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## COMMENTARIES ON THE GENOCIDE CONVENTION: A REINTRODUCTION TO NEHEMIAH ROBINSON

*Donald M. Ferencz\**

In September 2007, at the International Conference in Commemoration of the Sixtieth Anniversary of the Negotiation of the Genocide Convention (Conference), I was privileged to chair a panel entitled “The Origins of the Genocide Convention: From Nuremberg to Lake Success.”<sup>1</sup> This forward introduces an unexpected find that I stumbled upon while preparing for our panel: a unique copy of a 1949 commentary on the Genocide Convention that came into my possession just two days before the Conference. The publication in question, *The Genocide Convention, Its Origins and Interpretation*, by Dr. Nehemiah Robinson, was originally circulated as an unbound seventy-five page folio.<sup>2</sup> With the publisher’s permission, it is reproduced in its entirety in the appendix of this issue.

As a backdrop to how Robinson’s work fits into the chronology of events pertaining to the Genocide Convention, it may be helpful to take a moment to contextualize the title that the Conference organizers bestowed upon our particular panel.

Students of the early history of the United Nations may recall that prior to the construction of its permanent headquarters it was an organiza-

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<sup>1</sup> The Conference was held at the Case Western Reserve Law School in Cleveland, Ohio, on September 28, 2007 and was officially entitled “To Prevent and to Punish: An International Conference in Commemoration of the Sixtieth Anniversary of the Negotiation of the Genocide Convention.” A webcast of the Conference is available at <http://law.case.edu/centers/cox/webcast.asp?dt=20070928>. The term “Genocide Convention” refers to The Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly Res. 260 A (III) of 9 December 1948, 78 UNTS 277, entry into force 12 January 1951. See William Schabas, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES, 516 (2000). See WILLIAM SCHABAS, GENOCIDE IN INTERNATIONAL LAW 516 (2000) (providing background information on the ratification of the Genocide Convention).

<sup>2</sup> Nehemiah Robinson, *The Genocide Convention, Its Origin and Interpretation* (Institute of Jewish Affairs of the World Jewish Congress, 1949) [hereinafter 1949 COMMENTARY].

tion that led what has been referred to as a “wandering existence.”<sup>3</sup> During that period, its meetings were held on both sides of the Atlantic, including facilities in London, Paris, and New York.<sup>4</sup> By December of 1946, its work in the New York area was split primarily between Lake Success, where the Secretariat was housed, and Flushing Meadow, where the General Assembly met.<sup>5</sup> It was at this time that the General Assembly adopted the historic, albeit non-binding, resolution that declared genocide to be an international crime and called for the development of a genocide convention.<sup>6</sup> Yet, with all due respect to both Flushing Meadow and Lake Success, our panel’s title could quite easily have given top billing to Paris, France, for it was actually in Paris, at the Palais de Chaillot, that the General Assembly unanimously adopted the Genocide Convention in December of 1948.<sup>7</sup>

The developments pertaining to the crime of genocide during this eventful period were to be addressed by my co-panelists, Professors Henry King, William Schabas, and my father, Benjamin Ferencz, each of whom I contacted in preparation for our collective presentation. It was in discussions with my father, two days before our panel, that he mentioned, almost as an afterthought, that he had something that he thought might be of interest to me.

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<sup>3</sup> The Secretary-General, *Supplementary Report of the Secretary General on the Work of the Organization*, 693, delivered to the General Assembly, U.N. Doc. A/65/Add.1 (Oct. 24, 1946) [hereinafter *Supplementary Report*] (providing a list of locations where the United Nations operated before its permanent headquarters was constructed). For a listing of dates and locations of General Assembly sessions, see ANTHONY MANGO, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS*, 2,471 (2003) (1985). For a more complete history of the United Nations Headquarters, see United Nations, *The Story of United Nations Headquarters*, Fact Sheet No. 23 (July 2006), <http://www.un.org/geninfo/faq/factsheets/FS23.HTM> [hereinafter *Story of the U.N. Headquarters*].

<sup>4</sup> See *Supplementary Report*, *supra* note 3, at 693; *Story of the U.N. Headquarters*, *supra* note 3.

<sup>5</sup> See Nick Paumgarten, *U.N. on Ice*, *THE NEW YORKER*, May 23, 2005, at 30; see also Charlene Mires, *The Search for the “Capital of the World,”* RESEARCH REPORTS FROM THE ROCKEFELLER ARCHIVE CENTER, Fall 2005, at 1.

<sup>6</sup> See *The Crime of Genocide*, G.A. Res. 96(I), U.N. Doc. A/231 (Dec. 11, 1946). While the Convention was being drafted, the Ad Hoc committee convened at Lake Success. See, U.N. Econ. & Soc. Council, Ad Hoc Committee on Genocide, *Report of the Committee*, U.N. Doc. E/794 (May 24, 1948).

<sup>7</sup> See Schabas, *supra* note 1, at 68–69. See also, Nehemiah Robinson, 1949 COMMENTARY, *supra* note 2 (referencing unanimous adoption of the Convention). From 1946 to 1948, the grounds considered for coverage by the crime of genocide were considerably modified. Compare the language set forth in G.A. Res. 96(I), of December, 1946, which speaks in terms of acts “committed on religious, racial, *political or any other grounds*” (emphasis added), with the language of the Convention, as finally adopted in December of 1948, which covers only “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.” G.A. Res. 96(I), U.N. Doc. A/64 (Dec. 11, 1946), U.N. Doc. A/810 (Dec. 9, 1948).

He produced an old sheaf of fourteen-inch papers in an unbound folder, constituting his personal copy of Nehemiah Robinson's 1949 commentary—given to him by none other than Robinson himself. The pages were beyond yellow with age; they were brown and fraying at the edges, and contained my father's original notations, made over half a century ago. Although my father had donated the vast bulk of his personal archives to The United States Holocaust Memorial Museum over a decade ago, this valuable reference work had remained behind. My reaction to being presented with this decaying little treasure was unequivocal. I immediately took it to the nearest Kinko's copy shop, had half a dozen hard copies made overnight, and then had it scanned and formatted for inclusion in this Symposium Issue.

Since Robinson's 1949 commentary says nothing about who he was, a few words are in order about his background and how my father came to have a copy of his work. Robinson was a Lithuanian Jew who immigrated to the United States in 1940, becoming an American citizen and the director of the Institute of Jewish Affairs of the World Jewish Congress.<sup>8</sup> He was an expert on war crimes and on German war reparations, and was in charge of all research for the World Jewish Congress.<sup>9</sup> He also worked with the Conference of Jewish Material Claims Against Germany,<sup>10</sup> and it was in this connection that he and my father (who was very involved in worldwide restitution claims after the war) became well acquainted.

In the process of enquiring as to how my father chanced to have received a copy of Robinson's commentary, I learned to my great surprise, that as a young child, I may very well have met Nehemiah Robinson, if only fleetingly. His relationship with my parents had evolved into a close personal friendship, and my father stated that Robinson was a regular visitor in our home. Hence, in the title of this forward, I give myself the benefit of the doubt, referring to my preparations for our panel as a *reintroduction* to Nehemiah Robinson.

It bears mentioning that Robinson followed his 1949 publication, about ten years later, with a longer work entitled *The Genocide Convention: A Commentary*, published just four years before his untimely death in 1964.<sup>11</sup> Both works are still cited with some regularity, and it may be of

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<sup>8</sup> See *Nehemiah Robinson Dead at 65; Led Institute of Jewish Affairs*, N.Y. TIMES, Jan. 12, 1964, at 92.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Nehemiah Robinson, *THE GENOCIDE CONVENTION: A COMMENTARY* (1960) [hereinafter 1960 COMMENTARY]. Robinson's 1960 commentary covered the same topics included in the 1949 commentary, but added several new sections dealing with action on the Convention in the ensuing years and perceived special problems involved in the application of the Convention. *Id.*; 1949 COMMENTARY, *supra* note 2.

historical interest to note that the 1949 commentary is credited with having been part of the record of Senate subcommittee hearings during the very early stages of the forty-year effort to ratify the Convention in the United States.<sup>12</sup>

The expanded commentary that Robinson published in 1960 draws heavily on his earlier analysis, portions of which are reproduced verbatim in the later commentary.<sup>13</sup> There is, however, one notable exception: in his 1949 commentary, Robinson offers authority for the view that there is nothing in the Convention to compel compulsory ICJ jurisdiction with respect to claims for reparations.<sup>14</sup> The discussion of this topic in his later work differs rather markedly from his earlier analysis, revealing an apparent change of perspective.<sup>15</sup>

Because *The Genocide Convention, Its Origins and Interpretation* is reproduced herein in its entirety, the work can speak for itself and needs little in the way of further introduction. Suffice it to say, that true to its title, it traces the Convention's drafting history, from its origins in 1946 to its adoption in 1948, and provides a comprehensive article-by-article analysis interpreting its provisions.

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<sup>12</sup> *International Convention on the Prevention and Punishment of the Crime of Genocide: Hearings on Executive Order Before a Subcomm. of the Comm. on Foreign Relations*, 81st Cong. 2d Sess. 487 (1950) (reprinting 1949 COMMENTARY, *supra* note 2). It was not until 1988 that the United States finally adopted implementing legislation making genocide a federal crime. See *Genocide Convention Implementation Act of 1987*, 89 DEP'T ST. BULL. 38 (1989) (providing a reproduction of President Reagan's remarks at the signing ceremony of the Genocide Convention Implementation Act, and the text of a White House fact sheet).

<sup>13</sup> Compare 1960 COMMENTARY, *supra* note 11, at 53–118, with 1949 COMMENTARY, *supra* note 2, at 10–56.

<sup>14</sup> See 1949 COMMENTARY, *supra* note 2, at 40–43.

<sup>15</sup> Compare 1960 COMMENTARY, *supra* note 11, at 101–04, with 1949 COMMENTARY, *supra* note 2, at 40–43.