
Raphael Lemkin: A Tribute

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Abstract

This short article honours Professor Raphael Lemkin (1900–1959), author of the term ‘genocide’ and initiator of the Convention for the Prevention and Punishment of the Crime of Genocide, on the occasion of the 50th anniversary of his death. The article provides a brief overview of his career in international law and highlights Professor Lemkin’s key ideas which shaped the Genocide Convention.

The man spoke nine languages and was able to read 14. He studied in France, Italy, and Germany, represented his native country at international law conferences, fought a guerrilla war against Nazism, held professorships at the University of Stockholm (Sweden), and at Duke, Yale, and Princeton Universities (United States), acted as an advisor to Justice Robert Jackson at the Nuremberg trial, received the Grand Cross of Cespedes from Cuba in 1950 and the Stephen Wise Award of the American Jewish Congress in 1951, was nominated by Winston Churchill for the Nobel Peace Prize in 1950, and again in 1952, and in 1989 was posthumously awarded the Roosevelt Freedom Medal for his enduring contribution to the principle of the freedom of worship. His name is probably immortal to all students of international law since he drafted the Convention for the Prevention and Punishment of the Crime of Genocide.¹ And yet, towards the end of his remarkable life, he still unassumingly referred to himself as an ‘unofficial’ man . . . His name was Raphael Lemkin.

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¹ The Convention was adopted by Res 260 (III) A of the UN GA on 9 Dec. 1948. Despite some critical views on the value of the Convention, such as those of James J. Martin (1916–2004), it became, over decades, more influential than it could have possibly been in Raphael Lemkin’s lifetime. As of 18 July 2007, the Convention had 140 states parties. For its ratification status see the UNCHR website at: www2.ohchr.org/english/bodies/ratification/1.htm (last accessed 10 Feb. 2009).

As the major accomplishment of his life turned 60 on 9 December 2008, and in 2009 50 years have elapsed since Raphael Lemkin's death, it seems appropriate to honour his name and his contribution to international law which, following his life, was not the same as it had been before. During the years of his unceasing efforts to promote the Convention, he was regarded by some sceptics as a 'dreamer' and a 'fanatic'. However, his contribution to international law proved to be more significant than his critics' arguments. The Convention he had proposed established an international criminal law regime for the suppression of a heinous crime which had hitherto remained unpunished. It is true that the Convention was in itself not sufficient to prevent the occurrence, in the 1990s, of the crime of genocide in the former Yugoslavia and Rwanda.² In the language of the Convention's Preamble, 'in order to liberate mankind from such an odious scourge'³ more consistent international cooperation – in other words, a stronger political will combined with an earnest humanitarian conscience – was also needed. And it was precisely this essential condition that Raphael Lemkin pointed to just over two years before the Convention was adopted.⁴ Now, six decades after the pioneering event, it may be wise to remember an outstanding lawyer who made his dream of a better international law come true.

Raphael Lemkin was born on 24 June 1900 in a village in what is now Belarus.⁵ Not much is known of his early years; while it was alleged that he was born into a farmer's family, apparently his relatives were prosperous enough to facilitate his prestigious law education in Poland and then in Germany and, later, his doctorate in philology from the University of Lwow. His first professional appointment was as Secretary to the Court of Appeals in Warsaw, where he later became a public prosecutor. Criminal law must have been Dr Lemkin's passion from his early years in the profession. From 1929 to 1935, he served as secretary of the Committee for Codification of the Laws of the Polish Republic. It was during that period that he took part as a member of the Polish delegation in the Fifth International Conference for the Unification of Criminal Law, held in Madrid in 1933, where he made an enterprising proposal to criminalize 'acts of barbarism and vandalism'. The formula must have been worded so directly as a reaction to the recent Spanish Civil War's atrocities which, in the author's opinion, could apparently not be referred to by way of euphemism. However, Dr Lemkin's initiative on such a sensitive legal issue brought him into disfavour with the Polish government, which, at the time,

² See *Swissinfo*, 'Value of UN Genocide Convention Questioned', available at: www.humanrights-geneva.info/Value-of-UN-Genocide-Convention,3933 (last accessed 10 Feb. 2009).

³ Convention, *supra* note 1, 3rd preambular para.

⁴ Lemkin, 'Genocide', 15 *American Scholar* (1946) 227, at 230.

⁵ Unlike in some sources, the correct date of 24 June 1900 appeared in an entry in *Who Was Who in America* (1960), iii, 511, and on the gravestone erected by Lemkin's family a year after his burial at Mt Hebron Cemetery in Queens, New York. There is no confusion, however, about Raphael Lemkin's birthplace. All sources refer to Bezwodne as a village near Wolkowysk (now Volkovisk), a small town in today's Belarus. At the time of Lemkin's birth, Wolkowysk was part of Tsarist Russia. Between the World Wars, it was located in Poland. Between 1945 and 1991 it was part of the Belorussian Soviet Socialist Republic.

was seeking appeasement with Nazi Germany. He was compelled to resign from the Committee in 1935 and returned to private practice.

Until the outbreak of the Second World War, Dr Lemkin worked as a successful academic in the domain of private (national and international) law. In 1938 in Cracow, he published (as an editor) a 725-page book entitled *Prawo karne skarbowe (Penal Fiscal Law)*. The volume dealt thoroughly with Polish national revenue laws and tax evasion issues in that country. Another sizeable volume on private law, *La réglementation des paiements internationaux*, was published in 1939 in France; the 422-page book analysed the key trends in the complex financial world of the 1930s. However, even during this period, he was seemingly unable to put his primary professional interest – criminal law – out of his mind. In 1939, he published simultaneously in the United States and the United Kingdom an English translation of Poland's Criminal Code of 1932 and of the Law on Minor Offences. This was published in partnership with Professor Malcolm McDermott, a member of the North Carolina Bar and a faculty member at the Duke University Law School, who would quite soon have a supportive role to play in Dr Lemkin's early years in the United States.

Soon after his arrival in the United States in 1941, Dr Lemkin delivered a lecture at the American Bar Association's annual session on the legal framework of Nazi Germany's control over foreign economies. This lecture was largely based upon his then current research the conclusions of which Columbia University Press released in November 1944, and which has ever since been considered among the finest examples of 20th-century legal and political thought.⁶ Soon thereafter Professor Malcolm McDermott recommended Dr Lemkin for a teaching appointment at Duke, which he soon had to combine with a post at the United States Board of Economic Warfare and later, as well as at the War Department, as a foreign affairs advisor.

It was in *Axis Rule*⁷ that Dr Lemkin used the term 'genocide' for the first time. He produced the notion after having heard Prime Minister Winston Churchill refer to Nazi atrocities as 'a crime without a name'.⁸ The new definition included a state-sponsored, coordinated plan aimed at the physical annihilation of a national group or groups. More specifically, such destruction could manifest itself in the disintegration of the political, social, economic, religious, and cultural institutions – the very foundations of the concept of nationality. Raphael Lemkin's book became a useful source of information, methodology, and evidence at the Nuremberg trial, where its author acted an adviser to Justice Robert Jackson. In response to opponents of the International Military Tribunal, who argued that it was applying *ex post facto* laws, Dr Lemkin argued:

The principle of *ex post facto* in criminal law tends to protect the individual's liberty. A person should not be oppressed by the state when he commits an act which seems to him fair and decent and which becomes a crime only through subsequent legislation. . . Murders and

⁶ R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944).

⁷ *Ibid.*

⁸ In a speech broadcast in August 1941, Winston Churchill said, 'We are in the presence of a crime without a name'.

atrocities as such were prohibited also in Germany. Hitler simply exempted his henchmen and himself of responsibility for such crimes. Is the restoration of such responsibility for crime an *ex post facto* law? Is it a destruction of the guaranties of individual liberty? Do we not adhere to the principle that no liberty can justify crime, oppression, and cruelty?⁹

As the development of international law after the Second World War showed, Dr Lemkin was right in many of his arguments: by 1950, the International Law Commission was to have derived from the Nuremberg Tribunal's Charter and Judgment a number of principles,¹⁰ which would soon after be recognized as laying the ground for the development of international criminal law, and specific provisions concerning individuals' liability for the commission of international crimes would be integrated in regional and universal human rights law instruments.¹¹ In turn, as the United Nations was founded in 1945, Dr Lemkin suggested that Members of the new universal Organization, together with as many non-members as possible, should enter into an international treaty for the purpose of defining genocide as an international crime and preparing the ground for its prevention and punishment in time of peace and war. According to him, the treaty should have embodied, *inter alia*, the following principles:

- The crime of genocide should be recognized as a conspiracy to exterminate national, religious, or racial groups. The overt acts of such a conspiracy may consist of attacks against the life, liberty, or property of members of such groups merely because of their affiliation with such groups. The formulation of the crime might be as follows: '[w]hoever, while participating in a conspiracy to destroy a national, racial or religious group, undertakes an attack against life, liberty or property of members of such groups is guilty of the crime of genocide';
- The crime so formulated should be incorporated in every national criminal code of the signatories. The defendants should be liable not only before the courts of the country where the crime was committed, but in the case of escape should also be liable before the courts of the country where they were apprehended;
- Persons accused of genocide should not be treated as political criminals for purposes of extradition. Extradition should not be granted except in cases where sufficient evidence existed to indicate that the requesting country would earnestly prosecute the culprits;
- Liability for genocide should rest on those who gave and executed the orders, as well as on those who incited the commission of the crime by whatever means, including the formulation and teaching of the criminal philosophy of genocide. Members of governments and political bodies which organized or tolerated genocide should be equally responsible;
- Independently of the responsibility of individuals for genocide, states in which such a policy was carried out should be held accountable before the UN Security Council.

⁹ Lemkin, 'The Legal Case Against Hitler', *The Nation*, 24 Feb. 1945, at 205.

¹⁰ See International Law Commission, 'Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, with commentaries', II *Yrbk Int'l L Commission* (1950) 374.

¹¹ See, e.g., the International Covenant for Civil and Political Rights (ICCPR), 6 ILM (1967), Art. 15(2); European Convention on Human Rights (ECHR), 5 ETS (1950), Art. 7(2).

The Council could request the International Court of Justice to deliver an advisory opinion on whether genocide had taken place within a given country before invoking, among other things, sanctions to be levelled against the offending country. The Security Council could act either on its own initiative or on the basis of petitions submitted by members of interested national, religious, or racial groups residing either within or outside the country in question;

- The Hague Convention and other pertinent treaties should be amended to the effect that an international body (such as the International Red Cross) should have the right to supervise the treatment of civilian populations by occupants in times of war in order to ascertain whether genocide was being practised by such occupants;
- A multilateral treaty for the prevention and punishment of genocide should not preclude two or more countries from entering into bilateral or regional treaties to provide for more extensive protection against genocide.¹²

Most of these principles have, in fact, been integrated into the final text of the Convention. Under Article I, the Contracting Parties confirmed that genocide, whether committed in time of peace or in time of war, would be regarded as a crime under international law which they would undertake to prevent and to punish. Article II described the crime of genocide – in a manner even more detailed than Dr Lemkin had originally suggested¹³ – and Article III laid down that, along with genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide should be punishable. Article IV provided that persons committing genocide or any of the other acts listed in Article III should be punished, whether they were constitutionally responsible rulers, public officials, or private individuals, and Article V required the Contracting Parties to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the Convention, and, in particular, to provide effective penalties for those guilty of genocide or any of the other acts listed in Article III.

As far as the applicable criminal procedure was concerned, the Convention laid down that those charged with genocide or any of the other acts listed in Article III should be tried by competent tribunals of the states in whose territories the acts in question were committed, or by such international penal tribunal as might have jurisdiction with respect to those Contracting Parties which accepted its jurisdiction (Article VI); the latter aspect of the provision would be given *ad hoc* effect with the establishment of the International Criminal Tribunal for Rwanda in 1994, and more

¹² See Lemkin, *supra* note 4, at 230.

¹³ Article II states: 'In the present Convention, genocide means any of the following acts 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.'

permanent jurisdiction over the crime would be constituted under the 1998 Rome Statute of the International Criminal Court (Articles 5 and 6). In addition, Article VII laid down that genocide and the other acts listed in Article III should not be considered as political crimes for the purpose of extradition.

According to the evidence of reporters who went looking for Dr Lemkin after the adoption of the Convention by the UN General Assembly on 9 December 1948 to share in his triumph, they found him in a darkened assembly hall, weeping in solitude. Between 1948 and his untimely death, Dr Lemkin delivered numerous public lectures, campaigning for the ratification of the Convention he had initiated. Dr Lemkin died of a heart attack at the public relations office of Milton H. Blow in New York City on 28 August 1959. A sad twist of fate – the funeral of the ‘unofficial man’ who had devoted his life to the remembrance of millions of victims of genocide was attended by only seven relatives and close friends. It is our hope that more people will gratefully pay tribute to him now 50 years after his death.