

The validity of R. Lemkin's notion of genocide in the context of Russia's war in Ukraine

Aktualność pojęcia ludobójstwa Rafała Lemkina w kontekście działań Rosji w Ukrainie

Актуальность понятия геноцида Рафаэля Лемкина в контексте действий России
в Украине

Актуальність поняття геноциду Рафала Лемкіна в контексті дій Росії
в Україні

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Summary: The article presents the figure of the outstanding lawyer Rafał Lemkin. It focuses on his work in the Second Polish Republic, on the international forum until 1939, and outside Poland after 1940. Rafał Lemkin is recognised as the author of the concept and the term 'genocide' and the main animator of the United Nations Convention of December 9, 1948 on the Prevention and Punishment of the Crime of Genocide. The text discusses the evolution of the concept of 'genocide' taking into account Lemkin's social sensitivity. Not only does it cover the influence of Rafał Lemkin's works on the final shape of the definition of genocide but also indicates an analogy between the definition of genocide and the ongoing war in Ukraine, as well as the relevance of his canon to the current times taking into account the threats of new technologies and cultural transformations. Attention was also drawn to his approach to the crime of genocide, which is perceived as controversial in some circles. It was written in response to the need for further exploration of Lemkin's work and with the view to developing research on new areas that may become "crime of crimes" in the present day.

Key words: genocide, Lemkin, international law, Russia, armed conflict

Streszczenie: W artykule przedstawiono sylwetkę wybitnego prawnika Rafała Lemkina. Skupiono się na jego działalności w II Rzeczypospolitej, na forum międzynarodowym do roku 1939 oraz działalności po roku 1940 poza granicami Polski. Rafał Lemkin uważany jest za twórcę pojęcia i terminu „ludobójstwa” oraz głównego animatora Konwencji Organizacji Narodów Zjednoczonych z dnia 9 grudnia 1948 r. w sprawie zapobiegania i karania zbrodni ludobójstwa. W tekście omówiono proces ewolucji pojęcia „ludobójstwa” z uwzględnieniem aspektu wrażliwości społecznej Rafała Lemkina. Poruszono kwestię wpływu dzieł tego autora na końcowy kształt definicji ludobójstwa. Wskazano analogię między zdefiniowaniem ludobójstwa przez Lemkina a trwającą wojną na Ukrainie, podkreślono aktualność jego dzieł w kontekście współczesności, uwzględniając zagrożenia nowych technologii oraz przemian kulturowych. Przywołano nowatorskie i odbierane jako kontrowersyjne w niektórych kręgach podejście Lemkina do przestępstwa zbrodni ludobójstwa. Zwrócono także uwagę na konieczność dalszego prowadzenia studiów nad pracami Lemkina oraz rozwijania badań nad nowymi obszarami, które mogą stać się „zbrodnią zbrodni” w obecnych czasach.

Słowa kluczowe: ludobójstwo, Rafał Lemkin, prawo międzynarodowe, konflikt zbrojny

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Резюме: В данной статье представлена личность выдающегося юриста Рафаэля Лемкина. Основное внимание уделено его деятельности во Второй Речи Посполитой, на международной арене до 1939 г., а также его деятельности после 1940 г. за пределами Польши. Рафаэль Лемкин считается создателем понятия и термина «геноцид» и главным инициатором принятия Конвенции ООН от 9 декабря 1948 г. о предупреждении преступления геноцида и наказания за него. В тексте рассматривается процесс эволюции понятия «геноцид» с учетом аспекта социальной чувствительности Рафаэля Лемкина. Рассматривается вопрос о влиянии работ этого автора на окончательное формирование определения геноцида. Отмечена аналогия между определением геноцида Лемкина и продолжающейся войной в Украине, подчеркнута актуальность его работ в современном контексте, с учетом угроз новых технологий и культурных трансформаций. Напоминается о новаторском и, как считают некоторые, спорном подходе Лемкина к преступлению геноцида. Также обращается внимание на необходимость дальнейшего изучения трудов Лемкина и развития исследований в новых областях, которые могут стать «преступлением преступлений» в наши дни.

Ключевые слова: геноцид, Рафаэль Лемкин, международное право, вооружённый конфликт

Резюме: У статті представлено образ видатного правника Рафала Лемкіна. Основна увага приділяється його діяльності у Другій Речі Посполитій, на міжнародній арені до 1939 року та діяльності після 1940 року за межами Польщі. Рафал Лемкін вважається творцем поняття та терміну "геноцид" і головним натхненником Конвенції Організації Об'єднаних Націй від 9 грудня 1948 року про запобігання та покарання злочину геноциду. У тексті розглядається процес еволюції поняття "геноцид", беручи до уваги аспект соціальної чутливості Рафала Лемкіна. порушується питання про вплив праць цього автора на остаточний вигляд визначення геноциду. Вказано на аналогію між визначенням геноциду Лемкіна та війною, що триває в Україні, а також підкреслено актуальність його праць у сучасному контексті з огляду на загрози нових технологій та культурних трансформацій. Згадано про новаторський і сприйнятий як суперечливий у деяких колах підхід Лемкіна до злочину геноциду. Також звертається увага на необхідність подальшого вивчення творчості Лемкіна та розвитку досліджень у нових сферах, які можуть стати "злочином злочину" в сучасному світі.

Ключові слова: геноцид, Рафал Лемкін, міжнародне право, збройний конфлікт

Introduction

The phenomenon of genocide has always been present in human history. This can be inferred from archaeological research or ancestral accounts. However, the reaction of state law to this phenomenon came relatively late. Its specificity, i.e. the sanctioning and justification of one group against another, eluded the classical principles of responsibility for a crime.

In the graves found at Helibron, dating to 5,000 BC, many skulls of adults and children were found with clear signs of stone axe blows, but was this genocide in the sense we know it today? Numerous studies suggest that it was. Prehistoric battles and wars between individual peoples as well as entire civilisations were not only aimed at acquiring food or "living space" as was the case in the early 20th century, but also at destroying entire tribes simply because they practised a different lifestyle or belief.

Despite many historical crimes and wars of the 18th century, such as the “extermination of the Vendée” or the 19th century “Black War,” i.e. the extermination of the Tasmanian aborigines and the extermination of the population in the Belgian Congo, it was the 20th century, when the world seemed to have reached the peak of its civilisational achievements, that proved to be both the most brutal and the most permeated by the crime of genocide.

There are many examples of it, the most important being the Cambodian Fields, the Sabra and Shatila Massacre, the Katyn Massacre, the Holocaust, the Volhynia Massacre, the Palmiry Massacre, the Srebrenica Massacre, or the Rwandan Genocide.

Unfortunately, the 21st century also began to write its history with tragedies such as the Uyghur genocide, the Darfur Conflict, or the massacres in Ukrainian towns such as Bucha and Izium.

Russia's attack on Ukraine on 24 February 2022 gave rise to the need to analyse this concept. Some commentators, lawyers, and politicians accuse their interlocutors of being too ready to use the term which denotes the gravest crimes and carries the most serious consequences. Similar debates, although not as polarised, were part of the line of defence of the German authors of the greatest human tragedy of the 20th century which was the Second World War. Despite the obvious intentions and consequences of the Holocaust, during the Nuremberg trials, the Germans tried to diminish their guilt and its legal burden, shifting responsibility to their superiors and commanders, whose orders they were “merely” carrying out. The terminology used in the indictments and speeches was also a very important element of the trial. As it is well known, the defendants were convicted for the creation of the extermination machine and the murder of millions of people, and their sentences were carried out, but the term ‘genocide’ was not mentioned in the indictment itself. This became the reason for combating genocide in international law, so that a similar line of “defence” by arguing that genocide is not formally prohibited would not be adopted again.

That task was undertaken by Rafał Lemkin one of the most eminent Polish lawyers, nominated for the Nobel Peace Prize ten times.¹ He introduced the concept of *genocide* into international law,² marking the beginning of the evolution of the term.

¹ https://www.nobelprize.org/nomination/archive/show_people.php?id=5366 [access: 10.08.2023].

² K. Orzeszyna, *Human Rights and Public International Law*, in: *International Human Rights Law*, eds. K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa 2023, p. 19.

1. The definition of genocide in Lemkin's work

Lemkin, a Pole of Jewish origin, was born in Grodno. The literature on the subject, especially published in the West, often overlooks the fact that this eminent lawyer began his education and work in Poland. Yet, this was the country that shaped him. His academic views and political activity were clearly influenced by the crimes of the Nazi German regime in Poland. But Rafał Lemkin had already recognised the problem before the outbreak of the Second World War, which indicates that he was inspired by education and Polish culture.

Thanks to the persistence, talent, and dedication of the Polish lawyer, genocide was given a legal definition. How important and needed it was at the time was demonstrated by the words of British Prime Minister Winston Churchill. In his radio address of 24 August 1941, he said: "Since the Mongol invasions of Europe in the Sixteenth Century, there has never been methodical, merciless butchery on such a scale, or approaching such a scale. And this is but the beginning. Famine and pestilence have yet to follow in the bloody ruts of Hitler's tanks. We are in the presence of a crime without a name."³

Despite Lemkin's life challenges and the scepticism which he initially encountered, the nameless crime was with time described and included in international and criminal law, but before this happened Rafał Lemkin had to go a long way.⁴ Rafał Lemkin, being formed in Polish society, was sensitive to the problem of extermination of certain groups. He confirmed in his biography that Polish literature influenced his academic future. Rafał Lemkin pointed directly to his fascination with the works of Henryk Sienkiewicz, as evidenced by the reminiscence he included at the beginning of his autobiography: "As soon as I could read, I started to devour books on the persecution of religious, racial, or other minority groups. I was startled by the description of the destruction of the Christians by Nero. They were thrown to the lions while the emperor sat laughing on the Roman arena. The Polish writer Henryk Sienkiewicz's book on this subject. 'Quo Vadis', made a strong impression on me, and I read it several times and talked about it often. I realized, vividly, that if a Christian could have called a policeman to help he would not have

³ J.T. Fussel, "A Crime without a Name" Winston Churchill, *Raphael Lemkin and the World War II Origins of the Word "Genocide"*, <http://www.preventgenocide.org/genocide/crimewithoutaname.htm> [access: 10.08.2023].

⁴ T. Lachowski, *Rafał Lemkin – uparty prorok, twórca pojęcia „ludobójstwo” w prawie międzynarodowym*, Instytut De Republica, <https://iderepublica.pl/znani-nieznani/indeks/rafal-lemkin/> [access: 5.08.2023].

received any protection. Here was a group of people collectively sentenced to death for no reason except that they believed in Christ. And nobody could help them.”⁵

Further on in his autobiography, he described the impression made on him by literature in these words: “Thus my basic mission in life was formulated: to create a law among nations to protect national, racial, and religious groups from destruction.”⁶

Reflecting on the significance of Lemkin's youthful sensibility in the evolution of the concept of genocide, it is important to note that without it, and without his innate need to help other people, to ensure their protection, the term would never have arisen, and if it appeared in law at all, it would probably function today in a very truncated form, given the years of resistance to Lemkin's concept. Rafał Lemkin emphasised that danger for several years. And yet the obvious regulation was created with great reluctance.

In October 1933, the Fifth Conference for the Unification of Criminal Law took place in Madrid.⁷ Officially, Lemkin was unable to attend it due to financial reasons, but the actual reason was most likely the fact that the Minister of Foreign Affairs did not approve of the trip. Despite this, Lemkin sent his paper entitled “Acts of general (inter-state) danger recognised as crimes of the law of nations.” He was determined not to be stopped, and he found a delegate who agreed to present his proposal on his behalf.⁸

It was the demand for the prosecution of “acts of barbarism” that proved to be the foundation of the concept of the crime of genocide promulgated later. Lemkin's innovative focus on violence against a group, rather than against an individual, paved the way for the definition and legitimisation of the Churchillian concept of the “nameless crime.” After the outbreak of the Second World War, Lemkin made his way to the United States, where he began working at The Duke University Law School in Durham. Having learnt that most of his fifty relatives had not survived the Holocaust, he resigned from his post and devoted himself unreservedly to his book *Axis Rule in Occupied Europe*, which soon proved to be a breakthrough in genocide research.

Almost at the same time, the Allied states, struck by the scale of the German atrocities, were taking action to punish those guilty of war crimes. On 13 January 1942, a conference at London's Saint James Palace was held. It was organised on

⁵ R. Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. D.-L. Frieze, New Haven–London 2013, p. 1.

⁶ *Ibidem*, p. 2.

⁷ P. Sands, *Ku pamięci sprawiedliwości: Nieoczekiwane miejsce Lwowa w prawie międzynarodowym – osobista historia*, Palestra 2012, no. 11–12, p. 16.

⁸ D. Eshet, *Totally Unofficial: Raphael Lemkin and the Genocide Convention*, Brookline, MA 2007, p. 10.

the initiative of Poland and Czechoslovakia and was also attended by the representatives of Belgium, France, Greece, Luxembourg, the Netherlands, Norway, and Yugoslavia.⁹ After the conference, chaired by the Polish Prime Minister, General Władysław Sikorski, a declaration was announced. For the first time, the declaration did not stop on condemnation, but explicitly put forward a demand for the judicial punishment of those guilty of violating international law. It was the first voice demanding an ordinary trial of war criminals. The declaration... emphasised that one of the aims of the war from now on was also to punish war criminals by means of the normal judicial procedure, regardless of whether these people had given orders to commit the crimes, whether they themselves had committed them, or whether they had assisted others in committing them.¹⁰ Still, the word 'genocide' was not mentioned.

Rafał Lemkin approached the US political leaders asking them to draft an international treaty criminalising the destruction of entire peoples and their cultures. He succeeded in meeting with Vice President Henry Wallace but failed to obtain his support. So, he wrote a letter to President Roosevelt, urging him to help create a treaty making the extermination of an entire people a "crime above crimes."¹¹ In response, Roosevelt asked Lemkin for patience. "Patience is good when one is building a road and not looking for a way to save the people being murdered" – Lemkin wrote at the end of 1942. At this time, his parents were sent to the gas chambers of Treblinka.¹²

In January 1944, the United Nations Commission on War Crimes set up by the anti-Hitler coalition began its work. This Commission drafted the Statute of the International Criminal Court, modelled on the Statute of the Hague Tribunal.¹³

In November 1944, Rafał Lemkin's comprehensive book *Axis Rule in Occupied Europe* went to print. It is in this work that the term genocide, formed from the Greek *genos* (race, genus) and Latin *cide* (to kill), appeared for the first time. He titled Chapter 9 *Genocide – A New Term and a New Concept for Destruction of Nations*. It emphasised that: "New concepts need new terms. By 'genocide' we mean

⁹ T. Mielcarek, *Ocena sprawności polskiego powojennego wymiaru sprawiedliwości w osądzaniu zbrodni prawa międzynarodowego na przykładzie prac wykonanych przez Główną Komisję Badania Zbrodni Niemieckich w Polsce na terenie obozu karno-sledczego w Żabikowie i wykorzystaniu ich w procesie Arthura Greisera*, Czasopismo Prawno-Historyczne 2019, vol. 71, no. 1, p. 261.

¹⁰ *Materiały norymberskie*, eds. T. Cyprian, J. Sawicki, Warszawa 1948, p. 17.

¹¹ S. McFarland, K. Hamer, *Jak ludobójstwo zostało uznane za zbrodnię – dziedzictwo Rafała Lemkina*, Civitas et Lex 2016, vol. 10, no. 2, p. 75.

¹² A. Fedorowicz, *Samotny wojownik Lemkin*, Polityka 2015, no. 26, p. 58.

¹³ E. Rojowska, *Komisja Narodów Zjednoczonych do spraw Zbrodni Wojennych i działalność Polski w ramach jej prac. Zarys problemu*, Studia Prawnoustrojowe 2013, no. 22, pp. 23–24.

the destruction of a nation or ethnic group. This new word, created by the author according to the old principle in the new edition, was formed from the Greek word 'genos' (race, tribe) and the Latin 'cide' (killing), and thus in a similar way to the words 'tyrannicide' (bullying), 'homicide' (murder), 'infanticide' (infanticide) and so on. [...] It is intended to signify a coordinated plan of various actions aimed at destroying the basic foundations of the life of national groups, with the aim of annihilating these groups."¹⁴

Lemkin's conviction of the need for new insights and the creation of new terms probably stemmed from his family and academic experiences. According to Raffael Scheck, the development of the concept (probably between December 1942 and November 1943) was influenced by three factors. First, Lemkin shared a peculiar understanding of the Nazi regime's motives in the Second World War, namely the idea that Hitler, by waging a war on foreign peoples rather than states, was cynically calculating that even a militarily defeated Germany would dominate an impoverished and decimated Europe after the war.¹⁵ Lemkin had already made that conclusion in the introduction to his work *Axis Rule*: "The picture of coordinated German techniques of occupation must lead to the conclusion that the German occupant has embarked upon a gigantic scheme to change, in favor of Germany, the balance of biological forces between it and the captive nations for many years to come. The objective of this scheme is to destroy or to cripple the subjugated peoples in their development so that, even in the case of Germany's military defeat, it will be in a position to deal with other European nations from the vantage point of numerical, physical, and economic superiority. Despite the bombings of Germany, this German superiority will be fully evident after hostilities have ceased and for many years to follow, when, due to the present disastrous state of nourishment and health in the occupied countries, we shall see in such countries a stunted post-war generation, survivors of the ill fed children of these war years."¹⁶

Lemkin's thesis about Germany's aims and actions was so shocking to representatives of such powers as the US that it was either disbelieved or ignored. Unfortunately, these words turned out to be prophetic, as could be observed when looking at the German state even many years after the war. Lemkin's conclusions should

¹⁴ R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation Analysis of Government, Proposals for Redress*, Carnegie Endowment for International Peace, Division of International Law, Washington 1944, p. 79.

¹⁵ R. Scheck, *Raphaël Lemkin's Derivation of Genocide from His Analysis of Nazi-Occupied Europe*, *Genocide Studies and Prevention: An International Journal* 2019, vol. 13, no. 1, pp. 113–129.

¹⁶ R. Lemkin, *Axis Rule in Occupied Europe...*, p. XI.

serve as an argument for states that are now making legal demands for reparations from Germany. Unfortunately, they do not.

Moreover, Lemkin claimed that the German plan for the war, whether won or not, had already been adopted before the war began: Thus the German people in the post-war period would be in a position to deal with other European peoples from the vantage point of biological superiority.¹⁷ He repeated his thesis in his autobiography: “Hitler intends to change the whole population structure of Europe for a thousand years – which means virtually forever. Certain nations and races will disappear completely or be crippled indefinitely. Even in the case of German defeat, the Germans have it planned that these remaining nations will have to lean on Germany to stay alive. The Germans are trying to defeat and destroy not governments, but peoples.”¹⁸

Nowadays the same seems to be true about Russia, whose actions at this stage of the war are aimed at isolating Ukraine and preventing Ukrainians from joining the EU or NATO, thus making Ukraine dependent on Russia for years, even if Russia loses the war. On 17 March 2023, the International Criminal Court issued an arrest warrant on Vladimir Putin and the Russian Children’s Rights Advocate Maria Lvova-Belova. The judges found that there were real grounds to believe that Putin was responsible for war crimes involving the unlawful deportation of children from the occupied territories of Ukraine to Russia.¹⁹ This indicates Rafał Lemkin’s complete and systemic grasp of the issue. The course of the war in Ukraine confirms that the same patterns of action are used and the same motivations are behind it.

It is important to note that Lemkin’s original 1944 definition was: “Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an

¹⁷ Ibidem, p. 81.

¹⁸ R. Lemkin, *Totally Unofficial...*, p. 109.

¹⁹ *Międzynarodowy Trybunał Karny wydał nakaz aresztowania Putina*, Polska Agencja Prasowa, 17.03.2023, <https://www.pap.pl/aktualnosci/news%2C1549962%2Cmiędzynarodowy-trybunał-karny-wydał-nakaz-aresztowania-putina.html> [access: 16.08.2023].

entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.”²⁰

Jonathan Hobson pointed out: “The first significant appearance of the term genocide after Lemkin's inception of the term in 1944 was during the trials in Nuremburg and Tokyo after the Second World War. These trials were based on two important pieces of legislation: the ‘Charter of the International Military Tribunal,’ which was presented in June 1945 and formed the basis for the trials of Nazi party members at Nuremburg, and in September 1945, the ‘International Military Tribunal for the Far East Charter,’ which was the basis for trials of Japanese prisoners in Tokyo. [...] The legislation adopted as part of the trials at Nuremburg and Tokyo were important for several reasons. Common to both trials was a list of three crimes: crimes against peace, war crimes, and crimes against humanity, one of the first occasions on which such serious acts of widespread violence, aggression, and destruction were codified at an international level.”²¹

Also during the closing speeches, the term was used by the British and French prosecutors, and during the trial itself Lemkin's book was very often referred to.²² Rafał Lemkin took further steps to criminalise genocide. He devoted himself entirely to the work of having the UN implement a convention that would prevent the “crime above crimes.”

According to Sam McFarland and Catherine Hamer: “Following the conclusion of the Nuremberg trials, Lemkin set about persuading the newly formed United Nations to recognise genocide as a violation of international law. In early 1946, he travelled to Lake Success (New York), where the initial UN meetings were held. He was there ‘totally unofficial’ (totally unofficial), as the title of his autobiography says, but this did not prevent him from continuing his struggle. He accosted delegates and correspondents in the corridors, puzzling them, saying: ‘You and I must change the world.’”²³

Lemkin himself wrote: “First, I wrote a draft resolution on the soft sofa in the Delegates’ Lounge. Then I let it be mimeographed by the U.N. because it is easier to talk about a draft proposal with the document before one’s eyes. The draft resolution modestly asked the U.N. to study genocide with the view of establishing it as an

²⁰ R. Lemkin, *Axis Rule in Occupied Europe...*, p. 79.

²¹ J. Hobson, *Prosecuting Lemkin's Concept of Genocide: Successes and Controversies*, *Genocide Studies and Prevention: An International Journal* 2019, vol. 13, no. 1, p. 20.

²² R. Szawłowski, *Rafał Lemkin (1900–1959) polski prawnik, twórca pojęcia „ludobójstwo”*, in: *Zbrodnie przeszłości. Opracowania i materiały prokuratorów IPN*, vol. 2. *Ludobójstwo*, eds. R. Ignatiew, A. Kura, Warszawa 2008, p. 15.

²³ S. McFarland, K. Hamer, *Jak ludobójstwo...*, p. 78.

international crime, like piracy, trade in children, and slavery. I stressed that genocide had happened throughout history and inflicted great losses on mankind and culture. I thought the draft should not demand too much, so that the delegations might make it stronger. The main thing is not to frighten by too-bold demands.”²⁴

The definition was so broad that it found its opponents; mainly the Soviet Union, where large-scale killings and persecution of political dissidents were the norm, but also Britain, which feared the consequences of its colonial past, and which described the convention as a complete waste of time, given that if genocide was occurring somewhere, it was in conditions where no international convention would apply.²⁵ As Alexa Stiller reminds us, a UN resolution on genocide was successfully adopted on 11 December 1946. In contrast to the later Convention for the Prevention of Genocide of December 1948, the 1946 resolution was not limited to mass murder and still contained the cultural extermination of groups. At the same time, however, the aspect of forced resettlement and forced assimilation, unlike Lemkin’s original concept, had already disappeared...²⁶

Lemkin’s reactions were described in detail by Samantha Power: “When reporters looked for Lemkin immediately after the Convention was passed on December 9, 1928, they could not find him in any way. At last, they found him in the evening, sitting alone and weeping, or rather, sobbing. And this man, who had previously imposed himself directly on journalists, now asked them to leave him alone... In doing so, he described the Convention as an ‘epitaph on the grave of his mother, who died in Poland at the hands of the Germans’ and as a token of recognition that ‘she and many millions of lives did not die in vain.’”²⁷

Despite this, Lemkin felt disappointed and bitter because of being unaware of what fruit his work would bear in the future. William Schabas pointed out an important aspect in the context of the progressive effects of Lemkin’s work over time: “Since 1948, the law concerning crimes against humanity has evolved substantially. That crimes against humanity may be committed in time of peace as well as war has been recognized in the case law of the *ad hoc* international tribunals, and codified in the Rome Statute. Arguably, the obligations upon States found in the Genocide Convention now apply *mutatis mutandis*, on a customary basis, in the case of crimes against humanity. Therefore, the alleged gap between crimes against

²⁴ R. Lemkin, *Totally Unofficial...*, p. 122.

²⁵ J. Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, New York 2008, p. 94.

²⁶ A. Stiller, *The Mass Murder of the European Jews and the Concept of ‘Genocide’ in the Nuremberg Trials: Reassessing Raphaël Lemkin’s Impact*, *Genocide Studies and Prevention: An International Journal* 2019, vol. 13, no. 1, p. 163.

²⁷ S. Power, *“A Problem from Hell”: America and the Age of Genocide*, New York 2002, p. 60.

humanity and genocide has narrowed considerably. Speaking of the relative gravity of crimes against humanity, the International Commission of Inquiry on Darfur said: 'It is indisputable that genocide bears a special stigma, for it is aimed at the *physical obliteration* of human groups. However, one should not be blind to the fact that some categories of crimes against humanity may be similarly heinous and carry an equally grave stigma.'²⁸

Professor Lemkin, a great legal mind, nominated for the Nobel Prize ten times, died on 28 June 1959 in New York after he collapsed at a bus stop. He was returning from a publishing house preparing his autobiography, in which he told the story of his life and his fight to prevent the crime of genocide. Only four people attended his funeral.

Conclusion

Although Lemkin passed away alone, his legacy has forever changed international law and the understanding of what the 'Crime of Crimes' is. The timeliness of his work is particularly striking now, more than 80 years after the outbreak of the Second World War. Lemkin can be boldly called a prophet of law, especially when we analyse his theories on cultural genocide in the present day. Lemkin's innovative approach shocked his academic and political contemporaries. One thing is certain: there is a great need to develop his legal thought. To paraphrase the great jurist, these times call for another, new perspective on the processes taking place in societies around the world.

There are online tools used to stupefy entire nations under the guise of entertainment. The fact that the popular Chinese platform TikTok has been banned and blocked in many countries and European institutions is a wake-up call. Citing national security reasons, India has blocked access to 59 Chinese smartphone apps. The blocking of TikTok, which has 120 million users in India, is expected to be the most severe. The sanctions are a response to the border conflict with China. In a statement cited by *The Indian Express* daily newspaper, the Indian Ministry of Information Technology quotes the theft and sending of users' data to servers outside India as the reason for blocking mobile apps. The collection and profiling of this data by elements hostile to India's national security and defence, which strikes at India's sovereignty and integrity, requires extraordinary countermeasures, the ministry wrote.²⁹

²⁸ W. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed., New York, 2009, pp. 14–15.

²⁹ U. Gwiazda, *TikTok w Indiach zablokowany. Powód? Względy bezpieczeństwa*, RMF24, 30.06.2020, https://www.rmfm24.pl/fakty/swiat/news-tiktok-w-indiach-zablokowany-powod-wzgledy-bezpieczenstwa,nId,4583984#crp_state=1 [access: 20.08.2023].

The proliferation of destructive content changes culture and identity, and increasingly leads to the death of people who, influenced by “online trends,” engage in life-threatening behaviours to feel part of a fictitiously created “community.” A similar threat is posed by the propagation of religious sects, mainly in the radical Islamist trend, or the drug cartels created by left-wing extremists in Colombia. Venezuelan President Hugo Chavez, who died in 2013, was pursuing a plan to flood the US with drugs from the Colombian leftist guerrilla Revolutionary Armed Forces of Colombia (FARC), the Madrid daily *El Mundo* reported. This was thought to be a form of warfare against the US.³⁰ These threats may seem distant and exotic, but they are an ongoing process and, in the long run, a real threat to the integrity of societies. Europe, which is experiencing a crisis of the family, has been promoting militant atheism and the greatest of crimes, abortion, for many years. Thus, it is also putting itself in danger of self-destruction. In view of the changing world, new tools and systems of political and cultural warfare, a system of effective war reparations, but also ways of preventing non-military destruction, must be constantly developed. This is why it is important to return to the work of Lemkin, who described very clearly what we face as a world: “Genocide is the destruction of a particular national and ethnic group [...] it does not necessarily mean the immediate destruction of a nation, except when carried out by the mass murder of all members of the group. Rather, it is meant to imply a coordinated plan of diverse actions aimed at the annihilation of the group itself. The aim of such a plan would be to disintegrate the political and social institutions, culture, language, national sentiments, religion and economic basis of existence of national groups, as well as to take away the personal security, freedom, health, dignity and even the lives of individuals belonging to such groups. Genocide is directed against the national group as a whole, and its actions are directed against individuals not as individuals but as members of the national group. [...] Genocide has two phases: the first, the destruction of the national ways of life of the oppressed group; the second, the imposition of the national ways of life of the oppressor.”³¹

Genocide is a process, not an event. What distinguishes the ‘Crime of Crimes’ from other crimes is the *dolus specialis*; the special intention, which informs the perpetrators about their responsibility when they commit specific acts of violence. Lemkin noted the homicidal processes of his time and predicted that they would

³⁰ M. Zatyka, *Media: Prezydent Wenezueli chciał zalać USA narkotykami od FARC*, Bankier.pl, 13.09.2019, <https://www.bankier.pl/wiadomosc/Media-Prezydent-Wenezueli-chcial-zalac-USA-narkotykami-od-FARC-7737985.html> [access: 20.08.2023].

³¹ R. Lemkin, *Rządy państw Osi w okupowanej Europie. Prawa okupacyjne, analiza rządu, propozycje zadośćuczynienia*, trans. A. Bieńczyk-Missala et al., Warszawa 2013, p. 110.

recur. This is precisely why he was so concerned about countering genocide. Over 136 states have committed themselves to the prevention of genocide, and the prohibition of genocide is *ius cogens*; that is, a peremptory norm so fundamental that no state can deviate from it. It is only up to us to recognise new destructive processes...

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