

Acts Shocking to the Conscience of Mankind

Why Norway voted to delete cultural genocide from the 1948 Genocide
Convention

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List of abbreviations

ANMFA	Archives of the Norwegian Ministry of Foreign Affairs
ANMJ	Archives of the Norwegian Ministry of Justice
ECOSOC	Economic and Social Council
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
MFA	Ministry of Foreign Affairs
MJP	Ministry of Justice and the Police
NUN	Norwegian Delegation to the United Nations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly

1 Introduction

This study aims to shed light on the concepts “genocide” and “cultural genocide”. It does so by considering a pivotal moment in the history of the two concepts. In the autumn of 1948, as United Nations Member States discussed and eventually adopted the Convention on the Prevention and Punishment of the Crime of Genocide,¹ they decided to leave out the proposed article prohibiting cultural genocide, thus damning the concept to an uneasy life outside the sphere of international law. This paper considers this moment from the perspective of Norway, a small country on the side-line of the emerging superpower tensions, yet an active participant in the drafting process, and a country that 70 years later faces accusations of cultural genocide against indigenous peoples within its borders.²

While most studies on the drafting of the 1948 Genocide Convention focus on the participation of the most influential actors – the United States, United Kingdom and the Soviet Union, little or no attention has so far been devoted to the participation of Scandinavian countries in the process. This study aims to remedy this situation by shedding light on Norway’s approach to the drafting of the convention, and the question of cultural genocide in particular. During the drafting process, Norway became known as an eager proponent of the convention. With the country recovering from recent experiences of wartime occupation and destruction, its delegates expressed the hope that the convention would contribute to securing a stable post-war order – the convention was to become “one of the stones in the building of peace”, as one delegate put it.³ However, Norway voted to delete the provision on cultural genocide, together with neighbouring Sweden and 23 other UN member states.

Because assimilationist policies were widespread at the time when the convention was drafted, it is relevant to question how this impacted their perception of cultural genocide. It is clear from the meeting records that several Member States were worried about a potential link between cultural genocide and forced assimilation. For instance, a Swedish delegate wondered whether “the fact that Sweden had converted the Lapps to Christianity might not lay her open to the accusation that she had committed an act of genocide.”⁴ Because Norwegian policies of assimilation had many similarities to those of neighbouring Sweden, it is relevant to question whether this linkage was on the radar of the Norwegian actors involved in the negotiations.

¹ Hereinafter “the Genocide Convention”

² Vars, “Samene i Norge”, 181, Minton, “Educational Systems and Cultural Genocide”, 144

³ United Nations. *Interview with Mr. Erling Wikborg*

⁴ United Nations General Assembly (UNGA) 6th Committee “Eighty-Third Meeting,” (25 October 1948) in Abtahi and Webb, *The Genocide Convention: The Travaux Préparatoires*, 1506 (Petren, Sweden). Unless otherwise stated, the pagination of United Nations documents will follow this book.

1.1 Research question, aims and outline

The analysis of the drafting of the Genocide Convention comprises the core of this study. Broadly, the purpose of this exercise is to shed light on how cultural genocide was construed by the drafters, and how they approached the issue. By focusing on Norway and on the deletion of the proposed article on cultural genocide, I aim to contribute to scholarship on the negotiation of the convention and on the early development of the concept of genocide, but also on how the Norwegian state viewed its own minority policies at a particular point in time. With specific regards to Norway, the guiding research questions are: a) how Norwegian government actors, relevantly within the Norwegian Ministry of Foreign Affairs (MFA) and Ministry of Justice and the Police (MJP) considered the Genocide Convention, b) how they regarded the question of cultural genocide and its significance, and c) what were the reasons for their positions on this question.

This thesis is divided into six chapters. Chapter 2 provides a background and elaborates the research question. It presents the case for discussing the history of the concept “genocide”, as well as the continuing challenge posed by the concept of cultural genocide. Chapter 3 delves into the drafting history of the convention, with focusing on how the definition developed throughout the process. It also highlights Norwegian participation. Chapter 4 focuses on the debate surrounding cultural genocide in the Sixth Committee of the General Assembly. It offers a typology of claims about cultural genocide, based on an analysis of statements made by delegates. Chapter 5 contains an analysis of Norwegian participation in the drafting process and considers how the Ministry of Foreign Affairs and Ministry of Justice and the Police perceived the relevance of the convention. It then goes on to outline the treatment of the question of cultural genocide by these ministries, and provides reflections on their stance. Chapter 6 provides a conclusion.

1.2 Theoretical starting points

International law does not provide an objective lens through which to analyse the political world, and does not exist independently from politics. This apparent truism does not simply mean that international law depends on international politics for its enforcement and credibility. Rather, international law is an expression of international politics. The institutionalisation of norms is a social process, and legal instruments, and legal concepts, are fundamentally

political.⁵ The Genocide Convention, and hence, its definition of the crime, was shaped into being by diplomats whose primary task was to promote the interests of the states they represented. The simple explanation of why the legal definition of genocide stands as it does is therefore that it is what the states involved could agree on at the time.⁶

This thesis is inspired by what Damien Short has termed the cultural or post-colonial turn in genocide studies.⁷ On the one hand, this turn signifies an increased attention towards the connection between colonialism and genocide, with a special emphasis on settler-colonialism and genocides on indigenous peoples. On the other, it signifies the trend of criticisms of the concept of genocide and its predominant focus on mass killing.⁸ Because the definition of genocide contained in the Genocide Convention has come to dominate the political and legal discourse on genocide, a post-colonial critique of the concept should be founded on awareness of the discourse in which this concept was conceived.

According to Christopher Powell, the Genocide Convention “was shaped by the desire of the framers not to criminalize their own behaviour.”⁹ While this study is not an assessment of whether the Norwegian state committed a cultural genocide against its indigenous peoples, it is inspired by the realization that many of the states taking part in the drafting of the Genocide Convention were or had recently been pursuing policies of forced assimilation domestically. Between the mid-19th century and the mid-20th century, the Norwegian state attempted to assimilate their Sami and Kven minorities. Intrinsic to this policy was the aim that members of these indigenous group should give up their languages and identity, and thus the disappearance of these cultures as such.¹⁰ How did this tradition and these policies influence how the Norwegian state regarded the question of cultural genocide? And how should we read the documents from the Norwegian actors involved in the process in this light? Did they take it up explicitly? If not, how should this absence be understood?

This study is also influenced by conceptual history, or *Begriffsgeschichte*, after the German historian Reinhart Koselleck. This is a strand of historical enquiry that engages with the “problem of the change in the semantics of particular concepts.”¹¹ An underlying premise

⁵ Koskenniemi, *The Politics of International Law*. See also Freeman, *Human Rights. An Interdisciplinary Approach*, 88: “The *sociological* point is not that human rights should never be institutionalised, but, rather, that institutionalisation is a social process, involving power, and that it should be analysed and not assumed to be beneficial”

⁶ Schabas, “Commentary on Paul Boghossian”, 96-98

⁷ Short, *Redefining Genocide*. 194

⁸ See Moshman, “Conceptions of Genocide”; Short, *Redefining Genocide*, 16

⁹ Powell, “What do Genocides Kill?” 532

¹⁰ Vars, *loc.cit*, Minton, *loc.cit*

¹¹ Wimmer: «Conceptual History», 548; Koselleck & Richter, “Introduction”, 16

of this study is that concepts change over time, depending on who applies them, and in what social circumstances. In contrast to its relative stability since 1948, the concept of genocide which dominates international discourse today is very different from the one originally conceived by the Polish Jewish Lawyer Raphael Lemkin in 1943.¹² While Lemkin's concept was concerned with a broad notion of group destruction,¹³ there has been a tendency to conflate genocide with mass murder, which is also seen in ordinary usage of the term.¹⁴ Illustratively, the Oxford dictionary defines genocide as "the deliberate killing of a large group of people, especially those of a particular nation or ethnic group."¹⁵ How did we get here?

In the late 1940s, the United Nations was in its infancy. The first ever General Assembly took place only a year after the organization had been formally established by its 50 original member states in October 1945. Throughout the drafting, membership would increase to 58 – in comparison, the organization today spans 193 member states.¹⁶ In other words, the UN was not yet a truly global organization, and it is safe to agree with Elsa Novic that "colonialism still constituted a paradigm of international relations."¹⁷ Most of Africa, as well as Asia, was unrepresented, or represented by colonial powers.

Historical research on the negotiation of the Genocide Convention has tended to highlight the intersection between three dimensions: the experience of the recent war, the building of the post-war order, and the increasing rivalry between major powers. All these dimensions were also present in the discussions about cultural genocide. Anton Weiss-Wendt has shed particular light on how this issue became engulfed in early superpower rivalries.¹⁸ However, the question of cultural genocide did not strictly follow the emerging East-West divides.¹⁹

Johannes Morsink has categorized the standpoints on cultural genocide into voter blocks: Communist states, and some Middle Eastern delegations, were strong supporters of including the provision. USA and the majority of Latin-American countries voted against.²⁰ Hence, the balance lay with the North-Atlantic/Western European delegations, who eventually voted for deleting the provision. According to Morsink's analysis, these states did not do so

¹² Irvin-Erickson, *Raphael Lemkin and the Concept of Genocide*, 81

¹³ Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," 32-34

¹⁴ See Moshman, "Conceptions of Genocide" & Short, *loc cit*

¹⁵ Oxford Dictionaries, "Definition of genocide"

¹⁶ United Nations. "Growth in United Nations membership, 1945-present." (South-Sudan became the 193rd member state in 2011).

¹⁷ Novic, *The Concept of Cultural Genocide*, 28

¹⁸ Weiss-Wendt, *The Soviet Union*, 77

¹⁹ Archive of the Norwegian Ministry of Foreign Affairs (ANMFA) 30.10/7 (Folkemord, Bind II) Letter from Norwegian UN Delegation, 8 October 1948

²⁰ Morsink., "Cultural Genocide" 1029-1041

because they were fundamentally opposed to minority protection, but because they believed the issue should rather be addressed in the Universal Declaration of Human Rights (UDHR).²¹ When these states later voted against minority protection in the UDHR, Morsink attributes this to “reasons having to do with the rhetoric and reality of the cold war.”²² Because Morsink’s study draws on official UN documents, it tells us more about what states said, than about why they said it. Consequently, this hypothesis should be tested through consulting internal Norwegian documents from the drafting.

1.3 Methodology and limitations of study

The analysis in this study focuses on both international and state level, and this is reflected in the methods pursued in the different chapters. Chapter 3 and 4 focus on the drafting process and discussions in the United Nations. This part rests primarily on an analysis of available UN documents from the drafting, such as meeting transcripts, historical summaries and draft resolutions. It also builds on secondary literature about the drafting of the convention by authors including William Schabas, Anton Weiss Wendt, Elsa Novic, and Johannes Morsink. For the analysis of Norwegian participation in the drafting (chapter 5), I have consulted the archives of the MJP and the MFA, available through the National Archives of Norway. This analysis therefore rests heavily on unpublished documents from these two ministries. In order to provide context and guidance, I have also consulted secondary literature on Norwegian foreign policy and minority policy, as well as on the Norwegian approach to later human rights treaties.

As to the Norwegian treatment of the Convention and the question of cultural genocide, the study is largely confined to the MFA and the MJP.²³ These two ministries formulated and represented Norwegian interests the process from a bureaucratic, legal, and political standpoint. While individual officials necessarily influenced the process in different ways, the analysis in this study focuses on the output and correspondence produced within these ministries, and does generally not highlight the individual authors of the various texts, even though correspondence between and within the ministries is typically signed. This is because I have aimed to establish how the matter was dealt with on an institutional level. Moreover, most of the reviewed correspondence appears to be collaborative efforts within the offices involved.

While I have made extensive archival inquiries, there is a chance that I have missed something. With regards to a fairly specific question such as cultural genocide, for which I have

²¹ Ibid, 1009-1010

²² Ibid, 1010

²³ Since 2012, The Ministry of Justice and Public Security

identified only a few central documents from each ministry, the chance that new material could significantly change the picture, increases. The limited scope of this master thesis did not allow for investigations into related avenues that could have been fruitful in order to shed further light on this question. An enquiry into Norwegian standpoints on the question of minority protection in the UDHR, studies of personal archives of the delegates, or a comparative study including neighbouring Sweden and their treatment of the question are examples of interesting next steps in this regard. I have unsuccessfully searched for minutes of internal meetings within the UN delegation to the Third General Assembly, which would have allowed for a more detailed impression of how the delegates experienced the negotiations as they evolved.

Notwithstanding these limitations, this study provides useful insights into how the Norwegian MFA and MJP considered the genocide convention during in 1947-1948. Turning attention away from the superpowers and towards a small state such as Norway allows for perspectives that are more easily overlooked within the overarching frame of the emerging Cold War. Focusing on the question of cultural genocide allows for an investigation into how the drafters attempted to capture the phenomenon of intended group destruction in the language of international law. A central claim is that the drafters failed to fully capture this phenomenon not only because they wanted to avoid scrutiny, but also because they viewed destructive colonial policies as something fundamentally unproblematic. The implication is that the UN definition of genocide, which has remained unchanged until today, provides a highly selective framework for understanding the phenomenon of group destruction.

2 What is cultural genocide, and why does it matter?

What is genocide? A standard way to answer this question is by reference to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. During the 70 years since its adoption by the UN General Assembly on 9 December 1948, the convention has not been amended. In the meantime, 152 states have become parties,²⁴ and the convention has come to be regarded as partially expressing international customary law, i.e. binding states regardless of whether or not they have ratified the convention.²⁵ The convention has been interpreted by international courts and tribunals, including the international tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR),²⁶ and the International Criminal Court.²⁷ It is uncontroversial to state that the UN definition is the single most authoritative definition of genocide today.²⁸

The history and spread of the term “genocide” is connected to, and shares similarities with the “language” of human rights.²⁹ Within the framework of the UN, the Genocide Convention and the Universal Declaration of Human Rights ushered in a new discourse on state accountability, to be developed by the human rights treaties in later decades. By the end of the 20th century, human rights had become a “global lingua franca of global moral thought,”³⁰ with human rights-talk communicating “across cultures in ways similar to money, statistics, pidgin English, or a discussion of soccer.”³¹ In a similar way, the term “genocide” has become a consequential normative term with large implications for how the international community perceives situations and the actors involved. Genocide is commonly perceived as the worst category of evildoing produced by humanity, or as the “crime of crimes.”³² It is considered to justify military intervention, to delegitimize governments, and to condemn alleged perpetrators as enemies of civilization.³³

²⁴ United Nations Treaty Collection, “Convention on the Prevention and Punishment of the Crime of Genocide” Status as of 28 July 2019

²⁵ United Nations General Assembly (UNGA). “Report of the Ad Hoc Committee on the Establishment of an International Criminal Court,” at para 60

²⁶ See e.g. ICTR, Judgement, “Prosecutor v. Jean Paul Akayesu,” and International Criminal Tribunal for the Former Yugoslavia (ICTY), Judgement, “Prosecutor vs. Radoslav Krstic.” The Akayesu case was the first judgement on genocide by an international court. The Krstic case represented the first conviction for genocide by the ICTY.

²⁷ Rome Statute of the International Criminal Court, articles 5 and 6.

²⁸ Schabas, “Genocide and Crimes against Humanity,” 4

²⁹ Law, “The Global Language of Human Rights”, 111-113

³⁰ Ignatieff, *Human Rights as Politics and Idolatry*, 53

³¹ Cmiel, “The recent history of Human Rights”, 36

³² For this formulation, see International Criminal Tribunal for Rwanda (ICTR). “Prosecutor v. Jean Kambanda”, para 16

³³ Nouwen & Werner. “Monopolizing Global Justice”, 161

The importance of the Genocide Convention's definition of genocide has been bolstered by the growing dominance of international criminal law and international criminal legal discourse over the last decades. When discussing the Genocide Convention, one must have in mind that its definition has been used and developed with criminal prosecution in mind. This matters because, as Nouwen and Werner have pointed out, international criminal law, with its language, concepts and structure, is increasingly becoming a dominating discourse through which global issues are framed.³⁴

The Genocide Convention defines genocide as “any of the following acts, when committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:”

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.³⁵

2.1 Genocide: mass murder or group destruction?

The Genocide Convention does not contain the *only* definition of genocide. In 2001, Scott Straus counted 15 different scholarly definitions of the term. Various definitions are applied in fields such as political science, sociology and history, with “genocide” figuring simultaneously as “an empirical, moral, legal and political concept.”³⁶ The 1948 definition is not even the only definition of genocide within the legal sphere, as some domestic legal systems apply different definitions.³⁷ In addition to scholarly definitions, the term sees a broad normative non-scholarly usage which does not necessarily conform to any of the definitions mentioned above, but which generally aims to generate attention around a particular issue viewed as atrocious.³⁸ The large variations in usage of the genocide concept, and the tendency, particularly among scholars, to “energetically defend their own usage,” has prompted observers to label the term an “essentially contested concept.”³⁹

³⁴ Nouwen and Werner. «Monopolizing Global Justice», 162

³⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, article II

³⁶ Straus, “Contested Meanings and Conflicting Imperatives”, 350-355, 359

³⁷ Schabas, *Genocide in International Law*, 5-6. It is therefore slightly imprecise to talk of “the legal definition” as such. However, for the sake of simplicity, I will use this term in the study.

³⁸ Weiss-Wendt, “When the End Justifies the Means”, 173.

³⁹ Collier et al. “Essentially contested concepts”, 212

One reason for the proliferation of alternative conceptions of genocide has been misgivings about the 1948 definition. During the Cold War, international criminal law was largely dormant, leaving usage of the term to activists, social scientists and historians, many of whom felt that the definition in the convention was too restrictive.⁴⁰ Criticisms of the 1948 definition have also engendered similar and related terms, such as “gendercide”, “indigenocide”, “politicide”, “ecocide and “linguicide”. These words have developed independently from the legal term genocide; however they retain some of its essence while implying that the destruction of a particular victim group or object requires its own determination.⁴¹ Cultural genocide shares some similarities with these alternative terms. Due to its deletion from the draft Genocide Convention and thereby from international law, the concept has developed both apart from and in response to the master concept of genocide.

David Moshman conceptualizes the main divide between different definitions of genocide in terms of how they capture the phenomenon of destruction of human groups. He sets up three different scenarios: “(1) random mass killing, (2) group destruction through mass killing, and (3) group destruction by disrupting the transmission of culture across generations.”⁴² Simply put, cultural genocide represents the claim that scenario (3) constitutes genocide. Thus, besides physical attacks on group members, a human group can be destroyed through attacks on its culture. Interestingly, the Genocide Convention itself does not confine its definition to mass killing of members of a group. Though the category of cultural genocide was deleted, the idea that genocide may occur by disrupting intergenerational transmission of culture remains within the ambit of the definition, since the forced removal of children from the group is still included as a type of genocidal acts.⁴³

2.2 Lemkin and the origin of the concept

Raphael Lemkin (1900-1959) is most known for inventing the word “genocide” and for his work to outlaw genocide through international law. While he is sometimes misleadingly presented as having singlehandedly drafted and fathered the convention, his relentless and intense activity as a writer, lobbyist and campaigner was undoubtedly essential.⁴⁴ After fleeing Poland in 1939, Lemkin spent a year in exile in Sweden,⁴⁵ before travelling to the United States,

⁴⁰ Schabas, “Judicial Activism and the Crime of Genocide”, 63-64

⁴¹ Shaw, *What is Genocide?* 65-76; Novic, *Op cit* 35; Verdeja, “The Policial Science of Genocide” 309

⁴² Moshman, “Conceptions of Genocide”, 75, 81

⁴³ Article II (e)

⁴⁴ See e.g. Irvin-Erickson, “Genocide”; Weiss-Wendt, “When the End Justifies the Means”, 173

⁴⁵ see Klamberg, “Raphaël Lemkin in Stockholm” for an assessment of the impact of his stay there on *Axis Rule*.

where he finished his study, published as *Axis Rule in Occupied Europe. Analysis of Occupation, Proposals for Redress*⁴⁶ in 1944.

Whereas the majority of his book compile decrees and laws issued by the Axis powers in occupied countries, it's main theoretical contribution lies in the analysis of various 'techniques of occupation' carried out by Axis powers. The term genocide is introduced as a technique of occupation, namely as "the practice of extermination of nations and ethnic groups [...] as carried out by the invader".⁴⁷ Later, he defines genocide more generally as "the destruction of a nation or of an ethnic group."⁴⁸ "Destruction" in this sense does not exclusively refer to mass killing, however. Rather, it signifies "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."⁴⁹

Lemkin lists eight fields in which genocide is carried out, or eight "techniques of genocide, which the German occupant has developed in the various occupied countries,": political, social, cultural, economic, biological, physical, religious and moral.⁵⁰ Genocide in the cultural field is not strictly defined, but rather explained by way of example. First, Lemkin points to school policies in German-occupied areas: In Luxembourg, "[t]he French language was not permitted to be taught in primary schools." "In Lorraine general compulsory education to assure the upbringing of youth in the spirit of National Socialism begins at the age of six." "In the Polish areas Polish youths were excluded from the benefit of liberal arts studies and were channelled predominantly into the trade schools, [because] [...] the study of the liberal arts may develop independent national Polish thinking."⁵¹ He then points to restrictions to cultural events and activities such as "music, painting, theatre, architecture, literature, press, radio, and cinema"⁵² and the destruction of national monuments, libraries, archives, museums and galleries of art, as for instance the burning of the "great library of the Jewish Theological Seminary at Lublin, Poland".⁵³

As A. Dirk Moses has pointed out, Lemkin's ideas on cultural genocide were connected to his particular notion of culture as "high culture." Genocide could be perpetrated by destroying elite institutions of cultural transmission, even if the population would retain

⁴⁶ Lemkin, *op. cit.*

⁴⁷ Lemkin, *op. cit.*, xi

⁴⁸ *Ibid.*, 79

⁴⁹ *Loc. cit.*

⁵⁰ Lemkin, *op. cit.*, 82

⁵¹ *Ibid.*, 84

⁵² *Ibid.*, 84

⁵³ *Ibid.*, 85

elements of their common culture.⁵⁴ Correspondingly, Lemkin envisaged genocide as a cultural crime in that it deprived the world of elements of its shared culture: “how impoverished the world would be if the [...] Jews had not been permitted to create the Bible or give birth to an Einstein, [...] if the Poles had not had the opportunity to give the world a Copernicus, a Chopin, a Curie.”⁵⁵

Lemkin’s concept of genocide did not appear out of thin air. Already in the early 1930s Lemkin had advocated for outlawing acts of group destruction through the League of Nations system. He had then suggested the two legal concepts “barbarity” and “vandalism” to encompass attempts “to destroy ethnic, religious or social collectivities”, the latter term denoting the “crime of destroying a group’s cultural works.”⁵⁶ However, his ideas were then dismissed.⁵⁷

Further, Lemkin’s combination of Greek *genos* meaning “group”, “race” or “tribe” with Latin *cide* meaning “to kill”⁵⁸, closely resembled several already existing words, among them the German term *Völkermord*,⁵⁹ which Lemkin had also used, and similar constructions in other Germanic languages, including the Norwegian word *folkemord*.⁶⁰ Words with a corresponding construction could also be found in a number of other languages, including Greek and Armenian.⁶¹ As Irvin-Erickson has suggested, by introducing the new word “genocide”, Lemkin might have wanted to avoid the nationalist connotations carried by the word *Volk*, the root in the German term *Völkermord*.⁶² Lemkin also preferred “genocide” to other contemporary terms, including *denationalization*.⁶³

Even though Lemkin’s conception of genocide was not exclusively legal, its implications, as Lemkin saw them, had very much to do with international law. The book included two recommendations for the future, namely the “prohibition of genocide in war and peace”, and the “international control of occupation practices”.⁶⁴ Lemkin’s ideas on genocide gained traction following the release of his book and became consequential for some of the war-

⁵⁴ Moses, *op. cit.* 30

⁵⁵ Lemkin, quoted in Moses, *op. cit.* 30

⁵⁶ Irvin Erickson, “Genocide,” 46-47, 75

⁵⁷ *Ibid.*, 78

⁵⁸ Lemkin, *op. cit.*, xi; See p. 79n1: Lemkin also suggested “ethnocide” as an alternative concept.

⁵⁹ Gerlach. «Extremely violent societies.» 464: Gerlach points to usage of the word *Völkermord* back to 1831

⁶⁰ Bjørnlund, “The Big Death”, 13. Bjørnlund traces Scandinavian usage of the word *folkemord* back to the reaction to the destruction of Ottoman Armenians and Greeks in 1915. However, a limited study of the Norwegian term *folkemord* shows that the term predates this by more than half a century. The earliest usage identified by this author dates from 1846. See Den Constitutionelle, “Det frie ord” 2 August 1846.

⁶¹ Bjørnlund, “Integrated Genocide History”, 129

⁶² Irvin-Erickson, *op. cit.* 83

⁶³ Lemkin, *op. cit.* 80

⁶⁴ Lemkin, *op. cit.*, 90, 94

crimes tribunals after the war, to a large degree thanks to Lemkin's lobbying efforts. Though the Nuremberg trial saw the concept "genocide" overshadowed by the broader concept "crimes against humanity", the prosecution employed the term in indictments as well as in its arguments.⁶⁵ In August 1946, genocide "in the biological" and "cultural senses", was employed in convictions of Nazi defendants by the Supreme National Tribunal of Poland.⁶⁶ At the first session of the United Nations General Assembly in 1946, Lemkin's quest to outlaw genocide led him to draft and push for a resolution. General Assembly Resolution 96 (I), "The Crime of Genocide", tabled by Cuba, India and Panama, was adopted on 11 December 1946.⁶⁷ With the resolution, the General Assembly declared genocide a crime under international law, and requested the Economic and Social Council (ECOSOC) to start the preparations for a convention.

2.3 Cultural genocide and its persistency

Like genocide, the word "culture" evades simple definition, and it is a concept that has changed greatly over time. A way to generalize this change is to state that the last century has seen a "humanistic" conception of culture replaced with a plural, relativistic or anthropological conception. Previously, "culture" often referred to cultural products, such as literature, music and the visual arts, and was expressed in the value of "being cultured" and the notion of "high culture." Within an anthropological conception, culture usually figures as a much broader phenomenon, encapsulating a wide range of features of collective life.⁶⁸ In a broad sense therefore, culture may be understood as lifestyle or as a "way of life," or as a way to distinguish between human groups ("the world is divided into different cultures").⁶⁹ In contemporary discourse however, cultures are rarely treated as mutually exclusive. Rather, current anthropological conceptions tend to underline the fluid and overlapping nature of culture and identity.⁷⁰

Following the deletion of cultural genocide from the draft Genocide Convention, an authoritative definition of the term is lacking both within and outside international law. However, some characteristics of the concept can be identified from its usage. Cultural genocide involves a claim that genocide may be committed by destroying a group's culture,

⁶⁵ Schabas, *Genocide in International Law*, 43-48

⁶⁶ Irvin Erickson, *op. cit.* 152

⁶⁷ *Ibid*, 152-158; UNGA Res. 69 (I), "The Crime of Genocide"

⁶⁸ Barnard and Spencer, "Culture," pp. 168- 9. See also Novic, *The Concept of Cultural Genocide*, 2-3

⁶⁹ Barnard and Spencer, "Culture" 168- 9.

⁷⁰ Novic, *The Concept of Cultural Genocide*, 2-3

and not only through attacks against individual members of a group. Such attacks may be carried out against both tangible aspects of a group's culture, such as libraries, religious buildings and monuments, and intangible aspects, such as language, traditions and ways of life. If genocide is the intended destruction of a human group, then cultural genocide may be understood as the intended destruction of a human group through attacks on the group's culture, or to "prevent the transmission cultural values from one generation to the next."⁷¹

On a number of occasions, certain situations or acts have been claimed to constitute cultural genocide. This includes the Dalai Lama's use of the term to describe Chinese language- and cultural policies in Tibet from the 1950s onwards, Taliban's attacks against non-Islamic Afghan cultural heritage such as the destruction of the Buddhas of Bamiyan, and more recently, the destruction of cultural heritage by the so-called Islamic State in Syria, Iraq and elsewhere.⁷² This year, the term has been applied by a number of observers condemning Chinese policies targeting Uighurs and other Muslim groups in the Xinjiang province, claiming that a systematic campaign of forced re-education aims to transform the identity of members of the groups.⁷³

Critiques of colonialism and forced assimilation⁷⁴ of indigenous peoples constitute another important source of renewed relevance of the concept. Talk of cultural genocide has figured in the debates surrounding truth and reconciliation processes in Canada and Australia. In particular, these processes have focused on the issue of forced removal of children to residential schools and foster families throughout the 18th and 19th century,⁷⁵ but also the broader processes of assimilation. Here, cultural genocide figures as an intergenerational process. The destruction is genocidal in that it hinders the transmission of group culture across generations, and may be understood as a process of colonization spanning across decades or even centuries. Davidson's suggested definition of cultural genocide as "the purposeful

⁷¹ Akhavan, "Cultural Genocide: Legal Label or Mourning Metaphor?," 259. This broader way of conceptualising cultural genocide corresponds to that of the UN Secretariat in their 1947 draft Genocide Convention, while the narrower definition stems from the Truth and Reconciliation Commission in Canada. See also, Lemkin, *Axis Rule in Occupied Europe*, 84-85

⁷² Novic, *The Concept of Cultural Genocide in International Law*, 1-2; For destruction by the Islamic state, see for instance Deakin University, "Mapping the cultural genocide in Iraq and Syria"; Al Jazeera. "What can be done to stop cultural genocide?"; US Government Publishing Office, "Preventing Cultural Genocide"

⁷³ See for instance Washington Post. "Muslim countries joined China in defending its cultural genocide of Uighurs. Aren't they ashamed?" and BBC. "China Muslims: Xinjiang schools used to separate children from families"

⁷⁴ Assimilation may be defined 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." Thornberry, quoted in Morsink, "Cultural Genocide", 1026n81

⁷⁵ Australian Human Rights Commission, *Bringing Them Home*; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*

weakening and ultimate destruction of cultural values of feared out-groups”⁷⁶ is illustrative in this regard, as it exemplifies an emphasis on process, rather than an act or event.

Usage of the concept in this context poses an important challenge to the legal definition. It is at odds with what is typically referred to as the special intent requirement. Besides the requirement that the substantive genocidal acts are intentional, the perpetrator must have committed them with the intent of destroying a group as such. The Australian National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families concluded in 1997 that such intent was indeed present in assimilationist policies up until the 1970s, as these were aimed at “the effective disappearance of Aboriginal culture as a distinct basis of individual and collective identity, [by] its swallowing up of a European way of life.”⁷⁷ However, as these arguments were repeated in the Australian High Court, the court found that it was not able to establish an unambiguous intent to destroy.⁷⁸ Relevantly, the court found that acts of child removal had at least in part been framed as intended to improve the welfare of the children, by the perpetrators. In this specific context, the notion of intended destruction appears difficult to apply, because by the end of the 19th century, European Australians commonly believed Aborigines were a “dying race”, their extinction simply a matter of time.⁷⁹ In this perception, neither the intent to destroy, nor the perception of destruction itself could properly be attributed to the perpetrators.

2.3.1 Cultural genocide in Norway?

The term “Norwegianization” (*fornorskning*) refers to a set of assimilationist policies initiated by the Norwegian state in the mid-19th century, lasting until the mid-20th century.⁸⁰ These policies were particularly aimed at the Sami and Kven minorities, and sought to make members of these groups change their language and adapt to the culture and lifestyle of the Norwegian majority, in order to become “good Norwegians”. Intrinsic to this aim, was the consequence that the identity of these groups would disappear.⁸¹ In the 19th century, the evolutionary idea that the growth of civilization would lead to the destruction of “weaker races” also found traction in Norway.⁸² Still, Norwegianization was not unique for its time. Similar political projects were found in several European countries, and included Swedification, Danification,

⁷⁶ Davidson, *Cultural Genocide*, 18-19

⁷⁷ Van Krieken, “Cultural Genocide in Australia,” 134

⁷⁸ *Ibid*, 135

⁷⁹ *Ibid*

⁸⁰ Niemi, “Fornorskningspolitikken”

⁸¹ *Ibid*, 131

⁸² Andresen, “Vitenskapene og den nye samepolitikken” 416

and Germanization. Norwegianization had particular similarities with Swedification, which was directed against the Sami and Tornedalians.⁸³

Einar Niemi identifies four phases of Norwegianization carried out against the Sami and Kven. He characterizes 1850-1870 as a moderate introductory phase when the aim of Norwegianization was formulated.⁸⁴ Norwegian parliamentary debates in the 1860s saw differing views on such policies, but some held that “the only rescue for the Sami was to be absorbed in the Norwegian nation”.⁸⁵ Around 1870 to 1900, Norwegianizing school policies intensified, and Norwegianization was expanded to other areas, including religion.⁸⁶ In 1889, a parliamentary bill determined that education in public schools was to be in Norwegian only. The state captured their school policies in military terms, with “teachers as frontline soldiers in a battle over the identity, culture and language of the pupils.”⁸⁷

The period 1900-1940 saw consolidation and expansion of Norwegianizing policies, but also Sami resistance, for which the 1917 Sami National Congress was a particular landmark.⁸⁸ Two dominating views in the inter-war period were that Sami people and their culture were inferior to Norwegians, and that the Sami culture was doomed to perish in confrontation with more developed forms of culture. Such views justified increasingly broad Norwegianizing policies.⁸⁹ In the late 1940s, Norwegian Sami policies saw slight changes.⁹⁰ In 1948, the same year as the Genocide Convention was passed, new guidelines for Sami school questions were issued, pushing a change in the state’s views on the Sami. These asserted that the Sami “have lived in this country since ancient times, and have the right to raise their children according to the same principles as other Norwegian citizens”. In other words, it implied that the Sami had cultural rights.⁹¹ Still, changes on the ground remained slow, and new generations of Sami children were subject to the same practices as before.⁹²

Vars argues that the term “Norwegianization” is too narrow, as it fails to capture “the breadth and depth” of assimilationist policies, not least because it tends to focus on the means, rather than their consequences.⁹³ These consequences are not captured in the full by considering the different techniques in isolation, but rather by considering it as a broad process with a history

⁸³ *Loc. cit.*

⁸⁴ Niemi, 134-138

⁸⁵ *Ibid.*, 136. (my translation)

⁸⁶ *Ibid.*, 138

⁸⁷ *Ibid.*, 139

⁸⁸ Niemi, *op. cit.*, 145

⁸⁹ Andresen (2016). *op. cit.* 406

⁹⁰ Andresen. *op. cit.* 406.

⁹¹ *Ibid.*, 418 (my translation)

⁹² Andresen 419

⁹³ Vars, “Samene i Norge”, 179

spanning centuries. Vars applies the term cultural genocide to describe these policies. She writes that “Current knowledge about policies towards the Sami from the end of the 19th century until the 1980s shows that the Norwegian state worked systematically and over a long time with the aim of making the Sami forget their language and change fundamental values in their culture and identity. The policy was without doubt an attempt at cultural genocide.”⁹⁴

Vars was not the first to apply the concept when discussing Norwegianizing policies. Twenty years before Lemkin conceived of the word “genocide”, the idea of the destruction of a people captured the mind of Professor Torleiv Hannaas, who criticized Norwegianizing policies in schools in Finnmark, Norway in the following terms: “Is this not language coercion? I have called it a genocide [folkemord]. The word is strong. But not at all too strong. If the language is the people, it is genocide to kill an old national language.”⁹⁵

⁹⁴ Ibid, 181. My translation.

⁹⁵ Hannaas, “Maaltvangen i Finnmark” (my translation)

3 Negotiating the UN definition: 1946-1948

The process of drafting the Genocide Convention was initiated by General Assembly resolution 96 (I) of 11 December 1946 and concluded with the unanimous adoption of the convention in the 179th plenary meeting of the General Assembly on 9 December 1948.⁹⁶ In the two intervening years, the convention was discussed in various UN settings. The Economic and Social Council (ECOSOC) became an important forum for laying the groundwork of the convention, and the 6th (legal) Committee of the General Assembly was particularly important for the substantial discussions on its contents. These discussions were primarily founded on two subsequent drafts, the first prepared by the UN secretariat in the spring of 1947, the second prepared by an Ad Hoc committee of representatives of seven member states in the spring of 1948. The inclusion of acts of cultural genocide was a divisive issue throughout the negotiations; these acts were finally deleted from the draft after a vote by the 6th committee of the general assembly on 25 October 1948.

This chapter provides a historical overview of the development of the concept of genocide taking place in the United Nations in 1947 and 1948. It captures the process in two stages, connected to the three documents and ensuing negotiations. The first stage took place in 1947, revolving around Resolution 96 (I) (1946) and the 1947 Secretariat draft. While resolution 96 (I) did not contain a strict definition of genocide, it would become a point of reference for later discussions over the concept, and is therefore meaningful to consider. In contrast, the Secretariat draft proposed a definition of the crime, and outlined a set of genocidal acts. The second stage revolves around the Ad Hoc committee draft of 1948. This draft formed the basis for the negotiations in the third General Assembly, culminating in the adoption of the convention on 9 December 1948.

3.1 1946-1947: Resolution 96 (I) and the Secretariat draft

General Assembly Resolution 96 (I) declared that “genocide is a crime under international law [...] for the commission of which principles and accomplices [...] are punishable.”⁹⁷ Though it did not provide a strict definition of this crime, it stated that genocide was “the denial of the right of existence of entire human groups, as homicide is the denial of the right to live for individual human beings”. It went on to assert that “such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other

⁹⁶ UNGA Resolution 260 (III). “Prevention and Punishment of the Crime of Genocide”

⁹⁷ UNGA Res 96 (I) “The Crime of Genocide”

contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.” The resolution acknowledged that genocide as a phenomenon also existed beyond Nazi extermination policies: “Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.”⁹⁸

Through the resolution, the General Assembly requested “the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.” In March 1947, the members of the ECOSOC Social Committee discussed how to proceed on the matter. The Norwegian delegation to the United Nations participated in this first round of discussions, with delegates Moe and Lunde expressing “full Norwegian support for the principles” in the General Assembly resolution.⁹⁹ For the preparation of the first draft, the Human Rights division of the Secretariat consulted three experts: Raphael Lemkin, Henri Donnedieu de Vabres, and Vespasian Pella.¹⁰⁰ The draft, along with a commentary was distributed to Member Governments in the beginning of July 1947.¹⁰¹

3.1.1 1947: Defining genocide in the Secretariat draft

In the preamble to the Secretariat draft, genocide is introduced broadly as “the deliberate destruction of a human group,”¹⁰² while Article I of the draft defines genocide through a list of genocidal acts. The accompanying commentary made it clear that the drafters sought a narrow definition of genocide. The concept was to be delineated from other notions, “which logically are and should be distinct”.¹⁰³ This was likely a reference to crimes against humanity and minority rights, the first having been defined in the Nuremberg Charter, and the second being discussed at the time in the context of the drafting of an international bill of rights.¹⁰⁴ However, the draft convention was intended as broad enough to facilitate discussion by Member States.¹⁰⁵ In addition to 24 draft articles and a commentary, the Secretariat draft of 1947 contained draft statutes for an international criminal court.

⁹⁸ Ibid

⁹⁹ UN ESC, “Summary Record of the Seventieth Meeting,” 39; UN ESC Committee on Social Affairs, “Summary Record of Sixth Meeting, 45

¹⁰⁰ Irvin-Erickson, *op. cit.*, 40-42

¹⁰¹ UN ESC. «Draft Convention on the Crime of Genocide», 222-223

¹⁰² Ibid, 223

¹⁰³ Ibid, 222

¹⁰⁴ Schabas, *Genocide in International Law*, 60

¹⁰⁵ UN ESC, “Draft Convention on the Crime of Genocide”, 223

Article I of the Secretariat draft begins by declaring the purpose of the Convention “to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.”¹⁰⁶ It specifies that genocide is “a criminal act directed against any of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.”¹⁰⁷ Finally, article I sets out a list of 12 acts constituting genocide. This list is divided into three categories: First, the category of “physical genocide” appeared in the draft as “causing the death of members of a group or injuring their health or physical integrity.” Second, the category of “biological genocide” appeared as “restricting births.” Third, acts of “cultural genocide” were listed as “destroying the specific characteristics of the group by:

- (a) forced transfer of children to another human group; or
- (b) forced and systematic exile of individuals representing the culture of a group; or
- (c) prohibition of the use of the national language even in private intercourse; or
- (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and objects used in religious worship.”¹⁰⁸

Whereas the commentary records no discord among the experts over the inclusion of physical and biological genocide, the question of cultural genocide divided the three experts. According to Pella and Donnedieu des Vabres, “cultural genocide represented an undue extension of the notion of genocide and amounted to reconstituting the former protection of minorities (which was based on other conceptions) under cover of the term genocide.”¹⁰⁹ Lemkin, on the other hand, argued strongly for including the concept, because “a racial, national, or religious group cannot continue to exist unless it preserved its spirit and moral unity.”¹¹⁰ Besides the moral value of the existence of such groups, their right to exist was also justified, according to Lemkin, because “if the diversity of cultures were destroyed, it would be as disastrous for civilization as the physical destruction of nations.”

Nevertheless, Lemkin assured that cultural genocide was “much more than just a policy of forced assimilation by moderate coercion”. Rather, it was “a policy which by drastic methods, aimed at the rapid and complete disappearance of the cultural, moral and religious life

¹⁰⁶ Ibid, 214

¹⁰⁷ Loc.cit.

¹⁰⁸ Ibid, 229

¹⁰⁹ Ibid, 234

¹¹⁰ *loc. cit.*

of a group of human beings.”¹¹¹ The commentary reflects Lemkin’s assurance on the matter, stating that a “policy of compulsory assimilation of a national element”¹¹² “even if the notion of “cultural” genocide ... is admitted, does not as a rule constitute genocide. The system of protection of minorities, if applicable, should provide for the protection of minorities against a policy of forced assimilation employing relatively moderate methods.” On the other hand, the commentary specifies that “measures to prevent the preservation or development of a group is also genocide.”¹¹³

In addition to the question of cultural genocide, the commentary identified five other “chief” problems which would have to be addressed in the negotiations to follow. These were which human groups should be protected under the convention, whether genocide was to be considered a crime under universal jurisdiction, whether only rulers and statesmen, or also officials and private persons should be liable for punishment, whether an international tribunal should be entrusted with punishment of genocide, and the conditions of entry into force of the convention.

3.1.2 1947: The fifth session of ECOSOC and the second General Assembly

The fifth session of ECOSOC did not consider the question of cultural genocide, or other substantial issues regarding the contents of the convention. However, the drafting process was subject to discussion, with the Norwegian delegation an eager participant. Norway tabled a draft resolution calling for a special session of ECOSOC devoted to the convention¹¹⁴ arguing that “the matter was urgent and should be considered apart from the general codification of international law.”¹¹⁵ However, the proposal was deemed unpractical,¹¹⁶ and defeated. A second Norwegian proposal to appoint a special drafting commission during the current session of ECOSOC, was also rejected.¹¹⁷

It soon became clear that the future of the convention was uncertain. In the discussions in the 6th Committee of the General Assembly, the United Kingdom and the Soviet Union took an obstructionist stance. A draft resolution proposed by the Soviet Union was intended to refer the question of whether a convention was desirable at all to ECOSOC.¹¹⁸ The proposal was

¹¹¹ Ibid, 235

¹¹² Ibid, 231

¹¹³ Ibid, 232

¹¹⁴ UN ESC Social Committee. “Genocide Resolution Proposed by the Delegation of Norway”, 23 July 1947, 287

¹¹⁵ UN ESC Social Committee. “Summary Record of the Fifteenth Meeting”, 2 August 1947, 290 (Seyersted)

¹¹⁶ Ibid, 292 (Osuna, Cuba)

¹¹⁷ Ibid, 293-294

¹¹⁸ Schabas, *Genocide in International Law*, 67

eventually defeated, and on 21 November 1947, the General Assembly decided to instruct ECOSOC to continue work on the convention.¹¹⁹ Norway was among the states taking a clear stance against attempts to delay the process. Norwegian delegate Seyersted warned against jeopardizing the work on genocide “on which there is such a positive unanimity.” Instead, he suggested speeding up the process: “Let us now work out the convention on genocide in order to do what little we can to prevent it from happening again; and let us do it now while our memories are still fresh.”¹²⁰

3.1.3 1948: Commentaries to the Secretariat draft

Norway was one of 12 member states that eventually fulfilled the Secretary-General’s request for comments on the draft convention. The others were Denmark, France, Haiti, India, Luxembourg, the Netherlands, the Philippines, Siam (Thailand), the United Kingdom, the United States and Venezuela. Among these, only the United States and France commented on the inclusion of acts of cultural genocide, or “destroying the specific characteristics of the group.” Both argued for limiting the definition to physical and biological genocide. The exception was the forced removal of children, the inclusion of which the United States found acceptable.¹²¹

Norway’s response, dated 9 April 1948, was one of overall support to the convention. While it did not touch upon the question of cultural genocide, it contained one substantial objection to its contents, relating to the requirement that the contracting parties enact domestic legislation outlawing genocidal acts (Article VII). The issue, as seen from the Norwegian Government, was that some genocidal acts, such as the establishment of obstacles to marriage and the prohibition on the use of the national language, could only be carried out by the state: “The Norwegian Ministry of Justice does not find it advisable to introduce in the national legislation provisions which are specifically directed against state authorities, of their own state or foreign state, for acts of genocide.”¹²² Whereas national legislation was well adjusted to dealing with crimes committed by private citizens, persons acting in an official capacity should rather be punished under the statutes of an international criminal court.¹²³

¹¹⁹ UNGA Resolution 180 (II): “Draft Convention on Genocide”, 467

¹²⁰ UNGA, 123rd Plenary Meeting, 21 November 1947. Summary records, 451-452

¹²¹ UN ESC. “Comments by Governments”, 30 January 1948, 538

¹²² UN ESC. “Comments by Governments”, 19 April 1948, 634

¹²³ UN ESC. “Comments by Governments” 19 April 1948, 633-634

3.2 1948: The Ad Hoc committee draft and the deletion of cultural genocide

At its sixth session, in 1948, ECOSOC decided to delegate the preparation of a second draft to an Ad Hoc committee. The committee would consist of national representatives from China, France, Lebanon, Poland, the United States of America, the Union of Soviet Socialist Republics and Venezuela.¹²⁴ The Ad Hoc committee met 28 times, and produced a report containing a new draft, which was made available to Member Governments on 24 May 1948.¹²⁵

In addition to the Secretariat draft, the committee received alternative texts from China, France and the United States, and a document from the Soviet Union outlining a set of guiding principles. The ad-hoc committee's terms of reference included a list of questions "of a general nature" that ECOSOC felt that the committee needed to address.¹²⁶ This included the question of cultural genocide, which proved to be one of the divisive issues also within this forum.

In the Ad Hoc committee, supporters of including cultural genocide argued that a human group could be "supressed" by "abolishing, without making any attempts on the lives of the members of the group, their specific traits", as well as by "causing its members to disappear", and that the "Convention would fail fully to achieve its object if it left out "cultural" genocide." Proponents of deletion argued that "cultural" genocide did not hold the same moral gravity as "physical" and "biological" genocide, that it was difficult to limit the definition of "cultural" genocide, and that such acts should rather be prevented through the protection of minorities and human rights. According to countries favouring deletion, "the inclusion of cultural genocide in the Convention might prevent many countries from becoming parties to the Convention and jeopardize its success."¹²⁷

The discussions of the Ad Hoc committee and the texts that they were presented with displayed some variation in how the drafters conceptualised cultural genocide, though there was also a set of common elements. The basic provisions presented to the Ad Hoc committee by the USSR stated that the "concept of genocide must also cover measures and actions aimed against the use of the national language or against national culture (so-called "national-cultural genocide"). It included a non-exhaustive list, numbering measures against the use of the national tongue and the destruction of "monuments and objects of national culture (or of religious worship)".¹²⁸ The Chinese draft included cultural genocide as "Destroying the cultural

¹²⁴ UN ESC Resolution. 117 (VI). "Genocide", 3 March 1948, 619

¹²⁵ UN ESC Ad Hoc Committee on Genocide. "Report of the Committee and Draft Convention" 24 May 1948, 1112

¹²⁶ UN ESC. "Ad Hoc Committee's Terms of Reference," 1 April 1948: 646-647

¹²⁷ UN ESC. "Report of the Committee and Draft Convention" 24 May 1948, 1127

¹²⁸ UN ESC. "Basic Principles of a Convention on Genocide" 7 May 1948, 697

institutions and achievements or suppressing the language of such [national, racial, religious or political] group.” Additionally, beyond “destroying its [the group’s] physical existence,” the Chinese formulation of intent included the intent of “preventing its normal development.”¹²⁹ Lebanon proposed a more limited article on cultural genocide, covering only acts aiming “at the systematic destruction by oppressive or violent means of the language, religion or culture of ... [a national, racial or religious] group.”¹³⁰ They also suggested adding to the draft text the act of “placing the members of the group in conditions calculated to make them renounce their language, religion or culture.” However, this proposal was also rejected.¹³¹

Despite opposition from the US and France, the concept of cultural genocide was kept in; this was finally decided with a majority vote of six to one. However, and unlike the Secretariat draft, cultural genocide was separated into its own article, away from “physical” and “biological” genocide, in order to facilitate further discussion, and perhaps, its deletion.¹³²

3.2.1 The definition of genocide in the Ad Hoc committee draft

Whereas the secretariat draft had introduced genocide as an “the intentional destruction of a group of human beings” (Preamble) and “the destruction of racial, national, linguistic, religious or political groups” (Article I), the Ad Hoc Committee draft is devoid of such references to a general concept. Except from a preambular reference to “many recent instances of genocide” having taken place, the concept of genocide is exclusively dealt with under articles II and III, defining the crime. Article II contains a list of acts corresponding to the categories “physical genocide” and “biological genocide” under the secretariat draft. It specified that these acts constituted genocide when “committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members.”¹³³ Cultural genocide was represented by Article III as follows:

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 the national or racial origin or religious beliefs of its members 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;

¹²⁹ UN ESC “Draft Articles for the Inclusion in the Convention on Genocide Proposed by the Delegation of China on 16 April 1948”, 833

¹³⁰ UN ESC. “Report of the Committee and Draft Convention” 24 May 1948, 1127-1128

¹³¹ Ibid, 1128

¹³² Schabas, *Genocide in International Law*, 72-75

¹³³ UN ESC. “Report of the Committee and Draft Convention” 24 May 1948; 1162

- (2) destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.¹³⁴

3.2.2 Autumn 1948: The third session of the General Assembly and the deletion of cultural genocide

At the third session of the General Assembly, work on the Genocide Convention was allocated to the Sixth Committee, tasked with legal issues.¹³⁵ The committee began with a brief general discussion before turning to study the draft article-by-article. Finally, a drafting committee was tasked with producing a final draft, which it then submitted to the Plenary of the General Assembly. The General Assembly adopted the convention unanimously on 9 December 1948.¹³⁶

Already before the drafting of article III on cultural genocide, it had become clear that the fate of the article was uncertain. This uncertainty became especially pronounced as the Greek delegate sought to reintroduce the clause on forced removal of children from a group into the convention. This clause had previously figured under the heading of cultural genocide, but was absent from the Ad Hoc committee draft. Greece, for whom the clause on child removal held great political importance, rather sought to introduce it into Article II, its delegate arguing that it would fit because of the “physical and biological effects” of such acts.¹³⁷

Rather than interactive discussion between the delegates, both the discussions on Article III and the general discussion consisted primarily of declaratory statements. Positions which had been expressed previously were now developed further, but this time, voices of support also made themselves heard. The summary records from the debate on Article III record interventions by 21 states. These were Pakistan, Venezuela, Sweden, Brazil, China, Denmark, Egypt, Canada, Syria, Iran, New Zealand, India, the Byelorussian SSR, Peru, Union of South Africa, the Netherlands, the United States, Ecuador, Belgium, the USSR and Czechoslovakia.¹³⁸ In addition, France, Uruguay, the United Kingdom, the Philippines, the Ukrainian SSR and Lebanon had also voiced their opinion on cultural genocide during previous meetings.¹³⁹ With 25 votes to 16, and with 4 abstentions, the Committee decided to delete Article III.¹⁴⁰ This

¹³⁴ Loc cit

¹³⁵ UNGA “Agenda for the Third Session”, 1284

¹³⁶ Schabas, *Genocide in International Law* 77-78

¹³⁷ Weiss-Wendt, *The Soviet Union*, 130-142

¹³⁸ UNGA 6th Committee “Eighty-Third Meeting” 1501-1519

¹³⁹ UNGA 6th Committee “Sixty-Third Meeting” (30 September 1948); “Sixty-Fourth Meeting” (1 October 1948); “Sixty-Fifth Meeting” (2 October 1948); “Sixty-Sixth Meeting” (4 October 1948), 1289-1332

¹⁴⁰ UNGA Sixth Committee, “Eighty-Third Meeting”, 1518: Voting for deletion: Union of South Africa, United Kingdom, United States of America, Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Dominican

deletion would stick to the final text: Despite a last minute attempt by the Soviet Union to reintroduce the provision, the General Assembly confirmed its decision to delete cultural genocide.¹⁴¹

3.2.3 Norway in the third General Assembly

The Norwegian delegation made few statements during the Sixth committee meetings. During the discussion of Article II on physical and biological genocide, Norwegian delegate Erling Wikborg reiterated his government's wish to see the convention adopted during the current session, and emphasised that this was a matter of special importance for smaller nations such as Norway. Wikborg touched upon one definitional question, arguing against the inclusion of political groups.¹⁴² However, in the voting on the issue a week later, the Norwegian position, along with that of Sweden and the UK, had shifted, and Norway voted for inclusion.¹⁴³

The Norwegian delegation further supported the USSR proposal that the definition of genocide should "cover the destruction of the whole or part of a group",¹⁴⁴ and successfully reintroduced this idea in a later amendment, by inserting the words "in whole or in part" after the words "with the intent to destroy". This amendment would stick to the final wording of the convention.¹⁴⁵ Norway also agreed with the USSR on the point of deleting the sentence "on grounds of racial origin, religious belief, or political opinion..." because "it was the fact of destruction which was vital, whereas motives were difficult to determine."¹⁴⁶ In his general statement on article II, Wikborg pointed to subparagraph 4, on restriction of births, which unlike the three other subparagraphs was not covered by Norwegian domestic laws, except when force was used. He therefore suggested that this paragraph should be studied thoroughly before adoption. However, the Norwegian delegation did not follow through on this, by making no more statements on the issue. As to cultural genocide, no statements by the Norwegian delegation were recorded.

Republic, France, Greece, India, Iran, Liberia, Luxembourg, Netherlands, Norway, Panama, Peru, Siam, Sweden, Turkey.

Voting against deletion: Union of Soviet Socialist Republics, Yugoslavia, Byelorussian Soviet Socialist Republic, China, Czechoslovakia, Ecuador, Egypt, Ethiopia, Lebanon, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic.

Abstaining: Venezuela, Afghanistan, Argentina, Cuba.

¹⁴¹ UNGA "Hundred and Seventy-Ninth Plenary Meeting" (9 December 1948) 2063-2085

¹⁴² UNGA 6th Committee "Sixty-Ninth Meeting" (7 October 1948) 1360 (Wikborg, Norway)

¹⁴³ UNGA 6th Committee "Seventy-Fifth Meeting" (15 October 1948), 1411 (Wikborg, Norway)

¹⁴⁴ UNGA 6th Committee "Union of Soviet Socialist Republics: Amendments to the draft convention on genocide" (9 October 1948), 1969

¹⁴⁵ UNGA 6th Committee "Norway: Amendment to article II of the draft Convention" UN Doc (12 October 1948)

¹⁴⁶ UNGA 6th Committee "Sixty-Ninth Meeting" 1361 (Wikborg, Norway)

4 Deletion of cultural genocide: A typology of claims

The Norwegian delegation did not explain their vote to the Sixth committee, and had been silent on the issue throughout the drafting process. How should we understand their standpoints? In order to elucidate the positions of the drafters, I have compiled a typology of claims which were relevant in the discussions leading up to the deletion of cultural genocide. Through an analysis of the statements on cultural genocide during the 1948 Sixth Committee debate, I have identified the following five types of claims that were central to the debate on cultural genocide:

- (i) Claims about the concept of genocide
- (ii) Claims about the relative importance of genocidal acts
- (iii) References to human rights or minority rights
- (iv) Claims about vagueness
- (v) Claims about assimilation

Clearly, this list is in part overlapping. For instance, a conceptual claim that cultural genocide does not constitute genocide proper would normally imply that it is less important and thus should not be included, except, as argued by a few delegates, if cultural genocide should be regarded as a preparatory type of acts.¹⁴⁷ Simultaneously, arguments about the scope of the convention were not necessarily conceptual claims. States also applied a combination of these types of claims in their statements. In the following, I will consider these different types of claims, or modes of argumentation, in turn.

4.1 Claims about the concept of genocide

In light of the common conflation of genocide with mass murder today, it might seem surprising that few delegates explicitly questioned whether cultural genocide was actually genocide. Few openly challenge Lemkin's vision of the word he had created few years earlier; rather they claimed that the concept did not belong in the convention for different reasons.¹⁴⁸ However, delegates Abdoh of Iran and Sundaram of India claimed that there was "inherent difference"¹⁴⁹ between cultural and physical genocide and that cultural genocide "could not be linked with

¹⁴⁷ See e.g. ESC, "Two hundred and eighteenth Meeting," 26 August 1948, 1237-1238 (Monge, Peru), and UNGA 6th Committee "Eighty-Third Meeting," 1515 (Correa, Ecuador)

¹⁴⁸ *Loc. cit.*

¹⁴⁹ UNGA 6th Committee "Eighty-Third Meeting" 1510 (Abdoh, Iran)

genocide proper”.¹⁵⁰ United States delegate Gross claimed that “the new and far-reaching concept of cultural genocide, i.e., the destruction of a culture, had no connection with the better known conception of genocide as the physical destruction of members of a human group.”¹⁵¹ This claim seems at odds with the history of the concept so far, as previous definitions of genocide had all included cultural genocide and the idea of destruction of culture. Unfortunately, as far as recorded, the delegate did not provide reasons for his claim that the two were unconnected.

Though there were few explicit arguments that mass murder constituted a “core” in the concept of genocide, it is difficult to imagine that this was not the case in 1948, shortly after the horrors of Nazi extermination had been broadcasted to the corners of the world. A fact sheet produced by the American Association for the United Nations in late 1948 illustrates this, calling genocide “the new international crime of mass murder”.¹⁵² Some delegates also presented arguments which could be read as support for such an understanding of genocide. This was particularly explicit in the references to Resolution 96 (I) for instance by Amado, the delegate of Brazil, who suggested that genocide should be understood as “homicide committed against a group of human beings.”¹⁵³

Conceptual claims were more often made by proponents of inclusion. Lebanese delegate, Mr. Azkoul, said that the cultural and physical aspects of genocide were “indivisible.” They were “two facets of one and the same act having the same origin and the same purpose, namely, the destruction of a group, whether by the extermination of its members or by the eradication of its distinctive characteristics.”¹⁵⁴ Morozov, the Soviet delegate, shared the Lebanese view, insisting that the “important element was the intent to destroy a given group in whole or in part” and that the “destruction of the culture of the group” was one of the ways in which such intentions could be carried out.¹⁵⁵ Similarly, delegates of Venezuela and Ecuador stated that both physical and cultural genocide could lead to the same result, namely the destruction of a group.¹⁵⁶ Bahadur Khan from Pakistan went even further, arguing that cultural genocide was even more central to genocide than acts of physical genocide, as “cultural genocide represented the end, whereas physical genocide was merely the means. [...] For millions of men in most Eastern countries, the protection of sacred books and shrines was more

¹⁵⁰ UNGA 6th Committee “Sixty-Fourth Meeting” 1304 (Sundaram, India)

¹⁵¹ UNGA 6th Committee “Eighty-Third Meeting” 1514 (Gross, USA)

¹⁵² See ANMFA 30.10/7 (II) “Fact sheet on Genocide”

¹⁵³ UNGA 6th Committee “Sixty-Third Meeting” 1292 (Amado, Brazil)

¹⁵⁴ UNGA 6th Committee “Sixty-Sixth Meeting” 1326-1327 (Azkoul, Lebanon)

¹⁵⁵ UNGA 6th Committee “Eighty-Third Meeting”, 1516 (Morozov, USSR)

¹⁵⁶ UNGA 6th Committee “Sixty-Fifth Meeting” 1311 (Perozo, Venezuela)

important than life itself; the destruction of those sacred books or shrines might mean the extinction of spiritual life.”¹⁵⁷

4.2 Claims about the relative (un)importance of cultural genocide

Should genocide be limited to acts “shocking to the conscience of mankind?” With reference to this formulation found in General Assembly resolution 96 (I), several delegates argued that cultural genocide should be excluded from the convention. While some of the most consistent pro-deletion delegations nevertheless assured the others of their moral outrage at such acts, others openly worried that cultural genocide might come to encompass acts which they found morally justifiable. What united them was the claim that cultural genocide was much less outrageous than acts of physical and biological genocide. Those favouring deletion concluded that including both in the same convention would display a lack of proportion. The Danish delegate to the Sixth Assembly, Mr. Federspiel, clearly expressed this idea: “it would show a lack of logic and of a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries.”¹⁵⁸

To an extent, also proponents of inclusion accepted this moral difference. For instance, Mr. Raafat of Egypt agreed that cultural genocide “was certainly not such a heinous crime as the physical destruction of a group”; nevertheless, he felt that this difference could rather be addressed with regards to sentencing than at the stage of determining guilt.¹⁵⁹ The delegate of China represented an exception – stating that cultural genocide “might be even more harmful than physical 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.”¹⁶⁰

4.3 References to human rights or minority rights

What provided direction to arguments about the relative unimportance of cultural genocide, was the existence of an alternative discourse in which related issues were being discussed. During the previous general debate, delegates from the United Kingdom, France and Uruguay had all argued that cultural genocide should be addressed in connection to human rights. As Shawcross of the United Kingdom stated, cultural genocide “was simply one aspect of the general problem of protecting the fundamental rights of man.”¹⁶¹ During discussions on Article

¹⁵⁷ UNGA 6th Committee “Eighty-Third Meeting” 1502 (Bahadur Khan, Pakistan).

¹⁵⁸ UNGA 6th Committee “Eighty-Third Meeting” 1508 (Federspiel, Denmark)

¹⁵⁹ UNGA 6th Committee “Eighty-Third Meeting” 1509 (Raafat, Egypt)

¹⁶⁰ UNGA 6th Committee “Eighty-Third Meeting” 1507 (Tsien, China)

¹⁶¹ UNGA 6th Committee “Sixty-Fifth Meeting” 1307 (Shawcross, United Kingdom)

III, also delegates of Sweden, Brazil, Denmark, Canada, India, South Africa, the Netherlands stated that cultural genocide should rather be dealt with as a matter of human rights.¹⁶² Canadian representative Lapointe proposed 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 on human rights”¹⁶³ Several delegations objected to this reasoning. Firstly, because the declaration would not afford the same protection as a binding convention.¹⁶⁴ Secondly, because they did not view the overlap with protection elsewhere as problematic.¹⁶⁵

4.4 Claims about vagueness and the lack of a common vision

A number of representatives argued that cultural genocide was too vague to include in the convention. Mr. Federspiel, the delegate of Denmark, argued that this perceived vagueness was problematic: “tribunals ... might find themselves in difficulties if they were called upon to pronounce judgement in such an undefined field as cultural genocide.”¹⁶⁶ Mr. Amado of Brazil also felt that cultural genocide was “too indefinite a concept.”¹⁶⁷ The Dutch delegate, Mr. de Beus, agreed that the lack of a precise definition and delimitation made it unfit for inclusion in the convention, and added that “the inclusion of cultural genocide in the convention might give rise to abuses by reason of the vagueness of that concept.”¹⁶⁸ Similarly, Mr. Chaumont, the French delegate, argued that “while physical genocide could be defined in exact legal terms, the same was not true of cultural genocide, for the conception of the latter was less precise. If that concept were broadened, it would soon lead to intervention in the domestic affairs of states.”¹⁶⁹ Though positive to inclusion, the Venezuelan delegate, Mr. Perozo, considered the current text of the article “an ill-assorted mixture of heterogeneous elements and abstract conceptions lacking in precision[, and that] ... the terms used were vague and too general to form the substance of a document to win the support of States which would ratify the convention.”¹⁷⁰

In other words, a common understanding as to what proponents of the term wanted to include, was lacking. Though several delegations expressed their support for inclusion of cultural genocide in principle, this did not mean that they supported Article III of the Ad Hoc

¹⁶² UNGA 6th Committee “Eighty-Third Meeting” 1499-1519

¹⁶³ Ibid, 1509-1510

¹⁶⁴ UNGA 6th Committee “Eighty-Third Meeting” 1502 (Bahadur Khan, Pakistan)

¹⁶⁵ UNGA 6th Committee “Eighty-Third Meeting” 1505 (Perozo, Venezuela)

¹⁶⁶ UNGA 6th Committee “Eighty-Third Meeting”, 1508

¹⁶⁷ Ibid, 1507

¹⁶⁸ Ibid, 1514

¹⁶⁹ Ibid, 1295

¹⁷⁰ Ibid, 1506

Committee draft as it stood. Rather, many delegations who were proponents of inclusion felt that the scope of the article should be limited or more clearly specified.¹⁷¹ Pakistan proposed amending the article to cover essentially acts of religious destruction,¹⁷² in line with its accusations that India was in fact carrying out a cultural genocide, as “thirty-five million people, bound to Pakistan by ties of religion, culture and feeling but living outside its frontiers, faced cultural extinction at the hands of ruthless and hostile forces.”¹⁷³ As mentioned before, the Soviet Union had promoted a broad understanding of cultural genocide in the document sent to the Ad Hoc Committee. However, Stalin preferred the notion “ethnocultural genocide.”¹⁷⁴ As Weiss-Wendt has shown, this notion of cultural genocide was in particular aimed at lynching in the United States, as well as racial discrimination in colonies.¹⁷⁵

4.5 Claims about assimilation and barbarism

Several delegations openly opposed the inclusion of cultural genocide on the grounds that it could interfere with policies of assimilation which were “within the domestic jurisdiction” of states, policies which they considered justified. Mr. Paredes, representing the Philippines, warned that Article III “could be interpreted as depriving nations of the right to integrate the different elements of which they were composed into a homogenous whole.”¹⁷⁶ The delegate of Brazil, Mr. Amado, pointed out that “[g]iven the historical evolution of civilizations, [...] a State might be justified in its endeavour to achieve by legal means a certain degree of homogeneity and culture within its boundaries.”¹⁷⁷

In their interventions, the delegations from Sweden, Brazil, Iran, New Zealand, and South Africa framed assimilation as a civilizing process, and therefore justified. Some of these delegations also contrasted civilization with “backwards” or “barbarous” cultures. The delegate of Iran stated that it would “have to be decided whether all cultures, even the most barbarous, deserved protection, and whether the assimilation resulting from the civilizing action of a State also constituted genocide.”¹⁷⁸ While emphasising that all the groups within his country were “encouraged to make the largest possible contribution to the common culture,” Mr. Egeland of

¹⁷¹ Ibid, 1504 (Perozo, Venezuela), 1508 (Raafat, Egypt), 1510 (Tarazi, Syria), 1514 (Correa, Ecuador)

¹⁷² see UNGA 6th Committee “Pakistan: amendment to article III of the draft convention on genocide” 13 October 1948, 1983

¹⁷³ UNGA 6th Committee, “Eighty-Third Meeting” 1501 (Bahadur Khan, Pakistan)

¹⁷⁴ Weiss-Wendt, *The Soviet Union*, 70

¹⁷⁵ Ibid, 77-78

¹⁷⁶ UNGA 6th Committee, “Eighty-Third Meeting”, 1315 (Paredes, Phillipines). See also 1516 (Kaeckenbeeck, Belgium) and “Sixty-Third Meeting”, 1259 (Chaumont, France)

¹⁷⁷ UNGA 6th Committee “Eighty-Third Meeting” 1507 (Amado, Brazil)

¹⁷⁸ UNGA 6th Committee “Eighty-Third Meeting” 1511 (Abdoh, Iran)

the Union of South Africa “wished to point to the danger latent in the provisions of article III where primitive or backwards groups were concerned. No one could, for example, approve the inclusion in the convention of provisions for the protection of such customs as cannibalism.”¹⁷⁹

Representing Sweden, Mr. Petren argued that the “acts which, according to article III, would constitute cultural genocide might be far less serious than those specified in article II; for instance, in the case of measures of educational policy, it might be difficult to estimate their scope in relation to the cultural position of a minority. The question could arise whether, for example, the fact that Sweden had converted the Lapps to Christianity might not lay her open to the accusation that she had committed an act of cultural genocide.”¹⁸⁰

4.6 The link to rights – beyond the arguments

As shown, an important argument for the deletion of cultural genocide was the reference to the UDHR. While the Genocide Convention is a binding treaty, the Universal Declaration is not. Therefore, pointing to the UDHR as a more suitable place for minority protection was a relatively noncommittal strategy for states who wanted to limit the scope of the Genocide Convention. What kind of provision were they looking at? Since the first session of the Human Rights Commission, the matter of including a clause on minority protection had been a controversial question. Views on how a minority rights article should look were also diverse. The 1947 draft provision prepared by the secretariat in 1947 had similarities to the provisions on cultural genocide:

“In all countries 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 to establish and maintain, out of an equitable proportion of public funds available for that purpose, their schools and cultural institutions, and to use their language before the courts and other authorities and organs of the State, and in the press and public assembly”¹⁸¹

Like cultural genocide, the question of whether to include a minority protection clause in the UDHR proved divisive, and the provision was eventually excluded from the declaration.¹⁸² Morsink observes how several states who had opposed the inclusion of cultural genocide on the grounds that it was a human rights concern did not deliver on such “promissory

¹⁷⁹ UNGA 6th Committee “Eighty-Third Meeting”, 1513 (Egeland, Union of South Africa)

¹⁸⁰ UNGA 6th Committee “Eighty-Third Meeting”, 1506 (Petren, Sweden)

¹⁸¹ ESC. “International Bill of Rights” (11 June 1947), 380 (original pagination)

¹⁸² Eide, “The Non-Inclusion of Minority Rights”, 704

notes” when time came to review the minority protection clause in the UDHR.¹⁸³ Novic refuses to take their argument at face value: “one cannot prevent oneself from questioning the underlying sincerity of other states’ arguments. The main states opposing cultural genocide were the United States, Canada, and France, all either being of having been involved in widespread campaigns of colonization.”¹⁸⁴ In other words, they feared that a minority protection clause could come to interfere with assimilationist minority policies at home – and hence, such promissory notes concerning cultural genocide were not sincere.

Canada was one of these states. Before voting for deleting cultural genocide, the Canadian representative told the Sixth Committee that

“The Government and people of Canada were horrified at the idea of cultural genocide and hoped that effective action would be taken to suppress it. The people of his country were deeply attached to their cultural heritage, which was made up mainly of a combination of Anglo-Saxon and French elements, and they would strongly oppose the attempt to undermine the influence of those two cultures, as they would oppose any similar attempt in any other part of the world.”

His delegation was not, therefore, opposed to the idea of cultural genocide, but only to the inclusion in the convention of the means to suppress it... For that reason ... article III should be deleted and ... 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 on human rights”¹⁸⁵

Besides strikingly illustrating which cultures Canada deemed worthy of protection, this quote somewhat obscures how the Canadian government viewed the importance of the question of cultural genocide. After all, Canada never throughout the deliberations commented on their own domestic policies of forced assimilation. A diplomatic cable sent from the Canadian Ministry of Foreign Affairs on 27 July 1948 sheds more light on how the provision was viewed as a potential threat: It instructed the delegation to “support or initiate any move for the deletion of Article three on cultural genocide. If this move not successful, you should vote against Article three and if necessary the Convention.”¹⁸⁶ The rest of the convention it deemed overall acceptable.¹⁸⁷

¹⁸³ Morsink, “Cultural genocide”, 1010

¹⁸⁴ Novic, *The Concept of Cultural genocide* 29

¹⁸⁵ UNGA 6th Committee “Eighty-Third Meeting,” 1509-1510

¹⁸⁶ Brean, “Canada Was Ready to Abandon 1948 Accord”

¹⁸⁷ Schabas, *Genocide in International Law*, 212n239

The question of cultural genocide was also likened with the system of minority protection that had existed in Europe before the war. For instance, Petren, the Swedish delegate, observed that “the content of article III had many similarities with certain clauses regarding the protection of national minorities contained in a number of treaties concluded after the First World War.”¹⁸⁸ The numerous bilateral minority treaties which had been made before the war were viewed with disfavour, in part because they had been used as a pretense for the invading forces of Nazi Germany.¹⁸⁹

¹⁸⁸ UNGA, 6th Committee “Eighty-Third Meeting”, 1506 (Petren, Sweden)

¹⁸⁹ Morsink, *op. cit.*, 1026, Eide, *op. cit.* 708

5 Norway, the convention and cultural genocide

As previously mentioned, the Ministry of Foreign Affairs (MFA) and the Ministry of Justice and the Police (MJP) were the two main Norwegian institutions involved in the drafting. In addition, governmental consent was required in order to sign the instrument, whereas a positive vote by parliament was necessary in order to ratify the convention in 1949. While developments in international cooperation fell naturally within the ambit of the MFA, the drafting of the Genocide Convention entailed legal obligations, and required consultations with the MJP.¹⁹⁰ The MFA forwarded correspondence from representatives at the UN to the MJP, and requested the input of that ministry on several occasions.

The first such request was made in a letter dated 18 February 1947 on the background of General Assembly resolution 96 (I). The MFA then asked the MJP to provide an overview of provisions in Norwegian penal law that could be relevant for the attempted destruction of population groups, and further asked whether an international convention could come to require changes in domestic legislation.¹⁹¹ Similarly, the MFA requested comments on the basis of the Secretariat draft in August¹⁹² and in December 1947, the latter on the basis of the Secretary General's request to all Member States for comments.¹⁹³ Finally, in August 1948, the MFA requested comments on the Ad Hoc committee draft ahead of the third General Assembly.¹⁹⁴

The MJP provided comprehensive replies to requests from the MFA in March and August 1947, and in August 1948. These three letters contained general remarks on the convention, as well as assessments of the different provisions contained in the draft. Within the MJP, the Legislation Department was the primary entity involved in reviewing the documents. This translated into an emphasis on domestic legislation which is palpable both in the correspondence between the ministries and in Norwegian statements during the deliberations in the UN. Illustratively, the point that Norway possessed the necessary legislation in order to implement the convention was expressed both in a 1947 General Assembly plenary meeting,¹⁹⁵ and in the Sixth Committee in the autumn of 1948.¹⁹⁶ In addition to providing comments and thereby in effect defining Norwegian standpoints on the convention, the MJP also had a more direct influence on the negotiations. MJP representatives figured in the Norwegian delegation to the General Assembly, where they took part in the deliberations in the Sixth Committee.¹⁹⁷

¹⁹⁰ For the consultations between the MFA and the MJP Legislation Department concerning other human rights related instruments, see Møse, "Lovavdelingen og menneskerettighetene – overblikk og tilbakeblikk", 149-152

¹⁹¹ Archives of the Norwegian Ministry of Justice (ANMJ) Df-0176. FN: "Folkemord." (Dossier 2/3, 1948).

Letter from MFA to MJP, 18 February 1947, 1-2

¹⁹² ANMJ. Df-0176 (2/3) Letters from MFA to MJP, 6 August 1947 and 23 August 1947

¹⁹³ ANMJ. Df-0176 (2/3) Letter from MFA to MJP, 3 December 1947

¹⁹⁴ ANMJ. Df-0176 (3/3) Letter from MFA to MJP, 7 August 1948

¹⁹⁵ UNGA, "Hundred and Twenty-Third Plenary Meeting" (21 November 1947) 451-452 (Seyersted)

¹⁹⁶ UNGA (6th Committee) "Sixty-ninth Meeting" (7 October 1947) 1361 (Wikborg)

¹⁹⁷ See Abtahi & Webb, *The Travaux Préparatoires*, 1279. Norwegian members of the Sixth Committee at the 3rd GA were Terje Word, Erling Wikborg, Frede Castberg, Gustav Sjaastad, Ivar Lunde, and Einar Ansteensen.

The Records of UN meetings that have been considered throughout chapter 4 and 5 also provide a basis for observations of the behaviour of Norwegian delegates during the drafting process. In addition to the recorded statements, the Travaux Préparatoires provide voting records, proposals and commentaries submitted by states. 16 Norwegian statements have been recorded in the Travaux Préparatoires. The earliest of these was made in the ECOSOC Committee of Social Affairs on 15 March 1947, the last on 13 October 1948 in the Sixth Committee of the General Assembly. With the exception of one statement at a plenary session of the 1947 General Assembly, the statements were made in various configurations of ECOSOC and in the Sixth Committee.

5.1 The Genocide Convention in Norwegian post-war foreign policy: A stone in the building of peace

Norway was one of the most consistent supporters of the Genocide Convention throughout the drafting process in 1947 and 1948. This is reflected in the Summary Records from the meetings, as well as in the correspondence from the Ministry of Foreign Affairs and the Ministry of Justice. Norwegian support was also acknowledged by other actors: For instance, the active role taken by the “brilliant” Norwegian delegation was acknowledged by Raphael Lemkin in letters to MFA Secretary Erik Dons in early 1949, in an effort to encourage Norwegian ratification.¹⁹⁸ Moreover, that the convention remained an issue of importance for the Ministry of Foreign Affairs is reflected in their successful push for early ratification in 1949.¹⁹⁹ In addition to being the first and only Western-European state to sign the Convention on 9 December 1948, it was only the third country to ratify the Convention, after Ethiopia and Australia.²⁰⁰

A closer reading of Norwegian statements also displays overall support. 16 Norwegian statements have been recorded in the Travaux Préparatoires. Six of these contain explicit endorsements of the convention. In March 1947, a Norwegian delegate to ECOSOC expressed “full Norwegian support” to the principles contained in Resolution 96 (I).²⁰¹ This sentiment was reiterated in the General Assembly that autumn,²⁰² and in the Sixth Committee one year later.²⁰³ Five of the recorded Norwegian statements were clearly aimed at pushing the process forward, or at overcoming obstacles in the deliberations on the convention. Furthermore, Norwegian proposals related to procedure indicate an aim of advancing the process. In statements, as well

¹⁹⁸ ANMFA, 30.10/7 (II). Lemkin to Dons, 5 May & 7 June 1949

¹⁹⁹ See ANMFA, 30.10/7 (II). Correspondence with MJP February-July 1949

²⁰⁰ However, Norway represented the first parliamentary ratification. See ANMFA. 30.10/7 (II) Letter from UN Delegation (hereinafter NUN) to MFA, 7 July 1949

²⁰¹ UN ESC, “Seventieth Meeting” (15 March 1947), 39 (Lunde)

²⁰² UNGA, “Hundred and Twenty-Third Plenary Meeting” (21 November 1947) 452 (Seyersted)

²⁰³ UNGA (6th Committee) “Sixty-Ninth Meeting”, 1360 (Castberg)

as in reports, members of the Norwegian UN delegation expressed the objective of completing the convention, sooner rather than later. As one delegate remarked in the 1947 General Assembly, the momentum on the convention should be utilized “while the memory of the war [was] still fresh.”²⁰⁴

5.1.1 Norway and the value of the convention

After the war, a common Norwegian perception was that Norway could not rely on itself, but was dependent on the major powers to maintain its security. In the face of emerging tensions between the Soviet Union and the Western powers, the Norwegian government first adopted a waiting attitude. Norwegian foreign policy in the immediate post-war years has therefore been described as a policy of bridge-building, or in less active terms as an act of withdrawing from the emerging tensions.²⁰⁵ This involved not taking sides, but rather hoping that the relationship between the Soviet Union and Western powers would improve.²⁰⁶ Towards the end of 1947, however, the government initiated a process of reorienting its foreign policy. From then on, it became increasingly clear that Norway would become a part of a Western-oriented security arrangement, which it finally did by becoming one of the first NATO member states in 1949.²⁰⁷

The United Nations played a crucial role in Norwegian hopes for a peaceful post-war order. International cooperation was dependent on a level of trust between the superpowers. This aim could be advanced through supporting the building of a strong world organization. Simultaneously, Minister of Foreign Affairs Halvard Lange subscribed to a realist notion of international politics, in which it would be unrealistic to transpose democratic principles to international affairs. Because Norway wanted the new world organisation to be as strong as possible, it had departed from other smaller states by supporting the difference in power represented by the veto-arrangements in the Security Council.²⁰⁸

Why did Norway become such a strong proponent of the Genocide Convention? One clear reason was the Convention’s contribution to strengthening international cooperation, and the United Nations in particular. Before the Norwegian parliament voted unanimously to ratify the Genocide Convention on 24 June 1949, Erling Wikborg, provided a rationale for Norwegian support. From his experience as delegate to the Sixth Committee, the major powers took great

²⁰⁴ UNGA “Hundred and Twenty-Third Plenary Meeting” 451-2; ANMJ. Df-0176 (2/3): Note from NUN, 25 August 1947

²⁰⁵ Sverdrup. *Inn i storpolitikken. 1940-1949*, 199-201

²⁰⁶ Loc.Cit.

²⁰⁷ Ibid, 223

²⁰⁸ Ibid, 208; 203

interest in the treaty. For a small country such as Norway, it was of considerable importance to build an international society governed by the rule of law, and the Genocide Convention would be “one of the stones in such a building”.²⁰⁹ Wikborg’s statement to the Norwegian parliament echoes the radio speech he had given at the UN eight months earlier. In this speech, he stated that Norway wanted a strong and clear convention, in order for it to become “one of the stones in the building of peace.”²¹⁰

The perception that the convention was instrumental to strengthening the United Nations was pronounced by the Norwegian delegation in the autumn 1947. Norwegian delegate Seyersted reminded ECOSOC of the importance of the convention for enhancing the prestige of the United Nations. A report by the Permanent Delegation to the UN in New York that autumn also expressed this concern. According to the report, the UN, and ECOSOC in particular, had been too passive; therefore, it was psychologically important to take positive action on the issue of genocide.²¹¹

In line with its commitment to supporting a strong world organization, the Ministry of Foreign Affairs emphasised a balanced approach to the superpowers in multilateral settings in the post-war years.²¹² This was clearly reflected in the fact that Norway, along with France, had represented a middle ground between the United States and the Soviet Union during the Peace Conference in Paris in 1946.²¹³ It was also reflected in Norwegian participation in the drafting of the Genocide Convention. This approach is clear from the voting records: The only two Western-European countries supporting Soviet policies to a significant degree were France (46,7 percent) and Norway (40 percent).²¹⁴

Balancing support for the powers in the drafting of the Genocide Convention was a tactical decision by the MFA, as the deepening divisions between the Soviet Union and the Western powers threatened to hamper agreement on the convention. Pointing to the great importance of Soviet approval in order to secure adoption of the convention, a report dated 7 August 1948 from the Norwegian delegation suggested supporting Soviet amendments to the current draft in cases where these were acceptable alternatives to other proposals.²¹⁵ This approach clearly resonated at home: At the third session of the General Assembly, the

²⁰⁹ Recommendation report from the Parliamentary Committee for Constitutional and Foreign Affairs: Innst. S. nr. 138 (24 June 1949): 1802-1803

²¹⁰ UN Audiovisual Library, *Interview with Mr. Erling Wikborg*

²¹¹ ANMFA, 30.10/7 (I) Letter from NUN, 23 August 1947

²¹² *Ibid*, 214

²¹³ See Jakob Sverdrup. *Inn i storpolitikken. 1940-1949*, 209

²¹⁴ Weiss-Wendt, *The Soviet Union*, 103

²¹⁵ ANMFA 30.10/7 (I) Draft letter to MJP, 7 August 1948

delegation was instructed to “contribute to minimizing disagreement ... between the major powers ... without losing sight of the necessity to assert that Norway will fight for political and spiritual freedom.”²¹⁶

5.1.2 Norway and the perceived relevance of legal obligations stemming from the convention

If the Norwegian MFA and MJP considered the overall importance of the convention as connected to the strength of the United Nations, how did they regard the obligations stemming from the document? The MJP Legislation department provided feedback to the MFA on the contents of the relevant drafts and provided input that informed Norwegian positions in the discussions on the convention. This it did, in large part, by commenting on the relevance and applicability of the various draft articles. It is easy to discern a degree of reluctance in the letters from the MJP, who remarked that the issue of genocide appeared to “belong on an international plane,” and that as such, domestic legislation would be of secondary importance. This skepticism related to the perception that genocide would “almost without exception be carried out by organs of state,” and that changes in domestic legislation would primarily be relevant for acts carried out on the territory or by persons under the jurisdiction of the state.²¹⁷

This is expressed in even stronger terms in internal notes from the Legislation Department. In a comment on the last page of a 1947 draft letter to the MFA, an MJP caseworker gave a rather negative assessment of the work on the convention: “I personally have a rather dispirited view of the practical value of this convention. As alleged by the Peruvian representative, the provisions in the Convention will likely only be of use following a victory in war.”²¹⁸ A year later, an internal note accompanying a draft letter to the MFA also expressed a degree of skepticism: “How much one should engage with this murky subject is a question of taste.”²¹⁹

Following the distribution of the Ad Hoc committee draft in 1948, the Norwegian UN delegation had also come to adopt a rather bleak assessment. If adopted in its current form, it observed, the Convention would lose a substantial part of its value.²²⁰ This skepticism did not translate into Norwegian standpoints in discussions in the UN. But it clearly remained important

²¹⁶ ANMFA 30.5/6 Third UN General Assembly, part 1 (“De Forente Nasjoners tredje ordinære generalforsamling, del 1” (I) Instructions (“Instruks for delegasjonen til de Forente Nasjoners tredje generalforsamling.”) 14 September 1948

²¹⁷ ANMFA 30.10/7 (I) Letter from MJP, 17 March 1947

²¹⁸ ANMJ Df-0176 (2/3) Draft letter to MFA, 29 August 1947

²¹⁹ ANMJ Df-0147. «Menneskerettigheter» (Human rights) Jnr. 0277-0772. Draft letter to MFA, 21 August 1948

²²⁰ ANMFA, 30.10/7 (I) Letter from MFA to MJP, 23 June 1948

to the domestic perception of the convention and was expressed at the point of ratification by the parliament. There, Terje Wold, who had also taken part in the negotiations, remarked that while it might be of little practical significance, the treaty was of a large moral significance.²²¹

5.2 Norwegian treatment of the concepts of genocide and cultural genocide

Norwegian delegates to the various UN forums did not explicitly touch upon the issue of cultural genocide in any of the available summary records from the drafting. Out of the 16 statements that have been considered, only five explicitly touched upon substantive questions regarding the content of the Convention, while the majority of statements were related to procedural questions. Substantial questions discussed by Norwegian delegates included the establishment of an international criminal court/tribunal, extradition of suspects, domestic jurisdiction against genocide, the proposed protection of political groups, the inclusion of the destruction of groups in “whole or in part,” and the restriction of births within a group. Indeed, the only expression of a Norwegian stance on the question of cultural genocide is the vote in favour of deletion on 25 November 1948. How did the MFA and MJP consider the issue?

5.2.1 Perceptions of conceptual controversy

Notwithstanding the reservations expressed by the MJP Legislation Department about the overall value of a convention on genocide, they did provide substantial comments on the drafts, and the correspondence between the MFA and the MJP allows for insights into how they considered the questions raised in the discussions. This included the question of defining genocide, which was brought to the fore early on. In March 1947, the MJP noted that the definition of genocide indicated by Resolution 96 (I) gave doubts as to which acts it would come to cover. The letter referred to an article by Lemkin published in the Norwegian periodical *Samtiden*. In this article, Lemkin had briefly introduced his concept of genocide, and his aim of outlawing genocide through a UN convention.²²² As the MJP saw it, the concept appeared to cover not only murder, but also forms of mass persecution. It would therefore be necessary to clarify the meaning of the concept.²²³ In April 1947, the MFA also pointed to the importance of defining genocide. The Delegation warned that “one must assume that delineating the

²²¹ Innst. S. nr. 138, 1802-1803

²²² Lemkin, “Forbrytelsen genocid (folkemord)” (“The Crime of Genocide”)

²²³ ANMFA 30.10/7 (I) Letter from MJP to MFA, 14 March 1947

concept of genocide will pose one of the most difficult questions during the elaboration of the convention.”²²⁴

The issue of cultural genocide was also brought to the attention of the Norwegian MFA and MJP early on. In a 1947 report from the deliberations, the UN delegation remarked that “most seem to include in the term not only physical elimination of current or future members of the group through murder, abortion, sterilization, separation of spouses and similar, but also forced assimilation of the group into a larger population group (“Germanization,” “Italianization” etc.) and other measures against the group aiming to make its continued existence impossible.”²²⁵ This reading is somewhat surprising, given that Lemkin, who had so far had a large impact on the deliberations, had clearly stated that the two exact terms “Germanization” and “Italianization” were different from what he envisaged with the term genocide, as they connoted “only some functional aspect of the main generic notion of genocide.”²²⁶ Nevertheless, this quote is relevant because it indicates that the association between cultural genocide and forced assimilation into a national group was made quite early by the Norwegian MFA.

It is also clear from a report from that summer that the Norwegian UN delegation identified cultural genocide as one of the more difficult questions to resolve in order to adopt the convention. In 1947, the UN Delegation noted that “aside from the more technical and juridical questions, the draft raises three questions of a more political nature”. These questions were a) whether to include cultural genocide in the convention, b) whether to include political groups among the groups protected by the convention, and c) whether an international court should be established with the competency to try genocide.²²⁷

5.2.2 The Ministry of Justice and the assessment of cultural genocide

A few documents shed light on the treatment of cultural genocide by the MJP, the first from August 1947. While the first letter did not remark on the inclusion of cultural genocide, it recommended that Norwegian representatives should work to limit the convention to only the more “serious forms of genocide.”²²⁸ With regards to domestic legislation, they also noted that some of the criminal acts envisaged under the secretariat draft could only be carried out by state authorities. Here, they pointed to the provisions on obstacles to marriage (article I (II) (2) (c))

²²⁴ ANMFA 30.10/7 (I) Report from NUN, 11 April 1947

²²⁵ ANMFA 30.10/7 (I) Report from NUN, 11 April 1947

²²⁶ Lemkin, *Axis Rule*, 80; “Forbrytelsen genocide (folkemord)”, 495

²²⁷ ANMFA 30.10/7 (I) Letter from NUN to MFA, 7 July 1947

²²⁸ ANMFA 30.10/7 (I) Letter from MJP to MFA, 29 August 1947

and on the “prohibitions of the use of the language even in private intercourse” (article I (II) (3) (c)), the latter an act of cultural genocide. According to the MJP, a lack of domestic legislation in such cases would not be problematic, as article IX stipulated that “individuals acting as organs of a state or with the toleration of a state” should be tried by an international tribunal.²²⁹

While the MJP had refrained from substantive treatment of the question in their comments to the Secretariat draft, the Ad Hoc Committee draft, published on 24 May 1948,²³⁰ called for a new assessment. In their letter dated 23 July 1948, the MFA had observed that the new draft provided an “even narrower definition of genocide” than that the previous, in line with the MJP’s wish to limit the definition. Regarding cultural genocide, it noted that the inclusion of this “previously so controversial” concept had only been opposed by the USA. Simultaneously the definition of cultural genocide had been restricted, protecting only language, religion and culture for national, racial and religious groups, while the protection of political groups would be limited to physical and biological genocide. The letter also noted that the Lebanese proposal to protect groups from conditions calculated to make group members renounce their language, religion or culture, had been narrowly defeated, but could be taken up at a later stage.²³¹

The MJP provided more a comprehensive consideration of the provisions in the Ad Hoc committee draft than those in the Secretariat draft. In its letter to the MFA, dated 26 August 1948, it provided both an overall assessment of the draft and it went through the text article by article. Regarding article III on cultural genocide, it stated that

“The provisions on so-called “cultural genocide” are lacking precision, and may give rise to doubts about the acts they intend to cover. Such acts will presumably not pose any real threat unless committed by the state acting under its authority, and are therefore badly suited to prosecution in the country in which the act was committed.”²³²

In their internal correspondence, the MJP developed their thinking on the question further:

“Many of the genocidal acts envisaged in Article III will undoubtedly fall outside the scope of the Norwegian penal code. This applies in particular to acts committed by persons acting on behalf of a state, but such cases should after my judgement be referred to the exclusive jurisdiction of an international court. ...The [Lebanese] suggestion ... should probably not be

²²⁹ ANMFA 30.10/7 (I) Letter from MJP to MFA, 29 August 1947

²³⁰ See ANMFA, 30.10/7 (I), Letter from MFA to MJP

²³¹ ANMFA, 30.10/7 (I), Letter from MFA to MJP, 23 June 1948

²³² ANMFA, 30.10/7 (I), Letter from MJP to MFA, 26 August 1948

supported by Norway. A penal provision with this content will be very imprecise, and will be very difficult to apply.”²³³

While the draft letter warned against supporting the Lebanese proposal, a handwritten comment in the margins added that it “does not appear to involve any extension from previous drafts. We have previously not distanced ourselves from the [draft] rules on “cultural genocide”, and should in principle continue to refrain from doing so.” Overall, the draft noted that the exclusion of political groups from the Article on cultural genocide was a “relatively fortunate solution to this delicate question.”²³⁴

The reluctance towards domestic prosecution does not translate to a clear stance against inclusion of cultural genocide. And as we have seen, the MJP shared the assessment of Peru, and later the UK, that the case itself belonged on an international plane. Indeed, the Norwegian delegation was an active proponent of ensuring international jurisdiction over genocide. Rather than penalizing state authorities through domestic legislation, individuals acting on behalf of states should be prosecuted under the statutes of an international criminal court.²³⁵ In this light, it appears that the MJP did not challenge the criminalization of cultural genocide as such, but its application in domestic law.

5.2.3 Norway and the arguments for deletion

In the previous chapter, I identified five modes of argumentation, or five categories of claims that were central to the discussions on cultural genocide in the deliberations in UN fora. These were (i) conceptual claims, relating to whether or not cultural and physical/biological genocide represented the same phenomenon, (ii) claims about the relative gravity of cultural genocide, (iii) claims about whether acts of cultural genocide should rather be addressed in the context of human rights, (iv) claims about the clarity of the concept and definition of cultural genocide, and (v) claims relating to assimilationist policy. What traces of these arguments can we find in the documents from the Norwegian MFA and MJP?

In the correspondence that has been reviewed, the relation between the concepts (i) is not brought up. While a degree of skepticism may be inferred from a reference to “so-called cultural genocide,”²³⁶ there is nothing suggesting that the ministries questioned Lemkin’s concept of genocide, or the concept expressed by the draft definitions, as such. This is not surprising, given that the MJP was preoccupied with questions about legislation, whereas the

²³³ ANMJ Df-0147 Draft letter to MFA, 18 August 1948

²³⁴ Loc.cit.

²³⁵ UN ESC. “Comments by Governments” 19 April 1948, 633-634

²³⁶ ANMFA, 30.10/7 (I) Letter from MJP to MFA, 26 August 1948

MFA, and the Norwegian delegates were preoccupied with the same business as other states involved in the drafting: attaining a final text that was in accordance with their perceived national interests.

It is unclear whether the MJP considered the acts of cultural genocide as less significant than acts of physical and biological genocide (ii). As mentioned, the MJP recommended limiting the scope of the convention to the “more serious forms of genocide.”²³⁷ Whether this included cultural genocide, however, is not clear. In the MFA’s interpretation, the Ad Hoc committee draft, which included cultural genocide, already constituted an improvement along these lines. Furthermore, as the MJP pointed out, the acts of cultural genocide covered by the Ad Hoc draft “do not amount to real danger, unless they are carried out on behalf of the state.”²³⁸

While neither the MFA nor the MJP made reference to human rights (iii) in the reviewed correspondence up until 25 October 1948, this connection was made in a report dated 15 December 1948, summarizing discussions on the convention. On the deletion of cultural genocide, it remarked that “the majority of the Committee, including Norway, found that measures to prevent violations of this type should rather be taken up in connection with the convention [sic] on human rights, which is under development.”²³⁹ This rationale was repeated upon ratification by the Norwegian parliament in 1949.²⁴⁰ With regards to the perceived lack of clarity of the provisions on cultural genocide (iv), this issue was raised by the MJP in their instructions in 1948, as they remarked that they were “imprecise, and may give rise to doubts about the acts they intend to cover.”²⁴¹

While the MJP considered cultural genocide as vague and badly fit for domestic prosecution, the lack of substantial arguments against including cultural genocide implies that Norwegian actors were not fundamentally opposed to the provision. The post hoc linkage with human rights reads as an expression of a wish to resolve a difficult question in the drafting, more than a matter of opposition to the provision as such. Because Norway was primarily occupied with supporting agreement on the text, it remains an open question whether they would have voted against the provision if the mood in the Sixth Committee had been more positive to inclusion.

²³⁷ ANMFA. 30.10/7 (I) Letter from MJP to MFA (30 August 1947)

²³⁸ Ibid

²³⁹ ANMFA 30.10/7 (II) Letter from GA Delegation to MFA, 15 December 1948

²⁴⁰ Parliamentary proposition (St. prp.) Nr. 56, p. 3

²⁴¹ ANMFA 30.10/7, (I) Letter from MJP to MFA, 26 August 1948

5.2.4 Assimilationist policies and domestic relevance

As shown, the definition of cultural genocide in the Ad Hoc committee draft covered prohibitions on the use of the language of the group, and the Lebanese proposal would have broadened the scope to cover acts aimed at causing group members to give up their language. While the MJP and the MFA made the link between cultural genocide and forced assimilation, this connection was not taken up in the documents produced by the MJP. How should we understand this absence?

The Nordic countries are often regarded internationally as champions of human rights. While it is true that the Nordics were generally strong supporters of international human rights instruments, they tended to view the domestic application of new norms as secondary. With regards to the human rights treaties in the 1980s, Vik and Østberg observe that neither treaty “negotiation [n]or ratification dr[e]w noticeable attention to possible changes at home among Norwegian bureaucrats and politicians who found the new norms at once desirable internationally and unproblematic domestically.”²⁴² As Sørberg has remarked with regards to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Nordic countries supported the convention due to its international importance, despite their perception that it was irrelevant for their policies at home.²⁴³ Norwegian treatment of the Genocide Convention appears to be part of the same tradition. After all, Norway was predominantly occupied with the international level - both with regards to the importance of the convention, and with regards to its application.

The apparent irrelevance of cultural genocide could also stem from the perception of Norwegianization and minorities. Sørberg’s study is interesting in this regard, as CERD clearly applied to minorities such as the Sami and Kven. In a 1966 note, the MJP Legislation Department reported that they were not familiar with the situation of the Sami. Still, their impression was that there were no “current problems” of racial discrimination against them.²⁴⁴ If this was the perception of the Legislation department in 1966, it is not unlikely that they viewed the situation in the same way in 1948. A 1950 draft letter to the MFA appears to support this. On the basis of a request by the Commission on Human Rights for input regarding legislation on minority protection, the MJP remarked: “The treatment of minorities raises no problems in Norway. Legislation does not differentiate between persons belonging to minorities and other Norwegian citizens, and furthermore, no discrimination is practiced towards specific

²⁴² Vik & Østberg, ”Deploying the Engagement Policy”, 319

²⁴³ Sørberg, “Rasediskriminering og hjemlig relevans” 48

²⁴⁴ Sørberg, “Rasediskriminering og hjemlig relevans” 48

population groups.”²⁴⁵ The perceived irrelevance of indigenous peoples could also be connected to the understanding of which minorities mattered in international affairs. In the discussions, several countries had made references to the inter-war system of bilateral minority treaties. This system had focused on the protection of “national” minorities, that is, minorities “with a different nationality than that of the host state,”²⁴⁶ Indigenous peoples, on the other hand, had been left out.²⁴⁷

Finally, in Article III of the Ad Hoc committee draft, the enumerated acts constituted genocide only if committed “with the intent to destroy the language, religion, or culture of a national, racial, or religious group on grounds of the national or racial origin or religious belief of its members.”²⁴⁸ This characterization of intent does not correlate with how states viewed their own policies. Delegates justified assimilation policies, describing them as “civilizing” acts, or as constructive aspects of nation-building. Given the difference in terms, it is not obvious that states would consider their own policies as relevant. This difference is reflected in how the Norwegian state conceptualized Norwegianization. Rather than destruction, the Sami were to be “absorbed into the Norwegian nation”. The process had also been viewed in social-Darwinist terms: Sami culture was doomed to perish in confrontation with more developed forms of culture.²⁴⁹

²⁴⁵ ANMJ. Df-0148, Draft letter to MFA, 23 October 1950

²⁴⁶ Castellino, “The Protection of Minorities and Indigenous Peoples,” 405

²⁴⁷ *Ibid.*, 397

²⁴⁸ UN ESC “Report of the Committee and Draft Convention” 24 May 1948, 1112

²⁴⁹ See chapter 2.3.1

6 Conclusion

Through this study, I have sought to contribute to scholarship on the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide taking place in 1947 and 1948. While the drafting of the convention has been subject to attention from historians as well as legal scholars, the deletion of cultural genocide clearly warrants further study. Analysing this process and the actors involved in it provides insights into of how states conceptualized and discussed the phenomenon of group destruction, and how they perceived the relevance of their own policies. It is also important due to its implications for how we understand the phenomenon of group destruction today.

The analysis has focused on the question of including cultural genocide in the convention, and the participation of Norway in the deliberations. As this study has shown, Norway was a strong proponent of the Genocide Convention, and participated actively in the drafting process. An analysis of documents from the Ministry of Foreign Affairs and the Ministry of Justice and the Police connects Norwegian support of the convention to their ambitions of strengthening the United Nations. As one Norwegian delegate remarked, the convention was to become “a stone in the building of peace.”²⁵⁰

Cultural genocide was controversial from the beginning of the drafting, and was finally deleted in the fall of 1948. The concept underwent significant change from Lemkin’s 1944 book to its deletion from the draft convention in 1948. However, there was also continuity in how the drafters understood the phenomenon; for instance, restrictions on the use of the national language was kept in. Furthermore, the question of ascertaining the relationship between cultural genocide and forced assimilation was expressed both with regards to the Secretariat draft, and in the discussions on the basis of the Ad Hoc committee draft in 1948.

Through an analysis of the discussions on cultural genocide taking place in the Sixth Committee of the Third General Assembly, I identified five types of claims applied by representatives in their statements. These were (i) claims regarding the relationship between the concepts of cultural genocide and genocide, (ii) claims regarding the relative seriousness of cultural genocide, (iii) claims about the linkage to human rights, (iv) claims about vagueness, and finally (v) claims relating to assimilation or justifications of colonialism.

Unpublished documents from the Norwegian MFA and MJP reflect two of these types of claims. Firstly, the MJP warned that the provision was too vague. Second, at least post hoc, the MFA subscribed to the argument that acts of cultural genocide should rather be considered

²⁵⁰ See chapter 5.1.1.

in the context of human rights. However, these arguments did not translate into a strong opposition to the inclusion of the provision in the convention. This study can therefore not conclude on whether Norway would have voted to delete or to retain cultural genocide had the majority of the Sixth Committee favoured retaining the concept.

The MJP's limited treatment of the question follows in part from their assessment that domestic legislation was secondary in criminalizing genocide, and that legislation should rather be established on an international plane. Here I find that Norwegian treatment of the matter is similar to the approach to human rights treaties in later decades, whereby domestic applicability was viewed as secondary to the aim of establishing attractive international norms.²⁵¹

In the introduction, I presented Christopher Powell's suspicion that the wording of the Genocide Convention "was shaped by the desire of the framers not to criminalize their own behaviour."²⁵² This study does not find evidence that this applied to the Norwegian assessment of cultural genocide. Norwegian drafters did not consider domestic policies relevant to their assessment; likely, they did not consider them at all. It makes little sense to fear the criminalization of behaviours one does not consider applying to oneself.

This lack of consideration of domestic policies is interesting because of its implications. The definitions of genocide contained in the two drafts and in the final convention emphasise the intent to destroy human groups, which does not correspond well to the self-identification of the Norwegian state, as it carried out policies that nevertheless had a destructive impact on indigenous Sami culture and language. Even if destruction was intrinsic to the aims of these policies, they were regarded in positive terms as civilizing acts, while the disintegration of Sami culture was in part perceived as a natural phenomenon.

For good reasons, acts of mass killing are more "shocking to the conscience of mankind"²⁵³ than systematic processes on cultural destruction. However, this does not mean that they are more genocidal. We need to ask what did *not* shock the conscience of the drafters in 1948, and how this impacted the perception of genocide. There is a need for further case-studies that go beyond the UN meetings and question the impact of colonialism on the internal discourses of the states taking part. This study is one step on this path.

²⁵¹ Vik & Østberg. Op. Cit.

²⁵² Powell, "What do Genocides Kill?"532

²⁵³ See chapter 4.2.

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