

PART II

# The Law and the Indictment

Why the Genocide Convention was passed, its provisions as an extension of the Charter of the United Nations, its relation to American law, our right of petition, the duty of the General Assembly to hear our complaint, precedents for hearing it, and the indictment of the Government of the United States of America for the crime of genocide against the Negro people of the United States.

## The Law and the Indictment

SHOCKED by the Nazis' barbaric murder of millions of Jews and millions of Poles, Russians, Czechs and other nationals on the sole basis of "race" under Hitler's law—just as Negroes are murdered on the basis of "race" in the United States under Mississippi, Virginia and Georgia law—the General Assembly of the United Nations adopted the Genocide Convention on December 9, 1948.

### *Why the Genocide Convention Was Passed*

The Convention, to a marked degree, is a result of the Nuremberg trials of the Nazi war criminals at the conclusion of World War II. The trial, according to Supreme Court Justice Robert H. Jackson of the United States, then a special prosecutor of the Nazi criminals, indicated that domestic genocide in time of peace has an inevitable tendency to the greater genocide of war. Indeed he declared in his opening statement that the first was preparation for the latter. This domestic genocide, Mr. Jackson asserted, was the foundation of predatory war and the prelude to the larger genocide that followed against the nationals of other countries, a genocide seeking the political and economic control of Europe, if not the world, as the previous domestic genocide had secured it in Germany.

As Justice Jackson said in his opening statement at the Nuremberg trial:

"How a government treats its own inhabitants generally is thought to be no concern of other governments or of international society. Certainly few oppressions or cruelties would warrant the intervention of foreign powers. But the German mistreatment of Germans is now known to pass in magnitude and savagery any limits of what is tolerable by modern civilization. *Other nations by silence would take a consenting part in such crimes.* These Nazi persecutions, moreover, take character as international crimes because of the purpose for which they were undertaken. If aggressive warfare in vio-

lation of treaty obligations is a matter of international cognizance, *the preparation for it must also be of concern to the international community. Terrorism was the chief instrument for securing the cohesion of the German people in war purposes.*" (Italics ours.)

The relation between domestic genocide and international war caused progressive world opinion to favor the drafting and passage of the Genocide Convention. Genocide became an international crime because it was an international danger. "How a government treats its own inhabitants" must be of world concern when that treatment includes a war-breeding genocide that may engulf the world.

The Nuremberg trial punished *after* the crime and *after* war had been precipitated by its perpetrators. But the Genocide Convention looks toward preventing war through *preventing* and punishing the crime of genocide in time of peace *before* war occurs. It declares (Article I) that "The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish." It may be relevant to note that this American genocide of which your petitioners complain, also surpasses "in magnitude and savagery any limits of what is tolerable by modern civilization," in Justice Jackson's words. And above all it, too, is being used in part as an instrument "for securing the cohesion" of the people of the United States "in war purposes." We are confronted by a "deadly parallel."

#### *Aspects of the Convention*

It is sometimes incorrectly thought that the definition of genocide is the complete and utter extinction by force and violence of a people or group. Article II of the Genocide Convention, however, defines the crime as meaning

"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."

Article III of the Convention provides that "The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide."

The Genocide Convention differs from other international proclamations such as the Declaration of Human Rights. It is more than a statement of moral principle. It is law, international law, setting out specific crimes and specific punishments. It has all the status of solemn treaty. It takes its place beside such international prohibitions as those forbidding and punishing piracy and slavery. As such it focuses attention on the criminal. Under its terms persons committing genocide or attempting to commit genocide shall be punished "whether they are constitutionally responsible rulers, public officials, or private individuals." (Article IV.)

The contracting parties under Article V undertake to provide effective domestic penalties for persons guilty of genocide, while Articles VII, VIII and IX provide measures for international cooperation and control. Under the Convention the nations of the civilized world recognize and accept their responsibility to take individual and collective action against genocide "in order to liberate mankind from such an odious scourge." (Preamble.) In addition the Convention provides for the future creation of a world criminal court having jurisdiction over genocide. (Article VI.)

Thus the essence of the Convention is recognition of the principle that the prevention and punishment of genocide requires international enforcement. It is designed to insure international liability where the state responsibility has not been properly discharged. It therefore applies to the existing situation in the United States. For the daily acts of genocide committed against the American Negro people are so numerous and of such long standing, embedded in the law and often perpetrated by such organs of state government as the police and courts, that they could not take place without the positive or negative sanction of the several states and the Government of the United States of America. White supremacy has been voiced as a state philosophy by government officials, Federal, state and city, and in order to effectuate that policy city, state and federal governments have sanctioned "direct and public incitement to commit genocide" and "conspiracy to commit genocide" (Article III), outlawed as national and international crimes "contrary to the spirit and aims of the United Nations and condemned by the civilized world." (Preamble to Convention.)

#### *The Convention and the Charter*

The Convention on the Prevention and Punishment of the Crime of Genocide, the requisite twenty states having ratified it in accordance with Article XIII, entered into force on January 14, 1951. It is binding on all its signatories, which include the United States of America.

The Genocide Convention, we submit, is clearly an extension and implementation of the Charter of the United Nations. Its obvious intent is to give force and effect to the Charter's numerous pronouncements that

the purpose of the United Nations is to contribute to "peaceful and friendly relations among nations" by promoting "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Seven separate articles of the United Nations Charter deal with "respect for human rights" and "fundamental freedoms for all without distinction as to race. . . ."

The Genocide Convention thus provides for the enforcement of the very heart of the United Nations Charter. Failure to enforce the Genocide Convention would not only reduce the Convention to idle verbiage but would similarly transform the Charter. It is apparent that unless those provisions of the Genocide Convention forbidding "killing members of the group," "causing serious bodily and mental harm to members of the group," etc., are enforced there can be no reality to such salient articles of the Charter as the following:

#### ARTICLE I

The purposes of the United Nations are . . .

3. . . . to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. (59 Stat. 1037)

#### ARTICLE 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of . . .

b. . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. (59 Stat. 1039)

#### ARTICLE 55

With a view to the creation of conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote. . . .

c. Universal respect for, and observance of, human rights and fundamental freedom for all, without distinction as to race, sex, language, or religion. (59 Stat. 1045-46)

#### ARTICLE 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55. (59 Stat. 1046)

#### ARTICLE 62

2. It (the Economic and Social Council) may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. (59 Stat. 1046)

## ARTICLE 68

The Economic and Social Council shall set up commissions in economic and social fields for the promotion of human rights, and such other commission as may be required for the performance of its functions. (59 Stat. 1047)

## ARTICLE 76

The basic objectives of the trusteeship system in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter shall be . . .

c. To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world. (59 Stat. 1049)

It is obviously the duty of member states of the United Nations to carry out these provisions of the Charter. If the Government of the United States of America did so there would be no necessity for this petition. The genocide practiced against the petitioners and the Negro people of the United States stems from a direct failure on the part of the United States to enforce its obligations under the Charter. We complain, therefore, not only of the violation of the Genocide Convention by the United States but also of its refusal to perform its solemn obligations under the Charter of the United Nations.

That genocide violated the United Nations Charter was admitted by Dean Rusk, Assistant Secretary of State of the United States, in testifying before the Senate Foreign Relations Committee. He said:

“Senator Pepper, I think it would be true not only that genocide would be a violation of the specific convention but these acts defined as genocide, if committed by governments, would be violations of their obligations to the United Nations.”<sup>1</sup>

The Genocide Convention does not change the Charter, but strengthens it by reducing general proclamations to the status of specific law. Even if the Genocide Convention had not been ratified by twenty member states in accordance with Article XIII, this petition complaining of genocide committed against the Negro people of the United States could be sustained under the provisions of the Charter.

*The Charter Supersedes Conflicting United States Law*

The refusal of the United States to carry out the provisions of the Charter of the United Nations is not only an international offense but also a violation of a cardinal principle of United States law. For the Charter, having been signed by the United States and ratified by its Senate, becomes the supreme law of the land, its provisions against segre-

1) Hearings on Genocide Convention p. 17.

gation and discrimination superseding and voiding every state law in conflict with them. In a recent case (*Fujii v. California*, 97 A.C.A. 154), a native of Asia challenged the California law which bars Asians from owning land. The court held that the law of the Charter of the United Nations superseded the law of California when the latter was in conflict with the former.

This position of the court is in accordance with the fundamental principles of the United States law. The Charter, because it was ratified by the Senate and has the status of treaty, is, according to the Constitution of the United States, "the supreme law of the land and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State, notwithstanding." (Article VI, Section 2.)

The supremacy of treaties over state laws has in fact been the law of the United States since 1796 and the decision in the case of *Ware v. Hylton* which held that, "It is within the power of the Federal Government by treaty to remove from state control any matter which has become the subject of negotiations."

Yet the Government of the United States, despite its avowed adherence to the Charter of the United Nations, despite international law and its own law, has failed to insist on the supremacy of the principles of the Charter. It has taken no action to void the many racist anti-Negro laws of the several states. It has done nothing to negate "white supremacy" by law or executive and judicial action.

It has imposed no domestic penalties for violation of the Genocide Convention, although as a signatory it is clearly required to do so by the terms of Article V.

The obligation to implement the Convention is absolute and in no way dependent upon ratification. Having been ratified by twenty member states as provided for, the Convention has become binding on all member states. The obligations stem from the undertaking as a contracting party. But the Government of the United States has wilfully failed to pass such legislation. Enforcement at the level which the Convention looked to for control is non-existent in the United States. Indeed there has been no attempt at either state or federal enforcement.

Moreover, if the Charter and the Genocide Convention which implements the Charter, supersedes, negates and voids racist anti-Negro laws of the several states and the Federal Government, it also creates the solemn international obligation that the Government of the United States enforce those laws and constitutional provisions already in existence which would buttress and give effect to the principles of the Charter and of the Convention. This includes the Fourteenth and Fifteenth Amendments to the Constitution of the United States, guaranteeing equal rights to the Negro people. The President, the Supreme Court, members of Congress and other

officials solemnly swear to enforce these Amendments but *do not*, in violation not only of their oath of office but also of the principles of the Charter and the Genocide Convention.

But it is incumbent upon the United Nations to see that the Convention and the Charter are not violated, especially by member states.

There is a distressing disparity between the solemn pledges of the Government of the United States and its actions in fact. It is pledged to "fulfill in good faith the obligations assumed by them in accordance with the present Charter" (Article II) to the end that "fundamental human rights . . . the dignity and worth of the human person, the equal rights of men and women and the nations large and small" (Preamble) may result in the achievement of "international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedom without distinction as to race, sex, language or religion."

This is the solemn pledge of the Government of the United States. But its actions involve it in the killing and oppression of genocide on the Hitlerian basis of race. The failure of the Government of the United States to implement the United Nations Charter and the Genocide Convention, as well as its long-standing failure to enforce the Fourteenth and Fifteenth Amendments of the Constitution of the United States, clearly reveal that the oppression and genocide being practiced against the Negro people of the United States is a policy of the Government of the United States.

#### *The Right to Petition*

If the peoples of the world were voiceless save when their pleas were uttered by governments, the great protections of the Charter and the Declaration of Human Rights might become meaningless. The rights of individuals or minority groups to petition the United Nations is clearly inherent in the Charter and the Declaration of Human Rights. The General Assembly is charged with the obligation to "initiate studies and to make recommendations for the protection of human rights and fundamental freedoms for all." (Article XIII.) If those whose human rights are violated can speak only through the government that violates them, or through some other formal state entity, the right of the General Assembly to make recommendations for the protection of human rights is considerably vitiated. It is obviously necessary to hear the complaints of minority peoples if studies or recommendations protecting their rights are to have any meaning.

This was apparent to the League of Nations whose Council declared in a resolution of October 29, 1920:

"Evidently this right does not in any way exclude the right of minorities, or even of states not represented in the Council, to call the attention of the League of Nations to any infraction or danger of infraction."<sup>2</sup>

That "all are equal before the law and shall be accorded equal protection before the law" is the assertion of Article 20 of the Declaration of Human Rights. Yet without equal access to the law there can be no equality before it. A law that the sufferer cannot invoke gives no protection, equal or otherwise. The United Nations, moreover, declares itself an organization formed by "We, *the people* of the United Nations, determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . ."

Thus it is clear that the United Nations is more than a concert of state entities. Rather it exists in the name of the peoples of the world, was created for their benefit and can be invoked by them whenever their "fundamental human rights" are violated by a sovereign nation. If this were not true, if minority groups suffering under the crime of genocide had not the right to appeal to the United Nations, both the Charter and the Genocide Convention would be reduced to meaningless and hypocritical abstractions. It was not the purpose of the United Nations to define and forbid the crime of genocide while denying those suffering from it the right to state their case.

#### *The Duty of the General Assembly*

It is equally clear that the General Assembly has the right and duty to hear our complaint under the provisions of the Charter. This case involves those violations of "fundamental human rights" outlined in the Charter and forbidden by the Genocide Convention. It has frequently been held that any matter coming within the scope of the Charter is admissible before the General Assembly. Thus, Mr. Evatt, in addressing himself to the resolution on the Mindzsenty case, said:

"There was not a single question or matter coming within the scope of the Charter, relating to its aims, its principles, or any one of its provisions, which could not be discussed by the General Assembly. If any question was covered by an article of the Charter, that question would no longer be a matter essentially within the domestic jurisdiction of a state."<sup>3</sup>

The General Assembly, itself, took this view when it passed a resolution condemning the Asiatic Land Tenure and Indian Representation Act passed by the Parliament of the Union of South Africa in 1946. This Act denied South African citizens of Indian descent certain civil rights, dis-

2) League of Nations, Protection of Linguistic, Racial or Religious Minorities by the League of Nations, Geneva, 1931, pp. 7-12.

criminating against them on the basis of race, just as Negroes are discriminated against by racist laws in the United States. The Government of India contended that the Act breached treaty obligations and violated the spirit and letter of the United Nations Charter. It requested the General Assembly to pass a resolution urging South Africa to desist from any policy of discrimination.

South Africa questioned the authority of the Assembly to pass such a resolution. It pleaded immunity under Article XI, Paragraph 7, of the United Nations Charter which states that "Nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the jurisdiction of any State. . . ." The General Assembly, however, rejected this plea, basing its action on Article 55 of the Charter which authorizes the United Nations "to promote . . . a universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." The Assembly resolution declared that "it is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two governments, *and the relevant provisions of the Charter.*"<sup>3</sup>

As has been said, a complaint against a nation on the ground that genocide is practiced against a minority people can be sustained by Article 55 of the Charter which has been ratified as treaty by the Senate of the United States. We repeat that the Genocide Convention is an implementation of the Charter, a law for the specific enforcement of certain provisions of the Charter. The two are so closely connected that they must be considered as a whole. Under any circumstances, however, those who are denied the rights guaranteed by the United Nations have a right both in justice and in law to appeal to the United Nations for relief. Therefore the petitioners herein again allege that their complaint of genocide can be sustained not only on the basis of the provisions of the Genocide Convention but also, as in the decision against South Africa, on the basis of Article 55 of the Charter.

#### *American Opinion Believes the Convention Applies*

It is relevant to note that the American Bar Association believes that the crimes against the Negro people in the United States come within the provisions of the Genocide Convention. It is for that reason, in fact, that the Bar Association has opposed its ratification. It believes that if the violence and persecution directed against the Negro people were liable for punishment in other than domestic courts, irreparable harm might be done to "the American form of government," i.e., so-called "state's rights."

3) A/BUR/SR 58, p. 13, UN Document.

4) U.N. document A/C 1 & 6/12.

This is a profound commentary upon the character of government by those who today rule America, rather than upon any truly "American form of government," as it is called.

The American Bar Association is the pre-eminent organization of lawyers in the United States. Its resolution not only makes no attempt to deny that oppression and violence on the basis of race is directed against the Negro people in the United States but, on the contrary, is based on the prevalence of that violence. It admits the very substance of our complaint. What it fears is that punishment by an international agency might seriously breach the "American legal system." It admits that the lynching and terror directed against the Negro people will be construed as genocide under the terms of the Convention. Nonetheless, it maintains that these crimes are genocide only under United Nations law and are not genocide in reality and in fact.

Its Special Committee on Peace and Law through the United Nations objected to the ratification of the Genocide Convention because:

"Endless confusion in the dual system of the United States would be inevitable with the same crime being murder in state law and genocide in the federal and international fields. Race riots and lynching being both local crimes and genocide depending on the intent and extent of participation."<sup>5</sup>

The Bar Association's complaint is hypocritical—it exaggerates a non-existent danger. It well knows that neither Federal nor state courts enforce the laws against race riots or lynching. Unpunished lynchers far outnumber any punished. We allege, and shall hereinafter prove, that the courts, on the contrary, are used for the "legal" murder of innocent Negroes on the basis of race and as an instrument of white supremacy and genocide.

The American Bar Association passed a resolution opposing the ratification of the Genocide Convention on September 7, 1949. Its resolution deplored genocide but added that "The Convention raised important fundamental questions but does not resolve them in a manner consistent with our form of government." It further declared:

"American citizens might eventually come to be triable by an international tribunal where they would not be surrounded by the constitutional safeguards and legal rights accorded persons charged with domestic crime."

Here again is tacit admission that the United Nations has venue and jurisdiction under the Genocide Convention of complaints brought before it relevant to the crimes being committed against the Negro people in the United States. The American Bar Association is well aware that Negro

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5) American Bar Association Special Committee on Peace and Law, Rep. 12, 1949, pp. 13, 15.

citizens desire to be tried by "tribunals" where they would be surrounded by constitutional safeguards and more than formal legal rights. However, the Bar Association goes on to argue with the terms of the Convention, declaring that genocide ought to be defined as a crime only when "Genocide directly affects thousands of persons. Anything short of a crime against thousands constitutes the local crime of murder." It further holds that "reliance of punishment of individuals is upon the national courts" and states in its resolution that genocide "can only happen with the official approval or complicity of the Government of the United States."

We agree with the last statement. Genocide, in this instance, and perhaps in all instances, takes place only with the "approval and complicity" of the government under which it is perpetrated. We allege, and shall prove, moreover, that "thousands of persons" *are affected*, are the victims of the genocide directed against the Negro people in the United States, and that the national courts, instead of trying the guilty, are themselves as a branch of government guilty of genocide as a matter of consistent policy. Over the years the courts have legally murdered innocent Negroes on the basis of race, thus playing their part in oppressing the Negro people and keeping them in economic and political bondage. It is because we Negro petitioners have no true and real recourse in these courts, because we receive no protection from the state, because police and courts are themselves involved in the genocide directed against us, that we are forced to appeal to the General Assembly for redress and relief.

It is important to note that virtually all those who opposed ratification of the Genocide Convention before the United States Senate Committee on Foreign Relations, did so precisely because the Genocide Convention specifically applies to the crimes being committed against the Negro people in the United States. Thus Leander H. Perez, District Attorney of Louisiana, expressed the fears of the lynchers and white supremacists in the United States when he testified that:

"All forms of homicide and personal injury cases could be brought under the broad mantle of genocide, and the mechanics of the thing would simply be that the United States attorney would walk into the State district court and move to transfer the cases to the Federal Courts. But what is still worse than the destruction of our constitutional set-up and our framework of government in America is the over-hanging threat that citizens of our States some day will have to face the international tribunal, where now they must face the State Courts and a jury of their peers."<sup>6</sup>

Peculiarly enough, in view of the Fourteenth and Fifteenth Amendments to the Constitution guaranteeing equal rights to the Negro, virtually all white supremacists declare that nothing can be done about the wrongs directed against the Negro people without "destruction of our constitutional set-up." Of course, they know these constitutional amendments are

never enforced. They are equally adamant that perpetrators of crimes against the Negro people shall be tried locally by a "jury of their peers" because they know such trials are a bulwark of white supremacy and a protector of genocide. Harry S. Barger, of the National Economic Council, a fascist organization, argued openly when he testified before the Senate Committee on Foreign Relations:

"As a matter of fact, this pending Convention goes much further than merely outlawing mass murder. In effect its real purpose is to set up an international FEPC. If I may, I should like to suggest that the ultimate effect of it will be to punish in every country the crime of lynching. . . . The punishment should be left to the States where they have trial by juries of their peers and the punishment inflicted by the courts of justice set up under our American standards."

The Ku Klux Klan, a terroristic organization licensed by the states and permitted by the Federal Government despite its frankly anti-Negro program, also opposed the ratification of the Convention. It conducted an active lobbying campaign against such ratification.

At the Senate hearings, the question of whether or not lynching, race riots and other crimes committed against the Negro people were punishable under the Genocide Convention, was repeatedly raised and repeatedly answered in the affirmative. Alfred J. Schweppe, Chairman of the Bar Association's Special Committee on Peace and Law through the United Nations, testified:

"What is meant by inflicting mental harm on part of a group which may mean a single person? Also what about a lynching or a race riot? The State Department's letter of transmittal recognizes that genocide may be committed against a single individual. If, for example, in a town of the United States of America, where a crime has allegedly been committed by some unidentified Chinaman, I should decide to get rid of all or most all the Chinamen in the town by force, and should in the process kill or maim one Chinaman, I would be guilty of genocide, in that with intent to destroy part of the racial group, I had killed or maimed one individual. The Chinaman could well be a colored person, or a member of any other minority group."

The applicability of the Genocide Convention to crimes against the Negro people was raised by Senator McMahon of Connecticut at the hearings:

"SENATOR McMAHON: Now let's take a lynching case, for example. Let's assume there is a lynching and a colored man is murdered. Is it your contention that that could be construed to be within the confines of this definition, namely, with intent to destroy him as part of a group?"

"MR. SCHWEPPE: The International Court will ultimately tell us. Actu-

6) Hearings before the Committee on Foreign Relations, January 23, 1950, p. 229.

ally, a race riot of some substantial character would be more clearly within my concept of genocide.”

Thus, the very arguments opposing the Genocide Convention completely support our petition. First, they admit that the terror against the Negro people in the United States *is* genocide. Second, they admit this terror *is* punishable under the Convention. Third, they admit the Convention overrides state and national law. And finally, they come to the defiant conclusion that *just because the Genocide Convention would be effective in stopping this terror against the Negro people*, the United States Government must veto the Convention—and continue its present lawless terror.

The Bar Association and others seek to avoid the elimination of genocide committed against the Negro people of the United States by preventing American ratification of the Convention. They forget, however, that the Convention, having been ratified by twenty nations, is now in force and binding on all its signatories, including the United States. They overlook the fact that the Government of the United States, having signed the Convention, having solemnly promised to punish those guilty of genocide, having contracted to implement its laws thereto, is morally and legally bound by its undertaking.

#### *The Indictment for Violation of the Convention*

“It is manifest that a people cannot be consistently killed over the years on the basis of ‘race,’—and more than 10,000 Negroes have so suffered death—cannot be uniformly segregated, despoiled, impoverished and denied equal protection before the law unless it is the result of the deliberate, all-pervasive policy of government and those who control it.”<sup>7</sup>

The principal defendant in our indictment, if either term can be properly used in such a proceeding, is the Government of the United States of America. Whatever the proper terminology, however, we accuse the Government of the United States of America of being primarily responsible for the genocide committed against the Negro people who live under its sovereignty and are therefore entitled to its protection instead of its persecution. It is guilty of “killing members of the group,” we allege, for the reason, among others, that its Supreme Court has failed to use its power to save from death innocent Negroes, convicted on the basis of “race” by venal courts after torture in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, as well as in violation of the United Nations Charter and the Genocide Convention.

Our indictment charges the Government of the United States with violation of virtually every provision of the Genocide Convention. Our

7) From the Opening Statement of this petition.

evidence, in Part III of this petition, sustains the charges. But the great and central fact is that the basic law of the United States itself specifically forbids violence and discrimination against the Negro people on the basis of race, forbids genocide, and that that law is not enforced as a wilfull and long-sustained policy of government in violation of the Constitution of the United States, the United Nations Charter, and the Genocide Convention.

The policy of non-enforcement of basic American constitutional law, written and passed to protect the Negro people, has become a legal authorization of genocide. It is the enabling act for genocide. It is the foundation for segregation and other discriminatory practices in law and by the courts. Non-enforcement of the Fourteenth Amendment of the Constitution of the United States, which guarantees the Negro people "due process of law" and "equal treatment before the law," obviously incites to genocide. Non-enforcement as a matter of cardinal policy of the Civil Rights Act, also drafted and passed by Congress to protect the rights of the Negro people, is government notification that the Negro people have no rights that will be protected by the Government of the United States.

The notorious failure to enforce, or even attempt to enforce, the Fifteenth Amendment to the Constitution of the United States, which stipulates that Negro citizens shall be secure in their right to vote, results, and long has resulted, in the murder of Negroes on the basis of race when they have attempted to vote. Nor are such murderers tried under the Fourteenth or Fifteenth Amendment or the Civil Rights Act. For genocide, killing members of the group, is the policy of the Government of the United States no matter what the legal circumlocutions used to conceal it.

It is evident that a government which has the power to punish murder on the basis of race and does not use it as a matter of invariable policy, encourages murders on the basis of race. Nor can the Government of the United States, we submit, escape liability by pleading that it is not responsible for the laws or actions of the several states under its central authority. Not only is it a well-known principle of American law that state statutes, such as those providing for segregation, must be in conformity with a Federal Constitution guaranteeing equality before the law for the Negro people, but it is an ancient and universally accepted principle of international law that a sovereign state is responsible for international crimes committed within its borders. It cannot escape such responsibility by the declaration that such crimes are authorized by the law of one of its own political subdivisions. A sovereign state must accept responsibility for international crimes committed within its confines. Genocide is such a crime.

We shall charge the Government of the United States with specific violations of specific provisions of the Genocide Convention. We maintain that if the United States is guilty of "conspiracy to commit genocide," as we allege, it is also guilty of "killing members of the group" and of violation of other provisions of the Convention. It is an established principle of law that conspiracy to murder makes every member of the conspiracy equally guilty with the conspirator who committed the actual act of murder. It would be a poor thing to charge a police officer or deputy sheriff with genocide and to leave untouched and unrebuked the sovereign power, in this case the Government of the United States, whose acts and failures to act, whose racist laws and statutes enforcing segregation, whose courts and legislatures and totality of policy, have manufactured the climate for genocide as well as the institution of genocide—whose very capital is self-admittedly a "disgrace to the nation" because of the bestial and inhuman character of its racist practices.

In view of this and other facts, we charge in relation to the following provisions of the Convention:

#### ARTICLE II (a). KILLING MEMBERS OF THE GROUP

The main characteristic of genocide is its object: the act must be directed toward the destruction of a group in whole or in part. Groups consist of individuals and criminal actions against groups must in the last analysis be actions against individual members of the group.

The crime of genocide is not conditioned upon the factual destruction of a group in whole or in part but on the intent to achieve this aim. Moreover, genocide is not characterized by intent to destroy a whole group, but rather on the intent of eliminating a portion of a group given identity by its common racial, national or ethnic characteristics. (U.N. Document A/C. 6/242)

The petitioners, in the first count of their indictment against the Government of the United States of America, charge that members of a minority ethnic group, the Negro people of the United States, have been and are being killed (see Evidence, Part III) and that such killings are intended and aimed at the destruction of the group in whole or in part to which the murdered individuals belonged.

#### ARTICLE II (b). CAUSING SERIOUS BODILY OR MENTAL HARM TO MEMBERS OF THE GROUP

The assaults, beatings and maimings directed against the Negro people on a basis of race, hereinafter described in Part III, obviously are instances of "serious bodily and mental harm," particularly when the crime is executed by officers of the state. (See Evidence, Part III) The petitioners charge, moreover, that the killing of substantial numbers

of the group, that is the Negro people of the United States, is done with the intent of inflicting serious bodily and mental harm on the whole group.

Mass murder on the basis of race is a powerful source of constant terror, as it is intended to be, to the whole Negro people. As a result of the pattern of extra-legal violence in which they live out their lives, if they do live, the entire Negro people exists in a constant fear that cannot fail to cause serious bodily and mental harm.

Another source of serious bodily and mental harm is the segregation which imprisons United States Negroes from birth to death, marking their status as inferior as a matter of law on the basis of race, cutting them off from adequate education, hospital facilities, medical treatment, and housing, forcing them to live in ghettos and depriving them of rights and privileges that other Americans are accorded as a matter of course. This imprisonment which cuts off United States Negroes from the services and privileges of their fellow citizens, which makes them pariahs in their own country, results in a condition which is temperately described by the words "serious bodily and mental harm."

Section (b) of Article II seeks to cover the various methods of genocide described by Rafael Lemkin, who coined the word and declared:

"Genocide can be effected by physical, political, social, cultural, biological, economic and religious and moral oppression."

The petitioners in the second count of their indictment against the Government of the United States of America charge it with political, social, cultural, biological, economic and moral oppression which have been and are being inflicted on the Negro people of the United States, and which has resulted and will result in "serious bodily and mental harm to members of the group."

ARTICLE II (c). DELIBERATELY INFLECTING ON THE GROUP CONDITIONS OF LIFE CALCULATED TO BRING ABOUT ITS PHYSICAL DESTRUCTION IN WHOLE OR IN PART

As a result of segregation, of living in ghettos and disease-breeding housing, of being barred from the great majority of hospitals, as a result of discrimination in employment which makes for a tragically low income, of violence which often prevents trade union organization, of the semi-peonage of share-cropping, of a terror which prevents members of the group from using political action to better their condition, as a result of these and other factors, United States Negroes are deprived on an average of nearly eight years of life as compared with the life expectancy of white Americans. Disease rates and mortality rates are higher among

the Negro people than in any comparable segment of the United States population. (See PART III, The Evidence.)

This does not just happen. It results from "deliberately inflicting" on the group such conditions for the purpose of depressing wages, increasing profit, and retaining reactionary political and economic control through the divisions they effect in American life. The conditions are imposed with the intent to destroy in whole or in part.

Therefore, we charge as the third count in our indictment of the Government of the United States of America, acts, both by individuals and state and federal officials, which constitute "deliberately inflicting on the group"—the Negro people of the United States—"conditions of life calculated to bring about its physical destruction in whole or in part."

### ARTICLE III. CONSPIRACIES, ATTEMPTS, INCITEMENTS AND COMPLICITY TO COMMIT GENOCIDE

Article III declares that the following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

It is obvious that genocide could not adequately be prevented or punished if only those who actually killed, or directly caused serious bodily or mental harm, or violated other provisions of Article II of the Convention were held to be guilty. Therefore Article III was included to apprehend and punish those involved by cooperation with those directly guilty of overt acts of genocide by reason of conspiracy, incitement or complicity to commit the crime.

The petitioners allege that public officials, particularly in the Southern states of the United States, are frequently guilty of murder on the basis of race, of genocide, by direct and public incitement to genocide, by participating in actual violence on the basis of race as in the case of sheriffs and law enforcement officers, by use of the courts to kill innocent Negroes on the basis of race as a matter of policy in sustaining white supremacy, by approving and soliciting the murder or assault of Negroes who attempt to vote, by being parties to the creation of that terror which results in "serious bodily and mental harm," by passing and enforcing laws providing for segregation in violation of the Constitution, the Charter and the Genocide Convention, and by refusing to enforce the criminal law against those guilty of crimes against the Negro people.

The petitioners further charge that officials of the Government of the United States of America in all its three branches, judicial, legislative,

and executive, are guilty of genocide, through their refusal to enforce those provisions of the Constitution of the United States which provide for "due process" and "equality before the law" for the Negro people, in violation of the United Nations Charter and those provisions of the Genocide Convention, among others, which prohibit conspiracy and complicity.

The petitioners charge, therefore, that the Government of the United States of America is involved with others in "conspiracy to commit genocide," in violation of Section (b) of Article III of the Genocide Convention.

They further charge that certain officials of the Government of the United States of America, as set forth in the evidence of Part III of this petition, have with others, including the Governors of certain states, directly and publicly incited to genocide in violation of Section (c) of Article III of the Genocide Convention.

They further charge the Government of the United States of America and others with "complicity to commit genocide" in violation of Section (e) of Article III of the Convention.

#### ARTICLE IV. RULERS AND OFFICIALS MAY BE PUNISHED

Article IV states:

"Persons committing genocide or any of the other acts enumerated in Article III shall be punished whether they are constitutionally responsible rulers, public officials, or private individuals."

The crimes committed against the Negro people on the basis of race in the United States are in part committed by officials taking an active part in such crimes and/or conspiring and inciting individuals to commit such criminals acts, and/or in granting immunity to the perpetrators of such acts. The petitioners charge, and submit evidence in Part III of this petition, that public officials of certain states, and certain officials of the Government of the United States of America, are guilty of conspiring to commit genocide, of complicity in genocide, of inciting to genocide, and of other offenses forbidden by the Genocide Convention and the Charter of the United Nations.

#### ARTICLE V. ENACTMENT OF DOMESTIC LAW TO ENFORCE THE CONVENTION

Article V provides:

"The contracting parties undertake to enact in accordance with their respective constitutions the necessary legislation to give effect to the provisions of the present convention and to provide effective penalties for persons guilty of genocide."

Regardless of whether or not the Convention is ratified, the Government of the United States as a contracting party, as a signatory to the Convention, is solemnly pledged to enact the legislation provided for in Article V. It is legally and morally bound to do so under the Charter and under the Convention. Failure could only be interpreted as a desire for the credit of signing the Convention without the obligation of observing it or the onus of opposing it.

This is the present situation. The United States Government has made no move, recommendation, or act to pass the domestic legislation "to give effect to the provisions of the present convention" to which it is solemnly obligated under international law. It has failed even to pass a Fair Employment Practice Act, or a Federal anti-lynching law, or even to enforce laws technically in being which could be used to eliminate genocide.

That this failure is deliberate, that it stems from the fact that genocide against the Negro people is an integral part of the fabric of American law, government and practice, is the only logical conclusion when it is known that the United States has effectively implemented other international agreements requiring domestic law for enforcement. It passed laws, for example, implementing the Treaty for the Suppression of the Opium Trade in 1883, the Treaty for the Punishment of Persons Breaking or Injuring Submarine Cables in 1889, the Convention on Slavery in 1890, the Convention on the Suppression of White Slave Traffic in Women and Children in 1904, the Convention on Obscene Publications in 1911 and the Multilateral Slave Trade Treaty in 1929.

Therefore the petitioners allege that the Government of the United States of America has wilfully violated Article V of the Convention in that as a contracting party it has not undertaken "to enact . . . the necessary legislation to give effect to the provisions of the present convention. . . ."

The obligation under Article V involves not only the enactment of new laws in the penal code of the United States. It also means the enforcement of those laws and Amendments to the Constitution which would eliminate genocide by granting the equal protection to life, liberty and property of the Negro people provided by the laws and Amendments to the Constitution of the United States. This the United States is also obligated to do, as we will show, under the Charter of the United Nations.

Instead of honoring this dual obligation, the United States has failed and continues to fail to enforce the basic guarantees of full and equal rights guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution. The Supreme Court of the United States has in fact denied the language, purpose and intent of these Amendments by tortuous constructions holding that the authority of the Federal Government can-

not protect the rights of the Negro people if those rights are violated by individuals and not by the actions of one of the several states. Since all crimes, including those of states, are carried out by human beings, this decision has been used over the generations, and still is being used, to strip Negro Americans of the protection of their government.<sup>8</sup>

Now this important fact contains one of the legal bases supporting our complaint to the United Nations. The United States Government, having formally ratified the United Nations Charter and having signed the Genocide Convention as a contracting party, is guilty of breaches of solemn pledges to the United Nations in violating these Amendments. The failure to enforce them involves violation of international law as well as national.

The Genocide Convention and the United Nations Charter (Article 56) impose obligations upon the members of the United Nations. The word "pledge," if it has any meaning at all, involves the solemn promise, the contractual undertaking, to perform that which is pledged. Reference to "separate" action as distinguish from "joint" action reveals that Members are individually bound by the Charter to act on their own part for the achievement of "universal respect for an observance of human rights and fundamental freedoms for all without distinction as to race. . . ." Indeed this is the sense of the entire Charter for it would obviously be monstrous for members to violate at home what they undertake to uphold abroad. But this the United States has done.

Therefore the petitioners charge the Government of the United States with violating its pledges, its solemn international undertakings, under the Charter and the Genocide Convention, and allege that by reason of such violations the Negro people of the United States have suffered from acts of genocide.

#### ARTICLE VI. TRIBUNALS FOR TRIAL

Article VI provides:

"Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by any such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

Jurisdiction over the crime cannot be confined to the courts "of the State in the territory of which the act was committed" because the crime often involves the heads of such States. It is obvious that state or national authorities would be unwilling to prosecute and punish themselves. If

8) Cruikshank, 92 U.S. 589, 1876.

the crime of genocide is to be effectively eliminated, the Convention recognizes that preventive and punitive measures must be enforced against the officials of States or nations.

Article VI, moreover, provides for the setting up of an international penal tribunal. Just as conventions for the suppression of piracy, slavery, white slavery and other crimes impose an obligation on the States to conform to these conventions and punish infractions of them, so the Genocide Convention imposes an obligation on the Member States of the United Nations to take action against officials of an offending nation. Since action by means of an international tribunal is anticipated by the Convention, the petitioners call upon the General Assembly to establish such a tribunal to the end that justice may be done and future acts of genocide prevented.

There is ample precedent in international law for such action. The Geneva Convention of 1937, which provided for the establishment of an international court to judge individuals accused of offenses against the convention for the Prevention and Punishment of Terrorism, and the Nuremberg and Tokyo international military tribunals, which had been set up under multilateral agreements, are precedents for international trials.

The petitioners, therefore, call upon the General Assembly to follow the precedents of international law in dealing with violators of international conventions. As did the nations at the Nuremberg trial, the petitioners demand the punishment of crimes and atrocities which cannot continue without peril to the civilized world.

#### ARTICLE VIII. ACTION UNDER THE CHARTER

Article VIII provides:

“Any Contracting Party may call upon the competent organs of the United Nations to take action *under the Charter* of the United Nations as they consider appropriate for the prevention and suppression of the acts of Genocide or any of the other acts enumerated in Article III.”

This provision clearly stipulates enforcement of the Convention through the Charter and in doing so manifestly supports our contention that the Convention is an extension of the Charter, inseparable from it. It buttresses our point that complaints of genocide could be made and punished under the provisions of the Charter by proposing “prevention and suppression of the acts of Genocide” under the Charter.

It is accepted, we presume, that the General Assembly is a competent organ of the United Nations since it has already acted as to the denial of human rights in the Mindszenty and South African cases to which reference has previously been made. It is clear, too, that the Security

Council has the right and authority to listen to acts relating to genocide, since genocide is a practice which tends to war and disturbs international relations. Moreover, the United Nations would have jurisdiction, as we have said, over genocidal crimes, irrespective of the Genocide Convention, under the Charter principle of promoting "universal respect for and observance of human rights" as well as by virtue of its authority to deal with questions relating to the encroachment on progressive development of international law. (Article XIII, Paragraph (a) of the Charter.)

Article VIII provides that "Any Contracting Party may call upon the competent organs of the United Nations to take action under the Charter. . . ." Therefore, the petitioners plead and request that each and every Member State as contracting parties "call upon the competent organs of the United Nations to take action." We particularly plead that the representatives of the governments of France, Poland, Czechoslovakia, the U.S.S.R., the Ukrainian S.S.R., and Byelo-Russian S.S.R. call upon the United Nations to take action and we call upon them particularly because their nations and their peoples suffered under this "odious scourge." We plead with these representatives and all representatives, particularly of the Government of India whose nationals know something of oppression on the basis of race, to exercise their power under Article VIII of the Convention that the petitioners may obtain a proper hearing and that "the sounding board" of the United Nations may shock "the conscience of mankind" to the end that the crimes inflicted against the Negro people of the United States of America may be condemned and terminated.

#### ARTICLE IX. THE INTERNATIONAL COURT OF JUSTICE

Article IX states:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for Genocide or any of the other acts enumerated in Article III, should be submitted to the International Court of Justice at the request of any parties to the dispute."

Article IX is one of the most important in the Convention. *It creates compulsory jurisdiction of the International Court of Justice in all disputes relating to the Convention.*

Its importance becomes evident by comparison with various provisions of the Charter. Article 33 imposes upon members of the United Nations the obligation to seek a solution of disputes by judicial settlement only if that dispute is such that its continuance is likely to endanger international peace and security. Article IX of the Convention, however, contains

no such restriction. *Its jurisdiction is obligatory and relates to all disputes without exception.*

In accordance with Article 94 of the Charter, the members of the United Nations undertake to comply with the decision of the Court in any case to which they are parties, i.e., the fulfillment of its judgment constitutes an obligation under the Charter. Furthermore, the same Article stipulates that if a party to a case fails to perform the obligations incumbent upon it under a judgment of the Court, the other party may have recourse to the Security Council, which may make recommendations or decide upon measures to give effect to the judgment. Thus the Security Council may be involved in cases which otherwise would not come under its competence.

Finally the Charter imposes on all members the obligation to furnish the United Nations assistance in any action it takes in accordance with the Charter. Thus the Security Council's measures may involve action by all members of the United Nations against a State refusing to comply with the judgment of the International Court of Justice.

The obligation of the parties to submit disputes under the Genocide Convention to the International Court of Justice is broad in regard to subject matter. It includes not only the interpretation of the provisions of the Convention, but also its application, and the fulfillment of the obligations imposed. Thus the obligation to enact necessary legislation (Article V of the Convention) is relevant, and failure to do so may be submitted if in dispute, as may failure to extradite culprits (Article VII), or failure to prosecute those responsible for violation of the Convention (Article VI). In addition, disputes submitted may relate to the responsibility of a State for acts of genocide or any other punishable acts.

The petitioners in their prayer for relief (Part IV) call upon the General Assembly and the Contracting Parties to the Convention to submit, if in dispute, the application and fulfillment of the Genocide Convention by the United States of America, to the International Court of Justice.

In concluding Part II of this petition concerning The Law and The Indictment, it might be useful if the petitioners summarize their indictment of the Government of the United States of America. We charge the Government of the United States of America, and submit supporting evidence in Part III of this petition, with responsibility for, and participation in, violation of the Genocide Convention by killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, failure to enact domestic legislation enforcing the

Genocide Convention as was contracted by becoming a signatory to it, and violation of international law by its failure to carry out its solemn pledges under the Charter and under the Convention.

For these offenses, the petitioners ask the General Assembly for relief and redress on behalf of the Negro people of the United States now suffering under the crime of genocide.