
‘In the Beginning, There Was No Word ...’

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‘We are in the presence of a crime without a name,’¹ Sir Winston Churchill remarked in a broadcast speech in 1941 with respect to German atrocities. But how to gauge the most heinous killings, the ‘crime of crimes’,² the very epitome and evidence of the inhumanity of humans? It was Raphael Lemkin who noted in his seminal analysis of the gigantic Nazi scheme, *Axis Rule in Occupied Europe*, published in 1944, that ‘[n]ew conceptions require new terms’,³ and thus he created the neologism ‘genocide’ to make the inexplicable explicable. In the aftermath of the war, Lemkin laboured relentlessly to conceive the Genocide Convention. On the occasion of the 70th anniversary of the signing of the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948 we pay tribute to its ‘founding father’ – not an empty phrase, considering that Lemkin fiercely dedicated most of his life to the fight against the annihilation of groups and to the adoption of the Convention. He significantly forged it, and even referred to it at times as his child.

Born in 1900 on a farm in eastern Poland, now Belarus, Lemkin’s interest was captivated from early on by the extirpation of certain groups. Despite his own idyllic childhood, as soon as he could read he devoured books on the persecution of minority groups.⁴ At the age of 11, he learned about Nero’s persecution of Christians in the Roman Empire. He was utterly aghast and questioned his mother as to why nobody intervened when the Romans fed the Christians to the lions simply for believing in Christ. At age 18, he was shocked by the destruction of the Armenians and noted, ‘A nation was killed and the guilty persons set free.’⁵ To Lemkin, it was deeply dismaying that government could essay to destroy an entire group due to the absence of any law, while an individual, accused of lesser-scale atrocities, would be criminally charged. When he

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¹ Prime Minister Winston Churchill’s Broadcast to the World about the Meeting with President Roosevelt, 24 August 1941, available at <https://www.ibiblio.org/pha/timeline/410824awp.html>.

² Judgment and Sentence, *Prosecutor v. Jean Kambanda* (ICTR 97-23-S) International Criminal Tribunal for Rwanda, 4 September 1998, § 16.

³ R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944), at 79.

⁴ D.-L. Frieze (ed.), *Totally Unofficial. The Autobiography of Raphael Lemkin* (2013), at 1.

⁵ P. Sands, *East West Street* (2016), at 143.

went to law school in Lwów – interestingly, the same school where the other prominent lawyer of the Nuremberg trial, Hersch Lauterpacht, deviser of the term ‘crimes against humanity’ as a legal term of art, was taught by the same teacher – he confronted his professor with this iniquitousness. His tutor pointed to sovereignty: any intervention in internal affairs would be as unlawful as preventing someone from slaughtering his own chicken. ‘But’, Lemkin replied, ‘the Armenians were not chickens.’⁶

After graduation, Lemkin worked for several years as a public prosecutor. While criminal law remained his primary interest, he was a truly ‘universalist’ lawyer and intellectual, speaking at least 12 languages and publishing extensively on a wide array of topics.⁷ When Lemkin served as a member of the Polish delegation at the Fifth International Conference for the Unification of Criminal Law, he submitted a visionary proposal to ‘criminalize acts of barbarism and vandalism’ at the international level. This proposition – voiced in the same year as Hitler’s ‘*Machtergreifung*’ (1933) – foreshadowed his efforts and merit to create a universal framework to fight against the destruction of groups. Regretfully, Lemkin’s innovative pamphlet was proposed at a time when Poland was shifting towards the Reich, causing him to resign from his position as public prosecutor. He moved into private practice and became a successful commercial lawyer in Warsaw until the war broke out.

While the fight against persecution and extermination was a guiding motif throughout Lemkin’s life, it was in 1940 in Lithuania, after he had been bombed out of his home, that the previously prolific lawyer suddenly found himself as a refugee and had a grand epiphanic moment, to which he bore witness:

The big lawyer’s fees, the idle talk about our endless professional wisdom, that expensive furniture, the country house will never return. Should they ever come my way again, I would not let them cross my threshold. They never made me really happy, they only intoxicated me for a while. As a public prosecutor and lawyer I served power and enjoyed false prestige. I really lived only when I was fighting for an ideal. I will devote the rest of my life to my work – outlawing the destruction of peoples.⁸

And so he did. Lemkin made this fight his destiny. On his 14,000-mile abscondence to freedom via Sweden, Russia, Japan and Canada, until he arrived in the USA, he carried with him suitcases full of Nazi decrees and ordinances. While based at Duke University, he started to undertake the Sisyphean task of thoroughly analysing all these documents. After President Roosevelt declined to react to his memorandum to outlaw mass killings, Lemkin decided to publish his investigation in a book, which ultimately turned into an almost encyclopaedic analysis of the occupation policies. In *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Lemkin identified a three-tiered common theme, beginning with *denationalization*, followed by *dehumanization*, and resulting in *extermination*, in a cultural sense.⁹ Chapter Nine of the book introduced, for the first time, the term ‘genocide’. The

⁶ *Ibid.*, at 143.

⁷ Sayapin, ‘Raphael Lemkin: A Tribute’, 20 *European Journal of International Law (EJIL)* (2009) 1157, at 1158.

⁸ Frieze, *supra* note 4, at 66.

⁹ Sands, *supra* note 5, at 166; see also Bilsky and Klagsbrun, ‘The Return of Cultural Genocide’, 29 *EJIL* (2018) 373.

precise evolution of the term remains unclear. An adequate designation was needed to enunciate the unheard horror of meticulously planned and orchestrated annihilation of a group to which previous expressions seemed euphemistically unfitting. 'Mass murder' may have seemed inappropriate since it only added a quantitative auxiliary, besides the fact that 'Mörder' is a somewhat questionable Nazi-infused concept ('Tätertypenlehre'). 'Germanization' was infelicitous due to the harmless association of homogeneity. Genocide, in turn, crystallizes the unparalleled horror of perfidious, systematic mass extermination. In retrospect, it is not so surprising that Lemkin invented the word – compounding the Greek prefix *genos* (γένος, meaning 'race' or 'tribe') and the Latin suffix *cide* ('killing') – since Lemkin not only majored in law but also claimed to have studied philology in Heidelberg and Lwów.

Lemkin's crucial examination of the Nazi plot immediately led to a job at the Board of Economic Warfare in Washington DC. After the war, his meticulous analysis served as an important source of detailed information for the Nuremberg trials and resulted in his advising chief prosecutor Justice Robert Jackson. Lemkin worked uncompromisingly and to the point of self-abandonment to ensure that the emerging international order recognized that 'nowhere in history of mankind did six million people die so calmly',¹⁰ and provided a framework to prohibit and prosecute the destruction of groups for the future. On the night after the unanimous adoption of the Convention, he collapsed. Upon recuperating, he self-diagnosed 'genociditis: exhaustion from the work on the Genocide Convention'.¹¹ For almost a decade, he had sacrificed everything for this unparalleled effort to outlaw mass killings and to promote the Convention, giving his life an almost tragic trait. Although he was nominated for the Nobel Peace Prize several times and lectured at some of the most prestigious US universities (among them Duke and Yale), he was almost impecunious when he died at the age of 58 in Manhattan.¹² More than once, he gave up his position at esteemed universities to lobby for the Convention, and his destitution forced him to noxious nourishment, disadvantaging his already precarious health. Having lost large parts of his family in the holocaust – his parents were gassed in Treblinka shortly before he coined the term 'genocide' – and living in Manhattan's Upper West side in a frugal single-room apartment without a water closet, this gifted, effusive, and remarkable individual suffered in isolation and solitude. Due to his nomadic life and being entirely absorbed in his work, only a handful of relatives and close friends attended his funeral at Mt Hebron Cemetery in New York.

For a long time, Lemkin's name was not widely recognized, but recently we have witnessed the emergence of a vivid interest in his life and achievements.¹³ Most recently, Philippe Sands' profound and bestselling book, *East West Street*, brought this

¹⁰ Frieze, *supra* note 4, at 49.

¹¹ *Ibid.*, at 179.

¹² See Roaming Charges, in this issue, at 1353.

¹³ J. Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (2008); D. Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (2016); D. J. Schaller and J. Zimmerer (eds.) *The Origins of Genocide. Raphael Lemkin as a Historian of Mass Violence* (2009); see also the documentary film *Watchers of the Sky*, directed by Edet Belzberg (2014).

‘unofficial man’, a forgotten hero of international law shaded and eclipsed by other prominent figures, his due renown.¹⁴ However, a peculiar and deplorable void of reception with regard to Lemkin remains. His achievements sadly and regrettably still do not receive the recognition in the country responsible for the wholesale extermination of the European Jewry. Most German hornbooks on international law do not mention his name, and there is hardly any German literature on Lemkin’s merit. This may be because, in the country where the holocaust originated, the Genocide Convention lamentably operates under the name ‘*Völkermordkonvention*’, taking prominence over Lemkin’s incisive neologism.

‘The fact of genocide is as old as humanity’,¹⁵ Jean Paul Sartre once remarked. But we had to wait for Raphael Lemkin and his unequalled dedication, idealism and persistence to provide us with a term for the ineffable. When Lemkin discussed his neologism, prior to the Convention drafting, with Egypt’s ambassador to the UN and related it to the ancient Egyptian theory that words precede things, Lemkin stated ‘they help to crystallize our thinking. They become symbols for action, they are rallying points for past human experiences and a program for the future.’¹⁶ Accordingly, Lemkin not only invented a term but firmly enshrined in international law an imperative to outlaw the most egregious abuse. It is for us to turn this imperative into reality, and ‘liberate mankind from such odious scourge’.¹⁷ In the beginning, there was no word, now the word is with us, and we are empowered to eradicate this ‘problem from hell’.¹⁸

¹⁴ Sands, *supra* note 5; see also the EJIL: live! Interview with Professor Philippe Sands, available at <http://ejil.org/episode.php?episode=27>.

¹⁵ Sartre, ‘On Genocide’, in R. A. Falk, G. Kolko, and R. J. Lifton (eds), *Crimes of War* (1971) 534.

¹⁶ Frieze, *supra* note 4, at 137.

¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, GA Res. 260 A (III), 9 December 1948, 3rd preambular.

¹⁸ S. Powers, *A Problem from Hell. America and the Age of Genocide* (2002).