

Cultural Genocide, the Universal Declaration, and Minority Rights

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This essay will show how in the late 1940s the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide¹ and of the Universal Declaration of Human Rights² overlapped in a significant manner. That overlap helps explain why neither of these documents directly addresses the crime of cultural genocide. While they retained the original title, the drafters of the Genocide Convention severely weakened the prevention part of their goal when they cut out of their document the prohibition and punishability of acts of cultural genocide. Such a prohibition was part of the first draft of the Genocide Convention.³

During the drafting process, it was clear that the communist and Arab delegations favored a cultural genocide article for the Genocide Convention as well as a minority rights article for the Universal Declaration. However, the nations from both Americas were wedded to their respective policies of assimilation and, therefore, opposed both provisions.

In the end, the balance of the votes lay with the delegations from Western Europe. Having witnessed Hitler's acts of ethnic cleansing first-

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1. Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* 9 Dec. 1948, 78 U.N.T.S. 277 (*entered into force* 12 Jan. 1951) (*entered into force for U.S.* 23 Feb. 1989) [hereinafter *Genocide Convention*].
2. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., (Resolutions, part. 1), at 71, U.N. Doc. A/810 (1948), *reprinted in* 43 Am. J. INT'L L. SUPP. 127 (1949) [hereinafter *UDHR*].
3. *Draft Convention on the Prevention and Punishment of the Crime of Genocide*, U.N. ESCOR, Comm'n on Hum. Rts., art. 3, U.N. Doc. E/447 (1947) [hereinafter *Draft Convention*]. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 273 n.44, 274 & n.45 (1999).

hand, the Western delegates understood the connection between cultural genocide and physical genocide, which the communist and Arab delegations were making. They argued, however, that the right place to make that connection was in the Universal Declaration and not in the Genocide Convention itself. Therefore, they voted to delete the cultural genocide prohibition from the Convention on the promise that they would support a similar measure for the Universal Declaration. However, when the time came, they chose (for reasons having to do with the rhetoric and reality of the Cold War) not to make good on those promissory notes. The breakup between Stalin and Tito further weakened the pro-minority rights lobby.

Since the Cold War has ended and nations on both American continents are becoming more nuanced in their approach towards members of minority groups, this essay ends with an argument for the completion of the Universal Declaration. Amending that document with a separate article on the rights of members of religious, linguistic, and cultural minority groups will allow us to address the greatest problem in international affairs today, the treatment of members of minority groups and, at the same time, correct and complete some of the work begun by the moral visionaries who, in the late 1940s, shaped so much of the world in which we now live.

I. THE LEAGUE OF NATIONS BACKGROUND

Overtly, the Universal Declaration is like the Charter of the United Nations⁴ in that neither document contains a special provision for the protection of minority groups. Such provisions were very much part of the Peace Treaties that were signed at the end of the First World War.⁵ Having witnessed the horrors of "ethnic cleansing" ourselves, we can readily grasp President Wilson's comment of May 1919 that "[n]othing . . . is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. . . ."⁶ When the global powers redrew the map of Europe, certain religious, ethnic, and linguistic minorities were created. In order to protect these minorities, fourteen treaties involving

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4. U.N. CHARTER, signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (entered into force 24 Oct. 1945).
 5. See generally CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, THE TREATIES OF PEACE 1919-1923 (1924).
 6. President Wilson made the statement at a plenary meeting of the Peace Conference on 31 May 1919. LEAGUE OF NATIONS COUNCIL, PROTECTION OF LINGUISTIC, RACIAL OR RELIGIOUS MINORITIES BY THE LEAGUE OF NATIONS 159, DOC. C.L.110.1927.I.B.2 (1927). See FRANCESCO CAPOTORTI, SPECIAL RAPPORTEUR OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES 17, ¶ 92, U.N. Doc. E/CN.4/Sub.2/384/Rev.1, U.N. Sales No. E.91.XIV.2 (1979).

seventeen countries were drawn up.⁷ The June 1919 Treaty with Poland⁸ was the first one and served as a model.⁹

Poland promised to place no restriction “on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at any public meetings” and to give “adequate facilities . . . to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts.”¹⁰ In this way, the German speaking minority in Poland had its language and culture protected.¹¹ We should note that the language of this protective shield is the language of nondiscrimination. The Polish government promised not to discriminate against, and not to interfere with the use of “any language” by, “any national.” The language here is general, but the underlying aim was to protect the German speaking minority.¹² The Polish government also indicated a willingness to take special measures, such as the provision of “adequate facilities” for Polish citizens whose native tongue was not Polish. Cultural and religious differences were involved as well.

In much the same way, ethnic, religious, or linguistic minorities were protected in: Austria, the Serb-Croat-Slovene State (Yugoslavia), Czechoslovakia, Bulgaria, Romania, Hungary, Greece, the Free City of Danzig,

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7. See PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* 41–42 (1991). These countries included Austria, Poland (including Upper Silesia), the Serb-Croat-Slovene State, Czechoslovakia, Bulgaria, Romania, Hungary, Greece, the Free City of Danzig, the Åland Islands, Albania, Estonia, Lithuania, Latvia, Turkey, Memel, and Iraq. See CAPOTORTI, *supra* note 6, at 18, ¶ 96. The American President had tried to get an article included in the Covenant of the League of Nations in which the Member Nations promised “to accord to all racial or national minorities within their jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people.” *Id.* at 16, ¶ 85 (citation omitted). He was not successful in this attempt, though it did inspire the 14 separate Minority Instruments that were signed as part of the peace. See generally *id.* at 16–18.
 8. Minorities Treaty Between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919, 225 Consol. T.S. 413 [hereinafter *Minorities Treaty*].
 9. See CAPOTORTI, *supra* note 6, at 17–18, ¶¶ 93–95.
 10. *Minorities Treaty*, *supra* note 8, art. 7.
 11. Later, when he had already quit the League, Hitler claimed that the Polish government was not adequately protecting its German minority and he invaded the country. Hitler’s use of this pretext was one reason why, after World War II, the members of the United Nations were reluctant to include minority clauses in the UN Charter. What Wilson saw as a guarantee of peace, they saw as a cause for war.
 12. Patrick Thornberry makes the point that these League Treaties “were not principally group centred, but ascribed rights to individuals: nationals, inhabitants, and persons belonging to racial, religious, or linguistic minorities.” THORNBERRY, *supra* note 7, at 48. From the citations in the text, the reader can see that this is indeed so. Therefore, my claim is not that the Treaties recognized the rights of groups, as such, but that, as Thornberry says a page later, “[t]he League scheme . . . recogniz[ed] the group dimension of human existence.” *Id.* at 49. A later excerpt of Thornberry reflects the focus of my argument: “The League treaties were designed to protect the right to an identity of the minorities concerned.” *Id.* at 51.

Albania, Lithuania, Latvia, Estonia, Iraq, and Turkey. In each case, the protection of the relevant minorities amounted to a combination of non-discrimination laws and of special measures when needed. In these Treaties, the principle of nondiscrimination served as the means to the end of minorities' protection.¹³

The United Nations Charter is different because, in it, the means are made into an end. The Charter sets up the principle of nondiscrimination as an independent substantive principle that is meant to give content to the document's human rights references without invoking the cause of minority rights. One of the purposes of the United Nations is the promotion and encouragement of respect for human rights and fundamental freedoms "for all without distinction as to race, sex, language, or religion[.]"¹⁴ Because the Charter does not spell out what it means by these human rights and does not tell us which freedoms are fundamental, the principle of nondiscrimination is made to stand as an end in itself. The irony is that the minority groups, the protection of which used to be the object of nondiscrimination clauses in international legal instruments, are left out of the Charter. The basic political unit of the Charter is the state, and the basic social unit is the individual human being. The group dimension of human existence, so prominent in the League Treaties, is absent.

One of the main reasons for this absence is the failure of the implementation machinery set up by the League. The system of petitions that was meant to monitor compliance broke down because, in the last analysis, only states as members could give a petition (even if it did not originate with a state) legal standing before the Council of the League. From 1930 to 1932, there were 305 petitions, but in 1939, there were only four.¹⁵ One of the problems was that the states that had been made to sign a Minority Treaty felt like second-class citizens of the League in comparison to the other states which had no such restrictions put on their sovereignty. This two-tier system led to distrust and resentment.¹⁶ Add to this the inflammation of minority sentiments in neighboring states caused by Hitler's rhetoric, and we can easily imagine the failure of the Treaties as the collapse of "one floor of a toppling building," which is how one author describes the moral and political disintegration of the between-wars world.¹⁷ It was a time when "[d]ictatorships replaced democracies, hate and intolerance flourished, power over-rode reason, and passionate nationalism crushed the growing

13. See generally CAPOTORTI, *supra* note 6, at 18.

14. U.N. CHARTER, *supra* note 4, art. 1, ¶ 3.

15. See THORNBERRY, *supra* note 7, at 46.

16. See *id.* at 47-48.

17. *Id.* at 48 (quoting I.H. BAGLEY, GENERAL PRINCIPLES AND PROBLEMS IN THE PROTECTION OF MINORITIES 126 (1950)).

bloom of international co-operation. That minorities should suffer in such a climate was inevitable."¹⁸ This disappointment with the League system, and the knowledge that Hitler had used it as an excuse for waging aggressive wars, is one of the reasons why no amendment favoring protection of minorities was proposed at the San Francisco Conference that wrote the UN Charter.¹⁹

Since the Universal Declaration also has no article that protects the rights of members of minority groups, it is tempting to explain this omission as due to the same general factors that I just mentioned. On this interpretation, the Declaration is cut of the same individualist cloth as its legal parent, the UN Charter. I shall argue, however, that this omission in the Declaration was not a mere transfer of "blindness" from the Charter and that, at first, a minority rights article was slated for inclusion in the Declaration. Its omission was due more to a conflagration of negative factors than to a concerted effort from the start to do with the Declaration what had been done with the Charter. In short, it was an accident of history. And, as the title of this essay suggests, it involved a fateful overlap in the drafting of the Genocide Convention with the drafting of the Universal Declaration.

II. MINORITY RIGHTS SLATED FOR INCLUSION IN THE DECLARATION

In his background paper for the creation of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Mr. Humphrey, the first Director of the Secretariat's Human Rights Division, defined the term "minorities" as "groups within a country that differ from the dominant group in their culture, religion or language, and which usually desire to maintain and foster their cultural, linguistic, and religious identity."²⁰ He pointed out that the expression "protection of minorities" would normally "include both protection from discrimination and protection against assimilation."²¹ The latter of these two concepts refers to the extra steps mentioned in the League Treaties, such as adequate facilities for linguistic and cultural development. Mr. Humphrey also pointed out that there were "historical precedents for the protection of minorities against assimilation, both in national and international law. States like Belgium, Canada, Finland, South

18. *Id.* (quoting BAGLEY, *supra* note 17, at 126).

19. Thornberry does not mention this as a reason. He gives the fact that the countries that lobbied most aggressively for the human rights references in the Charter were what are called "countries of immigration," which did not keenly feel the "problem" of minorities. See THORNBERRY, *supra* note 7, at 122.

20. *Working Paper on the Establishment of a Sub-Commission on the Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., at 3, U.N. Doc. E/CN.4/W.5 (1947).

21. *Id.* at 2.

Africa, Switzerland, and the Union of Soviet Socialist Republics [had] established constitutional guarantees for the protection of linguistic and religious minorities."²²

Several delegates to this First Session of the Commission on Human Rights—some of whom were later to turn against the Article—made positive comments about the need to protect members of minority groups.²³ Mrs. Metha, the Indian delegate, drew attention to "the case of Indians, Chinese, Japanese and other peoples scattered in the world."²⁴ She thought that an

effort must be made to define in precise, legal and practical language, as to what a minority is, as to what discrimination is. Additionally to this, a definition must be made forthwith as to what specific safeguards must be incorporated in the proposed bill of human rights against the danger of assimilation of minorities where they exist.²⁵

That, in the popular mind, the question of human rights was often equated with that of the protection of minorities was clear from Mr. Hodgson's question: the Australian delegate asked what was meant by the phrase "Human Rights" and himself answered, "We refer to, or we have in mind minorities."²⁶ Mr. Romulo, the delegate from the Philippines, felt that "the bill of rights, which we have been commissioned to draw up, should take into account . . . the rights of minority groups within the state. . . ."²⁷

With this support ringing in his ears, Mr. Humphrey prepared his first draft of the Declaration. Of the drafts, he had collected only four containing some sort of provision protecting minority rights: Parson's draft, the draft of the American Association of the United Nations, the one by the Institut de Droit International, and the one proposed by Professor Lauterpacht.²⁸ For his own draft, Mr. Humphrey borrowed most from the proposals that had been submitted by the Cuban,²⁹ Chilean,³⁰ and Panamanian³¹ delegations. There-

22. *Id.*

23. *Commission on Human Rights Drafting Committee International Bill of Rights*, U.N. ESCOR, Comm'n on Hum. Rts., at 380, U.N. Doc. E/CN.4/AC.1/3/Add.1 (1947) [hereinafter *Commission on Human Rights Drafting Committee*].

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Analysis of Various Draft International Bills of Rights*, U.N. ESCOR, Comm'n on Hum. Rts., at 7, U.N. Doc. E/CN.4/W.16 (1947). The Lauterpacht Bill of Rights was part of his 1945 book *An International Bill of the Rights of Man*. The Bill is at 69–74, and the minority rights Article, no. 12, is at 72. HERSH LAUTERPACHT, *AN INTERNATIONAL BILL OF THE RIGHTS OF MAN* 69–74, 72 (1945).

29. For the Cuban proposal, see *The Cuban Delegation to the General Assembly of the United Nations: Draft Declaration on Human Rights and Letter of Transmittal 22 April 1946*, U.N. ESCOR, Comm'n on Hum. Rts., U.N. Doc. E/HR/1 (1946).

30. The Chilean proposal was prepared by the Inter-American Juridical Committee. See *Draft Declaration of the International Rights and Duties of Man: Formulated by the*

fore, it is significant to note that none of their drafts contained an article on minority rights and that Humphrey went to the Lauterpacht draft for inspiration.³² He quoted Professor Lauterpacht's Article in his report to the Commission and, with two minor changes, used it as Article 46 in the draft that he submitted to the First Session of the Drafting Committee that was set up by the Commission on Human Rights.³³

Humphrey argued for the inclusion of the Lauterpacht Article in the Bill because he agreed with the members of the Institut de Droit International who wanted to "replace the then existing Minorities Treaties by an instrument of general application."³⁴ He quoted Lauterpacht's remark that "the abandonment of the present [League] system of protection of minorities, without an alternative and compensating international arrangement, would mean a disservice to the minorities, to the cause of international protection of human rights and international peace and progress."³⁵ Humphrey probably also agreed with Lauterpacht's argument that the principle of nondiscrimination did not by itself protect the cultural rights of members of minority groups.³⁶ That is precisely what the League Treaties had sought to do when they demanded extra steps beyond the floor of nondiscrimination.

Inter-American Judicial Committee, U.N. ESCOR, Comm'n on Hum. Rts., U.N. Doc. E/CN.4/2 (1947).

31. The American Law Institute prepared the Panamanian proposal. See *Statement of Essential Human Rights Presented by the Delegation of Panama*, U.N. ESCOR, Comm'n on Hum. Rts., U.N. Doc. E/HR/3 (1946).
32. All three of these are compared with each other and with the draft submitted by the American Federation of Labor. See *Committee on Arrangements for Consultation with Non-governmental Organizations: American Federation of Labor*, U.N. ESCOR, U.N. Doc. E/CT.2/2 (1946). See also *Working Paper on Consideration of Communications Received*, U.N. ESCOR, Comm'n on Hum. Rts., U.N. Doc. E/CN.4/W.3 (1947) (containing no minority article).
33. From one of the other documents Humphrey submitted to the Commission, its members could learn that several of the constitutions of the Member States also contained provisions on the rights of minorities. The most explicit of these were the Chinese and Czechoslovakian. However, they are the exceptions. The very large majority of constitutions in the late 1940s contained no special article dealing with the rights of members of minority groups. Humphrey, however, was bold to include one. Article 132 of the 1920 Czechoslovak Constitution set public funds aside in those districts "where there is a considerable fraction of Czechoslovak citizens belonging to some minority . . . religion, or nationality or language" for the use and enjoyment by those minorities of their religion, culture, or language. *Commission on Human Rights Drafting Committee*, *supra* note 23, at 382. The Chinese Constitution had several articles dealing with the rights of "racial groups", one of which granted "all racial groups" the enjoyment of "equality" and two of which deal specifically with "racial groups in the border regions." *Id.* at 381.
34. *Analysis of Various Draft International Bills of Rights*, *supra* note 28, at 7.
35. *Id.*
36. See LAUTERPACHT, *supra* note 28, at 151-54.

This Lauterpacht/Humphrey Article was positively received by the First Session of the Human Rights Drafting Committee. In its fourth meeting, the "inclusion of the substance of Article 46 was sponsored by Dr. Malik (Lebanon)."³⁷ There was no discussion at this time. Mr. Cassin, who was asked to do a rewrite of the Humphrey draft, did not include Humphrey's Article 46 in the first of his two revisions. Perhaps this omission was caused by the fact that his own country, France, took an assimilation view of minorities. He did, however, include it as Article 39 in his second rewrite two days later. At that time, he told his colleagues that he considered this to be "one of the most important Articles as the prevention of discrimination should be emphasized in the Declaration."³⁸

Cassin had made three important changes in the Humphrey/Lauterpacht text. He deleted the reference to the "equitable portion of public funds available for the purpose," added a provision that the minorities shall have the rights at issue "as far as compatible with public order," and he deleted a provision about the use of the minority language in "the press and in public assembly," which Humphrey had added to the Lauterpacht text.³⁹ Cassin did not explain these changes and, admitting his uncertainty about the wording of it, suggested that the Article be "referred for further study to the Sub-Commission on Prevention of Discrimination and Protection of Minorities."⁴⁰ His idea to refer it to the newly established Sub-Commission made sense, and we probably should not interpret his proposal as an attempt to sidetrack the Article. On the other hand, it is possible that the unsolicited changes he made in the Article were portents of his later opposition to it.

Mr. Santa Cruz, the delegate from Chile, spoke for most Latin American delegations when he remarked that "many countries of America had been created by immigration . . . and that the form and substance of this Article called for the most careful consideration."⁴¹ He did not call, however, for an outright rejection. Mr. Wilson, the delegate from the United Kingdom (UK), also was not sure about the language of the Article. He believed that "when the time was ripe, something along the lines of the draft Article should be included in the Declaration."⁴² Even so, he did not want to refer the Article

37. *Summary Record of the Fourth Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., 1st Sess., at 10, U.N. Doc. E/CN.4/AC.1/SR.4 (1947).

38. *International Bill of Rights: Drafting Committee*, U.N. ESCOR, Comm'n on Hum. Rts., 1st Sess., at 6, U.N. Doc. E/CN.4/AC.1/SR.15 (1947).

39. *International Bill of Rights, Revised Suggestions Submitted by the Representative of France for Articles of the International Declaration of Rights*, U.N. ESCOR, Comm'n on Hum. Rts., at 7, U.N. Doc. E/CN.4/AC.1/W.2/Rev.2 (1947).

40. *International Bill of Rights: Drafting Committee*, *supra* note 38, at 6.

41. *Id.*

42. *Id.*

to the new Sub-Commission "as it would then carry the endorsement of the Drafting Committee."⁴³ He stated: "The Chairman thought that a footnote might be attached to the Article saying that this was a draft based on the Secretariat draft."⁴⁴ Mr. Malik, the Lebanese delegate who had sponsored the Article, "did not object to referring this Article to the Sub-Commission for further study, but [he] insisted that the idea should be included in the Declaration."⁴⁵ No formal vote was taken, and the Article ended up in the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.

This Sub-Commission was composed of delegates from: Australia, Belgium, China, Ecuador, France, Haiti, India, Iran, Sweden, the Union of Soviet Socialist Republics (USSR), the UK, and the United States (US). Very few changes were made in what was already a good article. They added the word "security" after the word "order" and restored the phrase "in the Press and other public assembly," which Cassin had removed and the Drafting Committee had also left out. This amended version was passed on to the Second Session of the Commission on Human Rights together with a clear statement as to when a minority group deserved special protective treatment. This statement does not confuse the issue of minority rights with that of either immigration or of a federation of states, and it passed overwhelmingly.⁴⁶ Nor did the Article itself confuse these matters. It was adopted by the Sub-Commission by six votes to four, with two abstentions. It read as follows:

In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order and security to establish and maintain schools

43. *Id.*

44. *Id.*

45. *Id.*

46. The following paragraph was adopted by nine votes to one, with two abstentions.

The protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion, and language. In order to qualify for protection a minority must owe undivided allegiance to the Government of the State in which it lives. Its members must also be nationals of that State.

Report Submitted to the Commission on Human Rights, U.N. ESCOR, Comm'n on Hum. Rts., 1st Sess., at 13, U.N. Doc. E/CN.4/52 (1947) [hereinafter Report Submitted to the Commission on Human Rights]. The following paragraph was adopted by seven votes to three with two abstentions: "If a minority wishes for assimilation and is debarred, the question is one of discrimination and should be treated as such." *Id.*

and cultural or religious institutions and to use their own language in the Press, in public assembly and before the courts and other authorities of the State.⁴⁷

This Article was sent to the Second Session of the Commission with the recommendation that it be included in the Declaration.

The Article was accompanied by comments of some of the members. In one of them, Mr. Nisot, the delegate from Belgium and the Chairman, explained that he objected to the Article as written because it gave the rights of minorities to "persons" instead of to "citizens" belonging to such minority groups. He was supported in this observation by the delegates from the UK and from France.⁴⁸ The point of the objection was to not grant the "differential treatment" to aliens, tourists, and migrant workers.

Although the Article had been thoroughly researched and prepared by the Sub-Commission, its fortune started to wane upon its arrival in the Second Session of the Commission. Mr. Victoria, the delegate from Uruguay, stated that "his country had no minority problems" and that it would be better if the Commission waited for the report from the Working Group to which the Article had been sent.⁴⁹ Mrs. Roosevelt concurred. "The United States of America," she said, "was in the same position as Uruguay regarding minorities; they did not exist as such in the United States."⁵⁰

The Working Group mentioned by Mr. Victoria had only one South American representative on it. Mr. Adamo, the Panamanian delegate, might well have repeated the South American misgivings expressed by Mr. Victoria, but he did not do that. At the time, Article 94 of the Panamanian Constitution stated that "[t]he State will give special protection to peasant and indigenous communities for the purpose of integrating them in an effective manner in the national community with regard to their standards of living, economic, political and intellectual."⁵¹ Though the Article goes on to say that "the values of the autonomous culture" will be preserved, one senses that assimilation is the main policy. As I said, Mr. Adamo did not take a strong stance against a minority rights article. The other representatives to this Working Group were: Mrs. Roosevelt (Chairperson, US), Professor Cassin (Rapporteur, France), Mr. Stepanenko (Byelorussian Soviet Socialist Republic (BSSR)), General Romulo (Philippines), Mr. Bogomolov (USSR),

47. *Id.* at 9.

48. *Id.* at 10.

49. *Summary Record of the Thirty-Second Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., 2d Sess., at 4, U.N. Doc. E/CN.4/SR.32 (1947).

50. *Id.*

51. *Provisions of National Constitutions Concerning the Prevention of Discrimination and the Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, at 33, U.N. Doc. E/CN.4/Sub.2/4 (1947).

and Mr. Heppel (UK), who attended as an observer.⁵² With the South American voice muted, the only delegation to be strongly opposed to a minority rights article in the Declaration was the one from the US.

After General Romulo "proposed that the Sub-Commission's text be taken as a basis of discussion," Mrs. Roosevelt stated that although there were different ethnic and linguistic groups in her country, "in the United States . . . there was no minority problem."⁵³ Her delegation had submitted a draft declaration in which this Article was omitted and its provisions housed under the rights of other Articles, like the one on nondiscrimination and Article 27's right "to participate in the cultural life of the community."⁵⁴ The other delegates suggested changes, but all of them approved of the Article in concept. Mr. Cassin said that his country "had always been an immigration country, . . . [but that his] delegation would vote for the whole of Article 36, provided the word 'persons' was replaced by 'citizens of the country.'"⁵⁵ This was accepted.

The two communist delegates complicated the rationale for the Article by intertwining the problem of minorities with that of nationalism and colonialism. Mr. Stepanenko, the delegate from the BSSR, wanted to reinstate the provision for public funding that Cassin had deleted. He proposed that a State with a minority group or groups would guarantee "the necessary means from State sources in order to give members of such groups rights of nation and nationality in the framework of national and territorial autonomy."⁵⁶ This amendment fused the general problem of minorities with the more specific ones of nationalism and territorial authority. While some national movements within federated structures of government are likely to be minorities within that overall structure, not all such minorities see themselves as nations claiming a territory. Mr. Bogomolov, the USSR delegate, similarly set back the cause of minority rights when he

52. *Report of the Working Group on the Declaration on Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 2d Sess., at 1, U.N. Doc E/CN.4/57 (1947).

53. *Working Group on the Declaration of Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 2d Sess., at 17, U.N. Doc E/CN.4/AC.2/SR.9 (1947) [hereinafter *Working Group on the Declaration of Human Rights*].

54. See *United States Suggestions for Redrafts of Certain Articles in the Draft Outline (E/CN.4/AC.1/3)*, U.N. ESCOR, Comm'n on Hum. Rts., art. 39, at 7, U.N. Doc. E/CN.4/AC.1/8 (1947). See also *Proposal for a Declaration of Human Rights Submitted by the Representative of the United States on the Commission on Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., art. 9, at 2-3, U.N. Doc. E/CN.4/36 (1947) (meeting just before the Second Session had met); *Draft International Declaration on Human Rights (Document E/600) with United States Recommendations*, U.N. ESCOR, Comm'n on Hum. Rts., 2d Sess., art. 30, at 11-12, U.N. Doc. E/CN.4/AC.1/20 (1948) (illustrating that the redistribution of the provisions to other Articles is made explicit in the comment "see previous article," which is our Article 27).

55. See *Working Group on the Declaration of Human Rights*, *supra* note 53, at 19.

56. *Id.*

observed that "the Charter spoke of the obligation to promote the development of the peoples of non self-governing territories towards independence."⁵⁷ Professor Cassin, the French delegate, responded that there "were certain countries where different peoples, Christians, Mohammedans, and Jews, had lived side by side for centuries" without each of them requiring autonomy or self-government over a certain territory.⁵⁸

Listening to this discussion and being worried about having articles in the Declaration that were not "applicable to all States," Mrs. Roosevelt proposed to delete "the whole of the text."⁵⁹ This was voted down, and the "text of Article 36 was therefore retained."⁶⁰ She then put the above-mentioned Byelorussian amendment to the vote. When this amendment was rejected, she "called for a vote on the text of Article 36, as proposed by the Sub-Commission on Minorities, in which the word 'persons' was replaced by the words 'citizens of the country.'"⁶¹ At this point, one can feel history slip through the fingers of one hesitant man. It is my reading of these minutes that the Article would have passed as proposed by the Sub-Commission with the change Cassin had demanded. The Sub-Commission had done an excellent job sorting out the different issues involved in the protection of members of minority groups. The members of this Working Group understood that passage at this time would in no way prevent them from making improvements at later drafting stages. The French amendment to replace "persons" by "citizens" had been accepted and would help gather support for the Article in the Second Session itself.

In spite of all this, "Professor Cassin (France) withdrew his amendment, since he considered that the text of this Article was not yet final and should therefore be held over. This was done, and the text was to be added to the Report [of the Working Group] and submitted to Governments for comment."⁶² The US opposition, the communist complications, and Mr. Cassin's hesitancy brought about a turning point in the chances of the Article's inclusion. Because the Article was no longer included in the formally approved list for the Declaration, the burden of proof had shifted, and from then on, proponents had to fight an uphill battle, which they lost.

When the report of the Working Group was submitted to the Second Session, Mrs. Roosevelt interpreted what the Group had done as more negative than what had actually happened. She said that "Article 36 . . . had not been voted on by the Working Group and therefore should . . . be left

57. *Id.* at 20.

58. *Id.*

59. *Id.* at 19.

60. *Id.*

61. *Id.* at 20-21.

62. *Id.*

aside.”⁶³ This is debatable, for we saw above that Mrs. Roosevelt’s own proposal that “the whole of the text” be deleted had failed and the minutes tell us that therefore “the text of Article 36 was retained” by the Working-Group. Mr. Cassin’s decision to withdraw his amendment could only have been applied to his own replacement of “citizens” for “persons” and not to the whole of the retained text. However, that is how Mrs. Roosevelt, as Chair, chose to interpret the Cassin withdrawal. The sense of the group had clearly been in favor of the Article. As a result of this ruling by the Chair, the Article was not only passed on to governments without formal backing, it was also passed on, in this informal way, to the Third Session of the Commission on Human Rights.⁶⁴

III. THE IMPACT OF THE GENOCIDE DELIBERATIONS ON THE THIRD SESSION OF THE COMMISSION ON HUMAN RIGHTS

Between the Second Session of the Commission on Human Rights of December 1947 and the Third Session of May and June 1948, the United Nations Ad Hoc Committee on Genocide met at Lake Success, New York, from 5 May to 10 May.⁶⁵ This is the committee that produced the first draft of the Genocide Convention that would be adopted by the 1948 Third General Assembly on 9 December, which was one day before that body adopted the Universal Declaration of Human Rights. The Genocide Convention, as proposed by this committee, included an article on cultural genocide, discussed below. However, this cultural genocide article was deleted from the Genocide Convention by a later vote in the Sixth Committee of the General Assembly, which deals with legal matters. In

63. *Summary Record of the Fortieth Meeting*, U.N. ESCOR, Comm’n on Hum. Rts., 2d Sess., at 16, U.N. Doc. E/CN.4/SR.40 (1947).

64. The Dutch government saw a problem with the education and language requirement, the Brazilian government wanted to make sure that the provision did not apply to “groups formed by immigration,” and the Egyptian government felt the Article did not belong in the Declaration and “should be covered by a convention on minorities.” *Collation of the Comments of Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation*, U.N. ESCOR, Comm’n on Hum. Rts., 3d Sess., at 47, U.N. Doc. E/CN.4/85 (1948) [hereinafter *Collation of the Comments of Governments*].

65. Between these two sessions of the Commission, there also was the Second Session of the Drafting Committee, which met in May of 1948. This Drafting Committee Session did not discuss the Article on rights of members of minorities (Article 31 at the time) of the Declaration and passed it on to the Third Session without comment. See *Summary Record of the Forty-Second Meeting*, U.N. ESCOR, Comm’n on Hum. Rts., 2d Sess., at 2, U.N. Doc. E/CN.4/AC.1/SR.42 (1948). The Covenant on which this Second Drafting Session spent most of its time did not have an article on the rights of members of minority groups, not even the suggestion of one.

December, just before adoption, a Soviet attempt to reinstate the cultural genocide prohibition failed. This means that the last stages of the drafting of the Universal Declaration—and its planned minority rights article—overlapped with the discussions on whether or not the Genocide Convention should have an article on cultural genocide.

Adding up these two overlapping discussions, we find that the protection of the rights of minorities was discussed no fewer than seven times after the minority rights article left the Second Session of the Commission on Human Rights in December of 1947. After that, the discussion of the protection of minorities went through the following stages: 1) the Ad Hoc Genocide Committee meetings (May 1948), which put into the Genocide Convention an Article III prohibiting cultural genocide, as well as physical and biological genocide; 2) the Third Session of the Commission on Human Rights (June), which decided to “delete” the minority rights article from the Universal Declaration; 3) the discussion of the Genocide Convention (with Article III in it) in the Economic and Social Council (July/August); 4) the Sixth Committee of the General Assembly (October), which decided to delete Article III from the Genocide Convention and just make it one on physical and biological genocide; 5) the Third Committee of the General Assembly (late November), which decided not to reinstate the minority rights article to the Declaration; 6) the debate in the General Assembly (December) in which it was decided not to reinstate Article III in the Genocide Convention; 7) the debate in the General Assembly (December) in which it was decided not to reinstate the minority rights article in the Declaration.

The relationship between these two sets of discussions might have gone either way. It could have happened that the deletion of cultural genocide from the Genocide Convention in the Sixth Committee strengthened the need for a minority rights article in the Declaration, which is what some delegations thought. (“If not in the one place, then in the other.”) However, it could have been that the reasons for deleting Article III from the Convention strengthened the opposition to a minority rights article in the Declaration. (“If not there, then not here either.”) Both lines of thought can be found in the remarks of different delegations, but the neither-here-nor-there school of thought won out. In this section, the impact of the first draft of the Genocide Convention on the minority rights deliberations in the Third Session of the Commission on Human Rights will be addressed. That impact turned the doubts raised in the Second Session of the Commission into solid opposition to the Article’s inclusion in the Declaration.

On December 11, 1946, the very First General Assembly of the United Nations had passed a resolution declaring genocide to be “a denial of the

right of existence of entire human groups."⁶⁶ The purpose of the Genocide Convention, drawn up by the Economic and Social Council, was "to prevent the destruction of racial, national, linguistic, religious, or political groups of human beings."⁶⁷ The Economic and Social Council set up an *ad hoc* committee, which decided to include under the heading of "cultural genocide" the following Article III as part of the Convention draft it submitted:

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the groups.⁶⁸

There is a clear overlap between this Article and the minority rights article we have been discussing. For some delegations, there was no difference at all, except that the Convention included certain measures of implementation and needed to be ratified.

On its first reading, Article III was adopted by the Ad Hoc Genocide Committee with five votes in favor (USSR, Venezuela, Lebanon, China, and Poland) and two against (France and the US); on the second reading, Article III was adopted with four votes in favor (USSR, Venezuela, Lebanon, and Poland) and three abstentions (France, the USA, and China).⁶⁹ Not surprisingly, the stand that nations took on this Article III influenced their later votes in the Third Session of the Commission on Human Rights on a minority rights article for the Declaration. Of those who voted for Article III, Venezuela was not represented on the Third Session of the Commission, but it spoke up clearly for minority rights later on. The communists and Lebanon were represented in the Third Session of the Commission and spoke up on behalf of a similar provision for the Declaration. Those who voted against

66. *The Crime of Genocide*, adopted 11 Dec. 1946, G.A. Res. 96 (I), U.N. GAOR, 1st Sess., 55th plen. mtg., U.N. Doc. A/RES/96 (1948), reprinted in 1 UNITED NATIONS RESOLUTIONS 175 (Dusan J. Djonovich ed., ser. I 1973) [hereinafter G.A. Res. 96].

67. *Draft Convention*, *supra* note 3, at 5.

68. *Summary Record of Meetings 175-225*, U.N. ESCOR, 3d Year, 7th Sess., Supp. No. 6, at 6, U.N. Doc. E/3/SR.175-225 (1948) [hereinafter *Proceedings of ECOSOC*].

69. *Id.* at 7. The extra (Chinese) abstention is a reconstruction on the part of this author, who has not yet found confirmation on this point. As the citations indicate, the other three delegations were far too strongly in favor ever to have switched like this.

Article III or abstained (namely, the USA, France, the UK, and China) voted against inclusion of such an article in the Declaration.

The US opposition had been clear from the start. As a member of the Ad Hoc Genocide Committee, it had voted against Article III and had asked that the following formal declaration be added to the Ad Hoc Genocide Committee's Report:

The prohibition of the use of language, systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value, commonly known in this Convention to those who wish to include it, as "cultural genocide" is a matter which certainly should not be included in this Convention. The act of creating the new international crime of genocide is one of extreme gravity and the United States feels that it should be confined to those barbarous acts directed against individuals which form the basic concept of public opinion on this subject. The acts provided for in these paragraphs are acts which should appropriately be dealt with in connection with the protection of minorities.⁷⁰

The only other place where the protection of minorities was being discussed was the Declaration, and the last comment raises the prospect of US support for a minority rights article in that document, but that was not to be. In the Third Session of the Commission, Mrs. Roosevelt, the US delegate, said that "provisions relating to rights of minorities had no place in a declaration of human rights."⁷¹ By way of explanation, she "pointed to the decision taken at the Lima Conference in 1938 and reiterated in Chapultepec, that minority questions did not exist on the American continent."⁷²

The Ad Hoc Genocide Committee discussions on the prohibition of cultural genocide also help us see why some countries, which had been in favor of or doubtful about a minority rights article in the Declaration in the First Session of the Commission, had become more negative by the time of the Third Session. The UK, India, and China fit this description. Having been forced to take a stand on the cultural genocide Article III, they were more aware of the issues involved and withdrew their earlier support for a minority rights article in the Declaration.⁷³ In the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the UK expert had supported the Lauterpacht/Humphrey Article, but in the Third Session, he sided with the assimilationists.

The Indian reversal is particularly startling. In the First Session, the Indian delegate had expressed her delegation's interest in an International

70. *Id.*

71. *Summary Record of the Seventy-Third Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., 3d Sess., at 5, U.N. Doc. E/CN.4/SR.73 (1948) [hereinafter *Summary Record of the Seventy-Third Meeting*].

72. *Id.*

73. *Id.*

Bill of Rights in terms of the protection it would give to minority groups who lived outside of India, especially those in South Africa. "During the past one hundred years four million Indians had been transplanted to various parts of the world under the aegis of the colonial governments concerned, and were now residing abroad in special communities, created at the request of and for the benefit of those governments" The point being that these same groups were constantly and grossly being discriminated against by the "host" governments.⁷⁴ A year and a half later, Mrs. Metha, India's delegate to the Third Session, took the approach that the colonial powers and the US were taking.⁷⁵ She "opposed the article as unnecessary," because "[m]embers of minority groups were protected as human beings by other articles of the Declaration."⁷⁶ The Belgian delegate agreed, adding the warning that Hitler had used the presence of German minorities in other countries as a pretense to meddle.⁷⁷ We shall see that both the Indian and Belgium delegations later reversed these negative positions and (again) became supporters of including the minority rights article in the Declaration. However, it would be too little, too late.

Though not a member of the Ad Hoc Genocide Committee, the Australian position also shifted significantly between sessions. As quoted earlier, the Australian delegate's observation in the First Session of the Commission, in essence, stated that talk of human rights meant the same thing as talk of the rights of minorities. This suggests a strong endorsement of a minority rights article. Later, however, in the Third Session, Mr. Hood, the Australian delegate, said that the ideas of the Sub-Commission's Article "went beyond the scope of the declaration" because it confirmed "rights upon groups as such."⁷⁸ "While he did not question the wisdom of the policy of free development of diversified groups in other countries, [he] . . . pointed out that Australia had adopted the principle that assimilation of all groups was in the best interest of all in the long run."⁷⁹ The representatives of Uruguay and France also spoke against inclusion of the Article.⁸⁰ The

74. *Summary Record of the Second Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., at 3, U.N. Doc. E/CN.4/SR.2 (1947).

75. In addition to the point that "the other rights [in the Declaration] covered the issue," the US delegation sided with the South American countries who took the position that "minority questions did not exist on the American continent." *Summary Record of the Seventy-Third Meeting*, *supra* note 71, at 5. This point is returned to in the discussion of the debate in the Third Committee. Mr. Loufti, the delegate from Egypt, also felt that "the problem of minority rights would be automatically solved by a complete implementation of the human rights" in the Declaration." *Id.*

76. *Id.*

77. *Id.* at 6.

78. *Id.* at 10.

79. *Id.*

80. *Id.* at 10, 12.

French vote, like the UK one, represented a reversal taken from the support given to the Lauterpacht/Humphrey Article in the Sub-Commission on the Protection of Minorities. France was represented on the Ad Hoc Genocide Committee where it had a chance to think through some of the implications of her previous support for a minority rights plank. Australia, France, and Uruguay never wavered in their opposition to a minority rights article for the Declaration.

At this Third Session stage, the only delegations that favored inclusion of a minority rights article in the Declaration were the Lebanese and the communist ones. Mr. Malik, the delegate from Lebanon, was one of the few original non-communist supporters who stuck with the minority rights article from beginning to end. As a member of the Ad Hoc Genocide Committee, Lebanon had voted for the cultural genocide Article III, even though the two changes it had proposed to the Article had been rejected. The support that the minority rights article received in the Third Session from the Lebanese delegation was, therefore, to be expected. Mr. Malik pointed out that the principle of assimilation⁸¹ so successfully used in the West "did not appear to be applicable to many countries of Eastern Europe and Asia, such as India. Somewhere in the Declaration protection of distinct ethnic groups in multinational states should be mentioned," he said.⁸² He received immediate support from Mr. Vilfan, the representative from Yugoslavia, who said that his country "might be described as one state, with two scripts, three religions, four languages, five nationalities, six republics and many ethnic groups."⁸³ Responding to the earlier observation by the Belgian delegate that Hitler had used the League Treaties on Minorities as a pretense for invasions, Mr. Vilfan countered that "[t]he abuse of a right in no way detracted from the inherent value of the right," and that the Belgian experience of "two distinct national groups" was a good lesson of how things could and should be done.⁸⁴

Mr. Malik had the support of his colleagues from the USSR and the BSSR, both of whom reiterated the points they had made in the Working Group of the Second Session. Mr. Klekovkin, the delegate from the Ukrainian Soviet Socialist Republic (UkSSR), pointed out that "various ethnic groups such as the Usbeks had been permitted to develop their culture and

81. Thornberry defines "assimilation" as "the idea of the superiority of the dominant culture, (aiming) to produce a homogenous society by getting groups to discard their culture in favor of the dominant one." It is not the same thing as "fusion", which he defines as "two or more cultures combine to produce another which is different from the parent cultures. Fusion reflects the equality of cultures as a process and a result." THORNBERRY, *supra* note 7, at 4.

82. *Summary Record of the Seventy-Third Meeting*, *supra* note 71, at 8.

83. *Id.*

84. *Id.*

language freely. . . . He strongly favored the retention of Article 31 in order to promote the development of distinctive group cultures in multinational States."⁸⁵ As an example he referred to the right of each member of such a group to be educated "in one's own language."⁸⁶

The Third Session voted down the Lebanese proposal that "[c]ultural groups shall not be denied the right to free development," as well as the Soviet proposal that "[e]veryone has the right to his ethnic, national culture, regardless of whether he belongs to a minority or majority of the population."⁸⁷ The whole of the Sub-Commission's Article was deleted with a vote of ten to six.⁸⁸ However, the word "delete" is too strong here because when the Second Session and its Working Group had passed on the Article without official backing, the burden of proof had shifted away.

While the contents of the Ad Hoc Genocide Committee Report had been available since the beginning of the Third Session, the Report itself did not arrive until the Third Session was well underway. When it did arrive, the Session set up a Sub-Committee to study the draft Convention on the Prevention and Punishment of Genocide. This Committee had on it Messrs. Loufti from Egypt, Cassin from France, and Azkoul from Lebanon. These three delegates proposed that the Session tell the Economic and Social Council that

[d]ue to a lack of time, the Commission [on Human Rights] was not able during its third session to study the draft Convention thoroughly and therefore is not in a position to make any observations concerning its substance. However, the Commission considers that the draft Convention represents a sound basis which will enable the General Assembly to reach a decision during its next session.⁸⁹

Article III on cultural genocide, which at this point was still in the Convention, did not, itself, become a point of dispute. One could speculate, however, that its adoption by the Ad Hoc Genocide Committee influenced the changes of position recorded in this section. The Third Session discussed whether, as a Session, it had spent enough time on the Genocide Report to be able to say that the draft Convention provided a "sound basis" for further discussion and action. The Soviet, UK, and Belgian delegations did not think that was the case and thought that the resolution therefore lacked

85. *Id.* at 10.

86. *Id.*

87. *Id.* at 13. The first one with a vote of seven to four, with five abstentions, and the second one with a vote of eight to four, with three abstentions. See *Summary Record of the Seventy-Fourth Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., 3d Sess., at 4 & 3, U.N. Doc. E/CN.4/SR.74 (1948).

88. *Id.* at 5.

89. *Draft Convention on the Prevention and the Punishment of Genocide*, U.N. ESCOR, Comm'n on Hum. Rts., 3d Sess., U.N. Doc. E/CN.4/136 (1948).

integrity. Most others, including Panama, Lebanon, Egypt, Chile, the US (hesitating), India (hesitating), China, France, and the Philippines felt that the Third Session was well enough acquainted with the documents involved to be able to support the resolution of the Sub-Committee. It was adopted "by 10 votes to 1, with 6 abstentions."⁹⁰

IV. THE DELETION OF CULTURAL GENOCIDE FROM THE GENOCIDE CONVENTION

When the Ad Hoc Genocide Committee Report arrived at the Sixth Committee of the General Assembly, which deals with legal matters, the representatives of the Sixth Committee took up three different positions with respect to the presence of Article III, which prohibited acts of cultural genocide. In the end, they deleted it in a vote of twenty-five to sixteen, with four abstentions.

Since a Convention is more demanding than a Declaration, we should count the sixteen votes for the cultural genocide prohibition (i.e., Article III) as nations that were also strongly committed to the inclusion of a minority rights article in the Universal Declaration. The debates about the Declaration bear this out. The group of sixteen that wanted to retain Article III consisted primarily of communist and Arab delegations: the USSR, Yugoslavia, the BSSR, China, Czechoslovakia, Ecuador, Egypt, Ethiopia, Lebanon, Mexico, Pakistan, the Philippines, Poland, Saudi Arabia, Syria, and the UkSSR. The four nations that abstained from voting on Article III's retention (Venezuela, Afghanistan, Argentina, and Cuba)⁹¹ probably had strong sympathies toward the protection of minority rights but, for one reason or another, felt that the Genocide Convention was not the right place. The Declaration debates also support this contention. The majority of the twenty-five votes cast against Article III need not be necessarily counted as opposed to any and all measures to protect the rights of members of cultural minority groups. They could have voted against Article III for that reason, but they may also have thought that the Convention was not the right place for this kind of protection, whereas the Universal Declaration was the right place. The delegations from the Americas had the former motive for deleting Article III, while many (if not most) Western European ones had the latter motivation. Those who voted against Article III were: the UK, the USA,

90. *Summary Record of the Seventy-Sixth Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., 3d Sess., at 15, U.N. Doc. E/CN.4/SR.76 (1948).

91. *Summary Record of Meetings*, U.N. GAOR 6th Comm., 3d Sess., at 206, U.N. Doc. A/C.6/SR.(1948) [hereinafter *Proceedings of the Sixth Committee*].

Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Dominican Republic, France, Greece, India, Liberia, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Peru, Siam, South Africa, Sweden, and Turkey.

The Sixth Committee discussions on Article III were very revealing and tell us how each nation felt in the late 1940s about the need for special protection of cultural minorities, both in the Genocide Convention and (by implication) in a similar provision in the Universal Declaration. In the material that follows, the voting blocks will be discussed in the order that they were introduced above.

A. The Communist Delegation

The communist nations were remarkably consistent in their support for an article on cultural genocide in the Genocide Convention. Both Poland and the USSR—the two communist members on the Ad Hoc Genocide Committee—voted for Article III's inclusion in the Convention and never changed their minds on that point.⁹² When the Article was threatened with removal in the Sixth Committee debates, the communist delegations spoke up forcefully on behalf of its retention. This position reflects the consistent communist support for some version of a minority rights article in the Universal Declaration.

The main argument for the inclusion of Article III in the Convention was that cultural genocide is more often than not a preparatory stage for the physical or biological genocide that soon follows. The communist delegations came from countries where—to stay with the recent past—Hitler had practiced cultural genocide. This fact led them to the obvious conclusion that there is what they called an “organic connection” between theories about superior and inferior races and acts of cultural genocide that seek to wipe out those cultures and races or groups of people that are thought to be inferior.

Defending the retention of Article III in the Sixth Committee, Mr. Morzov, the USSR delegate, argued that if genocide was “the intent to destroy a group in whole or in part, the physical destruction of members of the group was one way of carrying out that intention, and the destruction of the culture of a group was another” such method.⁹³ He pointed out that the “Nuremberg verdicts had shown that the destruction of the culture of certain groups might constitute a method of destroying those groups; there had

92. *Proceedings of ECOSOC*, *supra* note 68, at 15.

93. *Proceedings of the Sixth Committee*, *supra* note 91, at 205.

been examples of that in Czechoslovakia, Poland and Luxembourg."⁹⁴ To those delegations that argued that cultural genocide would be dealt with in the Declaration and, therefore, did not need to be mentioned in the Genocide Convention, he responded that biological genocide—the destruction of the physical person—was also already covered in the Declaration's rights "to life, liberty and security of person,"⁹⁵ "yet no one disputed the need for a convention on physical genocide."⁹⁶ Why should cultural genocide be any different? Mr. Khomusko, the BSSR representative, also argued that "[a]cts aimed at the destruction of the language, religion or culture of a group . . . were always a feature of persecutions having as their object the destruction of groups—as the crimes perpetrated under Hitler showed."⁹⁷

Mr. Zourek, the Czechoslovak representative

drew the Committee's attention to the fact that a group might disappear either as a result of the physical extermination of its members or as a result of forcible destruction of its distinctive and permanent characteristics. . . . He quoted numerous instances of cultural genocide of which the Czech and Slovak had been victims during the Nazi occupation. Those acts were designed[, he said,] to pave the way for the systematic disappearance of the Czechoslovak nation as an independent and national entity. Such Nazi activity had been accompanied by a thorough attempt to destroy everything which might remind the people of its national past and to prepare the way for complete germanification. . . . All those acts of cultural genocide had been inspired by the same motives as those of physical genocide: they had the same object, the destruction of racial, national or religious groups.⁹⁸

Since the Sixth Committee deleted Article III from the Convention, the delegation from the USSR sought to revive a version of it in the General Assembly debate on the Genocide Convention that took place later that December. More precisely, at that later debate, an attempt took place on December 9, the day before the Universal Declaration was to be adopted. This later USSR version read as follows:

94. *Id.*

95. UDHR, *supra* note 2, art. 3.

96. *Proceedings of the Sixth Committee, supra* note 91, at 205.

97. *Id.* at 202. Earlier, in the ECOSOC discussions, the representative of the BSSR, Mr. Kaminsky, had stressed the need for the Convention to combat cultural genocide. "The people of the BSSR, which had recently won its freedom after centuries of national persecution, had special reason to understand the importance of combating that form of genocide. The lessons of the Second World War also served to emphasize the importance of the struggle." *Proceedings of ECOSOC, supra* note 68, at 728.

98. *Proceedings of the Sixth Committee, supra* note 91, at 206. Mr. Katz-Suchy, the Polish delegate in the earlier ECOSOC discussions, observed that "[e]very form of genocide—cultural, physical, racial, had been attempted on various groups of the Polish population as well as on the nation as a whole." *Proceedings of ECOSOC, supra* note 68, at 711.

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national group on grounds of national or racial origin, or religious beliefs such as:

(a) Prohibiting the use of the language of the group in daily intercourse or in schools or the printing and circulation of publications in the language of the group;

(b) Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.⁹⁹

A roll-call vote was taken, and the Third General Assembly rejected this Article by thirty-one votes to fourteen, with ten abstentions.¹⁰⁰ Besides the six Eastern European communist countries that voted for this Article, we count the following: China, Haiti, Lebanon, Liberia, Pakistan, the Philippines, Saudi Arabia, and Syria.¹⁰¹ Once again, the support from the Middle East should be noted.

In the next section, I argue that the positive votes of three of these delegations (China, Haiti, and the Philippines) conflict with the rejection by these same nations (in earlier Third Committee discussions) of the same kind of provision for the Declaration. Because a convention is more demanding than a declaration, I take this General Assembly vote on cultural genocide to represent the "real" position of these nations on the question of the protection of cultural minority rights and shall ascribe the earlier rejection of the Declaration Article as primarily due to Cold War tensions and an error in Soviet strategy.

In its attempt to resurrect Article III, the Soviet Union received the support of the delegation from the Byelorussian Soviet Socialist Republic. Mr. Khomussko, the BSSR representative, told his colleagues how Hitler had used ghettos, concentration camps, and, finally, gas chambers in Minsk to "hasten extermination of the population."¹⁰² He went on to argue that it would not do to write off cultural genocide "as part of the larger problem of human rights" and, therefore, as not really connected to these horrible acts of physical genocide.¹⁰³ "Experience under Hitlerism had shown that such barbaric acts[, such as the suppression of a language and the destruction of

His point was that "acts of cultural genocide, which were essentially connected with the destruction of national groups, should be regarded as preliminaries to the crimes of physical genocide and be punishable as such." *Id.* at 713.

99. U.N. GAOR, 3rd Sess., U.N. Doc. A/767 (1948).

100. U.N. GAOR, 3rd Sess., at 848, U.N. Doc. A/810 (1948) [hereinafter *Proceedings of the General Assembly*].

101. *Id.* at 847.

102. *Id.* at 829.

103. *Id.*

libraries, museums, schools, or national monuments,] constituted some of the elements of racial or national persecution aimed at the extermination of certain groups of the population."¹⁰⁴ The Byelorussian people knew, he said,

that the destruction of cultural and national centers accompanied the mass destruction of people, cities and villages. The Germans had burned the Academy of Sciences, the State University, the State Library, the schools of medicine and law, the Ballet Theater, the National Library, whose books had been plundered and destroyed, and over one thousand school buildings in the region of Minsk alone.¹⁰⁵

He said that the same thing had been done in the Soviet Union, Poland, and Czechoslovakia. Mr. Katz-Suchy, his colleague from Poland, also remarked that "the [genocide convention] would only be fully effective if it covered cultural genocide which could be as destructive of the life of a nation as physical extermination."¹⁰⁶

B. Middle Eastern Delegations

Just as there was an experiential component to the arguments of the communists, there was a connection between the events unfolding in Palestine—with the displacement of thousands of Arabs after the creation of the State of Israel—and the interest of the delegations from the Middle East in the protection of the rights of members of minority groups. The only nation from the Middle East on the Ad Hoc Genocide Committee was Lebanon. This country has the most consistent record of support for the protection of the rights of members of minority groups—both in the Genocide Convention and the Declaration discussions—of any of the countries involved. Lebanon voted to include Article III in the Genocide Convention, even though its two amendments to Article III were rejected. It opposed the deletion of Article III in the Sixth Committee and ended up, as we discussed above, supporting the Soviet Union's attempt to revive a version of it in the General Assembly. When we come to discuss the debates on the Declaration in the Third Committee, we will see that Lebanon was one of the few delegations to propose its own Article for the protection of members of minority groups. This Lebanese voting record on minority rights gainsays at least half of the claim made by Abdullahi Ahmed An-Na'im when he says that the Chinese and Lebanese representatives, "both of

104. *Id.* at 838.

105. *Id.*

106. *Id.* at 842.

whom had been educated in American Universities, reflected their 'westernization' in the positions they took during the debates."¹⁰⁷

Saudi Arabia, Syria, Egypt, and Pakistan also voted to retain Article III in the Genocide Convention. Mr. Sadar Bahadur Khan, the Pakistani delegate to the Sixth Committee, stated that "for his country cultural genocide was a matter of vital concern, for thirty five million people, bound to Pakistan by ties of religion, culture, and feeling, but living outside its boundaries, faced cultural extinction at the hands of ruthless and hostile forces."¹⁰⁸ He argued that biological and cultural genocide were "complementary crimes insofar as they had the same motive and the same object, namely, the destruction of a national, racial, or religious group as such either by exterminating its members or by destroying its special characteristics."¹⁰⁹

He then reversed the usual order of things with the argument that "cultural genocide represented the end, whereas, physical genocide was merely the means. The chief motive of genocide was," he said, "a blind rage to destroy ideas, the values and the very soul of a national, racial or religious group, rather than its physical existence."¹¹⁰ The two kinds of genocide were therefore "indivisible," which meant that "the goal of Article III could not be attained by provisions of the Universal Declaration of Human Rights or of a Convention on Minority Rights."¹¹¹ Addressing those delegates who "appeared to consider cultural genocide as a less hideous crime than physical or biological genocide," he told them that "for millions of men in most Eastern countries the protection of sacred books and shrines was more important than life itself; the destruction of those sacred books or shrines might mean extinction of spiritual life." He concluded with the observation that "[c]ertain materialistic philosophies prevented some people from understanding the importance which millions of men in the world attached to the spiritual life."¹¹²

During the General Assembly debates on the new Soviet version of Article III, Mrs. Ikramullah, who was then the Pakistani delegate, made

107. Abdullahi Ahmed An-Na'im, *Problems of Universal Legitimacy for Human Rights*, in *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* 350 (Abullahi Ahmed An-Na'im & Francis M. Deng, eds., 1990).

108. *Proceedings of the Sixth Committee*, *supra* note 91, at 193.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 194. In response to the claim that Article III "would hinder the integration of the various elements of a country into a homogenous national unit," the Pakistani delegate cautioned them not to use assimilationism as "a euphemism concealing measures of coercion designed to eliminate certain forms of culture." *Id.* Nevertheless, to meet these worries half way, his delegation had proposed that paragraph (1) of Article III be deleted and replaced with a more restricted definition of cultural genocide "as acts of violence aimed at the destruction of objects of religious or cultural value and at forced conversions." U.N. GAOR 6th Comm., 3rd Sess., U.N. Doc. A/C.6/229 (1948).

many of the same points.¹¹³ In addition, she responded to a point often made by those who objected to Article III (or its replacements) on the grounds that the General Assembly Resolution 96 (I),¹¹⁴ which called for a Genocide Convention, did not have cultural genocide within its stated scope.¹¹⁵ She disagreed with that interpretation. She pointed out that the Resolution spoke of the “great losses to humanity in the form of cultural and other contributions represented by these human groups. . . .”¹¹⁶ It was clear to her, therefore, that the Resolution “definitely envisaged the prevention of genocide in the cultural field, as well as in all other fields.”¹¹⁷ Now, fifty years later and living in an age of multiculturalism, we are sympathetic to the principle of diversity invoked by Mrs. Ikramullah in her speech. “It was,” she said, “an accepted principle that diversity of spiritual endowments was of great value to the human race and that every effort should be made to safeguard it.”¹¹⁸

Having listened to the Pakistani worries about the Muslims living in India, Mr. Raafat, the Sixth Committee delegate from Egypt, thought that an “international convention was the only means of allaying the fears inspired by the remarks of the representative of Pakistan and by the behavior of certain metropolitan Powers in Non-Self-Governing Territories, which were attempting to substitute their own culture for the ancient one respected by the local population.”¹¹⁹ He added that this “analogy between cultural genocide and forced assimilation” was not his own invention but “had already been mentioned in the draft by the Secretary General.”¹²⁰ Mr Raafat admitted that “Article III might well be a source of endless difficulties, but that was not sufficient reason for deleting it. The crime of cultural genocide

113. Mrs. Ikramullah repeated the means-end argument with the observation that “those guilty of the crime of mass extermination committed that crime because the existence of a group endowed with a separate cultural life was intolerable to them. . . . [T]he mere physical existence of a group was,” she went on to say, “of little value from the point of view of humanity, for a group deprived of the living springs of the spirit was only a body without a soul, unable to make any contribution to the world’s heritage of art and science.” *Proceedings of the General Assembly*, *supra* note 100, at 817.

114. G.A. Res. 96, *supra* note 66.

115. One of these countries was Iran. Its delegation to the Sixth Committee submitted an amendment to suppress Article III, maintaining that there was “a great deal of difference between physical genocide which the mass extermination of human groups and so-called cultural genocide, which referred to attempts to destroy the language, religion or culture of a group.” U.N. GAOR 6th Comm., 3rd Sess., U.N. Doc. A/C.6/218 (1948). Mr. Abdoh, its delegate, also thought it important that there “was no actual mention of cultural genocide in Resolution 96 (I).” *Proceedings of the Sixth Committee*, *supra* note 91, at 200.

116. G.A. Res. 96, *supra* note 66.

117. *Proceedings of the General Assembly*, *supra* note 100, at 818.

118. *Id.*

119. *Proceedings of the Sixth Committee*, *supra* note 91, at 199.

120. *Id.* For that draft, see *Draft Convention*, *supra* note 3.

was presently being committed in the Holy Land and elsewhere."¹²¹ The Egyptian delegation would therefore support Article III "if it were reduced to the very reasonable proportion suggested by the delegation of Pakistan."¹²² Mr. Tarazi, the delegate from Syria, "agreed with the representative of Egypt that the idea of cultural genocide should be included in the convention" but in a "developed and improved" way.¹²³

C. India and China

Mr. Setalvad, the Indian delegate, felt called upon to respond to the strong Pakistani interest in the protection of minority cultures. He said that his delegation "fully sympathized with the idea underlying Article III."¹²⁴ He pointed out that there were "comprehensive provisions in [India's] constitution for the protection of minorities," and that, therefore, "the anxiety expressed by the representative of Pakistan concerning the fate of the thirty five million Muslims [was] quite unfounded."¹²⁵ His delegation did not think, however, that there was a connection between what the convention on physical or biological genocide was trying to do and the protection of the cultural rights of minorities. "The protection of cultural rights of a group should be guaranteed," he said, "not by the convention on genocide, but by the declaration of human rights."¹²⁶ His colleague, Mr. Sundaram, repeated that suggestion in the later General Assembly. He argued against all attempts to restore Article III to the Genocide Convention on the grounds that "the cultural rights of groups should be assured by the declaration of human rights, which would shortly come before the General Assembly."¹²⁷ In the next section, we will meet with that Indian support for a minority rights article in the Declaration.

121. *Proceedings of the Sixth Committee, supra* note 91, at 199.

122. *Id.* Later on, in the General Assembly debate, Mr. Raafat stressed that, without even speaking of the thousands of Moslems who had, in the meantime (since the Ad Hoc Genocide Committee began its deliberations), fallen victims of religious quarrels in certain parts of the world, it was enough to mention the sad events which had taken place during the last months close to the Egyptian borders. In that connection, Mr. Raafat stressed that the recent massacres committed in the Holy Land must inspire all nations of goodwill to redouble their efforts to prevent and to punish genocide wherever it might occur. *Proceedings of the General Assembly, supra* note 100, at 829. After that, he announced that his delegation would support "the concise and sensible amendment submitted by the Venezuelan delegation." *Id.*

123. *Proceedings of the Sixth Committee, supra* note 91, at 200.

124. *Id.* at 201.

125. *Id.*

126. *Id.*

127. *Proceedings of the General Assembly, supra* note 100, at 824.

When the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was considering the Humphrey/Lauterpacht Article on minority rights, Dr. Wu, the Chinese expert, explained to his colleagues that "in the whole of China's history there had been no religious or racial persecution. There were five main races in China, but none had been added by military conquest. The minorities in China were," he said, "given more than equal representation."¹²⁸ Consistent with this view, Mr. Tsien, the Chinese delegate to the Sixth Committee, supported the inclusion of Article III in the Genocide Convention because, while cultural genocide seemed less brutal, "it might be even more harmful than physical genocide or biological genocide, since it worked below the surface and attacked a whole population attempting to deprive it of its ancestral culture and to destroy its very language."¹²⁹ These same considerations led China to give early support to a minority rights article for the Declaration. To those who were looking for a convention only on minority rights, he pointed out "that at the present no such convention existed even in the form of a draft."¹³⁰ China's support was not consistent, however, because, in the Third Committee, it voted against a minority rights article for the Declaration, which is discussed below. Reversing its position again, it supported the Soviet Union when that country sought to amend the Genocide Convention with a resurrection of Article III.

Having surveyed the two blocks of votes (the communist and the Middle Eastern ones) that favored strong protection of the rights of members of minority groups, we now turn to two blocks of votes (the Latin American and North Atlantic ones) that generally favored neither Article III, nor its partner that had been slated for inclusion in the Declaration.

D. Latin America and the USA

With the exception of Venezuela, most Latin American delegations and the US consistently showed a lack of interest in the protection of the rights of members of minority groups. They all, as a matter of policy, denied that there was any kind of minority problem on the American continent. This denial was grounded in national policies of assimilation since before the 1940s, but I shall cite only pronouncements from this era. In the 1940s, the nations of Latin America were worried about World War II spreading to their

128. *Summary Record of the Third Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, 1st Sess., at 4, U.N. Doc. E/CN.4/Sub.2/SR.3 (1947).

129. *Proceedings of the Sixth Committee*, *supra* note 91, at 98.

130. *Id.*

continent. That fear was connected to the waves of immigration they had experienced from Germany. On at least three separate occasions, they, as a group, publicly worried about the influx of undesirable aliens into their nation-states. In March of 1945, just before the San Francisco Conference, they held an Inter-American Conference on the Problem of War and Peace. Under the heading of "Postwar Immigration," the group stipulated that "[i]t is highly undesirable that there should reside in the territory of any of the American States aliens disposed to conspire against the historic democratic ideal common to those States or . . . intended to foment wars, conflicts, or disturbances of any nature, . . . or who pursue aims in the name of doctrines contrary to the ideals and principles of liberty sustained by the peoples of the Hemisphere. . . ."¹³¹ They drew the conclusion that "it is likewise undesirable that there should reside in such territory closed and homogeneous groups which might be in the nature of extensions of countries, parties or sects, and which might seek to claim the status of minorities contrary to Resolution XXVII of the Eight International Conference of American States and Resolution XX of the Third Meeting of Ministers of Foreign Affairs. . . ."¹³² For any group to have the "status of a minority" was, for these nations, a direct threat to their sovereignty; Hitler's misuse of the League Treaties served as a warning to them not to start out on that route.¹³³ These worries, and the formal declarations to which they led, lasted far beyond the War, and they reinforced an already existing policy of assimilationism.

Given this background, the reader can well imagine that Article.III of the Genocide Convention was a difficult bone to swallow for the nations of Latin America. Bolivia, Brazil, Chile, the Dominican Republic, Panama, and Peru all voted against the Article while Ecuador and Mexico voted to retain

131. *Constitutions, Declarations and Other Instruments of International Organizations and Conferences Relating to the Prevention of Discrimination and the Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, at 5, U.N. Doc. E/CN.4/Sub.2/3 (1947).

132. *Id.* at 6.

133. The two other Resolutions mentioned in the one I quoted above are very clear on this point. The Eight International Conference of 1938 had resolved that "[t]he system of protection of ethnical, language, or religious minorities cannot have any application whatsoever in America, where the conditions which characterize the group known as minorities do not exist." Along the same lines, in February of 1942, the Latin American Ministers of Foreign Affairs, worried about the War spreading to their continent, had announced that "[i]n accordance with its historical, racial, political, and juridical tradition, there is and can be no room in America for the so-called racial, linguistic or religious 'minorities,'" and they reiterated "the Principle of American Public law, according to which aliens residing in an American state are subject to the jurisdiction of that State, and the governments and agencies of the countries of which such aliens are nationals cannot lawfully interfere, controlling the status or activities of such aliens." *Id.* at 6.

it and Venezuela, Argentina, and Cuba abstained.¹³⁴ Brazil, Peru, and Chile's negative votes in the Sixth Committee amounted to a change of position from their earlier, more positive, stances. In an earlier general ECOSOC discussion, Mr. Monge, the delegate from Peru, had spoken of his country's early experience with genocide in the case of "the destruction of the Inca civilization."¹³⁵ He explained:

History showed how many and how shocking were the repeated instances of genocide on record. The crime always began with the destruction of the spiritual and cultural symbols of the persecuted group, and then took as a pretext its alleged mental inferiority. It was natural that a racial group deprived of spiritual life should appear inferior. The law should intervene in time to protect human groups against persecution and destruction.¹³⁶

Yet, in the Sixth Committee, Peru voted for the deletion of Article III because its wording was "too broad" and "the time [was] not yet ripe for the application of the Convention to cultural genocide."¹³⁷

Brazil made a similar shift. In the general ECOSOC discussions, Mr. Guerreiro had hesitantly approved of the idea of cultural genocide if it was defined narrowly and shown to be "the destruction of a human group by brutal methods" (and immigrants would not be covered).¹³⁸ Then, in the Sixth Committee, Mr. Adamo made the argument that "the cultural protection of the group could be sufficiently organized within the international framework of the protection of human rights and of minorities, without there being any need to define as genocide infringement of the cultural rights of the group."¹³⁹ He suggested this alternate route because he was worried that Article III would intervene with a state's justification "in its endeavor to achieve by legal means a certain degree of homogeneity and culture within its boundaries."¹⁴⁰ At this time, the only other international instrument available for this purpose was the Universal Declaration, but in the subsequent Third Committee discussion, Brazil did not support a minority rights article for the Declaration.

Mr. Mederos, the Bolivian delegate to the Sixth Committee, also said that his country could only support a convention on physical genocide and that the other acts described in Article III "came within the competence of the Third Committee," which just then was working on the Universal

134. See *Proceedings of the Sixth Committee*, *supra* note 91, at 206. The case of Venezuela is special because it was one of the strongest defenders of the need to protect the rights of members of minority groups. Its abstention here will be explained in the text below.

135. *Proceedings of ECOSOC*, *supra* note 68, at 718.

136. *Id.*

137. *Proceedings of the Sixth Committee*, *supra* note 91, at 202.

138. *Proceedings of ECOSOC*, *supra* note 68, at 719.

139. *Proceedings of the Sixth Committee*, *supra* note 91, at 197.

140. *Id.*

Declaration.¹⁴¹ After initially accepting the draft that came out of the Ad Hoc Genocide Committee,¹⁴² Chile voted against Article III in the Sixth Committee and against such a provision for the Declaration in the Third Committee.

In the preceding section, I cited the formal dissent to Article III that the US had registered as a member of the Ad Hoc Genocide Committee. I showed how, in the Third Session of the Commission on Human Rights, the US invoked the Latin American policy, discussed above, to explain its rejection of a minority rights article for the Declaration. In the ECOSOC discussions that preceded the Sixth Committee debates, the US delegate, Mr. Thorn, repeated his country's opposition to Article III. He said that its presence would be "a dilution of the purpose of the Convention which might render it much less effective."¹⁴³ He admitted that it "was obvious that such fundamental rights as those envisaged in the article on 'cultural genocide' must be safeguarded, but he did not think that that end would best be achieved by including them in a convention on genocide."¹⁴⁴

It was to be expected, therefore, that in the Sixth Committee, the US would vote for the deletion of Article III from the Genocide Convention. Mr. Gross, the US delegate, gave a rather revealing rationale:

There were, in fact, grounds for asking whether it was more important to protect the right of a group to express its opinions in the language of its choice, [which is what Article III did,] or to protect its right to free expression of thought, whatever the language. If the object were to protect the culture of a group, then it was primarily freedom of thought and expression for the members of the group which needed protection.¹⁴⁵

This line of thinking misses the close connection that exists between language and culture and, in some important respects, misses the very point of the Article. Mr. Gross repeated substantially the same objection in the later General Assembly debates.¹⁴⁶

141. *Id.* at 206.

142. *Proceedings of ECOSOC, supra* note 68, at 726.

143. *Id.* at 725.

144. *Id.*

145. *Proceedings of the Sixth Committee, supra* note 91, at 203.

146. Mr. Gross said that he was sympathetic to the arguments presented on behalf of the USSR's reintroduction of a version of Article III, but he felt that "[h]owever barbarous and unpardonable it might be, the destruction of a church, a library or a school was in an entirely different category" from physical and biological genocide. *Proceedings of the General Assembly, supra* note 100, at 821. The USSR amendment (quoted in the text above) was particularly objectionable because "it would make punishable by law acts such as the prohibition of the use of a certain language in schools or in daily discourse, as also in publications. The amendment was not, however, designed to guarantee the free expression of thought, irrespective of the language employed. That demonstrated," he said, "how difficult it was to enter upon the field of fundamental human freedoms within the framework of the Convention." *Id.* at 725.

The vote on Article III in the Sixth Committee shows that Mexico and Ecuador¹⁴⁷ wanted the Article retained, while Venezuela, Argentina, and Cuba abstained from voting. None of these five nations later voted for the USSR substitute in the General Assembly. Ecuador and Mexico were absent then, Argentina and Cuba had become opponents, and Venezuela abstained because it had submitted an amendment of its own.¹⁴⁸ Venezuela's abstention in the Article III vote in the Sixth Committee was unfortunate. Though Venezuela was a strong proponent of a minority rights article in both documents, its abstention might be explained as resulting from its opposition to language rights, which it did not include in its version of the cultural genocide article that it submitted to the General Assembly on 9 December for last minute inclusion in the Genocide Convention.¹⁴⁹

Venezuela was the only Latin American nation on the Ad Hoc Genocide drafting Committee. As a member of that group, it had voted for the inclusion of Article III in the Convention, and it became one of the most articulate defenders of that position. Defending the need for Article III, Mr. Perez Perozo pointed out that "[a] group could be deprived of its existence not only through physical destruction of its members, but also through the destruction of its specific traits, the loss of which led to the dissolution of its unity." He made the further point that

[a]dequate justification for the protection of human groups from cultural genocide could be found in present-day history; everyone was aware of the violent outrages committed by the Nazis upon the cultural or religious life of the groups that they intended to destroy; everyone knew of the burning of synagogues and Jewish libraries; nor could anyone forget certain events which occurred during the first World War, such as the burning of the university of Louvain and the destruction of the cathedral of Rheims.¹⁵⁰

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147. Mr. Corraera "was of the opinion that the idea of cultural genocide should be included in the convention, since it would meet a real need. A group," he said, "consisted of individuals and possessed a culture of its own. The destruction of that culture was normally effected with less violence than the extermination of the members of the group, but the result was the same—the disappearance of the group." *Proceedings of the Sixth Committee, supra* note 91, at 203. He also suggested that a better text be found for the ideas in Article III, and "he did not share the view that the protection of groups against acts of cultural genocide could be ensured by the Declaration of Human Rights." *Id.*
148. See *Proceedings of the General Assembly, supra* note 100, at 848.
149. This amendment sought protection only for the following three items: religious edifices, schools, and libraries of the group. It had dropped the example of prohibiting a group from using its own language because, for countries which were largely composed of immigrants, the "defence of the national language was a vital necessity. . . ." *Id.* at 815.
150. *Proceedings of the Sixth Committee, supra* note 91, at 195. In the ECOSOC discussions, he had also said that while acts of cultural genocide did not present "the horrifying aspects of mass murder, acts of brutality against the spirit and culture of a human group were one of the surest ways exterminating it." *Proceedings of ECOSOC, supra* note 68, at 705.

To those who held that Resolution 96 (I) did not mention cultural genocide, Mr. Perozo responded that the Resolution did carry the implication of barring cultural genocide because it gave as an example of genocide, "the forced transfer of children to another human group."¹⁵¹ If the group could be destroyed while the children, as individuals (sometimes even happy in their new environments), continued in existence, then it could not be denied that cultural genocide belonged in the Convention as mandated. In the General Assembly debate, Mr. Perozo proposed a new slimmer version of Article III, which amendment he said was the result of much study. That study had shown that "racial or religious hatred had always begun to show itself in the form of cultural genocide before it assumed the bloody aspects of mass murder."¹⁵²

E. Promissory Notes from Around the North Atlantic

So far, the score of the voting on Article III is two blocks for the protection of minority rights (the communists and most of the Middle Eastern delegations) and one large block of mostly Latin nations against such protection in the Convention. If Article III of the Genocide Convention was going to have a chance—and, by implication, the minority rights article in the Declaration as well—then the balance would have to come from the North Atlantic nations. The votes of this block went almost unanimously against the inclusion of Article III in the Convention.¹⁵³ Mr. Phillips, the UK delegate, had overstated the views of this block somewhat when, in the earlier ECOSOC discussions, he had stated that

[i]t was a far cry from the unspeakable crimes which had been perpetrated at the Nazi crematoria and which had so fundamentally shocked mankind, to the prohibition of the use of a museum cherished by some particular group or other acts of cultural repression deplorable and revolting though they might be. [He added that the] inclusion of such indefinite concepts as cultural genocide . . . would render the whole concept [of genocide] meaningless and result in a highly controversial convention.¹⁵⁴

While they were sympathetic to his first point, many North Atlantic nations did not subscribe to the second point because they did not think the gap

151. *Proceedings of the Sixth Committee*, *supra* note 91, at 195.

152. *Proceedings of the General Assembly*, *supra* note 100, at 816.

153. The countries opposing the Article were South Africa, the UK, Australia, Belgium, Canada, Denmark, France, Luxembourg, the Netherlands, New Zealand, Norway, and Sweden. See *Proceedings of the Sixth Committee*, *supra* note 91, at 206.

154. *Proceedings of ECOSOC*, *supra* note 68, at 707, 727.

between the two kinds of genocide was as great as Mr. Phillips made it out to be.

These European delegations found themselves in a bind. Although opposed to Article III, they also understood the point of the communist and Arab arguments that acts of cultural genocide, more often than not, led to further acts of physical and biological genocide. They had experienced Hitler's acts of ethnic cleansing more or less firsthand and, therefore, understood the means-ends connection between cultural and physical genocide. They could not, in good conscience, make blanket and unnuanced objections to the presence of Article III in the Genocide Convention. For that reason, as they voted against Article III, they, at the same time, handed out promissory notes about a similar article for the Declaration (or some other suitable human rights instrument). We will see shortly that the omission of a minority rights article in the Universal Declaration could have been avoided if these North Atlantic nations had made good, in the Third Committee debates that followed, on the promissory notes they had handed out in these Sixth Committee debates.

Mr. LaPointe, the Canadian representative to the Sixth Committee, in many ways shared the views of his UK counterpart. He said that

the people of his country were deeply attached to their heritage, which was made up mainly of a combination of Anglo-Saxon and French elements and they would strongly oppose any attempt to undermine the influence of those two cultures in Canada. . . . [His delegation] felt that the idea of genocide should be limited to the mass physical destruction of human groups. . . . For that reason he would support the proposal made by the French delegation . . . that the attention of the Third Committee should be drawn to the need for the protection of language, religion and culture within the framework of the international declaration of human rights.¹⁵⁵

This is proof of two promissory notes having been given.

France had been a member of the Ad Hoc Genocide Committee. It had been one of the two objectors in the first reading of Article III, and it had not changed its stance. Mr. Ordonneau, the French representative in the ECOSOC discussions, said that his delegation

did not accept the idea of "cultural genocide" presented in Article III. It considered such an idea too vague, and thought that the council should not confuse two extremely different concepts and risk going beyond the purpose of the Convention by transforming a minor infringement of human rights into an international principle.¹⁵⁶

155. *Proceedings of the Sixth Committee, supra* note 91, at 199, 200.

156. *Proceedings of ECOSOC, supra* note 68, at 723.

He then made the proposal referred to by Mr. LaPointe, committing France to action when the question of minority rights came up in the context of the Declaration.¹⁵⁷ In that later Third Committee discussion, Belgium, unlike France, was a strong supporter of a minority rights article in the Declaration, but here in the Sixth Committee, the Belgian representative still expressed the view that the matter raised by Article III "came within the province of the domestic affairs of States."¹⁵⁸

Mr. Federspiel, the Danish representative, thought that the concept of cultural genocide "was not clearly defined" and that, in any case, there was a huge difference between "mass murderers" and "the closing of libraries."¹⁵⁹ After he voted against Article III, he explained that if "he had voted for the exclusion of provisions concerning acts of cultural genocide, it was not because he disputed the criminal nature of these acts but because he considered the question came within the sphere of human rights."¹⁶⁰ That is to say, he thought the matter should be covered in the Universal Declaration.

Similar promissory notes were imbedded in the rationales given by the Dutch and Swedish delegations. The Dutch delegate stated that "cultural genocide fell rather within the sphere of the protection of human rights or the rights of minorities."¹⁶¹ The Swedish delegate thought it "desirable to establish the cultural protection of minorities on a more general international plane" than had been the case with the League Treaties, "which led him to suggest that there be a special convention on the cultural protection of minorities."¹⁶² If he advocated the creation of such a convention, then he certainly would favor a minority rights article for the Declaration, or so we are led to think.

V. UNREDEEMED PROMISSORY NOTES IN THE THIRD COMMITTEE

A few weeks after the Sixth (Legal) Committee voted to delete Article III from the Genocide Convention, the Third (Humanitarian and Social Affairs) Committee came to consider the minority rights article that had been slated for inclusion in the Declaration but which had been set aside, first by the Second Session, and then again by the Third Session, of the Commission on Human Rights. The intervening cultural genocide discussions had raised delegates' awareness of the gravity of the issues involved, and several

157. See U.N. GAOR 6th Comm., 3d Sess., U.N. Doc. A/C.6/216 (1948).

158. *Proceedings of the Sixth Committee*, *supra* note 91, at 204.

159. *Id.* at 198.

160. *Id.* at 206-07.

161. *Id.* at 203.

162. *Id.* at 197.

delegations had come to reassess their position on a minority rights article for the Declaration. They wanted to review the decisions taken in the Second and Third Sessions of the Commission on Human Rights. Several versions of the Article were proposed, but, for reasons I will explain, none of them were brought to a vote. They were all sent back to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities for further study. In order to make a coherent story out of very scattered and disparate votes, I have adopted the following strategy. I shall defend this thesis: If it had not been for the influence of the Cold War and its accompanying rhetoric, there would have been enough votes for the inclusion of such an article in the Declaration. My voice is one of an imaginary lobbyist.

The Soviet Union resubmitted its own version of the minority rights article as a substitute for "[A]rticle 31 of the Geneva text [that had been] rejected by the Commission."¹⁶³ This Article 31 was the Lauterpacht/Humphrey Article that had been "put aside" in the Second Session of the Commission. The only real difference between the two was that the Soviet version included the cultural rights of majorities as well as of minorities. It read as follows:

All persons, irrespective of whether they belong to the racial, national, or religious majority of the population, have the right to their own ethnic or national culture, to establish their own schools and receive teaching in their native tongue, and to use that tongue in the Press, at public meetings, in the courts and in other official premises.¹⁶⁴

This being the Fall of 1948, Stalin and Tito were no longer on friendly terms. This is probably why the delegation from Yugoslavia submitted its own proposals instead of backing the amendment of the Soviet Union, which was the usual communist procedure.

The Yugoslav delegation proposed that three additional articles be added to the Declaration.¹⁶⁵ The first article, called (A), was perceived by the other delegations to be addressed to the problem of federalism, and for that reason, rejected as inappropriate for inclusion in the Declaration.¹⁶⁶ The

163. U.N. GAOR 3d Comm., 3d Sess., U.N. Doc. A/C.3/307/Rev.2 (1948).

164. *Id.* See *Report of the Third Session of the Commission on Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., U.N. Doc. E/800 (1948).

165. U.N. GAOR 3d Comm., 3d Sess., U.N. Doc. A/C.3/307/Rev.2/Add.1 (1948).

166. "Any person has the right to recognition and protection of his nationality and to the free development of the nation to which he belongs. National communities which are in a state community with other nations are equal in national, political and social rights." *Id.* This Article was rejected by a vote of 20 to eight, with eight abstentions, *Summary Record of Meetings*, U.N. GAOR 3d Comm., 3d Sess., at 740, U.N. Doc. A/777 (1948) [hereinafter *Proceedings of the Third Committee*], because, as Mr. Contuomas, the Greek delegate, said, this Article "could not be considered in connection with the declaration, the subject of which was the rights of the individual, though it might one

second Yugoslav article, called (B), dealt with minority rights proper. It was not that far removed from the Lauterpacht/Humphrey original, except that it did not mention members of a religious minority explicitly. It read: "Any national minority, as an ethnical community, has the right to the full development of its ethnical culture and to the free use of its language. It is entitled to have these rights protected by the State." I discuss below why this article was never voted upon.

The third Yugoslav article, called (C), wanted to make "the rights proclaimed in the Declaration also apply to any person belonging to the population of Trust and Non-Self-Governing Territories." After it had been decided not to bring any minority rights article up for a vote and (B) was sent back to the Sub-Committee, the Third Committee voted to accept and include this Yugoslav Article (C) in the Declaration, where it now is the second paragraph of Article 2.¹⁶⁷ The vote was sixteen to fourteen, with seven abstentions.¹⁶⁸

If the vote on (C), which brought up the problem of colonialism, had taken place before the one on (B), which dealt with the rights of members of minority groups, then the discussions on (B) would not have become infected with the inevitable rhetoric attached to the campaign to liberate the colonies. (C) having been adopted, (B) might have been discussed on its own merits and, I will argue, that it would have had a chance of being included in the Declaration. That would have corrected the document's greatest shortcoming. As it happened, upon the recommendation of the British delegation, the Yugoslavian Article (C) was deleted in the General Assembly debates where its contents were put into what became the second paragraph of the article on nondiscrimination.¹⁶⁹

These two communist delegations were joined by Denmark, which set out to redeem the promissory note that it had handed out in the Sixth Committee genocide discussions. It submitted this proposal to the Third Committee: "All persons belonging to a racial, national, religious or linguistic minority have the right to establish their own schools and receive training in the language of their own choice."¹⁷⁰

These three delegations did not synchronize their efforts, and no concentrated attempt was made to merge these three proposals into one, as was often done when amendments were quite similar. Nor was any attempt made to lobby the other nations that had made promissory notes in the

day deserve attention, should the United Nations ever decide to deal with the subject of federalism." *Id.* at 737. See also the comment by Mr. Dehousse, the Belgian delegate, and the one by Mr. Watt, the Australian delegate. *Id.* at 738, 739.

167. UDHR, *supra* note 2, art. 2.

168. See *Proceedings of the Third Committee*, *supra* note 166, at 346.

169. *Proceedings of the General Assembly*, *supra* note 100, at 932.

170. U.N. GAOR 3d Comm., 3d Sess., U.N. Doc. A/C.3/307/Rev.1/Add.2 (1948).

earlier Sixth Committee debates. It is my reading that the support for a minority rights article in the Declaration was fairly widespread, but scattered and extremely unorganized. The submission of the Danish amendment shows that the communist effort to resurrect a version of the Lauterpacht/Humphrey Article had merit and was not merely a Cold War ploy. It also shows that if the Soviets sought to drive a wedge between "colonial powers" and "non-colonial Latin" ones—which is what Thornberry suggests¹⁷¹—then that was a gross miscalculation. From the Third Session of the Commission and from the cultural genocide debates in the Sixth Committee, the Soviets could have learned that the opposition from the Latin American nations and the US was deeply entrenched and part of a publicly announced policy. By way of contrast, several North Atlantic colonial powers had offered promissory notes that the Soviets might have been able to collect if they had not brought up the colonial issue the way they did. Instead of attacking the colonial powers in the hope of gaining Latin American votes, they should have courted North Atlantic votes in the hope of overriding entrenched Latin American opposition.

Besides the Danish amendment, I should also mention the turn around made by the delegations of Belgium and India. Both of these had voted against the inclusion of a minority rights article in the Third Session of the Commission, but (probably) having been awakened by the genocide discussions, became vigorous defenders of the provision in the Third Committee. Unfortunately, this renewed support was too little, too late. None of the amendments mentioned above were brought to a vote. Instead, a Haitian proposal to refer all of them back to the Sub-Commission for further research and study passed easily.¹⁷² I will now lead us up to that referral.

As was to be expected, in the Third Committee, the debate on the Article was shaped by delegations from South America who argued that immigrant groups might want to avail themselves of the rights spelled out in the Article, and, thus, threaten the unity of their countries and their respective policies of amalgamation. Mr. Athayde, the delegate from Brazil, argued that "if foreigners were able to use their mother tongue in the schools, before the courts and in various other circumstances, immigrants would have no interest in learning Portuguese and in becoming assimilated as rapidly as possible into the Brazilian population."¹⁷³ Similar remarks were made by Mr. Santa Cruz, the Chilean delegate; Mr. Jimenez de Arechaga, the delegate from Uruguay; and by Mr. Maybank, the Canadian representative.¹⁷⁴ This onslaught in the Third Committee supports Thornberry's

171. THORNBERRY, *supra* note 7, at 136.

172. *Proceedings of the Third Committee*, *supra* note 166, at 735.

173. *Id.* at 721.

174. *See id.* at 722, 723, 729 respectively.

observation that "[i]t is not without significance that the momentum in favour of replacing 'protection of minorities' with 'prevention of discrimination' on the international agenda was generated by 'countries of immigration', principally the US and Latin American States."¹⁷⁵

The Belgian delegate, Mr. Dehousse, sought to address these (mostly) Latin American criticisms with the observation that

the problem of minorities was distinct from that of immigration. The immigrant went to establish himself in a foreign country and it was natural that he should submit to the laws of the country that received him; minorities, on the other hand, were historically constituted groups settled in one or more determined territories.¹⁷⁶

The words "historically constituted" were crucial, and if they had been added to a reintroduced Sub-Commission text, that might have helped clarify the issues in the debate. The Sub-Commission's Article would then have read something like this:

In States [historically] inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such [historic] ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order and security to establish and maintain schools and cultural or religious institutions and to use their own language in the Press, in public assembly and before the courts and other authorities of the State.¹⁷⁷

Mr. Dehousse was supported by Mrs. Menon, the delegate from India, who pointed out that "in her own province school examinations could be taken in four different languages."¹⁷⁸ However, none of the amendments before the Third Committee incorporated the distinction Mr. Dehousse had drawn, and no delegation sought to revive the Sub-Commission's original text. Unfortunately, the Belgian delegation did not shape its insight into an amendment.

Though he had voted against the Lauterpacht/Humphrey Article, Mr. MacNamara, the Australian expert on the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, had made some useful suggestions for the improvement of the Article.¹⁷⁹ Ignoring these earlier suggestions, the Australian delegation to the Third Committee took a straight, unnuanced assimilationist approach to the question at hand.¹⁸⁰ Its

175. THORNBERRY, *supra* note 7, at 122.

176. *Proceedings of the Third Committee*, *supra* note 166, at 725.

177. *See Report Submitted to the Commission on Human Rights*, *supra* note 46, at 10.

178. *Proceedings of the Third Committee*, *supra* note 166, at 327.

179. *See Report Submitted to the Commission on Human Rights*, *supra* note 46, at 10 (citing all three of them).

180. It is not at all unusual, in the international forum, for experts (which is what Mr. McNamara was) and official government representatives (which is what Mr. Watt was) to differ in this way on matters of substance.

delegate, Mr. Watt, observed that "Australia shared the point of view of the Latin American countries; it desired the dispersal of groups rather than the formation of minorities . . . [and it] would not be able to admit as a fundamental right the use before a tribunal of any language other than the national language."¹⁸¹

Going against the custom of the Committee, Mr. Kaminsky, the Byelorussian delegate, openly criticized the record and behavior of other States. By doing so, he probably lost some valuable votes of delegations that might have voted their consciences but did not want to be told to do so.

Mr. Kaminsky said that

[the] individual's right to his own language and culture was one of the most important human rights . . . [and that i]t was impossible to ignore the fact that . . . Australia had carried out a policy of forceful elimination of its aboriginal groups and that the North American Indian had almost ceased to exist in the United States. [He went on to say that in] colonial territories too there were no signs that indigenous culture was being developed and encouraged. . . . Ninety percent of the people living in the British colonies were illiterate, for the development of culture and the colonial yoke were mutually exclusive.¹⁸²

Mr. Kayaly, the Syrian delegate, reinforced this point with the claim that "[i]n Africa, the indigenous populations were still prohibited from using their own languages in primary and secondary schools, and were not even allowed to establish universities. That being so," he said, "it was the duty of the Committee to vote in favor of the individual's right to use his own language and have his own schools." He then added the proviso "that the individual would also be helped toward assimilation. There could be no question of granting the minority the right to interfere in national affairs."¹⁸³

Mr. Davies, the delegate from the UK, retorted that

[the BSSR representative's] conception of the policies of the British empire . . . was rather out of date. There had been considerable progress in the colonies toward self-determination. No evidence had been produced that the use of Native tongues was being restricted in any British colony. . . . The United Kingdom delegation took the view that the declaration already fully protected the rights of all minorities. . . .¹⁸⁴

Mr. Demchenko, delegate from the Ukrainian Soviet Socialist Republic, replied by reminding his British colleague of

a petition by Natives of Tanganyika complaining that a proposed law affecting their interests and ostensibly supported by them had not even been translated

181. *Proceedings of the Third Committee, supra* note 166, at 726.

182. *Id.* at 728.

183. *Id.* at 729.

184. *Id.* at 731.

into their Native tongue. . . . [O]n the whole Natives were prevented from using their language and developing their own culture. It was enough to cite the following figures: on the Gold Coast 90,000 out of a population of 3,500,000 Natives attended schools; in Kenya, the Government spent 500 times as much on each European child as on each African child.¹⁸⁵

Attacks like these, however much truth they contained, caused the colonial powers to stiffen their backs and withhold their votes. They felt drawn into the anti-imperialist campaign that the communist nations had started the previous spring and resisted it in indirect ways. One of those ways was their refusal to side with the communists on this issue of minority rights, which is not to say that were not also afraid that, after the threat of Germanization, they were now faced with the threat of Sovietization.

Mr. Demchenko ended his speech with the statement that “[h]e opposed the Haitian draft resolution, which sought to evade a vital issue.”¹⁸⁶ He referred to a Haitian draft resolution which had been submitted to the Third Committee on the very day the discussion on the minority rights article commenced. That resolution stated:

The General Assembly,

(1) *Considering* that the United Nations cannot remain indifferent to the fate of minorities;

(2) *Considering* that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises, [without endangering the national unity of the Member States and without creating a new source or cause of aggravation of the discriminations outlawed both by the United Nations Charter and by the present Declaration;]¹⁸⁷ and

(3) *Considering* the universal character of the declaration of human rights;

(4) *Decides* not to deal [in a specific provision]¹⁸⁸ with the question of minorities in the text of the present declaration; and

(5) *Requests* that “a thorough study of the problem of minorities be made. . . .”¹⁸⁹

This Haitian proposal was submitted long after the three amendments had been received on time and in good order, but Mr. Malik, who was in the Chair, judged that this Haitian proposal dealt with a question of procedure and not of substance and, therefore, would need to be voted upon before a

185. *Id.* at 732.

186. *Id.*

187. This bracketed part was deleted before final adoption of this proposal.

188. This clause was added just before the vote was taken. See *Proceedings of the Third Committee*, *supra* note 166, at 34.

189. U.N. GAOR 3d Comm., 3d Sess., U.N. Doc. A/C.3/373 (1948).

vote was taken on the three minority rights articles that had been proposed. This would mean that the nations who had given promissory notes in the Sixth Committee would not be called upon to make good on those notes.

To avoid this kind of a bind may well have been one of the motivations behind the Haitian proposal. Indeed, the part of paragraph (2) that I bracketed suggests Haiti served the interests of assimilationist countries rather than its own, for, just a week later, it voted for the USSR amendment to (as of yet) insert a cultural genocide article into the Genocide Convention.¹⁹⁰ As we have seen, that Convention demanded far more than an article in the Declaration would.

The Haitian proposal was voted on in parts, but only after strenuous objections had been raised by the Soviet Union. Mr. Pavlov, the USSR delegate, first made the point that "the USSR [A]rticle and the Haitian draft resolution were not mutually exclusive" because "the Haitian motion dealt with just minorities, whereas the Soviet [A]rticle also included members of the majority cultural tradition."¹⁹¹ He then said that "[t]he Committee should not evade the issue but should have the moral courage to vote either in favor or against the USSR [A]rticle, which dealt with a most important question."¹⁹² As that vote was being circumvented, he "formally moved that the Committee should vote on whether or not to vote on the USSR Article, which had been submitted in due time and in full accordance with the rules of procedure. He pointed out that [it] was a procedural motion which called for immediate action. The Chairman [stated that] the motion was not acceptable."¹⁹³ Whereupon, Mr. Pavlov responded that this was the first time that a properly presented article was not voted upon and "he protested, in the name of the USSR delegation, against such discrimination, and urged that his [A]rticle should be either accepted or rejected."¹⁹⁴ The Chairman ruled that the Haitian motion would take precedence, which ruling Mr.

190. *Proceedings of the General Assembly*, *supra* note 100, at 848.

191. *Proceedings of the Third Committee*, *supra* note 166, at 733.

192. *Id.*

193. *Id.* Though I am inclined to disagree with his handling of the Soviet position on this issue, I am not about to question the integrity of the Chairman, Mr. Charles Malik from Lebanon. The Lebanese delegation was one of the most consistent supporters of a minority rights article for the Declaration, and it voted *against* this decision to refer the Article back to the Sub-Commission for further study.

194. *Id.* The Chairman responded that this was not the first time that a properly presented article was not voted upon because "similar action had been taken the previous day with respect to the proposed new article dealing with the right to petition." *Id.* This was true, but that petition article had never before been the subject of discussion, whereas the Soviet Union simply wanted to resurrect an article that had been approved by one of the Commission's own Sub-Commissions and had almost been accepted by the Second Session. Also in Mr. Pavlov's favor is the fact that the Sixth Committee had rejected an article on cultural genocide in the expectation that the Third Committee would take up that cause.

Pavlov promptly appealed, and which appeal he lost.¹⁹⁵ As a last attempt, Mr. Demchenko, the UkSSR delegate, moved the adjournment of the meeting, which was also rejected. Finally, the Committee was ready to vote on the five parts of the Haitian proposal.

The Chairman's ruling that the Haitian motion was only a matter of procedure can be questioned. The motion's second paragraph contained a two-part rationale. The part I marked (i) is quite general and, therefore, true enough, but it does have the smell of substance to it, for the South American and US position had all along been that the "problem of minorities" was a local, mostly European one and not universalizable over the entire United Nations membership. This hidden assimilationist agenda was brought to the surface in the part of the second paragraph that I marked (ii). So marked, Paragraph 2 of the motion stated: "*Considering* that (i) it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises (ii) without endangering the national unity of Member States and without creating a new source of aggravation of the discriminations outlawed both by the United Nations Charter and by the present declaration. . . ."¹⁹⁶ Mr. Pavlov was right to suspect that the organizers of the Haitian motion were trying to circumvent the issue before them, for this extended rationale turned the Haitian motion into a matter of substance as much as the USSR Article was one of substance. The vote on the second paragraph supports this interpretation because part (ii) of the paragraph was rejected by twenty votes to thirteen, with five abstentions.¹⁹⁷ That left part (i) as the only partisan marker.

For us, the key part of the Haitian motion is paragraph 4. It makes the General Assembly "[d]ecide not to deal [in a specific provision] with the question of minorities in the text of the present declaration of human rights."¹⁹⁸ The phrase "in a specific provision" was inserted just before the vote was taken. This important insertion carries the implication that the Declaration does protect the rights of members of minority groups. It just does not do it in "a specific provision." The decision not to "deal with the question of minorities" was a difficult one for many delegations. Many showed their discomfort by abstaining from the vote on this fourth paragraph. The roll-call shows the following abstentions: Denmark, Mexico, Norway, Peru, Sweden, Syria, Turkey, Uruguay, Yemen, and Argentina.

On the basis of statements these delegations made, and if one had been brought to the vote, I interpret all of these abstentions, except Uruguay and Argentina, as weak expressions of not objecting to some sort of minority

195. By 26 votes to one with two abstentions. See *id.*

196. U.N. GAOR 3d Comm., 3d Sess., U.N. Doc. A/C.3/373 (1948).

197. *Proceedings of the Third Committee*, *supra* note 166, at 734.

198. *Id.*

rights article in the Declaration. If a good lobby had been present, these eight abstentions might have been turned into positive votes for a minority rights article. To these eight, we should add the nine strong positive votes of the delegations that voted against paragraph 4. They were: the BSSR, Czechoslovakia, India, Lebanon, Poland, the USSR, Yugoslavia, and Belgium. Had it been brought to a vote, these eight abstentions and nine negatives give us seventeen votes for a minority rights article in the Universal Declaration.

In the previous section, I made the point that any nation that supported a cultural genocide article for the Genocide Convention—which had to be signed and implemented under threat of international sanction—should also be willing to accept a similar article for the Declaration. With this principle in mind, I suggest that we steal three votes from the block that voted for the Haitian paragraph 4. Within a week of voting for paragraph 4, China, Haiti, and the Philippines supported the Soviet Union in its attempt to get a cultural genocide article reinstated in the Genocide Convention.¹⁹⁹ That later support for an even more demanding minority rights article suggests that, in this earlier Third Committee vote, these three nations were swept away by Cold War currents and fears. They wandered from their own deeper convictions. This brings the positive votes for a minority rights article in the Declaration up to twenty.

A similar, but weaker, case can be made for the nations that abstained in the later vote on the Soviet amendment to the Genocide Convention. Egypt, Ethiopia, and Guatemala had voted for paragraph 4 of the Haitian motion in the Third Committee, yet, they abstained from voting on the Soviet amendment to the Genocide Convention. These three abstentions suggest that these nations also overstated their own objections to a minority rights article for the Declaration. If we count these, the tally will be twenty-three potential votes for the Article.

As a further complicating factor, I should have mentioned that two of the strongest defenders of minority rights, Pakistan and Venezuela, were not present when the Haitian motion was voted upon. Pakistan also backed the Soviet attempt to resurrect the cultural genocide prohibition in the General Assembly, while Venezuela proposed its own Article. Other nations that would back the USSR attempt a week later or then abstained, but were not present for this Third Committee vote on the Declaration, were: Saudi Arabia (backer), Liberia (backer), Egypt (abstainer), Burma (abstainer), and Yemen (abstainer). If we count these as possible votes for a minority rights article, we get an extra seven votes, which makes for a total of twenty-seven positive votes. Also absent were South Africa and Luxembourg, which might

199. *Proceedings of the General Assembly*, *supra* note 100, at 847.

have made twenty-four out of the twenty-two votes cast in favor of the Haitian motion.

Finally, I mention two countries that voted against the later USSR proposal for a cultural genocide article, but which had made positive comments about the need to protect the rights of minorities. At the start of the Third Committee proceedings, Mr. Raminéz, the delegate from Colombia, had said that “[a]s men lived in social and family groups, the declaration ought to recognize that fact and state the rights of such groups as well as of individuals.”²⁰⁰ In the same discussion, Mr. Anze Matienzo, the delegate from Bolivia, had argued that “the need for protection of minorities and ethnical groups should also be remembered” in the Declaration.²⁰¹ These two nations were absent for this Third Committee vote. Had they been present, that might have brought the tally to a total of twenty-nine for and twenty-four against a minority rights article in the Declaration.

Counting these unreal and un-cast votes was not an exercise in futility. I wanted to show that perhaps a good lobby—as was done in the case of women’s rights²⁰²—might have brought out the vote for a minority rights article in the Declaration. What was done on behalf of the Article was not well organized, and it was too little, too late.

VI. CONCLUSION: AN ARGUMENT TO AMEND THE UNIVERSAL DECLARATION

Both the Genocide Convention and the Universal Declaration have become cornerstones of the international network of human rights instruments that has spread across our globe since the end of the Second World War. In December of 1998, we celebrated the fiftieth anniversary of the adoption of both of these documents. As of 31 December 1996, 117 nations had ratified the Convention on the Prevention and Punishment of the Crime of Genocide. Today, the United Nations has more than 150 members. All of them have signed the Charter and have thereby underwritten the Universal Declaration, which is the most authoritative statement on what the seven human rights references in the UN Charter mean.

The damage of not having the rights of members of minority groups spelled out more clearly in these two pivotal documents is considerable. The arguments offered by the communist and Arab delegations for inclusion

200. *Proceedings of the Third Committee*, *supra* note 166, at 45.

201. *Id.* at 42.

202. See generally Johannes Morsink, *Women’s Rights in the Universal Declaration*, 13 *HUM. RTS. Q.* 229 (1991).

of a cultural genocide prohibition in the Genocide Convention were good ones. History has born out the point that, more often than not, acts of cultural genocide are but a prelude to acts of physical genocide. On the other hand, it must be admitted that the inclusion of such an article might have delayed the adoption and coming into force of the Genocide Convention. Nations today are still reluctant to ratify conventions in the areas of the protection of minority and indigenous peoples. That is why the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities²⁰³ was just that: a declaration and not a convention, which usually brings with it at least a modicum of enforcement machinery. It is also why the human rights instrument being drawn up to deal with the rights of indigenous people will be a declaration and not a convention either.²⁰⁴

The coming into force of the Genocide Convention has not stopped these horrors from occurring. The spate of genocides and near-genocides in recent decades has impressed upon us the great urgency of protecting the rights of members of ethnic, religious, and linguistic minorities. Neglect and violation of these kinds of rights constitute the flashpoints of our interconnected world, and if Huntington is right, clashes between peoples belonging to different civilizations and cultures will make up the major agenda item in international affairs for the foreseeable future.²⁰⁵ It would seem that ethnic and cultural clashes are at least as prevalent in our world as they were in the late 1940s. Perhaps even more so, now that the Cold War lid has been taken off some of the ethnic boiling pots.

While all this is true, it is also true that our world—fifty years after the December 1948 adoption of both the Genocide Convention and the Universal Declaration—is quite a different one. The Cold War is over. Many new African and Asian nations, with more familial ways of political

203. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted 18 Dec. 1992, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Annex, U.N. Doc. A/Res/47/135/Annex (1992), reprinted in 32 I.L.M. 911 [hereinafter Declaration on the Rights of Minorities].

204. Chapter 14 of the book *International Human Rights in Context* provides many of these texts and provides a discussion of these two documents. See *Self-Determination and Autonomy Regimes*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 969 (Henry J. Steiner & Philip Alston eds., 1996). See also Declaration on the Rights of Minorities, *supra* note 203; *Discrimination Against Indigenous Peoples: The Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples: Addendum*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, 46th Sess., Provisional Agenda Item 15, UN Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994); THE RIGHTS OF PEOPLES 179–212 (James Crawford ed., 1988) (providing a more complete list of “Selected Treaties, Resolutions, and Other Documents on the Rights of Peoples”).

205. SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD ORDER (1997).

thinking, have joined the family of nations. Having discovered that the "problem of minorities" is not simply a European problem and can indeed be generalized over the entire United Nations membership, nations on both American continents have started to revise their assimilationist policies and become more nuanced in their approach to the rights of members of minority groups. Unfortunately, these changes do not go deep enough to make adding a protocol prohibiting cultural genocide to the Genocide Convention a realistic goal for the international human rights community to adopt. Recent United Nations activity in this area suggests that ratification of Article III—which prohibited cultural genocide, but which the Sixth Committee took out of the 1948 Genocide Convention—would take a long time and might find only a few signatories.

However, the time might be ripe for an additional article to be added to the Universal Declaration, possibly as a way of celebrating that document's recent fiftieth anniversary. Such an addition would be in keeping with the spirit of the drafters. For we have seen that the votes for inclusion were there in 1948, but that no strong lobbying effort was made to bring them out. Mr. Humphrey, the First Director of the Secretariat's Division of Human Rights, wrote the first draft of the Declaration, and he included in it a minority rights article. This Article was favorably received by the First Session of the Drafting Sub-Committee and passed on to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. This Sub-Commission made a few minor alterations and passed it on to the Second Session of the Commission on Human Rights, which Session did not reject the Article. It put it aside in order to await a more precise wording of the text. I argued that this ruling of putting it aside, made by the Chair, Eleanor Roosevelt, was a questionable one.

At this point, the Cold War interfered and the assimilationist block of votes from the Americas kept the minority rights article from being reinstated in either the Third Session of the Commission or in the Third Committee of the General Assembly. I showed how Cold War tensions allowed several European nations to fail to deliver on promissory notes they had handed out when they voted against the inclusion of a cultural genocide article in the Genocide Convention. The split between Stalin and Tito also contributed to the defeat of a minority rights article for the Declaration. Had these delegations made common cause, and had they been willing to separate the issue of minority rights from their campaign to liberate the colonies, the Universal Declaration probably would now have in it an article specifically applying the rights of the Declaration to members of linguistic, religious, and cultural minority groups. It is part of the irony of history that that part of the world, which, in the late 1940s, was in the vanguard of the campaign to protect minority rights, has, in our own day, contributed to so many and such gruesome examples of the violation of the

minority rights, including horrible examples of cultural and physical genocide.

Should the UN General Assembly be willing to consider amending the Declaration, it can borrow this noncontroversial text from the International Covenant on Civil and Political Rights: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."²⁰⁶ This text has already been ratified by more than 130 nations, including the US. The Assembly can also opt for the bolder, more positive text that I showed to have been "set aside" in the late 1940s:

In States [historically] inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such [historic] ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order and security to establish and maintain schools and cultural or religious institutions and to use their own language in the Press, in public assembly and before the courts and other authorities of the State.²⁰⁷

Since both of these texts already have a standing in the international community, drafting would not have to take place from scratch. The difference between the two texts is that the former treats all minority memberships on an equally abstract level and does not, in so many words, call for positive measures. The second text has its roots in the Minority Treaties drawn up after World War I. These treaties called for positive and permanent affirmative action on behalf of members of minority groups created by the Versailles Peace Accords. The insertion of the qualification "historic" was suggested by the Belgian representative to the Third Committee and will have the effect of drawing a distinction between immigrant groups and indigenous peoples that live under the security umbrella of one single state. It does not, however, forever freeze the line of demarcation between these two kinds of groups. Each country can and should decide for itself which groups it shall count as historic and which ones not. Nations can copy selection procedures and criteria from each other. And, what to one generation may be a new wave of immigration, may seem—but need not—to much later generations like a historic minority group. In that way, the desire of a minority group to retain its separate cultural identity will have

206. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 27, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

207. *Collation of the Comments of Governments*, *supra* note 64, art. 31, at 47.

been tested over time and, on that account, recognized as a viable alternative for cultural membership by those citizens who do not identify themselves with the dominant culture that is likely to inform the structures of government and the background assumptions of the legal system.

I give three reasons for adding one of these two texts to the Universal Declaration at this time.

First, the present omission of an article on the rights of members of linguistic, ethnic, or religious minorities is the greatest defect of this pivotal document. The Universal Declaration is a well crafted and remarkably complete statement of the human rights that people have, yet it shares with the United Nations Charter a certain blindness about the connection that exists between the prevention of discrimination and the protection of minorities.²⁰⁸ People are almost never discriminated against simply because of the individuals that they are. They never speak a private language, almost never worship private gods, and find it next to impossible to teach the customs of a minority culture in private only. Religion, language, and culture are, in their very nature, practiced by groups and in groups. When people are hated or hunted down for a characteristic they possess, they almost always share that characteristic with other people, who are also hated and hunted down because they possess that same characteristic. Adding one of these two texts to the Universal Declaration would restore the group dimension to the concept of nondiscrimination, specifically, and to the possession of human rights in general. That dimension was deleted from the international agenda because of disappointments with the League of Nations Treaties and because the nations from the Americas placed too great an emphasis on assimilationism. We need to restore the balance between the individual as an individual and the individual as a member of society and of various religious, linguistic, and cultural groups.

Second, such an additional article would not just correct a grave error in the Declaration; that correction, itself, would be in keeping with a spirit of communitarianism that lies just below the surface of the document. It would give added credence to the references to the "human family"²⁰⁹ in the first recital of the Preamble and to the "spirit of brotherhood"²¹⁰ in Article 1. For affective membership in the human family comes by way of fostering group attachments and treating others in a spirit of sharing and caring that is there fostered. It would make explicit that which is now understood to be the point of the list of nondiscrimination items of Article 2 of the Declaration. This Article does not just forbid discrimination. It says that

208. See generally MORSINK, *supra* note 3 (for support for this claim).

209. UDHR, *supra* note 2, pmbl.

210. *Id.* art. 1.

"[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²¹¹ This long list is an expansion of the much shorter UN Charter list of "race, sex, language, or religion."²¹² The initiative for this expansion came from the Sub-Commission on the Prevention of the Discrimination and the Protection of Minorities, and the point of it was to make sure that members of minority groups characterized by any of the items on this list would also be able to enjoy the substance of the rights in the Declaration. In other words, the point of Article 2 is not just not to discriminate, but to make sure that members of the relevant minority groups also actually enjoy their human rights.²¹³ In certain circumstances, that may well mean the need for positive measures, like those called for in the League of Nations Treaties and by more recent declarations focusing on the rights of members of minority groups and of indigenous peoples.

A minority rights article would also be in keeping with the Declaration's call for the special protection of the family,²¹⁴ and of "motherhood and childhood,"²¹⁵ whether in or outside of wedlock.²¹⁶ It also fits with the entire section of social, economic, and cultural rights, especially with the right to "social security" which everyone is said to have "as a member of society."²¹⁷ Examples of this group dimension are the "prior right" parents have in the determination of what kind of education their children are to receive,²¹⁸ and the right to practice one's religion "either alone or in community with others."²¹⁹ A minority rights article would complement the first paragraph of Article 29, according to which "[e]veryone has duties to the community in which *alone* the free and full development of his personality is possible."²²⁰ I emphasized the word "alone" to make the point that the drafters of the Declaration fully understood what contemporary communitarian critics of the Declaration were saying. This word, and the duties that it calls forth link Article 29 to the first recital and to Article 1. Article 29 was only put at the end in the penultimate drafting stage, having all along been at the head of the document, right next to the statement of principles contained in Articles 1 and 2.

211. *Id.* art. 2.

212. U.N. CHARTER, *supra* note 4, art. 1, ¶ 3.

213. See MORSINK, *supra* note 3, at 92–129 (illustrating details of this expansion).

214. UDHR, *supra* note 2, art. 16.

215. *Id.* art. 25.

216. See generally MORSINK, *supra* note 3, chs. 5–7 (for support for these claims as well as those that follow).

217. UDHR, *supra* note 2, art. 22.

218. *Id.* art. 26(3).

219. *Id.* art. 18.

220. *Id.* art. 29(1) (emphasis added).

The addition of an extra article on the rights of members of minority groups would counter-balance the unfortunate use of the definite article in Article 27, the first paragraph of which says that “[e]veryone has the right . . . to participate [freely] in *the* cultural life of *the* community. . . .”²²¹ Here, the drafters inadvertently suggest that citizenship and cultural membership overlap and are coterminous for “everyone.” That, of course, is not so. What I said above about the group dimension in and just below the text of the Declaration shows that the drafters did not mean to impose the majoritarian cultural customs and values on members of minority groups. Their use of the definite article “the” in Article 27 was an oversight.

The third reason for amending the Declaration with a minority rights article is that the operative paragraph of the document tells us that the Declaration was proclaimed “to the end that every individual and every organ of [every] society . . . shall strive by teaching and education to promote respect for these rights and freedoms. . . .”²²² The act of amending the Universal Declaration so soon after its fiftieth anniversary will have tremendous educational and symbolic value. It will immediately boost the cause of minority rights all over the world. The Declaration is, by far, the best known of all the human rights instruments, and none other has the same moral force. Right now, campaigns are being conducted to place the Declaration in the hands and minds of all primary and secondary school students in the US. Similar initiatives are under way in other countries. This educational purpose of the Declaration was underscored when the drafters spent a great deal of time discussing the Article on the right to an education. The second paragraph of Article 26 states that

[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.²²³

Again, the group dimension of human rights here is lifted up for attention. Adding a specific minority rights article would be very much in keeping with the use of the Declaration as a tool for human rights education. All indications are that this tool is starting to be widely used, and one of my arguments is that the drafters would have liked for us to sharpen their tool in the way I am suggesting.

Even if—contrary to fact—the drafters were not sympathetic to our correction, we should still do it. We live in a world that is shaped very much

221. *Id.* art. 27(1) (emphasis added).

222. *Id.* pmb1.

223. *Id.* art. 26(2).

by structures that were set up by moral visionaries at the end of the Second World War. The Universal Declaration is a product of that vision. It is a grandparent of almost all of the human rights instruments that now entangle every nation on earth. Amending the Declaration would let us finish what those visionaries started. It would let us make a meaningful response to what, for us, is the most burning issue in international law and affairs, the treatment of members of minority groups. The 1948 visionaries did not know whether or not they would be successful in their attempts to shape the post-war world. Their adoption of the two documents that were the subject of this essay was an act of faith. It was a grasping for, and a writing down of, transcendent moral principles that were to shape the international world to come. We ourselves are witnesses that these principles did shape that world, albeit, in a Hegelian fashion of two steps forward and one step backward.

Our amending the Declaration at this time would also be an act of faith. No nation needs to sign anything. All that is required is that the General Assembly declare that the Universal Declaration be amended on "such and such" a day in "such and such" a manner. The difference is that at the time the Declaration was adopted, the drafters did not know for sure that it would not fall on deaf ears. For all they knew, the world might not listen to moral language that was not written on the paper of force and superior military power. They put cynicism aside and went ahead anyway. At least, we now know that the tool that we are amending has become a powerful document that already is the moral backbone of an entirely new branch of international law. The act of amending done, the education of millions of children and students, young and old, all over the world will begin.

Putting the details of scholarship aside momentarily, let us pretend it is 10 December of the year 2048. Imagine that, in the late 1990s, nothing was done to amend the Universal Declaration. What kind of a world do you see around you? Now, imagine instead that we amended the Universal Declaration. Imagine that millions of children and students were taught one of the above cited texts. Think again of Human Rights Day 2048. Now, what do you see?