an Epitaph for Raphael Lemkin

By Dr. William Korey

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THE JACOB BLAUSTEIN INSTITUTE FOR THE ADVANCEMENT OF HUMAN RIGHTS OF THE AMERICAN JEWISH COMMITTEE
Foreword

“The life of the law,” as Oliver Wendell Holmes, Jr., famously taught, “has not been logic: it has been experience.” The most searing experience of the century just closed was the discovery that the modern nation state, in which so much hope for the progress of civilization had been invested, could itself become a force for uninhibited barbarism. The 20th Century was but 15 years old when Sigmund Freud, writing in Vienna, expressed the apprehension that “the state has forbidden to the individual the practice of wrong-doing, not because it desired to abolish it, but because it desires to monopolize it, like salt and tobacco.” By the middle of the century this appalling reality had become too plain to ignore.

That experience energized the effort to find legal mechanisms to restrain at least the more extreme manifestations of state barbarism. The Convention on the Prevention and Punishment of the Crime of Genocide is one of the first fruits of that effort.

To move from particular experiences to general principles of law requires a high order of imagination, historical knowledge and persuasive skill. This monograph constitutes a case study of that process and an homage to the man who was both father and midwife to the word genocide, and brought into being the Genocide Convention: Raphael Lemkin.

Lemkin tirelessly worked to give a name and legal existence to a new crime. By the force of his own will, he functioned as a one-person non-governmental organization to change the landscape of international law. His work led directly to the Genocide Convention, and laid the groundwork for the introduction of universal jurisdiction in such international human rights instruments as the Convention Against Torture and the recent creation of the international criminal tribunals for the former Yugoslavia and Rwanda.

This is a dramatic story of human accomplishment, and at the centennial of Lemkin’s birth it is important that homage be paid to this largely forgotten man. We have had
many war heroes; we are in desperate need of peace heroes, and Lemkin is one such.

Since this year marks the 50th anniversary of the coming into force of the Genocide Convention, it is important to take stock of how far we have come and of what remains to be done. One hundred thirty two nations have ratified the Convention — but almost 60 have not, including Indonesia, Japan and half of the countries of Africa. One can only hope that Lemkin’s story will speed the slow march toward universal ratification, as called for by United Nations Secretary-General Kofi Annan during the 2000 Millennium Summit.

It should also be recognized that Article VI of the Genocide Convention contemplated the establishment of an international penal tribunal. The statute establishing such a tribunal was adopted in Rome in 1998, but the struggle to achieve full realization of that institution also needs to be invigorated. Lemkin’s story may help.

This monograph was written by Dr. William Korey, author of numerous works on human rights and former director of International Policy Research for B’nai B’rith. The Jacob Blaustein Institute for the Advancement of Human Rights of the American Jewish Committee is proud that Dr. Korey has served as a member of its Administrative Council since 1994. We are honored to publish this monograph and are grateful to the Carnegie Corporation of New York for supporting Dr. Korey’s research and writing.

Founded in 1971, the Jacob Blaustein Institute strives to narrow the gap between the promise of the Universal Declaration for Human Rights and the realization of its ideals in practice. It accomplishes its mission by strengthening scholarship on current human rights issues; supporting educational and training programs that advance knowledge and effective use of international human rights instruments and mechanisms; and engaging in other efforts to nurture and strengthen human rights organizations worldwide.

Raphael Lemkin has been largely forgotten, but the daily news reminds us that the cause to which he devoted his life is more urgent than ever. Dr. Korey’s effort to revive Lemkin’s legacy will be made meaningful only through renewed commitment to prevent and punish the crime of genocide manifested by universal ratification of the Genocide Convention and the International Criminal Court before the end of this decade.
Raphael Lemkin died in 1959. It is our hope that this belated epitaph will herald a more civilized world.

Robert S. Rifkind
Chair, The Jacob Blaustein Institute for the Advancement of Human Rights
Preface

A letter addressed to me at the *Saturday Review* over a quarter century ago triggered the beginning of my fascination with Raphael Lemkin. In October 1964 I had written an article for that once-famous literary journal titled “An Embarrassed American.” It told the story of how an eloquent civil rights expert from the United States at a UN panel was rendered tongue-tied in his ability to respond to a Kremlin challenge to the United States for its failure to ratify the UN Genocide Convention. In the course of that article, I referred briefly to Lemkin as the moving force in developing the treaty.

The letter-writer, a certain Dr. Robert Lemkin of Long Island, had found the article with its reference to Raphael Lemkin more than a little intriguing. Was there someone out there who was interested in his cousin, the creator of the genocide treaty, a man whose name had virtually disappeared from the American media years ago? In the letter, Robert Lemkin introduced himself as a dentist who was a cousin of Raphael and who, at times, offered him his home when he was lobbying at the UN in the nearby Long Island town of Lakes Success. Was the author of the *Saturday Review* article interested in some informal background material on Raphael Lemkin he could provide, or in a vast archive at his home of Lemkin’s letters, articles, speeches, and notes? Would I like to see the bust of Raphael being sculpted by the dentist, who was a gifted amateur?

Indeed I was, and a series of meetings with Bob Lemkin followed. I wanted to know everything he could remember about Raphael’s character and activity and how he perceived his cousin. He showed me several articles that had appeared in the media during 1948-51 drawn from interviews with Raphael, and he provided me an overview of the contents of the archive. At the time my regular job as a human rights lobbyist at the UN precluded me from contemplating making a full-time project of preparing a scholarly paper on Lemkin. I did recommend that the ar-
chive should be made available to Hebrew Union College in Cincinnati, a suggestion that Bob Lemkin acted upon soon after we met.

The unfinished bust was of particular interest; in return for paying the cost of having it bronzed in a reputable foundry, my organization, the B’nai B’rith International, could acquire it. The last task was quickly consummated, and the finely sculpted likeness was installed at B’nai B’rith Klutznick Museum. In 1998, the museum loaned it to the U.S. Holocaust Memorial Museum where it remained until recently. The bust was displayed at the Museum during a conference marking the fiftieth anniversary of the Genocide Convention.

During the sixties, seventies, and eighties, a major focus of my work was lobbying for U.S. ratification of the treaty, which it had shamefully failed to do since 1948. In pursuit of this objective I wrote articles for Foreign Affairs, Foreign Policy, and other journals, as well as numerous op-ed pieces for the New York Times and a half-dozen other major newspapers. I found it increasingly curious and unaccountable that the man most responsible for the genocide treaty had disappeared entirely from public consciousness.

Restoring his name and reputation became inseparably linked to my efforts to gain U.S. ratification of the Genocide Treaty. Fortunately, the New York Public Library, under the presidency of Dr. Vartan Gregorian, also felt the force of this connection and arranged for an exhibit of some of Lemkin’s writings in December 1983-January 1984. To open the exhibit, the library had invited top officials of the city, the U.S. Mission to the UN, and the UN Human Rights Division to speak. Six months later, President Ronald Reagan made ratification a priority of his reelection campaign.

Once U.S. ratification was achieved in 1988, the time seemed ripe to tell the story of Lemkin’s extraordinary achievement, what motivated him in this life-long endeavor, how he went about achieving his objective, and what impact the treaty came to exercise in our time upon international law and human rights. Still, I had to complete several other research commitments before I could turn my attention to Lemkin.

For some background on the exhibit, see Kathleen Teltsch, “Crusader Against Genocide Recalled,” New York Times, December 4, 1983. The UN correspondent quoted Dr. Gregorian as saying that “as an Armenian,” he was “personally interested in the genocide treaty.”
But the timing was especially appropriate once my other research projects were completed and published; January 12, 2001 marks the fiftieth anniversary of the coming into force of the Genocide Convention. What better way to honor its founder with the recognition he so richly deserves then to publish a study about Lemkin in this anniversary year? Moreover, 2001 constitutes the centenary of his birth. Restoring Lemkin’s rightful place among the giants in the human rights field would be welcomed by all of those interested in the advancement of the rule of law and in the enhancement of international justice.

Among those particularly interested in these twin objectives, the Carnegie Corporation of New York has been especially prominent; its support has made it possible for me to research various archives, especially the one at Hebrew Union College in Cincinnati where I had recommended that the Lemkin papers be deposited. I am most grateful to the Carnegie Corporation of New York for their assistance in this timely project. I am also most appreciative to the Carnegie Council on Ethics and International Affairs for administering the project. Finally, I must heartily thank the Jacob Blaustein Institute for the Advancement of Human Rights of the American Jewish Committee (AJC) for publishing this monograph. I also wish to recognize Dr. Stephen Steinlight, Senior Fellow at AJC and Director of its Publication Department, for his assistance in preparing this publication.

The study was never intended to be a full-scale biography of Raphael Lemkin; rather, it is intended to be an in-depth introduction to Lemkin’s fascinating role in the development of a major instrument of international law: the Genocide Convention. Almost all aspects of the monograph relate in one way or another to Lemkin’s intensive involvement with the historic treaty. The discussion and analysis presented here will, I trust, prove of value to the future biographer of Lemkin.

But it is surely of equal importance not to lose sight of the man himself. We need to recall the life and work of one who, almost single-handedly, left an enduring legacy in combating genocide, humankind’s greatest evil. That legacy—as well as the name of the man himself—is barely known outside of highly specialized works. The latest edition (1998) of the Encyclopedia Britannica, for example,

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has no entry on Raphael Lemkin and in the entry on "Genocide" (vol. 5) no reference is made to him. Even many academics know little of Lemkin beyond the name, if they know even that. I was dismayed when a top-level university administrator and professor of international affairs at an Ivy League university acknowledged total ignorance about Lemkin and his work in a recent conversation with me.

I hope this monograph, the fulfillment of a moral commitment I made to Bob Lemkin, will provide insight into an extraordinary individual and begin to break the silence that has left him in profoundly unmerited obscurity.

W. K.
AN EPITAPh FOR RAPHAEL
LEMKIN

Introduction: From Hero to Non-Person

It was a rare moment of exultation in the history of the United Nations and of human rights when the Convention on the Prevention and Punishment of the Crime of Genocide—the Genocide Convention—was adopted unanimously (the vote was 55 to 0) by the General Assembly over fifty-years ago. The president of the General Assembly, Dr. Herbert V. Evatt, Australia’s minister of external affairs, underscored its historic significance: “In this field relating to the sacred right of existence of human groups, we are proclaiming today the supremacy of international law once and for all.”¹ He called it an “epoch-making event in the development of international law” because it established “safeguards for the very existence” of national, racial, ethnic and religious groups.

In the grand Palais de Chaillot in Paris where the UN Assembly had been meeting, the excitement was palpable. A storm of applause rocked the hall. It came from the delegates and from the gallery filled with observers, lobbyists, and ordinary citizens.² The diplomats and the press knew that a single individual had made the event possible: an obscure Polish-Jewish international lawyer, Raphael Lemkin. The very first UN human rights treaty, preceding by a day the adoption of the historic Universal Declaration of Human Rights, was largely his doing. From the very name of the crime to the text of the treaty to the lobbying that brought it into reality—it was all Lemkin.

For a moment Lemkin was the toast of the distinguished assemblage. Delegates from Latin American countries rushed to embrace him with the traditional abrazo. John Foster Dulles, then a member of the U.S. delegation, told him that he had made “a great contribution to international law.” Assembly President Evatt descended from the podium to congratulate him personally. As the Australian put his hand around Lemkin’s arm, he arranged to have a picture taken of the two. One of the world’s leading statesmen of the time, Sir Zafrullah Khan, foreign minister of Pakistan, declared that the new international law should be called “the Lemkin Convention.”
John Hohenberg, then the UN correspondent of the New York Post whom Lemkin had befriended—he cultivated every reporter who might be useful to his cause—would later recall a poignant and revealing episode that transpired when the clamor had ceased and the delegates had left the hall. The correspondents had initially rushed to file their stories about the unprecedented Assembly action, but now they had returned and sought to interview the person who had made it all happen. The Post writer remembered:

...We looked everywhere and found no trace of him [Lemkin]. Had he been in character, he should have been strutting proudly in the corridors, proclaiming his own merit and the virtues of the protocol that had been his dream. But on this, his finest hour, he was gone.  

Their search finally paid off when the group of reporters entered “the darkened Assembly chamber” where they could see a cleaning woman on the stage of the Palais “moving back and forth in the eerie light of a single electric bulb.” Just below the stage and occupying “the same seat he had occupied that day” sat Lemkin. When the reporters rushed over to interview him, he begged off. “Let me stay here alone,” he muttered while the tears rolled down his cheeks. It startled the reporters that this modern Don Quixote who had tilted with the powerful windmills of state authority sought no publicity; his personal gratification came from the Genocide Convention’s becoming reality. Lemkin told a reporter in June 1948 that the convention would be an “epitaph on my mother’s grave.”

Yet nowhere in the United Nations today is the father of the UN’s first human rights convention accorded any recognition. His name is not to be found at the vast UN headquarters above Turtle Bay on the East River. It is not inscribed on its walls or featured in materials on display in the glass exhibition cases that adorn its halls, or in the major documents and works it has produced. It is absent even from the booklet The Crime of Genocide published some years ago by the UN’s Office of Public Information. Nor is Lemkin’s name anywhere in the large UN complex in Geneva that houses the UN’s Centre for Human Rights. On special occasions that commemorate the Genocide Convention or mark an outgrowth of it, like the Statute of an International Criminal Court approved in July 1998, there are no references to Lemkin and his role.

George Orwell would have recognized this treatment
as a classic example of a feature of totalitarian societies—names and events being plunged down "the memory hole of history." But how can one account for the silence of democratic nations? Only an obscure, unvisited gravestone in the Mount Hebron cemetery in Queens, New York, memorializes his achievement with an inscription that reads: "Dr. Raphael Lemkin (1900-1959) Father of the Genocide Convention." The date of his birth on the gravestone does not coincide with the basic biographical data listed in the major archive of Lemkin's papers and materials—the American Jewish Archives, at the Jacob Marcus Center of Hebrew Union College in Cincinnati. There the date of birth is listed as June 24, 1901, in Bezvodene, in eastern Poland, then part of czarist Russia. The same birth date appears in the standard Current Biography volumes of 1950 and 1959, in Encyclopedia Judaica and Encyclopedia of the Holocaust. Articles based upon five separate interviews conducted with Lemkin by journalists during 1948-51 clearly, if sometimes indirectly, also cite 1901 as the year he was born. Thus, the year 2001 constitutes Lemkin's centenary.

The centenary coincides with the fiftieth anniversary of the Genocide Convention coming into force—January 12, 1951. Ramifications of that treaty have already proved significant and, indeed, grow stronger and more widespread. The impact of the ad hoc International Criminal Tribunals dealing with the former Yugoslavia and with Rwanda is certain to be widely felt as more arrests are made and more judgments rendered. Preliminary evidence suggests that these two tribunals may well be augmented with additional ones dealing with genocide in Sierra Leone and in Cambodia.

The United States has been in the forefront of pushing these new initiatives just as it has played the leading role in pressing the UN Security Council to establish the tribunals for Bosnia and Rwanda. But it could hardly have played that role until 1988 because, until then, it had failed to ratify the Genocide Convention even though U.S. representatives were leading supporters of Lemkin's efforts from 1946 to 1948 and the U.S. government was the first to sign the convention.

It is perhaps not accidental that the only recent major references to Raphael Lemkin came in 1988 during the final stages of the U.S. ratification process of the Genocide Convention. Two prominent American leaders were responsible. William Proxmire of Wisconsin was the prime mover in the U.S. Senate, where for twenty years he had called for ratification. He set an almost unbelievable record of delivering 3,500
speeches on this subject from the floor of the upper chamber. Literally every day of every Senate session from 1967 onward, Proxmire would remind his colleagues of the obligation to become a contracting party to a treaty designed to prevent and punish genocide. Opposition came from a potent and recalcitrant group that had been paralyzing legislative action for decades, but eventually Proxmire prevailed. After the crucial Senate vote (on October 14, 1988) adopting essential implementing legislation of the treaty, the nongovernmental community held a reception in Washington for Proxmire, honoring him for his extraordinary record on ratification. In return, the senator credited Lemkin for the inspiration that made his effort possible.

Far more decisive even than the role played by Proxmire was the action taken by President Ronald Reagan, who, beginning in 1984, took a series of steps aimed at neutralizing the Republican right-wing opposition to ratification as well as its implementing legislation. He won the “advise and consent” of the Senate in 1986 to treaty ratification and, on November 4, 1988, signed the implementing legislation at a special ceremony near O’Hare Airport in Chicago. His remarks at the signing warmly recalled the work of Raphael Lemkin and then concluded with the observation: “We finally close the circle today.”

Afterward, references to Lemkin in the public arena all but disappeared, with the exception of a few academic conferences. The prominent historian and journalist Michael Ignatieff began a public lecture some months ago by calling Lemkin a “forgotten hero.” Ignatieff went on to add: “I don’t think there is anyone in this room who knows the name of Raphael Lemkin....” Ignatieff’s assertion was incontrovertible by anyone in the lecture hall or outside it.

### Early Influences

While the argument has long raged among scholars and philosophers over the role of the individual in history, with the determinists having largely prevailed, the career of Raphael Lemkin testifies to an extraordinary degree how the efforts of a single individual can produce a revolutionary change. To examine how he accomplished what he did in the sphere of international affairs provides fascinating insight into Lemkin’s thought and actions at various stages in the development of his strategy for the adoption of a treaty on genocide.

But it is equally instructive to ascertain how it all be-
gan, what prompted and motivated his all-out determination to move toward a specific goal. In Lemkin’s case, childhood reading appears to have had a profound effect. He would later recall in remarkable detail the impact exerted on his thought by the novel Quo Vadis? written by the prominent Polish novelist Henryk Sienkiewicz. He first read the work in 1912, and forty years later he described to interviewers how he was filled with horror and disbelief by the vivid spectacle elaborated in the famous work of a Roman mob howling with glee as early Christians were torn to pieces by lions.

Running to his mother for comfort, the anguished eleven-year-old cried: “They applauded! Why did they not call the police?” Raphael’s wise mother, who was largely responsible for the boy’s education, was said to have replied: “That is a most important question, but it is more than I can answer. You must study more and think more and find the answer for yourself.” The episode pricked a profound concern in the sensitive youngster. He wanted to be certain that the killing of the early Christians “was a bad thing.” His mother responded that it was “very bad.” On a further exchange, Raphael wanted to know whether killing is nowadays immune from punishment: “When people kill people today, they get put in jail, don’t they?” The mother with some hesitation answered: “Yes, they get put in jail.”

For Lemkin, Quo Vadis and the discussion about its meaning with his mother engendered a life-long concern, and he gave the episode considerable prominence in his autobiography. He told an interviewer: “That was the day I began to crusade [against genocide] because I started looking for the answer.” He saw his future work as stimulated by his mother’s insistence that he seek out the answer for himself. That a single incident would spur an unceasing effort is not altogether surprising when one takes account of his early solitary life in an isolated farming region and his mother’s strong influence on his education.

The Lemkins lived in a little farmhouse near Bezvodene on the flatlands of eastern Poland, then part of czarist Russia. Joseph Lemkin, his father, acquired a spread of about 100 acres in a cultivated clearing surrounded by forests of birch and pine. Raphael was the middle son. The youngest, Samuel, died, probably of tuberculosis, during World War I. Winters in the region were remembered as gloomy and brutal with snow so high on the sides of the house that the family’s isolation was almost complete. Reading was an imperative, and it could not fail have a profound impact upon the young
and curious child, especially when the boy’s tutor was creative and well versed in the humanities.

It was his mother, Bella, who served as his primary teacher until he entered the University of Lwow in 1920. She was a painter, linguist, and student of philosophy who stocked her home with a rich library of the world’s classics. Raphael’s earliest memories are of her sitting before the fire in the desolate winter instructing her sons. By the time he entered university, Raphael had mastered a half dozen languages. As early as fourteen, he could read Nietzsche in German.

The special interest in mass killings that propelled Lemkin in the solitary circumstances of his early youth motivated him to accumulate a unique and broad historical background in this area, rare for a youngster, even for a global historian. He read of the Carthaginians ruthlessly destroyed by the Roman legions, of the millions annihilated out by the Mongols under Genghis Khan and his successors, of the 50,000 Huguenots murdered in France, and of the 30,000 Catholics tortured and killed in Japan. He meticulously stored the details of these historical events in his memory to be tapped years later in his speeches and, more significantly, as the basis for a planned “History of Genocide.”

The extensive readings would be followed by the inevitable discussions with his mother. For Raphael, the key question always was: “To kill defenseless people just because they are different from you—is there no law?” His mother’s response struck him as utterly unsatisfactory: “There are laws against murder,” she would say. The sensitive youngster would respond: “They do not seem to be any good against massacres.”

What is particularly striking in the young Lemkin was a keen awareness of the value of cultural difference among the world’s peoples. He perceived each ethnic or religious community as a contributor to a rich pluralistic human heritage. In this he echoed the thought and writing of Johan Friedrich von Herder. The young Polish Jew shared the universalistic approach to society and history that characterized the great German philosophers of history of the nineteenth century. Though conscious of his Jewish heritage, Lemkin, like his parents, was indifferent to Orthodox Judaism and was not attracted to Zionism. In contrast, the extended Lemkin family, encompassing some fifty persons living in various towns in eastern Poland, was more deeply involved in Jewish cultural tradition. Still, as a youngster, Raphael was tutored in the Hebrew language by a teacher from a nearby town and mas-
tered Yiddish.

Raphael’s universalism did not preclude a high degree of sensitivity to anti-Semitism. He was well read on the bigotry directed at the Jewish people throughout history, especially during the Middle Ages. The horrors of the pogroms against Jews in czarist Russia concerned him deeply. It was hardly surprising that Adolf Hitler’s appointment as chancellor of Germany in 1933 evoked especially profound anxiety in him.

With his keen interest in ethnicity and distinctive ethnic cultures, Lemkin could be expected to focus attention upon the importance of language, which was seen as the core of an ethnic group. It was therefore natural that he would seek to major in philology when he finally left home and entered the University of Lwow in 1920. He told an interviewer that he wanted to understand why in almost every age people of one culture would seek to wipe out people of another culture. Already familiar with the major European languages, which he had learned at home, at the university he added Arabic and Sanskrit to his linguistic skills. By the time he graduated he had mastered nine languages, and he would later add Swedish to this impressive list. His remarkable facility with language would prove enormously useful in his later lobbying efforts. At the same time, his awareness of the centrality of language to culture would lead him to emphasize the importance of linguistic rights—the right to use one’s language in everyday as well as official communication.

While he was at the university, an episode occurred that triggered a sharp exchange with one of his professors. That exchange, in turn, prompted Lemkin to alter his career goal. The new goal virtually predetermined the manner in which he would seek to fulfill his early aspiration to bring an end to ethnic or religious massacres. As early as 1915 Lemkin had been shocked to learn about the massive killing of Armenians by the Ottoman Turkish regime. The vast carnage of 1,200,000 Armenians burned itself into his consciousness. Six years later he would read about the assassination in Berlin of Talaat Pasha, the man who had been head of Turkey’s police forces in 1915, by a young Armenian, Teilierian, who hunted him down and shot him dead. “That is for my mother,” said the young Armenian, who quickly gave himself up.

The episode led to a memorable exchange between the twenty-year-old Lemkin and one of his professors. 11 Lemkin asked whether it would have been more appropriate to have the Turk arrested for the massacre. The professor’s comments
stunned him: “There wasn’t any law under which he could be arrested.” The naive Lemkin shot back: “Not even though he had had a part in killing so many people?” The response of his teacher set Lemkin back on his heels: “Let us take the case of a man who owns some chickens. He kills them. Why not? It is not our business. If you interfere, it is trespass.” Lemkin reacted with irritation: “The Armenians were not chickens.”

The professor overlooked Lemkin’s sardonic reply. He sought to drive home his argument: “When you interfere with the internal affairs of a country, you infringe upon that country’s sovereignty.” It was the traditional argument that prevented and precluded action by the international community to restrain regimes guilty of mass murder or those that engage in torture as well as other gross human rights violations. Lemkin offered an angry response rooted in logic, though not in international law: “So it is a crime for Teilerian to strike down one man, but it is not a crime for that man to have struck down one million men.” The professor was both condescending and contemptuous: “You are young and excited.... If you knew something about international law....” The sentence was not completed. But it posed the core question for Lemkin. Could not an international law be established designed to deal with mass murder? The query quickly led to a shift in Lemkin’s academic goal. From philology he moved on to the study of law, specifically international law.

Lemkin later explained to an interviewer that law was essential to combat mass killings of ethnic or religious groups and the destruction of their culture. “Law gives you an instrument of influence in society,” he said, noting that “parliaments are controlled by lawyers.” In his view, “the world is built and torn down by law.” He steeped himself in legal studies for six years, first at Lwow and later at the University of Heidelberg. What disappointed him was the fact that nowhere could he find a legal code barring the murder of racial or religious groups.

In 1929 Lemkin was appointed Warsaw public prosecutor, a job similar to that of a district attorney in an American city. He told his mother that the job would enable him “to learn at firsthand how laws operate.” Only in this way, he added, could he perhaps ascertain how the laws can be used and how “I can do something with them.” While “it is moral power that counts,” thought Lemkin, at the same time, “the law can make it count more.” Even as a public prosecutor, he searched for the basic standards that would guide conduct. He wrote a book on the rehabilitation of criminals and pre-
pared studies analyzing the legal codes of a number of countries. Poland’s new legal code, approved in 1932, was influenced by his writings. But it was to international law that he looked to fulfill a lifelong ambition. An opportunity presented itself in October 1933 at the Fifth International Conference for the Unification of Penal Law, held in Madrid under the auspices of the League of Nations.

Madrid: The “Crime of Barbarity”

An interviewer from the *New York Times Magazine* traced the beginning of “Lemkin’s crusade” to this conference. There, for the very first time, he would offer a concrete proposal to the international legal community to deal with the killing of ethnic and religious groups. In a paper submitted to the conference attended by the leading international legal experts of thirty-seven countries, Lemkin formally proposed that the “destruction of national, religious, and racial groups” be declared “an international crime alongside piracy, slavery and drug smuggling.”

Interestingly, Lemkin called the “act of destruction” the “crime of barbarity.” This language was utterly inadequate to encompass the horrors of what later would be termed by him genocide. Despite its remarkable prescience, his fertile imagination could not yet make the leap to a new terminology. Still, it was apparent that he was seeking to break free of the fetters of ordinary language. The effort to compare the crime with piracy, slavery, and drug smuggling was both ingenious and appropriate as the international community had already determined that such acts were unacceptable and must be barred by civilized society. Why not mass murder?

Lemkin’s proposal at Madrid merits close scrutiny. His submission outlined not one but rather two new crimes that he believed should be outlawed by the international community. The first was the “crime of barbarity,” predecessor of the “crime of genocide.” As formulated by Lemkin, the proposal read:

> Whosoever, out of hatred towards a racial, religious or social collectivity, or with a view to the extermination thereof, undertakes a punishable action against the life, bodily integrity, liberty, dignity or economic existence of a person belonging to such a collectivity is liable for the crime of barbarity....

But, in addition, his proposal contained a second crime—“crime of vandalism”—that involved the destruction of the cul-
tural and artistic works of ethnic groups. It read:

Whosoever, either out of hatred towards a racial, religious or social collectivity or with a view to the extermination thereof, destroys its cultural or artistic works will be liable for the crime of vandalism.

Later, Lemkin would emphasize this point, implying that Nuremberg had failed to take account of this type of “crime.” Lemkin intended the category “crime of vandalism” not only to delineate and encompass the enormities of the past—he was also laying the foundation for the concept of cultural genocide, which greatly concerned him. During the fifties this concept would provide a frame of reference for a sharp critique of the Kremlin’s attempts to reduce or minimize or eliminate the cultural works of the various nationalities and ethnic groups comprising its empire.

There was yet another feature of Lemkin’s proposal at Madrid that bears some emphasis and that he would later vigorously stress, especially in connection with the preparation of the Genocide Convention. At the end of the definitions of the two crimes of barbarity and vandalism, Lemkin added:

The above crimes will be prosecuted and punished irrespective of the place where the crime was committed and of the nationality of offender, according to the law of the country where the offender was apprehended.

Extending universal jurisdiction to the two crimes was rationalized in terms of how the international community dealt with other crimes that violated the “Law of Nations” like slavery, drug trade, and commerce in prostitution and child labor.

Two developments in 1933 prompted Lemkin’s initiative at Madrid. The first was the massacre of 600 Christians in Iraq; the other was Adolf Hitler’s rise to power. Lemkin, who had read deeply in the Nazi leader’s writings, recognized that they carried the potential for massive violence against Jews. Lemkin’s proposal was met by derisive laughter, especially from the German delegates. The essence of the opposing arguments was the one that had been articulated by his professor at Lwow and would plague Lemkin’s supporters in future years: raising the issue of the destruction of ethnic and religious minorities constituted interference in the internal affairs of states and thus threatened national sovereignty. Lemkin’s
proposal was pigeonholed. The architect of the proposal was dismayed. He recalled how "it seemed incredible and unbearable that such crimes which long antedate Hitler ... should go unpunished."

From a historical perspective, Lemkin’s proposals at Madrid are remarkable. On the very occasion of Hitler’s ascent to power, only Lemkin appeared to possess a vision that could grasp the potential of the Nazis to inflict unprecedented enormities upon ethnic minorities. Michael Ignatieff, biographer of the great historian Isaiah Berlin, noted in a recent lecture at the U.S. Holocaust Memorial Museum, that neither Sir Isaiah nor his friend, Chaim Weizmann, the first president of Israel, entertained any vision at all of the terrors that would unfold in the following decade. History has shown that the imaginative leap Lemkin was capable of making was astonishing in its foresight; and yet for all its prevision of horror, it fell short of the historic actuality.

That Madrid constituted a decisive moment in Lemkin’s campaign is reflected in the first speech he made in the United States. The occasion was a meeting of the North Carolina Bar Association on May 16, 1942. As the recently appointed lecturer on comparative law at Duke Law School, Lemkin was asked to speak on “Law and Lawyers in the European Subjugated Countries.” A significant segment of his address was devoted to the proposals he had advanced on the “crime of barbarity” and the “crime of vandalism.” He related that as his proposals were read out at the Madrid conference, the German delegation, consisting of the president of the supreme court of Germany and the president of Berlin University, left the room because they knew that Germany was the focus of his proposals.

Because the proposals he had advanced were rejected, Lemkin added, “it is one of the thousand reasons why I am now here before you and why your boys are fighting and dying in different parts of the world at this very moment.” To be sure, this rather immodest statement was hardly accurate. It is extremely unlikely that the adoption of his or anyone else’s principles at a specialized legal conference could have stopped Hitler’s war machine. But the claim enveloped Lemkin in an aura of heroism.

Embellishment of the Madrid episode was a distinctive feature of Lemkin’s lecture. He went so far as to claim that he actually was in Madrid at the time and publicly read out his paper. Thus, after describing his proposal on the “crime of barbarity” and the “crime of vandalism,” he said, “when I was
reading this proposal, the German delegation ... left the room of the proceedings." In fact, as Lemkin’s unpublished autobiography written over a decade later would make clear, at the last minute his superiors in Warsaw forbade his attending the Madrid Conference. The autobiography went on to add that he was pleased with himself for having had the foresight to send ahead his written text. The embellishment in his speech to the North Carolina Bar permitted Lemkin to appear as a bold hero who had taken on the German enemy. Afterward, whenever Lemkin wrote about Madrid, he fudged the question of his presence; he left the matter unclear until his autobiography. Madrid had assumed mythic proportions in his own analysis; therefore, why not leave the impression that he was actually there?

The publicity that surrounded Lemkins’s proposal did not fail to attract hostile attention. Warsaw policy makers, already jittery about Hitler’s intentions, were irritated that Lemkin had not checked with the Foreign Office about his proposal. Polish foreign minister Josef Beck denounced him for “insulting our German friends.” Government-inspired newspapers attacked him as a foolish idealist. If he wished to continue his “crusade,” he knew he would be obliged to retire from his government post. Lemkin quit his public prosecutor job and launched a full-time campaign against “the crime of barbarity.” He would now spend all of his time writing about the “crime,” making speeches elaborating upon his proposal and traveling to every international law conference where he could to present his idea. Among the capitals he visited while attending conferences during the next few years were Budapest, Copenhagen, Paris, Amsterdam, and Cairo.

Whether the speeches Lemkin was delivering at conferences were having an impact is by no means clear, although he was making contacts with legal officials and law professors that would prove useful later. But even if his influence were minimal, he would not retreat from a mission to which he was committed. He once commented that “Tolstoy taught me to live an idea.” It was a lonesome journey, and he did not have many close friends. In his autobiography, he made clear that he chose not to marry lest he burden a wife with unnecessary worries and responsibilities. Later, an American lawyer who befriended him and served as his personal attorney, Maxwell Cohen, would explain that while “women were attracted to him,” Lemkin’s “single-minded devotion to his work” precluded marriage.

But he could stir up powerful enemies. It was not only
Hitler’s legal minions who criticized him and prevailed upon the Polish Foreign Office to delay granting him travel visas; the other leading totalitarian state in Europe, the Soviet Union, targeted his writings as unacceptable. Andrei Vyshinsky, the infamous state prosecutor during the notorious purge trials of the thirties, wrote a foreword to a Soviet pamphlet titled *Counterrevolutionary Intervention Through Criminal Law*. Vyshinsky singled out Lemkin’s “crime of barbarity” as offering a rationale for the capitalist world to intervene in the internal affairs of the USSR.

**Sweden, America and a Seminal Work**

World War II radically altered the character of Lemkin’s struggle. No longer were the proposals he offered at international law conferences a purely theoretical concern or seen as a reaction to the atrocities of the distant past. The mass destruction of Jews in gas chambers or the organized carnage of the *Einsatzgruppen* had assumed a terrifying reality, even if all the details were not known until the war ended. Winston Churchill, in a radio broadcast, would characterize the distinctive horror perpetrated against European Jewry as “a crime without a name.” Lemkin would later give it one, but in the meantime, with the German invasion of Poland on September 1, 1939, he had to deal with his own immediate situation.

With others, Lemkin took refuge in the Polish forests and proceeded by train to Lithuania, to Latvia, and eventually by boat to Sweden. The taxing and dangerous journey is brilliantly captured in Lemkin’s unfinished autobiography. The circumstances of his newfound refugee status compelled him to become ever more determined about fulfilling his goal. But it was not only the plight of Jews that concerned him; the violence against Poles affected him deeply. He later commented that when he saw the German planes bomb hundreds of refugee children just as they were eating breakfast: “Is it any wonder I couldn’t forget my idea.”

One stop was essential for him before he left for Sweden; he visited his mother and father in eastern Poland, then under the control of the Red Army. He knew, as did they, that life would be dangerously uncertain for those remaining in the area, but his parents understood that he must continue his personal crusade and that he was already trying to get to the United States, which would provide him with a major platform. (A Duke University Law School professor, Malcolm
McDermott, who had been hosted by Lemkin while he was a visiting scholar in Warsaw, persuaded the law school administration to invite the former public prosecutor.) It was in Sweden that he set to work developing a full-blown documentary work on Nazi policies in German-occupied territory that would provide a solid foundation for the evidence of ruthless racism. Even while teaching law at the University of Stockholm, he won the cooperation of Swedish officials in obtaining invaluable documentation of hundreds of orders signed by and thus incriminating Wehrmacht commanders, Reich cabinet ministers, including Heinrich Himmler and Hermann Goering.

When the American visa came through in the spring of 1941, Lemkin was able to catch one of the very last trains on the Trans-Siberian Railroad before the German invasion of Russia. He boarded a small craft in Vladivostok that took him to Japan, and from there an oceangoing vessel that eventually brought him to Seattle, from which he set out for Durham, North Carolina. Arriving in mid-1941, Lemkin immediately dispatched duplicate sets of his rich portfolio on Nazi crimes to the State and War Departments.

By the winter after Pearl Harbor when the United States entered World War II, the Duke University immigrant was transformed into an invaluable resource for the American war effort. The U.S. Army called upon him to teach classes on military government at Charlottesville, Virginia, and the Board of Economic Warfare drafted him as a chief consultant. But even while teaching at Duke University and providing the U.S. government and military with invaluable technical assistance, he concentrated upon writing *Axis Rule in Occupied Europe*, a landmark work published in 1944 by the Carnegie Endowment for International Peace.

The book constituted a significant repository of source material about the character of Nazi rule. But even more lasting—and therefore far more impressive—was its introduction to the world of a new term Lemkin had coined—*genocide*. He told an interviewer that he felt compelled to invent an appropriate term after listening to Churchill’s radio broadcast that the crimes of the Nazis had no name. Obviously, “barbarity” was unsuitable; nor was the phrase “race murder,” which had been suggested to him. He had stumbled upon a crucial element of the new word by a rereading of Plato, who had emphasized the concept of *genos*, an ethnic group or clan. To the Greek term he added the Latin *cide*, meaning killing. The word *genocide* would eventually become common in

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28 To the Greek term he added the Latin *cide*, meaning killing. The word *genocide* would eventually become common in
media reporting and ordinary discourse. Some may assume that the word had long been part of the English language, but before 1944 it did not exist.

Lemkin’s work *Axis Rule*, published when the war with Germany was at fever pitch, was a seminal achievement. No other volume until then had encompassed in legal and moral terms the comprehensiveness of Nazi brutality and destruction. Divided into three parts, the volume focused on “The Techniques of Occupation,” on “The Occupied Countries” themselves, and on the “Laws of Occupation: Statutes, Decrees and Other Documents.” The last part provided government officials and ordinary readers a rich lode of documentary evidence, which, under ordinary circumstances, would have been very difficult to obtain. Much of the first two parts of the volume relied upon this source material.

The accumulation of this extensive material began in 1940 when Lemkin arrived in Stockholm and persuaded the Swedish Foreign Ministry to instruct Swedish consular officials throughout much of occupied Europe to provide him as much documentation as possible of Nazi atrocities. Among the very few neutral states in Europe, Sweden was in a position to have its embassies, legations, and consulates amass the available published reports, records, and information. It required a leap of creative imagination for Lemkin to embark upon this distinctive, if not unique, research project that would lay the foundation for the legal plans he had been contemplating for a very long time. In the preface to his groundbreaking work, he disclosed that he had begun his research project while in Sweden in 1940 but then augmented the documentation in 1941-42 while he was teaching at Duke University Law School and completed the task while serving with the U.S. government in Washington. Lemkin also was careful to note that his private collection of documents, assembled in Sweden, had been earlier submitted to “certain U.S. government institutions.” He was undoubtedly referring to the War Department and possibly the Board for Economic Warfare, and he wanted to make clear that he had received “permission” from them to “publish” the sources “later.”

Far more important in the long run, and even in the short run, than the documentation of German rule was a special chapter on “Genocide” in Part I dealing with “The Techniques of Occupation.” He began the chapter by observing that “new conceptions require new terms” and then he explained the genesis of the word. Actually, the new word was introduced in the preface to the volume, suggesting that Lem-
kin clearly recognized that he was making a seminal contribution to language.\textsuperscript{33}

Lemkin recognized that genocide’s generic definition, “the destruction of the nation or of an ethnic group,” required explication and refinement. “Generally speaking, genocide does not necessarily mean the immediate destruction of a nation except when accomplished by mass killings of all members of a nation.” Rather, Lemkin continued, genocide must be seen as “a coordinated plan of different actions” aimed at “the destruction of essential foundations of the life of national groups...” The ultimate purpose was the “annihilation of the groups themselves.” Individuals may be targeted for death but it is not as a result of “individual capacity” (their particular natures) but rather because they are “members of the national group.”

To grasp Lemkin’s conception fully, it is necessary to focus on the phrase “essential foundations.” This explicitly refers to the political and social institutions of the national or ethnic group as well as of its cultural character, including language, religion, and psychology. Genocide had as its ultimate objective the destruction of a specified “entity,” and, in pursuit of this aim, the various national or ethnic institutions and cultural structures must be obliterated. Thus it is not only physical or biological annihilation that is encompassed by the term genocide (Lemkin devoted an entire chapter to how the Jews were made special legal targets of the Germans, as were Gypsies). He devoted considerable argumentation to demonstrating the “cultural” aspects of the Nazi genocide program. Thus, the languages of various national and ethnic groups were forbidden in schools and in the media while artistic expression, whether in painting, sculpture, music, theater, and literature, were prevented or sharply controlled. Lemkin showed that national monuments, libraries, archives, museums, and galleries were eliminated systematically.

It was Lemkin’s view that the overall Nazi intention was the imposition of “a gigantic scheme of change” whereby “the balance of forces” between Germany and all other national and ethnic groups “for many years to come will be radically changed” in favor of the Germans. The “subjugated peoples” will have been so crippled or destroyed that, even in the case of a Nazi military defeat, Germany “will be in a position to deal with other European nations from the vantage point of numerical, physical and economic superiority.”\textsuperscript{34} Lemkin’s speculation in 1944 about a possible defeat of Nazi Germany was not far off base, although his anticipation of
postwar German superiority proved to be wildly inaccurate.

Lemkin’s focus upon nationhood and national culture would remain a core element of his thinking. In his concluding remarks on genocide in Axis Rule, he emphasized that “nations are essential elements of the world community.” They offer “original contributions based upon genuine traditions, genuine culture and well-developed national psychology.” It therefore follows that “the destruction of a nation ... results in the loss of its future contribution to the world.” This universalistic theme would often reappear in his later writings.

Lemkin’s classic work did not only introduce the historic term genocide into the lexicon, but it also projected the urgent postwar need to establish “an international multilateral treaty.” Genocide must be acknowledged as being of “such great importance” that banning it must be perceived as a central goal of international law and domestic constitutional and criminal law. The crime of genocide, he added, is not only a wartime phenomenon; it is carried out and must be combated and banned in peacetime as well. If later he distanced himself from a mere repetition of the Nuremberg Tribunal judgment, it was because he perceived that it was restricted to war crimes.

What was to serve as the centerpiece of the projected international treaty, he wrote, was the “principle of universal repression for genocidal practice.” The principle required that those responsible for genocidal crime must be liable to indictment, trial, and conviction—and not only in the country where the crime was committed—but “in any other country in which he might have taken refuge.” This thesis would find a re-sounding echo a half century later in the “Pinochet Principle,” which derived from the indictment of the former Chilean dictator Augusto Pinochet by a Spanish judge and his being held in the United Kingdom for a time on the basis of that charge. The thesis would also find expression in acts taken by governments or NATO military forces in apprehending war criminals indicted by tribunals in The Hague and Arusha covering former Yugoslavia and Rwanda, respectively. (Today, the phrase “universal jurisdiction” would replace “universal repression.”)

In Lemkin’s opinion, “genocidal offenders should be subject to the principle of universal repression” in the same way that international law deals with traffic in women and children, piracy, narcotics traffic, counterfeiting, and trade in obscene publications. It was precisely this perspective that had prompted him to introduce his “crime of barbarity” and “the
crime of vandalism” at the 1933 League of Nation’s Madrid conference on international law. He had sought to have his newly proposed crimes “internationalized.” Strikingly, he had then defined the “crime of vandalism” in terms very similar to the way he now characterized cultural genocide—“the malicious destruction of the genius of such groups.”

Lemkin was not averse to crowing a bit, even if with a note of sadness, about his earlier proposals that had been rejected at Madrid. Had they been accepted, he now thought, the “principle of universal repression” might have served as a deterrent to genocide. The boast contains more than a touch of ego; but Lemkin failed to elaborate how the recognition of the new crime at Madrid could have become an effective deterrent of Hitler’s genocide later.

Impact of the New Term

If harking back to Madrid was unproductive, creating the term genocide was, as was the projection into the future of a new, special variety of international law that might act as a deterrent to such horrendous crimes. It wasn’t long before the monumental work began to influence the opinion-makers. On December 2, 1944, shortly after the book’s publication, the influential Washington Post carried an editorial entitled “Genocide.” It may have been the first time the term appeared in the national media. The editorial constituted a powerful endorsement of Lemkin’s book, and of the new word and its implications. Quoted especially was Lemkin’s definition of “genocide” as “aiming at the destruction of essential foundation of the life of national groups.”

Several years later, in 1947, Sigrid Arne, a Washington Post reporter, provided a lengthy summary of the essentials of the Lemkin work and stated that it would soon result in the adoption of an international treaty. But especially significant was his revelation that Lemkin’s book of 1944 had “struck sparks in Washington.” It went on to note that Lemkin had come to visit and “finally found help” in the person of Eugene Meyer, owner of the Washington Post, whose paper began to write about the idea. Lemkin’s autobiography also makes reference to the Meyer connection. That he had a knack for cultivating influential people is patently evident. Among the Post’s writers who were especially helpful was its star
composer of editorials on civil liberties, Alan Barth.

The New York Times would not be outdone; it provided Axis Rule extraordinary exposure shortly after its publication. At the beginning of 1945 the New York Times Book Review gave it unusual prominence for a serious, scholarly book. Its review of Lemkin’s work was the cover story, and it was accompanied by a powerful illustration of an SS officer drawn by the gifted caricaturist Arthur Szyk. Written by a well-known specialist on Germany, Otto Tolischus, the review lauded the book as “an indispensable handbook for scholars and historians and for those authorities of the United Nations charged with undoing, as far as possible, the effects of Axis domination.”

Even if the Lemkin work was primarily one of “dry legalism,” the reviewer found that it effectively described “the contours of the monster that now bestrides the earth.” Still, from the perspective of Tolischus, “the real character” of the monster is “but dimly recognized” by Lemkin. Instead of an analysis of the nature of totalitarianism, the work was said to be preoccupied with the excesses of German nationalism rather than with the power of the central bureaucratic state. Nevertheless, the Lemkin book was held to be “a most valuable guide” to any study of totalitarianism. The review detailed how the word genocide, a “new term of gruesome significance,” came into existence, and how it encompasses “biological warfare,” including extermination of Jews, Gypsies, and Poles, as well as moral debauchery, aggressive colonization, and a host of features comprising “the fangs and claws” of Nazism. The laudatory treatment of the book in the Times, together with the prominence it was given, assured widespread attention to Lemkin’s ideas.

Later, in August 1945, the Times carried an editorial entitled “Genocide” that was largely devoted to Lemkin’s accomplishment. The significance of the new term was underscored and, pointedly, reference was made to how the term had cropped up in the Nuremberg proceedings, then unfolding. Specifically mentioned was the use of the reference to “genocide” in the presentation made by two British prosecutors in castigating the twenty-one Nazi leaders on trial. One of the British prosecutors was Sir Hartley Shawcross, who would later become Lemkin’s arch-opponent. The editorial appealed to the Nuremberg Tribunal to incorporate the new term into the final “sentence” or judgment that it would render, an objective Lemkin keenly desired, but which would be denied him. Whatever happened at Nuremberg, the Times
strongly urged that the new term, *genocide*, be “incorporate[d] in international law.” “Genocide” also won strong endorsement in an editorial in the *New York Herald Tribune* on November 25, 1945. The editorial, titled “Genocide,” took its point of departure from the proceedings at Nuremberg.

*Axis Rule* argued that the crime of genocide required an international treaty to prevent its reappearance. Editorials in the press were helpful, but Lemkin decided to lobby the media personally on its behalf. Later on, the United Nations would be founded in April-May 1945, and the headquarters it establish in New York would offer the focus and the media services to press for this objective. But there was no point in waiting; even as the war against Hitler was continuing, Lemkin began promoting his idea. In a lengthy two-part series for the *Nation*, published in February and March 1945, he argued that international law must no longer avoid the issue of mass murder. On the contrary, he contended, international law “must continue to be subordinate to the basic principles of human conscience....” Even as he argued the case for a Nuremberg Tribunal, well before the idea became reality, he concluded it was essential that an “international treaty ... be signed by the United Nations [i.e., the wartime alliance]” and the neutrals in which genocide” would be placed on a list of international crimes. It would join such offenses as piracy and trade in women, slaves, and narcotics.

Lemkin’s neologism had begun to exercise significant influence on key organs of the media, and its entrance into common usage was all but assured. Still, Lemkin initially concentrated upon the intelligentsia because he viewed them as the bearers of cultural authority, believing them to possess the capacity to influence civilization. During 1945, he prepared a major, groundbreaking article for the *American Scholar* that appeared under the title “Genocide” early the following year. In some respects the article constituted a condensed restatement of several themes from his volume on *Axis Rule*; but in others it represented a conceptual advance and offered critical breakthroughs for what would become his next major intellectual step.

The *American Scholar* article focused on how Lemkin’s word was created and what it meant. For the very first time, he acknowledged that his initial motivation sprang partly from Winston Churchill’s broadcast in August 1941 in which the latter had said: “We are in the presence of a crime without a name.” For Lemkin, Churchill’s observation about the incapacity of current language posed a serious challenge. He
asked himself whether “mass murder” was an adequate name for this phenomenon, and he came to the conclusion that it was not. The decisive reason for rejecting the phrase that is often used in public circles or popular media was that it failed to “connote the motivation of the crime,” which is based upon racial, national, and religious considerations. What the appropriate term must characterize or define is “an attempt to destroy a nation and obliterate its cultural personality.” The new word must also deal with both “biological” destruction and cultural liquidation. After describing its derivation from Greek and Latin roots, Lemkin suggested that his creation would correspond to “homicide” or “patricide.”

Later, he ventured into both psychology and linguistics to offer an explanation of why and how new words are minted. In an unpublished “Introduction to the Study of Genocide,” probably designed for a planned history of the subject, Lemkin wrote that “it was necessary ... to coin this new word because the accumulation of this evil and its devastating effects became extremely strong in our own days.” In his view, “new words are always created when a social phenomenon strikes at our conscience with great force.” In thinking about the new phenomenon or in figuring how to react to it, people “feel they must have a name for it.” The word for describing the new phenomenon he believed must have the following characteristics: specificity, clarity, and incisiveness. Genocide fit those requirements.

Even as he sought to define “genocide,” Lemkin developed one new unexplored theme and elaborated upon another he had adumbrated earlier. The definition could be given in precise terms because of what Nazi Germany had actually put into practice. The Nazis had almost succeeded in achieving their goal of “exterminating Jews and Gypsies in Europe.” Further, they had bluntly announced their intentions and sought to carry out the annihilation of the Poles and Russians, as well as the French element in Alsace-Lorraine and the Slovenian element in parts of Yugoslavia. The destruction was to be understood in demographic and cultural terms. But at this point Lemkin sought to transcend the historical specifics of Nazi Germany’s behavior. If “genocide” were to become a viable term it had to be linked to earlier historical epochs and must be applicable to other national, ethnic, and religious groups. For the first time, he offered a list of genocidal examples in history going back to the ancient world and culminating before World War II in the “massacre of the Armenians.” Listed were the destruction of Carthage by Rome; the mass
killing of religious groups in the wars of Islam and the Crusades; and the massacres of the Albigensians and Waldensians in Western Europe during the Middle Ages.
The Need for an International Treaty

In *Axis Rule*, as earlier at Madrid, Lemkin stressed that genocide (or barbarity, in its initial incarnation) “must be considered an international crime,” an argument he again stressed in the *American Scholar*. Humanitarian intervention was vigorously welcomed. States in the modern era, he pointed out, have intervened on behalf of oppressed or threatened ethnic or religious groups living within the borders of another state. He pointed to a host of international agreements providing for the protection of minorities. He argued that cultural considerations, by their very nature, “speak for international protection of national, religious and racial groups.” He elaborated by contending that “our whole cultural heritage is a product of the contributions of all nations.” In explanation, he stressed “how impoverished our culture would be” had the peoples doomed by Germany, like the Jews, not been permitted to create the Bible or to give birth to an Einstein or a Spinoza. Similarly, what would modern civilization be like if the Poles had not given the world a Copernicus, a Chopin, a Curie; the Russians, a Tolstoy and a Shostakovich; the Czechs, a Jan Hus and a Dvorak; the Greeks, a Plato and a Socrates?

In his piece in the *American Scholar* Lemkin also seemed to suggest strongly that the expulsion of an ethnic or religious group is a form of genocide. Regrettably, he failed to develop the theme, which has had numerous contemporary echoes, the infamous practice of “ethnic cleansing” among them. What he did stress was that mass expulsions “created frictions” with the people of “neighboring countries” to which the victims were expelled and, for that reason, certain genocidal practices ineluctably require the application of international law. “The establishment of international machinery” to prevent such practices and impose appropriate punishment is essential,” he wrote. The thesis would take on an extraordinary degree of relevancy a half-century later, but regrettably in the intervening years no country encoded it in law or gave it concrete expression in the conduct of its policies.

In *Axis Rule*, for the first time Lemkin could project an international treaty making genocide a crime; with the United Nations a reality, he could elaborate upon this theme. Geno-
cide, he wrote, should be recognized as "a conspiracy to exterminate national, religious or racial groups." It should be applied to both circumstances of war or peace and it should be incorporated in every national criminal code of governments that become signatories of the treaty. In the event an alleged perpetrator of genocide escapes from the signatory's borders, he can be tried before the courts of the country to which he fled. Extradition should be applicable especially in cases where the requesting country intends to prosecute the culprit. Finally, liability for genocide must rest with those who gave or executed the orders as well as those who incited its commission.

The various facets of Lemkin's proposal for an international treaty read very much like the draft that was adopted in 1948, and Lemkin played a major role in formulating it. Lemkin's article in the American Scholar in 1945 had given him an opportunity to outline his preliminary thinking on the subject. What is totally new in Lemkin's proposal articulated in the article—it is not mentioned in Axis Rule and not explicitly dealt with in the 1948 treaty—are specific references to the UN Security Council (which, of course, did not exist in 1944 or early 1945). In Lemkin's view, states that have committed themselves to the international law and the genocide treaty (presumably by ratification, although the process was not spelled out here) "should be held accountable before the Security Council...." He did not detail how the UN organ would function, but his broad concept seems to have special pertinence in relation to recent developments with respect to Bosnia and Rwanda.

He did offer some general guidelines, however. The Security Council "may act either on its own initiative or on the basis of petitions submitted by members of interested national, religious or racial groups residing either within or without the accused country." The idea was revolutionary, a clear break from the narrowly defined functions of the UN organs in which emphasis is placed on the sovereignty of state entities. Later on when quite a few governments sought to scuttle his earlier thinking, he would fight as he had never fought before to keep his American Scholar article vibrant and relevant.

While emphasizing the authority of the UN Security Council in holding "accountable" perpetrators of genocide, Lemkin avoided going into detail as to how the authority would be exercised. Nor would or could anyone fault him on this failure so early in UN history. One weapon he did advance was sanctions against the offending country. Clearly, he was tough-minded when it came to employing nonmilitary weap-
ons. For Lemkin to have suggested more aggressive means of implementation at the time the piece was written would have bordered on the utopian.

The *American Scholar* article gained the attention of many in the intellectual community for Lemkin's language and concept. The essay includes a citation to the first Nuremberg trial, specifically the indictment, which gratified Lemkin enormously and led him to believe that the tribunal itself would become linked to his name. The indictment charges the defendants of "deliberate and systematic genocide" with the aim of "the extermination of racial and national groups" including "particularly Jews, Poles, Gypsies and others." By using the term *genocide* in the indictment, Lemkin carefully stressed, "the enormity of the Nazi crimes has been more accurately described." Without his term, the indictment would be lacking in precision. How much more important would be the use of the term *genocide* in the Tribunal's judgment? Lemkin was hoping for a major breakthrough that would have a decisive impact upon international law. It was not to be.

**Disappointment with Nuremberg**

Lemkin believed it was imperative that the term *genocide* be incorporated into the proceedings of the Nuremberg Tribunal. The tribunal had been set up by the major powers that had defeated the German war machine—Britain, the Soviet Union, and the United States. The idea grew from the recognition that the nature of war crimes committed by the Germans and their allies and collaborators were unprecedented. As the war neared its end, the horrors of the Holocaust, the concentration camps, the gas chambers, slave labor, and the mass killings of minorities had become widely known. The conscience of the international community was deeply stirred. The victor governments saw the tribunal as providing documentation of crimes against humanity and providing a legal and moral framework for judging and punishing those responsible. The proceedings would provide an object lesson for would-be military aggressors.

Given Lemkin's growing renown as an expert on war crimes, it was hardly surprising when he was appointed to the staff of U.S. Supreme Court Justice Robert Jackson, who had been named chief prosecutor at Nuremberg. Lemkin's book *Axis Rule in Occupied Europe* was, after all, a landmark study of Nazi genocidal policies. Jackson's team met in London with British legal specialists for several months to hammer out the
indictment. A leading American prosecutor at Nuremberg, Telford Taylor, disclosed several years ago that the American team—over objections by a top British legal expert—succeeded in getting Lemkin's newly minted word into the indictment of Nazi leaders. The term described the "extermination of racial and ethnic groups ... particularly Jews, and Poles and gypsies...." 49

An assistant chief U.S. prosecutor at the time, Benjamin Ferencz, recalled in a recent interview that Lemkin was a "nudnik" (the Yiddish word for "pest") in his "persistence." 50 Still, thought Ferencz, Lemkin was "nice enough" if at times "unrealistic." Besides, his was a "noble cause" and his obsession with the vindication of his changed view on genocide undoubtedly kept up his resolve. Looking back, Ferencz commented that Lemkin offered an object lesson of how a determined and persistent advocate can change the world. Following Lemkin's lead, in prosecuting the Einsatzgruppen, Ferencz used the word genocide in the indictment and prevailed upon the court to do the same in the judgment it rendered. 51

In the indictment against the twenty-one leading Nazi defendants at Nuremberg, two British prosecutors, Sir Hartley Shawcross and Sir David Maxwell Fyfe, used the term. Lemkin wrote to Fyfe on August 26, 1946, expressing his "warm appreciation for your great and so effective support which you lent to the concept of Genocide," 52 and pleaded with him to support the inclusion of the term genocide in the judgment to be rendered by the Nuremberg Tribunal. Lemkin told Fyfe this "would contribute to the creation of a preventative atmosphere against similar acts of barbarity." How would the judges of the tribunal react?

Lemkin knew the tribunal's judgment and sentence would have the effect of creating international law. He went to Nuremberg in May 1946 to lobby his case with the judicial officials. It was in vain. When the presiding judge, Lord Justice Sir Geoffrey Lawrence of Britain, pronounced the court's judgment and verdict on October 1, 1946, the term genocide was conspicuous by its absence. Lemkin was more than disappointed; he was so stunned that he would later call the event "the blackest day" in his life. Later, his resentment found expression in an article for the United Nations Bulletin critical of Nuremberg. 53 In the UN house organ, he argued that Nuremberg dealt primarily with crimes against humanity committed during wars of aggression, while genocide covered, in addition, such crimes during peacetime. The article seemed
also to suggest that Nuremberg represented the judgment of
the victors—not the application of untrammeled justice.

The suitability of Lemkin’s term had been put into
question and, indeed, the word *genocide* would not enter the
*Oxford English Dictionary* until the mid-seventies, thirty years
after it first appeared. The delay is puzzling considering the
word had entered into international discourse and, by 1950,
had appeared in American dictionaries.

Lemkin’s emotional torment was immeasurably deep-
ened when he learned from his brother, Elias, who had come
to meet him in Berlin, that his mother and father and forty-
seven other members of the Lemkin family—aunts, uncles, and
cousins—had perished in the Holocaust. They had died in the
Warsaw ghetto, in concentration camps, on death marches,
and in the gas chambers. The death of his beloved mother who
had played such a key role in his early life was especially
shattering. He had carried with him the last letter from his
parents sent in June 1941. It read: “We are well, we hope you
are happy. We are thinking of you.”

Bitter disappointment and vast personal loss trans-
formed Lemkin. The crusader now became a zealot, a driven
personality, determined more than ever to inscribe in interna-
tional law the crime of genocide together with its punishment.
Wherever there was a target audience or a conference that
might shape legal thinking, he would be there. An international
legal conference in Cambridge was his first stop in the cam-
paign to urge the adoption of a resolution against genocide.
As at Madrid in 1933, the delegates told him that “he was
trying to push international law into a field where it did not
belong.” A resolution on genocide failed, just as had the
proposed resolution on barbarity at Madrid.

More important was the first peace conference fol-
lowing the Second World War being held in Paris in Septem-
ber 1946. Could not the delegates refer to genocide in the
provisions of peace treaties? “Good heavens, man,” said an
American diplomat, “don’t you read the papers? Don’t you
know we’re having a devil of a time with the Russians as it is
without dragging in another issue?” A French diplomat told
him that the issue was “not on the agenda” and, therefore,
“how can I bring it up?” A heartsick Lemkin could find no
support. On his third day in Paris, he was too ill to get out of
bed. He was taken to an American military hospital where his
personal trauma would be accompanied with high fever and a
dangerous increase in blood pressure.

Victory at the United Nations in 1946

Then fate intervened. A sleepless night prompted Lemkin to turn on a hospital radio from which he learned that the agenda of the UN General Assembly’s first regular session was being prepared. He checked himself out and rushed to New York, going directly to Lake Success where the UN headquarters was located. With a resolution he had drafted making genocide an international crime and with the gall of a zealot, he approached the ambassadors of the three major democracies. Only five days remained before the agenda would be closed to any additional items. It was a race against time.

The U.S. ambassador, Warren R. Austin, previously Republican senator from Vermont, was more than sympathetic; he said that he would support the proposed resolution if Lemkin could get others to introduce it, preferably smaller powers. The British, though far less enthusiastic, gave him a similar answer, as did the French. Forever flexible with regard to tactics, on his second day in New York Lemkin approached a distinguished international lawyer, Ricardo Alfaro, former president of Panama. After introducing himself, Lemkin handed him a copy of his draft resolution, observing “large countries can defend themselves by arms; small countries need the protection of laws.” On the following day, Alfaro, who would later become one of Lemkin’s strongest backers, handed him the proposed resolution—signed.

Two days later, Lemkin persuaded the Cuban delegation to sign on by pointing out that the number of Jews destroyed in the Holocaust exceeded the population of that island nation. With two Latin American states on board, Lemkin, always adept at political maneuvering, thought it advisable to win a signer from Asia. After meeting with Nehru’s sister, Vijaya Lashmi Pandit, and later with an Indian judge in the delegation who considered that a resolution against genocide was very much in the Indian tradition, Lemkin obtained his third signature. It was 3:30 p.m. on November 5, with only two hours before the cutoff for the submission of resolutions remaining, Lemkin deposited the draft resolution in the office of UN secretary-general Trygve Lie.

For the first time a breakthrough seemed possible, but Lemkin recognized it would require his personal lobbying on an around-the-clock basis. No government, after all, was
prepared to make genocide a policy priority. Now came the real test of his lobbying skills and his persuasiveness. He rushed back to Washington to take a two-month leave of absence, without pay, from his War Department job. It was the beginning of a monastic existence. His $8,000-a-year government salary had enabled him to rent a modest apartment in Washington’s Wardman Park Hotel. Now he took a rather shabby one-room apartment in Manhattan, close to the Cathedral of St. John the Divine, where the monthly rent was $25.

Lemkin feverishly lobbied the delegates at Lake Success. He prowled the UN corridors daily and within a few weeks was on speaking terms with virtually everyone. A friend of his, Emery Kelen, a Hungarian author, would later recall to a New York Times correspondent at the UN, “The man was like a hermit crab who spotted an empty office, moved in and made it his home.” In the evenings, he would spend much of his time at the library hunting for particularly relevant historical material. Lemkin would need the documentation so that he might prepare statements for delegates who showed an interest in supporting his genocide resolution. During a six-week period, he prepared presentations for thirty different ambassadors—an extraordinary achievement. Equally impressive was his ability to use his skills as a polyglot to draft the various speeches in a half dozen languages. Each draft was tailored to the historic traditions and special circumstances of the country he was lobbying. In the draft for the Czech delegation, he referred to the abrogation of Bohemian rights during the late Middle Ages; and, for the French delegation there were citations to Voltaire.

Especially burdensome was the obstacle of the Soviet Union. It would repeatedly resist Western proposals in the drafting of the Universal Declaration of Human Rights in 1946-47 and to that document when the issue shifted to the General Assembly. Ultimately, only the tactfulness of Eleanor Roosevelt prevailed upon Moscow and its half dozen satellites to abstain. As early as the debate on the Genocide Convention in the steering committee of the Assembly, which had the authority to approve the proposed agenda item, Moscow’s lack of enthusiasm became manifest.

After the American representative formally proposed that the genocide item be included on the agenda, the USSR objected. Seeking to avoid the issue becoming hostage to U.S.-USSR conflict, Lemkin struck upon a wise maneuver. He went to see the foreign minister of Czechoslovakia, Jan Masaryk, with whose family he had some familiarity. Masaryk
agreed to talk to Vyshinsky and won the latter’s promise to support the resolution. At the 1946 Assembly, Moscow adhered to the commitment it had given Masaryk. Soviet representatives gave speeches in support of the resolution and voted in favor of it, in contrast to Russian conduct on the Universal Declaration of Human Rights.

The lobbying effort was enormously taxing on Lemkin’s health, especially since he had virtually no income. He frequently stayed at a cousin’s home in Hempstead, Long Island, borrowing money for taxi rides to Lake Success. At times he carried a single sandwich in his briefcase, and sometimes he was known to have gone without any food. On occasion, he would pass out from hunger.

But finally the vote came on the resolution that Lemkin had drafted. On December 11, 1946, the General Assembly formally declared that genocide was an international crime, and it instructed the appropriate UN body to draft and adopt a treaty that would give effect to the declaration. The vote was unanimous. For the first time in history, the international community had accorded recognition to genocide as a crime and formally articulated the urgent need to prevent it. The resolution—96 (1)—was a milestone in the struggle on behalf of human rights. And it testified to the remarkable determination and ceaseless efforts of a solitary individual to prevail. The exhausted Lemkin returned to his little room in Manhattan, pulled down the shades, and stayed in bed for two days.

When he had arrived at UN headquarters in Lake Success in October 1946, Lemkin was armed with a fully constructed intellectual frame of reference to guide him. The “postulates” of his Madrid submission would again be activated, but this time the word genocide would substitute for the crimes of both barbarity and vandalism. The resolution, which he drafted for the sponsorship of Panama, Cuba, and India, consisted of several parts. The first was a preamble that referred to the destruction of racial, religious, or national groups in the past and stressed the losses to humanity in the form of the groups’ cultural contributions. This theme with its implied attention to cultural genocide would continue to run as a basic tenet throughout his writings.

The second part of the resolution urged the Economic and Social Council to declare genocide an international crime and recommend that it be addressed through national legislation in the same way as other international crimes like piracy and traffic in women and children. At which point the Legal Committee of the General Assembly took over and, under
Shawcross’s leadership, chose to bypass the ECOSOC and decided to have the Assembly, already in session, formally declare genocide an international crime. As drafted by the Assembly’s Legal Committee, the resolution read that the Assembly affirmed “that genocide is a crime under international law” and its commission, “whether [by] private individuals, public officials or statesmen,” is subject to punishment. Highlighted here is the elimination of any distinction between private persons and public officials.

The resolution then went on to call upon states to enact the necessary legislation for the prevention and punishment of the crime of genocide. Finally, it called upon the UN Economic and Social Council to draw up a draft convention on the crime, which was to be submitted to the next session of the General Assembly. A striking omission by the Legal Committee is any reference to cultural genocide, a centerpiece of Lemkin’s initial draft. Equally significant was the addition to the text of the phrase “political groups.” As adopted, the resolution specified “religious, racial [and] political groups” as potential targets of genocide. Lemkin’s initial draft does not appear to have had this phrase.58

But once Resolution 96 (I) was adopted, the struggle was still not over. UN secretary-general Lie naturally recognized that even if Lemkin represented no government and served in no formal capacity in the UN Secretariat, he was ideally suited to help draft the formal treaty banning genocide, and he offered Lemkin the job. Lemkin could hardly refuse. Two other outside experts were added—Professor Donnedieu de Vabres, a prominent French judge who had served on the Nuremberg Tribunal, and Professor Vespasian Pella, a Romanian who was chairman of the International Penal Law Association.59 They were to act on the basis of a resolution of the UN Economic and Social Council in the spring of 1947 to draw up a draft genocide treaty. Experts from the Secretariat were also involved. Personal relationships among the outside experts were not good. According to a report by the U.S. representative on a key UN commission, de Vabres and Pella “appear to resent the fact that Dr. Lemkin has achieved remarkable success” in the promotion of the concept of genocide.60 The result, he said, was “a marked antagonism” between the two sides.

The U.S. official went on to emphasize in his report that Lemkin was determined to push forward: “It can be confidently anticipated that Dr. Lemkin will continue to press for some procedure that would assure some further action on
genocide by the General Assembly at its second session.” In his obvious effort to press forward, the determined Genocide Treaty advocate was already giving serious, if somewhat unrealistic, thought to compliance machinery that would achieve the purposes of preventing or halting genocide.

As early as 1947, Lemkin envisioned an elaborate implementation mechanism to be spelled out in the Genocide Convention. The focus would not be the Security Council, as he projected in his American Scholar article, but rather on the UN Economic and Social Council (ECOSOC). According to his draft, which he shared with two State Department officials, “an International Office for the administration of all matters” related to the Genocide Convention would be established. It would gather data related to the causes and development of genocide, “in particular the racial, religious and national tensions conducive” to that crime. The office would also “conduct surveys on ways and means of alleviating ... tensions and preventing acts of Genocide.” The office would also “advise” ECOSOC on what recommendations to make to the contracting parties to the treaty.

Linked to the International Office would be national offices to be established by each contracting party. These national offices would collect data pertinent to “the detection, prevention and punishment” of genocide. The leading political authorities of contracting parties would be apprised of the national offices’ findings, as would be the International Office. Included in the information to be provided would be the following: (1) instances of acts of genocide within a contracting party; (2) lists of persons accused or found guilty of genocidal acts; (3) studies of “techniques, patterns and underlying causes” of genocide; and (4) suggestions “to facilitate the prevention and punishment of the crime of Genocide,” which would involve the maintenance of “close contact” with the “judicial authorities” in each contracting state.

The mechanisms Lemkin proposed in 1947 had more than a touch of naivety about them. By making international implementation a function of ECOSOC, he was challenging the authority of the major powers that occupy the critical seats in the Security Council and wield the all-important veto power. It is inconceivable that any of them would abdicate its veto power on a crucial, indeed central, postwar human rights issue. To have endowed ECOSOC with the potency reserved for the Security Council at a time when state sovereignty was universally treasured and regarded as inviolate bordered on the utopian. “Unworldly” was how one of his students at Yale
Law School characterized Lemkin’s approach. Moreover, the requirement that contracting parties establish “national offices” linked to the “International Office” could hardly be deemed as other than a threat to the principle of state sovereignty. Obliging contracting parties to create institutions whose purpose transcended state security concerns only added to the unrealistic nature of Lemkin’s proposals. These recommendations for implementation did not reappear in his later writings; it suggests that Lemkin had been advised by officials of the State Department, and perhaps others as well, that hewing to a certain realism in international affairs was an absolute necessity if a Genocide Convention were to be adopted.

At the same time, Lemkin’s proposals illuminated a problem that would confront the Genocide Convention—the need for mechanisms or machinery to achieve compliance with its provisions. All later UN human rights treaties would include a built-in compliance mechanism. Since genocide prevention and punishment would most typically involve the use of military power, whatever implementing mechanisms were forged would necessitate the approval of the Security Council and, particularly, the support of its key powers. Lemkin himself had recognized the importance of the Security Council in his American Scholar article. Ultimately, Lemkin would come to realize the critical importance of the Security Council in giving the treaty viability and effectiveness, even if the treaty did not have a built-in implementing mechanism.

Lemkin regarded the Madrid conference and his role in it as a watershed in his career. He would refer to it at some length in his seminal work on genocide Axis Rule in Occupied Europe and in a major article for the American Scholar soon afterward. But its special significance in his intellectual development, along with its distinctive nuances, would be elaborated upon shortly after he succeeded in winning endorsements of his view by the UN General Assembly in December 1946. An article of Lemkin’s in the important American Journal of International Law in January 1947 provided the insights that he had sought to capture in 1933 and that he again sought to emphasize with the adoption of the UN resolution.

In early 1947 Lemkin contended that the Nuremberg Tribunal of the previous year would have been more effective had his ideas been accepted in Madrid. Citing a speech to the UN General Assembly in November 1946 by the highly respected British attorney general, Sir Hartley Shawcross, Lemkin wrote that “the failure of... [his 1933] proposal made it
impossible to punish” some of the serious Nazi crimes.\textsuperscript{64} Lemkin drew attention to the fact that the tribunal’s charter specified that “acts committed before the outbreak of the war were not punishable offenses.”\textsuperscript{65} He had come to believe that, had his proposals been accepted at Madrid, Hitlerian crimes before 1939 would have been included in the Tribunal’s judgment. He regretted that the tribunal chose not to punish pre-war acts, for had it done so, it would have established the precedent of dealing with a government to prevent it “from destroying groups of its own citizens.”

### The Battle for the Genocide Convention

Technical and drafting considerations had to give way, almost at the outset, to political calculation. As early as the 1947 session of the General Assembly, an effort was undertaken—mainly by the Soviets, reversing an earlier position, and, to a lesser extent, by Britain—to have the world legislative body delay action on the grounds that its enactment was premature. The morning that the issue was to come to a vote, Lemkin accosted the president of the Assembly, Oswald Aranha, foreign minister of Brazil. Once again, Lemkin displayed unmitigated gall. Lemkin dramatically asked Aranha: “Who is making international law for the world—Vyshinsky [the Soviet deputy foreign minister] or the General Assembly?”\textsuperscript{66} He appealed for a short delay on the Soviet proposal lest it “destroy the Genocide Convention by postponing it indefinitely.” Aranha obliged, giving Lemkin time to line up sponsors for a substitute resolution that directed the Assembly to prepare a treaty for action by 1948. The substitute resolution was adopted with a majority of thirty-eight votes.

The struggle had now entered its final round when Lemkin was confronted with a dilemma: Yale University Law School had invited him to join its faculty to lecture on the United Nations. But how could he accept, even if he was desperately penniless and in debt, while the tantalizing Holy Grail of a Genocide Convention beckoned? He would accept the Yale offer only on condition that the fight for a Genocide Convention would remain his first priority. Yale accepted, giving him a light teaching load and providing both research and secretarial assistance. In the summer of 1948, Yale went further, granting him a paid leave of absence so that he might travel to Geneva and then Paris for what could be the last act of his personal drama. Yale’s law school dean, Wesley A. Sturges, explained to him: “Making international law is as
important as teaching it." It was a rare and impressive academic commentary on Lemkin's role as a creator of international law.

Geneva was but a stop-off before the crucial General Assembly session in the fall, but Lemkin was convinced of its tactical utility for three reasons. First, the UN Economic and Social Council was meeting there in July, and he felt that this organ could encourage positive Assembly action later by an appropriate resolution, which his lobbying would help accomplish. Second, since the bulk of the items on ECOSOC's agenda did not cover genocide, Lemkin had plenty of time to work on chapters of his planned "History of Genocide," which he hoped to use in lobbying for the treaty in Paris. Of particular importance was a planned chapter on the persecution and expulsion of the Moors from Spain in the late fifteenth century. No doubt, he was thinking of the political usefulness of such a chapter in his lobbying of various Muslim countries like Pakistan and Saudi Arabia. Though they were uncompleted, Lemkin saw the draft chapters' immediate lobbying potential. He pointedly observed that "the voice of history is in my valise."

Third, the Swiss city was the headquarters of an important nongovernmental organization (NGO)—the World Federation of United Nations Associations. Its general secretary was John Ennals, a friend of Lemkin, who could be encouraged to mobilize the national constituents of the international NGO to lobby for the Genocide Convention in their home countries. The episode demonstrated Lemkin's keen awareness of the lobbying power of NGOs and he did not hesitate to use it. Among the NGOs he especially exploited, aside from UN NGOs, were women's groups and religious bodies.

But the Geneva stopover produced a far more important result, one that came about accidentally. Through sheer chance it provided him extraordinary contact with a man who could decisively affect the outcome of Lemkin's aspirations. That contact would be the next president of the General Assembly, Dr. Herbert Evatt, minister of external affairs and attorney general of Australia. Evatt was greatly impressed by Lemkin's goal and, by virtue of his position, could play a strategically important role in the Assembly's deliberations and decisions. Ultimately, they became close friends, according to Lemkin's lawyer, Maxwell Cohen.

How the contact was made is instructive about Lemkin's personal habits and his ability to charm and utilize virtu-
ally anyone he met. Not infrequently, he would find it difficult
to fall asleep, and on one such occasion he decided to go for
a walk at 1 a.m. His hotel was near the city’s famous Lake
Léman, and Lemkin chose to traverse the lengthy bridge that
crossed it. It just so happened that Canada’s top UN diplomat,
David Wilgress, was also having trouble falling asleep that
night and he, too, found it convenient to walk on the lake’s
bridge; the walkers met and entered into conversation.

Ambassador Wilgress, a history buff, soon fell under
Lemkin’s spell particularly as the latter paraded his detailed
knowledge of mass murder throughout history. Convinced
that the General Assembly must adopt a Genocide Conven-
tion, the Canadian told Lemkin that “we need to win over
support” of his “good friend,” the Australian Herbert Evatt.
Wilgress explained: “This is too big a cause to be lost; it is
simply a matter of getting the right people to do the right thing
at the right time.” Arrangements were made for Lemkin to
meet with Evatt the following morning. Once again, the mix-
ture of charm, learning, and conviction proved persuasive.
Evatt told Lemkin: “We will work together. I promise to
conspire with you and to get the thing through in Paris.”
Lemkin recognized that he had finally found his “fighting
statesman,” a man who could decisively influence the UN
General Assembly through his skill and determination.

A crucial result of that relationship was Evatt’s re-
quest that Lemkin help him identify the person who should
chair the Assembly’s Legal or Sixth Committee, the body that
would carry central responsibility for the drafting of the Geno-
cide Convention. Lemkin proposed the name of Ricardo
Alfaro of Panama, with whom he had established especially
close relations in 1946 at the Assembly session. Alfaro quickly
got the nod from the Australian, thereby enabling Lemkin to
occupy a seat as close to the parliamentary driver of the geno-
cide issue as could possibly be hoped for. The appointment of
Alfaro made it evident to Lemkin that Evatt “meant business.”

Still, nothing was to be left to chance in the forth-
coming great UN parliamentary game. Lemkin deliberately
arrived in Paris several days before the Assembly session
opened so that he could study the composition of each de-
egation. Once he knew who would be serving, especially in the
Legal Committee, he could formulate an appropriate strategy
for influencing each target. As meticulous as the current crop
of important NGO lobbyists, Lemkin functioned as a combi-
nation of researcher and strategist. But if present-day NGOs
employ dozens who perform these tasks, as well as others,
Lemkin operated as a one-man lobbyist operating on several different levels. His single-minded focus, augmented by enormous energy in handling a variety of tasks, could not fail to be extraordinarily impressive to the observer.

Lemkin undoubtedly made a total nuisance of himself with other UN delegates. A Canadian diplomat at the 1948 UN session remembered the “portly Polish lawyer with two large battered briefcases scurrying from delegate to delegate,” and reported it to his son, the author Michael Ignatieff. According to the latter, the memoirs of the UN diplomats of the time record their irritation with Lemkin’s endless lobbying: “Here he was again with his damned convention, endless drafts, endless amendments, piles of paper ... a kind of monomaniac ... keeping going just by sheer cussedness.”A New York Times correspondent Hohenberg, considered him “an unmitigated nuisance.”69 One careful scholar, in a recent study, found that two words—“dreamer” and “fanatic”—defined Lemkin in the minds of diplomats whom he sought to lobby.70 Not dissimilar terms were used by one of his students at Yale Law School. He remembered Lemkin as having a prophetic quality, but at the same time as “arrogant,” intolerant, and dogmatic, very much the attributes of the “fanatic.”71

A New York Times editorial that appeared two days after Lemkin’s death perhaps caught the attitude of UN diplomats best. “Diplomats of this and other nations who used to feel a certain concern when they saw the slightly stooped figure of Dr. Raphael Lemkin approaching in the corridors of the United Nations need not be uneasy anymore.”72 Lemkin would not be deterred and his persistence proved to be remarkably effective.

Key Issues in the UN Legal Committee

Six major issues confronted the Legal Committee, and Lemkin played a key and sometimes decisive role with regard to all of them: (1) whether there should be a Genocide Convention at all; (2) whether the convention should cover political groups; (3) whether action on the Genocide Convention should be postponed a year so that the Universal Declaration of Human Rights could be given priority; (4) whether the convention should embrace cultural genocide; (5) whether the UN Security Council or other UN organs should be authorized by the treaty to take action under the convention’s provisions;
and (6) whether the convention should provide for an interna-
tional criminal court. What gave most of Lemkin's goals a real
chance of being achieved was the *deus ex machina* in the
person of Assembly president Evatt.

Almost from the beginning, Britain was unenthusiastic
about adopting a Genocide Convention. Its representative on
the Legal Committee, the learned and eloquent Sir Hartley
Shawcross, articulated the view that Nuremberg proceedings
were sufficient and that they had preempted the value of a
convention. It must be recalled that Britain's judicial officials
at Nuremberg had objected to the use of the term *genocide*.
Now, Britain would follow up by rejecting a treaty that en-
compassed genocide.

But Britain's argument, no matter how vehemently
advocated, could not effectively challenge and counteract the
unanimous General Assembly decision of December 11, 1946,
declaring genocide an international crime. That resolution
enjoined the Assembly to draft and adopt a treaty banning
genocide. If a direct challenge could not work, Shawcross
retreated to a clever indirect challenge that was interwoven
with the very definition of genocide. A core issue from the
beginning of the UN deliberations was whether the treaty was
restricted to the destruction of racial, ethnic, and religious
groups or whether it also embraced political groups. The draft
convention, prepared by the UN Secretariat and drawing upon
Resolution 96 (I) of the General Assembly, included in its
Article I specific reference to "political groups." In the early
deliberations of the Secretariat with its three experts, Lemkin
was not enthusiastic about the inclusion since he thought such
groups lacked the permanence and specific characteristics of
racial, ethnic, and religious groups. He feared that reference to
this deeply divisive category might jeopardize support of the
treaty.

Still, when the deliberations in the Legal Committee of
the Assembly began in the fall of 1948, Lemkin, as well as the
American legal specialist with whom he was in regular contact
in Paris, John Maktos, were favorably disposed to include
political groups. But Moscow strongly objected. No doubt,
certain political groups were seen by the Soviets as threatening
their very sovereignty and, therefore, adding political groups
to the definition might legitimize them in their struggle against
the totalitarian regime.

From the Soviet perspective, it was always wiser to
limit rather than to broaden the definition. Indeed, at the very
beginning of the debate in the Legal Committee when the
focus was upon the preamble, Moscow sought to identify genocide in the crucial opening section of the treaty exclusively as a Nazi or fascist crime. However, aside from the Soviet bloc members, this formulation found no support. And so the preamble, reflecting the strong historical thinking of Lemkin, which he regularly sought to document, read: “at all periods of history, genocide has inflicted great losses on mankind.” Genocide was not an utterly new phenomenon; rather, it was seen as a common occurrence, repeatedly appearing at various historical intervals. Still, on the issue of political groups, the Soviet bloc stood firm and uncompromising.

The Soviet perspective was reinforced by some Latin American states. A journalist recorded a Latin American leader arguing as follows:

> On our continent, we are always having a revolution; then we dance a rhumba and forget it. But if this treaty includes political groups, the losers of the revolution can claim before the world that the winner violated the genocide pact and must be punished.

Might not those adhering to this view—still a minority—affect the thinking of the entire Latin bloc, if not immediately then during the ratification process? The combined potential opposition, especially since it included a bloc of states close to the United States both geographically and ideologically, compelled Lemkin to change tactics. The need for modification was made all the more necessary when account was taken of the size of the Latin American bloc. Only Western Europe exceeded in numbers the Latin American bloc.

A letter of November 27, 1948, from a key NGO official working in Paris for an American Jewish organization revealed the complexity of the problem as well as Lemkin’s perspective on the subject. The official was Joel Wolfsohn, director of the Paris office of the American Jewish Committee (AJC). In his letter to the head of AJC’s Foreign Affairs Department in New York, Wolfsohn wrote that while leading American diplomats at the General Assembly were hesitant about dropping political groups from the treaty’s text, they would do so if the treaty’s passage were jeopardized by its inclusion. Wolfsohn further related that he and several other NGO representatives in Paris met with the American diplomats and sought to convince them “that political genocide, if retained in the convention, might mean first that the convention might not pass the assembly, and second, that even if
adopted by the assembly, might not secure enough adherents to make it meaningful.”

According to the AJC representative, Lemkin was more vigorous in expressing his fears that including political groups would “scuttle the convention.” The same day, Wolschon wrote to Clark Eichelberger, president of the American Association for the United Nations, that while the NGOs were generally concerned about the tactical situation, Lemkin was more militant. He was “willing to throw anything and everything overboard in order to save a ship.”

However uncompromising Lemkin may at times have appeared in pursuing his overall objective, he was by no means inflexible; to preserve his goal, he was prepared to make a significant concession, especially since he had not been a strong advocate for inclusion of “political groups.” He deliberately approached Maktos and asked: “Is it better to get everything we want and then have it ratified by only a few countries or to compromise and get most of the world behind us?” The questions revealed him to be “intensely political,” said one analyst of the episode. Maktos chose to put Lemkin’s question to the entire American delegation, including Secretary of State George Marshall. It was agreed to withdraw reference to “political groups.”

But that withdrawal gave Shawcross a new opportunity to call into question the value of a genocide treaty itself. Lemkin’s unfinished autobiography records that the British attorney general vigorously argued against the exclusion of political groups. The question produced what Lemkin saw as an “ominous silence” among various delegations. Recognizing that the intent of the British maneuver was to “destroy” the genocide treaty, Lemkin played here his trump card, which he would exploit on several decisive occasions—he went to see Assembly President Evatt. Lemkin explained his profound misgivings about the possible effectiveness of the Shawcross maneuver. The next day Evatt had lunch with John Foster Dulles and urged that the U.S. delegation embark upon a strong lobbying effort in the Legal Committee to make certain that the reference to political groups be dropped. Evatt’s advice was followed and the British initiative foundered.

Lemkin’s grasp of the reason for the deletion of “political groups” from the Genocide Convention was less than complete. Like Lemkin, a number of delegations contended that, unlike national, ethnic, racial, and religious groups, political groups were not permanent and stable; as a category, they lacked cohesiveness and distinctiveness. More important
was a second objection; quite a few delegations were concerned about the reference to an international penal court in the treaty, even if that institution might come into being in the distant future. They feared that a future international court might interfere with their governments’ legitimate suppression of what they regarded as subversive political groups. In the final deliberative stages, the Legal Committee and the advocates of keeping both “political groups” and reference to an international criminal court in the treaty posed a very sharp dilemma: either one or the other must be sacrificed to win decisive support for the treaty. The United States opted for the court, especially given the strong opposition to “political groups” by the Soviet bloc, and the U.S. compromise proved decisive.

The Assembly was also effective for Lemkin’s purpose in counteracting an effort by human rights pressure groups either to subordinate the genocide treaty to the contemplated Universal Declaration of Human Rights or to postpone the treaty until 1949, thus giving the declaration greater public attention and, therefore, importance. The initial proposal, made fairly early in the Assembly session, was to simply add the planned genocide treaty to the declaration. Lemkin believed that the linkage would, in the words of an interviewer, “create confusion and delay.” It was the genocide treaty that was all-important to Lemkin, not the declaration, however valuable it might prove to be. In his view, freedom of speech, of worship, of political rights, of schooling, and of nondiscrimination in everyday activity might be quite significant. But the assurance of life itself was primary and more fundamental. “First we make existence safe,” he pleaded, “then we work to improve it.”

Later in the Assembly session, Lemkin learned of a new tactic by some human rights activists: they had sent a joint letter to all NGOs in Paris contending that it was impossible to adopt an agreed-upon draft Genocide Convention in Paris during the Assembly session. In Lemkin’s view, the letter reflected the fear that concentration upon the genocide treaty “would take away” attention from preparation of the Universal Declaration. He denounced the initiative as “non-constructive” and rushed to see Evatt. He urged the Assembly president to issue a statement on the importance of the genocide treaty. What must be clearly understood, in Lemkin’s opinion, was that the declaration was a nonbinding document, not a legally binding treaty. To the mind of an expert in international law, the differences were enormous. Lemkin saw the declaration as
nothing more than “an enunciation of general principles.” The treaty, in contrast, required contracting states to fulfill treaty obligations.

The issue remained dormant for much of the Legal Committee’s deliberations but, in the final weeks of the Paris session, the activists pressing for the Universal Declaration proposed that a resolution be adopted that would formally postpone the genocide treaty until 1949. A prominent leader of this group went to Evatt to press this view. Lemkin, whose sources kept him aware of all pertinent developments at the Paris meeting, knew that his relationship with Evatt was such that the latter would not permit any effort that might undermine the centrality of the genocide treaty. Lemkin observed in his autobiography that he had keenly followed the maneuvers of the Declaration advocates but that he “was successful in blocking them.” Later, however, human rights issues would become an endless source of conflict and concern for him. This was especially the case when the question of U.S. ratification of the Genocide Convention arose.

At times, even the most determined zealot can fail. Lemkin considered that his treaty ought to incorporate the idea of “cultural genocide.” Not only was the physical liquidation of a people to be banned; similarly, the destruction of a culture, whether language, monuments, archives, libraries, or any other intrinsic features of a tradition must be deemed impermissible and punished. Lemkin viewed the cultures of ethnic and religious groups as intrinsic to their very existence; any threat to such cultural features must, therefore, be mightily resisted. In a private discussion with key State Department officials as early as 1947, Lemkin gave emphasis to his perception of the great value of ethnic culture to civilization. As recorded in an official memorandum in 1947, he told two department interlocutors, “Our civilization has been enriched by the contributions of all the divergent races, peoples and creeds of mankind irrespective of physical power and material resources.”

Significantly, he gave the officials a “draft convention [on genocide] which he had been working on” that required contracting parties to take certain “measures” in the education and cultural fields to prevent “antagonisms and tensions which may lead to genocide.” The undefined measures were to “include instruction in the schools and the systematic use of mass media such as press, radio, and films.” Presumably, what was intended here was positive multicultural programming to be introduced in schools and the media. It projected
a utopian vision, hardly consonant with the politics of the time.

Lemkin fought vigorously for inclusion of cultural genocide as “this idea was very dear to me.” He had protected it in two separate drafts, thereby securing, he said, “the shrine of the soul of a nation.” But Lemkin’s two expert colleagues, de Vabres and Pella, took a different point of view. They argued that “cultural genocide,” in the words of a scholar who studied the issue, “unduly extended genocide.” Even his friend, John Maktos of the U.S. delegation, was concerned that its inclusion might result in some states refusing to ratify the treaty. During the Legal Committee debates, it had become clear that Lemkin’s strong views on “cultural genocide” did not accord with the attitudes of postwar governments and their elites. Nationalism reemerged as a powerful force, and cultural pluralism might be perceived as threatening the fabric of society. Many delegations, he complained, remained “silent” on the issues. Even his friend Ricardo Alfaro, the Legal Committee’s chairman, abandoned him. With time running out for the Paris session, Lemkin chose to withdraw the cultural genocide proposal. The withdrawal came just one day before the very end of the Assembly session. It was “just in time,” he later claimed.

But there would be no compromise and no withdrawal about a core issue affecting the treaty’s implementation. Draft Article VIII of the convention provided for any contracting party to the treaty to authorize a case of genocide before the UN Security Council or another UN organ, which could then act to prevent intended violence against threatened ethnic, religious, or racial groups. No other compliance machinery was specified.

The draft article’s significance was either not grasped by the Legal Committee or it was perceived as a threat to hallowed state sovereignty. Authorizing Security Council action beyond the maintenance of peace was hardly a welcome goal for diplomats. It was not surprising that the Legal Committee, at one point, decided to delete the draft article. An infuriated Lemkin was moved to lobby intensively for the restoration of the important article, as is noted in his autobiography. The night of the committee’s action found him seeking to telephone its members, but to no avail: “they were as usual at a reception.” He recognized that with the passage of time at grueling and, perhaps, boring sessions, the social life of the delegations had become intense. For the totally concentrated Lemkin, the episode was intolerable: “I hated their receptions
more than ever."

He did succeed in reaching one crucial colleague—Maktos, the expert on the American delegation—who quickly recognized Lemkin’s point about the vital importance of the deleted article. He volunteered to call friends in other delegations. Lemkin himself sought out Committee Chairman Alfaro, who was quickly persuaded. “You are right,” the Panamanian was quoted as saying. Telephone calls by Maktos, Alfaro, and Lemkin prompted a committee reversal. The draft article was reintroduced and, this time, approved. The desperate and now relieved Lemkin later recalled: “I felt like the pilot of an airliner who managed to restart a couple of dead motors.”

The accomplishment had considerable future relevance. Without Article VIII, the Security Council would never have had the legitimacy and authority for creating the ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda. Council action was also required to end massacres in East Timor and to establish tribunals to deal with the genocide in Sierra Leone and elsewhere.

Significantly, Lemkin chose not to insist upon the immediate creation of a special permanent institutional device aimed at providing punishment for the perpetrators of genocide. The French government sought at Paris to have the Assembly establish an international criminal court. But Lemkin believed that “in the existing circumstances, and in the absence of a sufficiently developed international criminal law, the establishment of a permanent court of international jurisdiction ... would be premature.”\(^{86}\) The comment, recorded in a UN document of 1947, the year before the Paris Assembly session, did not make clear why Lemkin thought the idea “premature.”

In his unfinished autobiography, he offered some details to buttress his opinion. He recalled that when the idea of an international criminal court was first broached in the League of Nations in 1934 in the wake of the murder in Yugoslavia of French foreign minister Louis Barthou, it received little support. In 1948, he found that more than one-half of the UN state members were similarly unenthusiastic about the proposal. If nothing else, Lemkin was consistently realistic about what would fly and what would not. When he stubbornly insisted upon adopting a resolution, it was because he knew or sensed that the idea would carry, and the converse was also true.

Ultimately he accepted a compromise proposal that was incorporated in Article IX of the draft text. An international penal court was projected into an indefinite future, the
timing of its founding to be determined by the international community. It was not until a half-century later that a conference of plenipotentiaries called by the UN General Assembly gathered in Rome to approve the statute for an international criminal court. The conference itself was a product of three years of negotiations among member states of the UN. To a large extent, the positive outcome was a result of extraordinary pressure exerted by the international nongovernmental community. Lemkin’s analysis in 1948 was essentially vindicated.

The adoption of the Genocide Convention on December 9, 1948, was a seminal event, and its ramifications have reverberated into the new millennium. Yet, to a remarkable extent, it was a product of one man’s imagination, initiative, ceaseless striving, and unflagging determination. The day after the vote of the Assembly, the New York Times featured a photo of Lemkin with the following head: “His Idea Adopted.”87 Later, The Washington Post would editorialize: “More largely perhaps than any other individual, he [Lemkin] has been responsible through his dedicated persistence for having it [genocide] recognized as an international crime.”88

Perhaps the greatest compliment came from the new dean of the Yale Law School, Eugene V. Rostow, who would later serve as undersecretary of state under President Lyndon Johnson. In a letter to Lemkin dated December 31, 1948, Rostow contrasted his conduct with that of most “intellectuals” who “fear a fight” even when they are right.89 For that reason, argued Rostow, intellectuals “make the worst possible allies ... because they tend to run out when they should be most stubborn.” In contrast, Lemkin had stood his ground and “organized a very effective team,” which impressed Rostow. He added: “My hat goes off to you.” But praise was not the only thing on his mind. He urged Lemkin to “come home and write a book about it, to make sure that the victory is not lost.” Regrettably, the book that would describe the “victory”—Lemkin’s planned autobiography—was never finished.

The historic character of Lemkin’s achievement was widely noted by later scholars. Perhaps the leading authority on genocide, Leo Kuper, called the very adoption of the treaty “a remarkable achievement.”90 What was especially stunning was that the UN, which had only recently come into existence, possessed hardly any settled procedures, and was comprised of governments with vastly different legal systems and ideological outlooks, had nonetheless “agreed on the terms and phrasing of this Convention so expeditiously.”91
Lemkin and the Press

Lobbying diplomats in Geneva and Paris was, of course, fundamental to Lemkin’s strategy; this was how he had won the day at Lake Success during the fall and early winter of 1946. But the stakes in Geneva and especially in Paris were much higher, and Lemkin realized he needed to have public opinion strongly behind him, especially in the United States. Even in 1946, he had needed public support. In a scholarly article that dealt with the 1946 UN resolution declaring genocide an “international crime,” Lemkin divulged one of his secret weapons in winning public support. The disclosure took the form of a footnote, which read: “An important factor in the comparatively quick reception of the concept of genocide in international law was the understanding of this idea [about genocide] by the press of the United States and other countries.”

A list of major newspapers from various American and West European countries followed, led by The Washington Post, the New York Times, and the New York Herald Tribune. Next to the name of the Washington Post Lemkin noted parenthetically that it began promoting his idea in 1944. Others, which provided “remarkable contributions” in addition to the above were the Sunday Times of London and Dagens Nyheter of Stockholm. As for the foreign press, he referred to the media in France, especially Le Monde, as well as other supporters in the press in Switzerland, Holland, Norway, and India.

Lemkin did not, however, go into detail about how he actually went about the task of seducing news correspondents. But in an article written over two decades later, the UN correspondent for the New York Post vividly recalled his personal experiences with Lemkin in 1946 as well as the experiences of other journalists. The article was written for the Saturday Review by John Hohenberg, who, after his UN stint, became a professor at Columbia University’s School of Journalism and administrator of the Pulitzer Prize awards. Hohenberg’s revelations provide intriguing insights into the tactical maneuverings of a natural-born lobbyist.

The enticements began in the office shared by Hohenberg with several other UN reporters at Lake Success. While the Post correspondent was completing a piece for his paper’s final edition in the afternoon of a late autumn day, the door to his private office opened and Hohenberg could hear an apologetic cough. “Excuse me,” said the visitor, “I wish to talk to
you.” As he was writing on deadline, Hohenberg was more than a little irritated by this intrusion and had to control himself with some effort. But the stranger appeared harmless. As described by the observant journalist, the visitor was “a graying figure in a well-worn double-breasted blue suit, scuffed black shoes and dark necktie askew against a none-too-clean white shirt collar.”

When Hohenberg finished his piece, he turned to Lemkin with some impatience and asked what he wanted. At this point, the enticement began. Lemkin sounded like a conspirator with a secret plan to bring the world to the Garden of Eden. Looking at Hohenberg with blue eyes blazing behind thick glasses and with his disorderly gray hair tumbling over his forehead, the visitor said with careful emphasis: “You and I, we must change the world.” The words were delivered in heavily accented English but with meticulous deliberateness. When Hohenberg sought to brush him off with a joke that he should go to the New York Times if he wished to “change the world,” Lemkin delicately reproached the reporter: “Make no jokes, this is serious business and I must have your help.”

Lemkin’s solemnity was riveting as he explained the word genocide, described his background, the impact of the Holocaust, and delineated his dream for a worldwide treaty to outlaw genocide through UN action. Hohenberg came to view Lemkin from a new perspective: he wasn’t an “irritant” but rather “a well-meaning fanatic.” With time and persistence Lemkin steadily whittled the negative view away. Every day, Hohenberg related, Lemkin would visit the UN press section and deliberately trap one or another reporter, arguing his cause and hoping for a bit of publicity. While diplomats might tire of Lemkin as “an unmitigated nuisance,” the journalists became increasingly sympathetic. For them, the visionary had developed into a “rather special person.”

Hohenberg acknowledged how this likeable immigrant zealot with his “exaggerated dignity” obliged the press to abandon their “Puritan objectivity” and engage in a form of journalistic “campaigning” on behalf of his cause. The correspondents came to portray him as “a lonely crusader … who was tilting his lance in solitary grandeur against the ramparts” of UN member states. The correspondents knew they were being used, Hohenberg recalled, but the story that emerged was “worth it.” When Hohenberg reflected on what Lemkin did in fact accomplish through his association with the correspondents, he believed that their collaboration with Lemkin was right. Hohenberg is not inclined to excessive romanticiz-
ing of the past. A rigorous realism compelled him to conclude that “Lemkin made a world figure of himself,” but, almost as an afterthought, he added, “with our considerable assistance.”

Lemkin lavished special attention on the New York Times, which he would later note was regarded by the UN Secretariat and by delegations as the “Bible of Lake Success.” In 1947 he entered into a friendly relationship with Gertrude Samuels, a regular contributor to the New York Times Magazine who would later sketch an extremely sympathetic portrait of him in the magazine. On December 2, 1947, she wrote asking that he keep her “posted” on UN developments because “it looks as though the problem [of approving a genocide treaty] is going to need a good many more editorials.” Apparently, she was referring to a growing opposition to the treaty by Britain and the USSR. One can easily infer from the letter that Samuels carried weight with the Times editorial board and the newspaper’s policy makers.

Soon afterward, at the beginning of the following year—January 12, 1948—Lemkin advised Samuels in a letter that the British-Soviet efforts had failed. The more disturbing maneuver was by the British, he said. The British were seeking to prevent “looking into the destruction of populations within their spheres of influence.” The British-Soviet initiative, Lemkin reported, was halted by the United States, France, several Latin American countries, India, and Pakistan. By the time of the vote in the UN General Assembly the contacts between Samuels and Lemkin had grown, as is suggested in a letter written by Samuels to Lemkin on December 10, 1948. Referring to him as “Dear Ralph” instead of “Raphael,” she wrote:

You deserve the world’s gratitude for your great and stubborn fight—and Dr. Evatt for his determined support of your ideas. I’m proud that we had a small share in your victory.

Lemkin and the NGO Community

While the press, both through reportage and editorial comment, was extremely important, what proved equally helpful, indeed crucial, was the support of the nongovernmental community. While Lemkin dealt with numerous NGOs, he viewed one of them as particularly important in terms of mobilizing public opinion in the United States and elsewhere in the democratic world, the National Conference of Christians and Jews (NCCJ).

It was the NCCJ that seeded a special NGO operation
that became the focal point of a national and international campaign involving a host of organizations that would lobby for the historic Convention on the Prevention and Punishment of the Crime of Genocide. Raphael Lemkin’s own lobbying with government officials and their delegates during General Assembly sessions and ECOSOC at its meetings in 1947 and 1948 were, of course, crucial and direct. But the indirect efforts of NGOs, coordinated by the so-called Committee for an International Genocide Convention, while not given very much public attention, proved to be an indispensable handmaiden to Lemkin’s efforts. Lemkin’s personal role in the committee’s work was indispensable; he was, in fact, its principal theoretician and strategist.

A source of valuable insight on the committee’s work is the University of Minnesota Social Welfare History Archives in Minneapolis. It houses the committee’s minutes that chronicle its plans and strategies, as well as its deliberations regarding what persons to involve and in what way and for what purpose. The core group that generated the all-embracing committee was a special operation within the NCCJ comprising three persons: James Rosenberg, a prominent attorney; Henry Noble McCracken, cochairman of the International Council of Christians and Jews; and Willard Johnson, secretary of the NCCJ. They comprised the Human Rights Committee of the NCCJ, which, in turn, with additional members, principally key figures in important religious bodies, was eventually transformed into the central lobbying body for the Genocide Convention.

In a report to the NCCJ written on his Yale University Law School stationery, probably in late 1949, Lemkin acknowledged “the decisive importance” of NCCJ’s activities in promoting the Genocide Convention. He mentions its organizing a “national appeal” on behalf of the Genocide Convention; its bolstering of the position of the U.S. delegation with reference to the Convention at ECOSOC and General Assembly sessions in 1948; and its efforts to influence its sister organization, the Council of Christians and Jews in the United Kingdom. In fact, these achievements were the work of the Rosenberg committee, which was initially sparked by the NCCJ.

The committee’s inaugural meeting was held on April 23, 1948 at Rosenberg’s home on East 67th Street in Manhattan. In attendance were Dr. Samuel McCrea Cavert, general secretary of the Federal Council of Churches; Catherine Schaeffer, a top aide to Thomas H. Mahoney, president of
the Catholic Association for International Peace (she was also a high official of the National Catholic Welfare Conference); Louise Congdon, a top aide of Dr. Henry A. Atkinson, general secretary of the Church Peace Union and of the World Peace Alliance, Rosenberg, McCracken, Johnson, and finally Lemkin. A letter from Atkinson was read which revealed the committee’s initial intent: to publicize the definition of genocide; urge favorable action by the ECOSOC at its meeting in Geneva during the summer, and make “efforts through our various organizations” to support the Genocide Convention.

Taking note of Atkinson’s second point, Rosenberg reported that several in attendance had met in February with the president of ECOSOC, Charles Malik, who had “pledged his support.” On that occasion Malik was presented with a petition signed by 120 religious leaders urging adoption of the Genocide Convention, and Lemkin noted that the petition had been cited by the American representative at the ECOSOC’s spring session. The representative, Walter Kotschnig, was reported to have “stressed the necessity for the Council to comply with the request of the religious leaders and organizations.”

After McCracken and Cavert spoke of the need for a coordinated effort at the ECOSOC meeting in July and at the Assembly’s September meeting in Paris, the group formally voted to create the “Committee for an International Genocide Convention.” Rosenberg was chosen as chairman and Johnson, general secretary. It was also recommended that several prominent individuals should be approached and invited to join. In his first official task, Rosenberg reported that he had already written to the secretary of the British Council of Christians and Jews, W. Simpson, urging him to try to use his influence on the British delegation. Rosenberg, McCracken, and Johnson were to serve as a subcommittee to invite and involve as many persons and organizations as required. Special attention was focused upon getting Dr. Everett Clinchy, president of the NCCJ, to “actively participate” in the ECOSOC deliberations in Geneva. Others, too, would be asked to lobby the delegates. Of particular importance was the decision by the group to have Lemkin prepare a complete memorandum for the use of lobbyists and those who might be permitted to address ECOSOC.

Beyond ECOSOC, there was the crucial General Assembly session in Paris. The subcommittee’s overall purpose was clear: “to mobilize public opinion” in the United States and other countries to demonstrate “the significance of an
international convention outlawing genocide.” The mobilization efforts must involve “organizations and prominent men and women.” A major piece of literature, Rosenberg announced, would be prepared in time for the Geneva ECOSOC meeting. Lemkin was developing a special issue of the *Yale Law Journal* dealing with genocide, and a large number of copies would be printed. The special issue of the *Journal* would underscore how certain provisions of the Genocide Convention might serve to deter would-be perpetrators of genocide from taking the first step toward mass murder. Among these was the provision that extradition could be used to bring alleged perpetrators of genocide to trial. In addition, the treaty brought within its scope not only mere individuals but also constitutionally responsible rulers and public officials.

At its next meeting (May 13), the committee was augmented by the presence of an official of the World Federation of United Nations Associations, which immediately provided the strategically significant group an important international connection. Discussion was focused upon inviting key individuals whether in their private capacity, like Allen Dulles or Pearl Buck, or in their organizational capacity, such as the head of the Business and Professional Women’s Clubs or representatives of the labor movement.

The committee recognized that Lemkin, its star member, lacked the large personal funds needed to finance his trip to and stay in Geneva and Paris during the summer. Details were not spelled out, but the minutes show that Rosenberg commented “that he hopes Dr. Lemkin will be able to attend the July UN meetings on funds provided by the Committee.” The reason for Rosenberg’s uncertainty was that Lemkin had been sick and his doctor recommended that he take a three-week vacation. Despite his illness, immediately upon his return from vacation he was asked to prepare a small pamphlet on genocide in English, French, and Spanish to be reproduced and distributed at the UN sessions; Lemkin was clearly seen as chief lobbyist, strategist, and propagandist of the committee.

In his capacity as an advocate, he further developed a theme that had appeared in his *UN Bulletin* article for the first time. Toward the end of the meeting both he and Rosenberg provided crucial guidelines for the committee on the question of the relationship between Nuremberg and the Genocide Convention. The first point was rather self-evident: Nuremberg dealt only with acts during a war of aggression, while genocide covered acts during peacetime as well. The second
point was more controversial: “Nuremberg was a case of the victor over vanquished [while] a Genocide Convention will be a voluntary act of equal nations.” The second point expressed a problematic or even negative attitude toward Nuremberg—one that could provide ammunition to Holocaust deniers and to others who believed Nuremberg to be unfair.

A final point reinforced the negative argument. The judgment at Nuremberg was said to be “essentially ex post facto”—i.e., the creation of new law and its application to acts taken before its existence was formally accorded legal status. But the Nuremberg judgment reflected a very different view: that the behavior of the Nazis constituted a violation of customary international law; civilized standards existed even if they had not been spelled out before Nuremberg. Lemkin’s willingness to use his new and disturbing argument was probably an outgrowth of his constant fear that Britain would seek to scuttle the Genocide Convention on grounds that Nuremberg was sufficient to combat genocidal acts. That the Nuremberg judgment failed to include the word genocide undoubtedly aggravated his hostility. That he would have no hesitancy in exploiting this perverse argument, no matter how counterproductive it might prove to be, was indicative of his driven personality. Nothing—even undermining the legal and moral authority of Nuremberg—must be permitted to interfere with the adoption of the Genocide Convention.

At the next meeting on June 3—which Lemkin did not attend—the group voted to change its name to the “United States Committee for a United Nations Genocide Convention.” Lemkin resumed his attendance at the July 20 meeting. Just prior to the meeting, on July 18, Lemkin wrote to Rosenberg arguing “that an appeal to the General Assembly by numerous organizations covering many countries and indicating [the size of their respective memberships] might exercise considerable influence on the delegates.”101 Priority at the July meeting was placed on the planned petition for circulation among the numerous NGOs with consultative status at the UN as well as among national groups. Lemkin was asked to draft the petition and Johnson was deputized to coordinate the signing efforts. In one of the committee’s rare personal resolutions, it voted to express “appreciation to Dr. Lemkin for his untiring efforts....”

The petition campaign, very much Lemkin’s idea, proved to be a huge success. In a formal “statement” to a U.S. congressional body delivered on January 4, 1950, by Willard Johnson, the U.S. Committee reported submitting a petition to
the UN General Assembly in September 1948 signed by the leaders of 166 organizations from twenty-eight countries with memberships of over 200 million persons. The petition thus represented approximately one-tenth of the world’s population. How much the petition influenced the deliberations of the 1948 session of the Assembly is not known. Certainly it could not have failed to exert a positive effect on delegations from democratic states for it demonstrated the popularity of the committee’s effort on behalf of the Genocide Convention. At the same time, the campaign illuminates the multilayered nature of Lemkin’s initiatives. He stood at the heart of the committee’s deliberations and initiatives, harnessing its public drive to his own lobbying initiative, which also encompassed a wide variety of target audiences.

One of the organizations he went out of his way to praise for its work in the petition effort was B’nai B’rith, a Jewish mass membership organization. Its house organ, The National Jewish Monthly, carried a special article by Lemkin in 1949 lauding the organization for its work both in the United States and abroad in joining the petition campaign and going beyond it by lobbying the White House and foreign governments. But it was not the immediate past that Lemkin saw as important; rather, it was what lay immediately ahead: ratification of the treaty was critical. He told his readers that “this treaty is a must” if humankind is “to substitute the law of civilized society for that of the jungle.” This battle cry defined his next goal.

**Bringing the Convention into Force**

For even with the convention’s adoption, Lemkin could not, would not rest. What very much remained on his mind once the historic convention was adopted was the question of its coming into force. This required a minimum of twenty state ratifications. All too often, significant time delays would characterize the ratification process for UN treaties. For Lemkin, any delay in bringing the convention into force was unacceptable. As always, he was a man in a hurry, as if the future of humankind rested upon the convention’s coming into force quickly. Lemkin could have returned to his academic position at Yale, but he chose to remain in New York to lobby for the treaty’s ratification. “I have no time to take a paying job,” he wrote, even while recognizing that the health consequences of the privation he could anticipate would be “fierce,” and indeed they were. In his autobiography, he re-
lated that in 1950 he was compelled to borrow money merely in order to buy food, and when he did not borrow he went hungry. His health deteriorated daily; at the UN, he found that he "could hardly stand on my feet" and was obliged to "look for support of a wall or seat." He was hospitalized once more at the end of the year.

Still, during 1949-50, Lemkin conducted an extensive correspondence with the presidents, foreign ministers, and UN representatives of numerous states, seeking to convince them to become contracting parties to the Genocide Convention. Carefully targeting his approaches, Lemkin once more displayed the realism and strategic ingenuity that had helped him win the convention's adoption. He worked hard to secure Ethiopia as the first state to ratify the treaty. The symbolism was clear: Ethiopia had been the first country to be conquered by an Axis power—Fascist Italy. Significantly, he succeeded in this quest. Other special targets were states that, for a variety of different reasons, were particularly eager to display their faith in the UN publicly. Among them were the defeated powers—the Federal Republic of Germany, Italy, Bulgaria, Romania, and Hungary—along with South Korea, Ceylon, and Jordan.

Latin America was especially important since the region contained the largest number of states. It also included the several small states of Central America that might be counted upon to seek international legal protection. When a conference of foreign ministers from Latin America was held in Washington, D.C., in April 1950, Lemkin determined to seize the opportunity. He moved to the capital in order "to talk to some of them [foreign ministers] personally," particularly those he had met at earlier UN sessions. He stayed on in the city, meeting with top-level officials who came through, such as Canadian prime minister Lester Pearson and famed Foreign Minister Carlos Romulo of the Philippines.

The Latin American priority concentrated his mind. When he learned that a congress of universities from that continent was to be held in Guatemala City in 1950, he cabled his various academic contacts to press the congress for an endorsement of the Genocide Convention. On another level, he cultivated a woman who had been a key member of Mexico's UN delegation. Her contacts with other Latin delegates were especially helpful. Nor did he neglect the NGO groups, especially women's and church groups. He maintained a continual correspondence with the NGOs, pleading with them to press governments on the need for ratification. Not a stone
was left unturned in his all-consuming effort.

By mid-October 1950, twenty-four delegations had deposited their documents of ratification. Only twenty had been needed. The speed of ratification was both unusual and impressive. A three-month span of time was required by the convention itself, from the moment the twentieth ratification document was deposited with the UN secretary-general, before it would become formally operational. The United States was not among the initial twenty-four contracting parties to the treaty for reasons that will be noted later. For the Washington Post, the U.S. absence was painfully regrettable. Its editorial on October 17, 1950 observed: “It is a misfortune that the United States has not been among the nations that laid the cornerstone … of the structure of international law by which the world must one day be governed.”

On January 12, 1951, the Genocide Convention went into force. Lemkin called the event “a day of triumph for mankind and the most beautiful day of my life.” Secretary-General Trygve Lie chose mid-October 1950 for a special treaty ceremony in his office and invited the UN ambassadors from four key states that were among the first to ratify it—France, South Korea, Haiti, and Costa Rica. The secretary-general also extended an invitation to a person who represented no state: Raphael Lemkin. The invitation recognized the great contribution of the “unofficial man” who made the treaty a reality. It was an exhilarating moment for Lemkin: “I could hardly believe it,” his autobiography recorded. He sought to engrave the event permanently in his memory: looking around the handsome office with its distinguished ambassador-guests and hosted by the international community’s chief executive, a somber Lemkin asked himself: “Is this the moment for which I was hoping and working so many years?” He answered the rhetorical question in a strikingly contradictory manner: “My joy was mixed with anxiety and fear.”

His mixed emotions were not unwarranted. Many skeptics had questioned him privately and publicly as to whether the Genocide Convention could achieve its objective; indeed, doubts about its efficacy would dog discussions about ratification in many Western countries and especially in the United States. Such skepticism was a classic reaction to virtually any human rights treaty. All too often the advocates of realpolitik would express their disdain, continually deriding the treaty while upholding the use of power politics to the utter exclusion or, at least, the minimization of international
law. Lemkin dealt with the issue in an undated paper:

Whether a Convention on Genocide will stop the
crime [of genocide] we do not believe that such a
question is fair. Does a penal code stop all crime in
society? The significance of a penal law lies mostly
in its preventative nature.\textsuperscript{105}

Lemkin greeted the day the Genocide Convention
came into force—January 12, 1951—in a distinctive manner.
He prepared and issued a 1000-word statement\textsuperscript{106} on the
significance of the day; he had never accorded any other single
event in his personal history such special attention: not De-
cember 11, 1946, and not December 9, 1948. The statement
makes for instructive reading. It provides insight into both
Lemkin’s psychology and into an aspect of the definition of
genocide he sought to stress.

Foremost was his sense of the unique glory of “the day
of triumph,” which conflated a recognition of the objective
historical breakthrough with feelings of personal vindication.
It is impossible to read parts of his statement without feeling
some embarrassment at the vainglory expressed. He offers his
experience as a “pattern” for others who “will follow my
example in engaging in a crusade for an idea.” Crusaders, like
him, can expect to be told, first, that “the idea is no good.”
Once the worth of the idea is recognized, “a small but skillful
group of professional people in the same field will fight you
openly or under cover.” Finally, when you are close to victory,
skillful opponents will seek to make your idea acceptable
“with slight changes and under a different name.” Lemkin
tracked his “obstacles” back to the 1933 Madrid conference
and then through the various sessions of the UN General
Assembly.

Lemkin viewed and presented himself as “a lonely cru-
sader.” Like other crusaders “in any field” he faced obstacles
that “might break his health, but never his spirit.” In the end,
he was confident that the crusader must prevail because of the
“spiritual force” of his campaign. It was this “spiritual force,”
he believed, that compelled governments to recognize him and
provide him with “diplomatic status.” It was this “spiritual
force” that enabled a mere “private individual” to “approach
directly heads of states,” cabinet members, ambassadors, and
members of parliaments. He felt obliged to articulate this
somewhat naive perspective “for the benefit” of those who
tend to become cynical about humanity, as well as those who
believe that only force counts in international affairs, not
"great humanitarian endeavors."

What had abetted his initiative, Lemkin argued, was the recognition by "nations," especially "small nations," that they needed the Genocide Convention to survive a "genocidal attack" upon them. When Lemkin used the term national next to ethnic and racial he was thinking of all the people of a nation. In the back of his mind were the small nations conquered and subjugated by Nazi Germany. He did not seem to anticipate developments of a half-century later when "genocidal attacks" on other nations were far less likely than those perpetrated within a single country by one ethnic group against another.

Because of this concern that he imagined as existing in vulnerable, smaller states, Lemkin calculated that the number of contracting parties would increase rapidly. As of January 1951, according to his figures, the number had risen to twenty-seven states, and he anticipated that an additional ten would soon sign on. He expected this progress to continue unimpeded because of the awareness that the "international community cannot exist without a law against genocide like a village or city cannot exist without a law against homicide." This segment of the statement concluded with a most intriguing observation. After noting that "all nations, religious groups and races" are in need of the protection of the Genocide Convention, he added: "History changes fast and the white man might need the protection of the Genocide Convention in Asia earlier than he thinks." Whatever lay behind this curious assertion remained unarticulated.

Asia, after all, had few white-populated areas except for the USSR’s Siberia and isolated pockets within the republics of the Caucasus. There was the small, newly formed country of Israel whose survival had been threatened by the Arab states during 1948-49, and Israel was among the first to ratify the Genocide Convention (in March 1950). Lemkin maintained a private interest in Israel through friends, but despite his origins, his relationship with the Jewish state was minimal. Publicly, he said virtually nothing about Israel. Did Lemkin perhaps envisage the revival of the "yellow peril" in the form of an offensive by Red China against Western outposts like Hong Kong? Regrettably none of his later (or earlier) writings touch upon this very odd prognostication.

Payback in Recognition

The moment the Genocide Convention went into ef-
fect was not the most glamorous one for the treaty’s founder and prime mover; his celebrity had reached its apogee in December 1948 with the UN vote on the treaty. That was the occasion on which the press and the media enveloped Lemkin in all the grandeur and celebrity of a famed discoverer. Yet, for UN legal specialists as well as academic authorities, January 12, 1951 constituted a climactic point when the new period could be separated from the old, when the rule of law would apply to genocide for the first time in history. Two weeks after the coming into force of the treaty, Lemkin was formally nominated for the Nobel Peace Prize.

One of Harvard University’s most eminent professors of law, Paul A. Freund, wrote to the Nobel Prize Committee in Oslo on January 24, 1951, nominating the Polish-Jewish immigrant. “The entire campaign [for the Genocide Convention],” he said, “was carried on by Dr. Lemkin on a voluntary basis in the pattern of a personal crusade....” Freund called attention to the great personal sacrifices made by Lemkin in terms of his health and modest personal assets. In Freund’s opinion, “the Genocide Convention is a very important milestone in the development of International Law and a vital step in securing International Peace.” It was precisely the significance of the January 12 event that prompted him to nominate Lemkin.

Freund was not alone in his recommendation. Others, like the mayor of Jerusalem and the Central Conference of American Rabbis, joined in pressing for the nomination. Clips from the press in 1951 and 1952, especially the Washington press currently among the holdings in the American Jewish Archives in Cincinnati, testify to the wide public interest his nomination. Still, this giant in international law did not receive the prize, and it is not clear why.

Lemkin’s colleagues and friends did not, however, relent in their nominating efforts, and his own correspondence indicates that he had become personally active in this campaign. Once again, on January 21, 1955, Professor Freund wrote to the Nobel Committee recommending Lemkin. A similar letter was sent at the same time by a prominent University of California Law School professor, Stefan Riesenfeld. The nomination effort climaxed in 1958 when the powerful congressman from Brooklyn, Emanuel Celler, chairman of the House Judiciary Committee, became involved. On January 22 of that year the congressman wrote to the Nobel Prize Committee in Oslo: “I know of no man who has so dedicated himself to a worthy cause. No sacrifice was too much for him.
No obstacle was too great for him to overcome." The glowing remarks reflected Celler’s profound appreciation for Lemkin’s accomplishments. A similar letter was forwarded to Oslo the following month by a very prominent Latin American political and judicial figure, Carlos Manuel Cox, Peru’s ambassador to the UN.108

On March 31, 1958, Lemkin wrote to Celler urging him to prepare additional letters to numerous prominent public figures in national and international life and offered to pay for the mailing expenses. He suggested that after Celler’s office prepared the draft letters and Celler signed them, Celler should ship them to him to mail. Among others to whom Celler wrote seeking their personal involvement in the nomination process were the attorney general of Belgium, the deputy high commissioner for Pakistan to India, and the minister of foreign affairs of Guatemala. As many as fifty such letters over the signature of Celler are to be found in Lemkin’s archive.

One of the recipients of the Celler initiative was Pearl Buck (Mrs. Richard Walsh), who wrote to the congressman on August 28, 1958, saying “I know Professor Lemkin and think very highly of him and his work.” However, she explained, she couldn’t comply with the congressman’s request because she was a winner of the Nobel Prize in Literature and it is impermissible for such winners to nominate persons from other fields. On the same day, the great Spanish historian and scholar Salvador de Madriaga, who was then teaching at Oxford, sent a similar letter to Celler. It spoke of the difficulty of interpreting Nobel regulations to ascertain which persons were eligible to participate in the nominating process.

Lemkin’s personal pursuit of the Nobel Prize extended even to Rex Stout, the mystery writer who was president of the important Authors’ Guild. As an author himself, Lemkin wrote to Stout asking him and his colleagues in the Guild to write to the Oslo Committee. Dated May 2, the letter included a copy of Celler’s endorsement. The Lemkin archive offers no speculation as to why he failed to become a Nobel laureate. Certainly, his personal efforts to win the prize were intense; as late as April 1, 1959, only a few months before Lemkin’s death, Congressman Celler again sent a final, futile letter to the Nobel Committee. During the fifties, after the initial 1951-52 push, references to Lemkin rarely appeared in the international media; his luster had dimmed considerably.

Lemkin’s campaign for the treaty that culminated on January 12, 1951 was accompanied by two other developments that could not fail to make Lemkin proud of his
achievement. A letter from the G. and C. Merriam Company of Springfield, Massachusetts, dated February 15, 1950, informed an associate of his in Washington, D.C., that the popular *Webster’s New International Dictionary* had entered the word *genocide* into the addendum of the dictionary’s second edition. This was particularly encouraging in light of his failure to have the term cited in the Nuremberg judgment. The same letter also noted that the word had been formally entered and defined in *Webster’s New Collegiate Dictionary*. Somewhat earlier, Random House’s *American College Dictionary*, a lesser-known dictionary, had introduced *genocide* and credited Lemkin for its origin. Lemkin learned of this in a letter by a friend, Miriam Milliren of Washington, D.C., dated June 13, 1948. His historic neologism would soon be accepted across the United States, and it has become one of the defining terms of the twentieth century.

**The Question of U.S. Ratification**

Despite the enormous personal gratification Lemkin experienced as a result of these accomplishments and his brief celebrity status, he was becoming consumed with a problem he had not anticipated: would the United States hesitate to ratify the treaty? The U.S. attitude toward the treaty was of critical importance. It was, after all, the leading democratic power with the leverage and authority to make it effective. Were the United States to ratify, he said, it would serve as “an inspiration to the world.” But what if it failed to? Supposing the ratification process of 1949-51 failed to engulf the rest of mankind and ratification stalled? Or supposing ratification proceeded, but at a slow pace and without effective mechanisms for implementation, what impact would the treaty have? These questions caused him profound anxiety. He publicly warned that not a few “already believe that Dachau, Auschwitz, Buchenwald are manufactured war propaganda.” Indeed, denial would become increasingly widespread.

Lemkin saw U.S. ratification as pivotal because he believed it would generate widespread accession, and he and other observers expected a positive response. After all, it was U.S. leadership that helped produce the initial breakthrough in December 1946 for a UN resolution making genocide an international crime. U.S. leadership was also impressive in the drafting of the text of the Convention on Prevention and Punishment of the Crime of Genocide. Equally important, the United States led the lobbying effort that brought about a
unanimous vote for the treaty at the General Assembly meeting in Paris at the Palais de Chaillot on December 9, 1948.

The United States was the principal actor in the drafting process, and Anglo-American legal theory was the principal source for the text. Indeed, the formulations were consciously couched in traditional American common-law concepts, including the precise wording of common-law crimes long accepted in American jurisprudence. Of critical importance in this connection was U.S. insistence that proof of intent to commit genocide must be clearly demonstrated before an offender can be convicted. Intent is a central element of U.S. criminal law, as distinct from legal notions in other systems of jurisprudence. It stands as the cornerstone of the Genocide Convention. Thus the treaty’s key Article II outlaws “acts committed with an intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.”

Adoption of the Genocide Convention by the UN General Assembly was a high priority of the United States, as important as the establishment of the Nuremberg Tribunal. Accountability for horrendous crimes against humanity, including genocide, was of central concern. The U.S. attitude was summarized by Assistant Secretary of State Ernest A. Gross, who headed the U.S. delegation. He made it clear to all UN delegations that “positive action [must] be taken now.” He added that America “is eager to see a Genocide Convention adopted at this session of the Assembly and signed by all member states before we quit with our labors here.”

American efforts were impressively successful. The Assembly vote on December 9, 1948, for the first UN human rights treaty was unanimous. Two days later, the U.S. delegation rushed to be among the first to sign the treaty. Signature to a treaty in the context of international law is a solemn and formal undertaking. It signifies both a commitment to fulfill the purposes of the treaty and intent to ratify it. The act of ratification (or accession) makes the treaty legally binding. The process of ratification varies from one country to another. In the case of the United States, the constitution requires a two-thirds vote from the Senate, thereby providing “advise and consent.” Even with this constitutional hurdle, hardly anyone expected serious difficulties and, indeed, the required deliberative process appeared to be moving rather swiftly. On June 16, 1949, President Harry Truman transmitted the treaty to the Senate, seeking its consent.

But vigorous objection to U.S. ratification came quickly in 1949 from critical segments of the American Bar
Association, an organization with extraordinary influence in the Senate. Many ABA members from the South as well as their counterparts in the Senate were concerned that the Genocide Convention might be used to target the treatment of Negroes in the United States. The postwar situation in the United States was marked by a significant upsurge in the campaign for civil rights for African Americans, and this prompted fierce resistance by segregationists in the South. At times, the resistance took the brutal forms of lynching and assassination.

Public attention would now center on the legislative hearings on the Genocide Convention by a subcommittee of the Senate Foreign Relations Committee to be held in January and February 1950. The chair of the subcommittee was a liberal Democrat from Connecticut, Senator Brien McMahon. Lemkin sought to head off a hostile reaction by southerners in the subcommittee and in the Senate as a whole by outlining a tactical approach that is articulated in a typewritten note prepared in early January 1950. He sought to stress that genocide was not and could not be an American phenomenon and, therefore, the Senate need have no concern that the United States would be vulnerable were it to ratify the convention. “The legal problem [of treaty ratification],” he wrote, “is of a purely academic nature for the U.S.A.”

Lemkin then stressed that “genocide does not happen here and is not likely to happen.” With considerable emphasis he sought to distinguish between civil rights issues, presumably including lynching, and what is at the heart of the treaty. Genocide, he said is not “a matter of discrimination but of destruction, annihilation, and obliteration.”

Mobilization of the American nongovernmental community was, predictably enough, at the center of Lemkin’s strategy. Already available to him was the coordination leadership group, the U.S. Committee for a UN Genocide Convention, which had rallied NGOs for a major appeal to the UN General Assembly in the fall of 1948. Once the treaty was adopted on December 9, the committee ceased to meet for three months. But early in March 1949 it resumed meeting with the overriding objective of winning treaty ratification by the United States.

At the first of these meetings, on March 2, it was determined that the opposition of the American Bar Association must be the committee’s primary concern. Lemkin reported that he attended the ABA’s meeting in Chicago and found “considerable confusion about the Genocide Convention and
the Human Rights Declaration.” This was an obsession of his during the deliberations of the Assembly’s Legal Committee. The U.S. Committee responded by seeking to add prominent members of the legal profession and deans of law schools to its membership to maximize an all-out effort to counter or neutralize the ABA.

When the U.S. Committee met on September 30, 1949, it won the agreement of a prominent New York judge, Robert Patterson, to serve as chairman of its newly created Legal Advisory Committee. In attendance for the first time was Roger Baldwin, a legendary figure in the human rights field, having founded the American Civil Liberties Union two decades earlier and then later established the International League for the Rights of Man in 1942. Baldwin could provide both luster and leadership.

An obsession bordering on paranoia about the tactical need to sever any linkage between genocide and human rights continued to consume Lemkin and color his recommendations. At an October 18 meeting regarding the materials and documentation Judge Patterson would be provided for his testimony to the Senate, in keeping with Lemkin’s apparent insistence, he was advised that “Genocide should be considered by this [Legal] Committee as quite apart from ... association with Human Rights and Civil Rights.”

At Lemkin’s suggestion, the next committee meeting, held on November 22, focused on a proposed letter to Secretary of State Dean Acheson urging that the Department plan an all-day conference devoted exclusively to genocide. The letter also recommended that “for tactical reasons” the State Department maintain in its “public presentation” a “complete separation of the Genocide Convention from human rights and civil rights.” Lemkin’s priority had clearly become that of the committee. Later, on December 26, 1949, Johnson received a letter from Lemkin at Yale Law School bitterly complaining about a legal brief submitted in August 1949 by Rosenberg on grounds that it was “detrimental to ratification because it confuses genocide with human rights and minority rights.” Rosenberg was further chastised for having “no right to submit [the brief] in the name of the Committee.” There is no record of what the Rosenberg brief contained.
By the end of 1949, the U.S. Committee, cochaired by
Cavert and Mahoney of the two principal Christian religious bodies, was prepared to submit a formal brief on the Genocide Convention to the five-member subcommittee of the Senate Foreign Relations Committee chaired by Senator Brien McMahon. The brief, formally submitted on January 19, 1950, was actually prepared by the powerhouse Legal Advisory Committee chaired by Judge Robert Patterson. Among its members were A. A. Berle, Allen Dulles, Judge Joseph Proskauer, Dean Wesley Sturges (of Yale Law School), and a half dozen other stellar legal or judicial figures.

An appendix to the brief listed twenty-two nongovernmental organizations "supporting ratification of the Genocide Convention." These included all the major American Jewish organizations from the American Jewish Committee to the B’nai B’rith, the AFL and the CIO, all the major veterans organizations from the American Legion to the AMVETS, secular and religious women’s organizations, major Protestant church bodies and secular Catholic organizations, the NAACP, and the Bar Association of the City of New York. The popular base for the brief was obviously enormous.

Running approximately 9,000 words, the entire brief carried Lemkin’s intellectual imprint, though it cited him only once. But that one citation was critical: it was an expression of Lemkin’s thesis that genocide has nothing to do with race riots and lynching, an argument made by the ABA in its attempt to demonstrate that treaty ratification would bring such crimes under federal power. The brief sharply rejected the contention that the specified race episodes are equivalent to genocide on grounds that “intent to destroy” an entire religious, racial, or national group is at the heart of genocide; the episodes lack such “intent.”

To document their thesis, the drafters of the brief carried the following in a footnote: “Dr. Lemkin, the originator of the Genocide Convention, has dealt with the question of intent in an article reprinted in the Congressional Record.” Cited was an insertion by Congressman Emanuel Celler on March 3, 1949. The Lemkin article, entitled “The UN Genocide Convention,” had stressed that the act of killing is “not enough”; for genocide to occur, the “murders must be committed as part of a plan to destroy the given groups.” The illustration of genocide provided was the massacre of more than 1 million Armenians by the Turks.

The U.S. Committee’s brief targeted the arguments that had been made by the ABA, and its counter-arguments were naturally made in a highly legalistic manner. There were
five key points in the Committee’s brief. First, the ABA perspective, in essence, rejected the use of treaties for advancing international law, thereby “tear[ing] down the moral leadership of the United States in the postwar world” and, thus, playing into the hands of the Soviet bloc. Second, that perspective denies “the lesson of history that domestic atrocities are the prelude to foreign aggression.” This much-quoted statement of Secretary of State George Marshall made at the Paris General Assembly, linking the internal and the external, was repeated as evidence.

Third, the brief hammered home the thesis that genocide is an international crime and has a direct impact upon many nations through forcing dislocation and migration of peoples, generating unrest and sparking tensions that lead to conflict and war. Thus the international repercussions of genocide transcend both moral and domestic concerns and forcefully impinge upon a country’s foreign relations, making a treaty to deal with it indispensable.

The two final points concerned the treaty’s constitutionality. The brief emphasized that treaty-making power is intrinsic to the U.S. Constitution and does not affect or weaken state power as the ABA argument suggested. On the contrary, the judicial authorities of the United States have upheld even the right of the United States to use the treaty power for protecting migratory birds, let alone all to confront “offenses against the Law of Nations.” Among such “offenses” are slavery, the opium trade, obscene publications, and traffic in women and children.

The fifth and crucial final thesis in the brief was the rejection of the argument that the treaty transgressed state law by making murder, through treaty, a federal crime. Here Lemkin’s argument was advanced to show the utter lack of relationship between the crime of individual murder and genocide. Criticism was extended to other areas that the ABA had raised. But it was in the brief’s conclusion that the U.S. Committee and their supporters in twenty-two major and large-scale popular organizations made the most telling point:

...The United States today has a position of moral leadership among the peoples of the world. That moral leadership must not be weakened. If the United States should fail to ratify this Convention, it would lose its pre-eminent position of moral leadership. 114

Throughout, the muffled voice of Lemkin could be heard.
Now, once again, his perspective was made explicit: "The Convention is not to be classed as one for the protection of human rights, but for the preservation of international peace."

Lemkin was keenly—it must be confessed, overly—sensitive to the fears of southern senators and their supporters that the lynching of blacks or other racist brutalities might bring a ratified Genocide Convention into play against the United States. Article I had defined genocide as an act committed with intent "to destroy, in whole or in part," a racial, ethnic, or religious group. The phrase "in part" had become the focus of attention. Could it mean a tiny or small number of killing incidents? Lemkin vigorously sought to diminish that fear. Thus in 1950 he wrote the following to the Senate Committee on Foreign Relations: "the destruction in part must be of a substantial nature so as to affect the entirety." He even proposed that an "understanding" might be attached to ratification that "the Convention applies only to actions undertaken on a mass scale and not to individual acts even if some of these acts are committed in the course of riots or local disturbances." Though Lemkin was obviously motivated in significant measure by fear of offending the powerful constituency of southern senators, the argument was not mere moral casuistry on Lemkin’s part. The brutalities committed against African Americans—while outrageous and deplorable—clearly did not fall into Lemkin’s definition of genocide.

While the brief prepared by Lemkin’s distinguished U.S. Committee was valuable, more important politically was the testimony of the Truman administration. Delivered by Deputy Under-Secretary of State Dean Rusk, it emphasized two major points. First, in addition to the value of the treaty itself, ratification was essential to "demonstrate to the rest of the world that the United States is determined to maintain its moral leadership in international affairs." Second, Rusk noted, ratification would indicate that the United States intends "to participate in the development of international law on the basis of human justice." The two themes—moral leadership and international law—stood at the core of America’s foreign policy during and immediately after World War II.

Still, the Senate subcommittee had to hear the negative testimony from the American Bar Association challenging the view of the government and the bulk of the NGO community. They carried the sounds of isolation and insularity. More significantly, they carried weight with the Senate—a body comprised largely of lawyers. The testimony of the ABA focused upon two arguments. One argument took its inspira-
tion from Charles Evans Hughes, a former U.S. chief justice, who had contended that the treaty-making power of the executive must be used only “with regard to matters of international concern.” From the perspective of the ABA, genocide and other human rights issues were essentially domestic matters and, therefore, did not meet the relevant test as to whether the Genocide Convention is “properly the subject of negotiations with a foreign country.” This argument failed, however, to take account of the specific constitutional provision that Congress has the power “to define and punish offenses against the Law of Nations,” and genocide had been firmly declared to be an offense against international law.

The second major argument of the ABA related to the federal character of the United States and to the balance of power between the federal government and the states. ABA critics of treaty ratification pointed to the fact that murder was a state crime and, therefore, by making genocide a federal crime through treaty ratification, the balance of power would tilt toward the federal government. Strikingly, when Congress later enacted legislation in the civil rights field in the 1960s broadening the scope of federal authority in dealing with violence, the ABA continued to hold its earlier narrow perspective.

In May 1950, several months after the hearings, the Senate subcommittee reported favorably on the Genocide Convention. But the full Senate Foreign Relations Committee never got a chance to act upon its subcommittee’s favorable recommendation. A major and unexpected event overseas had intruded itself, deeply affecting American politics including action on the McMahon’s subcommittee decision. One month after the subcommittee vote, Communist North Korea launched an invasion of South Korea, ushering in a new era that would profoundly impact the fabric of American society. The Korean conflict unleashed powerful xenophobic forces, significantly bolstering McCarthyism and the widespread anticommunist witch-hunt in numerous political and cultural quarters. Resurgent nativism buttressed the traditional isolationist view that the Genocide Convention and other international human rights treaties would undermine American sovereignty.

As early as March 1950, Lemkin was anticipating difficulties. On March 23, he reported to his U.S. Committee that there was basic opposition to ratification from the senators in the South and even from some in the North on constitutional issues. By the late fall, he was beginning to utter warnings. He
told a U.S. Committee meeting on October 31 that the Genocide Convention "would not have the necessary force without American participation." He had become aware that his strategy of seeking to separate human rights issues from genocide had proved a failure. The ABA, he acknowledged, would not accept any "understanding" along such lines. Whenever the group was thwarted by one argument, it simply shifted to another. Lemkin commented on the ABA's posture in this way: "If somebody does not like mustard, he will always find a reason why he doesn't like it."116

Nativism and provincialism were by no means alien to the senators sitting on the subcommittee or its parent body, the Senate Foreign Relations Committee. In addition, a certain degree of anti-Semitism and antiforeignism was present in the thinking of a number of senators and found reflection in their perception of Lemkin, whose aggressive lobbying was considered offensive. These negative views did not appear in the proceedings of the subcommittee or in the public comments of the senators. Instead, they were articulated in executive sessions of the Senate committee that were not published until 1976, more than twenty-five years after the ratification hearings.117

Particularly revealing were the observations of the prominent Republican senator from New Jersey, H. Alexander Smith, a member of the committee. He said that he and others were troubled by the definition of the "new idea" of genocide, even if that "new idea" had been around since 1944. Far more distressing was Smith's open complaint that the "biggest propagandist" for the Genocide Convention was "a man who comes from a foreign country and who speaks broken English." No colleague or reporter ever observed that Lemkin spoke in "broken English." On the contrary, his English, if always spoken with a heavy accent, was impeccable in terms of syntax and grammar. That Lemkin embodied certain stereotypic ethnic traits that were deeply distasteful and offensive to Smith was evident. He told his colleagues in the committee that there were "many people who have been irritated to no end by this fellow running around."118

The New Jersey senator, of course, would not want to acknowledge that he was motivated by bigotry; on the contrary, he said, he was "sympathetic with the Jewish people," but that "they ought not to be the ones who are propagandizing [for the Genocide Convention], and they are." Why Lemkin should not be lobbying for a treaty he helped draft was not explained by Smith. The State Department's legal adviser,
Adrian Fisher, pointed out that Lemkin was a private citizen acting in accordance with his own expressed convictions. The senator was not appeased: “having a man talking broken English in the forefront” was a “mistake psychologically” for advocates of ratification.

Lemkin’s intense lobbying, so characteristic of his personality, did not sit well even with Senate supporters of ratification. The powerful Republican senator from Massachusetts on the subcommittee, Henry Cabot Lodge Jr., suggested during the hearings that Lemkin had “done his own cause a great deal of harm.” Even McMahon and Theodore Frances Green, Democrat of Rhode Island, held that Lemkin was “the least plus quantity” for ratification. Significantly, Lemkin, the leading authority on genocide, was not called to testify before the subcommittee, and he experienced this rejection as a traumatic personal setback. Hohenberg, the Pulitzer administrator, later said: “He had hoped that he could persuade the United States Senate to adopt his compact. After all, he had proved that one man could change the United Nations; why not the U.S. Senate?”

The behind-doors bigotry in the closed hearings was hardly the end of the story. During hearings by the Foreign Relations Committee on the Genocide Convention thirty-five years later, the representative of the extremist Liberty Lobby, which had regularly condemned the Genocide Convention, prevailed upon Senator Jesse Helms to print the conclusion of a book denouncing both Lemkin and the treaty in the hearing’s minutes. The book, James Martin’s The Man Who Invented Genocide: The Public Career and Consequences of Raphael Lemkin, challenges Lemkin’s account of Axis Rule as “inflammatory rhetoric.”

By the end of the year, it was becoming apparent that popular enthusiasm for the treaty was waning. The minutes of a meeting of the U.S. Committee on December 12 reported that “little response was received to the memo sent out by the group inviting organizations to join in the final drive for Senate ratification of the Genocide Convention.” Representatives from several new organizations, mainly Jewish, were invited to attend; undoubtedly, they were expected to energize what had become a torpid campaign. Among the guests were officials from B’nai B’rith, the American Jewish Committee, the Anti-Defamation League, and the National [Jewish] Community Relations Advisory Council (NCRAC).

Whether increased activism might have altered a discouraging picture of Senate passivity—the full Foreign Rela-
tions Committee made no effort to act upon its subcommit-
tee’s favorable action—was uncertain. When the U.S. Com-
mittee on Genocide called its next meeting on January 10,
1951, it chose to invite representatives from a large number of
NGOs—no fewer than thirty-five, more than three times the
representation at any previous meeting. The timing was cer-
tainly appropriate. Two days later, on January 12, the Geno-
cide Convention would come into force. If the coincidence
was seen as inspiring and encouraging, the minutes do not
reflect a resolute determination to prevail in the Senate. Eve-
ryone agreed that mass membership organizations must some-
how be mobilized in a major pressure campaign by their re-
spective grass roots. Members would write letters and directly
lobby senators seen as essential for passage, and individual
senators would be polled on their positions regarding treaty
ratification.

But precisely at this critical moment, the acting chair-
man of the U.S. Committee, Willard Johnson, who had been
from the beginning its general secretary, suddenly announced
that the organization lacked “adequate personnel and finances”
in order “to conduct a proper campaign.” Why this was the
case after two years of almost monthly meetings was not made
clear. In this uncertain and demoralizing atmosphere, the
American Jewish Committee stepped forward and offered to
make available to the U.S. Committee on genocide the full-
time services of a professional staff member, Ralph Bass, one
of three staffers from the AJC in attendance. Ethel Phillips, a
colleague of Bass’s who introduced him, advised the others
that all the constituent organizations must provide him
“wholehearted assistance.”

**Setback and the New U.S. Policy**

How far that assistance went is not known. No
further U.S. Committee meeting records are to be found in the
Lemkin file at the University of Minnesota Social Welfare
History Archives. The only other record is that of a meeting
of a strategy subcommittee held on February 13 chaired by
Roger Baldwin. Uncertainty was expressed about whether
Senator Tom Connally of Texas, chairman of the Senate
Foreign Relations Committee, ought to be approached.
Equally uncertain was the reaction to a proposal to encourage
President Truman to use his political muscle. The minutes
record that during the meeting Lemkin telephoned from New
Haven expressing regret that illness kept him from attending.
He did have a recommendation to offer: high officials of the Federal Council of Churches should write to President Truman urging him to influence the Senate. In the same call Lemkin related that he was working on a revision of the U.S. Committee’s fact sheet and would have it ready shortly. It was evident that Lemkin was not quitting the fight. Despite the doubts and general pessimism, he continued to seek the most effective lobbying tactics and offer his own labor for that effort.

Paralysis began to set in among supporters of the treaty. They were overwhelmed by a combination of McCarthyite and nativist forces. The treaty may have come into force on January 12, 1951 but the U.S. government that had played so critical a role at the UN in winning its adoption had simply dropped out of the struggle for ratification. Indeed, with the ascendancy of a new kind of isolationism that concentrated only upon the communist “enemy” in international affairs, some nativists would soon be prepared to enact legislation that would forever limit the treaty-making power of the executive, especially with respect to human rights treaties.

Senator John Bricker, Republican of Ohio, lent his name to this movement through a proposed constitutional amendment that would have dramatically reduced the historic authority of the executive to make treaties with foreign powers. A fundamental premise of Bricker’s opposition to the forces of internationalism and their presumed threat to American sovereignty was the notion that the most immediate danger emanated from the United Nations, specifically the UN Commission on Human Rights, where discussions had begun for creating legally binding covenants on human rights. Together with the Universal Declaration of Human Rights, the covenants would constitute the “International Bill of Rights,” the great hope of the Roosevelt and Truman administrations.

The new Eisenhower administration, inaugurated in January 1953, was fearful that the Bricker amendment would succeed in weakening the authority and power of the president in international relations. To undercut this strong legislative challenge, Secretary of State John Foster Dulles chose a maneuver aimed at depriving the Bricker forces of their primary raison d’être. If firm commitments were made to the Senate, as early as possible, that the administration would never contemplate signing a human rights treaty, let alone transmitting it to the Senate for its consent, the Bricker phenomenon might disintegrate for want of a compelling agenda.

Testifying before the Senate Judiciary Committee on
April 6, 1953—only two months after the presidential inaugu-
ral—Secretary Dulles publicly promised that the Eisenhower
administration would never “become a party to any covenant
[on human rights] for consideration by the Senate.”¹²² No
longer would the United States accept “formal undertakings”
such as treaties in the human rights area. If human rights were
to be promoted by the United States, it would be by “methods
of persuasion, education and example.” There was consid-
erable irony in Dulles’s undertaking this initiative. He himself
had been an advocate of the adoption of both the Genocide
Convention and the contemplated International Covenants on
Human Rights in 1948 when he served on the U.S. delegation
to the UN General Assembly. And, as noted, he had been
strong backer of Lemkin personally and had aided his efforts
to win adoption of an effective Genocide Convention. Now,
suddenly, the thrust of the Roosevelt and Truman administra-
tions for enlarging and strengthening the rule of law world-
wide partly through binding human rights treaties appeared to
have been reversed.

Dulles’s testimony infuriated Lemkin. Five days after
the secretary of state’s appearance before the Senate Judiciary
Committee, Lemkin prepared a draft letter that chastised
Dulles for having “created grave concern in this country and
abroad.”¹²³ The letter also pointed out how Dulles’s testimony
stood in sharp contradiction to his published statements, most
notably in the New York Times of September 10, 1949, where
he had severely chastised the ABA’s position on the Genocide
Convention. Lemkin also described in some detail how con-
cern for human rights, including “opposition to genocide,” had
very much been part of America’s foreign policy. The draft
letter then made a special plea: “I beseech you, therefore, Mr.
Secretary, to reconsider your position and to urge the Senate
to ratify the Genocide Convention.”

Perhaps nowhere else is Lemkin’s lack of political so-
phistication more evident. His appeal was based on the naive
notion that logic and consistency can be counted upon to
trump more immediate political considerations in the decision-
making process of high government officials. Of course,
Dulles’s statement was hardly a one-man decision. It reflected
serious political considerations as well as a crucial weighing of
an action that might prevent the evisceration of the treaty-
making authority of the executive. As it was, the Bricker
amendment lost by only one vote in the Senate.

What Lemkin failed to grasp was the resurgent power
of America’s right wing, with its traditional isolationism and
obsession with anticommunism. Pleading with the secretary of state could not reverse these trends; nor could legal or rational argument or even antitotalitarian arguments. The struggle for the rule of law and a resumption of America’s leadership on critical moral issues would have to wait a lengthy period. For the founder of the Genocide Convention, it was too long a wait.

The radical and unexpected turn of events prompted in Lemkin a profound sense of anxiety. Failure of the Senate Foreign Relations Committee to act upon its subcommittee’s favorable recommendation meant that the Senate as a whole would not provide its “consent” and, thus, the United States would not become a contracting party to the Genocide Convention. A private letter to a friend and high Democratic Party official on February 12, 1951, exactly one month after the treaty had come into force, revealed his innermost fears: “Ratification by the United States is of particular importance. Without it, the Genocide Convention might well share the fate of the old League of Nations.”

The recipient of the letter was Mrs. India Edwards, chairperson and director of the Women’s Committee within the Democratic Party leadership. Reference to the collapse of the League of Nations demonstrated Lemkin’s keen awareness of how the absence of the United States from the League of Nations structure helped eviscerate its ability to prevent war and thereby hastened its collapse. Might not the absence of the United States from the list of contracting parties to the Genocide Convention result in the UN suffering the same fate, thereby permitting mass killings of ethnic, racial, or religious groups once again? By raising the question, Lemkin displayed his clear understanding of the importance of power. Without the exercise of American power, future acts of genocide might be impossible to prevent. It was a self-evident truth to Lemkin that institutions serving ethical aims must have the force to function effectively.

Even as Lemkin expressed deep uncertainty about the future of the Genocide Convention without U.S. ratification, he refused to withdraw from his lobbying effort. The private letter to India Edwards was intended to motivate her to activate women and Democratic Party officials on the subject. No doubt with his encouragement, James Rosenberg of the U.S. Committee wrote strong letters on May 1, 1952 to both the head of the National Council of Churches and the secretary of the CIO, James Carey. The letters urged them to press for a plank on Genocide Convention ratification in the political
platforms of the Republican and Democratic parties. The letter is to be found in the Lemkin archives. In the same archives is another letter on the same subject by Rosenberg to John McCormack, chairman of the Democratic Party platform committee. The problem was that the leverage of Lemkin and his NGO colleagues was not particularly strong with either the Republican Party or the southern wing of the Democratic Party.

Lemkin’s Anticommunist Thrust

To rectify his political weakness and spur U.S. ratification of the convention, Lemkin suddenly lurched toward expounding anticommunist and anti-Soviet themes, the classic leitmotifs of the unfolding cold war, which he had previously eschewed. This ideological shift was no doubt part of an attempt by Lemkin to demonstrate his patriotic credentials in the face of growing xenophobic public sentiment. More importantly, the shift provided a rationale for U.S. ratification because it would enable Washington to tarnish the Soviet image as a practitioner of genocide against the various nationalities comprising the USSR and the Soviet empire in Eastern Europe.

Lemkin’s historical interest in cultural genocide provided the intellectual underpinning that facilitated this reorientation. Preservation of cultural as well as religious artifacts, intimately linked to culture, had been a cornerstone of his viewpoint. Any threat to the cultural integrity of an ethnic group was seen as bordering on genocide, even if the group’s physical integrity was not at stake. Given the Soviet Union’s continuous attempts to subject its many minorities as well as sizable nationalities to an overriding Soviet nationalism, Lemkin’s thesis could hardly fail to target Soviet practices.

Among the examples of ruthless Soviet repression of its nationalities—especially known in the West—were the Lithuanians and Ukrainians. Outside of the Soviet Union, two nations in East Europe, Poland and Hungary, whose major policies were determined in Moscow, were similarly held up in the West as examples of communist repression. It would not have gone unnoticed by the shrewd Lemkin that these ethnic groups carried demographic and electoral weight in the United States. The first of the U.S. ethnic groups with which he dealt was the Lithuanians, who had a sizable constituency in Ohio, the state from which Senator John Bricker hailed. Politics, ratification, and Soviet policies toward its nationali-
ties were all intertwined in a letter Lemkin wrote to Governor Frank Lausche of Ohio in June 1951 in which he stressed the need for U.S. ratification of the Genocide Convention. "The Soviets," he warned, "should not be allowed to kill victims and then to kill a law that might protect the victims." Lemkin sent a copy of the letter to the editor of the *Cleveland Plain Dealer*, Louis Seltzer.

That same month, as Lemkin’s correspondence on June 7, 1951, indicates, an exhibit on Soviet “genocide” against Lithuanians was to open in Cleveland, sponsored by the Lithuanian-American Council. Lemkin was invited to appear at the opening of the exhibit and at a press conference on June 16. An undated letter of Lemkin’s to Governor Lausche informed him about the exhibit on “genocide” in Lithuania and added: “the material on extermination of the captive nations is appalling.” His crucial political point was then driven home: Lausche, a Democrat, was urged to write to President Truman, pressing him on the need to accelerate the push for Senate ratification of the Genocide Convention. Such an act, observed Lemkin, would level the gravest moral condemnation in the cold war against the Soviet Union.

Lemkin’s correspondence with the head of the Lithuanian-American Council, Pius Grigaitis, was especially warm and proved financially helpful. At a time when Lemkin was in desperate need of funds—he was no longer teaching at Yale Law School—the money must have been especially welcome. Grigaitis sent him a modest amount in 1952 as an advance for a booklet on “genocide in Lithuania.” Additional funds came in November 1953 and Grigaitis thanked him for “your unceasing efforts” on behalf of the millions subjected to the “unscrupulous policy of genocide.”

When launching his initial cooperative efforts with the Lithuanians in June 1951, Lemkin also pursued other American ethnic groups with brethren in Eastern Europe. On July 17, 1951, he wrote to the president of the Polish Women’s Alliance, headquartered in Chicago, urging lobbying on behalf of Genocide Convention ratification. Several days later, he sent a similar letter to the head of AHEPA, a Greek-American society. Shortly afterward, Lemkin sent a telegram to the White House recommending that the United States bring charges under the Genocide Convention against the Soviet Union and Soviet-dominated countries of East Europe. The State Department chief of public liaison acknowledged receipt of the telegram, but there is no evidence that it exerted any impact.
During 1952 collaboration between Lemkin and Ukrainian-Americans began to blossom. In April, he was invited by a Ukrainian student group to attend its national conference at Columbia University. The group would be "greatly honored" were he to participate, the invitation read. The following year, he agreed to participate at a rally of the leading Ukrainian-American organizations, to commemorate the victims of the 1932-33 famine in the Ukraine. Modest sums of money were provided to him to cover undefined expenses. His collaboration with the Ukrainians continued into 1954, as indicated in a letter by Lev Dobriansky, the head of the Ukrainian Congress Committee of America.

Cooperation with Polish-American and Hungarian-American groups paralleled his efforts with the Ukrainian-Americans. Particularly noteworthy was Lemkin's warm correspondence with Monsignor Bela Varga, the former president of Hungary who now, as an exile, served as president of the Hungarian National Council in the United States. Varga was a vigorous supporter of Lemkin's initiatives and helped him seek links with the important Catholic NGO, the Knights of Columbus. The relationship was undoubtedly a factor in Lemkin's vigorous defense in 1956 of a Cuban draft resolution in the UN General Assembly denouncing the Kremlin's crushing of a revolt in Budapest against communism. He called the Cuban initiative an effort "to preserve the life of the Hungarian nation." He intended to have his planned three-volume "History of Genocide" carry a chapter on Soviet repression in Hungary.  

Lemkin's intense anticommunism won him plaudits in the various East European ethnic communities in the United States. The prominent coordinating body of these communities, the Assembly of Captive European Nations, wrote to him on December 7, 1955: "Our Assembly is indeed very grateful to you for your work on the question of genocide." Nonetheless, exploitation of cold war symbols, including a vituperative anticommunism, did not win Lemkin the politically meaningful right-wing support he sought. Genocide Convention ratification was as far away as it had been in 1950, if not more so. Isolationism was the dominant motif, and international human rights were considered anathema in whatever form they were presented. A trailblazer in the area of international law, Lemkin badly miscalculated the nature of American politics. His blatant anticommunism, perceived in part as a political ploy to win ratification, evidenced his lack of political sophistication. But it also demonstrates that his conception of genocide had
a universalistic character and was not exclusively or even primarily focused upon the Holocaust and the extermination of Jews.127

Lemkin’s correspondence with Jewish organizations in the fifties does not appear to have been nearly as extensive as his impressive correspondence with Lithuanian, Ukrainian, Polish, and Hungarian organizations. He took the allegations of cultural genocide by the Soviet Union against these groups and nations very seriously, and he pressed the U.S. government to raise their plight at the UN. In contrast, Lemkin appeared to be unaware or indifferent to the Kremlin’s destruction in 1948-49 of Soviet Jewish cultural institutions like the Yiddish press and publications and the world-famous Moscow Yiddish Theater. With the Yiddish school system all but wiped out in previous years, there were few mechanisms left to maintain or continue Yiddish culture. This cultural destruction would be accompanied in 1949 with a vitriolic anti-Semitic propaganda campaign, masquerading as “anticosmopolitanism.” Lemkin’s correspondence and the record of his activities during that period indicate that he did not respond to this form of cultural genocide.

On one occasion only was he stirred to action on the Jewish question in Soviet-ruled Eastern Europe. His intervention was prompted by two developments: (1) the vicious anti-Zionist trial in Prague, Czechoslovakia, in 1952; and (2) the notorious “Doctors’ Plot” unleashed by the Kremlin in January 1953.128 Writing for the ADL Bulletin in January 1953, Lemkin called the Czech trial, in which eleven of fourteen defendants were Jewish and were found guilty, as “judicial murders” that “threatened the entire Jewish population behind the Iron Curtain.” When the Prague court verdict of guilt was followed by the arrest in Moscow of nine doctors, six of whom were Jewish, it demonstrated, Lemkin wrote, “madness” that bordered on the “truly genocide in intent.” While Lemkin did not elaborate upon the vast anti-Semitic propaganda in the Soviet media that drove the campaign, he still saw it as “a unified conspiracy to destroy the Jewish communities in all of Eastern Europe.”

Analysis and commentary were not enough; action by the international community was required:

The United Nations should therefore be called upon to investigate the situation in the Soviet [Union] and its satellites with the view of establishing whether genocide against the Jewish communities is being committed. If it is, the United Nations should be
called upon to apply sanctions against those countries violating ... the Genocide Convention.

To expect UN action was scarcely realistic, and his appeal once more underscored Lemkin’s often “unworldly” perspective. A profound pessimism would seize Lemkin, as it had many others at the time. His article concluded with this warning: “the fate of Jews behind the Iron Curtain, many of whom are survivors of Nazi genocide, rests with the United Nations.” Had the fate of Jews in the Soviet Empire truly depended upon the UN, only a most dismal outcome could have been expected. Fortunately, the sudden death of Stalin on March 5, 1953 ended the unfolding horror.

Aside from the ADL article, there is little in the Lemkin archives to challenge the view that his principal preoccupation with presumed cultural genocide focused almost entirely on non-Jewish ethnic groups in Eastern Europe. Illuminating this extraordinary phenomenon is a letter written by Lemkin at the end of January 1953 to arguably the single most important Jewish leader in the United States, Rabbi Abba Hillel Silver of Cleveland. Nothing was said in the letter about possible Jewish genocide behind the Iron Curtain, a question that undoubtedly would have interested Silver. No reference was made to the Prague trial or the “Doctors’ Plot.” Instead, knowing that the rabbi was an active Republican and close to the newly elected president, Dwight Eisenhower, Lemkin urged Silver to raise the issue of genocide against “the communist nations” of Eastern Europe.

One of the last comments made by Lemkin before his death was: “I feel that I do not belong to one nation or religion.” What preoccupied Lemkin was the urgent need for U.S. ratification of the Genocide Convention, and he perceived anticommunism as a useful tool in influencing the U.S. president, particularly in Ohio with its sizable Eastern European ethnic communities. As noted, Senator John Bricker of Ohio was conducting an intensive campaign to limit the treaty-making authority of the executive. Despite occasionally exhibiting some political shrewdness, Lemkin’s grasp of American political realities was not too great. Only a few months after he had written to Rabbi Silver, Eisenhower’s secretary of state pledged to Bricker’s supporters that the administration would not bring any human rights treaty to the Senate.

In Lemkin’s bitter draft letter to Dulles on the latter’s new commitment to the Senate, he gave expression to his perception of why the cold war and the struggle against the
Soviet empire made it ever more urgent to ratify the Genocide Convention, not to retreat from that responsibility. The nature of “totalitarian regimes,” argued Lemkin, makes “genocide...a real threat.” It was rare to find the phrase “totalitarian regime” in Lemkin’s lexicon. With the world struggle against Soviet communism now dominant, the term flourished as the standard epithet for the states of the communist empire. Lemkin argued that Americans had more than an abstract moral stake in the cold war struggle. After all, Americans “are connected with ties of ethnic origin with people who have been subjected to genocide in other countries.” The implication was evident: it was in America’s current strategic and political interest, and not solely a matter of moral concern, to ratify the Genocide Convention. Increasingly, if rather naively, Lemkin would seek to exploit the cold war to spark interest in the Genocide Convention.

The Fight for Universal Ratification

Despite the profound disappointments he experienced in conjunction with the ratification campaign, Lemkin never completely lost hope; nor did he abandon the struggle for universal ratification of the treaty. From January 1951 to the end of his life he conducted a vigorous letter-writing campaign to achieve this aim. He initially attempted to amortize his efforts through working with a broad-based coalition of international nongovernmental organizations. A key NGO with which he had had a close working relationship was the World Federation of United Nations Associations, headquartered in Geneva. As early as February 12, only a month after the Genocide Convention became operational, he wrote to the NGO’s secretary-general, John Ennals, with whom he was friendly, asking him to mount a major effort in all the countries in which he had branches to campaign for ratification.

In his letter to Ennals, Lemkin explained why he believed it was of such importance to convince a sizable number of states to ratify. “If it [the treaty] is accepted soon by a large number of states,” he wrote, “its preventive force from now on will be very great.” The argument rested on Lemkin’s thesis that the chief value of the treaty lay in its power to prevent genocide in the first place, rather than halt it once it had started or to punish its perpetrators. While Lemkin sought assistance in winning ratifications per se, he could also be very concrete in targeting particular states, a reflection of his realistic perception of strategic considerations. Thus he asked
Ennals to concentrate upon India and Pakistan. If either of these major countries would ratify, he said, “a great number of Asiatic powers will follow.” Asia, which embraced a large number of states, had provided until then but a tiny number of ratifying states.

A short time after the letter to Ennals, Lemkin wrote to Rabbi Irving Miller, president of the World Jewish Congress (WJC), which served as a coordinating body for Jewish communities throughout the globe. Miller was asked to intensify lobbying efforts everywhere upon respective governments. Even if representing small minorities in numerous countries, as a highly disciplined NGO the WJC could be useful in lobbying efforts.\(^{131}\) What was particularly helpful in mobilizing Jewish support was the fact that Israel had ratified the treaty in March 1950. Israel’s implementing legislation of the treaty would enable its agents to seize Adolf Eichmann in Argentina a decade later.

Women’s groups formed a third potentially valuable partner in the alliance. In May 1951 Lemkin wrote to a high-level contact in the Chilean Ministry of Foreign Affairs, Ana Figueroa, who, he knew, would be playing an important role in organizing and preparing the agenda of an assembly of women in Latin America. He recommended that ratification of the Genocide Convention should occupy a major place on the agenda.\(^{132}\) He also emphasized that the conference should avoid linking genocide with human rights issues. Sensitive to concerns of women, he reminded Figueroa that Greek communist forces had kidnapped 28,000 Greek children during the civil war then raging, and he suggested that the conference treat this as genocide.

As late as spring 1958, he urged the International Federation of University Women, scheduled to assemble at Vassar College in the summer, to seek to ascertain what, if anything, the respective governments of the delegates were doing to ratify the Genocide Convention. He even drafted the letters that the delegates might send. Letters to NGOs were not intended to preclude his direct personal lobbying with governments. Characteristic were letters written by Lemkin in 1952 to the Indonesian ambassador to the United States, L. N. Palar, to the secretary of the president of Mexico, and to an academic acquaintance at the University of Vienna with important governmental contacts in Austria.\(^{133}\) Palar was asked to forward to his government a memorandum on genocide prepared by Lemkin and to recommend ratification. In his letter to the Mexican official, Lemkin identified himself “as
founder of the world movement to outlaw genocide.” It was the first time Lemkin identified himself in this manner. As his was not a household name, the tactic was probably useful.

That Lemkin’s sense of mission was indefatigable is apparent in a letter to “Eleanor”—presumably Eleanor Roosevelt—dated February 11, 1954. Notwithstanding “the mood of the Senate,” he wrote: the struggle for “ratification on a world basis must be continued....” If “nobody is committing genocide in this country,” he added, “a great deal of genocide is being practiced now behind the Iron Curtain.”

Ratification by the Federal Republic of Germany was seen by Lemkin as particularly important for its symbolic value and, in 1954, he mailed off a host of communications to legislative and judicial contacts in Germany and to government officials pressing the issue. That year Bonn responded favorably to the initiative. At the same time, he wrote to a Uruguayan member of the International Court of Justice whom he knew well, urging him to use his influence with the regime in Montevideo to get it to act. He also wrote to a prominent feminist in Japan in April 1955 seeking her assistance in making the promotion of the Genocide Convention a priority with women’s organizations. Shortly afterward, Lemkin wrote to Thailand’s ambassador to the UN asking his government to ratify. Italian ratification was also seen as symbolically important and, in 1956, he pressed officials close to the president of Italy on the issue. Lemkin also wrote to the Jewish lord mayor of Dublin, Robert Briscoe, asking him to help in winning ratification. He told Briscoe that he had already met in New York with the country’s prime minister, who had promised him “prompt action,” yet he thought the lord mayor could help hasten things along.

The flow of letters urging ratification continued into 1957. Bonn remained a major target in terms of its adopting implementing legislation. Lemkin wrote on March 8 to both Chancellor Konrad Adenauer and State Secretary for Foreign Affairs Walter Hallstein. The letter suggested that such legislation would be significant, not only for the image of the Federal Republic but also to help it seal off the Nazi past. Several weeks later, he once again turned to Latin America with its sizable body of potential ratifying states. On March 21, he approached Uruguay; on March 26, he contacted both Chile and Ecuador through their respective foreign ministers.

That same day, Lemkin opened up his first link to Africa. He wrote to one of its leading figures, Kwame Nkrumah, prime minister of Ghana, identifying himself, once again, as
“the founder of the world movement to outlaw genocide.” Nkrumah was urged to ratify the “most humanitarian of all treaties.” The obvious significance of Ghana as a potential breakthrough African nation prompted Lemkin to pursue that country. On January 8, 1958, he wrote to his contacts in Ghana urging them to lobby on the issue, and then again on February 8. A personal appeal to Nkrumah himself followed on March 22, 1958. Stunningly, on December 24, 1958, Ghana ratified the Genocide Convention.

Black Africa was not the only focus of Lemkin’s attention. On March 28, 1958 he wrote to his “distinguished friend,” Ambassador Habib Bourguiba at the Tunisian embassy in Washington, D.C. Noting that the newly independent Arab states of North Africa were scheduling a conference in Rabat, Morocco, in May, Lemkin recommended that a resolution be approved there endorsing the Genocide Convention. A special reason was offered for support of the treaty: it constituted “a basic international instrument in the struggle against colonialism.” Included in the letter was the draft of the resolution that Lemkin hoped Tunisia would introduce. Similar letters were sent the same day to the Moroccan ambassador in Washington and to the Sudanese foreign minister. Tunisia had ratified the Genocide Convention on November 29, 1956 and Morocco did the same fourteen months later.

In the absence of U.S. endorsement, the democracies of Western Europe remained the Genocide Convention’s strongest bloc of supporters. But a legal question growing out of the definition of genocide as adopted in December 1948 now returned to haunt Lemkin in both the United Kingdom and the Netherlands.

In the two countries, the absence of “political” genocide was seen as a serious drawback to the treaty. Lemkin viewed the Dutch government’s attitude as crucial because he recognized that he could do little to affect British attitudes. On May 2, 1957, Lemkin wrote to Dr. Elizabeth Pelletier, a high official in the Dutch Ministry of Foreign Affairs with whom he had had prior contacts. His response to the treaty’s failure to include political groups was somewhat similar to the way the Spanish high court would deal with the question forty years later when it approved the call for the arrest in Britain of the former Chilean dictator, Augusto Pinochet, on charges of genocide. Lemkin wrote that “political groups” are “part of national groups” and, therefore, there was no need for the treaty to refer specifically to “political groups.” He went on to note that the Genocide Convention “specifies the destruction
of a nation in part, which means the destruction of the political leadership of a nation.” How effective Lemkin’s argument was at the time is not entirely clear; but the Netherlands did not ratify the treaty until the end of 1966.

Asia was not unimportant—its size and the number of countries comprising the continent certainly attracted Lemkin’s interest—as is evidenced by the emphasis he placed upon India and Pakistan from 1946 onward. His recommendation to John Ennals in 1951 provided additional strong testimony of his perspective. On May 10, 1958, he sent off a letter to the foreign minister of India, K. Mehta, reminding him of how his government had played a crucial role in November 1946 in getting genocide on the agenda of the UN General Assembly. What Lemkin sought now was a repeat of its earlier action. New Delhi responded favorably: one year after his plea, in August 1959, India ratified the Genocide Convention.

The same year that Lemkin pressed India, he recalled in a letter to a contact of his in Paris that he felt responsible for Iran’s ratification of the Genocide Convention in August 1956. According to the letter dated January 9, 1958, Lemkin claimed that “through close friends in Teheran, I was able to obtain” Iranian ratification. Regrettably, he did not identify who “the close friends” were and how they achieved the goal he sought from them. He took special pride in what Teheran’s ratification might mean for the persecuted Bahai minority. As he put it, Iran’s action resulted in “great jubilation of the members of the Bahai faith who were in dire need, as you know, of protection.” The Paris recipient of the letter was a good friend, Laura Barney-Dreyfuss.

The year 1958 proved to be especially productive. Besides Ghana, Lemkin selected several other countries for vigorous lobbying by means of letter writing, including Austria and Finland. Austria, which had been tied to Hitler’s Germany through the Anschluss and which was now politically neutral, was seen by him as having considerable symbolic value were it to become a contracting party to the treaty. A favorable vote in its parliament in late January made Austria the fifty-seventh state to ratify, and Vienna formally deposited the instruments of ratification in March.

Finland was also symbolically significant as another neutral European nation. In February, Lemkin wrote to a colleague considered one of the country’s top judicial officials, Judge Voitto Saario, seeking his help in winning ratification. Soon after, on February 20, Saario wrote informing him that the Finnish minister of justice had just recommended ratifica-
tion and that the formal documents were “now” being prepared by the Ministry of Foreign Affairs. (The documents were deposited at the UN the next year.) The closing words of Saario’s letter were noteworthy: “I wish to congratulate you on your excellent work, which has already obtained the acceptance of the majority of nations.”

In early April 1959—a few months before his death—Lemkin received a communication from the World Council of Churches in Geneva informing him that the fifty-ninth ratification of the Genocide Convention had just been deposited. The council, with which he had a very friendly relationship, then extended him its congratulations for a heroic achievement. Indeed, it was an extraordinary accomplishment; to a considerable extent the bulk of the contracting parties had been lobbied personally by Lemkin. He had won his treaty almost single-handed, as Saario noted, and he had met this enormous challenge in the course of a single decade.

During the next four decades, the number of contracting parties to the Convention increased by seventy countries, averaging but seventeen new parties for each decade, in striking contrast to Lemkin’s earlier, lone achievement. Today, the Genocide Convention remains a long way from the goal of universality, with nearly sixty states still holdouts. Indeed, among the major human rights treaties as of September 14, 2000, it is among the lowest in the number of ratifications with only 132. Only the Torture Convention, with 123 countries ratifying as of November 2000, ranks lower. And the Torture Convention was adopted as recently as 1984 and came into force in 1987, only fourteen years ago.

The treaty with the largest number of nations ratifying is the Convention on the Rights of the Child adopted in 1989 and in force since 1990, with 191 contracting parties. The next most ratified is the Convention on the Elimination of Discrimination Against Women (CEDAW), adopted in 1979 and in force since 1981; it has 165 ratifying countries. Next in number of ratification is the International Covenant on Civil and Political Rights, adopted in 1966 and in force since 1976; it has 144. The International Covenant on Economic, Social and Cultural Rights was adopted and came into force at the same time as its sister covenant; 142 have ratified.

Although the oldest UN human rights treaty, the Genocide Convention has the poorest record in obtaining ratification over the time frame of a half-century, despite the fact that it addresses the most serious of international crimes. Among the holdouts are such major countries as Japan, Indon-
nesia, and Nigeria. The latter two have had notorious records with regard to genocide in very recent times, especially Indonesia. On the occasion of the fiftieth anniversary of the convention’s adoption, Mary Robinson, the UN high commissioner for human rights, promised an intense effort to win universal ratification. She has some distance to go before reaching that goal. No doubt, Lemkin’s absence from the fray since 1959 has proved to be a critical factor.

Despair, Ill Health, and Death

Lemkin’s passionate pursuit of universal ratification of the Genocide Convention did not go unnoticed. A New York Times editorial of October 20, 1957, spoke of the “totally unofficial man ... who had been urging the Genocide Convention day in and day out...” But there were other things on Lemkin’s mind as well. He was trying to complete an autobiography that carried the tentative title “Totally Unofficial: The Autobiography of Dr. Raphael Lemkin.” As is evident, the planned title was borrowed from the Times editorial. He was also working on a planned three-volume “History of Genocide.”

It was apparent that he regarded his contemplated three-volume history of genocide as his magnum opus. The work was to be divided into “Antiquity,” encompassing nine chapters ranging from “Biblical Genocide” to “Genocide in Ancient Greece.” The section on “The Middle Ages” would encompass thirteen chapters from “Genocide Against the Albigensians” to “The Crusades.” “Modern Times” would encompass forty-one chapters from “Genocide by the Germans against the Native Africans” to “Natives of Australia.”

The American Jewish Archives at the Jacob Marcus Center in Cincinnati hold incomplete drafts of various chapters. When he expected to complete the work is not at all clear. Several of the letters he wrote to various scholars during this period indicate that he was continuing to seek documentation on genocide in the early history of such countries as India and Korea.

As Lemkin worked on the various chapters of his two major works he sought a publisher. It is clear that the times were not conducive to his initiatives. A well-known publisher of serious and academic work, John Day Company, wrote to him on February 16, 1955, stating “we cannot feel that we could successfully sell a book about the history of genocide.” The letter went on to add that it “could not sell successfully a
biography of you." The publisher believed this would be the case whether the work was a full-length autobiography or a condensed version. A similar discouraging letter about the projected history of genocide came several years later from another leading publisher, Duell, Sloan and Pearce, informing Lemkin that "it would not be possible ... to find a large enough audience of buyers for a book of this nature." 

Lemkin almost certainly experienced disinterest by publishers in his lifetime achievements and research effort as a deeply wounding personal blow. It must surely have slowed the pace of his writing, undermined his mood, and damaged his uncertain health. The unfinished manuscripts we have today are both far from complete and are in considerable disarray. His close friend and lawyer, Maxwell Cohen, no doubt reflected Lemkin's anxiety with respect to the publications when he told an interviewer in 1982: "I have had only one interest in this [Lemkin] matter and have had it for twenty-three years. I want to see the genocide volume published, the autobiography if possible and a biography of Lemkin." An effort to fulfill Cohen's wish with respect to the incomplete three-volume history and the autobiography is currently being made by Dr. Steven Jacobs of the University of Alabama in Tuscaloosa. (Dr. Jacobs also serves as the rabbi of a Reform congregation in that city.)

Lemkin's lack of success in finding a publisher was accompanied by desperate efforts to obtain funding for his research. He sought grants from the Ford Foundation and the Social Science Research Council, but there is no evidence that he was awarded anything. Only the Conference of Jewish Material Claims Against Germany provided him a modest grant to pursue his research and promote his efforts at treaty ratification. One Jewish organization, the Jewish Labor Committee, was determined to help and gave him $100 a month. And a national Anglo-Jewish newspaper, the National Jewish Post, published in Indianapolis, Indiana, went so far as to appeal editorially to all Jewish organizations to provide him with financial help. With his proud nature, it is doubtful that Lemkin welcomed such an appeal, and he apparently rebuffed one such initiative that felt to him like a demeaning act of charity.

Though Lemkin's research and vigorous campaign on behalf of treaty ratification were all consuming, they were not the only things on his mind. He sought to make everyone conscious of the evil of genocide. Thus Lemkin asked a prominent New York rabbi, Bernard Bamberger, to try to
have the term *genocide* introduced in prayer books. Rabbi Bamberger was also asked whether a common prayer against genocide might be prepared that could be used by the three major religions in the United States.\[^{145}\]

Later, Lemkin was engaged in discussions with officials at the New School for Social Research in New York to establish an institute that would study genocide from a variety of disciplinary perspectives—psychiatry, history, sociology, culture, and international law. An undated letter of 1957 briefly describes the idea and discloses some of the discussion regarding it that Lemkin pursued with Dean Saul Padover of the New School. Apparently nothing came of the idea, but Lemkin’s pursuit of it, along with his efforts to promote the special prayer, exemplify his total and undying preoccupation with the subject.

By January 1, 1958 a sense of personal desperation seized Lemkin, and it is conveyed in a private letter to a close friend in Paris, Laura Barney-Dreyfuss. The letter emphasized two points: his poor health and his precarious financial situation. “I feel more and more like a man who is spending himself physically in an accelerated pace,” Lemkin wrote, adding “I have no financial backing neither for my activities of an international nature, nor for my writings.”\[^{146}\] Of course he experienced personal gratification from the great progress being made in ratifications of the Genocide Convention, but this was severely chastened by his growing doubt that there would be a breakthrough with respect to the key U.S. ratification.

His aspirations to complete and publish the volumes he believed would constitute his historic, personal legacy to humanity were also crumbling. The world had changed radically from the immediate postwar era when dreams that the rule of law in international affairs together with the spread of human rights seemed on the verge of being transformed into reality. The puncturing of those dreams inevitably transformed Raphael Lemkin’s personal life. Interest in his extraordinary accomplishment had virtually disappeared; the press no longer sought to interview him, and references to his work vanished from the media. Especially disconcerting was the indifference of American publishers to what he had to say or think. In the course of eight short years a meteor that had blazed across the international horizon had quickly burned out and disintegrated. On August 28, 1959, Lemkin collapsed and died of heart failure.

Lemkin found it difficult to cultivate personal friends, and he had only a few in his life. His zealotry generated con-
flicts with colleagues, and his obsessive preoccupation with one subject could not help but alienate many even as it fed impressively his tireless determination to prevail. A certain arrogance flowing from his prophetic style—for example, his assertion, “God must have chosen me in some way to contribute what I can to humanity”—could not fail to be off- putting. Only a handful of people came to his funeral. By the time of his death, his name and reputation had already plunged down history’s memory hole. At the end of his life he was so poor that his friends were ordered by the owner of the building in which he rented a one-room apartment to move out all of its contents, mainly papers and books, immediately. No money was found; even his burial had to be paid for by others; the American Jewish Committee covered the cost.

Yet Lemkin’s extraordinary solo performance could not easily be erased from the annals of modern history. An editorial writer in the New York Times, three days after his death, powerfully if somewhat sardonically caught Lemkin’s moral impact:

Diplomats of this and other nations who used to feel a certain concern when they saw the slightly stooped figure of Dr. Raphael Lemkin approaching them in the corridors of the United Nations need not be uneasy anymore. They will not have to think up explanations for a failure to ratify the Genocide Convention...

The writer went on to note that this Polish-Jewish international lawyer “did more than any other individual to win formal acceptance of the principle that it is criminal to injure or destroy a “national, ethnical, racial or religious group.”

Nor was the U.S. State Department of Secretary Dulles exonerated from the editorial critique. “Death in action” was Lemkin’s “final argument” against those, obviously including the Senate conservatives, who “feared that an agreement not to kill would infringe our sovereignty.”

Genocide: A History of Evasion

Lemkin’s belief that making genocide a crime in international law would act as a powerful deterrent was overly optimistic. During the forty years since the Genocide Convention came into force and for thirty years since his death, more than a half dozen episodes of genocide have engulfed sections of the globe, and the international community’s response has
been one of silence. An analyst of the history of genocide concluded: “Humanity’s record in preventing genocide has been nothing short of abysmal.”150 Two scholars, writing in 1988, calculated that the number killed in genocidal episodes since 1945 ranged from 7 to 16 million, which was about equal to the number who perished in all international and civil wars during the same period.151

The enormities committed in the sixties included the massacres of Ibos in the Biafra region of Nigeria, the mass killing of Chinese in Indonesia by the nationalist forces of Suharto during his civil war against the communists, and the carnage unleashed against the Acholi Christians in Uganda by Idi Amin. The dictator Amin was also responsible for the eviction of several hundred thousand Indians from the country. The seventies were marked by even more egregious examples of mass murder. In East Pakistan, thousands of Bengalis were butchered in 1971 by Pakistani military forces in an effort to destroy the Bengalis’ drive for self-determination. India provided strong military assistance to the Bengalis, resulting in their independence from West Pakistan and the creation of Bangladesh. While India publicly labeled Pakistani violence as “genocide,” no action was taken to involve the international community other than in providing relief.152 Once free, Bangladesh in 1973 announced that it intended to try 195 captured Pakistanis “for serious crimes that include genocide, war crimes [and] crimes against humanity,” but the projected prosecution under national legislation (not by an international court) was later abandoned.153

An effort at an international response to genocide came in Africa in 1972. During April-August of that year the Tutsi rulers of Burundi engaged in a massive slaughter of the Hutu elite—army officers, cabinet members, teachers, and civil servants.154 The number of victims was placed at a quarter million out of a total population of 3 million. The prime minister of Belgium told his cabinet that what was happening was “veritable genocide.” The UN secretary-general sent two missions to confirm the slaughter, but neither the Organization of Africa Unity (OAU) nor the West offered any help; there was not even moral condemnation.

Researchers at the Carnegie Endowment for International Peace ascertained that a lone assistant legal adviser for African affairs in the U.S. State Department prepared a memorandum contending that, under international law, the U.S. had a legal responsibility to uphold human rights so long as there was no “overriding political restraints” to fulfill this pur-
A high level official disclosed, however, that the memorandum was not “taken too seriously.” Indeed, one prominent State Department aide rhetorically asked, in response to a researcher’s question: “Do you know of any official whose career has been advanced because he spoke out for human rights?” International indifference helps explain why Hutus in nearby Rwanda twenty-two years later might seek a revanchist massacre and not expect official international resistance.

Several years after the Burundi genocide, the Khmer Rouge of Cambodia organized a slaughter of vast proportions—1.5 million were killed, including almost all Buddhist monks as well as Vietnamese inhabitants of Cambodia along with Chinese and Muslim Chams. The genocide was perpetrated during 1975-79, but the secretive totalitarian Khmer Rouge kept the violence from international attention. Not until the unearthing of the genocidal evidence in the early eighties by an NGO, the Cambodian Documentation Commission, did the international community begin to take note in a significant way. In 1986, a report by a UN special rapporteur, drawing upon the commission’s documentation, characterized the Khmer Rouge mass killings as genocide.

Yet efforts by the commission to encourage a contracting party to the Genocide Convention to bring the Cambodian case before the International Court of Justice (ICJ) were fruitless. Not that the ICJ could render any justice under terms of the Genocide Convention; its function was limited to the interpretation of the convention’s provisions for contracting parties. Commission sponsors, however, were hopeful that merely the airing of the genocidal horrors before the court could have a salutary, cleansing moral effect. But those nations from Southeast Asia that had most to gain from exposure were the most reluctant to undertake the proposed initiative. They were especially fearful of the growing power of Vietnam and were determined to expel its agents, who now dominated Cambodia. The geopolitics of the late eighties and nineties compelled them to support the revivified, rearmed Khmer Rouge that could help oust the Vietnamese rulers in Phnom Penh.

This view also prevailed in the United States and the West, which at the time were attempting to cultivate China for both economic and security interests, and Beijing, it was recognized, had been a strong supporter of the Khmer Rouge. The best that could be achieved bordered on the innocuous. Separate UN resolutions were adopted with a provision calling
for the “non-return to the universally condemned policies and practices of the past.” The word *genocide* was meticulously avoided, and accountability for the horrors of 1975-79 was altogether eschewed.

Just as the Cambodian massacres were hidden from public view, the genocidal acts perpetrated by the government of Iraq against its Kurdish community in 1987-88 were also largely unknown in the outside world. Evidence was finally unearthed by the United States with the capture of incriminating Iraqi documents during the Persian Gulf War. It was supplemented by forensic documentation obtained by NGOs in the immediate postwar period. The assaults against the Kurds, called Anfal, included the use of poison gas. A total of 182,000 Kurds were massacred. 157

Shortly before this genocide, Leo Kuper wrote in 1985 that despite the UN Genocide Convention the international community’s response to genocide is “a history for the most part of inaction and evasion.” 158 Equally critical was a study conducted by the UN itself. The Genocide Convention, it reported, “remains pure show,” subject always to the higher interests of individual sovereign states, of which they are the sole judges. 159 A recent president of the ad hoc International Criminal Tribunal on Former Yugoslavia in The Hague, Judge Gabrielle Kirk McDonald, offered the same disquieting assessment on the occasion of the fiftieth anniversary of the Genocide Convention at the U.S. Holocaust Memorial Museum. Addressing an audience of academics, government specialists, and NGO activists, the judge declared: “Humankind’s collective memory is fading,” she observed; instead, “amnesia predominates.” The phrase “Never Again” has “become nothing more than a cliche,” she said, and caustically suggested that it be replaced by the phrase “ever again.” 160

The failure of the United States to ratify the convention was a key factor in impeding its implementation. No major government was prepared to raise the genocide issue in the UN Security Council, and without being a contracting party to the treaty, the United States lacked appropriate standing at the Security Council to bring the issue forward, were an occasion to arise when it wished to do so. Lemkin, of course, had worked feverishly in his last years to win support for ratification from conservative anticommunist elements in the American body politic. But the obstruction of the American Bar Association and the Senate proved insuperable. Even if the treaty had been dubbed “an American treaty” in view of the leading role played by the United States in both its drafting
and in the lobbying effort at the UN General Assembly on its behalf, a combination of provincialism and xenophobia precluded positive Senate action.\textsuperscript{161}

Commitments made by the Eisenhower administration to avoid bringing human rights treaties to the Senate for ratification may have come to an end by January 1961; nonetheless, a "lingering Brickeritis" had by then seized hold of the Senate. The malaise of inertia reflecting anxiety about internationalism precluded determined legislative action to overcome threatened filibusters. Even when a breakthrough in the antediluvian policy of the ABA appeared in 1976 with an endorsement of the Genocide Convention, no definitive initiatives were undertaken in the Senate. Repeated hearings by the Senate Foreign Relations Committee, even if a positive outcome resulted, could not produce action when successive administrations were reluctant to invest the necessary political capital to overcome a willful group of isolationist senators from the south and the west.\textsuperscript{162}

A prominent treaty advocate in the Senate, Senator William Proxmire of Wisconsin, sarcastically noted that the Genocide Convention "set a record as the most scrutinized and analyzed nonmilitary treaty ever to be considered by the Senate." By his count, the Senate had over the years heard testimony from 200 witnesses and had accumulated a transcript of over 2,000 pages, but no "advise and consent" vote by the mid-eighties had yet been taken.\textsuperscript{163} Prominent American diplomats frequently complained that the United States was placed in an embarrassing position in international forums by its failure to ratify the treaty, but their observations had little effect upon the Senate. The ABA, however, could not fail to take note of America's domestic and international image as was made clear in a major article in the ABA journal in 1972 by former Supreme Court justice Arthur Goldberg and Columbia University Law School professor Richard Gardner.\textsuperscript{164}

President Ronald Reagan altered the political dynamics when, in September 1984, he called for ratification of the convention in order to assist "our efforts to expand human freedom and fight human rights abuses around the world." A popular conservative president's vigorous support weakened right-wing opposition, to some extent, although Senators Jesse Helms and Strom Thurmond and nine others refused "consent" to the bitter end. The vote providing "advise and consent" came in February 1986, but another two years of congressional battle was required to adopt implementing legislation. The United States became the ninety-eighth coun-
try to ratify the treaty. Forty years had elapsed from the time the Genocide Convention was adopted by the UN General Assembly. Strikingly, when he signed the implementing legislation on November 4, 1988, President Reagan referred warmly to Raphael Lemkin and his historic achievement. The president then said: “We finally close the circle today. I am delighted to fulfill the promise made by Harry Truman to all the people of the world—and especially the Jewish people.”165

Closing the circle by U.S. ratification of the Genocide Convention would have enormous implications in underscoring the historic legacy of Raphael Lemkin. Had the United States failed to become a contracting party, the convention might very well have become little more than a relic of the post-World War II era, an interesting bit of historical memorabilia, as it were, but a relic nonetheless. Lemkin’s treaty did serve as a milestone in the evolution of international law, but its effectiveness depended on whether it could be used to prevent or halt genocide and whether it could be used to punish genocide’s perpetrators. If the first required the application of force, the latter required the creation of judicial penal institutions. Both entailed the willingness of a major state to use both its diplomatic and military power to pursue such objectives. Ultimately, as Lemkin correctly anticipated, an effective response to genocide would depend largely upon the political will of the United States of America.

The UN Is Seized with the Genocide Issue

“Closing the circle” would soon produce an important result in terms of realizing Lemkin’s hope of combating genocide and punishing its practitioners. In the first four decades after the Genocide Convention came into force, the Security Council never confronted the subject, despite several egregious examples of genocide. It was precisely this body that Lemkin had envisioned as the principal international instrument that would respond to the challenge of mass killings. He had fought hard for the article in the treaty that legitimized the authority of UN bodies to respond to genocide, and no other at the UN could be as effective as the Security Council in coping with genocidal acts. At the same time, as noted, a critical obstacle blocking the possibility of Security Council action was the absence of the United States as a contracting party to the treaty. But by the end of 1988, with U.S. ratification, the situation changed radically.

The UN Security Council first confronted the issue of
genocide in the summer 1992. Unlike genocidal episodes in Cambodia and Iraq, which were almost completely hidden from public view, the mass killings and other atrocities in the former Yugoslavia, most notably in Croatia and Bosnia in 1992, perpetrated by the Serb army and its paramilitary units were extensively covered by the Western media. The horrors of what was termed “ethnic cleansing” could be seen nightly on television sets in virtually all the living rooms in the Western world. Journalists and NGO monitors also reported the existence of concentration camps, mass expulsions, widespread systematic rapes and sexual abuse directed against Croatians and Bosnian Muslims.

What happened next would not have come as a surprise to Lemkin, who had always held that establishing accountability would be a function of the Security Council. That body, taking account of reports of large-scale “ethnic cleansing,” in August 1992 adopted the historic Resolution 771. It called upon states and, most significantly, “international humanitarian organizations” to “collate substantiated information relating to the violations of humanitarian law, including grave breaches of the Geneva Convention...” This information, the resolution specifically stated, should be made “available to the Council.” While the Genocide Convention was not yet referred to, the reference to humanitarian law—“crimes against humanity”—pointed in that direction.

The Council was finally moving toward implementing the principle of accountability. Equally significant was action taken in the UN Commission on Human Rights. It requested its chairman to appoint a special rapporteur “to investigate firsthand the human rights situation” in Bosnia-Herzegovina, and the appointee was the former prime minister of Poland, Tadeusz Mazowiecki. He and his team made two visits to Bosnia, in August 1992 and then the following October. Their first report noted that “the situation of the Muslim population is particularly tragic: they feel that they are threatened with extermination.” Particularly significant was the special rapporteur’s thesis that “ethnic cleansing does not appear to be the consequences of the war, but rather its goal.”

Only two months later, the Security Council took another significant step forward. It requested the UN secretary-general “as a matter of urgency” to appoint a Commission of Experts to examine and analyze the situation in the former Yugoslavia and report on the “evidence of grave breaches” of the Geneva Conventions and other violations of international humanitarian law. The secretary-general appointed a five-
member Commission of Experts headed by the well-known American human rights law professor, Cherif Bassiouni of DePaul University. The commission’s finding, as reported to the Security Council in May 1993, was devastating. Among the “grave breaches” were “ethnic cleansing,” mass killings, torture, rape, arbitrary arrests, and the destruction of civilian as well as religious and cultural property. Bassiouni would later publicly disclose that the commission had identified 200,000 dead, mostly civilians, 800 prison camps and detention centers in which more than half a million persons were held, and 151 mass graves. The commission concluded: “international law norms on crimes against humanity and genocide apply to the entirety of this conflict” and expressed shock at the high level of victimization.

The culmination came in May 1993 with the Security Council taking an unprecedented, historic decision: the establishment of an international criminal tribunal “for the sole purpose of prosecuting persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia.” While the decision was based upon chapter VII of the UN Charter, which is geared to the maintenance of peace, the provisions of the Genocide Convention were also crucial to the decision. In the Statute of the International Criminal Tribunal, which was adopted at the same time as the vote for its establishment, the prosecution of perpetrators of genocidal acts was specifically noted. That statute had been recommended by the secretary-general, who called attention to the convention as embodying rules of international humanitarian law applicable to the Yugoslavia situation. The United States under a new Clinton administration played a vital role in the Security Council deliberations. The administration’s representative on the Security Council at the time was Ambassador Madeleine Albright, who had a keen concern regarding genocide and was determined to exert American leadership in the Council.

The United States not only played a leading role in getting the International Criminal Tribunal established, it also saw to it that it was adequately funded by the international community. Of additional importance, Albright and another high State Department official, Assistant Secretary of State for Democracy, Human Rights, and Labor John Shattuck, facilitated the creation of a special NGO that would publicly promote the aims of the Tribunal and lobby on behalf of its needs. The new NGO, titled the Coalition for International Justice, was founded by a branch of the American Bar Association, the
Central and East European Law Initiative (CEELI). The work of the Coalition ran parallel with efforts of another NGO, the Jacob Blaustein Institute for the Advancement of Human Rights (JBI) of the American Jewish Committee. JBI arranged the consultation with members of the UN’s Advisory Committee on Administrative and Budgetary Questions to press for adequate funding for the tribunals. The Albright-Shattuck team did an effective job persuading the ABA, and the ABA’s role was a far cry from what it had been in the years 1950-76.

No one was in a better position to judge the significance of the United States with respect to the International Criminal Tribunal on the former Yugoslavia than its first chief prosecutor, Richard Goldstone of South Africa, who had been a major critic of apartheid. In a personal letter written in 1995 and addressed to the American embassy in The Hague where the tribunal was situated, he declared that the United States was “the strongest supporter and most reliable friend of the Tribunal.” It was the kind of statement Lemkin undoubtedly had dreamed of.

A feature of the American posture on the issue of accountability that would have endeared it to the Genocide Convention’s founder was its rejection of amnesty for war criminals in the former Yugoslavia. U.S. rejection of amnesty was articulated by Ambassador Albright in November 1993 in a vigorous speech delivered only a few months after the tribunal was established. It served to rebuff British and French arguments that amnesty might be useful to bring about peace in Yugoslavia. In the same speech, Albright also advanced the possibility that governments refusing to extradite alleged perpetrators of genocide might be subjected to sanctions.

Still, if the tribunal constituted a significant milestone in confronting genocide, its creation as an institution highlighted a double irony, which, in turn, posed two serious problems. First, the tribunal was established at a time when genocide was on the upsurge in the Balkans and, indeed, would continue for at least two more years. By the middle of 1995, the Balkan genocide had assumed a ferociously murderous character. What was the point of the tribunal’s establishment if the criminal culprits it was created to try, convict, and punish had not been halted? Second, even when the tribunal handed down indictments, the government of the country in which the bulk of the alleged perpetrators lived refused to arrest them for extradition to The Hague. Under such circumstances, what value did the indictments serve?

What had initially stirred Lemkin’s concern with geno-
cide was the question of how to stop it. The killing of Christians in Nero’s Rome had prompted him to ask his mother where were the police and why didn’t they stop the slaughter. Later, he would conclude that all that was needed was law—specifically, international law—to halt or prevent genocide. But the establishment of a tribunal in 1993 failed to halt the killing; indeed, the killings grew worse following its establishment.

It would become ineluctably apparent that the use of military power was an indispensable ingredient for bringing an end to genocide perpetrated by a state—in this instance, Serbia. Unfortunately, one thing was clear as early as 1991 when Serbia was launching offensives against Slovenia and Croatia to end the drive for self-determination within those former Yugoslav republics: the United States would not intervene. In testimony before the U.S. Commission on Security and Cooperation in Europe and before the Senate Foreign Relations Committee, a key State Department official declared that the U.S. interest in the Balkans was far less than that of Western Europe. It was the European Community that had primary responsibility, not the United States. This was the first time since the beginning of the cold war that the United States had abdicated its leadership in Europe.

West Europeans, mainly the British and French, while operating under a UN flag, were reluctant to take any effective action to stop the Serb offensive in Bosnia, which continued to take the form of “ethnic cleansing.” UN officials saw their function as one of neutrality between opposing ethnic groups in control of separate governments. Human rights activists were increasingly shocked by the brutalities imposed upon Bosnian Muslims, but their protests produced little effective UN action.

A characteristic outcry was the 1993 testimony—a passionate jeremiad—by a top human rights specialist, Professor Thomas Buergenthal, to the U.S. Helsinki Commission:

I am outraged—all humanity should be outraged—by the inaction of the same governments, which in the 1930’s tried to appease Hitler and which for many months now have done the same with the murderers and rapists in the former Yugoslavia. Not only have they done nothing, they have repeated over and over again that they would not use force.

Buergenthal, elected to the International Court of Justice in 1999, concluded: “Have we learned nothing from the Holo-
caust?" His cry echoed Lemkin’s warnings. Increasingly, American nongovernmental organizations demanded U.S. military action, as did broad segments of Congress and the media.

There was also the American military establishment with which to contend. Albright conducted a vigorous campaign against prevailing Pentagon thinking, which was characterized by extreme caution about U.S. intervention. This attitude was largely an outgrowth of the Somali disaster of 1992 when eighteen American Army Rangers were killed in a firefight against a local warlord while serving in a UN humanitarian intervention to bring food to a starving population. Pentagon reluctance to intervene found expression in the so-called “Powell Doctrine,” named after General Colin Powell, chairman of the Joint Chiefs of Staff. The “Doctrine” would support intervention only when it enjoyed overwhelming popular support in the United States and mobilized overwhelming force.

**Direct U.S. Involvement**

The mass murder of thousands of Bosnian Muslim men and boys in Srebrenica in June 1995 by the Serbian military demonstrated the hollowness of UN assurances that the region would be treated as a “safe area.” The enormity also finally triggered the decision to activate U.S.-dominated NATO, rather than the UN, to halt the Serbian advance. Serious NATO bombing initiatives compelled President Slobodan Milosevic of Serbia to accept an independent Bosnian state comprising two entities (three ethnic communities—Muslim, Croatian, and Serb). The agreement was consummated in diplomatic negotiations effectively conducted in November 1995 by the United States in Dayton, Ohio. Even while ending the ethnic cleansing, the agreement recognized the tribunal as a guarantor of accountability, rebuffing any form of military intervention was essential to halt “ethnic cleansing” was made clear by a leading American general at a conference on genocide held three years later. General William Nash, who had played a key role in the NATO initiative in Bosnia, told his audience at the U.S. Holocaust Memorial Museum on December 9, 1998, that, if the military role was crucial, far more important was “political leadership.”

Citing the great Prussian military theorist, Karl von Clausewitz, Nash emphasized that political leadership was “a necessary precondition for the formulation of military objectives.” In Nash’s
view, the post-Holocaust vow “Never again!” is impossible to fulfill without a “political leadership” demanding the “mobilization of the nation to call for and support military action....” Nash’s devastating critique of the failure of two American administrations (George Bush Sr.’s and Bill Clinton’s) to respond to Serbia’s policy of “ethnic cleansing” during the four-year period 1991-95 could hardly be rebutted. While on a trip to Africa in March 1998, President Clinton finally acknowledged publicly that it took “more than two years” (1993-95) for his administration to reach a consensus internally and, with its NATO allies, “to go in and stop all that killing.” Rather than providing the indispensable “political leadership” of which Nash spoke, the United States dallied while tens of thousands Bosnian Muslims were murdered.

Ultimately, the UN recognized its failure. Secretary General Kofi Annan in a detailed “Srebrenica Report” released on November 15, 1999, acknowledged the “shocking ... magnitude” of the crimes committed and called it “attempted genocide.” The report went on to note that “not since the horrors of World War II had Europe witnessed massacres on this scale.” With amazing candor, it acknowledged that UN policy was based upon a “moral equivalency” (between Bosnian victims and Serb victimizers) and was rooted in “an institutional ideology of impartiality” even when confronted with “attempted genocide.” Rarely had the international organization ever bared its failure and its soul so remorselessly. The episode was one of “the most painful in our history” especially since the inhabitants of Srebrenica had come to believe in the assurances given them by the UN Security Council that their “safety” was guaranteed. That genocidal tragedy, the report concluded, “will haunt our history forever.”

Nor did the use of military power to terminate Europe’s greatest genocide since the Holocaust lead to the effective operationalization of the newly created institution – the ad hoc International Criminal Tribunal on Former Yugoslavia – to provide accountability and, therefore, punishment for the crimes committed. A recent analysis of the tribunal noted that, in its first four years, it “represented little more than an empty threat to the ethnic cleansers....” While the Dayton Accord required Serbia and the other signatories to turn over indicted war criminals and for the NATO peacekeepers to arrest suspects they encountered in the course of their normal work, little appetite was shown by NATO occupiers to fulfill their obligation.
Caution by the U.S. military and by NATO troop units was characteristic. A knowledgeable source at NATO told an inquiring reporter: “There’s no doubt that in the early years the emphasis for NATO troops was to pacify Bosnia and not to rock the boat with arrests of war criminals.” The prevailing fear was that seizures of accused Serbian suspects would ignite a popular uprising in the Serb region of Bosnia that might have undermined Dayton. Later experience strongly suggested that such fears were unwarranted.

The fear that hobbled the international community’s resolve to meet its obligations arose from the fact that the tribunal had no police or military forces at its own disposal. If the young Lemkin were to have miraculously reappeared during 1995-97 and repeated the question he had once asked his mother—“Why aren’t the killers of the Christians arrested?”—he might have phrased it somewhat differently: “Why doesn’t the tribunal’s police arrest the culprits?” President Cassese, the first president of the tribunal, exposed the disarming reality when he described the Tribunal as an

... armless and legless giant, which needs artificial limbs to act and move. These limbs are the state authorities ... the national prosecutors, judges and police officers. If state authorities fail to carry out their responsibilities, the giant is paralyzed, no matter how determined its efforts.175

The lengths to which NATO troops went to avoid arresting Serbian war criminals proved profoundly embarrassing. The tribunal’s liaison in Sarajevo, William Stuebner, later recounted: “I was in a constant fight with NATO officials because they repeatedly said they didn’t know where the war criminals were....”176 Stuebner and some colleagues, working from a list of persons already indicted, were able to demonstrate that 80 percent of that list could easily be found. Even the most notorious war criminals, Radovan Karadzic, former Bosnian Serb political leader, and Ratko Mladic, the head of the Bosnian Serb military forces, could be seen frequently on the streets of the Bosnian Serb capital.

As of January 1997 the tribunal had indicted seventy-five persons and, of that number, sixty-seven, or nearly 90 percent of the total, remained at large, not in the tribunal’s custody.177 Two months later, the logjam was broken. Three factors were responsible.178 First, the tribunal decided to begin issuing sealed indictments. The earlier public ones had in essence constituted an early warning system for the accused
and permitted them to take protective measures; the new device enabled officials to plan secret and quick military seizures. A second factor was the election of Tony Blair as British prime minister. In Blair’s view, lasting peace could only result from the apprehending of war criminals, and shortly after he assumed office Britain’s special commando units began making arrests. At about the same time, a new chief prosecutor, Carla Del Ponte, a former tough-minded attorney-general of Switzerland, was appointed. When French president Jacques Chirac visited the tribunal, Del Ponte sought French assistance in arresting top Bosnian Serbs located in its military sector. Their indictment was deliberately kept sealed. Until the meeting, it was widely rumored in France and throughout NATO that French military forces were especially lenient. But a month later the most senior Bosnian Serb official and the most significant alleged war criminal—Momcilo Krajsnik—was captured by French troops.

An additional factor was the death in 1999 of Croatian president Franjo Tudjman, who had been a major obstacle to the arrest of alleged Croatian war criminals. Tudjman’s successor, Stipe Mesic, has been far more willing to cooperate with the tribunal. Figures published by the Coalition for International Justice in June 2000 show considerable improvement over 1997. Ninety-four had been arrested but twenty-five indictments were dropped because of the deaths of the suspects or other reasons. Seventy are currently under indictment, of which thirty-six are either in the custody of the tribunal or are serving sentences. Twenty-seven indictees are still at large, and six have been released. The bulk of the indictments and convictions are for violations of the Geneva Convention—"crimes against humanity"—rather than the Genocide Convention. Nonetheless, five have been indicted for genocide, including Karadzic and Mladic. The failure to bring Karadzic and Mladic to justice, however, severely chastens any notion of improvement and casts a long shadow over whatever progress has been achieved.

Just as U.S. military intervention had made the difference in stopping genocide in Bosnia, the “ethnic cleansing” of Kosovo’s ethnic Albanians by Milosevic’s forces was ended in June 1999 by the exercise of massive American military power, operating once again under the aegis of NATO, in a relentless bombing campaign. Several weeks before the Serbs were halted, the tribunal’s chief prosecutor formally indicted Milosevic and five of his associates as war criminals. While the indictments remain sealed, evidence of and from mass
graves in the area continues to accumulate. Milosevic finally gave up power in October 2000 following his loss in the presidential election and in the wake of massive demonstrations. But the United States continues to insist that Serbia’s full acceptance into the international community cannot be realized until the new government of President Vojislav Kostunica has turned over Milosevic and his indicted associates to the tribunal in The Hague.
laire was reported to have testified that “with 5,000 troops and
the right mandate, he could have prevented most of the kill-
ings.”184 The testimony was made available by two members
of the Senate Foreign Relations Committee in a letter to Presi-
dent Clinton on May 13, 1994.

The UN refused to authorize the proposed mission; in-
stead, it suppressed the Dallaire cable. Keeping it from the
Security Council was later justified on grounds, according to
one reporter, that “in the aftermath of the American debacle
in Somalia, there had been no will in the Security Council to
do anything about Rwanda.”185 In fact, the United States
strongly opposed any proposal to increase the size of the UN
military mission as suggested by Dallaire; it actually appeared
to opt for decreasing it. According to a leading authority on
Rwanda, Professor Alison DesForges: “the United States was
the primary stumbling block” to international action.186 In an
address to the conference on genocide at the U.S. Holocaust
Memorial Museum, she chastised the United States and the
international community for making no effort to jam the
broadcasts of the government-run radio stations that had
called for killings of Tutsis. The international community was
also criticized for failing to denounce and stigmatize the
Rwandan genocide.

Public opinion in the United States and in the West
generally did not play a role in helping to stop the killing, as it
had in the case of the Bosnian genocide. Significantly, there
was a virtual absence of international media coverage of
Rwanda. Without public pressure, there was almost no levere-
age to generate the strong will required to make military
action a politically acceptable option for those in government.
Several years after the Rwandan genocide, General Dallaire
commented that “the killings could have been prevented if
there had been the international will to accept the costs of
doing so.”187

Once again U.S. leadership might have made the dif-
fERENCE. The French and the Belgians, those with the greatest
historical and cultural connection with Rwanda, abdicated any
military responsibility, as events make crystal clear. For the
United States, the question was, as Dallaire later stressed,
would it be willing to “accept the costs” of intervention? Not
only was the Somali experience a huge obstacle to surmount,
but even with the CIA report and general awareness of the
Dallaire cable, ignorance was widespread. A staffer on the
U.S. National Security Council, at the time, Morton Halperin,
later recalled:
Nobody was really focused on how serious the situation was until things were out of control. People were saying "we're not willing to make the kind of commitment that could really stop this." People concluded, "We can't do anything."\textsuperscript{18}

American reluctance to intervene or support intervention found expression in the Presidential Decision Directive 25 of May 3, 1994. The directive narrowly defined American national security interest in the fate of the small Rwanda.\textsuperscript{189} It seemed clear that a decision had been taken that Rwanda did not warrant the attention of the United States and, indeed, that month, administration spokesmen were instructed not to use the word *genocide* in referring to the bloodbath unfolding there. To use that term would have ineluctably brought into play the Genocide Convention, which the United States had ratified. Refusal to define the slaughter of Tutsis as genocide bordered on the farcically obscene. The State Department spokeswoman, on June 10, 1994, told the press "although there had been acts of genocide in Rwanda, all the murders cannot be put in that category."\textsuperscript{190} In what category, then, did they belong? An analyst bitterly wondered whether the Nazi genocidal program against Jews should have also avoided using the term since the Nazis were also killing "large numbers of non-Jews."\textsuperscript{191}

Four years later, President Clinton, in a powerful and remarkably abject *mea culpa* delivered on his trip to Rwanda, acknowledged: "We did not immediately call these crimes by their rightful name: genocide."\textsuperscript{192} The president recognized that the Rwandan genocide was "the most intensive slaughter in this blood-soaked century we are about to leave." His apologia was stunningly pointed: "We in the United States and the world community did not do as much as we could have and should have done...." The president's criticism was directed in all directions, to the world community and to Africa as well. But what was distinctive about his apology was a promise that the United States together with the international community must "increase our vigilance" so that such atrocities can be prevented or stopped in the future. He went on to announce that he was "directing my Administration" to improve "our system for identifying and spotlighting nations in danger of genocidal violence."

The mass killing was ultimately stopped in the summer 1994 by local military action. The Rwanda Popular Force (RPF), military units of mainly Tutsis and some Hutus who
earlier had fled to Uganda, were assisted by the latter in returning to defeat the Hutu genocidists and take power. The UN and the United States did nothing to prevent genocide in Rwanda or halt it either before or during its most virulent period, stretching through June 1994. But they did at least take steps to create an international institutional mechanism for apprehending, trying, and punishing the perpetrators of the mass killings. But the Security Council did not create that institution until November 1994, months after the carnage had been completed.

Security Council Resolution 955, adopted in November, established a second ad hoc International Criminal Tribunal having as its “sole purpose” the prosecution of persons “responsible for genocide and other serious violations of international humanitarian law in the territory of Rwanda...”\(^{193}\) The tribunal was located in Arusha, Tanzania, although the prosecutor’s office was to be established in Kigali, Rwanda. However, the chief prosecutor would be the same person who acts in that capacity for the tribunal dealing with Bosnia. Similarly, the two tribunals share the same five-judge appellate chamber.

The Arusha tribunal was slow in getting started and overcoming judicial and bureaucratic inefficiencies. But its record on indictments and apprehensions is superior to that of The Hague tribunal dealing with Bosnia. As of June 2, 2000, fifty-two persons have been indicted and only six remain at large, a significantly lower figure than the “at large” category in The Hague.\(^{194}\) Significantly, of all those who were arrested since the Tribunal began, forty-six persons were apprehended in foreign countries to which they had fled—thirty-seven from eleven African countries, eight from five European states, and one from the United States. The thirteen governments that had arrested suspects and extradited them were guided by obligations initially spelled out in the Genocide Convention of 1948. By the end of 2000, the tribunal had indicted forty-one persons for genocide and convicted seven.

The vast number of alleged perpetrators of genocide, some 120,000, were arrested and incarcerated locally, according to the latest figures of the Coalition for International Justice. As with other cases of genocide and as prescribed by the Genocide Convention, trials in national courts can take precedence if the local authorities opt for this procedure. Given the fact that the legal system of Rwanda was virtually destroyed during the violence with the massive killing of lawyers and jurists, speedy justice cannot be accomplished
easily. The United States has provided technical assistance to
facilitate judicial objectives.

Coping with Genocide in the Future

The experience of the two tribunals on Bosnia and
Rwanda, as recently noted by former chief prosecutor Richard
Goldstone, proved “most relevant” for the UN decision to
schedule a diplomatic conference in Rome in June-July 1998
that would prepare the statute for a permanent International
Criminal Court.195 Approved by 120 countries with only seven
opposed and twenty-one abstentions, the statute emphasized
that the court’s jurisdiction would be “limited to the most
serious crimes of concern to the international community.”
Listed first was “the crime of genocide.”196 Benjamin Ferencz,
a prosecutor at Nuremberg called the adoption of the statute
“historic and remarkable.”197

Lemkin had anticipated such a court and supported its
inclusion in the Genocide Convention. But judging from his
experience with the United States after that treaty was
adopted, he would not have been surprised by the vote the
United States cast in Rome; the United States was among the
seven that opposed the statute. Although President Clinton
had clearly indicated in 1996 his support for a permanent court
to punish those who “commit terrible atrocities,” the Pentagon
strongly opposed the treaty. The core of its argument was that
the United States, as the only superpower with military forces
around the world, must be assured that its troops might not
become the target of politically motivated, legally frivolous
prosecutions.

Perhaps more politically significant both in the short
and long run was the angry rejection of the statute by Senator
Jesse Helms, since 1995 the powerful chairman of the Senate
Foreign Relations Committee—and from June 5th, 2001, its
Ranking Member. He publicly warned that, were the treaty
establishing the court transmitted to his committee, it would
be “dead on arrival.” In the meantime, he has proposed legis-
lation that would block any U.S. effort to support the court
and, at the same time, punish non-NATO nations that dare to
ratify the court statute. Helms’s fierce objection recalled his
vigorous hostility to the Genocide Convention, even when it
was President Reagan who was promoting it.

A leading specialist on the international criminal court
at the Council of Foreign Relations, Ruth Wedgewood, took
cognizance of the Pentagon’s concerns and proposed an
incremental approach. In her view, the United States should cooperate with the court even as a nonmember of the statute. This working relationship, she hoped, would lead to changes America seeks and eventually result in the United States formally adhering to the statute and becoming “the strongest supporter” of the court.\textsuperscript{199} Wedgewood developed the same argument that was central to Lemkin’s thesis of what was required to make the Genocide Convention effective. She contended that the Court “needs American support, for without us, its orders will be disregarded and its mandates spurned.” Power, Wedgewood clearly implied, was essential for the practical fulfillment of the institution’s legal and ethical goals. Just as Lemkin feared that U.S. nonratification of the Genocide Convention would render the treaty powerless, its failure to support the international criminal court would similarly undermine that institution’s capacity to carrying out its moral purpose. (The Wedgewood perception, it should be noted, did not coincide with the view of most human rights NGO’s which contend that adequate concessions have already been made to meet U.S. fears, and that ratification ought not be delayed.

President Clinton did take an important step in this direction on the last day of 2000 by formally signing the treaty on the court. This action did not of course constitute ratification and, indeed, Clinton specifically rejected transmitting the treaty to the Senate until “our fundamental concerns are satisfied.” Clearly, what he was referring to were the Pentagon’s concerns, about which US ambassador David Scheffer was continuing to negotiate with other UN states. In keeping with these “concerns,” Clinton deliberately decided not to recommend that the next president press for ratification.

Nonetheless, the decision to sign in the face of opposition from the Pentagon and Senator Helms constituted, in its own right, a powerful endorsement of the goals of the treaty. It was spelled out in a statement by Clinton on the occasion of the signing: “I believe that a properly constituted and structured International Criminal Court would make a profound contribution in deterring egregious human rights abuses worldwide.” Significantly, Israel followed the lead of the United States and signed immediately afterward, even though it has misgivings of its own about the treaty.

It may be several years before the international criminal court comes into existence. The Statute establishing it requires sixty ratifying parties, and, to date, two and a half years after the Rome conference, some twenty-five countries
have become contracting parties while 120 are signatories. As the year 2000 approached its end, the critical question focused on whether the United States would sign the statute before December 31. That action would constitute an expression of intent to adhere to its provisions and, ultimately, to ratify. After the beginning of the New Year, only ratification was permissible. While the question of signing was being weighed, U.S. negotiator David Scheffer was pressing the international community to deepen the assurances for those major powers engaged in peacekeeping operations. The court would need to undertake “a rigorous review” of any case involving an American soldier before he is “surrendered.”

In the meantime, the UN Security Council, after vigorous lobbying by the United States, granted approval for a new international tribunal to deal with war crime atrocities in Sierra Leone. During this particularly brutal civil war, perhaps the most ghastly and singular of the atrocities inflicted by the rebels on the civilian population has been the hacking off of human limbs or parts or limbs, regardless of the age or gender of the victims. Unlike the Bosnia and Rwanda tribunals, which are entirely administered by the United Nations, the Sierra Leone court will be only partly controlled by the UN. As tentatively outlined by Secretary-General Annan, the two trial chambers would have three judges—one appointed by the government of Sierra Leone and two by Annan. While the chief prosecutor would be appointed by Annan, Sierra Leone would select his deputy.

A fourth tribunal is contemplated for Cambodia to try those responsible for the massacre and genocide of 1975-79 conducted by the Khmer Rouge. Plans for its operation are being negotiated by UN officials with the government of Hun Sen. Hun Sen insists that Cambodians play a more central role in the selection of judges and prosecutors. UN officials fear that were the Cambodian government to exercise a controlling influence, the process of international justice could be seriously jeopardized. Reports from the negotiating process suggest that at least a modicum of justice will be done in the case of this monstrous episode, now a quarter century old. Significantly, the Congress of the United States, in 1994, in an unprecedented domestic statute, adopted the Cambodian Genocide Justice Act that declared “the policy of the United States [is] to support efforts to bring to justice members of the Khmer Rouge for their crimes against humanity.”

The United States, according to its principal expert on war crimes, David Scheffer, wishes to see the establishment by
the Security Council of a fifth tribunal dealing with Iraq’s activities against the Kurds in 1987-88. In his view, Baghdad’s record of atrocities is “astounding” with evidence showing 281 Kurdish villages hit by chemical weapons. Should the Security Council, for political reasons noted by Scheffer, prove incapable of rendering justice in the case of Iraq, other avenues of redress must be explored.

In the U.S. view and in that of the broader international community, consideration of creating other tribunals should be dropped in the meantime. The prevailing perception, Scheffer pointed out, is that “a profusion of tribunals” has mushroomed whose costs are already excessively burdensome. How accountability for genocide and crimes against humanity is to be maintained under such circumstances has been left unanswered, however. In the case of the violence perpetrated by segments of the Indonesian military, “we don’t want to go to a tribunal,” Scheffer said. Instead, he argues that the Indonesian government should assume responsibility for taking the matter up, but he recognizes that that option is “very precarious, very unpredictable.” Other places that offer “challenges” in rendering international justice are Burundi and the Great Lakes region in Africa, most notably the Eastern Congo, where atrocities on a “great magnitude” have taken place.

What Raphael Lemkin envisioned about America’s positive role in furthering accountability for international crimes has been or is being fulfilled to a considerable extent—with the disturbing exception of the international criminal court. Especially significant has been very recent U.S. efforts to create bureaucratic institutions in the State Department that would seek to evaluate “early warnings” of genocide and develop policies and programs to prevent it. The plans were announced at a press conference held by President Clinton on December 10, 1998, one day after the fiftieth anniversary of the adoption of the Genocide Convention by the UN General Assembly. He announced the establishment of the Atrocities Prevention Interagency Working Group to be headed by David Scheffer. Never before had such an institution been created here or elsewhere, although Lemkin did attempt to outline something similar at both the international and national levels in 1947 during private conversations with State Department officials.

Shortly after the president’s press conference, Scheffer came to the conference on genocide held at the U.S. Holocaust Memorial Museum and spelled out the White House proposal. The Interagency Working Group would involve
both the diplomatic and intelligence communities, which "will collect and analyze information with a keen perspective on the warning signals." At the heart of the proposed structure was to be the newly created War Crimes and Atrocities Analysis Division in the State Department's Bureau of Intelligence and Research. The division was to work closely with Scheffer's own War Crimes Office and with the intelligence community to collect, analyze, and disseminate reports from all sources on genocide and crimes against humanity.

Data accumulation and analysis are but one aspect of the plan. In addition, the Interagency Working Group would "make recommendations for possible counter-measures." And, significantly, the United States would share its data with other governments so that its information will be "known as quickly as possible." The objective of the sharing of intelligence would be to produce an effective rapid collective response. At the same time, Scheffer cautioned, not every case will prompt a U.S. response; it will not undertake actions alone that might place "its military forces at risk." On the other hand, the United States could choose to "go it alone" were "our national security" to be "at risk."

The initial inquiry by State Department experts produced important conclusions that will guide future American reaction to genocide, according to Scheffer. Five principal lessons emerged. First, warning signs of genocide must be heeded. Second, official massacres will not "be tolerated" under any circumstances lest the organizers of genocide come to believe that further killings "will be ignored." Third, neutrality in the face of genocide is unacceptable. Fourth, the international community must respond quickly to genocidal events. And fifth, the international community must recognize that, in addition to intrinsic horror, genocide also results in additional national and international catastrophe: massive social and governmental destabilization that generates huge refugee flows, economic collapse, and permanent, sundering political divisions.

These "lessons," especially regarding genocide's destabilizing consequences, demonstrate conclusively the need to respond to genocide in its earliest stages. Equally important was the lesson that the international community must establish appropriate ad hoc tribunals or, at least, propose alternative measures of accountability. The climax of Scheffer's presentation was this poignant observation: "We cannot leave the twentieth century with the stench of these crimes trailing our children into the next century." Just as the "lessons" reflected
the thinking of Lemkin a half century ago, so too did the reference of a future without the “stench” of genocide echo the dream of the founder of the Genocide Convention.

According to Scheffer, in a presentation at the Carnegie Council on Ethics and International Affairs in October 2000, in its first two years the Interagency Working Group has met at least once a month and has been deeply engaged with a variety of genocidal crises as they unfolded. These have included the crises in Sierra Leone, East Timor, Burundi, and the Congo. While he did not offer details of what the Working Group discussed or what recommendations it offered, Scheffer emphasized that State Department policy has been made “sensitive” to genocidal issues. In his view, an atrocities “component” will now be factored into decision-making.

Whether the Interagency Working Group will continue into the future is, however, an open question. Much will depend on the attitude of President George W. Bush, and to date his public utterances on this subject have not been encouraging. In the presidential debate held on October 11, 2000, Vice President Gore indicated that he favored the United States becoming involved “if ... something like a genocide is taking place.” In sharp contrast, Governor Bush responded that his administration would be guided by national strategic concerns and leave direct involvement in genocidal situations to nearby countries. The president’s appointment of General Colin L. Powell as secretary of state inevitably raises the question whether the “Powell Doctrine,” previously discussed, will become a mainstay of U.S. foreign policy for the next four years, with its important implications as to where and under what circumstances America will intervene militarily.

The Pinochet Factor

The rich and complex legacy of Raphael Lemkin cannot be reduced simply to the exercise of American power or that of the UN Security Council in response to genocide. Perhaps the most stunning example of the effect of Lemkin’s thinking were the legal decisions reached by Spanish and British courts concerning Augusto Pinochet, the former president of Chile. Goldstone would comment that international lawyers only five or ten years ago “would have been astounded at the thought of a former head of state from Latin America being arrested in London at the request of a Spanish judge for crimes committed twenty years ago in Chile.”
Such a "scenario," in his view, could not easily have been envisaged. Yet, as early as 1933, Lemkin had spoken about "universal repression" for crimes involving the destruction of a national, ethnic, racial, or religious group. It would later be spelled out in his book *Axis Rule in Occupied Europe* when he specifically dealt with genocide.

In Lemkin's perspective, an alleged perpetrator of genocide can be arrested anywhere and tried anywhere or extradited to a country that seeks to try him. In other words, the crime of genocide is so horrendous that its perpetrator must be subject to international or universal jurisdiction. That was precisely how Spanish judge Baltazar Garzón looked upon the matter. He had been investigating crimes of a genocidal nature committed against Spaniards by Chilean and Argentine military officials during the era of "dirty wars" of the seventies. Having ascertained that Pinochet, the former military dictator of Chile who seized power from the elected government in a bloody coup in 1973, was in London in 1998 receiving medical treatment, Garzón sent a warrant for his arrest to British authorities. Under Pinochet, the military had engaged in a major campaign of kidnapping, torture, and murder aimed at leftists or those believed to be leftists.

The crucial question revolved around the meaning of genocide.\(^{206}\) If political genocide was specifically excluded from the definition adopted in 1948, on what grounds was it possible to charge Pinochet with having perpetrated genocide? The key term from Garzón's perspective was *national*, one of the groups specifically referred to in the 1948 convention. Since the group marked for extermination or victimization had distinctive common traits—they were singled out for holding beliefs or engaging in activity alien to the regime's ultranationalist ideology—then it is appropriate to apply the term *genocide* to this form of victimization.

Garzón's interpretation was upheld by Spain's National Court of Justice (National Audience), which involved popular conceptions of genocide that somewhat transcended any narrow concept of "national group." Thus, the exclusion of political groups from the Genocide Convention had not significantly narrowed the definition of genocide so long as the "national group" had an overarching commonality linking all its members. From the court's perspective, the concept of genocide had taken "on a life of its own" resulting in part from "popular conceptions of the crime."

Even more significant was the ruling of the law lords of Britain's House of Lords, the highest court in the United
Kingdom. The law lords charged Pinochet with violating the UN Convention against Torture rather than the Genocide Convention. That convention had come into force in 1987, and Chile ratified it a year later. In March 1999, the law lords had ruled that torture—one of the principal accusations made by Garzón—was an international crime permitting the extradition of anyone charged with the crime to any country that has ratified the torture convention. In its ruling, Britain’s highest court rejected the claim of Pinochet’s attorneys that he could not be tried for acts committed while he had been head of state. Repudiated, or at least fundamentally altered, was the frequently articulated thesis of the inviolability of sovereign immunity.

Lemkin, of course, had rejected the thesis of sovereign immunity back in 1933, and his reasoning for opposing this construct was elaborated in detail in his classic treatise. His view on universal repression or jurisdiction was incorporated into the provisions of the Genocide Convention, but it also became applicable to the Torture Convention when that was initially adopted in 1984, another extremely significant piece of his legacy. The traditional principle of sovereign immunity no longer could protect former rulers of states, and courts in any state that ratified the Genocide Convention or Torture Convention can seek their extradition. In the case of Pinochet, however, an exception was made on January 11, 2000. Jack Straw, the British home secretary, released Pinochet from house arrest and permitted him to return to Chile on the grounds that the eighty-four-year-old former general and chief of state was not medically fit to withstand further extradition proceedings.

Still, the “Pinochet Principle” had now been firmly established in international law. The head of a leading human rights organization, Kenneth Roth of Human Rights Watch, summed up the breakthrough on the very day of the British home secretary’s action: “Heads of state no longer enjoy impunity for crimes against humanity.” This NGO had launched a major initiative to seek to apply the “Principle” applied to other former heads of state who had engaged in genocidal crimes or crimes against humanity and who currently live in exile.

One especially pertinent example is that of the former dictator of Chad, Hissena Habre, who had fled to Senegal. Last year, he was charged with the widespread torture of prisoners during his brutal rule. The case constituted a potentially major breakthrough for Africa. The Senegalese presi-
dent, however, dismissed the chief investigating judge in the Habre case, thereby reversing a decision based upon the principle of universal jurisdiction. The UN Committee Against Torture has recently given this matter high priority and is reported to have demanded that Senegal take measures to prevent Habre from escaping justice.

There are, additionally of course, those covered by the "Principle" who have been indicted by The Hague Tribunal on the Former Yugoslavia who have yet to be extradited. Nor had Garzón’s novel technique come to an end with the Pinochet case. He had been investigating the torture practices of the Argentine military junta of the seventies and eighties against Spanish and other leftists. One of his targets, Ricardo Miguel Cavallo, who had run a torture chamber at a special school of the Argentine navy during that time frame, had fled to Mexico with the collapse of military rule in Buenos Aires.

In Mexico, Cavallo somehow became the director of the government’s national motor vehicle registry. When testimony by survivors about his earlier atrocities surfaced, Cavallo sought to flee to Argentina, where an amnesty earlier granted the military would have covered him. But Garzón’s warrant for his arrest stopped Cavallo’s escape plans. On January 12, 2001, a federal judge in Mexico City issued a ruling authorizing Cavallo’s extradition to Spain to stand trial on charges of genocide and terrorism in Argentina. The judge expressly rejected arguments that no one should be tried abroad for crimes committed in his native land. The judicial order on Cavallo was implemented shortly afterwards by the foreign minister of Mexico.

The Epitaph

Lemkin bequeathed a living legacy. His life’s work planted the seeds for new institutions of international justice that have arisen in the last decade that have dethroned the once sacred, hoary principle of state sovereignty that reaches back to the Treaty of Westphalia that ended the Thirty Years War some 350 years ago. He would have taken great pride in what has been accomplished in the half century since his moment of exultation when the Genocide Convention came into force.

He was obsessed with the preparation and adoption of the Genocide Convention. An unpaid assistant of Lemkin, Hannah Loewy, not long ago described his single-minded
devotion to this task to a well-known scholar on the UN who had served for several decades as an American diplomat, Ambassador Seymour M. Finger. Lemkin’s preoccupation was so intense and so total that he worked around the clock, day and night, preparing drafts of the treaty and passing them on to key U.S. diplomat dealing with the treaty. According to Finger, “much of the adopted text [of the Genocide Convention] was drafted by Lemkin.”

But the best witness to Lemkin’s monumental labors was a top UN Secretariat official, John P. Humphrey, who was the UN’s director of the Division of Human Rights for several decades. In his autobiography, this cautious Canadian, always meticulous, reserved, and given to understatement, who rarely waxed eloquent about anyone—and he had worked with the giants of international human rights—observed: “Never in the history of the United Nations has one private individual conducted such a lobby.”

Humphrey’s ringing, unsolicited praise, restricted to the private sphere of his own diaries, of necessity could only tell part of the story, based as it was upon the view from his front row seat of Lemkin’s lobbying UN diplomats and the Secretariat. It could not take into account Lemkin’s ceaseless work with the press and with NGOs to shape a climate of world opinion that would support his personal lobbying efforts with UN officials and diplomats. Nor could Humphrey have known in any detail what could be disclosed only in Lemkin’s archives: his all-consuming effort to win ratification for the treaty, to bring it into force and then to go far beyond in the pursuit of its universal ratification. Raphael Lemkin entirely devoted himself to and finally gave his life for a dream: ending genocide through the exercise of international law.

That dream would begin to come true through the work of international institutions carrying his imprimatur and still others that will soon come into being. Much of his achievement was the result of a solitary crusade that should serve as an inspiration to others. In the late fall of 1983, the president of the New York Public Library, Dr. Vartan Gregorian, decided upon holding an exhibit of Lemkin’s writings because: “In this age of homogenization when everyone talks about systems, Lemkin showed [how] one dedicated individual can make a difference.”

In an interview with the New York Times shortly after the Genocide Convention was adopted, Lemkin was asked what was on his agenda next. He answered that “the convention must become a living force in world society.” “And what
then do you plan to do?” asked the writer. He responded with a laugh: “When I have the time, I would like to indulge several moods. It would feel good to get back to my bad painting hobby again, or fishing, or just visiting old friends.”

That time never came. Obsession arising from his tragic personal history and absolute dedication to the moral imperative compelled him to labor ceaselessly for universal ratification of his treaty. A driven man, relaxation was almost totally unknown to him. He even felt it necessary to deny himself the pleasure he derived from his modest gift for painting, according to his lawyer-friend, Maxwell Cohen, and he indulged this interest only very rarely. Lemkin died all too soon, worn out by poor health, a threadbare existence, and bitter disappointment that his adopted country had failed to ratify his treaty. He was profoundly disappointed in America because he had conceived of its playing the principal leadership role in guiding humankind to a world finally free of genocide.

Still, the convention exists, and now, finally ratified by the United States, it exercises an increasingly prominent role in international affairs. Lemkin once said that he wanted the convention to be “an epitaph on my mother’s grave.” But it also has become an epitaph to his monumental struggle and achievement. It remains for America—and for all humankind—to accord this “epitaph” the recognition it deserves.
Lemkin’s Living Legacy:
An Afterword

Eight and a half years after the publication of *An Epitaph for Raphael Lemkin*, no one can any longer call Lemkin a forgotten man. Raphael Lemkin’s remarkable impact on international law and institutions has become the subject of praise, study, and emulation. These years have also seen remarkable growth in institutional and legal developments regarding the prevention and punishment of genocide: the creation of international tribunals and other mechanisms, followed by indictments, arrests, and convictions. Accountability was at the core of Lemkin’s questions to his mother, his teachers, and his diplomatic colleagues: *Why didn’t anyone call the police when the Romans were killing the Christians, when the Turks were murdering Armenians, and when the Jews of Europe were being annihilated?* The answer, readers of *An Epitaph* will recall, was that such mass killings aimed at destroying peoples in whole or in part were not international crimes. Because of Lemkin’s persistence—which Korey calls his obsession—genocide is not only an international crime, but there is now a range of mechanisms seeking to hold perpetrators accountable for it worldwide, at both national and international levels.

In June 2001, to mark the 50th anniversary of the coming into force of the Convention on the Prevention and Punishment of the Crime of Genocide and the centennial of Lemkin’s birth, the Jacob Blaustein Institute for the Advancement of Human Rights ("JBI") of the American Jewish Committee released William Korey’s study on the life and work of Raphael Lemkin at a high profile commemoration at UN headquarters. In a tribute, Secretary-General Kofi Annan commended Lemkin as “an inspiring example of moral engagement” and “one of the unsung heroes of the human rights movement.” Annan’s remarks were delivered at the JBI event by his wife, Nane Annan, the niece of Swedish diplomat Raoul Wallenberg, another inspirational figure of that epoch. Dr. William Korey was joined on the podium by two major figures in the post-cold-war development of international justice mechanisms, David Scheffler, the first US Ambassador-at-Large for War Crimes, and Hans Corell of Sweden, the UN’s Legal Advisor, who participated in a stimulating panel discussion moderated by Robert S. Rifkind, who was then JBI’s chairman.

Less than a year later, in her book *A Problem From Hell: America in the Age of Genocide*, Samantha Power would describe Lemkin to the American public. Power had been moved by the story of Lemkin’s persistence, recounted vividly by William Korey in a lecture at Harvard’s Carr Institute. She had requested an advance copy, which Korey forwarded to her, and which is cited prominently in her Pulitzer Prize winning study.

Soon afterward, in 2005, Lemkin would gain long-overdue but unique recognition in his native Poland, when Foreign Minister Adam David Rotfeld organized a ceremony and formally named a conference room at the Ministry of Foreign Affairs in his honor. Poignant details of Lemkin’s life, along with details from William Korey’s study, were recounted by Rotfeld to the stellar diplomatic assemblage. Noting that “there would be no Lemkin without his Polish roots,” Minister Rotfeld lamented that this “exceptional figure is unknown to the broader public” in Poland. Receiving a specially inscribed and bound copy of William Korey’s study presented by JBI to the Ministry, Rotfeld stated he hoped
this would “mark the beginning of Lemkin’s return to Poland” and that a similar monograph could be published there. He noted that since Lemkin’s death, “the world has changed, and so has the law. Much of the credit for this goes to Rafael Lemkin.”

Indeed, legal and institutional changes since 2001 have thrust Lemkin’s legacy onto a wider stage. Writing in 2001, Dr. Korey expressed cautious optimism that the Yugoslav tribunal could no longer be dismissed as an “empty threat,” because many wanted persons were then being apprehended, new tribunals were proliferating, and the US was focused less on building institutions than on getting results. This trend has continued, and as recently as last year, 2008, the 60th anniversary of the Genocide Convention, Professor William Schabas, author of the preeminent legal monograph on genocide, concluded that the trend line was indeed a positive one. Not only, he argued, has attention to the “legal aspects of genocide” grown dramatically in the past decade, but “there have been more important judicial pronouncements on genocide in the past five years than in the previous fifty-five.”

Significantly, these judgments have addressed both individual criminal responsibility in the various international tribunals (ICTY, ICTR, ICC, etc.) as well as the first case in which the International Court of Justice (World Court) found a violation of the Genocide Convention because Serbia failed to intervene and prevent the Srebrenica massacre in 1995. In addition to being the first judgment on the question of genocide by the World Court, this decision also makes clear that the international obligation to prevent genocide extends beyond a country’s own borders to other countries, particularly when there has been inaction in the face of obvious signs of genocidal action.

Individual accountability for atrocities has been a particular focus of these efforts. The various tribunals have, together, reportedly indicted more than 250 people, most of whom have been apprehended. Significantly, sitting heads of state have been among them: Slobodan Milosevic of Yugoslavia; Charles Taylor of Liberia; and Omar Hassan Ahmad al Bashir of Sudan. While Milosevic died in prison, Taylor’s trial is currently underway in the Hague. Bashir has so far refused to cooperate with the International Criminal Court, and has rallied African opposition to the indictment. Other high-level indictees include Jean Kambanda, the prime minister of Rwanda when the genocide took place; and Colonel T. Bagasora, the reported “mastermind” of the Rwandan genocide. Bosnian Serb leader Radovan Karadzic is in prison with a trial underway, while his military counterpart, General Ratko Mladic still remains at large. Notably, the very existence of the International Criminal Tribunal on Former Yugoslavia has, according to a study by Prof. Diane Orentlicher, “helped stimulate a serious, if imperfect process of war crimes prosecutions in Serbia – something that would not have happened without the Tribunal.”

At the international level, the new ICC has taken up investigations in cases in four countries and has indicted 13 persons to date.

Such cases establish the credibility of the courts and bring results. Not only have they reminded the public that international law is universal and that no one is above the law, but they have also preserved a factual record of the crimes—which some see as key to avoiding revisionist history and denial in the years ahead. This, it is claimed, will help deter future conflict and war crimes as well as prevent future genocides.

As remarkable as these case-specific developments have been, so too has been the growth of international law in conjunction with the establishment of these institutions. In the construction of new tribunals and through specific judgments reached by them, there
has been an expansive and often progressive development of international humanitarian law. Removing the requirement that crimes against humanity must occur in wartime is but one example of such thinking: it reflected a willingness to address both international humanitarian law and international human rights law, and an expansion of protection for the individual.

One of the areas that has benefited dramatically from this open legal approach has been new international jurisprudence related to gender violence and rape, as was seen in the Akayesu case at the International Criminal Tribunal for Rwanda in which rape was found to be a form of genocide. The stage was set for this by previous preeminent legal proceedings addressing rape as torture in the international tribunals since 1998, notably in the Celegici, Furundza and Foca (Kunarac) cases. Rape was not prosecuted in the Nuremberg Tribunal but had been prohibited and had variously been incorporated as a violation of international law, either under the category of crime against humanity, or as “outrages upon personal dignity.” At the time when Lemkin pressed for the Genocide Convention, international jurists seemed to approach the matter of rape and sexual violence against women as private or personal acts rather than abuses of power or violations of human rights/humanitarian law such as torture. In a series of cases in the recent past, jurists have reexamined these abuses using a gender lens, and have established that “sexual violence … rises to the level of a war crime when it is executed as part of a military strategy of ‘ethnic cleansing,’ or is used to terrorize, torture or displace.”

As the ICTY and ICTR’s former gender specialist Patty Sellers has thoroughly clarified, rape has been perpetrated and prosecuted in these and other Yugoslav and Rwanda Tribunal cases as a form of torture. Moreover, Sellers also recalls cases, such as Tadic, that prosecuted acts in which male prisoners were allegedly sexually tortured. Judgments in these cases have changed international approaches to the requirement of official capacity in cases of torture, for example, by putting an emphasis on the act of torture, not the official or unofficial status of the perpetrator of torture. Other bodies, including in the Inter American and European human rights systems, have similarly recognized that privately inflicted gender violence could itself constitute torture.

The Genocide Convention addresses prevention and not only punishment. In 2004, UN Secretary-General Kofi Annan announced the appointment of former Argentinean political prisoner Juan Mendez to the new post of Special Advisor on the Prevention of Genocide. At the request of the new Special Advisor, Dr. Francis Deng, who was appointed in 2007 by Secretary-General Ban Ki-moon, the Jacob Blaustein Institute has been working with a group of legal experts to help clarify the normative framework for genocide prevention, including the identification of risk factors that merit special preventive attention. This is being done in an effort to strengthen the Special Advisor’s capacity to implement his mandate. The Special Advisor represents the first so-called human rights “special procedure” that is mandated to report to and through the Secretary-General to the Security Council, rather than to the Commission on Human Rights or its successor, the Human Rights Council. JBI has pointed out that a lesson of the Holocaust and other genocides is that such crimes do not begin overnight. They are always preceded by a series of identifiable early warning signs that can be indicative that genocide may be imminent. Sometimes these are mass atrocities, but in other cases they may be more subtle dehumanizing discriminatory measures that require a timely
response. JBI hopes to be better able to enhance early warning and prevention by identifying pre-genocidal situations, as well as by helping states establish and strengthen legal protections that mitigate the threat of genocide.

UN Secretary-General Ban Ki-moon has stated, in this context, that “preventing genocide is a collective and individual responsibility. Everyone has a role to play.” The Special Advisor is mandated to collect existing information, but not to investigate anew. Therefore it is essential, among other things, that better means are developed de facto to ensure he works closely with other UN special procedures and mechanisms to achieve maximum protection.

States can be encouraged to take on responsibility to protect their citizens against genocidal situations. Curiously, ratification of the Genocide Convention has not gained much speed, while ratification of the Rome Statute has boomed. Dr. Korey expressed concern that, for all Lemkin’s early efforts to promote universal ratification of the Convention against Genocide, by 2000 it had obtained only 132—“the lowest number of ratifications of major human rights treaties.” In 2009, the number had inched up to 141 states, with the ratifications by Andorra, Bolivia, Comoros, Nigeria, Paraguay, Trinidad and Tobago, Sudan, United Arab Emirates, and Yugoslavia – a mix of large and small states, including some of Africa’s largest and most troubled polities. Universal ratification remains blocked by the absence of most African states and a fair number in other world regions.

Yet at the same time, the Rome Statute of the International Criminal Court, which had only about 25 ratifications when Dr. Korey’s publication appeared, has not only come into force in mid-2002 with 60 ratifications, but has had a huge influx of ratifications since then, amounting to a total of 110 ratifications and 139 signatures as of 2009. Curiously, although the Rome Statute explicitly includes genocide among the crimes over which it has jurisdiction, 26 states have ratified the Rome Statute of the International Criminal Court, but not the Genocide Convention. Fourteen of these are African states.

Dr. Korey reported that President Clinton’s formal signing of the Rome Statute on the International Criminal Court, “in the face of opposition from the Pentagon and Senator Helms, constituted...a powerful endorsement.” The US signature in 2000 did not allay fundamental American concerns about the ICC, he explained, so President Clinton would not recommend ratification yet. He clarified, however, that his signature could enable the US to increase its influence in the remaining negotiations regarding matters such as the prosecutor’s power, and possibly insulate nationals of non-state parties from the Court’s jurisdiction. However, President Bush formally informed the UN Secretary-General in May 2002 that the US had no intention of ratifying the treaty. This so-called “unsigning” of the Rome Statute was followed by US withdrawal from multilateral negotiations concerning the court. Clinton’s successors worked vigorously to seek Article 98 “non-surrender” agreements with states that had ratified the Statute and other restrictions on US interaction with the Court. The tables had turned and there was no endorsement, only denigration of the institution of the ICC.

Since the low point of 2002-04, however, the US position towards the ICC has grown more encouraging. In 2005, the US began to moderate its opposition to the ICC, with Secretary of State Condoleezza Rice questioning the results of US policy as “shooting ourselves in the foot.” The US did not block a Security Council referral of the
Darfur situation to the ICC, and the US began to change its policy so that it no longer pursues Article 98 agreements.

In 2009, the new Obama Administration signaled further changes are in store: UN Ambassador Susan Rice, in her first speech before the Security Council on behalf of the new President, remarked that the ICC “looks to become an important and credible instrument for trying to hold accountable senior leadership responsible for atrocities committed in the Congo, Uganda, and Darfur.” Undoubtedly, both Raphael Lemkin and William Korey would have welcomed this, hoping for more positive engagement, as the ICC seems to many observers to be the international court anticipated in the Genocide Convention.

Raphael Lemkin declared that “the Convention must become a living force in American society.” Surely the International Criminal Court is now travelling on a road that is filled with much life, much force, and much enthusiasm. Non-governmental advocates have breathed life and energy into the quest to make the ICC operational and to bring the US within its purview. The US government, for its part, is sharing information and documentation with the Tribunal as well. But the non-governmental activism has been remarkable so far. It shows every sign of continuing in this direction.

Indeed, through the writing and remembrances offered by Dr. William Korey and others, Raphael Lemkin’s legacy lives on. International criminal justice has captured the enthusiasm and imagination of American attorneys, advocates, and members of nongovernmental organizations concerned with international law and justice issues worldwide. The “dream” that Dr. Korey eulogized is gradually being realized.

It is my sad duty to end this afterword by reporting that William Korey passed away on August 27, 2009 – one day short of the 50th anniversary of Lemkin’s own death. At age 87, he had been fortunate to have the time and skills to preserve, in writings for the Jacob Blaustein Institute and elsewhere, not only this reflection on the life and living legacy of Raphael Lemkin, but also the achievements of the nongovernmental human rights movement – a rich and complex series of actions and interventions aimed at improving the lives and enhancing the freedoms of individuals everywhere.

In a letter, UN Secretary-General Ban Ki-Moon’s top communications specialist, Michael Meyers, wrote that “Dr. Korey was our stalwart friend. He wrote that Raphael Lemkin personified a fact of history often neglected: the power of a single individual to produce revolutionary change. Dr. Korey was the embodiment of that singularly heartening faith in the force of good. ...All of us joined in the common enterprise of giving voice to the voiceless, and defending the defenseless throughout the world, owe him a debt and are saddened by this loss.”

As Robert S. Rischkind reminded us at the outset, we need more “peace heroes.” Raphael Lemkin and William Korey were indeed peace heroes, and the world today needs more such figures. May their memories be for a blessing.

Felice Gaer
Director
Jacob Blaustein Institute for the Advancement of Human Rights
November 2009

2. The source for the reaction to the adoption of the convention and, particularly, the exuberant response to Raphael Lemkin is in the unfinished and unpublished autobiography of Raphael Lemkin. It was to have been entitled “Totally Unofficial: The Autobiography of Dr. Raphael Lemkin.” Available on microfilm rolls at the New York Public Library, it is very much a work-in-progress, not very well organized and, therefore, unusable for purposes of pagination. Rabbi Steven Jacobs of Tuscaloosa, Ala., is currently engaged in organizing the material for publication.


5. A document of Lemkin’s application for U.S. citizenship
in North Carolina in 1942 indicated 1900 as his birth. It was located
by James Fussell, who is working on a biography of Lemkin. The
discrepancy in the dates, as yet, does not have an explanation. Pertinent
volumes of Current Biography were published in 1950 and
1959. In Encyclopedia Judaica, published in 1971, see vol. 3. The
interviews of Lemkin with journalists are cited later in this work. It
makes little sense that he would choose to lie to them or mislead them.

Lemkin and the Genocide Convention,” RSA 99/2000 lectures,
17/01/00, p. 1. The text of the lecture was made available to the
author by James Fussell.

This Week, Jan. 7, 1951, p. 14. The magazine was published weekly
by the New York Herald Tribune.

8. Ibid. Also see Herbert Yahraes, “He Gave a Name to the
World’s Most Horrible Crime,” Collier’s, Mar. 3, 1951, p. 28.

10. Yahraes, “He Gave a Name,” p. 28.
11. Ibid.
17. Raphael Lemkin, Le Terrorisme. In Actes de la V Con-
ference Internationale Pour L’Unification du Droit Penal (Paris:
under International Law,” American Journal of International Law
41:1 (January 1947): 146.
18. Yahraes, “He Gave a Name,” p. 29.
20. Proceedings of the Forty-fourth Annual Session of the
North Carolina Bar Association (Durham, N.C.: Christian Printing
Co., 1942), pp. 107-16. The proceedings were made available to the
author by James Fussell.
21. Ibid., p. 112.
22. Ibid.
23. Steven Jacobs stresses this point in his “Genesis of the
Concept of Genocide According to its Author from the Original
Sources,” mimeo, p. 5, n. 3.
24. Steven Schurr, “Unofficial Man: The Rise and Fall of
Raphael Lemkin,” Reform Judaism, Fall 1982, p. 45.
25. Ibid.
27. The episode is related in his unfinished biography.
28. Yahraes, “He Gave a Name,” p. 56.
29. Raphael Lemkin, Axis Rule in Occupied Europe: Laws

30. See the comments of the top researcher at the Carnegie Endowment, George Finch, who called the texts of laws and decrees "the major part" of the work. They appear in "Foreword," ibid., p. vii.
32. Ibid., pp. 79-95. It is chap. 9 in the work.
33. Ibid., p. xi.
34. Ibid., p. xi.
35. Ibid., p. 91.
36. Ibid., pp. 91-92.
38. Sigrid Arne, "Refugee's Coined Word Will Become a Treaty." *Washington Post*. The article is undated, but a Herblock cartoon on the opposite page specifies 1947, and the text of the article refers to the UN Economic and Social Council meeting "right now." It suggests a spring date.
43. Ibid., p. 1.
44. This theme is cited in Jacobs, "Genesis of the Concept of Genocide," pp. 14-15.
46. Ibid., p. 3.
47. Ibid., p. 4.
48. Ibid., p. 3.
50. Interview with Benjamin Ferencz by telephone, Aug. 29, 2000.
52. The letter was found in the Raphael Lemkin Collection, P-154, Box 3 in the American Jewish History Archives. These had been located at Brandeis University and recently were moved to New York.
54. Yahraes, "He Gave a Name," p. 56.
55. Ibid.
58. See ibid., pp. 149-50. In discussing his draft, Lemkin makes no reference to political groups.
59. Robinson, Genocide Convention, pp. 18-19.
60. Supplementary Report of the Representative of the United States on the United Nations Commission on the Progressive Development of International Law and its Codification, June 19, 1947. The commission was an instrument of the General Assembly and was to advise the latter on the draft convention. The supplementary report was made available to the author by James Fussell.
61. Phillip Jessup Papers contains a State Department "Memorandum of Conversation" with Lemkin in 1947. Oddly, the Economic and Social Council was referred to as Social and Economic Council. The memorandum was found and made available to the author by James Fussell.
62. The word was used by Robert Silvers, now editor of the New York Review of Books, in a telephone interview on Sept. 19, 2000.
63. Lemkin, "Genocide as a Crime under International Law."
64. Ibid., pp. 146-47. The date of Shawcross’s speech was given as November 22.
65. Ibid., p. 148.
66. Yahraes, "He Gave a Name," p. 56. At the time, Collier's was one of America’s most popular publications. The article meant that he was receiving extraordinary public attention.
69. Hohenberg, "Crusade That Changed the UN," p. 86.
71. Interview with Richard Gardner by telephone Sept. 22, 2000. Professor Gardner, a prominent international law specialist at Columbia University, served in numerous government capacities in the international relations field.
73. See Robinson, Genocide Convention, p. 123.
74. See Schabas, Genocide in International Law, pp. 113, 134. In contrast, de Vabres was strongly for the inclusion.
75. Yahraes, "He Gave a Name," p. 57.
76. Ibid.
77. Both Wolfsohn letters were made available to the author by James Fussell.
78. Yahraes, "He Gave a Name," p. 57.
issue, see Beth Van Schaack, “The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot,” *Yale Law Journal*, May 1997. On the Internet the citation appears as 106 Yale L.J. 2259, pp. 1-5. It was Van Schaack’s opinion that “perhaps the leading motivating factor” for the Soviet opposition was that its inclusion could target “Stalin’s politically motivated purges of the kulaks” in the early 1930s. Her judgment is undoubtedly correct.

80. Yahraes, “He Gave a Name,” p. 56.
81. Ibid.
82. This “Memorandum of Conversation” with Lemkin was found by James Fussell in the Phillip Jessup Papers at Columbia University, p. 1.
83. Ibid., pp. 5-6.
85. Ibid., p. 181.
89. The letter is in the Raphael Lemkin Collection, P-154, Box 1, “Personal Correspondence,” American Jewish Historical Society Archives.
91. Ibid.
92. Lemkin, “Genocide as a Crime under International Law,” p. 149. See fn. 10. The article must have been written in late December 1946. The first time the *Sunday Times* of London used the term genocide was on Oct. 7, 1945.
95. The Samuels letter is in the Raphael Lemkin Collection, P-154, Box 3, “General Correspondence,” American Jewish Historical Society Archives.
96. The Lemkin response is in ibid.
97. The Dec. 10, 1948, letter is in ibid.
99. The minutes are merely titled “Meeting Re Genocide.” A copy of the minutes was sent to Lemkin on Apr. 26, 1948, even though he was in attendance. See Raphael Lemkin Collection, P-154,
Box 3, American Jewish Historical Society Archives.


101. Raphael Lemkin Collection, P-154, Box 3, American Jewish Historical Society Archives.

102. The “statement” was in the committee’s file at the University of Minnesota Social Welfare History Archive. The minutes of the committee’s meeting on Sept. 17, 1948, record that, as of that moment, 125 organizations from twenty-three countries had signed. But Secretary Johnson went on to say that “more signatures are arriving daily.”


105. The undated paper was also unsigned. Lemkin probably intended to use it either in congressional testimony or an interview. It is located in the Raphael Lemkin Collection, P-154, Box 1, American Jewish Historical Society Archives.


107. A copy of the letter by Paul Freund is to be found in the Raphael Lemkin Papers Series B, Subseries 3, American Jewish Historical Society Archives.

108. Cox’s letter is dated February 1958. It is to be found in *ibid.*

109. The letter, which is found in the American Jewish Archives in Cincinnati, was in response to an inquiry by Lemkin’s associate in Washington, Mrs. Elizabeth Nowinski, on Feb. 13, 1950.

110. The letter is to be found in the Raphael Lemkin Collection, P-154, Box 1, “Personal Correspondence,” American Jewish Historical Society Archives.

111. The note is in the Raphael Lemkin Collection, P. 154, Box 1, American Jewish Historical Society Archives. At the beginning of the note, Lemkin said that the Senate subcommittee would hold hearings “before the end of this month.”

112. A copy of the brief was found in the Lemkin file of the University of Minnesota Social Welfare History Archive. It is entitled “Brief Submitted for the United States Committee for the Genocide Convention in Support of Ratification.”

113. The starred footnote is on p. 21 of the “Brief.”

114. *ibid.*, p. 28.


118. See LeBlanc, United States and the Genocide Convention, pp. 19-20.
119. Hohenberg, “Crusade That Changed the UN,” p. 87.
120. LeBlanc, United States and the Genocide Convention, p. 21.
121. It is puzzling, if not rather disconcerting, that this work of a Holocaust denier is listed at the Holocaust Memorial Museum as a source work; indeed, it is the only book on Lemkin listed.
123. The draft letter to Dulles is dated Apr. 11, 1953. It is in the Raphael Lemkin Papers, Box 2 Subseries 3, American Jewish Archives.
124. Raphael Lemkin Papers, Series A, Box 2, File 1, American Jewish Archives.
125. All letters cited in this section can be found in the Raphael Lemkin Papers, Box 2, Subseries 1-7, American Jewish Archives.
126. See the Raphael Lemkin Papers, Box 6, Subseries 2, American Jewish Archives. All the planned chapters of the “History of Genocide” are included here. The chapter on Hungary was to be drawn from the “UN Report” on the Soviet invasion of the country.
128. Raphael Lemkin, “Is It Genocide?” ADL Bulletin, January 1953, pp. 3-8. The Bulletin was the organ of B’nai B’rith’s Anti-Defamation League. In the article, Lemkin took note of the “anticosmopolitan” campaign of 1949 but said nothing of the destruction of the Yiddish publishing establishment.
130. The letter to John Ennals is in the Raphael Lemkin Papers, Box 2, Subseries 1 (1951), American Jewish Archives.
131. The letter to Miller is dated Mar. 7, 1951. It can be found in ibid. A similar letter was sent to Dr. Isaac Lewin, who represented the Orthodox group, Agudath Israel, at the UN.
132. The letter is dated May 23, 1951. It is in ibid. He enclosed a draft declaration in the letter that he recommended be adopted.
133. The letter to Palar is dated Apr. 19, 1952; the letter to the Mexican official is dated July 8, 1952; and the letter to the Vienna academic is dated July 30, 1952. All can be found in the Raphael Lemkin Papers, Box 2, Subseries 2 (1952), American Jewish Archives.
134. The Raphael Lemkin Papers, Box 2, Subseries 4 (1954-56), American Jewish Archives.
135. The letter to Japan is dated Apr. 2, 1955; to Italian officials Mar. 13 and Apr. 4, 1956; and to Briscoe June 28, 1956.
136. The letter is dated Feb. 20, 1958. It is in the Raphael
Lemkin Papers, Box 2, Subseries 6, 2/13, American Jewish Archives.

137. This commitment was made in the course of a speech on Dec. 8, 1998, at the U.S. Holocaust Memorial Museum.

138. The editorial pointedly observed that Lemkin had recently observed his fifty-sixth birthday, which clearly indicated that he was born in 1901.


140. The letter was signed by the president of John Day, Richard Walsh. It is cited in Jacobs, "Papers of Raphael Lemkin," p. 112, n. 2.

141. The letter was signed by Charles Pearce and was dated Aug. 19, 1958. See ibid., p. 109.


144. Ibid.

145. The letter to Bamberger is dated May 1, 1953 and is in the Raphael Lemkin Papers, Box 2, Subseries 3, American Jewish History Archives.

146. The letter is dated Jan. 9, 1958. It is to be found in the Raphael Lemkin Papers, Box 2, Subseries 6, American Jewish Archives.

147. How Lemkin left irritation and acrimony in his wake when he spent a brief time in a national Jewish Reform institution was described by Schnur, "Unofficial Man," p. 45.

148. Ibid. One of his students, Professor Richard Gardner, in a recent interview emphasized Lemkin's "arrogance" even while referring to him as a "prophet." Interview with Richard Gardner, Sept. 22, 2000.


153. Ibid., p. 17

had been a colony of Belgium.

155. For appropriate citations, see ibid., pp. 5, 9, 17, 25.
159. UN, Study of Genocide, pp. 118-19, Cited in ibid., p. 18.

160. Judge McDonald’s address, entitled “Reflections,” was delivered on the morning of Dec. 9, 1998.
163. The advocate was Senator William Proxmire of Wisconsin, who delivered over 3,500 speeches on behalf of the Genocide Treaty on the floor of the upper house. See Klitzman, Baab & Murphy, “Ratification of the Genocide Convention,” p. 257.

See p. 2, Articles 4 and 5.
171. General Nash’s presentation was prepared in advance
and was incorporated in a report on the conference written by the author, “Genocide: Early Warning and Prevention,” and submitted to the Museum’s Committee on Conscience, pp. 25-27. The report was unpublished. At the time, General Nash was a lecturer at Harvard University’s Kennedy School of Government.


175. Statement by Antonio Cassese, President of ICFTY to the Parliamentary Assembly of the Council of Europe, Apr. 25, 1996.


177. A fact-sheet produced by the Coalition for International Justice on Mar. 19, 1997 provided the data. It was entitled The International Criminal Tribunal for the Former Yugoslavia.


179. The title of the report is the same as that of 1997: International Criminal Tribunal for the Former Yugoslavia, p. 4. An appendix of two pages offers a detailed breakdown.


183. Ibid., p. 2.


189. Ibid.

190. Rieff, “Far-Reaching Lessons,” p. 8

191. Bennet, “Clinton Declares U.S. ... Failed,” p. 12. In his speech in the Rwandan capital, Kigali, he used the term genocide no
less than eleven times.

Also see International Criminal Tribunal for Rwanda, April 2000, 
prepared by the Coalition for International Justice.
194. The figures are from the Coalition for International Jus-
tice. The date of compilation is June 2, 2000.
196. Toward an International Criminal Court? (New York: 
197. Korey, NGOs, pp. 514-33. Ferencz was a major lobby-
ist for the International Criminal Court.
198. Ibid., pp. 70-71.
199. See Barbara Crossette, “Clinton Weighing Options on 
World Criminal Court,” New York Times, Dec. 11, 2000; and Barbara 
Crossette, “U.S. Envoy Tackles Objections to Tribunal on War 
McNamara and Benjamin Ferencz, “For Clinton’s Last Act,” New 
200. For details, see Barbara Crossette, “UN to Establish a 
War Crimes Panel to Hear Sierra Leone Atrocity Cases,” New York 
Times, Aug. 15, 2000 and Barbara Crossette, “Sierra Leone to Try 
Juveniles Separately in UN Tribunal Plan,” New York Times, Oct. 6, 
2000.
202. This view was communicated in a lecture delivered by 
Scheffer to the Carnegie Council on Ethics and International Affairs 
on Oct. 5, 2000. Several weeks later, an article in New York Times 
expressed grave doubts about Indonesia rendering any kind of justice. 
See Seth Mydans, “And Justice for All?” New York Times (“Week in 
Review”), Oct. 22, 2000, p. 4. One human rights authority was 
quoted as saying that it was extremely doubtful that Indonesia would 
turn over its military and police officials for trial in East Timor. The 
foreign minister of the new East Timor state was quoted as saying: 
“Absolutely nothing has been delivered in terms of justice for the 
many thousands of victims in East Timor.”
203. The details are drawn from Scheffer’s speech at the 
204. The stenographic report of the debate appeared in “2nd 
Presidential Debate Between Gov. Bush and Vice President Gore,” 
policy adviser, Condoleeza Rice, in an authoritative article in Foreign 
Affairs, wrote not one word about genocide and contended that 
“humanitarian intervention should be guided by strong national 
security interests.” See Condoleeza Rice, “Campaign 2000—Pro-
moting the National Interest,” Foreign Affairs 79.1 (January-
February 2000).
205. Goldstone, Kosovo, p.17.
206. The issue is dealt with in Beth Van Schaack, “Limits of


210. Teltsch, "Library Show Recalls Man Behind Treaty on Genocide."

211. Samuels, "UN," p. 20.
i. William A. Schabas, “What is Genocide? What are the Gaps in the Convention? How to Prevent Genocide?” (Remarks at the Regional Forum on Genocide Prevention, Buenos Aires, Argentina, Dec. 10-12, 2008.)


Appendix 1

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1948)  

THE CONTRACTING PARTIES,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

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 to punish.

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.

Article III

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.

Article IV

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

Article V

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, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

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 such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.
Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

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

Article IX

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

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.
Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof for each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.
Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

a. Signatures, ratifications and accessions received in accordance with article XI;

b. Notifications received in accordance with article XII;

c. The date upon which the present Convention comes into force in accordance with article XIII;

d. Denunciations received in accordance with article XIV;

e. The abrogation of the Convention in accordance with article XV;

f. Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.