national feelings, religion, and the economic existence of the group. Even nonlethal acts that undermined the liberty, dignity, and personal security of members of a group constituted genocide, if they contributed to weakening the viability of the group.[41]

> Lemkin also pioneered the development of a typology of genocide—a set of types classifying actual cases of genocide—based on the intent of the perpetrator. In his chapter [IX] on genocide, he sketched the outline of an evolutionary development incorporating three types of genocide. The aim of the first genocides—which he related to wars of extermination in antiquity and the middle ages—was the total or nearly total destruction of victim groups and nations. A second type of genocide, one that had emerged in the modern era, was characterized by the destruction of culture without an attempt to destroy its bearers. Nazi-style genocide comprised the third type. It combined ancient and modern forms of genocide in a new type in which some groups were selected for immediate annihilation while others were selected for [compulsory] assimilation.*

Lemkin's breakthrough enabled the International Military Tribunal convened at Nuremberg in 1946 to advance an appropriate description of the charges against the major nazi defendants, that is, of having "conducted deliberate and systematic genocide, *viz.*, the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy certain races and classes of people and national, racial, or religious groups, particularly the Jews, Poles, and Gypsies, and others."[42] Following this lead, the Supreme National Tribunal of Poland, while prosecuting a group of lesser nazis during September and August of the same year, found them guilty on the basis that their "wholesale extermination of Jews and also of Poles had all the characteristics of genocide in the biological meaning of the term, and embraced in addition the destruction of the cultural life of those nations."[43] On December 11, 1946, the newly formed United Nations capped off the institutionalization of Lemkin's definition of the crime with the unanimous passage of General Assembly Resolution 96(I).

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*Chalk and Jonassohn, *History, op. cit.*, p. 9; referencing Lemkin, *Axis Rule*, *op. cit.*, pp. 79–82. Actually, things were never so clearcut as it is made to appear here. The nazi mode of genocide was "new" only in terms of scale and efficiency. The total extermination of target populations—or attempts to accomplish it, which is all the nazis managed—were hardly restricted to "antiquity and the middle ages." And deliberate efforts to destroy other cultures dates back as far as physical extermination. Indeed, the "combination of...forms" have *always* gone hand in hand—e.g., Melos and Carthage, each of which contained both elements—albeit the emphasis changes from genocide to genocide. This is what Lemkin was trying to get at in his definitional elaboration. Unfortunately, Chalk and Jonassohn either missed the point, or elected to blur it to a considerable extent. For further detail, see Raphaël Lemkin, "Genocide: A Modern Crime," *Free World*, Apr. 1945.

> Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups, and is contrary to moral law and the spirit and aim of the United Nations. Many instances of such crimes of genocide have occurred, when racial, religious, political and other groups have been destroyed, entirely or in part. The punishment of the crime of genocide is a matter of international concern.[44]

The General Assembly therefore affirmed "that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable."[45] No distinction was drawn in this "norm of international understanding" between genocidal acts or policies implemented abroad and those targeting groups within any state's claimed territoriality, nor between wartime occurrences and those transpiring during times of peace. Similarly, no differentiation in terms of the gravity of the offense was drawn between the accomplishment of genocidal objectives by lethal means and the pursuit of such objectives through processes of deliberate cultural eradication. Thus was the concept of genocide clearly distinguished from the far simpler crime of mass murder.

such objectives through processes of deliberate cultural eradication. Thus was the concept of genocide clearly distinguished from the far simpler crime of mass murder.

Definitional Erosion

Resolution 96(I) concluded, in line with the U.N.'s mandate to engage in the formulation of "black letter international law, by assigning its Economic and Social Council (ECOSOC) to draft for adoption by the General Assembly a fullblown Convention delineating the elements of the crime of genocide and appropriate responses by the international community."[46] Through the U.N. Secretariat, Raphaël Lemkin was pressed into service as a consultant, charged with primary responsibility for drafting the instrument.[47] The result, a beautifully crafted and comprehensive document incorporating not only all aspects of genocidal activity but the outlines of an effective means of enforcement, was submitted for review to the Council on the Progressive Development and Codification of International Law in June 1947. There, it immediately stalled because of "concerns" expressed by the representatives of numerous U.N. member states.[48]

With the conclusion of the major Nuremberg Trial, a number of gov-

ernments had quickly begun to backslide into their prewar postures. Having made grand statements on law and morality against the nazis, they were having second thoughts about the broader implications of such pronouncements and were busily contriving to protect their own "rights" to engage in variations on the same genocidal themes as the leaders of the Third Reich.* It was thus necessary for them, collectively, to narrow the Convention's definitional parameters of genocide in such ways as were necessary to exclude many of their own past, present, and anticipated policies/practices from being formally codified as *crimen laesae humanitatis* (crimes against humanity) in international law.[49] Consequently, General Assembly consideration was postponed until 1948, while Lemkin's material—usually referred to as the "Secretariat's Draft"—was handed over to an ad hoc committee of nation-state representatives licensed to rework it in conformity with what were described as the "political realities."[50]

The first task was for the United States to push Lemkin completely out of the process, paving the way for the real bargaining to begin.† With this accomplished, the initial modification was proposed by the U.S.S.R., strongly supported by Poland.[51] Lemkin's draft had specified that acts or policies aimed at "preventing the preservation or development" of "racial, national, linguistic, religious or political groups" should be considered genocidal, along with a range of "preparatory" acts, including "all forms of propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate, or excusable act."[52] The Soviet representative, arguing on behalf of a government which had systematically eliminated not only the entirety of its political opposition but whole socioeconomic aggregates during the 1930s and '40s, claimed that inclusion

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*Indeed, there were influential parties in each of the four participating powers—Great Britain, France, the United States and the U.S.S.R.—who had all along opposed the Nuremberg procedure for these very reasons. Winston Churchill and John A. Simon, respectively the English prime minister and lord chancellor, argued strongly for summary execution of the nazi leaders rather than risking the establishment of legal precedents at trial. This view was shared in the United States by Secretary of the Treasury Henry Morgenthau and, in all likelihood, President Franklin Delano Roosevelt; Bradley F. Smith, *The Road to Nuremberg* (New York: Basic Books, 1981) pp. 45–7.

†Not only was Lemkin removed from his U.N. role, he was prevented even from testifying before the Senate subcommittees conducting hearings on the possibility of U.S. ratification of the convention itself from 1950 until his death in 1959. Reasons stated included the facts that Lemkin was Jewish, "a man who comes from a foreign country who [spoke] broken English" and thus "irritated [many people] no end" by "running around" while serving as the "biggest propagandist" for the idea that genocide should be outlawed; Republican Senator H. Alexander Smith of New Jersey, quoted in LaBlanc, *U.S. and the Genocide Convention, op. cit.*, p. 20.

of political groups among the entities specifically protected by the Convention would be to cast the net "much too wide."[53]

The United States, which was by then locked into its Cold War confrontation with the U.S.S.R., led the opposition to this change until November 29, 1948, when it suddenly reversed its position.[54] A *quid pro quo* had been effected in which the Soviets would allow the removal of linguistic groups from the roster of protected categories and drop their opposition to deletion of Lemkin's entire second article, devoted to the question of cultural genocide.* In the original draft, Article II had specified as genocidal the "destruction of the specific character of a persecuted 'group' by forced transfer of children, forced exile [i.e., mass expulsion], prohibition of the use of the national language, destruction of books, documents, monuments, and objects of historical, artistic or religious value."[55] It was, as Monroe C. Beardsly later pointed out, meant to get at policies designed "to extinguish, utterly or in substantial part, a culture."[56]

The elimination of such criteria from the legal definition of genocide was strongly desired not only by the United States and other "Western democracies"—most of which were still presiding over "non-self-governing" colonial territories[57]—but by a number of emergent "postcolonial" Third World states even then in the midst of asserting jurisdictional and culturally hegemonic "rights" over divergent national minorities encompassed within their colonially delineated borders.† In the end, Lemkin's list of five protected

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*The negotiating positions adopted by the two sides hardly presented an accurate reflection of interests. On the "Free World" side, the United States in particular was and would increasingly be involved in types of political repression which might be correlated to genocide, both domestically and, to a far greater extent, in Third World client states; see, e.g., A.J. Langguth, *Hidden Terrors: The Truth About U.S. Police Operations in Latin America* (New York: Pantheon, 1978); Edward S. Herman, *The Real Terror Network: Terrorism in Fact and Propaganda* (Boston: South End Press, 1982). The "Communist Bloc," on the other hand—not only the U.S.S.R., but Yugoslavia, China, Vietnam, and others—has been as committed to the eradication of the "cultural deviations" of ethnic and national minorities as any capitalist power; see generally, Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton, NJ: Princeton University Press, 1984).

†Throughout what is now called the Third World, Europe's imperial powers overrode the traditional boundaries demarcating indigenous nations, creating new colonial entities in which all or parts of several nations were encapsulated; see, e.g., J.M. McKenzie, *The Partition of Africa, 1880–1900* (London: Methuen, 1983). When formal decolonization occurred—that is, when direct European control was terminated—these colonially created geopolitical entities were usually declared to constitute independent nation-states in their own right, without regard to the aspirations for a resumption of self-determining status of the various nations which had been forcibly incorporated into them in the first place. Hence, it is fair to say that most such "countries"—the Congo, for example, or Brazil, or India—went from being externally colonized to being internal colonizers; for a comprehensive examination of the history and conceptual issues involved, see Hugh Seton-Watson, *Nations and States: An Inquiry into the Origins of Nations and the Politics of Nationalism* (Boulder, CO: Westview Press,

group classifications was reduced to three—racial, national, and religious—to which a fourth, "ethnical," was then added by way of "compromise." Where he had elaborated three separate articles addressing the distinct but interactive and related categories of what he termed "physical," "biological," and "cultural" genocide, there was now a single abbreviated section.[58]

> *Article II.* In the present Convention, genocide means 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.*

The committee's insertion of the word "intent" was also extremely problematic insofar as it established a predicating requirement for any entity seeking to actually press charges of genocide against another which, on its face, would be virtually impossible to prove.† Finally, even in the unlikely event that

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1977). The elites of such emergent states, thoroughly Europeanized both by their colonial experience and by indoctrination to marxian "alternatives," proved every bit as culturally genocidal in their efforts to forge social homogeneity within their "countries" as had their imperial predecessors; for closer investigations of a specific geographic area, see Greg Urban and Joel Sherzer, eds., *Nation-States and Indians in Latin America* (Austin: University of Texas Press, 1991).

*Brownlie, *Basic Documents, op. cit.*, p. 31. From the background discussions concerning this formulation, it is clear that the ad hoc committee intended the first three criteria to be concerned exclusively with Lemkin's category of "physical" genocide. The fourth criteria is obviously drawn from Lemkin's "biological" category. All that was meant to remain of Lemkin's "cultural" category is the final criterion, concerning the forced transfer of children. The committee's intentions notwithstanding, however, it is plainly possible to argue that the "serious...mental harm" referred to in (b) could derive from criteria—e.g., prohibitions of language and religious practices—included under Lemkin's category of cultural genocide. Similarly, the "deliberate infliction of conditions of life calculated to bring about physical [group] destruction"—although not necessarily the individual group members—contained in (c) can be readily construed as including such culturally genocidal criteria as forced exile and mass expulsions. Try as it might, then, the ad hoc committee could not really get around the fact that Lemkin's physical, biological, and cultural categories of genocide represent inseparable routes to the same end, each of them *equally* deserving of condemnation and punishment.

†The implications were brought out clearly in March 1974, when, in one of the few instances where charges of genocide have ever been filed with the U.N. Secretariat, the International League for the Rights of Man, the Inter-American Association for Democracy and Freedom, and several other organizations did so against the government of Paraguay because of its extermination of Aché Indians. Paraguay's formal response to these allegations was that, "Although there are victims and victimizer, there is not the third element necessary to establish the crime of genocide—that is 'intent.' As there is no 'intent,' one cannot speak of 'genocide' "; Paraguayan Minister of Defense, quoted in Norman Lewis, "The Camp at Ceclio Baez," in Arens, *Genocide in Paraguay, op. cit.*, pp. 62–3.

intent might be demonstrated in a given instance, the ad hoc committee's final draft expunged Lemkin's provision for establishment of a permanent international tribunal to receive and try charges of genocide.* Instead, other than in extraordinary circumstances involving governmental dissolution, it was left to each state to utilize its own juridical apparatus in determining whether it, its officials, or its subjects were to be considered guilty of genocidal conduct.† This was the instrument submitted to and adopted unanimously and without discussion by the General Assembly on December 9, 1948.‡

Conceptual Reinforcement(s)

In the twenty years following passage of the Convention, a remarkable disinterest in the topic of genocide was exhibited by the scholarly community. While there was a burgeoning historical literature chronicling nazism, its leaders, and the war itself—many of these works included material on the extermination of Jews, Slavs, and others, and several were devoted exclusively to such subject matter—theoretical and social scientific exploration of the concept and its implications languished.[59] Perhaps the only significant

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*As the Venezuelan representative put it, the question of jurisdiction is "a very delicate matter... The question of the sovereignty of states is involved"; 3 U.N. ESCOR, *op. cit.*, pp. 139–40. For detailed examination of the far more protracted U.S. recalcitrance on this very question, see LaBlanc, *U.S. and the Genocide Convention*, *op. cit.*, pp. 151–234.

†Suggestions that a "whole new tribunal charter would have been necessary" to have accommodated Lemkin's provision don't hold up to even the most minimal scrutiny. The charter establishing the international tribunal apparatus presiding over the Nuremberg trials has never been rescinded (and the apparatus itself was very much functioning in the period 1946–48, when the Genocide Convention was being drafted and adopted). Indeed, the General Assembly as a whole had affirmed as universal the principles underlying the tribunal charter on December 11, 1946; U.N.G.A. Res. 95(I), U.N. Doc. A/236 (1946), at 1144; see Burns H. Weston, Richard A. Falk, and Anthony D'Amato, eds., *Basic International Law and World Order* (St. Paul, MN: West, 1960) p. 140. In effect, the U.N. willing to submit themselves to either the procedures or the