

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

must have inevitably accompanied choices made by most of those lawyers; he is nonjudgmental, and yet quite clear on where he stands.

The article will appeal in particular to those internationalists who themselves experience the pressures of a totalitarian regime, such as—*toutes proportions gardées*—a Communist one. It should not be difficult for them to make use of Vagts's scheme distinguishing four types of behavior (resistance, emigration, internal emigration, and opportunism) as a blueprint to categorize their own response to those pressures. As it looks now, such categorization in the case of Soviet and Eastern European internationalists will be more or less a private act, for there seems to be no strong determination either in the post-Communist countries, or outside, to make accountable those internationalists who manipulated international law to expand Communist domination in clear violation of the purposes and principles of the UN Charter. There may be good reasons for this. The Communist regimes came to an end in those countries gradually, through political reforms rather than bloody war; thus, there was time for some to change their views and adjust to the new trends. Furthermore, it might have been recognized that a witch hunt, once started, may never end, and that the social costs of evening the score may be too high. The obvious need for a constructive, rather than a destructive, environment in which to build a new, democratic society could be a valid consideration. But as Professor Vagts reminds us, "even in so-called totalitarian regimes there is some room for moral decisions" and "[t]he situation of those who took indefensible positions during one period of history can be rather unpleasant when times change" (pp. 701–02).

Vagts's article is equally important for those who were lucky enough never to have been forced to make hard choices. They may want to ponder what they would do under the circumstances that the German internationalists encountered in the Third Reich. And, following up that thought, they may ask themselves how they used their knowledge and skills, when they were free to say and do whatever they wanted. Vagts's article invites such soul-searching. The article may well be a most serious and thought-provoking discourse on the professional responsibility of an international lawyer. I certainly intend to require my students to read it for my international law course.

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