

Raphael Lemkin and the Genocide Convention: Living Legacy of a Lonely Lawyer

A landmark conference explores Dr. Lemkin's relentless work against genocide.

by AVIVA CANTOR

When a journalist entered the partially destroyed home in a Bosnian village, he saw a strange sight: There were three dead old men slumped at the table, but there were five small coffee cups on it. What had happened here? The old men were having coffee late one morning. The door was flung open. Two young men burst in with submachine guns: Serbian militiamen. The Muslim men welcomed them — they were the sons of their neighbors — and one of them got them cups of coffee and invited them to join them at the table.

The militiamen shot the old men dead. They left their coffee untouched.

This atrocity among so many others occurred during the Bosnia War of 1992-1995, when many Serbian actions were considered genocide under the terms of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The Convention (Article 2) defines genocide as any of five actions “committed with

intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (see box on p. 14).

The Convention was unfortunately not employed to stop the atrocities in Bosnia. But it did provide the basis for the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, which indicted, arrested and tried more than 155 Serbians, including two major perpetrators (see box on p. 15).

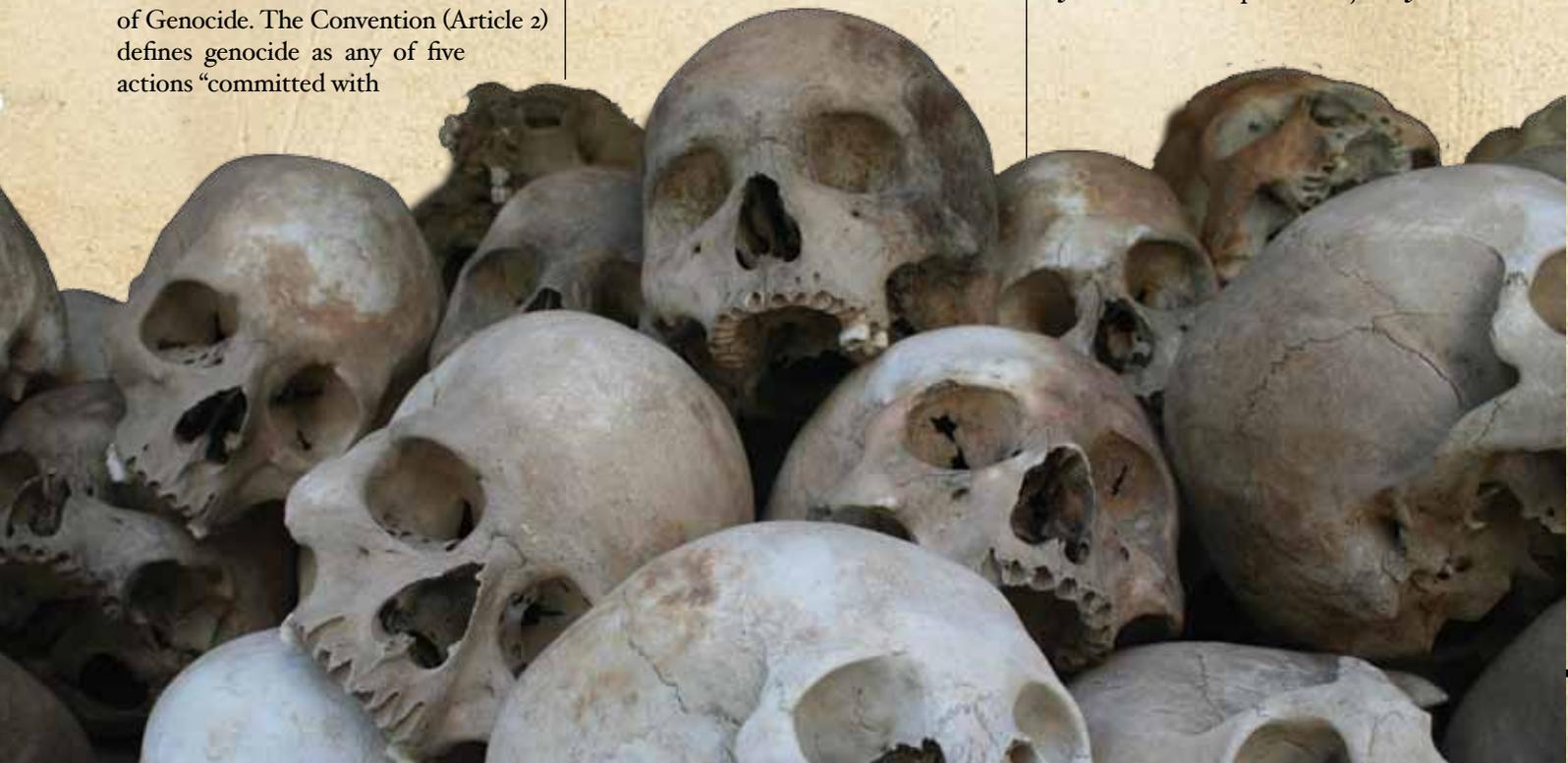
The term genocide was coined, conceptualized and defined by one man who drafted the Convention text and sacrificed his personal life and health to make it part of international law. His name was Dr. Raphael Lemkin.

A lawyer by profession and multilingualist by avocation who escaped Poland at the beginning of the Holocaust, Lemkin (1900-1959) lobbied tirelessly inside and outside the U.N. for the

adoption of the Genocide Convention, which took place in December 1948. It went into force in January 1951, when ratified by 20 nations, of which Israel was the second.

It was only in 1988 that it was ratified by the United States, when President Reagan signed it. By that time, Lemkin was already dead and buried for close to 30 years.

In November 2009, a few months after his 50th *yahrzeit*, the Center for Jewish History (CJH) in Manhattan held a conference, “Genocide and Human Experience: Raphael Lemkin’s Thought and Vision.” Co-sponsored with the American Jewish Historical Society (AJHS) and Yeshiva University Museum (YUM), it brought together a group of historians, political scientists, jurists, anthropologists and philosophers from all over the world. The conference, organized by CJH director of Special Projects Judith



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Siegel, was accompanied by an exhibition, "Letters of Conscience: Raphael Lemkin and the Quest to End Genocide."

Lemkin's Life

Raphael Lemkin was born on June 24, 1900 and raised on a farm 50 miles from Bialystok in czarist Poland. His father, Joseph, was a farmer; his mother, Bella Pomerantz, was an intellectual, artist and student of philosophy who homeschooled him and was his greatest childhood influence. When he was 6 years old, pogroms in the Bialystok region involving fiendish mutilation rituals resulted in the murder of 70 Jews and grave injuries to 90 others.

At the age of 11, Lemkin read in Henryk Sienkiewicz's Polish masterpiece about the Roman Empire, *Quo Vadis*, of the throwing of Christians to the lions, and later, accounts of massacres of the Carthaginians and the French Huguenots. He asked his mother why there is no law against killing "defenseless people just because they are different from you." She told him he must "study more and think more and find the answer for yourself." He resolved to look for answers.

Lemkin entered the John Casimir University of Lvov in 1920, planning to major in philology. He already knew seven languages; he later added three more. A professor, in response to Lemkin's question about the slaughter of 1.5 million Armenians during World War I, told him that international law precludes interference in the sovereign affairs of a country. The young student began to think that a law to stop the murder of a group must be created, and switched his field to law. He subsequently became a

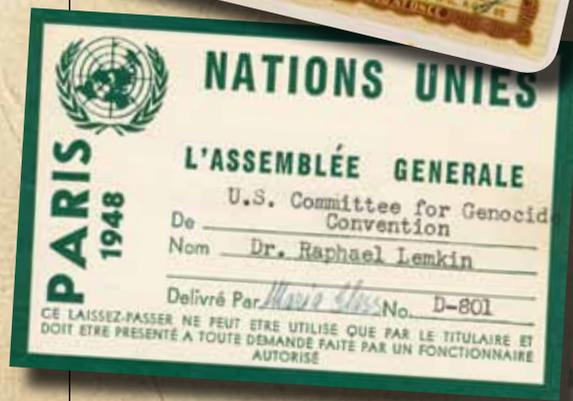
public prosecutor in Warsaw.

In 1933, Lemkin, who had already grasped that the Nazis would inflict "unprecedented" atrocities on ethnic minorities, wrote a paper for a League of Nations' international conference in Madrid, proposing laws against the obliteration of national, religious and racial groups and the destruction of their cultural works. The Polish government, trying to cultivate/placate the Germans, refused to let him attend (his paper was read aloud but the proposal was tabled), and he was forced out of his job.

When World War II broke out in September 1939, Lemkin fled Warsaw and eventually found refuge in Sweden, where he taught law at the University of Stockholm. He persuaded the Foreign Ministry to instruct consular officials to provide documentation of German orders of mass murders in countries they occupied.

This material formed the basis of his 712-page book, *Axis Rule in Occupied Europe* (see box on p. 15), the first all-encompassing work on the enormity of Nazi brutality and destruction. Published in the U.S. in 1944, it was also the first work in which Lemkin both used the word "genocide" he had coined and wrote of the need for an international treaty to prevent its recurrence.

By this time, Lemkin had made his way to the U.S. to teach law at Duke University in North Carolina and work for government agencies in Washington D.C. He tried, unsuccessfully, to get officials — including President Roosevelt and Vice President Wallace — interested in taking action against the mass murders of European Jews.



Raphael Lemkin's War Department and United Nations identification cards.

Raphael Lemkin Papers, American Jewish Historical Society, New York, NY

Lemkin was in Nuremberg in 1946, working as an adviser on the staff of the chief prosecutor in the trials of Nazi war criminals. He became greatly distressed that the term genocide was not used in the Final Judgment. Even more significant to him, the Tribunal's Charter and Judgment specified that "acts committed before the outbreak of the War were not punishable offenses." He was disturbed that these documents enshrined the principle that what a government does to its own citizens does not fall under international law. Lemkin was unhappy about this as precedent, said William A. Schabas of the Irish Center for Human Rights at the National University of Ireland, "because he looked to the future."

The Final Judgment was rendered in October, after a summer in which Lemkin traveled in Europe and met people in DP camps, including former colleagues, and heard their horrific stories. In September, his distress worsened when he found out that 49 members of his family, including his parents, had been murdered, wrote the late William Korey, former director of International Policy Research of B'nai B'rith. "The death of his beloved mother who had played such

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a key role in his early life was especially shattering” to him, said independent researcher Jim Fussell, who is writing a biography of Lemkin.

The Nuremberg Judgment, Lemkin later wrote in his incomplete and unpublished *Totally Unofficial: The Autobiography of Dr. Raphael Lemkin*, was “the blackest day” of his life. It compounded the trauma of his parents’ and relatives’ murders, and left Lemkin in “extreme psychic pain,” said Schabas. He developed dangerously high fever and high blood pressure.

He checked himself out of the hospital after hearing on the radio that the first agenda of the General Assembly (GA) was being prepared and would be finalized in five days’ time. He rushed to New York to initiate work on getting his idea of a Genocide Convention translated into reality. The next four years were a period in which “the idea of one man became an international treaty,” said Fussell. Lemkin later wrote that “he found temporary relief from my grief in this work” and “transformed my personal disaster into a moral striking force.”

Lemkin, Fussell said, underwent a “complete transformation” in 1946 from a man with many interests and friends to one who was single-minded, and gave up his personal life. Diplomats and U.N. correspondents, whom Lemkin lobbied unremittingly, later remembered him as a slightly stooped figure scurrying with

two large battered briefcases from delegate to delegate.

He succeeded in getting enough delegates to sponsor a resolution to declare genocide an international crime and to instruct a U.N. body to draw up a draft of a convention for the next GA session. In the course of a six-week period, he successfully lobbied all the delegates to get the resolution passed. On appointment by the secretary-general, Lemkin did the major drafting of the Convention, during which time he took a leave from his teaching job at Yale University Law School.

Prof. Alexander Laban Hinton of Rutgers University told the conference that mass murders of a social class would be considered genocide under the Convention. But the final text, which underwent tortuous political wrangling, did not include political or economic groups.

Nor did it include cultural genocide — a provision that both the U.S. and the U.S.S.R. opposed. The inclusion of what Lemkin called “the destruction of cultural memory” was dear to his heart. He considered it a crime against civilization, which “results in the loss of [a group’s] future contribution to the world.” Hinton defined cultural genocide as the systematic and organized destruction of the art and cultural heritage in which the “unique genius” of a people is revealed, and of the cultural pattern of a group, which “must remind

them of their history” and results in their “spiritual death.”

After the GA voted to adopt the Convention in December 1948, it still had to be ratified by 20 states to go into force. Lemkin, after being hospitalized again, leaped once more into his “lonely crusade,” wrote Korey, and lobbied without respite at the U.N. He had to borrow money for food and often went hungry. He could hardly stand on his feet at Lake Success and “had to look for support of a wall or a seat.”

Because of Lemkin’s unrelenting advocacy — facilitated by his being well-versed in the languages, traditions and concerns of many nations — the Genocide Convention was ratified by 27 states and went into force on January 12, 1951, which he called “a day of triumph for mankind and the most beautiful day of my life.” Since then, 140 countries have signed on.

Lemkin then worked on getting more ratifications of the Convention; he feared that without U.S. ratification, the Convention might share the fate of the League of Nations. His efforts failed due to the revival of the power of the right wing, which accelerated when the Korean War speeded up the acceptance of its nativism, xenophobia, isolationism and anti-Communism. Fear of the loss of American sovereignty — opening the country to international scrutiny — was used as an argument by

Main provisions of the “Convention on the Prevention and Punishment of the Crime of Genocide”

Article 2: Lists five actions committed with intent to destroy a group: killing its members, causing them serious bodily or mental harm, inflicting on it conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures to “prevent births” within it; and “forcibly transferring children to another group.”

Article 3: Actionable crimes: genocide; attempts, conspiracy and incitement to commit it; and complicity in genocide.

Article 6: Persons charged with genocide shall be tried by a country’s tribunal or by an “international tribunal” with jurisdiction in countries which have accepted it.

Article 8: Any signer may call upon any U.N. organ to take appropriate action under its Charter for “the prevention and suppression of acts of genocide” or any acts listed.

Major international treaties and prosecution since 1951

- **International Criminal Tribunal for the Former Yugoslavia (ICTY)**, the first such special tribunal, was established in May 1993 at The Hague. The ICTY arrested Slobodan Milosevic, president of Serbia and Yugoslavia in the 1990s, and charged him with 66 counts of crimes, including genocide, in Bosnia, Croatia, and Kosovo (he died in 2006, during the trial). The ICTY also arrested Radovan Karadzic, president of Republika Srpska (Serb enclave in Bosnia), and indicted him in 2009 on charges of genocide in organizing the 1995 massacre of 8,000 Bosnian Moslem civilians in Srebrenica, and of Croat civilians. His trial began and was postponed and resumed in 2010.
- **International Criminal Tribunal for Rwanda** was established 1994 after the Hutu massacre of 800,000 Tutsis. Major testimony was given by Canadian Maj. Gen. Romeo Dallaire, chief of the U.N. Mission there, who, to his intense pain, was unsuccessful in his unrelenting efforts to bring about intervention to stop the

genocide. One of the eight senior officials on trial was convicted of organizing the systematic rape of Tutsi women, which the court found to constitute the genocidal act of “causing serious bodily or mental harm to members of the group.” The judge ruled that “sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those actions to constitute genocide.”

- **The International Criminal Court (ICC)** became a permanent tribunal in July 2002, aiming to prosecute individuals for genocide and other crimes. As of fall 2009, it has received 2,889 complaints about crimes in at least 139 countries and dismissed those in all but Uganda, Congo and Central African Republic, for most of which the perpetrators charged are still at large. An ICC prosecutor initiated an effort in January 2010 to charge Sudan president Omar Hassan al-Bashir with genocide.

southern (white) senators who feared that the Convention might be used to target the treatment of blacks, who were escalating their struggle for civil rights amid lynchings and other atrocities.

After 1951, Lemkin was largely ignored and then forgotten, though he was nominated for the Nobel Peace Prize five times in the 1950s. He kept on writing, but no publisher would issue his books, including his three-volume *History of Genocide* and his *Introduction to the Study of Genocide* (its publication by Lexington Books is anticipated). These, his memoir and other papers are located at the AJHS, American Jewish Archives at Hebrew Union College-Jewish Institute of Religion in Cincinnati and the New York Public Library, whose expresident, Vartan Gregorian, opened the conference.

Lemkin had no money except the \$100 a month the Jewish Labor Committee gave him, and a tiny one-time grant from the Conference on Jewish Material Claims Against Germany. Ill and in dire poverty, Lemkin collapsed and died of a heart attack on Aug. 28, 1959. Immediately after his death, the landlord ordered his friends to clear out his one-room apartment near Columbia University, which was piled high with books and papers. The American Jewish Committee paid for his burial at the Mt. Hebron Cemetery in Queens. Seven people attended his graveside funeral.

Lemkin's Legacy

“The history of the 20th century required Lemkin’s imagination to describe [group] rights,” said Prof. Berel Lang of Wesleyan University, who traced the expansion of the idea of human rights from individual rights — advocated during the 18th-century European Enlightenment — to its extension, derived largely from Lemkin’s views and work, to group rights. The problem, he continued, lies with who decides what these rights are and what if one group’s rights conflict with another’s or with individuals. He emphasized that it is crucially important not to misuse the word genocide, which he defined as the violation of a group’s right to existence inside and outside a nation, no matter who was responsible.

Prof. Benjamin Valentino of Dartmouth College said that debate continues to rage among scholars, international lawyers and jurists as to whether a specific event constitutes genocide because most people believe that using that word “implies a clear moral judgment” and a “clear obligation to do something”; Lemkin saw the word in these terms. Therefore, he continued, “the stakes are high.”

The speakers were united in favoring intervention but differed on what *kind* of intervention — military political, economic — and by whom.

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Find Out More

Reading

John Cooper: *Raphael Lemkin and the Struggle for the Genocide Convention* (Palgrave Macmillan, 2008)

Daniel Goldhagen: *Worse Than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity* (Public Affairs, 2009)

William Korey: *An Epitaph for Raphael Lemkin* (American Jewish Committee, 2009)

Raphael Lemkin: *Axis Rule in Occupied Europe* (Carnegie Endowment for International Peace, 1944; reprinted, with additional material by Samantha Power and William Schabas, by Law Books Exchange, 2005)

Samantha Power: *A Problem from Hell: America and the Age of Genocide* (Basic Books, 2002)

Viewing

Christiane Amanpour: “Scream Bloody Murder” (2008) — world’s failure to prevent or stop genocides, from Armenia to Darfur — CNN documentary

Daniel Goldhagen: “Worse Than War” — PBS documentary

Lemkin conference: proceedings, dates, speakers’ biographies; links to his papers; companion programs; exhibition: cjh.org/lemkin

The United Nations Casebook, “Genocide,” CBS, 1949

Genocide

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Prof. Lawrence Woocher of the Center for Conflict Analysis and Prevention of the U.S. Institute of Peace stressed that while "economic shock" could "trigger the need for a scapegoat," and environmental-economic stress could activate group conflict, genocide is not a "spontaneous event" but one that is organized by a leadership clique. To sustain the atrocities, the clique needs economic means — which enable it to provide arms and other materiel to low-level perpetrators — and, therefore, disrupting them might be effective.

All the speakers on the topic of intervention agreed with Woocher that it must take place at an early stage. This was also the basis of the proposal by author Prof. Daniel Goldhagen, speaking after screening a preliminary version of his powerful film for PBS, "Worse Than War." He suggested the creation of a "dedicated organization of democratic nations to craft prevention, intervention and justice" in cases of genocide. The new organization, Goldhagen said, must be capable of "identifying when a genocide begins," and must trigger measures "to activate an anti-genocide system" because "waiting a few days is a catastrophe."

Prof. Donna-Lee Frieze of Deakin University in Melbourne told the conference that "genocidal cultural destruction" (a term she prefers to cultural genocide) is usually the "first phase" of genocide. The murder of a group's intellectual leaders and the destruction of its cultural symbols (art, buildings, monuments, books) are designed to render the group "defenseless" against physical attack, and constitute "evidence of intent to destroy" it. Prof. Peter Balakian of Colgate University described these atrocities in Armenia.

Factors Contributing to Intervention

Speakers at the CJH conference discussed two important social and historical factors in the evolution of thought and action on intervention in cases of genocide: the increasing influence of non-governmental organizations (NGOs) and the development of international law.

From the latter part of the 19th

century, humanitarian groups began to protest and/or provide proactive assistance to victims of human rights atrocities. Some examples: the assistance to the Irish during the potato famine; the Congo Reform Association brought the atrocities in that Belgian colony to international attention after reports even before 1900 called it a "slave state," said Prof. Benedict Kiernan of Yale University.

NGO influence continued to grow and had a major impact on the adoption of the Genocide Convention in 1948 by the U.N. The Committee for an International Genocide Convention established by the National Council of Christians and Jews — with Lemkin as its theorist and strategist — submitted a petition to the U.N. with signatures by leaders of 166 NGOs from 28 countries with memberships of over 200 million people in September 1948. Three months later, the Convention was adopted.

Ruth Messinger, president of American Jewish World Service and a speaker at one of the CJH's companion programs that followed the conference, said that NGOs' work is "helpful" with work in education and advocacy, but acknowledged that "we haven't gotten responses from governments that we would like to see. It's slow-going."

Regarding the sluggish pace of the evolution of international law, Schabas emphasized that it "moves forward in spurts of activity" such as those during and after the 1915-1919 Armenian genocide, the Nuremberg Trials, the adoption of the Genocide Convention, and the creation of international tribunals in the 1990s.

It took 42 years from the time the U.N. adopted the Genocide Convention for it to take any action on genocide.

Most of those years were those of the Cold War, when action was impeded because the U.S. was "lukewarm" to attempts to prosecute genocide, said Schabas. But "building on Lemkin's great and detailed work," said Messinger, is going on.

In 1993, drawing on Article 8, according to which any signing party could authorize a U.N. body to take up a case of genocide, the Security Council established the ad hoc International Criminal Tribunal for the Former Yugo-

slavia. In 1997, it established another ad hoc tribunal on Rwanda. In 2002, acting on Article 6, the U.N. founded the International Criminal Court. China, Israel, Russia, Sudan and the U.S. have not joined it (see box on p. 15).

Lemkin never received a Nobel Peace Prize for his pioneering work, which he so richly deserved; efforts should begin for a posthumous one. Nowhere at the U.N. is there a bust of Lemkin, nor is any street named after him near the Secretariat building or elsewhere in New York or Washington. The only monument to him is his tombstone, which reads, "Father of the Genocide Convention."

Over 60 years after the adoption of the Convention he created and championed, "our world is not a world free of genocide," said Bosnian Muhamed Mesic of the Brainswork Institute, a think tank in Vienna. (Egregious examples are the genocides in Congo and Darfur.) Nevertheless, the small but palpable advances of the tribunals and courts demonstrate that, to use Mesic's words, Lemkin's "larger-than-life legacy is growing over time."

Lemkin's work is "proof that one man can make a difference," Messinger said. Lemkin made the world conscious that there is such a mega-crime as genocide and that the international community is responsible for making sure it does not continue to be perpetrated. He created a workable instrument for nations to do so. With this consciousness and with this instrument and others it inspires and motivates, the international community may possibly be able one day to overcome power politics, indifference and inertia to rid the world of genocide. The world may yet fulfill the inspiring vision of the lonely lawyer, linguist and humanitarian pioneer Dr. Raphael Lemkin.

Aviva Cantor, the initiator of Lilith magazine, is the author of Jewish Women, Jewish Men: The Legacy of Patriarchy in Jewish Life, "a feminist exploration of Jewish history, culture and psychology" (HarperCollins, 1995) and The Egalitarian Hagada. © Copyright Aviva Cantor 2010. All Rights Reserved. Cantor can be reached at eisenspring@yahoo.com.