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The debate I discuss here revolves around the question of whether the Holocaust played a pivotal role in the drafting of the Universal Declaration of Human Rights and the Genocide Convention. The widely shared assumption is that it did indeed. Since 2010, however, some have raised doubts about this view. Who is right in this debate? I try to throw fresh light on it, using new sources and reevaluating old arguments to tackle three questions: what did the drafters of these early human rights instruments know about the Holocaust in 1946–48? What traces of the Holocaust can be found in the *travaux préparatoires* of these instruments? And who spoke about the Holocaust during the final debates? I argue that the fact that the term “Holocaust” was not used in 1946–48 does not mean that the realities behind it were absent from the minds of the drafters.

Keywords: polemics; Holocaust; Genocide; United Nations; Universal Declaration of Human Rights.

O Debate sobre o Papel do Holocausto no Ressurgimento dos Direitos Humanos após a II Guerra Mundial

Este artigo analisa o debate em torno do papel ocupado pelo Holocausto na elaboração da Declaração Universal dos Direitos Humanos e da Convenção do Genocídio. O senso comum é que este papel foi determinante. No entanto, desde 2010, alguns autores têm questionado esta ideia. Quem tem razão? Este texto procura trazer um novo olhar a este debate, recorrendo a novas fontes e reavaliando velhos argumentos para responder a três questões: o que é que, em 1946-48, os autores destes instrumentos pioneiros dos direitos humanos sabiam sobre o Holocausto? Que traços do Holocausto podem ser encontrados nos *travaux préparatoires* destes instrumentos? Quem mencionou o Holocausto nas discussões finais? O meu argumento é que o facto de o termo “Holocausto” não ter sido utilizado em 1946-48 não significa que esta realidade estivesse ausente do pensamento dos autores destes documentos.

Palavras-chave: polémicas; Holocausto; Genocídio; Nações Unidas; Declaração Universal dos Direitos Humanos.

The Debate about the Role of the Holocaust in the Post-War Human Rights Revival

Antoon De Baets*

Introduction: Debates about history

When confronted with conflicts about history, international courts have often reiterated that the general right to free expression includes the right of everyone to seek the historical truth. The European Court of Human Rights, for example, has held

that it is an integral part of freedom of expression ... to seek historical truth and it is not its role [the role of the Court, *adb*] to arbitrate the underlying historical issues, which are part of a continuing debate between historians that shapes opinion as to the events which took place and their interpretation ... [E]very country must debate its own history openly and dispassionately.¹

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¹ European Court of Human Rights (Research Division), *Cultural Rights in the Case-Law of the European Court of Human Rights* (Strasbourg: ECHR, 2011 and 2017), § 85, quoting Case of Chauvy and Others v. France (Application no. 64915/01) (June 29, 2004), § 69, and Case of Monnat v. Switzerland (Application no. 73604/01) (December 21, 2006), § 64 (see also §§ 57–59, 63, 68). See also, in the same report (*Cultural Rights*), §§ 86–88 (“Right to seek historical truth”). For other examples of cases in which the European Court of Human Rights explicitly referred to “the historical debate,” see Case of Lehideux and Isorni v. France (Application 55/1997/839/1045) (September 23, 1998), §§ 47, 55; *Affaire Orban et autres c. France* (Application no. 20985/05) (April 15, 2009), §§ 49, 52, 54; *Affaire Dink c. Turquie* (Requêtes nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09) (September 14, 2010), §§ 135, 137; *Affaire Smolorz c. Pologne* (Requête no 17446/07) (October 16, 2012), §§ 36, 38. See also Toby

Citizens from all walks of life have a personal interest in seeking, receiving, and imparting historical information and ideas and in participating in free and critical historical debate. Likewise, society at large has a strong collective interest in a robust public debate about history in its entirety, including its dark sides, because the historical truths that may emerge from such debates are important in themselves *and* instrumental in achieving other fundamental goals, such as democracy and justice.² The view of history as a debate implies respect for historical evidence and tolerance for the diversity of historical opinions and interpretations resting on that evidence.

In sum, the free-expression interest represented by an exchange and debate about history belongs to all and, when balanced against other interests, it is so paramount that there is little scope for its restriction. The strong interest in a robust public debate about the past is even greater in two particular contexts: when past public figures (such as a Hitler or a Stalin) and victims of atrocity crimes (such as the Holocaust or the Holodomor) are taken into consideration.³ In addition, the freedom to debate about the past increases with the passage of time: the greater the distance from the historical period under consideration, the less reason there is to limit free expression about it. But debates are not only vital exercises of the right to free expression. Debate is also an essential value when it comes to the quality of his-

Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred for the UN Special Advisor on the Prevention of Genocide* ([Halifax] 2006), 40–41 (“Historical debate versus hate speech”).

2 See Antoon De Baets, “Democracy and Historical Writing,” *Historiografias / Historiographies: The Journal of History and Theory* 9 (June 2015): 31–43. An expanded and updated Portuguese version of this text is forthcoming in Angélica Müller and Francine Iegelski, *History of the Present Time* (Rio de Janeiro: Editora da Fundação Getúlio Vargas, [2022]).

3 The European Court of Human Rights systematically rejected all the applications of Holocaust deniers. In doing so, it did not resort to Article 10 of the European Convention on Human Rights (the right to freedom of expression), but to Article 17, the so-called abuse clause, devised to counter the “enemies of democracy”. The Court has consistently viewed Holocaust denial as tantamount to the advocacy of National Socialism, a totalitarian doctrine incompatible with democracy and human rights and falling outside the scope of the right to freedom of expression protected under Article 10. See Antoon De Baets, “Laws Governing the Historian’s Free Expression,” In *The Palgrave Handbook of State-Sponsored History After 1945*, eds. Berber Bevernage and Nico Wouters (London: Palgrave-MacMillan, 2018), 60–61. Regarding debates about public figures, see United Nations (UN) Human Rights Committee, *General Comment 34* [Freedoms of opinion and expression] (UN Doc. CCPR/C/GC/34) (2011), §§ 34, 38, 47.

torical scholarship. The mere prospect that others can criticize what scholars say or write about the past keeps them sharp and prepared. The permanent possibility of criticism and debate enhances the intersubjectivity of historical scholarship and helps it achieve a basic but essential degree of objectivity.⁴

I define a “public debate about history” as a public confrontation of adversarial opinions about the past. If the debate is private, I would call it a conversation or a dialogue. If the debate is public, it is only critical if the evidence and the logic of arguments are tested during the debate. Any typology of public debates about history should distinguish at least *immediate debates* between two or more persons in oral or written form (teaching, publications, discussions at conferences, in the media, on the streets) and *indirect debates* between two or more persons separated in time, ranging from one-directional criticism to bi- and multidirectional polemics. Both immediate and indirect debates can take place between experts (the academic debate),⁵ non-experts (the lay debate), or a mixture of both (for example, the historical debate in mainstream and other media, in courtrooms or in government circles). They range from peaceful exchanges to civilized disputes to heated controversies. Some of the more polemical ones received martial names such as “*Historikerstreit*” (battle of the historians), “memory wars” or “history wars.” I define “memory wars” as a chain of public debates intended to determine how a given set of historical events is publicly remembered, and “history wars” as a chain of public debates intended to determine how a given set of historical events is to be studied and taught.

4 This idea can be traced back to Karl Popper, *The Poverty of Historicism* (London: Routledge and Kegan Paul, 2002 [1957]), chapter 32.

5 Perhaps contrary to expectations, academic debate is far more regulated than public debate. Apart from an important brainstorming phase during the pre-publication stage, the expression of opinions in science, including historical writing, is checked by a system of peer review. See, among others, Bernard Williams, *Truth & Truthfulness: An Essay in Genealogy* (Princeton and Oxford: Princeton University Press, 2002), 217. As Thomas Haskell formulated it: “The price of participation in the community of the competent is perpetual exposure to criticism.” See Thomas Haskell, “Justifying the Rights of Academic Freedom in the Era of ‘Power/Knowledge,’” *The Future of Academic Freedom*, ed. Louis Menand (Chicago: University of Chicago Press, 1996), 47.

Special attention should be given to those who initiate and end debates about history. Quite a few times, debates are not started according to the splendid procedural and moral rules of discourse that such eminent social philosophers as Jürgen Habermas or Naomi Oreskes had in mind in their thoughtful and inspiring works about discourse and science.⁶ Many debates are distorted by political power and manipulated by lobby groups, becoming targets of selective access strategies and inappropriate interventions in the process. They are thus transformed into debates about the present, in which history is but a pretext for political or other gain. And in dictatorial countries, coercion and repression stifle debate about controversial topics.⁷ In such an intimidating context, free debate can only take place in sheltered or closed forums.⁸ If opening debates is delicate, closing them is often relative. In dictatorships, closing or staving off debates pushes critical participants to continue them clandestinely. In democracies, disputes can be advanced or even settled with new sources, better arguments, or an astute re-examination of the debate itself. Other disputes, however, are so fundamental that the last word cannot be said. In these cases, consensus (if that should be the goal at all) is impossible to reach: they are continuing and open-ended and any settlement has to be regarded as temporary.

How does the debate about the Holocaust fit into these reflections? The debate was a mixture of an immediate and indirect debate. It was held between experts as well as lay participants. It had “orthodox” and “dissenting” sides which were not partly but diametrically opposed. And it revolved around an important point: the origin of the

6 For a good introduction into Habermas’s discourse ethics, see James Gordon Finlayson, *Habermas: A Very Short Introduction* (Oxford: Oxford University Press, 2005), 76–105 (Habermas’s rules of discourse at 43). See also the remarks in Naomi Oreskes, *Why Trust Science?* (Princeton and Oxford: Princeton University Press, 2019), 53, 128–29, 133, 259–60, 275.

7 See Antoon De Baets, “Censorship and History (Since 1945),” *The Oxford History of Historical Writing*, volume 5, *1945 to Present*, eds. Axel Schneider and Daniel Woolf (Oxford: Oxford University Press, 2011 and 2015), 60–66 (“Controversial subjects in history textbooks worldwide [1945–2010]”).

8 See Antoon De Baets, *Crimes against History* (London: Routledge, 2019), 119–52 (“Resistance to the censorship of history”), especially 125 (“Debating in secret”).

post-1945 human rights revival.⁹ For years, the debate lay dormant and smouldered until it erupted in 2016. I will try to advance it by means of the classical instruments used by historians: the use of new, hitherto neglected, sources and a re-evaluation of some of the core arguments.

The debate

In its essence, the debate is not difficult to outline. Did the Holocaust play a central role in the drafting process of human rights instruments immediately after World War II? Until fairly recently, it was commonly assumed that the Holocaust was at the forefront of attention among the drafters of the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”) and the Universal Declaration of Human Rights (the “Universal Declaration”), both prepared in the years 1946–48, and that it constituted the prime force to taking not steps but leaps on the path of respect for human rights and the punishment of those violating them.¹⁰

One of the first to express this idea, albeit not unambiguously, was John Humphrey, the Canadian who directed the Human Rights Division of the United Nations (UN) Secretariat in those crucial years and who wrote the very first draft of the Universal Declaration in June 1947.¹¹ When recalling his work thirty years later, in 1979, he wrote:

The catalyst to which we owe the Universal Declaration of Human Rights and indeed much of the new international law of human rights which has so radically changed the theory and practice of the law of nations was the gross violations of human rights that were committed in and by certain countries during and immediately before the Second World War.¹²

9 The human rights surge after 1945 was a *revival*. See Antoon De Baets, “Does Inhumanity Breed Humanity? Investigation of a Paradox,” *History and Theory* 51, no. 3 (October 2012): 458–60.

10 The Genocide Convention is an instrument of criminal law, not of human rights law, but it has, of course, an intimate relationship with it.

11 Among the drafts Humphrey used to compile his text was a 1944 “Declaration on Human Rights” of the American Jewish Committee.

12 John Humphrey, “The Universal Declaration of Human Rights: Its History, Impact and

And in 2004, then UN Secretary-General Kofi Annan said in a speech:

The name “United Nations” was coined to describe the alliance fighting to end that barbarous [Nazi, *adb*] regime, and our Organization came into being when the world had just learnt the full horror of the concentration and extermination camps. It is therefore rightly said that the United Nations emerged from the ashes of the Holocaust ... Worldwide revulsion at this terrible genocide was the driving force behind the Universal Declaration of Human Rights ... And it was no coincidence that, on the day before it adopted the Declaration in 1948, the General Assembly had adopted the Convention on the Prevention and Punishment of the Crime of Genocide.¹³

Likewise, in a resolution of January 2005, designating 27 January as an annual International Day of Commemoration in memory of the victims of the Holocaust, the UN General Assembly stated:

Bearing in mind that the founding principle of the Charter of the United Nations, “to save succeeding generations from the scourge of war,” is testimony to the indelible link between the United Nations and the unique tragedy of the Second World War, *Recalling* the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted in order to avoid repetition of genocides such as those committed by the Nazi regime, *Recalling also* the preamble of the Universal Declaration of Human Rights,

Juridical Character,” *Human Rights: Thirty Years after the Universal Declaration*, ed. B. G. Ramcharan (The Hague, Boston, London: Martinus Nijhoff, 1979), 21.

¹³ Kofi Annan, “Throughout History, Anti-Semitism Unique Manifestation of Hatred, Intolerance, Persecution Says Secretary-General in Remarks to Headquarters Seminar” (Press release SG/SM/9375) (June 21, 2004), <https://www.un.org/press/en/2004/sgsm9375.doc.htm>.

which states that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, ...¹⁴

The same opinion is widespread among academics, as attested by Yutaka Arai-Takahashi (as one example among dozens) in a 2014 article about the relationship between international human rights law and international humanitarian law:

Human rights law, ..., while tracing its origin to the Enlightenment period ..., owes its exponential evolution to the context of international law in the aftermath of the Holocaust and Second World War, not least because of the keenly felt need to address grave violations of human rights committed against states' own people.¹⁵

Johannes Morsink, professor of political philosophy at Drew University in Madison, New Jersey, and perhaps the world's leading expert in the exegesis of the Universal Declaration, was more straightforward: in his publications, he has maintained time and again that "the horrors of the Holocaust shocked the delegates and the countries they represented into a reaffirmation ... of the existence of human rights."¹⁶ In his main work of 1999, he spoke of "the absolutely crucial factor of the Holocaust," saying that

The Cold War, the women's lobby, and the tradition of Latin American socialism were also major forces that

14 UN General Assembly, "Holocaust Remembrance," UN Doc. A/RES/60/7 (November 21, 2005).

15 Yutaka Arai-Takahashi, "The Interaction Between International Humanitarian Law and International Human Rights Law," in *The SAGE Handbook of Human Rights*, eds. Anja Mihr and Mark Gibney (London: Sage, 2014), 92.

16 Johannes Morsink, "World War Two and the Universal Declaration," *Human Rights Quarterly* 15, no. 2 (May 1993): 358 and *passim*.

shaped the writing of this pivotal document. But none of them match the Holocaust in importance.¹⁷

Morsink defended a theory of moral intuitionism: confronted with the atrocities of World War II, all individuals with a normal moral faculty *immediately knew* that such premeditated massacres were wrong and that this shocking realization was the main trigger to strive for drastic change.¹⁸ He thought that the inhumanity of World War II was so omnipresent in the minds of the drafters that it generated a powerful drive for humanity via the detour of moral outrage.¹⁹ Most authors both before and after Morsink have accepted this view. For example, the famous philosopher of law, Hans Kelsen, had written as early as 1951:

The mass murders of Jews, Poles, Catholics and members of other groups in Nazi Germany, which induced the General Assembly [of the UN, *adb*] to adopt the draft convention on genocide ...²⁰

There are small variations among all these authors. For example, Humphrey spoke of “gross violations of human rights,” without specifying them, Annan mentioned both the Universal Declaration and the Genocide Convention, Kelsen and the UN General Assembly only the Genocide Convention, Morsink only the Universal Declaration. Nevertheless, most assigned a role to the Holocaust in at least one of these two instruments.

17 Johannes Morsink, *The Universal Declaration of Human Rights: Origin, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), xiii–xiv, 36–91, 344–53.

18 Morsink, *Universal Declaration*, 300, and Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Philadelphia: University of Pennsylvania Press, 2009), chapter 2.

19 For an investigation of the thesis that human rights catastrophes trigger waves of humanity, see De Baets, “Does Inhumanity Breed Humanity?”, 451–65.

20 Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (London: Stevens, 1951), 47.

In 2010, however, Samuel Moyn, professor of law and history at Yale University in New Haven, Connecticut, threw doubt on that widely shared assumption, arguing that broader categories such as “the war” and “the Nazi crimes” were in the minds of the drafters of early human rights instruments, but *not* the Holocaust understood as the genocide of the Jews as such. Moyn wrote:

In real time, across weeks of debate around the Universal Declaration in the United Nations General Assembly, the genocide of the Jews went unmentioned, in spite of the frequent invocation of other dimensions of Nazi barbarity to justify specific items for protection, or to describe the consequences of leaving human dignity without defense.²¹

He added that “[T]he Nuremberg Trials ... had contributed to ignorance of the specific plight of the Jews rather than establishing a morally familiar tradition of responding to mass atrocity”²² and that “[c]ontrary to conventional assumptions, there was no widespread Holocaust consciousness in the postwar era, so human rights could not have been a response to it.”²³

Two years later, a history lecturer at the University of Sydney, Marco Duranti, put forward a bolder thesis in the *Journal of Genocide Research*: he called the general tendency to locate the origin of the Universal Declaration in the horrors of the Holocaust a “foundation myth,” “an article of faith,” and “a dogma.” He thought that what prevailed among the drafters of the Universal Declaration was silence about the Holocaust and suggested that this silence was intentional.²⁴

21 Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA, and London: Harvard University Press, 2010), 82.

22 Moyn, *Last Utopia*, 82.

23 Moyn, *Last Utopia*, 7; see also 47, 83, 209, 214, 219–20.

24 Marco Duranti, “The Holocaust, the Legacy of 1789 and the Birth of International Human Rights Law: Revisiting the Foundation Myth,” *Journal of Genocide Research* 14, no. 2 (June 2012), 159–186, especially 163–168.

The debate exploded in 2016 when the executive director of the Institute on the Holocaust and Genocide in Jerusalem, Israel Charny, accused Duranti and the *Journal of Genocide Research* of Holocaust minimization.²⁵ Supported by thirty genocide scholars, some of those attacked promptly retorted that Charny's allegations were wholly unfounded.²⁶ The problem with Duranti's approach is that it cannot be tested: although he undertook "a thorough examination of official UN records, as well as a selection of unpublished archival material," more than 6,000 pages, he reported on the results of this examination extremely summarily.²⁷ For the rest, he cited other scholars or offered only circumstantial evidence. The problem with Charny's approach on the other hand is that he did not provide any arguments at all for his views – at least not in the articles that were part of the immediate debate. Those attacked by Charny and responding to him summarized their view on Duranti's research as follows:

This conclusion he [Charny, *adb*] disparages is based on study of the thousands of pages of documentation from 1946 to 1948 that are freely available on the website of the United Nations (UN). At no point did UN delegates explicitly refer to the mass murder of Jews during the proceedings of the relevant UN committees even as they invoked other instances of Nazi crimes. The reasons for this silence at the UN suggest, among other factors, a climate of latent antisemitism, as well as the active and passive complicity of some UN member states in the Holocaust itself. This finding is in line with the great mass of publications on postwar

25 Israel W. Charny, "Holocaust Minimization, Anti-Israel Themes, and Antisemitism: Bias at the *Journal of Genocide Research*," *Journal for the Study of Antisemitism* 7, no. 1 (2016), 1–28, especially 2, 4, 21, 26.

26 Amos Goldberg, Thomas J. Kehoe, A. Dirk Moses, Raz Segal, Martin Shaw, and Gerhard Wolf, "Israel Charny's Attack on the *Journal of Genocide Research* and Its Authors: A Response," *Genocide Studies and Prevention* 10, no. 2 (2016), 3–22, especially 15.

27 Duranti, "The Holocaust," 165 (nine lines) and 167–168 (nineteen lines). The number (6,100 pages) is on p. 165; the quote is from the conclusion on p. 180.

Holocaust memory, according to which the annihilation of European Jewry was often conflated with Nazi evil generally during the 1940s, [while] the distinctive features of the Holocaust were omitted or obscured, particularly outside of Jewish milieux. ... The article in question [Duranti's article, *adb*] is simply reporting empirical findings.²⁸

In 2021, Nathan Kurz, a political researcher at the University of London, defended the Duranti view in even stronger terms. His rigorous approach was based on a detailed and impeccable investigation of the *travaux préparatoires*. He also studied seven memos and eight speeches of Jewish lobbies which were submitted to the UN at the time, in order to compare them with the ways in which they were summarized in the *travaux*. According to Kurz, references to the Holocaust in these memos and speeches were deliberately distorted, sanitized, censored, or deleted altogether in the *travaux*.²⁹ The reasons, Kurz tells us, were, among others, that references to the Holocaust would have undermined the consensus sought for the Universal Declaration and the Genocide Convention, drawn attention to the complicity of Allies in the Holocaust, and exposed the alleged anti-Semitism among many UN delegates.³⁰ I will call Kurz's thesis the *deliberate silence thesis*.

This thesis is flawed for a series of compelling reasons, all mentioned by Kurz himself, either repeatedly or in passing, but not given due weight. First, the objective of the *travaux préparatoires* was not to write a history of World War II or of the Holocaust, but to draft legal texts over which states could find agreement and in which the historical context was condensed to a maximum (I agree with Kurz that such a state-centered and decontextualized approach is problematic). Second,

28 Goldberg, etc., "Israel Charny's Attack," 15.

29 Nathan Kurz, "'Hide a Fact Rather than State it': The Holocaust, the 1940s Human Rights Surge, and the Cosmopolitan Imperative of International Law," *Journal of Genocide Research*, 23 no. 1 (2021), 37–38, 40, 42–46, 48, 53, 55; Nathan Kurz, *Jewish Internationalism and Human Rights after the Holocaust* (Cambridge: Cambridge University Press, 2021), 15, 41, 48–51.

30 Kurz, "'Hide a Fact'," 51–52; Kurz, *Jewish Internationalism*, 48, 51.

the UN received hundreds of memos from all sorts of organizations: if Jewish lobby memos and speeches ended up truncated in the *travaux*, so did major reports of the UN War Crimes Commission (see below), the UNESCO, and the American Association of Anthropologists, for example – and it would be unrealistic to expect otherwise. Third, all those who submitted memos had the right and possibility to amend the drafts of the summarized records (and often made use of them). Fourth, the fate of all categories of Nazi victims, not only of the Jewish subcategory, was mentioned sparingly throughout the *travaux*.³¹ Fifth, several Jewish spokespersons themselves did not mention the Holocaust where they could have done so.³² Sixth, Jews played a central role in the drafting of both the Universal Declaration and the Genocide Convention. Kurz's image of René Cassin, France's Jewish UN representative and arguably the foremost author of the Universal Declaration, as somebody who self-censored himself on the Holocaust or only spoke about it in "safe" places, is not plausible: Cassin sat in one of the driver's seats.³³ Likewise, the idea of a Genocide Convention was largely conceived by one man, the Polish-Jewish lawyer Raphael Lemkin, with the Holocaust permanently on his mind: Kurz barely mentions him. Seventh, examples that counter the deliberate silence thesis – Holocaust passages in memos that *were* inserted into the *travaux* – are explained away or evaluated as exceptional or unimportant.³⁴ All in all, it seems that Kurz offers contradictory explanations based on correct facts: he mentions all these counter-arguments but systematically undervalues them in light of his deliberate silence thesis. On the whole, the evidence for his thesis is weak: the silence about the suffering of the Jews was usually not intentional (although occasional anti-Semitism cannot be excluded), though references to that suffering were also not abundant.

31 Kurz, "‘Hide a Fact’," 40, 53.

32 Kurz, "‘Hide a Fact’," 52; Kurz, *Jewish Internationalism*, 15, 38, 41, 49, 51–53.

33 Kurz, *Jewish Internationalism*, 2, 49, 55.

34 Kurz, "‘Hide a Fact’," 45–46 (example of Marcus), 47 (example of Bienenfeld); Kurz, *Jewish Internationalism*, 51 (example of Perlzweig), 52–53 (example of the World Jewish Congress leadership).

A new approach to an old debate

In the following I will investigate the claims of the orthodox and dissident lineages in the debate. To that aim, I will use the records of the lengthy preliminary meetings of the Genocide Convention and the Universal Declaration in 1946–48, known as *travaux préparatoires* (preparatory works), as sources not systematically used in the debate thus far (except by Kurz in 2021). They were published in 2008 and 2013, respectively, and together they run to more than 5,500 pages.³⁵ These sources are available online and can help us to assess the central claim, namely that the Holocaust played an important role in the drafting stages of the early human rights instruments. Kurz has pointed to the deficiencies in these *travaux* as sources for historical claims, a critique to which I subscribe. Unlike Kurz, I did not consult speeches and memos submitted to the drafters of the Universal Declaration and the Genocide Convention, nor did I search for ego-documents of protagonists.

To understand my approach, I should first refer to the Vienna Convention on the Law of Treaties. This is the treaty of treaties, which tells us according to which rules treaties are to be drafted and interpreted. Its article 32 stipulates: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.”³⁶ I will throw new light on the debate through the two perspectives suggested by the Vienna Convention: a semantic analysis of “the preparatory work” of the Universal Declaration and the Genocide Convention and a micro-investigation of “the circumstances of its conclusion,” meaning the high-profile concluding debates after which both instruments were adopted. My

35 *The Genocide Convention: The Travaux Préparatoires* (Leiden: Nijhoff, 2008), eds. Hiram Abtahi and Philippa Webb, xxxvii + 2217 pp.; *The Universal Declaration of Human Rights: The Travaux Préparatoires*, ed. William Schabas (Cambridge: Cambridge University Press, 2013), cxxv + 3157 pp. Duranti, writing in 2012, does not refer to the first work; those replying to Charny, writing in 2016, do not refer to any of both works.

36 Vienna Convention on the Law of Treaties (1969; entered into force in 1980), in UN, *Treaty Series*, volume 1155, I-18232, Articles 31–33. Strictly speaking, the Vienna Convention cannot be applied retroactively to the 1948 instruments and, moreover, it does not cover declarations such as the Universal Declaration. Nevertheless, it has routinely been applied *by analogy* to both instruments under scrutiny here.

use of these primary sources is dependent on their (debatable) characteristic as a mirror of the prevalent opinions at the time and it will self-evidently not be the final word on the matter. Nevertheless, the fact remains that the orthodox side of the debate called the role of the Holocaust in the post-war human rights revival “crucial,” while the dissident side assessed it as “unmentioned,” “a foundation myth,” and “deliberately silenced.” These assessments contradict each other. More clarity is needed.

Knowledge of the Holocaust during World War II

The causal roles of war and genocide in unchaining the human rights revival from 1945 to 1948 were different, with the former far surpassing the latter in importance (as underlined by Moyn). Indeed, the genocide factor is more ambiguous. One myth, however, can be dispelled from the start: the classical story that the reality of what is known now as the Holocaust was generally unknown to the Allied Powers until the concentration camps were liberated at the end of the war is false. As early as the summer of 1942, it gradually dawned upon the Allies that the Nazis were performing a large-scale persecution and extermination campaign against the Jews. News about the extermination of the Jewish people began to circulate in wider circles of the Allied governments during the summer of 1942 at the latest.³⁷ On 17 December 1942, the United Nations (at that time, the

³⁷ Republic of Poland (Ministry of Foreign Affairs), *The Mass Extermination of Jews in German Occupied Poland – Note Addressed to the Governments of the United Nations on December 10th, 1942, and Other Documents* (New York: Roy Publishers, 1942 and London, New York, Melbourne: Hutchinson, 1942); *Foreign Relations of the United States: Diplomatic Papers, 1942, General; the British Commonwealth; the Far East* (Washington: State Department, 1960), volume 1, documents 41–69 (“Allied declarations condemning German atrocities in occupied territories”; “Proposal for the creation of a United Nations Commission for the Investigation of War Crimes”), <https://history.state.gov/historicaldocuments/frus1942v01/ch3>. See also Dan Plesch, *Human Rights after Hitler: The Lost History of Prosecuting Axis War Crimes* (Washington DC: Georgetown University Press, 2017), 69–86 (“When the Allies condemned the Holocaust”), 211–13 (“Timeline of the Allies’ principal political responses to Axis atrocities”); Gabriel Milland, “The Holocaust as It Occurred: Censorship in Britain, the US, the USSR, Sweden, Germany, and Nazi-occupied Europe,” *Censorship: A World Encyclopedia*, volume 2, ed. Derek Jones (London and Chicago: Fitzroy Dearborn, 2001), 1077–79; Andrew Buncombe, “Allied Forces Knew about Holocaust Two Years before Discovery of Concentration Camps, Secret Documents Reveal,” *Independent* (April 18, 2017); Oscar Rickett, “The Holocaust Prisoners Who Risked Their Lives to Sneak Evidence from Concentration Camps,” *Vice* (March 8, 2019), https://www.vice.com/en_us/article/wjmb9y/the-holocaust-prisoners-who

United Kingdom, the Soviet Union and the United States, supported by 28 other Allied countries) issued a “Declaration on the Persecution of the Jews.” It stated, among others, that “[T]he German authorities ... are now carrying into effect Hitler’s oft repeated intention to exterminate the Jewish people in Europe.”³⁸ On 1 November 1943, Franklin Roosevelt, Winston Churchill and Joseph Stalin issued a joint one-page “Moscow Declaration on Atrocities” denouncing the war crimes perpetrated by the Nazis and repeating their determination to punish the architects of these crimes.³⁹ This new declaration, though, did not explicitly mention Jewish victims. The truth in its full brutality became generally visible only as pictures were released of the dead and the survivors of the extermination camps, taken when they were liberated in 1945 – and this gave birth to the myth that the reality of the Holocaust was discovered only then.

It is certain that crystallized awareness of the Holocaust – and especially of its scale – came too late for it to play a central role in the drafting of the UN Charter (between October 1944 and June 1945) or the Charter of the International Military Tribunal at Nuremberg (between May and August 1945) that would punish the Nazi leaders responsible for crimes against peace, war crimes and crimes against humanity in the territories under Nazi command.⁴⁰ At the time, in the years 1945–48, the term “Holocaust” certainly *did* exist but it was *not* common and when it was used it was *not* always to indicate the Judeocide or the “Final Solu-

risked-their-lives-to-sneak-evidence-from-concentration-camps; Rafael Medoff, “The Rabbi, the Telegram, and the Holocaust,” *History News Network* (August 28, 2019), <https://historynews-network.org/article/172880>. Plesch (70–71) writes that the USSR had issued notes regarding Nazi German atrocities, including pogroms, as early as November 1941.

³⁸ The original statement can be found in its entirety in a long quote by Secretary of State for Foreign Affairs Anthony Eden, in House of Commons Debates. Hansard volume 385: 2083; Commons Sitting, Jews [German barbarities], United Nations Declaration (London 17 December 1942), <https://api.parliament.uk/historic-hansard/commons/1942/dec/17/united-nations-declaration>.

³⁹ *Declaration of German Atrocities* [signed by Roosevelt, Stalin, Churchill] (Moscow, November 1, 1943), https://www.cvce.eu/obj/moscow_declaration_on_atrocities_1_november_1943-en-699fc03f-19a1-47f0-aec0-73220489efcd.html.

⁴⁰ For Holocaust awareness during the Nuremberg trials, see William Schabas, *Genocide in International Law: The Crime of Crimes* (second edition; Cambridge: Cambridge University Press, 2009), 43–48, and Philippe Sands, *East West Street: On the Origins of Genocide and Crimes against Humanity* (London: Weidenfeld & Nicolson, 2016), 275–313, 327–75. They show that Moyn’s statement about the Nuremberg trials is untenable.

tion.” However, the fact that the hate-mongering Nazi propagandist Julius Streicher was sentenced to death in Nuremberg on charges of crimes against humanity and subsequently executed in October 1946 proves that the rejection of virulent anti-Semitism was important in these years. The term “Holocaust” *did* appear in the Israeli Declaration of Independence of 14 May 1948, but only by the late 1950s – after the Ulm Einsatzkommando trial of 1958 and the Eichmann trial of 1961 – did it become common as a name for the Nazi genocide of the Jews.⁴¹ Furthermore, generalized awareness of the Holocaust was a product of the late 1970s only.

It is also certain that the Nazi genocide, when it was on the mind of the drafters of the human rights instruments of the late 1940s, was usually immersed in a more general aversion to Nazi barbarity. Driven by the indomitable energy of the Polish-Jewish lawyer Raphael Lemkin, who was the first to call the extermination of the Jews a genocide, in 1944, this was sufficient to unchain the process which led to the Genocide Convention.⁴² As Annan recalled in 2004, the convention would be approved by the UN General Assembly one day before the Universal Declaration in 1948 – a mere four years after the term had been coined. Explicit and sustained awareness that one of the worst parts of that barbarity was a unique crime against the Jews, deserving of its own special names (Holocaust or Shoah), however, took more time.

Knowledge of the Holocaust in 1948

But there is another side. The fact that the term “Holocaust” was not used in these years does not mean that the realities behind it were absent from the minds of the drafters of the early human rights instruments. The views of the

41 Dirk van Laak, “Widerstand gegen die Geschichtsgewalt: Zur Kritik an der ‘Vergangenheitsbewältigung’,” in *Geschichte vor Gericht: Historiker, Richter und die Suche nach Gerechtigkeit*, eds. Norbert Frei, Dirk van Laak and Michael Stolleis (Munich: Beck, 2000), 15–19; Josh Fleet, “History and Meaning of the Word ‘Holocaust’: Are We Still Comfortable with this Term?” *Huffington Post* (January 27, 2012), https://www.huffingtonpost.com/2012/01/27/the-word-holocaust-history-and-meaning_n_1229043.html; Steve Friess, “When ‘Holocaust’ Became ‘The Holocaust’: An Etymological Mystery,” *New Republic* (May 18, 2015), <https://newrepublic.com/article/121807/when-holocaust-became-holocaust>; “Names of the Holocaust,” *Wikipedia* (retrieved September 20, 2018 and December, 10 2020), https://en.wikipedia.org/w/index.php?title=Names_of_the_Holocaust&oldid=860464844.

42 Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, 1944).

drafters of the Genocide Convention were straightforward: it was unthinkable that a Genocide Convention would have been adopted in 1948 without evidence of genocide during World War II. The claims of the dissidents in the debate who deny this are particularly weak here. The views of the drafters of the Universal Declaration are less straightforward. It is plausible to argue that, since the debates about the Genocide Convention and the Universal Declaration ran in parallel (roughly from December 1946 until December 1948), the drafters of both instruments were aware of each other's assignments. While the drafters of the Universal Declaration were arguably not directly impressed by the atrocities of World War II themselves, which is unlikely, they were certainly aware of the fact that a genocide treaty was being prepared at the same time. All in all, the influence of the Holocaust seems straightforward for the Genocide Convention and strong, though more indirect, for the Universal Declaration.⁴³

But what exactly did the drafters know – or could have known – about the Holocaust in 1948? The delegates preparing the Universal Declaration between late 1946 and late 1948 were extensively briefed about the war crimes of the Axis powers: they received a near-400-page report prepared by the UN War Crimes Commission at the request of the UN Secretariat. The report was distributed as from 15 May 1948 – six months before the Universal Declaration and the Genocide Convention were adopted. In contrast to what Kurz alleges – that the annihilation of European Jews does not feature as a major concern within the text⁴⁴ – it summarized the indictments, proceedings, and judgment of the International Military Tribunal at Nuremberg and described the Nazi crimes, including genocide, in detail.⁴⁵ Under the heading “Genocide,” for example, the first sentences read:

43 It is a fact, however, that the two main sponsors, Raphael Lemkin for the Genocide Convention and Eleanor Roosevelt for the Universal Declaration, disliked each other's projects. See Moyn, *Last Utopia*, 82, and David Mayers, “Humanity in 1948: The Genocide Convention and the Universal Declaration of Human Rights,” *Diplomacy & Statecraft* 26 no. 3 (September 2015), 457.

44 Kurz, “‘Hide a Fact’,” 38.

45 For the report, see UN War Crimes Commission, *Information Concerning Human Rights Arising from Trials of War Criminals: Report Prepared by the United Nations War Crimes Commission in Accordance with the Request Received from the United Nations* (UN Doc. E/CN.4/W.19) (May 15, 1948) (384 pages), <https://digitallibrary.un.org/record/669294?ln=en>. The Nuremberg tribunal is summarized at 22–71 and 310–46. See also UN War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (xx + 592 pages; London: UNWCC, 1948), <http://www.unwcc.org/wp-content/uploads/2017/04/UNWCC-history.pdf>.

Among the many and various types of murder and ill-treatment enumerated in the Indictment [of the Nuremberg Tribunal, *adb*], there is one which is of particular interest. It is stated therein that the defendants “conducted deliberate and systematic genocide, viz. the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, particularly Jews, Poles and Gypsies and others.” By inclusion of this specific charge the Prosecution attempted to introduce and to establish a new type of international crime.⁴⁶

The term Jews is used 79 times in the report, the term Jewish 24 times.

We have no way of knowing who among the drafters of the Universal Declaration or Genocide Convention read or inspected this report, although at least one of them referred to it during the drafting debates of the Universal Declaration. This was the Danish delegate Bodil Begtrup, vice-chairwoman of the Third Committee of the UN General Assembly, who observed in October 1948 that she had read in the report that the Nazis had used prisoners for medical experiments such as vivisection.⁴⁷ No other mentions of the report by delegates remain in the *travaux*. This does not mean, however, that they had not mentioned it nor that they had not read it or that they had not been influenced by it or by any other relevant documentation. On the other hand, as a piece of stand-alone evidence, the report also does not prove that the Holocaust was at the *origin* of the Universal Declaration and Genocide Convention. By May 1948, when the report was distributed, advanced drafts of both instruments already existed. However, detailed

46 UN War Crimes Commission, *Information Concerning Human Rights*, 49. Similar quotes on 37, 50–52, 318–319, 324, 326–36, 338–39, 343, 345, among others.

47 UN Doc. A/C.3/SR.109 (October 21, 1948), in *Universal Declaration*, ed. Schabas, 2302.

chronology is important here: the *travaux préparatoires* show that essential passages in these advanced drafts were substantially rewritten in the very last months and days before they were adopted. At times, these *travaux* read like a thriller.

Terms denoting the Holocaust in the *travaux préparatoires*

In an attempt to advance the solution to the question at stake, I tried to identify terms in the *travaux préparatoires* of the Genocide Convention and the Universal Declaration that indicate awareness of what happened to the Jews and other victim groups during the Holocaust. The selected terms had to be unambiguous. For example, the term “extermination” can be found 155 times in the *travaux préparatoires* of the Genocide Convention (and only twice in the *travaux* of the Universal Declaration) but upon closer inspection only 17 of these hits referred to “the extermination of the so-called ‘lower’ races,” only eight to “mass extermination,” and barely one to the genocide now known as the Holocaust (in the more inclusive phrase “mass extermination of Slav or Jewish populations”). In combination with “camp”, though, the term “extermination” gained enough specificity. Before I carried out the test, I assumed that I would find more hits for relevant terms in the *travaux préparatoires* of the Genocide Convention than in those of the Universal Declaration, for the simple reason that the Holocaust is a crime and that the Genocide Convention is an instrument of criminal law, whereas the Universal Declaration is an instrument of human rights law. In addition, I did not expect an abundance of hits because the nature of the *travaux préparatoires* – pragmatic and focused discussions on the wording of texts – did not make them particularly prone to long and detailed debates about past atrocities. The results of my term searches are listed in Table 1:

Table 1: Holocaust indicators in the *travaux préparatoires* of the Genocide Convention and the Universal Declaration (1946–48)

Terms and their frequencies in (a) the *travaux préparatoires* of the Genocide Convention and (b) the *travaux préparatoires* of the Universal Declaration, with mention of the speakers' origin:
Anti-Semitism: (a) 2 (Luxembourg; Uruguay); (b) 3 (Hebrew Society of Argentina, United Kingdom, USSR).

Cassin, René: (a) 2; (b) 955.

Concentration camp (*): (a) 7 (UN Secretariat Human Rights Division x2, Ad Hoc Committee on Genocide, Byelorussian SSR, Czechoslovakia, Poland, United Kingdom); (b) 13 (American Federation of Labor x4, Poland x2, United Kingdom x2, USSR x2, France, Lebanon, Ukrainian SSR).

Cremation oven, crematorium: (a) 6 (Ad Hoc Committee on Genocide x2, France x2, USSR, Canada); (b) 0.

Death camp: (a) 0; (b) 1 (USSR).

Endlösung: (a) 0; (b) 0.

Extermination: (a) 155; (b) 2.

Extermination camp: (a) 1 (USSR); (b) 0.

Final Solution (**): (a) 0; (b) 0.

Gas (asphyxiating, noxious, poison): (a) 6 (Ad Hoc Committee on Genocide x3, Poland, UN Secretariat Human Rights Division, USSR); (b) 0.

Gas chamber: (a) 5 (Byelorussian SSR, China, Denmark, USSR, Yugoslavia); (b) 0.

Ghetto: (a) 3 (Ad Hoc Committee on Genocide, Byelorussian SSR, USSR); (b) 1 (Byelorussian SSR).

Holocaust: (a) 0; (b) 0.

Jew, Jewish (***) : (a) 23 (World Jewish Congress x4, France x3, Yugoslavia x3, Pakistan x2, Poland x2, USSR x2, Byelorussian SSR, Czechoslovakia, Syria, United Kingdom, United States, Venezuela, unidentifiable); (b) 11 (Afghanistan x2, France x2, USSR x2, Czechoslovakia, India, Netherlands, Uruguay, World Jewish Congress).

Judeocide: (a) 0; (b) 0.

Lemkin, Raphael: (a) 37; (b) 0.

Massacre of Jews: (a) 1 (USA); (b) 0.

Mass extermination of Jews: (a) 1 (USSR), (b) 0.

Shoah: (a) 0; (b) 0.

(United Nations) War Crimes Commission: (a) 1 (UN Secretariat Human Rights Division); (b) 8 (UN Secretariat Human Rights Division x4, USSR, USA, Australia, Denmark).

(*) Two of the 13 uses of “concentration camp” referred to the Gulag, not to Nazi camps.

(**) One mention of “Final Solution” had a different (literal) meaning.

(***) Except as part of proper names such as World Jewish Congress.

Note: Next to the USSR, the Byelorussian and Ukrainian SSR had full UN membership status, which was the result of a 1945 compromise that had also granted membership status to India and the Philippines (which were colonies at the time).

Source: Compiled by Antoon De Baets.

We can infer from Table 1 that, although terms such as Holocaust, Judeocide, or Shoah were not used, a moderate awareness of Holocaust-related phenomena already existed in 1946–48 and that it was shared among many delegations and institutions. Naturally, states on whose territories the Holocaust had unfolded – in particular the USSR – tended to refer to its reality more often. As predicted, the use of these terms was clearly more pronounced during Genocide Convention discussions. Speakers such as John Maktos (USA), Hartley Shawcross (United Kingdom), Milan Bartos (Yugoslavia), Henri Donnedieu de Vabres (France), Alexander Bramson (Poland), and Spacek (Czechoslovakia, first name unknown) mentioned the Jews as victims of the Nazi genocide. For example, Maktos, speaking in his capacity as chairman of the Ad Hoc Committee on Genocide, declared during a meeting on 8 April 1948: “The fact which initiated the General Assembly resolution [on genocide, on 11 December 1946, *adb*] had been the systematic massacre of Jews by the nazi authorities during the course of the last war.”⁴⁸ There is no doubt: the atrocities behind what we now call the Holocaust *were* mentioned during these important talks, *not* casually, *not* in passing but also *not* persistently or ubiquitously. And they were mentioned by a broad spectrum of speakers from all over the world and depicted in their precise contours, those of an unprecedented genocide.

The concluding debates of 9 and 10 December 1948

In order to grasp the “circumstances of conclusion” of the Genocide Convention and the Universal Declaration, we can zoom in on the situation at the Palais de Chaillot in Paris on 9 and 10 December 1948, the days on which the UN General Assembly adopted the Genocide Convention and the Universal Declaration respectively, in order to see whether other convincing proof of “Holocaust awareness” can be found. Over these two dense and long days, no less than six UN General Assembly plenary meetings took place, all of them summarized in the *travaux préparatoires*. Meetings 178 and 179 on 9 December were devoted to final speeches on the Genocide Convention and to voting on it; meetings 180 through 183 on 9 and 10 December contained the final

⁴⁸ UN Doc. E/AC.25/SR.5 (April 16, 1948), in *Genocide Convention*, eds. Abtahi and Webb, 727.

addresses on the Universal Declaration and voting on it.⁴⁹ The last discussions about the Genocide Convention on 9 December 1948 were immediately followed by the first about the Universal Declaration, on the same day.

Apart from the Australian judge Herbert V. Evatt, who chaired all the meetings, there was little overlap between the 22 speakers on the Genocide Convention and the 35 speakers on the Universal Declaration: only Wahid Fikry Raafat from Egypt, Juliusz Katz-Suchy from Poland, and Zdenek Augenthaler from Czechoslovakia spoke on both occasions. In his address on 10 December, Raafat called both instruments a “real step forward.”⁵⁰ The fact that on 9 December in particular the delegates working on both instruments happened to be on the same spot and could meet, very probably meant that some of the speakers at the Universal Declaration meetings were present at the Genocide Convention debates or had heard about them directly from their fellow diplomats and vice versa. On 9 December, delegates Kaylan Sundaram from India, Ricardo Alfaro from Panama, and Gerald Fitzmaurice from the United Kingdom referred to the forthcoming Universal Declaration debates during their concluding speeches about the Genocide Convention.⁵¹ Other examples were Pakistani delegates Shaista Ikramullah and Mohammed Zaf-ullah Khan. In her speech about the Genocide Convention on 9 December, Ikramullah pointed to the forthcoming Universal Declaration;⁵² in his speech on 10 December, Khan referred to the 179th plenary meeting of the previous day, which he clearly attended in the audience; he called both the Genocide Convention and the Universal Declaration epoch-making events.⁵³ All this points to the possibility of mutual influences, not to their probability, let alone to something particularly remarkable about the Holocaust. But there is more.

On 9 December, during the concluding debates on the Genocide Convention, the minutes of the plenary of the UN General Assembly reported Soviet delegate Platon Morozov as saying:

49 Footage of parts of these UN General Assembly plenary meetings can be watched via <https://media.un.org/en>.

50 UN Doc. A/PV.183 (December 10, 1948), in *Universal Declaration*, ed. Schabas, 3072–73.

51 UN Doc. A/PV.178 (December 9, 1948) and UN Doc. A/PV.179 (December 9, 1948), in *Genocide Convention*, eds. Abtahi and Webb, 2059, 2066, 2069.

52 UN Doc. A/PV.178 (December 9, 1948), in *Genocide Convention*, eds. Abtahi and Webb, 2051.

53 UN Doc. A/PV.182 (December 10, 1948), in *Universal Declaration*, ed. Schabas, 3053.

The crime of genocide formed an integral part of the plan for world domination of the supporters of racial ideologies. Mr. Morozov quoted some examples of the crime, based on the records of the Nurnberg Tribunal. All those quotations showed that *the mass extermination of Slav or Jewish populations formed part of a plan* [my italics, *adb*] the implementation of which was made possible by an intensive propaganda campaign for the enslavement or destruction of races regarded as inferior. That propaganda was responsible for millions of deaths in Eastern Europe as well as in other countries, particularly France.⁵⁴

The minutes of the Genocide Convention debate further report the speech of Byelorussian delegate, N. M. Khomusko, who

referred to the cases of genocide committed in the territory of his country. He mentioned specifically the instance of *the ghettos and concentration camps set up by the Hitlerite occupation forces in Minsk, where hundreds of Byelorussians, Poles and Jews died daily and where from August 1942 onwards the Germans had used gas chambers to hasten the extermination of the population* [my italics, *adb*].⁵⁵

If anything, these were two clear, loud, and direct references to the Holocaust, uttered in the high-profile UN General Assembly, although the term itself was not used, although each time the Jews were mentioned jointly with other groups, although both quotes came from the same debate, and although the texts of both instruments were quasi-finalized at the moment they spoke. Much of what Morozov and Khomusko said during the debates was bitterly contested by the delegates of other coun-

54 UN Doc. A/PV.178 (December 9, 1948), in *Genocide Convention*, eds. Abtahi and Webb, 2044.

55 UN Doc. A/PV.178 (December 9, 1948), in *Genocide Convention*, eds. Abtahi and Webb, 2061–62.

tries, but not so their comments about the Holocaust. On the contrary, the Communist references to the genocide were never contradicted by other delegates. The Genocide Convention was adopted with 56 votes to none; the Universal Declaration with 48 votes to none with 8 abstentions.

Conclusion

On balance, the information provided to the drafters of the Genocide Convention and the Universal Declaration, the semantic evidence found in the preparatory debates, and the micro-analysis of the events on 9 and 10 December 1948 definitely point into the direction of a moderate Holocaust awareness even if the term itself was not used. I call this Holocaust awareness “moderate” because my findings show that presence of the Holocaust is less overriding than the absolute tone of the orthodox side of the debate would have us believe. My results also show that there is no question of generalized deliberate silence, as some of the dissenters have claimed.

There is also one crucial phenomenon that the dissenters cannot explain: the curious post-1945 revival of the Kantian idea of human dignity. After Kant developed this concept in his moral philosophy, it tumbled into relative obscurity only to be revived in the late 1930s. The concept was fundamental to the Universal Declaration and all subsequent human rights declarations and conventions, which, in fact, are nothing but attempts to operationalize the central notion of human dignity. Nowadays, three-quarters of the constitutions of the world use the concept of human dignity explicitly. And for our debate it is revealing that precisely the German constitution of 1949 says in article 1: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.” The tremendous postwar success of the concept of human dignity is closely related to the fear of indignity as embodied by the international outcry triggered by the horrors of World War II. The Holocaust was prominently part of these “horrors” as it represented the most tragic attack on human dignity during World War II.⁵⁶

⁵⁶ See De Baets, “Does Inhumanity Breed Humanity,” 457–58. See also Antoon De Baets. “A

My conclusion also shows that sources that were only available partially and with great difficulty when Morsink or Moyn wrote their main works on the question in 1999 and 2010, can really throw new light on a debate. The conclusion is also interesting from another, comparative, perspective. What I did not mention until now is that I briefly sketched the debate for the first time in 2012. The circumstances were different then. I wrote about it in the context of a broader essay that attempted to answer the more philosophical question of whether instances of atrocities in history tended to trigger waves of humanity.⁵⁷ Consequently, I had far less space at my disposal. Above all, I depicted the debate then without direct knowledge of the *travaux préparatoires*. I was unaware of those of the Genocide Convention, although they were published in 2008; and those of the Universal Declaration were not yet published (they would in 2013). My conclusion then was basically the same as the one I draw now, although in 2012 it was slightly more in favor of the orthodox view. While I am still convinced that this orthodox view prevails in the debate, the dissident side has a very serious point. It is a bold point that has the quality to surprise readers like me who thus far had unthinkingly assumed that the orthodox view was settled once and for all. But the theses of the dissidents are too iconoclastic when checked against the evidence they offer.⁵⁸ The facts derived from the sources, and even more the interpretation of these facts, offer a more nuanced and plausible picture. However, rereading my 2012 discussion of the debate in light of my present findings makes me more cautious. I was perhaps too hurried in “deciding” the debate in 2012. All the more reason to be prudent and humble when taking sides in debates about history at any time.

Successful Utopia: The Doctrine of Human Dignity,” *Histoirein: A Review of the Past and Other Stories*, no. 7 (2007): 71–85.

57 See De Baets, “Does Inhumanity Breed Humanity,” 459–60.

58 See the evaluation of his views in my “Does Inhumanity Breed Humanity,” 460–62, and my observation above that his view on the Nuremberg tribunal is untenable.

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