



DATE DOWNLOADED: Thu May 12 12:32:24 2022

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Raphael Lemkin, Genocide as a Crime under International Law, 4 U.N. Bull. 70 (1948).

ALWD 7th ed.

Raphael Lemkin, Genocide as a Crime under International Law, 4 U.N. Bull. 70 (1948).

APA 7th ed.

Lemkin, R. (1948). Genocide as crime under international law. United Nations Bulletin, 4(2), 70-71.

Chicago 17th ed.

Raphael Lemkin, "Genocide as a Crime under International Law," United Nations Bulletin 4, no. 2 (January 15, 1948): 70-71

McGill Guide 9th ed.

Raphael Lemkin, "Genocide as a Crime under International Law" (1948) 4:2 UN Bull 70.

AGLC 4th ed.

Raphael Lemkin, 'Genocide as a Crime under International Law' (1948) 4(2) United Nations Bulletin 70

MLA 9th ed.

Lemkin, Raphael. "Genocide as a Crime under International Law." United Nations Bulletin, vol. 4, no. 2, January 15, 1948, pp. 70-71. HeinOnline.

OSCOLA 4th ed.

Raphael Lemkin, 'Genocide as a Crime under International Law' (1948) 4 UN Bull 70

Provided by:

Kathrine R. Everett Law Library - UNC School of Law

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

Genocide as a Crime under International Law

By Raphael Lemkin

Genocide, the destruction of entire racial, national, and other groups, has "repeated itself throughout history almost with the regularity of a biological law," declares Dr. Raphael Lemkin, in the following survey of the United Nations' work on the subject. Dr. Lemkin was an adviser to the U.S. Prosecutor at the Nuremberg trials, and had a distinguished war career. He was invited as an expert on international and criminal law to assist the Secretary-General in preparing the draft convention on genocide.

THE GENERAL ASSEMBLY'S resolution of December 11, 1946, on the crime of genocide brought about a significant innovation in international law, as President Truman pointed out in his report to Congress on February 5, 1947. The Assembly unanimously resolved that genocide—meaning the destruction of racial, national, religious, linguistic, and political groups—is a crime under international law. From this follows a most important consequence: the destruction of such groups is no longer an internal affair of the country involved but a matter of international concern. A birthright, the right of entire human groups to exist, has been put under international protection by this resolution. The United Nations went boldly on record with its determination to put an end to this crime, which has repeated itself throughout history almost with the regularity of a biological law.

The most widely known cases of genocide include the destruction of Carthage, the destruction of the Albigenses and Waldenses, the Crusades, the march of the Teutonic Knights, the destruction of the Christians under the Ottoman Empire, the massacres of the Herreros in Africa, the extermination of the Armenians, the slaughter of the Christian Assyrians in 1933, the destruction of the Maronites, and the pogroms against the Jews in Czarist Russia and Rumania. By destroying six million Jews, several million Slavs, and almost all the Gypsies of Europe, the Nazis have focussed our attention more sharply on this phenomenon, which was not new in itself.

The determination to stop this crime, which finds its expression in the Assembly's resolution of the General Assembly of December 11, 1946, reminds us of the historic statement by Voltaire: "Out of these crimes will come a benefit for mankind." It was necessary for the General Assembly to adopt this resolution and to call for an international convention on genocide, because there was no generally accepted law for the prevention and punishment of this crime. The Nuremberg judgment did not, and could not, establish genocide as an international crime, recognized as such in normal conditions among sovereign states. The Nuremberg law applies only to crimes committed during or in connection with war. It deals with the relationship between a conqueror and a conquered country. Crimes connected with war are within the jurisdiction of military courts.

International law is strictly divided into two bodies, the law of war and the law applicable in time of peace. Crimes under international law (*delicta juris gentium*) are a quite different matter from crimes connected with war. Within the first category come such crimes as piracy, trade in women and children, trade in slaves, the drug traffic, trading in obscene publications, and forgery of currency. These crimes are punished according to the principle of "universal repression," meaning that a criminal can be validly punished by the court of the country where he is apprehended, irrespective of the place where the crime was committed. For example, an individual who has traded in women in Stock-

holm can be validly tried by a court in Paris. Such a criminal cannot claim any right to asylum. International law invokes the solidarity of the states in punishing such crimes, and makes the soil burn under the feet of such offenders. There are some variations in national criminal codes as to the number of crimes under the law of nations, but the underlying principles as to international solidarity in prevention and punishment are the same among all civilized nations.

Indeed, genocide must be treated as the most heinous of all crimes. It is the crime of crimes, one that not only shocks our conscience but affects deeply the best interests of mankind. Cultural and other contributions are no longer forthcoming from human groups slated for destruction. World culture is impoverished. Genocide engenders mass flights into other countries which are not always ready to receive destitute immigrants. The refugee and displaced persons problems are by-products of genocide. Other countries have to take care of the victims of genocide, and have to pay for the crimes committed by others. Moreover, genocide disrupts international trade, because entire groups which participate in the international exchange of goods disappear or disintegrate.

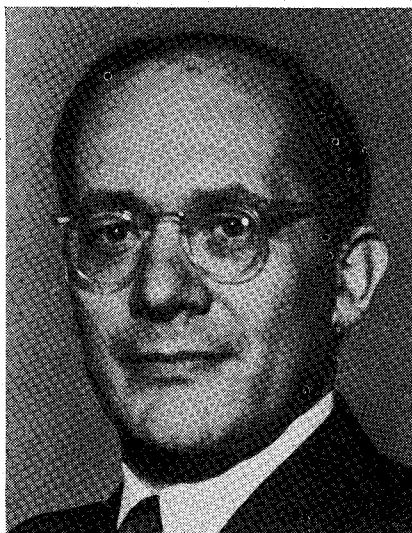
BY THE Assembly's resolution of December 11, 1946, the Economic and Social Council was called upon to draw up a draft convention on the crime of genocide. The Economic and Social Council in turn requested the Secretary-General to

prepare such a draft with the assistance of three experts in international and criminal law. A draft convention was subsequently drawn up and circulated among governments. The convention reflected the principles proclaimed by the resolution of December 11, 1946. It envisages the protection of national, racial, religious, linguistic, and political groups from destruction by acts of violence.

There are three basic phases of life in a human group: physical existence, biological continuity (through procreation), and spiritual or cultural expression. Accordingly, the attacks on these three basic phases of the life of a human group can be qualified as physical, biological, or cultural genocide. It is considered a criminal act to cause death to members of the above-mentioned groups directly or indirectly, to sterilize through compulsion, to steal children, or to break up families. Cultural genocide can be accomplished predominantly in the religious and cultural fields by destroying institutions and objects through which the spiritual life of a human group finds expression, such as houses of worship, objects of religious cult, schools, treasures of art, and culture. By destroying spiritual leadership and institutions, forces of spiritual cohesion within a group are removed and the group starts to disintegrate. This is especially significant for the existence of religious groups. Religion can be destroyed within a group even if the members continue to subsist physically.

Cultural genocide should not be mixed with provisions of minority treaties. Cultural genocide can be committed only through acts of violence which are qualified as criminal by most of the criminal codes. It should be noted, however, that the draft convention is drawn up in such a way that its structure remains valid even if parts should be removed or changed.

The protection of these groups centres around the concept of crimes under the law of nations described above. However, the possibility of creating an international court for



Dr. Raphael Lemkin

the most serious cases is envisaged in the draft convention. It will be up to the governments to decide about this issue. Moreover, the organs of the United Nations will have the right to intervene or otherwise to express their concern about human groups slated for destruction.

AFTER the draft convention had been drawn up by the Secretariat it was submitted in June 1947 to the Committee on Codification and Development of International Law and later, in July 1947, to the Economic and Social Council. However, neither of these bodies took action. These bodies explained their attitude by the fact that their members did not have instruction from their Governments on how to deal with this matter.

In these circumstances, the draft convention came before the General Assembly, and the Secretary-General proposed that the draft convention should be considered by the Social, Humanitarian, and Cultural Committee. However, the General Committee referred it to the Legal Committee. By a vote of 22 to 13, with one abstention and 16 representatives absent, the Legal Committee adopted a resolution by which the Economic and Social Council would have to decide whether a convention on genocide was necessary. It would also have to decide whether the problem of genocide should be considered "in connection with the drafting of

the convention including the principles of international law recognized in the Charter of the Nuremberg Tribunal and sanctioned in the judgment of the tribunal."

This vote of the Legal Committee signified a reversal of the resolution of December 11, 1946 which expressly called for a convention on the crime of genocide. However, when this resolution came before the General Assembly, it was defeated by a large majority. The Assembly decided on November 21, 1947 to call upon the Economic and Social Council to continue its work on the suppression of the crime of genocide and to submit a draft convention on the subject to the third Assembly session.

The attention of the Economic and Social Council was significantly called to the fact that the International Law Commission, which will be set up by the Assembly at its next session, has been charged with the formulation of the principles recognized in the Charter of the Nuremberg Tribunal as well as with the preparation of other codification projects. This means that the General Assembly has divorced itself from the tendency to connect the genocide problem with other codification projects. Such an attitude shows that the General Assembly has decided to treat genocide as a burning problem which cannot wait. The urgency of the matter was further stressed by the resolution of the General Assembly which stated that "the Economic and Social Council need not await the receipt of the observations of foreign Member Governments before commencing its work."

THIS ATTITUDE of the General Assembly is in keeping with a powerful trend in public opinion which has developed in favor of the genocide convention. Coming as it does from various civic and religious groups and leaders, from presidents of parliaments and states, and world-renowned writers, this profound interest justifies the statement of a leading American newspaper, which called the genocide convention "a treaty for the people."