Rafał Lemkin, „Ludobójstwo jako zbrodnia w świetle prawa międzynarodowego" - Tekst angielski

Introduction The practices of the National Socialist Government in Germany resulting in destruction of entire human groups gave impetus to a reconsideration of certain principles of international law. The question arose whether government can destroy with impunity its own citizens and whether such acts of destruction are domestic affairs or matters of international concern. Practically speaking, should the moral right of humanitarian intervention be converted into a right under international law[1]? If the destruction of human groups is a of international concern, then such acts should be treated as crimes under the law of nations, like piracy, and every state should be able to take jurisdiction over such acts irrespective of the nationality of the offender and of the place where the crime was committed. In line with this thought the present writer submitted a proposal[2] to the International Conference for Unification of Criminal Law held in Madrid in 1933 to declare the destruction of racial, religious or social collectivities a crime under the law of nations (delictum iuris gentium). There was envisaged the creation of two new international crimes: the crime of barbarity, consisting in the extermination of social collectivities, and the crime of vandalism, consisting in destruction of cultural and artistic works of these groups. The intention was to declare these crimes punishable by any country[3] in which the culprit might be caught, regardless of the criminal's nationality or the place where the crime was committed. This proposal was not accepted. Much later, on November 22, 1946, during the discussion on genocide in the United Nations General Assembly, Sir Hartley Shawcross, United Kingdom Attorney General and delegate declared[4] that the failure of this proposal made it impossible to punish some of the serious Nazi crimes.

[1] Although some humanitarian intervention stigmatized religious persecutions by the use of not-quite-legal terms, it has always been felt that such interventions are based essentially on considerations of international morality. Compare to this respect the communication from Secretary of State Hay to Mr. Wilson, United States Minister to Romania, on July 17, 1902, in connection with the persecution of Romanian Jews: "This government cannot be a tacit party to such an international wrong" (Moore, Digest, Vol. VI, p. 364), but also instructions from Mr. Lansing to Ambassador Morgenthau to use his good offices for the "amelioration of conditions of the Armenians, informing Turkish Government that this persecution is destroying the feeling of good will which the people of the United States have always hold toward Turkey" (Foreign Relations, 1915, Supplement, p. 988).

[2] Raphael Lemkin, Le terrorism, in Actes de la Ve Conférence pour l'Unification du Droit pénal à Madrid (14–20.X.1933), and in particular by the same author the supplement to the above report entitled Les actes constituant un danger général (interétatique) considérés comme délits de droit des gens: Paris, Pedone, 1933.

[3] The formulation ran as follows: Art. 1) Whoever, out of hatred towards a racial, religious or social collectivity or with view of its extermination, undertakes a punishable action against the life, the bodily integrity, liberty, dignity or economic existence of a person belonging to such a c collectivity community, is liable, for the offense of Barbarism, to imprisonment for a period of ... unless punishment for the action is not envisaged in a more severe provision of the respective Code. Art. 2) Whoever, either out of hatred towards a racial, religious or social collectivity or with the goal of its extermination, destroys its cultural or artistic works, will be liable, for the crime of vandalism, to a penalty of ... unless his deed falls within a more severe provision of the given code. The above crimes will be prosecuted and punished irrespective of the place where the act was committed and of the nationality of the offender, according to the law of the country where the offender was apprehended.

[4] Journal of the United Nations, No. 41, 1946, p. 52.

The Term “Genocide” It was only in 1945 that the German war criminals were indicted, among other things on the on the charge of genocide, meaning the extermination of racial, or religious groups, especially the Jews, Poles, Gypsies, and others. The term and concept of genocide had been developed by this writer in his work Axis Rule in Occupied Europe[1]. The word genocide is a hybrid consisting of the Greek genos meaning race, nation or tribe; and the Latin suffix cide meaning killing. The realities of European life in the years 1933–45 called for the creation of such a term and for the formulation of a legal concept of destruction of human groups. The Nazis had embarked upon a gigantic plan to change permanently the population balance in occupied Europe in their favor. They intended to wipe out entirely the biological power of the neighbors of Germany so that Germany might win a permanent victory, whether directly through military subjugation or indirectly through such a biological destruction that even in the case of Germany’s defeat the neighbors would be so weakened that Germany would be able to recover her strength in later years. The crime of genocide involves a wide range of actions, including not only deprivation of life but also the prevention of life (abortions, sterilizations) and also devices considerably endangering life and health (artificial infections, working to death in special camps, deliberate separation of families for depopulation purposes and so forth). All these actions are subordinated to the criminal intent to destroy or to cripple permanently a human group. The acts are directed against groups, as such, and individuals are selected for destruction only because they belong to these groups. In view of such a phenomenon the terms previously used to describe an attack upon nationhood were not adequate. Mass murder or extermination wouldn’t apply in the case of sterilization because the victims not murdered, rather a people was killed through delayed action by stopping propagation. Moreover mass murder does not convey the specific losses to civilization in the form of the cultural contributions which can be made only by groups of people united through national, racial or cultural characteristics.

[1] Axis Rule in Occupied Europe, Washington: Carnegie Endowment for International Peace; 1944.

Nuremberg The evidence produced at the Nuremberg trial gave full support to the concept of genocide[1]. However, the International Military Tribunal gave a narrow interpretation to its Charter and decided that acts committed before the outbreak of the war were not punishable offenses. This decision of the Tribunal was to a great extent based on the rectification on an alleged error in the Charter. On October 6, 1945, the four prosecutors signed in Berlin a protocol amending the Charter to the effect that the semi-colon in Art. 6, paragraph (c), of the Charter between the words “war” and “or” has been erroneously substituted for a comma. The signatories wished to remove a discrepancy between the Russian text (which had a comma) on the one hand and the French and English texts on the other hands, which had a semicolon[2] between the above words Ultimately the Charter was interpreted so that inhuman acts and persecutions of the civilian population were punishable only when committed during or in connection with the war. From the point of view of international law, however, acts committed before the war by Germany on its citizens were more significant. Had the Tribunal punished such acts a precedent would have been established to the effect that a Government is precluded from destroying groups of its own citizens. The UN General Assembly Such was the legal status of the problem when the General Assembly met at Lake Success in October of 1946. The present writer was conscious of the great necessity of establishing a rule of international law which would make sure that “revolting and horrible acts” committed by a government on its own citizens, to use the words, of the Nuremberg Tribunal, should in the future not go unpunished. It was then necessary to return to the postulates submitted to the International Conference for Unification of Criminal Law held in Madrid in 1933.

[1] See especially statements by Sir Hartley Shawcross and Sir David Maxwell Fyfe for the British prosecution; and Champetier de Ribes and Dubost for the French prosecution, who elaborated at length and with great eloquence on the crime of genocide in the course of the Nuremburg proceedings. The concept of genocide was also used recently by the Chief of Counsel in subsequent Nuremberg proceedings, Brigadier General Telford Taylor, in the case against the Nazi doctors who experimented in order on human camps. In this classical genocide case the defendants practiced experiments in order to develop techniques for outright killings and abortions, on one hand, and sterilizations and castrations on the other hand. The present writer calls the first “ktonotechnics” (from the Greek ktonos meaning murder) and the second “sterotechnics” (from the Greek steiros meaning infertility or steirosis meaning infertility). Both “ktonotechnics” and “sterotechnics” were considered by the Nazi as very essential and served the purposes of genocide in its physical and biological aspects. As to various aspects and techniques of genocide see the writer’s volume cited in Chapter IX, Genocide. If and when “sterotecnics” achieves scientific character and is free of its genocidal purposes it could then qualify as sterology (the science of sterilization).

[2] The provision of the Charter as signed by the Representatives of the United States, France, Great Britain and the Soviet Union on August 8, 1945, reads as follows: “Art. 6 (c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war; or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whet violation of domestic law of the country where perpetuated.” See United Department of State, Executive Agreement Series, No. 17, p. 46

The writer discussed the situation with several delegates at Lake Success. Encouraged by their sympathetic understanding, he drafted a resolution a resolution which was signed by the representatives of Cuba, India, and Panama as sponsors[1]. With the strong support of the United States delegation, the resolution was placed on the agenda of the General Assembly. Later the matter was referred to the Legal Committee for discussion. The draft of the resolution consisted of two parts: The preamble referred to the destruction of racial, religious or national, groups in the past and stressed the losses to humanity in the form of cultural and other contributions. It further stated that genocide is a denial of the right of entire human groups in the same sense that homicide is a denial to an individual of his right to live, and that such a denial is contrary to the aims and purposes of the UN. In its part the resolution of the assembly called upon the Social and Economic Council to prepare a report on three matters; first, to declare genocide an international crime; second, to insure international cooperation in its prevention and punishment; and third, to recommend that genocide be dealt with by national legislation in the same way as other international crimes such as piracy, traffic in women and children, and others. The Genocide Resolution in the Legal Committee The resolution met with the sympathy of the Legal Committee[2], as well as with considerable support from public opinion[3]. Sir Hartley Shawcross proposed that the Legal Committee should declare genocide an international crime without awaiting further study by the Social and Economic Council. The council was finishing its work and did not intend to reconvene during 1946. Because of additional amendments the Legal Committee appointed a sub-committee (Señor Gajardo from Chile served as chairman and Mr. Charles Fahy, Legal Advisor to the United States Department of State served as Reporter of the Sub-Committee) which submitted to the Legal Committee the final draft. The draft carried two additional points as compared to the original, a reference to moral law and a specification of the responsibility of public officials[4]. This was approved by the Legal Committee and finally, on December 11, 1946 unanimously adopted by the Assembly. The text of the resolution in its essential parts reads as follows:

[1] The writer wishes to express his deep gratitude to H.E. Guillermo Belt, Ambassador of Cuba, to the Hon. Mrs. Vijaya Lakshmi Pandit, Chairman of the Delegation of India, and to H.E. Dr. Ricardo J. Alfaro, Minister of Foreign Affairs of the Republic of Panama, for sponsoring the Resolution.

[2] The discussions in the Legal Committee were highlighted by the very learned comments of the following: H.E. Dr. Robert Jimenez, former Minister of Foreign Affairs of Panama, Chairman of the Legal Committee of the United Nations General Assembly; Mt. Charles Fahy, U.S.A; Professor Ernesto Dihigo, Representative of Cuba, Justice Chagla, Representative of India; Dr. Jesus Maria Yepes, Legal Advisor of the Ministry of Foreign Affairs of Colombia; The Honorable Abdul Monim Bey Riad, Representative of Saudi Arabia; Professor Charles Chaumont, Advisor of the French Delegation; Mr. P.N. Saptu, Alternate Representative of India, Dr. Manfred Lachs, Advisor to the Delegation of Poland; Dr. Kerno, Assistant to the Secretary General of the UN.

[3] An important factor in the comparatively quick reception of the concept of genocide in international law was the understanding and support of this idea by the press of the United States and other countries. Especially remarkable contributions were made by the Washington Post (since 1944), The New York Times (since 1945), New York Herald Tribune, Dagens Nyheter in Stockholm; Sunday Times of London, The Nineteenth Century and After, London, Le Monde of Paris, Tribune des Nations in Paris, and other organs of public opinion in Switzerland, Holland, Norway and India. Also numerous organizations working in the field of international affairs were interested and supported this concept such as The Scandinavian Institute for International Cooperation, and the International Women's Alliance, both of Stockholm.

[4] On responsibility of persons acting on behalf of states in the crime of genocide see article by present writer in The American Scholar, Vol. XV, No. 2 (April, 1946).

The General Assembly, Affirms that genocide is a crime under international law which the civilized world condemns – and for the commission of which principals and accomplices, whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds – are punishable; Invites the Member States to enact necessary legislation from the prevention and punishment of this crime; Recommends that international cooperation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end, Requests 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. The Right of Intervention, a Future International Treaty, and the Principle of Universal Jurisdiction By declaring genocide a crime under international law and by making it a problem of international concern, the right of intervention on behalf of minorities slated for destruction has been established. This principle is already accepted by the UN and does not need any specific confirmation by treaty. Thus the resolution of December, 11, 1946 changes fundamentally the international responsibilities of a government toward its citizens. The importance of the concept of genocide from the point of view of international law and the new responsibilities of states was stressed in the letter of President Truman transmitting his report on the United Nations[1] to the Congress of the United States on February 5, 1947.

[1] Text of letter in The New York Times, February 6, 1947.

Genocide is now established as a crime under international law on a plane with piracy although no treaties were signed to this effect. The usefulness of a future international treaty on genocide[1] lies in facilitating the prevention and punishment of the crime and apprehension of criminals. According to the second paragraph of the resolution, member states are to enact suitable legislation. No great difficulties are involved in this field since genocide is a composite crime and consists of acts which are themselves punishable by most existing legislation. The main task will be to redraft provisions into criminal law formulae based upon the specific criminal intent to destroy entire human groups. Such redrafted provisions will have to be adjusted to the principle that the offenders are punishable in a given country even if the crime is committed abroad. This last principle is the symbol and practical application of the higher doctrine of moral and legal solidarity in protecting the basic values of our civilization. The Peace Treaties and Germany's Criminal Code The concept of genocide can and must be used also in treaties between for the settlement of conflicts and disputes with underlying ethnical, racial and religious tensions, especially in cases where such tensions result in large scale criminality. Peace treaties afford an appropriate occasion for such use of this concept. Since some of the Axis satellite countries committed genocide in the recent war according to the German pattern the writer proposed in a special memorandum that the Paris Conference with the satellite countries should include in the Peace Treaties anti-genocide clauses. This would amount to an obligation by the enemy countries involved to include immediately the crime of genocide[2] in their criminal codes to punish the numerous perpetrators of this crime. Unfortunately the proposal of the author could not be discussed because it was introduced after the deadline of 16 August 1946, the time fixed for new amendments to the drafts of the treaties with the satellite countries.

[1] The outline of such a treaty was offered by the writer in his article published in The American Scholar, as cited – it was republished in La Revue Belge de Droit Pénal et de Criminologie, Brussels, November, 1946, also in Samtiden, Oslo, October, 1946, and in a special pamphlet issued by the Secretariat D'État à la Présidence du Conseil et à L'Information in Paris, on September 24, 1946 (Notes Documentaires et Etudes No 417) under the title Le Crime de Génocide.

[2] See Memorandum sur la necessité d'inclure les clauses contre le génocide dans les traités de paix published in the the Annex of the French pamphlet Le Crime de Génocide, cited above, note 13, wherein two alternative formulae of the crime of genocide proposed for peace treaties are introduced as follows: (1) "Whoever, while participating in a conspiracy to destroy a national, racial, or religious group, undertakes an attack against the life, liberty, or property of members of such groups is guilty of the crime of genocide"; (2) "Whoever, while participating in a conspiracy to destroy a national, racial, or religious group undertakes an attack against the life or bodily integrity or practices biological devices on members of such groups, is guilty of the crime of genocide."

However, in the case of the peace settlement relating to Germany the inclusion of anti-genocide clauses in the peace treaty or peace statute would both timely and appropriate. Germany, the classical country of genocide practices, must not profit by the situation that the United Nations genocide resolution does not bind her as a state because she is not a member the United Nations. Since Germany's practices actually provided the basis for developing the concept of genocide she should be the first country to include the crime of genocide in her criminal code. Such an obligation should be imposed upon Germany either through the forthcoming peace instrument or even earlier, by order of the occupation authorities and (or) or by a specific obligation to be included in the German state constitutions. Anti-genocide provisions in German domestic law are especially necessary because of the great number of persons of alien origin who are still residing in Germany as displaced persons.

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Raphael Lemkin, *'Genocide as a Crime under International Law',* American Journal of International Law (1947), Vol. 41 (1), pp. 145–151 (http://www.preventgenocide.org/lemkin/ASIL1947.htm#2).

[1] The views expressed in this note are the personal views of the author and not necessarily those of any government department with which he has been or is connected.