Preface

This devoted man did more than any other individual to win formal acceptance of the principle that it is criminal to injure or destroy any "national, ethnical, racial or religious groups." Raphael Lemkin, once a successful lawyer in Warsaw, had suffered loss of his family, except one brother, at the hands of Nazis. In this country he had a distinguished career as a teacher, lecturer and writer, but the burden of his days was his crusade against slavery, degradation and murder. It was a heavy burden, and last Friday it killed him, at the age of 58.

The New York Times, 31 August 1959, p. 20

It is difficult to overestimate Rafal Lemkin’s contribution to the intellectual and moral progress of mankind. Many before and after him attempted to come to grips with crimes on a scale defying human comprehension, with fully premeditated mass slaughter aimed at a physical extermination of a large group of people singled out on the basis of ethnic, class or religious criteria. The human race had for centuries been condemning and punishing crimes against individuals, examining the logic and motives behind them, but it remained intellectually defenseless and institutionally powerless in the face of death meted out on a massive scale in disassociation from—and often in contradiction to—the logic of war, particularly when the perpetrator or instigator was the state and the victims were its own citizens, not external foes. Such situations constituted a dramatic violation of the social contract upon which relations rested between citizens and the state and its institutions, giving citizens the right to expect the state to safeguard their security. The tradition of granting priority to the principles of state sovereignty and non-interference in a state’s internal affairs over the need to intervene in order to put an end to the tragic fate of innocent people often placed the international community in the role of a passive bystander. It was Lemkin’s concepts and work that ushered in an entirely new way of thinking.
For centuries, the lives of individuals had been protected by institutions of the state, which—in order to fulfill this function more effectively—over time managed to secure for itself a monopoly on the use of force. In inter-state relations principles of resorting to this monopolistic function were gradually subjected to regulation and in time the law of nations came to regulate also the conduct of war seen as the most violent form of inter-state relations. As the military service became more common in turn and military technology evolved, the need arose to replace honor codes rooted in medieval codes of chivalry with international law codifications providing the vanquished some measure of protection irrespective of their origin. As a result, at the beginning of the 20th century the fate of soldiers participating in regular armed conflict, as well as that of the civilian population in areas of military operations, were granted protection under international law. Rafał Lemkin was the first to recognize the threats inherent in a lack of protection under international law for large social groups exposed to discrimination by state institutions which, for political reasons, either refused to extend their protection to these groups or were pursuing a policy of their physical extermination. Lemkin’s intellectual search, which had begun prior to the outbreak of World War II, enabled him to formulate a response to the horrifying experience of the Holocaust and mass crimes carried out by the Third Reich on the populations of occupied countries of Central and Eastern Europe. After the end of World War II, acting in isolation and, initially, on his own, he proposed the introduction into international law of a definition of mass crime that he referred to as the crime of genocide and, later, of its penalization under international law. Thanks to his titanic effort, determination and resolve, Lemkin’s work ended in success. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations, marking the beginning of growing awareness of international responsibility for the protection of large social groups threatened with repression and genocide. Following the horrible experience of World War II, Rafał Lemkin’s concept helped restore faith in mankind and in its ability to stand up to evil, even if monstrous and well beyond human comprehension. The aim of the present volume is to perpetuate the memory of this outstanding individual and to popularize his unjustly forgotten achievements.

Rafał Lemkin was born in 1900 to a Jewish family in Bezwodne, eastern Poland. Already as a teenager, he was troubled by the impunity...
with which entire populations had been subjected to mass murder that escaped the norms of international law. He was educated in linguistics and law at the University of Lwów, and expanded his knowledge by attending a seminar in penal law at the University of Warsaw. He became an outstanding and valued lawyer. During the inter-war period, he served as assistant public prosecutor for the district court in Warsaw (1929–1934), a member of the Polish Law Codification Committee and secretary general of the Polish group of the International Association of Penal Law.

Lemkin studied examples of mass murder, such as the pogroms of Jews in tsarist Russia, the slaughter of the Armenians (Mets Yeghern) in 1915–1917 and the Great Famine in Ukraine (Holodomor) precipitated by the Soviet authorities in 1932–1933. He was especially disturbed by the ideology and policies of Nazi Germany and expressed his worries during international conferences as Poland’s delegate to the International Bureau for the Unification of Criminal Law. The Bureau suggested that he work on the formulation of a proposal to outlaw acts of “barbarism” and “vandalism” against national, ethnic, racial and religious groups. His earlier research into past mass crimes inclined him to formulate warnings in connection with the racial slogans and policies pursued by Nazi Germany. Following Germany’s attack on Poland on 1 September 1939, Lemkin’s family did not share his anxiety and disregarded his warnings. He decided to flee alone, through Lithuania and Sweden, to the United States. He lost all 47 members of his family in the Holocaust. Only one brother survived.

During the war, he informed the public opinion and politicians of the Western powers about the crimes perpetrated by the Germans in Europe. The immeasurable scale of these crimes defied human comprehension. Referring to their unprecedented character, Winston Churchill stated that Germany was perpetrating “a crime without a name,” thus acknowledging intellectual powerlessness in the face of the enormity of the crime. Whatever is unnamed does not exist, and in legal terms it goes unpunished. Refusing to accept this, Lemkin attempted to give a name to mass crime. In 1943, he created the term “genocide” (from the Greek genos and the Latin cide). He laid out his concept in his major work *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, published in Washington in 1944 by the Carnegie Endowment for International Peace.
Shaken by the scale of the crimes that had taken place in Europe, Lemkin began work on an international convention prohibiting genocide once and for all. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted unanimously by the United Nations General Assembly on 9 December 1948, one day before the adoption of the Universal Declaration of Human Rights. This was a great personal achievement for Lemkin, who immediately began a campaign to have the document ratified. The Convention came into force on 12 January 1951.

The adoption of the Convention on the Prevention and Punishment of the Crime of Genocide was one of several measures aimed at improving the position of an individual in the face of state authority. New instruments for the protection of human rights, new institutions and new implementing mechanisms were emerging in direct reaction to the horrors of World War II with its boundless destruction of human dignity.

Although it is difficult to overestimate the significance of the Convention, it did little to prevent subsequent cases of genocide in Cambodia, Rwanda or Sudan. Humanity has learned so much and yet so little. But Rafał Lemkin’s efforts are continued. On the one hand, this is reflected in the development of international penal law and in the functioning of international criminal tribunals, and, on the other, in the emerging concept of “the responsibility to protect” denoting steps that the international community ought to take when mass crimes are committed.

Rafał Lemkin was a remarkable, if tragic, figure. The dramatic events that had affected him personally during World War II led him to dedicate himself wholly and uncompromisingly to the cause of preventing similar tragedies in the future. Nominated for the Nobel Peace Prize on many occasions, he was at the same time far from being understood by humanity, for which he had done so much. He died in solitude in 1959 and was seldom mentioned in the years following his death. Neither was memory of Lemkin popular in his home country, which found itself in the Soviet sphere of influence after the war. Given his criticism of Soviet crimes, any mention of Rafał Lemkin or his beliefs was highly inconvenient for the communist regime. Only after the collapse of communism did it become possible to start rebuilding the memory of Rafał Lemkin.

An excellent opportunity in this regard was provided by the 60th anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide. It inspired the Polish
Institute of International Affairs (PISM) to organize, on 18–19 September 2008, an international conference that brought together many renowned scholars and experts, including historians studying the life of Rafał Lemkin or specific cases of genocide as well as legal scholars interested in international penal law or jurisprudence. The conference was an opportunity to remember this outstanding Polish lawyer, to present his achievements and to discuss the newest trends in the prevention and prosecution of genocide and other mass crimes.

On the occasion of the conference, the Polish Institute of International Affairs funded a commemorative plaque, which was ceremoniously unveiled on the first day of the conference at 6, Kredytowa Street in Warsaw, where Lemkin had lived and practiced before the war. The ceremony was attended by Dr Andrzej Kremer, undersecretary of state at Polish Ministry of Foreign Affairs, and by the former Polish foreign minister, Professor Adam Daniel Rotfeld, who, three years earlier, had unveiled a commemorative plaque at the Foreign Ministry, where one of the conference halls was named in honor of Rafał Lemkin.

On 3 February 2009, Foreign Minister Radosław Sikorski, while presenting Poland’s 2009 foreign policy in Parliament, declared that the Polish government was considering the establishment of a special international award commemorating Rafał Lemkin, the architect of the notion of “genocide.”

This publication is a result of the unusual conference organized by PISM in 2008. Its different parts are devoted to the life of Rafał Lemkin; to the importance of his achievements for the evolution of international law and humanization of international relations; to the stance of the great powers with regard to the Genocide Convention; and to current trends in preventing and reacting to major mass crimes.

The opening article was written by Adam Daniel Rotfeld, who had long been popularizing Rafał Lemkin’s ideas. The author describes Lemkin the individual as well as his accomplishments and observes that they show “just how much a single person can achieve in a free and democratic country.” He wonders about the significance of the term “genocide,” which has become a universal notion today, concluding that a drive for power is always the motive behind mass crimes. Insofar as Hitler sent people to their deaths based on ethnic, national or racial considerations, Stalin and Mao Zedong committed mass crimes based on class or ideological considerations, but it is nonetheless evident that the communist system has also been a criminal one.
The first chapter treats of Rafał Lemkin’s life as told by several eminent historians. Professor Ryszard Szawłowski has been researching Lemkin’s life for years and is the author of a monograph on Lemkin published in 2008 by the Polish National Remembrance Institute (IPN). Professor Szawłowski played an important role in making the community of Polish scholars more aware of the contribution of this great lawyer to the development of international law. In his article, he singles out three stages in Lemkin’s life: the development of his career as a scholar and lawyer in Poland before 1939; the culmination of his creative activity combined with international recognition and renown in mid-1940s in the USA and Western Europe; and, lastly, his final years in New York in the 1950s, when he was destitute and forgotten.

Professor Marek Kornat from the Polish Academy of Sciences (PAN), a representative of the younger generation of Polish scholars, presents in great detail Rafał Lemkin’s life in Poland prior to World War II. He points to events that affected the growth of Lemkin’s interest in mass crime, such as the assassination of Talaat Pasha, who was responsible for the massacres of the Armenians in Turkey, or the attempt on the life of Symon Petlura in revenge for the anti-Jewish pogroms in the Ukrainian People’s Republic in 1919.

Kornat also recalls Rafał Lemkin’s mentors: Juliusz Makarewicz (1872–1955), Wacław Makowski (1880–1942) and Emil Stanisław Rappaport (1877–1965). He discusses Lemkin’s work as a lawyer, including his work in criminal law, as well as his activities in the International Bureau for the Unification of Criminal Law.

William Korey, the author of another article in this volume, has not lived to see its publication, having passed away in September 2009. This article is one of Korey’s last texts devoted to Lemkin, whose life and achievements he actively propagated for years. In 2001, Korey published the results of his research in a book entitled An Epitaph for Raphael Lemkin, depicting the day the Convention was adopted by the UN as a great personal victory for Lemkin. Korey describes in great detail Lemkin’s determination to draft the Convention and get it adopted and ratified, as well as his contacts with politicians, experts and journalists whose help he needed to rally public support for his idea. Korey also recalls the words spoken by Pakistan’s Foreign Minister Zafrulla Khan on the day the Convention was adopted, when he observed that it should be called the “Lemkin Convention” in order to
stress Lemkin’s personal contribution and devotion in the struggle to get it adopted.

Steven Leonard Jacobs from the University of Alabama depicts Lemkin primarily as a victim of genocide. Among such victims, the author includes not only those who perished, but also the wounded who managed to survive as well as their relatives and children who inherited their trauma. Jacobs draws attention to the fact that Lemkin considered his struggle for the recognition of genocide as an illegal act to be his moral obligation to his mother, who had played a key role in shaping his personality. Her loss in the Holocaust released an unusual amount of creative energy in Lemkin. Jacobs also elaborates on the significance of Lemkin’s work for the development of the concept of humanitarian intervention and for the functioning of today’s international criminal tribunals.

Jean-Louis Panné, a French historian and researcher of communism, carries out a comparative analysis of the concepts of Rafał Lemkin and American historian Raul Hilberg, who studied the destruction of European Jews. Panné stresses that insofar as Lemkin primarily concentrated on the legal instruments that had led to the Holocaust and sought new regulations in international law for the future, Hilberg’s perspective was broader. The latter was interested in the Holocaust as a process. In his work, Hilberg emphasized the significance of Lemkin’s achievements. He valued Lemkin also for his analysis of the economic aspects and instruments of genocide. In consequence, Panné sees Hilberg’s work as being in large measure similar to Lemkin’s.

Stéphane Courtois, a scholar from the Centre National de la Recherche Scientifique (CNRS) and one of the authors (including Jean-Louis Panné) of The Black Book of Communism: Crimes, Terror, Repression (Cambridge, MA, 1999), clarifies the notion of class genocide and relates it to the concept of genocide as formulated by Rafał Lemkin. Courtois points out that it was only after the fall of the Soviet Union in 1991 that it became possible to conduct unhampered research into mass crimes committed under the Stalinist system. Courtois analyzes carefully the roots of genocidal ideology in the context of the emergence of communism and then presents acts of genocide carried out while Stalin was in power, demonstrating that they meet Lemkin’s definition of genocide.

The volume also presents the debate on Lemkin’s concept of genocide in countries that took part in World War II or played a key role in the adoption of the Convention and its entry into force. Claudia Kraft, professor of Central and Eastern European history at the
University of Erfurt, points out that the process of drawing up the Convention was affected by the Cold War, which was then beginning. The Soviet Union did not agree to a definition of genocide that included political groups, while the United States was opposed to the concept of “cultural genocide.” With respect to West Germany’s approach to Convention, Kraft notes that it was a consequence of the country’s changing role in international relations after World War II. West Germany became a part of Western Europe and in time was embraced by the European integration process. The discussion about the concept of genocide was also an important opportunity for the Germans to face their country’s history and responsibility for the outbreak of the war.

Anton Weiss-Wendt, head of the Research Department at the Norwegian Holocaust Center in Oslo, presents the Soviet viewpoint on the Genocide Convention. The Soviet Union was opposed to working on a convention, arguing that it was enough to codify the Nuremberg principles pertaining to war crimes and crimes against humanity. Moscow was determined to detract attention from crimes perpetrated by the Soviet Union, such as mass deportations in 1941–1944 or the execution of the Polish officers in Katyn in 1940. The author also reiterates that the objections of both the Soviet Union and the United States made it impossible to provide the Convention with tough implementing mechanisms—a factor seriously undermining its efficiency and functioning.

According to Samuel Totten, a professor at the University of Arkansas, the United States—even though it strives to play the role of a champion of human rights—has a problem with the ratification of many important international instruments. This was also the case with the Genocide Convention and the Rome Statute of the International Criminal Court referring thereto. The struggle for the ratification of the Convention in the United States lasted 40 years, i.e. until President Ronald Reagan’s decision in 1988. In this context, it is worth remembering the role of Senator William Proxmire of Wisconsin, who for well over a decade repeatedly argued in favor of ratifying the Convention before the U.S. Senate, and his efforts eventually made it possible to complete Rafał Lemkin’s work in the United States.

Professor Roman Serbyn’s article on the Ukrainian Great Famine of 1933 (the Holodomor) is another important contribution to the present volume. The author recalls that Rafał Lemkin was the first scholar to give a conceptual framework to research on the Holodomor. In 1953, Lemkin wrote an article “Soviet Genocide in the Ukraine,” where he
did not treat this tragedy as yet another mass crime, as did most scholars at the time, but instead referred to it as genocide. Lemkin’s knowledge of Soviet law and his familiarity with the political situation in the USSR played a key role in this respect.

Professor William A. Schabas, a distinguished jurist and international penal law expert, is the author of a comprehensive study of genocide entitled *Genocide in International Law: The Crimes of Crimes*, published by Cambridge University Press in 2000. In the article included in this volume, he elaborates on the significance of the Nuremberg Tribunal and its principles for the formulation of the Genocide Convention. In defining the crime of genocide it was necessary to examine the definition of a crime against humanity and determine whether or not it included genocide. Had the Tribunal not defined crimes against humanity as committed in wartime, the Convention might not have been adopted. Schabas juxtaposes and compares the concepts of both crimes, concluding that today, taking into account the achievements of international penal law and jurisprudence, the difference between the two crimes is symbolic rather than practical.

Given a comprehensive approach to Lemkin’s heritage, which goes far beyond the conventions that have been adopted, an important part of the conference and of this volume is devoted to the “responsibility to protect” concept, which reflects the need for an international response to the problem of genocide and other mass crimes. Professor Zdzisław Kędzia, a long-time employee of the Office of the UN High Commissioner for Human Rights, presents the relationship between the notions of “sovereignty” and “protection.” He defines sovereignty as a responsibility “for ensuring conditions of life of the population under the jurisdiction of the state at the level which is commensurate with human dignity.” The redefinition of the notion of sovereignty is of key importance for the formulation of effective international mechanisms to prevent mass crimes. The author presents the hopes and difficulties inherent in the formulation of the principle of “responsibility to protect.”

The success of the above concept will in large measure depend on the UN Security Council. This issue is examined by Daphna Shraga, principal legal officer at the UN Office of Legal Affairs. She states that—although the Security Council did not manage to avert the crime of genocide in Rwanda, Srebrenica or Darfur—the assessment of its role cannot be entirely negative, given the Council’s unquestioned contribution to the establishment of international criminal tribunals to try crimes in
Rwanda or in the former Yugoslavia. An analysis of the Security Council’s role in the above three cases and of the legal instruments in force has led the author to conclude that the Security Council is obliged to react in cases of mass violation of human rights, including genocide. The Security Council has on many occasions recognized such situations as constituting a threat to international peace and security, which is a *sine qua non* condition for the initiation of military action pursuant to Chapter 7 of the UN Charter. No one is in a position to force the Council to take action, however, if there is no political will to act amongst its members. Hence Shraga notes that it is a major challenge for our generation to define the Security Council’s powers to authorize the use of force in order to protect civilian populations from extermination.

Blaise Misztal, an analyst with the Bipartisan Policy Center, observes that Lemkin’s achievements are an expression of moral universalism that has led to the adoption of a universal law, which treats the extermination of groups of people on account of their nationality, ethnic origin, race or religion as the worst crime that can be committed by mankind. The author presents relations between the moral perception of the crime of genocide and its treatment in international law. On the one hand, the definition of genocide outlined in the Convention reflects moral values, but, on the other, it can provide justification for immoral policies. This takes place when, in the face of mass extermination, countries become bogged down in lengthy deliberations about whether or not they are dealing with the crime of genocide as defined under the Convention, thus justifying their “immoral” passivity.

It is our hope that the present publication will contribute to a better understanding of Rafał Lemkin, his achievements and his legacy, which extends way beyond his time. The multitude of problems it encompasses should be an inspiration for further research into genocide, while the memory of Rafał Lemkin should encourage us to continue his work.

We wish to thank all the distinguished scholars who had agreed to take part in the conference hosted by the Polish Institute of International Affairs and then submitted their articles for publication.

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