analysis of the reasons for the U.S. failure heretofore to ratify this Covenant, I differ with his conclusion that the road to U.S. ratification "is likely to be a long, arduous and uncertain one" (p. 393), as well as his prescription that the principal focus be shifted to "the well-being of Americans" from "that of Soviets or the citizens of any other country" (*id.*). May I explain my reasons as follows.

During the mid-1980s, the chances of U.S. ratification of the Genocide Convention (78 UNTS 277) were considered remote, if not nil. Rooted in the death of six million Jews at the hands of Nazi Germany in World War II, the Genocide Convention was adopted by the General Assembly in December 1948. In June 1949, President Truman submitted it to the Senate for approval, where it languished for thirty-seven years. Despite the fact that every President since Truman, with the exception of Eisenhower, supported the ratification of the Convention, it was not until February 19, 1986, that the Senate, by a vote of 83 to 11, approved the Convention. Because of the need to enact enabling legislation, the date for entry into force of the Convention for the United States was delayed until February 23, 1989. Might the experience of U.S. ratification of the Genocide Convention provide some precedent for U.S. ratification of the Covenant on Economic, Social and Cultural Rights, as well as such other international human rights treaties as the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights?

Two factors influencing U.S. ratification of the Genocide Convention have been mentioned in the press: the quest for Jewish support in the 1984 presidential election campaign, and the need to lend credibility to U.S. championing of human rights issues vis-à-vis Soviet bloc countries.<sup>1</sup> To these may be added a third factor: refugees.

Concerned with the mass expulsion of a country's own citizens as a major cause of refugee flows (e.g., Vietnam's expulsion of Vietnamese of Chinese origin in the late 1970s), the Office of the U.S. Coordinator for Refugee Affairs sought to deal with this root cause by focusing on the obligations of the country of origin under international law, including its obligations under the Genocide Convention (to which Vietnam is a party). For Article II of that Convention defines genocide as an act "committed with intent to destroy, in whole or in part, a national, ethnical,

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<sup>1</sup> See, e.g., *Christian Sci. Monitor*, Apr. 11, 1985, at 7.

racial or religious group, as such: . . . (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 . . . .”

But the attempt of the U.S. Coordinator’s Office officially to invoke the Genocide Convention was thwarted by the fact that the United States had not itself ratified the Convention. This raised the question: Why not ratify the Convention? That effort was thus intensified, with the U.S. Coordinator’s Office lending its weight to those favoring ratification.

At one point, the question of what specific “reservations” and “understandings” could be accepted by the United States as conditions for ratifying the Convention began to confound supporters of ratification. There was a general realization that a prolonged debate over their merits or demerits might risk unraveling the fragile coalition of the Convention’s proponents in the executive branch and the Senate. In the end, the counsel of Professor Louis B. Sohn proved invaluable: without delving into the substance of any “reservations” and “understandings,” he wisely placed them in juxtaposition to “ratification,” underscoring the fact that the latter is far more significant, visible and pertinent than whatever reservations or understandings might be attached to a treaty. If President Wilson, he argued, had chosen to accept the Senate’s reservations to the Treaty of Versailles, the entire post-World War I history might have been different, with the United States as a member of the League of Nations. Thus, a protracted debate over reservations and understandings was avoided.

What lessons can we learn from this brief and oversimplified account of U.S. ratification of the Genocide Convention? Certainly, some major ingredients favoring U.S. ratification of the Genocide Convention apply also to U.S. ratification of the Covenant on Economic, Social and Cultural Rights. The refugee factor is a case in point. Millions of people, particularly in Africa, have been forced by drought or civil strife to leave their own countries as refugees in search of food. The fulfillment of the right to food—the single most important right in that Covenant (for without food, all other rights are illusory)—would in one stroke remove an important cause of refugees.

But the implementation of the right to food would also yield rich dividends in international cooperation. In recognition of this basic human right, the United States and the Soviet Union recently reached an agreement under which Soviet planes deliver American grain to starving Ethiopians. The increasing liberalization movement in Eastern Europe under *perestroika* is conducive to changing the right to food from an abstract principle into a realizable goal, to which the 1966 Covenant gives concrete expression.

Might not all this argue in favor of U.S. ratification of the Covenant—not only from the standpoint of “the well-being of Americans,” but also from “that of Soviets or the citizens of any other country”? The foregoing should provide at least some food for thought.

LUKE T. LEE

TO THE EDITOR IN CHIEF:

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Professor Detlev Vagts’s *International Law in the Third Reich* (84 AJIL 661 (1990)) strikes me as one of the most significant writings published recently in the *Journal*. The article is much more than a brilliant discussion of international legal doctrines of Nazi Germany. What makes it uniquely valuable is its focus on an international lawyer living and acting under a ruthless totalitarian regime that professed and enforced an ideology inherently hostile to the basic precepts of international law and justice. Vagts portrays the behavior of the German internationalists with insight and objectivity. He is sensitive to the human drama that