Countries
13. The United States and the Genocide Convention: The Sovereignty Package in Perspective

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1. Introduction

Representatives of the United States were involved in drafting the Genocide Convention (the Convention) during most of the stages it passed through on its way to eventual adoption by the United Nations General Assembly in 1948. Soon thereafter, in June 1949, President Harry S. Truman requested the Senate’s advice and consent to the ratification of the Convention. Almost forty years later, in February 1986, the Senate adopted a resolution of ratification. Subsequently, in October 1988, the Congress adopted implementing legislation for the Convention and President Ronald Reagan deposited the United States’ instrument of ratification at the United Nations.

The resolution of ratification reflected a compromise to overcome the objections of the most outspoken critics of the Convention. Known as the Lugar-Helms-Hatch Sovereignty Package (see Appendix), the resolution consisted of understandings indicating how the United States interpreted the meanings of various words and phrases contained in the Convention; and two reservations—one to the dispute resolution clause, which would allow the International Court of Justice (ICJ) to settle disputes among the parties to the Convention; the other affirming the supremacy of the US Constitution over the provisions of the Genocide Convention. The sweeping terms of the sovereignty package make it unique among the instruments of ratification deposited by states parties to the Convention, and close allies of the United States strongly objected to its terms. Nonetheless, they remain in effect.

The purpose of this paper is to put the sovereignty package into historical perspective and to weigh the implications it has had for the United States’ subsequent ratification of human rights treaties. Since ratifying the Genocide Convention, the United States has ratified the Convention against Torture, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and two protocols to the Convention on the Rights of the Child. As we will see, the resolutions of ratification adopted for these treaties reflect the precedent that was set in the case of the Genocide Convention.