It does not apply to the past.

However, distressing some such actions may be, they do not constitute genocide under the terms of the Genocide Convention and the understandings attached to it.

Mr. President, we must ratify the Genocide Convention.

THE NEED TO ESTABLISH AN OFFICE OF CONGRESSIONAL LEGAL COUNSEL

Mr. MONDALE. Mr. President, I recently introduced legislation to establish an Office of Congressional Legal Counsel to aid in our attempts to insure that the executive branch obeys the law and the will of Congress. In the October 17 edition of the Minneapolis Star, Austin Wehrwein analyzes this proposal and effectively demonstrates the need for its speedy adoption. I urge that this article be read as an excellent summary and analysis of the important changes that the establishment of such an office could bring about.

Mr. President, I ask unanimous consent that Mr. Wehrwein's article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

HOUSE COUNSEL FOR CONGRESS

(By Austin C. Wehrwein)

Watergate didn't create arrogant executive clout. It was made possible by the existence of such an office could bring about.

That trend can be summed up in two words. Before Watergate they served, in effect, as the White House's response to congressional challenge.

They were, "So what?" The rebuttal to that, henceforth, might well be: "So we'll sue you.

This is the beginning of a new bill introduced by Sen. Walter F. Mondale, D-Minn., which was inspired by Ralph Nader.

Under it the legislative branch would create its own legal staff and hire top legal talent to the fore.

"This office would give senators and congressmen an in-house capability to bring suit against illegal executive branch actions." The concept is sound, but it is not enough.

Still, there are partial precedents. The General Accounting Office (GAO) is Capitol Hill's own auditing and professional delegation from Wisconsin.

GENOCIDE CONVENTION UNJUSTLY CRITICIZED

Mr. PROXMI. Mr. President, critics of the Genocide Convention have expressed their concern that ratification of this treaty would make a wide range of activities subject to punishment under international law.

Article II of the convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

First. Killing members of the group;

Second. Causing serious bodily or mental harm to members of the group;

Third. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Fourth. Imposing measures intended to prevent births within the group;

Fifth. Forcibly transferring children of the group to another group.

In a number of previous statements before the Senate I have pointed out that the Genocide Convention does not apply to civil wars, the acts which are of its critics fear that it would. The Senate Foreign Relations Committee has enumerated those concerns which are not covered by the Genocide Convention:

It does not apply to the rules of warfare, or the obligations of parties to the Geneva Conventions on the treatment of prisoners or war and the protection of civilian persons in time of war.

It does not apply to civil wars as such.

It does not apply to discrimination, racial slurs, and insults and the like.

It does not apply to voluntary population control measures.

Mr. President, we must ratify the Genocide Convention.

On the other hand, Mondale joined three other senators in suing successfully for the expulsion of Howard Phillips from his job as acting director of the Office of Economic Opportunity (OEO). It seems the White House just hadn't bothered to send his name up to the Senate. Bill would have had no legal right to his paycheck.

The crucial missing element in such tests is that the actual litigation was handled by private lawyers, not by employees of Congress.

Mondale praised their work. But he thinks that if the prerogatives of the legislative branch are to be restored it must have the full potential present only in an Office of Congressional Legal Counsel (CLC). Its own firm law, so to speak, one always on tap. More precisely, what lawyers call "house counsel."

The "senior partner" would be appointed by the speaker and the president pro temp of the Senate from nominations made by the leaders of both parties in both houses.

The CLC would render legal opinions. It would, armed with appropriate authority, argue before the courts on behalf of Congress in cases involving its own legal power to employ, as well as make, the laws so as to guarantee that the executive shall faithfully execute them, constitutionally.

THE NEED FOR A CEASE-FIRE IN THE MIDDLE EAST

Mr. BAYH. Mr. President, it was indeed distressing to learn this morning that the cease-fire has not taken hold in the Middle East. As the Washington Post editorially stated: "Israel is deep into legalism all the time of necessity."

The Office of Legislative Counsel aids members in the drafting of bills, a highly technical art.

But neither lobbies. Impoundment brought the "so what?" problem to the fore.

In recent past there have been some 20 often successful impoundment lawsuits, including one involving rural disaster relief in Minnesota, brought by the Farmers Union. A leading precedent in the Mondale concept was the lawsuit brought by the Missouri Highway Commission in which 22 Senators and five representatives filed an amicus curiae brief.

A. U.S. Court of Appeals affirmed a lower court's ruling that the secretary of transportation could not, contrary to express law, block a program.

Too, members of Congress filed lawsuits to attempt to end the war. Others have filed suits to gain information under the Freedom of Information Act. These cases have, however, been less successful than the Missouri highway case.

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