

Part I

Conceptual Foundations



Genocide

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Genocide – A New Term and New Conception for Destruction of Nations

New conceptions require new terms. By “genocide” we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide [*sic*], infanticide, etc.¹ Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.

The following illustration will suffice. The confiscation of property of nationals of an occupied area on the ground that they have left the country may be considered simply as a deprivation of their individual property rights. However, if the confiscations are ordered against individuals solely because they are Poles, Jews, or Czechs, then the same confiscations tend in effect to weaken the national entities of which those persons are members.

Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the

colonization of the area by the oppressor's own nationals. Denationalization was the word used in the past to describe the destruction of a national pattern.² The author believes, however, that this word is inadequate because: (1) it does not connote the destruction of the biological structure; (2) in connoting the destruction of one national pattern, it does not connote the imposition of the national pattern of the oppressor; and (3) denationalization is used by some authors to mean only deprivation of citizenship.³

Many authors, instead of using a generic term, use currently terms connoting only some functional aspect of the main generic notion of genocide. Thus, the terms "Germanization," "Magyarization," "Italianization," for example, are used to connote the imposition by one stronger nation (Germany, Hungary, Italy) of its national pattern upon a national group controlled by it. The author believes that these terms are also inadequate because they do not convey the common elements of one generic notion and they treat mainly the cultural, economic, and social aspects of genocide, leaving out the biological aspect, such as causing the physical decline and even destruction of the population involved. If one uses the term "Germanization" of the Poles, for example, in this connotation, it means that the Poles, as human beings, are preserved and that only the national pattern of the Germans is imposed upon them. Such a term is much too restricted to apply to a process in which the population is attacked, in a physical sense, and is removed and supplanted by populations of the oppressor nations.

Genocide is the antithesis of the Rousseau-Portalis Doctrine, which may be regarded as implicit in the Hague Regulations. This doctrine holds that war is directed against sovereigns and armies, not against subjects and civilians. In its modern application in civilized society, the doctrine means that war is conducted against states and armed forces and not against populations. It required a long period of evolution in civilized society to mark the way from wars of extermination,⁴ which occurred in ancient times and in the Middle Ages, to the conception of wars as being essentially limited to activities against armies and states. In the present war, however, genocide is widely practiced by the German occupant. Germany could not accept the Rousseau-Portalis Doctrine: first, because Germany is waging a total war; and secondly, because, according to the doctrine of National Socialism, the nation, not the state, is the predominant factor.⁵ In this German conception the nation provides the biological element for the state. Consequently, in enforcing the New Order, the Germans prepared, waged, and continued a war not merely against states and their armies⁶ but against peoples. For the German occupying authorities war thus appears to offer the most appropriate occasion for carrying out their policy of genocide. Their reasoning seems to be the following:

The enemy nation within the control of Germany must be destroyed, disintegrated, or weakened in different degrees for decades to come. Thus the German people in the post-war period will be in a position to deal with other European peoples from the vantage point of biological superiority. Because the imposition of this policy of genocide is more destructive for a people than injuries suffered in actual fighting,⁷ the German people will be stronger than the subjugated peoples after the war even if the German army is defeated. In this respect genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost.

For this purpose the occupant has elaborated a system designed to destroy nations according to a previously prepared plan. Even before the war Hitler envisaged genocide as a means of changing the biological interrelations in Europe in favor of Germany.⁸ Hitler's conception of genocide is based not upon cultural but upon biological patterns. He believes that "*Germanization* can only be carried out with the *soil* and never with *men*."⁹

When Germany occupied the various European countries, Hitler considered their administration so important that he ordered the Reich Commissioners and governors to be responsible directly to him. The plan of genocide had to be adapted to political considerations in different countries. It could not be implemented in full force in all the conquered states, and hence the plan varies as to subject, modalities, and degree of intensity in each occupied country. Some groups – such as the Jews – are to be destroyed completely.¹⁰ A distinction is made between peoples considered to be related by blood to the German people (such as Dutchmen, Norwegians, Flemings, Luxemburgers), and peoples not thus related by blood (such as the Poles, Slovenes, Serbs). The populations of the first group are deemed worthy of being Germanized. With respect to the Poles particularly, Hitler expressed the view that it is their soil alone which *can and should be profitably Germanized*.¹¹

Techniques of Genocide in Various Fields

The techniques of genocide, which the German occupant has developed in the various occupied countries, represent a concentrated and coordinated attack upon all elements of nationhood. Accordingly, genocide is being carried out in the following fields.

Political

In the incorporated areas, such as western Poland, Eupen, Malmédy and Moresnet, Luxemburg, and Alsace-Lorraine, local institutions of self-government were destroyed and a German pattern of administration imposed. Every reminder of former national character was obliterated. Even commercial signs and inscriptions on buildings, roads, and streets, as well as names of communities and of localities, were changed to a German form.¹² Nationals of Luxemburg having foreign or non-German first names are required to assume in lieu thereof the corresponding German first names; or, if that is impossible, they must select German first names. As to their family names, if they were of German origin and their names have been changed to a non-German form, they must be changed again to the original German. Persons who have not complied with these requirements within the prescribed period are liable to a penalty, and in addition German names may be imposed on them.¹³ Analogous provisions as to changing of names were made for Lorraine.¹⁴

Special Commissioners for the Strengthening of Germanism are attached to the administration, and their task consists in coordinating all actions promoting Germanism in a given area. An especially active rôle in this respect is played by inhabitants of German origin who were living in the occupied countries before the

occupation. After having accomplished their task as members of the so-called fifth column, they formed the nucleus of Germanism. A register of Germans (*Volkliste*)¹⁵ was established and special cards entitled them to special privileges and favors, particularly in the fields of rationing, employment, supervising enterprises of local inhabitants, and so on. In order to disrupt the national unity of the local population, it was declared that non-Germans, married to Germans, may upon their application be put on the *Volkliste*.

In order further to disrupt national unity, Nazi party organizations were established, such as the Nasjonal Samling Party in Norway and the Mussert Party in the Netherlands, and their members from the local population were given political privileges. Other political parties were dissolved.¹⁶ These Nazi parties in occupied countries were also given special protection by courts.

In line with this policy of imposing the German national pattern, particularly in the incorporated territories, the occupant has organized a system of colonization of these areas. In western Poland, especially, this has been done on a large scale. The Polish population have been removed from their homes in order to make place for German settlers who were brought in from the Baltic States, the central and eastern districts of Poland, Bessarabia, and from the Reich itself. The properties and homes of the Poles are being allocated to German settlers; and to induce them to reside in these areas the settlers receive many privileges, especially in the way of tax exemptions.

Social

The destruction of the national pattern in the social field has been accomplished in part by the abolition of local law and local courts and the imposition of German law and courts, and also by Germanization of the judicial language and of the bar. The social structure of a nation being vital to its national development, the occupant also endeavors to bring about such changes as may weaken the national spiritual resources. The focal point of this attack has been the intelligentsia, because this group largely provides national leadership and organizes resistance against Nazification. This is especially true in Poland and Slovenia (Slovene part of Yugoslavia), where the intelligentsia and the clergy were in great part removed from the rest of the population and deported for forced labor in Germany. The tendency of the occupant is to retain in Poland only the laboring and peasant class, while in the western occupied countries the industrialist class is also allowed to remain, since it can aid in integrating the local industries with the German war economy.

Cultural

In the incorporated areas the local population is forbidden to use its own language in schools and in printing. According to the decree of August 6, 1940, the language of instruction in all Luxemburg schools was made exclusively German. The French language was not permitted to be taught in primary schools; only in secondary schools could courses in that language continue to be given. German teachers were

introduced into the schools and they were compelled to teach according to the principles of National Socialism.¹⁷

In Lorraine general compulsory education to assure the upbringing of youth in the spirit of National Socialism begins at the age of six.¹⁸ It continues for eight years, or to the completion of the grammar school (*Volksschule*), and then for three more years, or to the completion of a vocational school. Moreover, in the Polish areas Polish youths were excluded from the benefit of liberal arts studies and were channeled predominantly into the trade schools. The occupant apparently believes that the study of the liberal arts may develop independent national Polish thinking, and therefore he tends to prepare Polish youths for the rôle of skilled labor, to be employed in German industries.

In order to prevent the expression of the national spirit through artistic media, a rigid control of all cultural activities has been introduced. All persons engaged in painting, drawing, sculpture, music, literature, and the theater are required to obtain a license for the continuation of their activities. Control in these fields is exercised through German authorities. In Luxemburg this control is exercised through the Public Relations Section of the Reich Propaganda Office and embraces music, painting, theater, architecture, literature, press, radio, and cinema. Every one of these activities is controlled through a special chamber and all these chambers are controlled by one chamber, which is called the Reich Chamber of Culture (*Reichskulturkammer*).¹⁹ The local chambers of culture are presided over by the propaganda chief of the National Socialist Party in the given area. Not only have national creative activities in the cultural and artistic field been rendered impossible by regimentation, but the population has also been deprived of inspiration from the existing cultural and artistic values. Thus, especially in Poland, were national monuments destroyed and libraries, archives, museums, and galleries of art carried away.²⁰ In 1939 the Germans burned the great library of the Jewish Theological Seminary at Lublin, Poland. This was reported by the Germans as follows:

For us it was a matter of special pride to destroy the Talmudic Academy which was known as the greatest in Poland. . . . We threw out of the building the great Talmudic library, and carted it to market. There we set fire to the books. The fire lasted for twenty hours. The Jews of Lublin were assembled around and cried bitterly. Their cries almost silenced us. Then we summoned the military band and the joyful shouts of the soldiers silenced the sound of the Jewish cries.²¹

Economic

The destruction of the foundations of the economic existence of a national group necessarily brings about a crippling of its development, even a retrogression. The lowering of the standard of living creates difficulties in fulfilling cultural-spiritual requirements. Furthermore, a daily fight literally for bread and for physical survival may handicap thinking in both general and national terms.

It was the purpose of the occupant to create such conditions as these among the peoples of the occupied countries, especially those peoples embraced in the first plans of genocide elaborated by him – the Poles, the Slovenes, and the Jews.

The Jews were immediately deprived of the elemental means of existence. As to the Poles in incorporated Poland, the purpose of the occupant was to shift the economic resources from the Polish national group to the German national group. Thus the Polish national group had to be impoverished and the German enriched. This was achieved primarily by confiscation of Polish property under the authority of the Reich Commissioner for the Strengthening of Germanism. But the process was likewise furthered by the policy of regimenting trade and handicrafts, since licenses for such activities were issued to Germans, and only exceptionally to Poles. In this way, the Poles were expelled from trade, and the Germans entered that field.

As the occupant took over the banks a special policy for handling bank deposits was established in order to strengthen the German element. One of the most widely patronized Polish banks, called the Post Office Savings Bank (PKO), possessed, on the day of the occupation, deposits of millions of Polish citizens. The deposits, however, were repaid by the occupant only to the German depositors upon production by them of a certificate of their German origin.²² Thus the German element in Poland was immediately made financially stronger than the Polish. In Slovenia the Germans have liquidated the financial cooperatives and agricultural associations, which had for decades proved to be a most efficient instrumentality in raising the standard of living and in promoting national and social progress.

In other countries, especially in Alsace-Lorraine and Luxembourg, genocide in the economic field was carried out in a different manner. As the Luxemburgers are considered to be of related blood, opportunity is given them to recognize the Germanic elements in themselves, and to work for the strengthening of Germanism. If they do not take advantage of this "opportunity," their properties are taken from them and given to others who are eager to promote Germanism.

Participation in economic life is thus made dependent upon one's being German or being devoted to the cause of Germanism. Consequently, promoting a national ideology other than German is made difficult and dangerous.

Biological

In the occupied countries of "people of non-related blood," a policy of depopulation is pursued. Foremost among the methods employed for this purpose is the adoption of measures calculated to decrease the birthrate of the national groups of non-related blood, while at the same time steps are taken to encourage the birthrate of the *Volksdeutsche* living in these countries. Thus in incorporated Poland marriages between Poles are forbidden without the special permission of the Governor (*Reichstatthalter*) of the district; and the latter, as a matter of principle, does not permit marriages between Poles.²³

The birthrate of the undesired group is being further decreased as a result of the separation of males from females²⁴ by deporting them for forced labor elsewhere. Moreover, the undernourishment of the parents, because of discrimination in rationing, brings about not only a lowering of the birthrate, but a lowering of the survival capacity of children born of underfed parents.

As mentioned above, the occupant is endeavoring to encourage the birthrate of the Germans. Different methods are adopted to that end. Special subsidies are provided

in Poland for German families having at least three minor children.²⁵ Because the Dutch and Norwegians are considered of related blood, the bearing, by Dutch and Norwegian women, of illegitimate children begotten by German military men is encouraged by subsidy.²⁶

Other measures adopted are along the same lines. Thus the Reich Commissioner has vested in himself the right to act as a guardian or parent to a minor Dutch girl if she intends to marry a German.²⁷ The special care for legitimation of children in Luxemburg, as revealed in the order concerning changes in family law of March 22, 1941, is dictated by the desire to encourage extramarital procreation with Germans.

Physical

The physical debilitation and even annihilation of national groups in occupied countries is carried out mainly in the following ways.

1 *Racial Discrimination in Feeding.* Rationing of food is organized according to racial principles throughout the occupied countries. "The German people come before all other peoples for food," declared Reich Minister Göring on October 4, 1942.²⁸ In accordance with this program, the German population is getting 93 percent of its pre-war diet, while those in the occupied territories receive much less: in Warsaw, for example, the Poles receive 66 percent of the pre-war rations and the Jews only 20 percent.²⁹ The following shows the difference in the percentage of meat rations received by the Germans and the population of the occupied countries: Germans, 100 percent; Czechs, 86 percent; Dutch, 71 percent; Poles (Incorporated Poland), 71 percent; Lithuanians, 57 percent; French, 51 percent; Belgians, 40 percent; Serbs, 36 percent; Poles (General Government), 36 percent; Slovenes, 29 percent; Jews, 0 percent.³⁰

The percentage of pre-war food received under present rations (in calories per consumer unit) is the following:³¹ Germans, 93 percent; Czechs, 83 percent; Poles (Incorporated Poland), 78 percent; Dutch, 70 percent; Belgians, 66 percent; Poles (General Government), 66 percent; Norwegians, 54 percent; Jews, 20 percent.

As to the composition of food, the percentages of required basic nutrients received under present rations (per consumer unit) are as follows:³²

<i>Consumer Unit</i>	<i>Carbohydrates</i>	<i>Proteins</i>	<i>Fats</i>
	%	%	%
Germans	100	97	77
Czechs	90	92	65
Dutch	84	95	65
Belgians.	79	73	29
Poles (Incorporated Poland)	76	85	49
Poles (General Government)	77	62	18
Norwegians.	69	65	32
French.	58	71	40
Greeks	38	38	1.14
Jews	27	20	0.32

The result of racial feeding is a decline in health of the nations involved and an increase in the deathrate. In Warsaw, anemia rose 113 percent among Poles and 435 among Jews.³³ The deathrate per thousand in 1941 amounted in the Netherlands to 10 percent; in Belgium to 14.5 percent; in Bohemia and Moravia to 13.4.³⁴ The Polish mortality in Warsaw in 1941 amounted in July to 1,316;³⁵ in August to 1,729;³⁶ and in September to 2,160.³⁷

2 *Endangering of Health.* The undesired national groups, particularly in Poland, are deprived of elemental necessities for preserving health and life. This latter method consists, for example, of requisitioning warm clothing and blankets in the winter and withholding firewood and medicine. During the winter of 1940–1, only a single room in a house could be heated in the Warsaw ghetto, and children had to take turns in warming themselves there. No fuel at all has been received since then by the Jews in the ghetto.³⁸

Moreover, the Jews in the ghetto are crowded together under conditions of housing inimical to health, and in being denied the use of public parks they are even deprived of the right to fresh air. Such measures, especially pernicious to the health of children, have caused the development of various diseases. The transfer, in unheated cattle trucks and freight cars, of hundreds of thousands of Poles from Incorporated Poland to the Government General, which took place in the midst of a severe winter, resulted in a decimation of the expelled Poles.

3 *Mass Killings.* The technique of mass killings is employed mainly against Poles, Russians, and Jews, as well as against leading personalities from among the non-collaborationist groups in all the occupied countries. In Poland, Bohemia-Moravia, and Slovenia, the intellectuals are being “liquidated” because they have always been considered as the main bearers of national ideals and at the time of occupation they were especially suspected of being the organizers of resistance. The Jews for the most part are liquidated within the ghettos,³⁹ in special trains in which they are transported to a so-called “unknown” destination. The number of Jews who have been killed by organized murder in all the occupied countries, according to the Institute of Jewish Affairs of the American Jewish Congress in New York, amounts to 1,702,500.⁴⁰

Religious

In Luxemburg, where the population is predominantly Catholic and religion plays an important rôle in national life, especially in the field of education, the occupant has tried to disrupt these national and religious influences. Children over fourteen years of age were permitted by legislation to renounce their religious affiliations,⁴¹ for the occupant was eager to enroll such children exclusively in pro-Nazi youth organizations. Moreover, in order to protect such children from public criticism, another law was issued at the same time imposing penalties ranging up to 15,000 Reichsmarks for any publication of names or any general announcement as to resignations from religious congregations.⁴² Likewise in Poland, through the systematic pillage and destruction of church property and persecution of the clergy, the German occupying authorities have sought to destroy the religious leadership of the Polish nation.

Moral

In order to weaken the spiritual resistance of the national group, the occupant attempts to create an atmosphere of moral debasement within this group. According to this plan, the mental energy of the group should be concentrated upon base instincts and should be diverted from moral and national thinking. It is important for the realization of such a plan that the desire for cheap individual pleasure be substituted for the desire for collective feelings and ideals based upon a higher morality. Therefore, the occupant made an effort in Poland to impose upon the Poles pornographic publications and movies. The consumption of alcohol was encouraged, for while food prices have soared, the Germans have kept down the price of alcohol, and the peasants are compelled by the authorities to take spirits in payment for agricultural produce. The curfew law, enforced very strictly against Poles, is relaxed if they can show the authorities a ticket to one of the gambling houses which the Germans have allowed to come into existence.⁴³

Recommendations for the Future

Prohibition of genocide in war and peace

The above-described techniques of genocide represent an elaborate, almost scientific, system developed to an extent never before achieved by any nation.⁴⁴ Hence the significance of genocide and the need to review international law in the light of the German practices of the present war. These practices have surpassed in their unscrupulous character any procedures or methods imagined a few decades ago by the framers of the Hague Regulations. Nobody at that time could conceive that an occupant would resort to the destruction of nations by barbarous practices reminiscent of the darkest pages of history. Hence, among other items covered by the Hague Regulations, there are only technical rules dealing with some (but by no means all) of the essential rights of individuals; and these rules do not take into consideration the interrelationship of such rights with the whole problem of nations subjected to virtual imprisonment. The Hague Regulations deal also with the sovereignty of a state, but they are silent regarding the preservation of the integrity of a people. However, the evolution of international law, particularly since the date of the Hague Regulations, has brought about a considerable interest in national groups as distinguished from states and individuals. National and religious groups were put under a special protection by the Treaty of Versailles and by specific minority treaties, when it became obvious that national minorities were compelled to live within the boundaries of states ruled by governments representing a majority of the population. The constitutions which were framed after 1918 also contain special provisions for the protection of the rights of national groups. Moreover, penal codes which were promulgated at that time provide for the protection of such groups, especially of their honor and reputation.

This trend is quite natural, when we conceive that nations are essential elements of the world community. The world represents only so much culture and intellectual vigor as are created by its component national groups.⁴⁵ Essentially the idea of a

nation signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture, and a well-developed national psychology. The destruction of a nation, therefore, results in the loss of its future contributions to the world. Moreover, such destruction offends our feelings of morality and justice in much the same way as does the criminal killing of a human being: the crime in the one case as in the other is murder, though on a vastly greater scale. Among the basic features which have marked progress in civilization are the respect for and appreciation of the national characteristics and qualities contributed to world culture by the different nations – characteristics and qualities which, as illustrated in the contributions made by nations weak in defense and poor in economic resources, are not to be measured in terms of national power and wealth.

As far back as 1933, the author of the present work submitted to the Fifth International Conference for the Unification of Penal Law, held in Madrid in October of that year in cooperation with the Fifth Committee of the League of Nations, a report accompanied by draft articles to the effect that actions aiming at the destruction and oppression of populations (what would amount to the actual conception of genocide) should be penalized. The author formulated two new international law crimes to be introduced into the penal legislation of the thirty-seven participating countries, namely, the crime of *barbarity*, conceived as oppressive and destructive actions directed against individuals as members of a national, religious, or racial group, and the crime of *vandalism*, conceived as malicious destruction of works of art and culture because they represent the specific creations of the genius of such groups. Moreover, according to this draft these new crimes were to be internationalized to the extent that the offender should be punished when apprehended, either in his own country, if that was the situs of the crime, or in any other signatory country, if apprehended there.⁴⁶

This principle of universal repression for genocide practices advocated by the author at the above-mentioned conference, had it been accepted by the conference and embodied in the form of an international convention duly signed and ratified by the countries there represented in 1933, would have made it possible, as early as that date, to indict persons who had been found guilty of such criminal acts whenever they appeared on the territory of one of the signatory countries. Moreover, such a project, had it been adopted at that time by the participating countries, would prove useful now by providing an effective instrument for the punishment of war criminals of the present world conflict. It must be emphasized again that the proposals of the author at the Madrid Conference embraced criminal actions which, according to the view of the author, would cover in great part the fields in which crimes have been committed in this war by the members of the Axis Powers. Furthermore, the adoption of the principle of universal repression as adapted to genocide by countries which belong now to the group of non-belligerents or neutrals, respectively, would likewise bind these latter countries to punish the war criminals engaged in genocide or to extradite them to the countries in which these crimes were committed. If the punishment of genocide practices had formed a part of international law in such countries since 1933, there would be no necessity now to issue admonitions to neutral countries not to give refuge to war criminals.⁴⁷

It will be advisable in the light of these observations to consider the place of genocide in the present and future international law. Genocide is, as we have noted,

a composite of different acts of persecution or destruction. Many of those acts, when they constitute an infringement upon honor and rights, when they are a transgression against life, private property and religion, or science and art, or even when they encroach unduly in the fields of taxation and personal services, are prohibited by Articles 46, 48, 52, and 56 of the Hague Regulations. Several of them, such as those which cause humiliations, debilitation by undernourishment, and danger to health, are in violation of the laws of humanity as specified in the preamble to the Hague Regulations. But other acts falling within the purview of genocide, such as, for example, subsidizing children begotten by members of the armed forces of the occupant and born of women nationals of the occupied area, as well as various ingenious measures for weakening or destroying political, social, and cultural elements in national groups, are not expressly prohibited by the Hague Regulations. The entire problem of genocide needs to be dealt with as a whole; it is too important to be left for piecemeal discussion and solution in the future. Many hope that there will be no more wars, but we dare not rely on mere hopes for protection against genocidal practices by ruthless conquerors. Therefore, without ceasing in our endeavors to make this the last war, we must see to it that the Hague Regulations are so amended as expressly to prohibit genocide in any war which may occur in the future. *De lege ferenda*, the definition of genocide in the Hague Regulations thus amended should consist of two essential parts: in the first should be included every action infringing upon the life, liberty, health, corporal integrity, economic existence, and the honor of the inhabitants when committed because they belong to a national, religious, or racial group; and in the second, every policy aiming at the destruction or the aggrandizement of one of such groups to the prejudice or detriment of another.

Moreover, we should not overlook the fact that genocide is a problem not only of war but also of peace. It is an especially important problem for Europe, where differentiation in nationhood is so marked that despite the principle of political and territorial self-determination, certain national groups may be obliged to live as minorities within the boundaries of other states. If these groups should not be adequately protected, such lack of protection would result in international disturbances, especially in the form of disorganized emigration of the persecuted, who would look for refuge elsewhere.⁴⁸ That being the case, all countries must be concerned about such a problem, not only because of humanitarian, but also because of practical, reasons affecting the interest of every country. The system of legal protection of minorities adopted in the past, which was based mainly on international treaties and the constitutions of the respective countries, proved to be inadequate because not every European country had a sufficient judicial machinery for the enforcement of its constitution. It may be said, in fact, that the European countries had a more efficient machinery for enforcing civil and criminal law than for enforcing constitutional law. Genocide being of such great importance, its repression must be based not only on international and constitutional law but also on the criminal law of the various countries. The procedure to be adopted in the future with respect to this matter should be as follows.

An international multilateral treaty should provide for the introduction, not only in the constitution but also in the criminal code of each country, of provisions protecting minority groups from oppression because of their nationhood, religion,

or race. Each criminal code should have provisions inflicting penalties for genocide practices. In order to prevent the invocation of the plea of superior orders, the liability of persons who *order* genocide practices, as well as of persons who *execute* such orders, should be provided expressly by the criminal codes of the respective countries. Because of the special implications of genocide in international relations, the principle of universal repression should be adopted for the crime of genocide. According to this principle, the culprit should be liable to trial not only in the country in which he committed the crime, but also, in the event of his escape therefrom, in any other country in which he might have taken refuge.⁴⁹ In this respect, genocide offenders should be subject to the principle of universal repression in the same way as other offenders guilty of the so-called *delicta juris gentium* (such as, for example, white slavery and trade in children, piracy, trade in narcotics and in obscene publications, and counterfeiting of money).⁵⁰ Indeed, genocide should be added to the list of *delicta juris gentium*.⁵¹

International control of occupation practices

Genocide as described above presents one of the most complete and glaring illustrations of the violation of international law and the laws of humanity. In its several manifestations genocide also represents a violation of specific regulations of the Hague Convention such as those regarding the protection of property, life, and honor. It is therefore essential that genocide procedures be not only prohibited by law but prevented in practice during military occupation.

In another important field, that of the treatment of prisoners of war, international controls have been established in order to ascertain whether prisoners are treated in accordance with the rules of international law (see Articles 86 to 88 of the Convention concerning the Treatment of Prisoners of War, of July 27, 1929).⁵² But the fate of nations in prison, of helpless women and children, has apparently not seemed to be so important as to call for supervision of the occupational authorities. Whereas concerning prisoners of war the public is able to obtain exact information, the lack of direct-witness reports on the situation of groups of population under occupation gravely hampers measures for their assistance and rescue from what may be inhumane and intolerable conditions. Information and reports which slip out from behind the frontiers of occupied countries are very often labeled as untrustworthy atrocity stories because they are so gruesome that people simply refuse to believe them. Therefore, the Regulations of the Hague Convention should be modified to include an international controlling agency vested with specific powers, such as visiting the occupied countries and making inquiries as to the manner in which the occupant treats nations in prison. In the situation as it exists at present there is no means of providing for alleviation of the treatment of populations under occupation until the actual moment of liberation. It is then too late for remedies, for after liberation such populations can at best obtain only reparation of damages but never restoration of those values which have been destroyed and which cannot be restored, such as human life, treasures of art, and historical archives.

NOTES

- 1 Another term could be used for the same idea, namely, *ethnocide*, consisting of the Greek word “ethnos” – nation – and the Latin word “cide.”
- 2 See *Violation of the Laws and Customs of War: Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919*, Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32 (Oxford: Clarendon Press, 1919), p. 39.
- 3 See Garner, *op. cit.*, Vol. I, p. 77.
- 4 As classical examples of wars of extermination in which nations and groups of the population were completely or almost completely destroyed, the following may be cited: the destruction of Carthage in 146 BC; the destruction of Jerusalem by Titus in 72 AD; the religious wars of Islam and the Crusades; the massacres of the Albigenses and the Waldenses; and the siege of Magdeburg in the Thirty Years’ War. Special wholesale massacres occurred in the wars waged by Genghis Khan and by Tamerlane.
- 5 “Since the State in itself is for us only a form, while what is essential is its content, the nation, the people, it is clear that everything else must subordinate itself to its sovereign interests.” (Adolf Hitler, *Mein Kampf* [New York: Reynal & Hitchcock, 1939], p. 842.)
- 6 See Alfred Rosenberg, *Der Mythos des 20. Jahrhunderts* (Munich: Hoheneichenverlag, 1935), pp. 1–2: “History and the mission of the future no longer mean the struggle of class against class, the struggle of Church dogma against dogma, but the clash between blood and blood, race and race, people and people.”
- 7 The German genocide philosophy was conceived and put into action before the Germans received even a foretaste of the considerable dimensions of Allied aerial bombings of German territory.
- 8 See Hitler’s statement to Rauschnig, from *The Voice of Destruction*, by Hermann Rauschnig (New York, 1940), p. 138, by courtesy of G. P. Putnam’s Sons: “... The French complained after the war that there were twenty million Germans too many. We accept the criticism. We favor the planned control of population movements. But our friends will have to excuse us if we subtract the twenty millions elsewhere. After all these centuries of whining about the protection of the poor and lowly, it is about time we decided to protect the strong against the inferior. It will be one of the chief tasks of German statesmanship for all time to prevent, by every means in our power, the further increase of the Slav races. Natural instincts bid all living beings not merely conquer their enemies, but also destroy them. In former days, it was the victor’s prerogative to destroy entire tribes, entire peoples. By doing this gradually and without bloodshed, we demonstrate our humanity. We should remember, too, that we are merely doing unto others as they would have done to us.”
- 9 *Mein Kampf*, p. 588.
- 10 *Mein Kampf*, p. 931: “... the National Socialist movement has its mightiest tasks to fulfill: ... it must condemn to general wrath the evil enemy of humanity [Jews] as the true creator of all suffering.”
- 11 *Ibid.*, p. 590, n. “... The Polish policy in the sense of a Germanization of the East, demanded by so many, rooted unfortunately almost always in the same wrong conclusion. Here too one believed that one could bring about a Germanization of the Polish element by a purely linguistic integration into the German nationality. Here too the result would have been an unfortunate one: people of an alien race, expressing its alien thoughts in the German language, compromising the height and the dignity of our own nationality by its own inferiority.” As to the depopulation policy in occupied Yugoslavia, see, in general, Louis Adamic, *My Native Land* (New York: Harper & Brothers, 1943).

- 12 For Luxemburg, see order of August 6, 1940.
- 13 See order concerning the change of first and family names in Luxemburg, of January 31, 1941.
- 14 *Verordnungsblatt*, 1940, p. 60.
- 15 As to Poland, see order of October 29, 1941.
- 16 As to Norway, see order of September 25, 1940.
- 17 "It is the task of the director to orient and conduct the school systematically according to National Socialist principles." See announcement for execution of the order concerning the elementary school system, February 14, 1941, promulgated in Lorraine by the Chief of Civil Administration.
- 18 *Verordnungsblatt*, 1941, p. 100.
- 19 As to organization of the Reich Chamber of Culture, see law of November 1, 1933, *Reichsgesetzblatt*, 1, p. 979.
- 20 See note of the Polish Minister of Foreign Affairs of the Polish Government-in-Exile to the Allied and neutral powers of May 3, 1941, in *Polish White Book: Republic of Poland*, Ministry of Foreign Affairs, *German Occupation of Poland – Extract of Note Addressed to the Allied and Neutral Powers* (New York: The Greystone Press [1942]), pp. 36–9.
- 21 *Frankfurter Zeitung*, Wochen-Ausgabe, March 28, 1941.
- 22 See ordinance promulgated by the German Trustee of the Polish Savings Bank published in *Thorner Freiheit* of December 11, 1940.
- 23 See Report of Primate of Poznań to Pius XII, *The Black Book of Poland* (New York: G. P. Putnam's Sons, 1942), p. 383.
- 24 That the separation of males from females was preconceived by Hitler as an element of genocide is obvious from his statement: "'We are obliged to depopulate,' he went on emphatically, 'as part of our mission of preserving the German population. We shall have to develop a technique of depopulation. If you ask me what I mean by depopulation, I mean the removal of entire racial units. And that is what I intend to carry out – that, roughly, is my task. Nature is cruel, therefore we, too, may be cruel. If I can send the flower of the German nation into the hell of war without the smallest pity for the spilling of precious German blood, then surely I have the right to remove millions of an inferior race that breeds like vermin! And by "remove" I don't necessarily mean destroy; I shall simply take systematic measures to dam their great natural fertility. For example, I shall keep their men and women separated for years. Do you remember the falling birthrate of the world war? Why should we not do quite consciously and through a number of years what was at that time merely the inevitable consequence of the long war? There are many ways, systematical and comparatively painless, or at any rate bloodless, of causing undesirable races to die out.'" (Rauschnig, op. cit., pp. 137–8, by courtesy of G. P. Putnam's Sons.)
- 25 See order concerning the granting of child subsidies to Germans in the Government General, of March 10, 1942.
- 26 See order of July 28, 1942, concerning the subsidizing of children of members of the German armed forces in occupied territories, *Reichsgesetzblatt*, 1942, 1, p. 488: "To maintain and promote a racially valuable German heritage, children begotten by members of the German armed forces in the occupied Norwegian and Dutch territories and born of Norwegian or Dutch women will upon the application of the mother be granted a special subsidy and benefit through the offices of the Reich Commissioners for the occupied Norwegian and Dutch territories."
- 27 See order of February 28, 1941.
- 28 See *New York Times*, October 5, 1942, p. 4, col. 6.
- 29 The figures quoted in this and the following two paragraphs have been taken, with the permission of the Institute of Jewish Affairs, from its publication entitled *Starvation over*

Europe (Made in Germany); A Documented Record, 1943 (New York, 1943), pp. 37, 47, 52.

30 Ibid., p. 37.

31 Ibid., p. 47.

32 Ibid., p. 52. For further details, see League of Nations, *World Economic Survey* (Geneva, 1942), pp. 90–1.

33 See *Hitler's Ten-Year War on the Jews* (Institute of Jewish Affairs of the American Jewish Congress, World Jewish Congress, New York, 1943), p. 144.

34 League of Nations, *Monthly Bulletin of Statistics* (Geneva, 1942), Nos. 4, 5, 6.

35 *Nowy Kurjer Warszawski* (Warsaw), August 29, 1941.

36 *Die Nation* (Bern), August 13, 1942.

37 *Poland Fights* (New York), May 16, 1942.

38 *Hitler's Ten-Year War on the Jews*, p. 144.

39 See the Joint Declaration by members of the United Nations, issued simultaneously in Washington and in London, on December 17, 1942: "The attention of the Belgian, Czechoslovak, Greek, Yugoslav, Luxembourg, Netherlands, Norwegian, Polish, Soviet, United Kingdom and United States Governments and also of the French National Committee has been drawn to numerous reports from Europe that the German authorities, not content with denying to persons of Jewish race in all the territories over which their barbarous rule has been extended, the most elementary human rights, are now carrying into effect Hitler's oft-repeated intention to exterminate the Jewish people in Europe.

"From all the occupied countries Jews are being transported in conditions of appalling horror and brutality to Eastern Europe. In Poland, which has been made the principal Nazi slaughterhouse, the ghettos established by the German invader are being systematically emptied of all Jews except a few highly skilled workers required for war industries. None of those taken away are ever heard of again. The able-bodied are slowly worked to death in labor camps. The infirm are left to die of exposure and starvation or are deliberately massacred in mass executions. The number of victims of these bloody cruelties is reckoned in many hundreds of thousands of entirely innocent men, women and children.

"The above-mentioned governments and the French National Committee condemn in the strongest possible terms this bestial policy of cold-blooded extermination. They declare that such events can only strengthen the resolve of all freedom-loving peoples to overthrow the barbarous Hitlerite tyranny. They reaffirm their solemn resolution to insure that those responsible for these crimes shall not escape retribution, and to press on with the necessary practical measures to this end." (*The United Nations Review*, Vol. III [1943], No. I, p. 1.)

40 *Hitler's Ten-Year War on the Jews*, p. 307.

41 See order of December 9, 1940.

42 Ibid.

43 Under Polish law, 1919–39, gambling houses were prohibited; nor did they exist on Polish soil when it was under Russian, German, and Austrian rule before 1914. See *The Black Book of Poland*, pp. 513, 514.

44 "No conqueror has ever chosen more diabolical methods for gaining the mastery of the soul and body of a people." (*Manchester Guardian*, February 28, 1941.)

"We know that there is no war in all our history where such ruthless and deliberate steps have been taken for the disintegration of civilian life and the suffering and the death of civilian populations." (Hugh R. Jackson, Special Assistant to the Director of Foreign Relief and Rehabilitation Operations, US Department of State, in an address before the

- National Conference of Social Work, New York, March 12, 1943; printed in Department of State, *Bulletin*, Vol. VIII, No. 194 [March 13, 1943], p. 219.)
- 45 The idea of a nation should not, however, be confused with the idea of nationalism. To do so would be to make the same mistake as confusing the idea of individual liberty with that of egoism.
- 46 See Raphaël Lemkin, "Terrorisme," *Actes de la V^e Conférence Internationale pour l'Unification du Droit Pénal* (Paris, 1935), pp. 48–56; see also Lemkin, "Akte der Barbarei und des Vandalismus als *delicta iuris gentium*," *Internationales Anwaltsblatt* (Vienna, November, 1933).
- 47 See statement of President Roosevelt, *White House Press Release*, July 30, 1943, Department of State, *Bulletin*, Vol. IX, No. 214 (July 31, 1943), p. 62.
- 48 Adequate protection of minority groups does not of course mean that protective measures should be so stringent as to prevent those who so desire from leaving such groups in order to join majority groups. In other words, minority protection should not constitute a barrier to the gradual process of assimilation and integration which may result from such voluntary transfer of individuals.
- 49 Of course such an offender could never be tried twice for the same act.
- 50 Research in International Law (Under the Auspices of the Faculty of Harvard Law School), "Part II. Jurisdiction with Respect to Crime" (Edwin D. Dickinson, Reporter), *American Journal of International Law, Supp.*, Vol. 29 (1935), pp. 573–85.
- 51 Since not all countries agree to the principle of universal repression (as for example the United States of America), the future treaty on genocide might well provide a facultative clause for the countries which do not adhere to this principle.
- 52 League of Nations, *Treaty Series*, Vol. 118, p. 343.

REFERENCES

- Adamic, Louis (1943). *My Native Land*. New York: Harper and Brothers.
- Garner, James W. (1920). *International Law and the World War*. Vol. II. New York: Longmans, Green and Co.
- Lemkin, Raphaël (1933). "Akte der Barbarei und des Vandalismus als *delicta iuris gentium*." *Internationales Anwaltsblatt* (Vienna, November).
- Lemkin, Raphaël (1935). "Terrorisme. Rapport et projet de textes." *Actes de la V^e Conférence Internationale pour l'Unification du Droit Pénal*. Paris: Editions A. Pedone, p. 48.