The United Nations Resolution on Genocide

Since his failure in 1933 to convince a conference associated with the League of Nations to recognise the new international crimes of ‘barbarity’ conceived of as the destruction of ‘ethnic, religious, or social’ groups and their culture which he designated as ‘vandalism’, Raphael Lemkin had not given his original proposals too much attention. During the Second World War, his analysis of the Nazi decrees in the subjugated countries of Europe compelled Lemkin to re-evaluate his ideas. But he merely touched on his original themes of the crimes of ‘barbarity’ and ‘vandalism’ when he addressed the North Carolina Bar Association on 16 May 1942.\(^1\) When he described his original proposals again in 1944, he wrongly claimed to have used the phrase ‘national, religious, or racial’ groups, a distinctive change of emphasis which showed a new awareness of the scale of mass killing and perverse racism. In his *Axis Rule in Occupied Europe* (1944), however, he looked forward to the amendment of the Hague Regulations ‘to prohibit genocide in any war which may occur in the future’. Every action impairing ‘the life, liberty, health, corporal integrity, economic existence, and the honor of the inhabitants when committed because they belong to a national, religious, or racial group’ was to be forbidden. Likewise ‘every policy aiming at the destruction or aggrandizement of one of such groups to the prejudice or detriment of another’ was to be prevented. Lemkin asserted that the system implemented in the past to protect minorities ‘was based mainly on international treaties and the constitutions of the respective countries’, but the enforcement machinery for these constitutional provisions was wholly inadequate. What was required was an international multilateral treaty, with provisions not only in the constitutions of each country but also in their criminal codes for the protection of minority groups: ‘Each criminal code should have provisions inflicting penalties for genocide practices’. Under the principle of universal repression, culprits suspected of such practices could be apprehended by the courts of the country in which the crime had been committed or to which they fled. Whereas prisoners of war were protected by the Hague Convention, the plight of women and children and groups of the population
in occupied countries went unmonitored; and it was necessary for the regulations of the Hague Convention to be revised, by setting up an agency to inspect occupied countries and to make ‘inquiries as to the manner in which the occupant treats nations in prison’.2

True that Lemkin was deeply disappointed by the form of the judgment delivered against the accused at Nuremberg on 1 October 1946, particularly its failure to include the concept of genocide; later he was to call it ‘the blackest day’ of my life;3 yet as early as April 1946 in the American Scholar Lemkin proposed ‘that the United Nations as they are now organized, together with other invited nations, enter into an international treaty which would formulate genocide as an international crime, providing for its prevention and punishment in time of peace and war’. Thus, it is apparent that Lemkin at the beginning of 1946 had already outlined plans for a treaty under the aegis of the newly constituted United Nations to combat genocide. Moreover, Lemkin argued that ‘the crime of genocide should be recognized therein as a conspiracy to exterminate national, religious or racial groups... The crime so formulated should be incorporated in every national criminal code of the signatories’. These last points had already been made in his book, Axis Rule in Occupied Europe. He went on to assert that ‘The liability for genocide should rest on those who gave and executed the orders, as well as on those who incited to the commission of the crime by whatever means, including formulation and teaching of the criminal philosophy of genocide’. Lemkin also devised a new scheme, whereby states pursuing a policy of genocide

should be held accountable before the Security Council of the United Nations Organization. The Council may request the International Court of Justice to deliver an advisory opinion to determine whether a state of genocide exists within a given country before invoking, among other things, sanctions to be leveled against the offending country. 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.

Here Lemkin had the lessons of the Holocaust in mind when he suggested that persecuted religious or racial groups could petition the Security Council to take action on their behalf.4 Similarly, Lemkin suggested that ‘an international body (such as the International Red Cross) should have the right to supervise the treatment of civilian populations by occupants in time of war in order to ascertain whether genocide is being practiced by such occupant’.5 Fortunately Count Bernadotte, the President of the Swedish Red Cross, stated that he would take up Lemkin’s proposal, and it was eventually implemented as Article 143 of the Geneva Convention of 1949 dealing with the treatment of civilian populations by occupation forces.6