

RAPHAEL LEMKIN

A Brief Biographical Sketch

Raphael Lemkin was once asked, "What good will it do to write mass murder down as a crime; will a piece of paper stop a new Hitler or Stalin? He replied: "Only man has law. Law must be built, do you understand me? You must build the law!" —Recounted by A.M. Rosenthal in his column, "On My Mind," *New York Times*, October 18, 1988, at A31, col. 1.

Dr. Lemkin was born on June 24, 1901 near Bezwodene, Poland, which at that time was part of Western Russia. His parents, both Jewish, owned a farm where Dr. Lemkin received his early education from his mother. He later studied in France, Italy, and in Germany at the University of Heidelberg, and received a doctorate degree in philology from the University of Lwow in 1926. Dr. Lemkin spoke nine languages and was able to read fourteen.

His first position in law was that of secretary for the Court of Appeals in Warsaw, and he later became a public prosecutor in that city. From 1929 to 1935 Dr. Lemkin served as secretary of the Committee on Codification of the Laws of the Polish Republic. It was during that time that he represented Poland at numerous international conferences.

Two cases of mass persecution in 1933 set the course of his life's work: the destruction of 600 Christians in Iraq and the developing scheme of Hitler to annihilate European Jews and other minorities. It was at the 1933 League of Nations' Fifth International Conference for the Unification of Criminal Law in Madrid that Dr. Lemkin first proposed an international document to outlaw "acts of barbarism and vandalism" as an instrument to protect minority populations. At that time his proposal was dismissed, and his efforts brought him into disfavor with the Polish government, which was attempting conciliation with Nazi Germany. Forced to resign his government posts, Dr. Lemkin went into private practice in 1935 and renewed his efforts on codification of Polish law.

Germany invaded Poland in 1939, and Dr. Lemkin took to the forests as a guerrilla fighter. Of his family, only his brother Elias survived the invasion. In 1940 Dr. Lemkin escaped to Sweden where he accepted a position at Stockholm University teaching international law (international payments, foreign exchange, banking laws). It was there that he began compiling documents on Nazi rule in the occupied countries of Europe.

In 1941 he left Sweden and traveled to the United States by way of the Soviet Union. Shortly after arriving in the U.S., Dr. Lemkin gave an address before the ABA annual meeting in Indianapolis entitled, "The Legal Framework of Totalitarian Control over Foreign Economies." With the assistance of Prof. Malcolm McDermott of Duke University Law School with whom he had completed an English translation of the Polish Penal Code in 1938, Dr. Lemkin obtained a position at Duke teaching international law. While at Duke he was appointed to the United States Board of Economic Warfare and later became a special adviser on foreign affairs at the War Department.

He completed his compilation and analysis of Axis occupation legal documents in 1943 and entitled it: *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. The book was published in 1944 by the Carnegie Endowment for International Peace through the International Document Service of Columbia University. Prof. Merle Fainsod's review of the book 58 Harv. L. Rev.. 74 (1945), states:

Dr. Lemkin . . . has accomplished a monumental task in gathering together and distilling the essence of the witches' brew [Axis rule] [W]hat he has provided is not so much a history of the Axis occupation, as a source material for it. Much of the story is irretrievably lost in the flames of a score of Lidices and in the ashes of the murder-chambers that blackened Hitler's Europe Dr. Lemkin's collection will provide an invaluable sourcebook from which to document that unctuous and peculiarly distasteful structure of pseudo-legality with which the Nazis and their collaborations sought to make death and slavery palatable to the world.

It was in *Axis Rule* that the term "genocide" first appeared in print. Dr. Lemkin coined the phrase after hearing Winston Churchill refer to Nazi atrocities as "a crime without a name." "Genocide" is derived from the Greek word "genos" (race, clan) and the Latin suffix "cide" (killing). He defined the concept as a state sponsored, coordinated plan aimed at the physical annihilation of a national group or groups. Such destruction may include disintegration of the political, social, economic, religious, and cultural institutions--the essential foundations of nationality.

Axis Rule became a valuable source of information at the Nuremberg trials, where Lemkin became an adviser to Justice Robert Jackson. In response to critics of the trials who argued that it was an application of *ex post facto* laws, Dr. Lemkin wrote:

International law is a body of flexible and uncodified rules of behavior among nations, based upon precedents, customs, treaties, and ethical concepts

. . . The principle of *ex post facto* in criminal law tends to protect the individual's liberty. A person should not be oppressed by the state when he commits an act which seems to him fair and decent and which becomes a crime only through subsequent legislation Murders and atrocities as such were prohibited also in Germany. Hitler simply exempted his henchmen and himself of responsibility for such crimes. Is the restoration of such responsibility for crime an *ex post facto* law? Is it a destruction of the guaranties of individual liberty? Do we not adhere to the principle that no liberty can justify crime, oppression, and cruelty? "The Legal Case Against Hitler," *The Nation*, Feb. 24, 1945, at 205.

Because of his desire to prevent future genocidal attacks from going unchecked, and because the Nuremberg trials did not attempt to assign individual responsibility for atrocities which occurred under Hitler before the outbreak of the war, Dr. Lemkin continued to work for the establishment of an international treaty prohibiting crimes against a nation. He continued writing (see attached bibliography) and advocating for such a document, and he became a permanent fixture at the fledgling United Nations Organization, where he walked the corridors prodding and persuading hesitant delegates. In order to retain his independence as an advocate, he accepted no titles or financial assistance from any government, and he himself wrote the initial draft of what was to become the Genocide Convention. During the days of his intense lobbying efforts, he was known by some as a "dreamer" and a "fanatic," but by others as an "exceedingly patient" and "totally unofficial man."

It has been said that when the U.N. General Assembly approved the Convention of December 9, 1948 reporters who went looking for him to share in his triumph found him in a darkened assembly hall, weeping in solitude. Between 1948 and his death, Dr. Lemkin continued to travel to state capitals to eloquently speak for ratification of the Convention for which he was responsible.

Between March 1948 and June 1951 he was an instructor in international law at Yale, where he taught a course on United Nations Law. He later taught at the Newark Law School of Rutgers where he held the rank of professor; his last teaching post was at Princeton University.

In recognition of his life's work, Winston Churchill nominated him for the Nobel Peace Prize in 1950, and he was again nominated in 1952. Dr. Lemkin also received the Grand Cross of Cespedes from Cuba in 1950, the Stephen Wise Award of the American Jewish Congress in 1951, and on October 13, 1989 was awarded posthumously the Roosevelt Freedom Medal for his life-long contribution to the principle of the freedom of worship.

He died on August 28, 1959. Just before his death he was working on his autobiography entitled, "Unofficial Man."

--Christopher P. Gilkerson
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[Note: Another indication of Dr. Lemkin's lasting impact on human rights law is a book, *The Man Who Invented 'Genocide': The Public Career and Consequences of Raphael Lemkin* (published in 1984 by the Institute for Historical Review), which attempts to denigrate Dr. Lemkin's work within a revisionist account of Nazi atrocities.]